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Evidential Issues in Trafficking in Persons Cases



CASE DIGEST

UNITED NATIONS OFFICE ON DRUGS AND CRIME
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Note to the reader

The Case Digest has analysed 135 cases from 31 jurisdictions. It benefited from the input from experts from all parts of the globe.

Trafficking in persons is a victim-centred crime, complex by its nature and requiring a constellation of circumstances in order to establish it. As a result, such cases present particularly complex evidential issues, many of which hinge upon the particular nature of this covert crime and the behaviour of victims, whose testimony is often the central piece of evidence. The Case Digest aims to serve to deepen an understanding of the issues it discusses. It is also hoped that criminal law and other practitioners may be able to learn from the actual cases which are presented, both by understanding that they are not alone in facing certain patterns and issues, and by deriving assistance from the tools that courts worldwide have developed.

In view of the complexity of human trafficking cases and the diversity of national systems which can accord with the Trafficking in Persons Protocol, this Case Digest's goal is not to instruct practitioners categorically on how to conduct cases. Instead, the Case Digest presents evidential issues and patterns and describes how different jurisdictions addressed these. In doing so, it needs to be recognized that there may not be one answer to a question or issue, but that there is an added value in presenting a wealth of possibilities and tools and in heightening an awareness of central issues which recur in trafficking cases across the world.

The Case Digest arose from a need the United Nations Office on Drugs and Crime (UNODC) identified among practitioners who fight trafficking, to be given tools to address typical evidential problems which arise in trafficking cases. Therefore, the Case Digest aims first and foremost to assist criminal justice practitioners worldwide in addressing the evidential issues typical to trafficking cases, under the assumption that there are particular issues which recur and are central to the success or failure of cases. It aims to equip these practitioners with an arsenal of possible creative solutions that have been tried and tested elsewhere in actual cases before courts. It is hoped that by using these tools, practitioners will be inspired to think "outside the box" when encountering problems related to evidential issues in human trafficking cases.

In the same vein, the Case Digest tries to alert practitioners that patterns which at first glance may appear to be weaknesses in the case, may actually strengthen it. For example, the fact that a victim does not flee when given an opportunity to do so, seems, at first glance, to be a weakness in the case, but may in fact be a strength in that it may point to the high level of control exerted by the trafficker; inconsistencies in a victim's testimony may seem such as a weakness in the case, but may actually be a strength, in establishing that the victim has not been coached, but is making a genuine statement; a threat that may seem, on the face of it, to be irrational and too fantastic to believe, may be a particularly menacing threat in the cultural context and subjective world of the victim. The essential lesson is that, in building a trafficking case, one must examine the totality of the circumstances in order to gauge the significance of any one piece of evidence.

It should be noted, however, that the Case Digest, as much as it aims to assist criminal justice practitioners, would also be valuable to a range of other stakeholders, including

policymakers and legislators, researchers, students and lecturers, service providers, labour inspectors and law enforcers from a variety of sectors, as well as other actors that are relevant to a comprehensive response to trafficking in persons and seek to better understand some of the challenges and opportunities in addressing trafficking.

As stated at the outset, this Case Digest has limitations. One of these is its subject matter, which is limited to evidential issues. Naturally, there are many additional aspects and dimensions, even in relation to this topic, that would be worth further exploration, but could not be included in this Case Digest. One such topic is victim protection measures which may impact upon the availability and quality of victim testimony. Another is the transnational dimension of many trafficking in persons cases, where the victim may be recruited in one country, transported through another and exploited in a third country, leading to special challenges that should be explored. In addition, the Expert Group Meeting convened to review a draft of this Case Digest in May 2014 in Vienna yielded suggestions to address, among other topics, discussions on organized crime, corporate defendants, public officials as defendants, and cases involving corruption. Unfortunately, these were beyond the scope of the present Case Digest, but we do hope that this is only the first of many such initiatives.

Most cases in the Case Digest are drawn from UNODC's Human Trafficking Case Law Database. This database is freely available at www.unodc.org/cld. Furthermore, relevant national legislation on trafficking in persons and allied crimes can be found in UNODC's Sherlock (Sharing Electronic Resources and Laws on Crime) database on legislation <http://www.unodc.org/cld/index-sherloc.jsp>. Both are living tools that continue to grow, are easily searchable and can complement the Case Digest. Readers of the Case Digest are invited to make use of them.

1. Background

1.1 Introduction

Article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking in Persons Protocol) defines trafficking in persons as constituting three elements: (a) an “action”, being recruitment, transportation, transfer, harbouring or receipt of persons; (b) a “means” by which that action is achieved (threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability, and the giving or receiving of payments or benefits to achieve consent of a person having control over another person); and (c) a “purpose” (of the intended action/means): namely, exploitation. All three elements must be present to constitute “trafficking in persons” in international law. The only exception is when the victim is a child; in such cases it is not necessary that one of the acts was accomplished through the use of any of the listed “means”. At the same time, the victim’s consent is irrelevant when any of the above “means” have been used.

Elements of trafficking in persons according to the Trafficking in Persons Protocol

The Protocol adopts a three pronged definition of the trafficking in persons crime:

1. ACT (recruitment, transportation, transfer, harbouring or receipt of a person);
2. MEANS by which the act is achieved (threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability and the giving or receiving of payments or benefits to achieve consent of a person having control over another person); and
3. PURPOSE of EXPLOITATION (at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs).

Elements of child trafficking

In the case of child trafficking, the definition does not include the element of MEANS, but only the ACT and PURPOSE OF EXPLOITATION.

The irrelevance of victim consent

The Trafficking in Persons Protocol states that where the MEANS are present, the consent of the victim is irrelevant.

More than 10 years after the Trafficking in Persons Protocol entered into force, a large number of countries have already embraced it.¹ Despite the high number of States Parties to the Protocol and the growing number of countries that have adopted national laws criminalizing trafficking in persons,² implementation remains challenging. Evidential issues are among the most pressing problems that criminal justice systems face in investigating and prosecuting human trafficking.

As in every crime, cases may succeed or fail according to the quality and adequacy of the evidence submitted. However, in trafficking in persons cases, there are particularly complex evidential issues, many of which hinge upon the particular nature of this covert crime and the behaviour of victims, whose testimony is often the central piece of evidence. Thus, an understanding of the issues and the ability to learn from actual cases in which they played a role is of the essence. This Case Digest aims to assist criminal law and other practitioners to address problems which often arise in pursuing trafficking cases by allowing them to draw upon case law in other jurisdictions which tackled similar problems.

However, the Digest's goal is not to instruct practitioners categorically on how to conduct cases, but rather to present evidential issues and patterns and describe how different jurisdictions addressed them. This approach recognizes that sometimes there is no one answer to a question, but that there is added value in presenting a wealth of possibilities which serves to heighten awareness of issues and present the practitioner with an arsenal of possible creative solutions.

Cases analysed are primarily drawn from UNODC's Human Trafficking Case Law Database. In addition, UNODC organized one Expert Group Meeting bringing together expert practitioners from different regions of the world and various legal systems to review existing cases and supply additional salient cases from their respective jurisdictions.

Besides cases dealing with trafficking in persons, the Digest also examined cases of "allied crimes" such as slavery, forced labour and involuntary servitude.³ These are relevant for a number of reasons: Firstly, they are closely connected crimes protecting similar values of autonomy and human freedom and dignity.⁴ In this regard, it is instructive that some laws

¹As of 1 August 2016, the Trafficking in Persons Protocol had 169 Parties, see https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=_en. The entering into force of the Trafficking in Persons Protocol also impacted regional developments leading to the enactment of a number of regional conventions and instruments including, the Council of Europe Convention on Action against Trafficking in Human Beings; Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, binding on members of the European Union; The Economic Community Of West African States (ECOWAS) Declaration on the Fight against Trafficking in Persons; the Commonwealth of Independent States (CIS) Agreement on Cooperation in Combating Trafficking in Persons, Human Organs and Tissues and the body's programme of cooperation; the Comprehensive Arab Strategy for Combating Trafficking in Human Being of 2012 and the Arab League Model Law on Combating Human Trafficking of 2012; the Organization of American States (OAS) Work Plan; the ASEAN Convention Against Trafficking in Persons, Especially Women and Children, and more.

²Some 173 out of 193 countries have legislation criminalizing trafficking in person (Global Report on Trafficking in Persons, UNODC 2016).

³These crimes maybe the subject of other international conventions, such as the Convention Concerning Forced or Compulsory Labour, 39 UNTS 55, ILO No. 29, Convention to Suppress the Slave Trade and Slavery, 60 LNTS 253 and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 226 UNTS 3.

⁴The terms "human dignity" or "human rights and freedoms" appear in several trafficking laws and, for example, article 7 of the trafficking law of Sudan; the preamble to the trafficking law of Indonesia; article 2 of Moldova's trafficking law of 2005; Colombia's law against trafficking from August. The term "human dignity" also appears in section 2 of the Philippine Trafficking Law of 2012. In several laws both trafficking and "allied crimes" appear in chapters which address "Offenses against Humanity" (Chapter 8 of Australia's Criminal Code which includes Divisions 270 on "Slavery and Slavery-like Conditions" and 271 which includes "Trafficking in Persons and Debt Bondage") or "Violations of Freedom" (Section 7 of Part 2 of the Criminal Law of Israel which includes trafficking in persons, holding a person under conditions of slavery, forced labour, abducting for the purpose of trafficking in persons).

or amendments addressing human trafficking were legislated regarding a series of such offences.⁵ Secondly, these allied crimes are purposes of exploitation according to the Trafficking in Persons Protocol, and as such, their analysis in case law has much to teach. Finally, similar evidential problems may arise in these cases. In the same vein, the Digest includes selected cases of prostitution offences with elements similar to trafficking in persons in their severity.

Drawing upon case law about allied crimes does not imply advocating a blurring of the distinctions between these crimes and trafficking in persons. Police, prosecutors and judges must still decide which crime is relevant, based upon the elements of each of these crimes and how they most accurately fit the factual picture of a particular case. However, whatever decision is ultimately made, often a commonality in evidential issues and solutions may enable practitioners to learn from allied crimes. When a specific case is presented in the Digest, the charges are clarified.

Most of the cases included in the Digest revolve around trafficking in persons for sexual exploitation or for labour exploitation, as these seem to be the cases most fully analysed by courts to date.

Since the Digest's aim is to address evidential issues specific to trafficking in persons cases, it does not include a discussion of general evidential problems such as the admissibility of defendants' confessions, burdens of evidence, or competency of witnesses, unless they include aspects particularly relevant to cases of trafficking in persons or allied crimes.

While some cases are cited with names of defendants, others are cited by means of numbers only, according to the rules and procedures of the particular country.

During the course of the Expert Group Meeting convened to review the Digest, several suggestions were made to include additional topics. These included organized crime, corporate defendants, public officials as defendants, and cases involving corruption. Also the topic of trans-national trafficking in persons would merit in-depth evaluation, as do the issues of marriage or adoption as tools of trafficking and surrogate motherhood or the problem of forced abortion,⁶ in the context of trafficking. Furthermore, distinctions which are of the essence in distinguishing between trafficking in persons and other crimes such as "mere" labour exploitation or crimes of prostitution could also justify a dedicated in-depth discussion.

While these are important topics, it was decided, however, to leave them to future Case Digests, in view of their complexity and in order to limit the length of the current tool. Still, the Digest may allude to certain aspects of these topics as for example organized crime is touched upon in the section which explores "the chain of trafficking".

And although the bulk of the sources cited in the Digest are court cases, books, reports, articles and manuals are also used as reference material when they can enrich an understanding of issues.

⁵ In addition to the legislation in Israel and Australia, see also, for example, the Norwegian Criminal Law where trafficking and enslavement offences are back to back (sections 224 and 225), and the Finnish Criminal Law where deprivation of liberty and trafficking offences are back to back (Chapter 27, sections 1 and 3).

⁶ See, for example, the Netherlands National Rapporteur reports at <https://www.dutchrapporteur.nl/Publications/RemovalofOrgansandForcedSurrogacy/index.aspx> and <https://www.dutchrapporteur.nl/Publications/CaseLawonTraffickinginHumanBeings/index.aspx> (pp. 55-56 and 116).

1.2 Mandate and procedure

As the guardian of the United Nations Convention against Transnational Organized Crime and its supplementary Protocols, including the Trafficking in Persons Protocol, UNODC is mandated to support Member States in the implementation of these instruments. Such support includes efforts to prevent and combat trafficking in persons; to protect and assist the victims of trafficking; to prosecute those who traffic persons, upholding justice and ensuring an effective criminal justice response; and to promote cooperation among States parties and other stakeholders in order to meet those objectives.

While ratification of the Trafficking in Persons Protocol has been increasing yearly, and while the majority of countries today have anti-trafficking in persons legislation, enforcement of these laws has been limited. The 2012 UNODC Global Report on Trafficking in Persons⁷ revealed that, of the 132 countries covered, between 2007 and 2010, 16 per cent did not record a single conviction for trafficking offences and 23 per cent recorded less than 10 convictions. The 2014 UNODC Global Report⁸ confirmed these findings—of the 128 countries covered, between 2010 and 2012, 15 per cent did not record a single conviction and 40 per cent reported less than 10 convictions. The continuing low number of convictions is also supported by the data collected by UNODC for the 2016 Global Report.

With regard to those prosecutions and convictions that are undertaken, very little is currently known at the international level about how practitioners use their respective laws to combat trafficking in persons, what, if any, are the characteristics of successful prosecutions and what are the central impediments to implementation of the laws.

To assist countries in meeting their obligations under the Trafficking in Persons Protocol, UNODC has developed the Human Trafficking Case Law Database (www.unodc.org/cld) as a publicly available collection of trafficking in persons and allied crimes prosecutions and convictions across the world. Launched in October 2011, the Case Law Database enables judges, prosecutors, policy-makers, researchers and other anti-trafficking actors to learn from patterns, dilemmas and solutions in other jurisdictions. The ultimate goal of the Human Trafficking Case Law Database is to increase the number of investigations, prosecutions and convictions for trafficking in persons globally. As of August 2016, the Human Trafficking Case Law Database includes information on about 1311 trafficking cases from more than 90 jurisdictions and three supra national courts/treaty bodies.

The Human Trafficking Case Law Database was recognized by the Working Group on Trafficking in Persons which adopted at its fourth session in 2011 a recommendation to the Conference of the Parties to the United Nations Convention against Transnational Organized Crime that “[t]he Conference should call upon States parties to support and submit cases to the UNODC human trafficking case law database, in order to review and identify new trends and good practices from those cases.”⁹

In line with this recommendation, in September 2012, UNODC convened an Expert Group Meeting on the further development of the UNODC Human Trafficking Case Law Database

⁷ The 2012 UNODC Global Report on Trafficking in Persons. Available at: http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf.

⁸ The 2014 UNODC Global Report on Trafficking in Persons. Available at: https://www.unodc.org/documents/data-and-analysis/glotip/GLOTIP_2014_full_report.pdf.

⁹ CTOC/COP/WG.4/2011/8, para. 49.

to solicit expert opinion on the next steps for the Database. The Expert Group Meeting, bringing together human trafficking practitioners from government and civil society organizations, academics, and law firms, recommended the development of several secondary products, including a case digest of trafficking cases.

UNODC then convened, from 6-8 May 2014 at its HQs in Vienna, a dedicated Expert Group Meeting to develop the Digest. The meeting included experts from Argentina, Australia, Austria, Azerbaijan, Belgium, Canada, Colombia, Egypt, Finland, France, Germany, Japan, Kenya, the Netherlands, Nigeria, the Philippines, Serbia, Thailand, the United Kingdom and the United States of America.

The meeting allowed the expert participants to provide UNODC with additional cases, present in-depth analyses of selected cases and provide comments on the Case Digest in terms of format, organization, issues addressed, nature of cases used and their geographical ambit. Several experts from India, Israel, Norway, Russian Federation, Swaziland and Tonga who were unfortunately unable to attend the Expert Group Meeting also kindly agreed to review the Draft Digest and furnished UNODC with comments and additional cases.

1.3 Challenges in developing this Case Digest on evidential matters

A digest of evidential cases may face particular difficulties in its effort to provide a practical tool for practitioners. In order to enable practitioners to evaluate the advantages and limitations of the Case Digest, this section focuses on a number of typical problems, some of which were touched upon in the introduction above. There are a number of natural obstacles which may impede learning among national jurisdictions.

Firstly, case law follows upon legislation, which may vary among States, thus imposing natural limits on what can be directly learned from jurisdiction to jurisdiction. National laws may differ regarding elements of the offence, evidential rules in general,¹⁰ special evidential rules in trafficking cases,¹¹ and different substantive criminal law principles and procedural law.

Moreover, legal systems may differ in ways which impact upon evidence, such as common law and civil law systems. These differences may relate for example to the role of the judge the role of exclusionary rules which limit the admissibility of evidence, and while both systems rely upon both oral and written evidence, the common law has a clear preference for oral testimony, whereas the civil law systems exhibit a preference for written documents. Moreover, whereas in common law systems, as a rule, evidence gathering takes place before a trial, in

¹⁰ Examples include the following: Are persons permitted to testify against family members? Is the testimony of one person sufficient to convict the defendant and if so under what conditions? Can women or children testify, and if so, under what conditions?

¹¹ Some national laws include explicit provisions on evidential matters in trafficking in persons cases such as the irrelevance of past sexual behaviour (see the Philippines Republic Act No. 10364, section 17-B); express statements by which it is irrelevant to certain crimes whether or not escape is possible or whether or not the victim attempted to escape (See Australia Criminal Code, sections 270.4(3) and 270.6(3)); what evidence is relevant in cases of slavery or trafficking (See Australian Criminal Code sections 270.10 and 271.11A) or what evidence is relevant to ascertaining if exploitation has taken place (See Canadian Criminal Code, section 279.04(2)). The Kenyan Counter Trafficking in Persons Act No. 8 of 2010, for sexual exploitation refers back to offences under the Sexual Offences Act 2006, which in section 34 provides that no evidence of character and previous sexual history of the victim other than evidence relating to sexual experience or conduct in respect of the offence which is being tried, shall be adduced unless upon an application to court.

civil law systems, evidence gathering can extend to the period during the trial process, as the judge is the main evidence gatherer; and whereas common law systems rely on a system of precedents to maintain uniformity, civil law jurisdictions do not view precedents as conclusive.¹² This complexity is heightened by the existence of mixed systems, which espouse elements of common law and civil law, as, for example, those in Finland, Japan or the Philippines.

These differences may limit what one system can learn from another. Thus, if a victim is too fearful to testify, a solution espoused by a civil law jurisdiction, whereby written statements are admissible instead of testimony, might be unacceptable in a common law system unless it conforms to an accepted evidentiary exception.¹³ By the same token, a solution adopted by a civil law system, whereby the judge may undertake the questioning of a fearful witness himself in order to encourage him or her to be more cooperative—might be unacceptable in a common law system. On the other hand, the creative solution of a common law court in order to admit hearsay evidence may be wholly unnecessary in a civil law court in which the judge may freely evaluate evidence.

Common law and civil law systems are not the only cohesive systems of law worldwide. Further examples can be found in countries which adopt religious laws or recognize certain forms of customary law.¹⁴ National systems may also differ in the adjudicative apparatus they choose, with some jurisdictions relegating this to a judge, whereas others rely upon a jury to rule on facts while the judge gives the jury instructions on law. This too may impact upon evidential issues and especially in jurisdictions which require the jury verdict to be unanimous. Juries may also be more reluctant to convict in cases where victims do not testify, even if the relevant law allows this.

National systems may also vary in their approaches towards international conventions, with “monistic systems” incorporating provisions of ratified conventions directly without the need for further national legislation and “dualistic systems” necessitating further national legislation even after ratification.¹⁵

Despite these obstacles, as mentioned before, the common normative framework provided by the Trafficking in Persons Protocol aims to assist States to bridge at least some of the gaps among them by providing unified terminology and concepts. In addition, at least in regard to civil and common law systems, there seems to be a broad consensus that with time, there has been a convergence between them, along with the development of mixed systems with elements of each.¹⁶ Thus, a hermetically sealed distinction between the systems is not grounded in reality. For example, while civil law systems do not ascribe conclusive force to precedent, judges and lawyers still use other cases in order to support their claims; while civil law systems do not exclude hearsay testimony, its weaknesses may be taken into account by the judge in evaluating its weight. In addition, clearly, learning can take place

¹² See Lundmark, *Charting the Divide between Common and Civil Law* (Oxford University Press, 2012) and Capowski, “China’s Evidentiary and Procedural Reforms, the Federal Rules of Evidence and the Harmonization of Civil and Common Law”, 47 *Texas International Law Journal* (2012), 455, 459-466.

¹³ Mixed systems like Kenya may allow admission of witness statements according to the Kenyan Criminal Procedure Code sections 154 and 156, in conjunction with section 34 of the Evidence Act.

¹⁴ An example is Nigeria, which in addition to common law, civil law and sharia law, includes as a source, customary law, which is derived from indigenous traditional norms and practice, including dispute resolution meetings. See: <http://elearning.trree.org/mod/page/view.php?id=142>.

¹⁵ This contrast is less clear than it appears to be, as even in monistic systems details may need to be filled in by legislation.

¹⁶ See Lundmark, *ibid.* p. 37.

regarding patterns found in certain kinds of evidence across jurisdictions. Finally, some of the solutions courts have found to address weaknesses in the evidentiary foundation of a case can conform to different legal systems.

Another limitation sometimes found, is that in many court systems evidentiary issues and decisions are not part of the written decision of the court. Moreover, even when cases do mention evidential matters, the analysis may be short, without an extensive discussion of evidential issues. In addition, in States with a jury system, there may be no recorded judgments in courts of first instance, so that only if the case is appealed, will there be a written and publicized judgment. In these cases, the appeal may be on a narrow issue, so that while certain evidence may be mentioned, we do not always know how important it was in the first instance's original ruling. Nor do we always know the full array of evidence in the case.

However, even in cases that do not have formal and direct evidential rulings, a description of the kinds of evidence submitted and the types of issues addressed may give valuable information to practitioners.

Complete case decisions were not always available for the cases discussed in this Case Digest. Thus while analysis is based on full decisions when available, in some cases we relied on entries in the UNODC Human Trafficking Case Law Database and expert summaries and analysis provided for the purposes of this Case Digest, though an attempt was made to focus on full cases.

In order to appraise practitioners of the nature of the source material, when it is not a full decision this is mentioned in a footnote. In addition, we are careful to mention how the court used certain pieces of evidence and when there is a doubt, we note it.

1.4 The methodology of case analysis

Analysis of evidential issues in case law is characterized by complexity. Explicit rulings on evidential issues are usually handed down in courts of first instance, rather than courts of appeals whose holdings are more commonly published. The limited accessibility to holdings of courts of first instance impacts on the breadth of court rulings upon which we can rely. In addition, some of the verdicts in the cases were terse and did not include an explicit analysis of evidential issues or even an explicit reliance on the various pieces of evidence mentioned. However, it was felt that even these cases may still be of value to practitioners if they include descriptions of typical forms of evidence, evidential problems and the solutions courts of law posed to these problems.

In view of this reality, the case analysis in this Case Digest is not limited to direct court rulings on evidential issues, but also encompasses descriptions of the mosaic of evidence which led to convictions, along with evidential problems which arose and the solutions courts posed to them. The reasoning behind this is that the mosaic of evidence in trafficking cases tends to repeat itself, so that pointing out certain types of evidence, the problems they raise, and solutions found, may in itself be of value to practitioners from other countries who may have experienced similar scenarios in their jurisdictions, but never realized they were part of a worldwide pattern, typical to trafficking cases.

Thus, the Case Digest analyses cases in the following contexts:

1. The evidential issue is raised and discussed explicitly. Examples can be questions such as when and for what purposes expert opinions can be used; when the past sexual history of a victim can be submitted in evidence; when a case will not be closed though the main victim is not a witness. Within this category there may be rulings directly relevant to the case or those mentioned incidentally.
2. A piece of evidence is mentioned, but there is no explicit discussion of a legal issue in regard to it. Sometimes it appears as part of the mosaic of evidence, without an explicit comment, thus suggesting that it was viewed as relevant to the conviction; sometimes it appears in conjunction with a brief statement by the court that it is admissible or relevant, or admissible despite flaws or did not detract from the credibility of a witness or of another piece of evidence.¹⁷
3. Sometimes a piece of evidence may be mentioned by the court as a tangential fact, where it is unclear if it was used as part of the mosaic of evidence to attain a conviction or lead to an exoneration.

In view of this array of possibilities, an effort was made to analyse each case painstakingly and to note how each piece of evidence was addressed by the court: as part of an explicit and direct ruling germane to the case; as an incidental comment; as part of the mosaic of evidence mentioned by the court as relevant to the conviction or exoneration; as a tangential fact not clearly relevant to the decision.

The Case Digest also attempts to analyse for what purpose a piece of evidence was considered relevant. When a piece of evidence relates to a particular element of the crime, this is mentioned; when it is connected to the conviction in general, this is noted; when it is relevant to the sentence, this is stressed.

While the Case Digest focuses on convictions, where deemed relevant and in as far as available to the authors, it also seeks to cite cases resulting in exonerations and cases where the prosecution or police decided not to pursue a case. There is also an attempt to enrich the Case Digest by highlighting cases in which different judges on one bench disagreed or cases in which there are disagreements between trial and appeals courts.

1.5 Structure of the Case Digest

As can be seen from the table of contents, the Case Digest will first discuss the kinds of evidence that can be used in the context of bringing to court a trafficking in persons or allied crime case, whether testimonial, documentary or “real evidence”. It will then present what we have called a “mosaic of evidence”, including a discussion of circumstances that can contribute to a conviction if established by the court (such as violence, vulnerabilities, or restrictions of freedom); a discussion of circumstances that may potentially weaken the case, (e.g., the victim’s apparent freedom of movement). The next section of the Digest addresses particularly difficult evidential challenges such as investigating the full chain of trafficking; cases where exploitation never transpired; and finally, because it deserves particular attention,

¹⁷ Examples of such treatment by courts might be mentioning contradictory statements by victims without ruling expressly on their impact on credibility or mentioning the submission of an expert opinion from an anthropologist or psychologist, without a ruling expressly on its admissibility or weight.

a section on how to handle the scenario of the victim's consent. The last part of the Case Digest consists of the in-depth analysis of cases that pulls together the variety of evidential issues which may arise in actual cases.

The overall rationale behind the structure of the Case Digest is to clarify to the reader how to best "build a case" concerning trafficking in persons or an allied crime. To use a metaphor for this structure, it can be compared to a manual on how to construct a house. The "kinds of evidence", discussed at the beginning of the Case Digest, are like the tools used in this endeavour; the "mosaic of evidence" can be compared to an array of building materials, which together, contribute to the construction of the house: the materials are not all of the same weight or centrality, but each can strengthen the edifice. And the "in-depth case analysis" at the end shows how tools and materials bring it all together to produce the house itself.

Thus, the Case Digest can be read as a coherent whole, from beginning to end, in order to help a practitioner understand how to "build" the house of evidence necessary to lead to a conviction. However, the Case Digest can also be used by practitioners who wish to focus on one specific evidential aspect that is relevant to the extant case. In order to facilitate such use, the details of cases are often repeated when such cases are used in different sections of the Digest.

2. Kinds of evidence

2.1 Introduction

Trafficking in persons and allied crimes cases reviewed in this Case Digest rely on a variety of kinds of evidence, including testimonial, documentary and “real” evidence. Testimonial evidence is evidence rendered in the form of testimony which can be obtained from sources such as victims, defendants, law enforcement officials, experts, and eye witnesses, such as neighbours, customers or family members. Documentary evidence can include financial and business records, contracts, e-mails, text messages or invoices. “Real” evidence can include witness demeanour, photographs, biological materials, traces, fingerprints and other proofs obtained at the crime scene.

It appears that the most common form of evidence used to obtain trafficking in persons convictions is testimonial. Thus, testimonial evidence was critical in most of the cases reviewed for this Case Digest. In particular, victim testimony seems to be the most relied upon source of evidence in human trafficking cases. Trafficking cases often stand or fall on the availability/quality of victim testimony. However, as we will see below, victim testimony is often characterized by weaknesses. These weaknesses may create challenges for criminal justice practitioners, and can pose barriers to successful convictions.

The following chapter analyses the problems linked to the kinds of evidence that can potentially be used in trafficking cases and at giving practitioners tools to overcome possible evidentiary challenges.

2.2 Victim testimony

While varied forms of evidence are used in trafficking in persons cases, in many cases around the world the central piece of evidence is victim testimony.¹⁸ Indeed, often this may be the only, or the main, piece of evidence available. Even when other kinds of evidence are submitted, victim testimony is often necessary to explain them. For example, while expert medical opinions may attest to the existence of bruises or injuries on the victim’s body, often, only

¹⁸ See National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children (2014). *Trafficking in Human Beings: Visible and Invisible II. Summary of the Quantitative Report 2008-2012*. The Hague: National Rapporteur, pp. 16-17, by which an analysis of 77 investigations in 2012 showed that criminal investigations rely to a large extent on the statements of victims.

he or she can explain how they were inflicted. Oftentimes, however, criminal justice systems and actors may too heavily rely on the statements of victims, where additional evidence might be available but more difficult to gather.

However, many challenges are linked to victim testimonies in trafficking cases. Some victim testimonies do not appear to be candid, straightforward and unwavering, but rather seem to be inconsistent, irrational, unpersuasive or clearly untruthful. In some cases, there is no other credible evidence to corroborate testimony. Additionally, victims will not always come forward to report the crime, and there may be no or only limited victim testimony available.

The next section focuses on how the various problems related to victim testimonies were handled by courts worldwide.

2.2.1 Typical weaknesses of victim testimony

2.2.1.1 *Inconsistent statements and outright falsehoods*

In cases of trafficking in persons, statements by victims are often inconsistent or even include outright falsehoods. While in general the consistency of a witness statement will be an important element for courts to consider in their assessment of credibility, in cases of trafficking, inconsistencies may arise from a range of reasons other than lack of credibility.

Victim inconsistencies as a chronic problem

In addressing the prevalence of inconsistent or false victims' statements in human trafficking cases, practitioners at the UNODC Expert Group Meeting on the Digest (6-8 May 2014) shared the following insights:

- "Victim inconsistencies are normal in a trafficking context."
- "Inconsistencies and falsehoods are a chronic problem in trafficking cases."
- "Victim testimony is always the weak link in a case."
- "In trafficking cases, it is a challenge to find the case amid the weaknesses, rather than to find the weaknesses in the case."

As will be seen in the cases described below, inconsistencies among statements may arise from a wide range of reasons, including lapses in memory, confusion about the chain of events or traumatic reactions.¹⁹ In addition, victims may be afraid that their traffickers will harm them or their families. In some cases, victims are related to the traffickers or feel a sense of love or loyalty to them. In other cases, they have been indoctrinated by traffickers to tell a certain story; in yet others, victims may not trust those who are questioning them. These feelings and loyalties can present complexities for prosecutors attempting to rely on victim testimony and may reawaken when victims face their traffickers in court.

Courts in various jurisdictions worldwide have arrived at various solutions to address this problem and to differentiate between credible and non-credible (victim-) witnesses according to the circumstances of each individual case.

¹⁹ See Lindholm, *Police, Practice and Research* (2014): "Adolescent girls exploited in the sex trade: informativeness and evasiveness in investigative interviews", *Police Practice and Research: An International Journal*, DOI:10.1080/15614263.2014.880839.

The following are a number of examples of cases in which victims contradicted themselves or even told falsehoods, and yet courts still found them credible in recognition of the reasons that may have led to such behaviour. The reasoning of the various courts is instructive in providing tools for practitioners to deal with weaknesses in victim testimony.

The case *Correa Perea (Argentina)*²⁰ concerned the trafficking of three minor girls for sexual exploitation where the two defendants used threats, violence and intimidation to control the victims. The court noted minimal contradictions in the testimony of one of the victims but found that the victim's testimony was credible enough to prove, at least in part, the recruitment, harbouring, abuse and subjugation required for the human trafficking conviction. Additional evidence in this case included testimony from the other two victims, law enforcement officials and the mother of one of the victims. In relying upon the victim's testimony, the court considered the lapse of time between the four occasions in which her testimony was given, the human motivations behind the contradictions, including fear, and the court's understanding of the functioning of the human psyche which may tend to attempt to delete difficult events. The supporting testimony may also have played a part in the court's assessment. Both defendants were convicted of trafficking for sexual exploitation of minors and of promotion of prostitution of minors.

In *López López (Argentina)*,²¹ two defendants, a man and a woman, ran a brothel in which minor girls were sexually exploited. Two of the victims were related to the female defendant; one was her daughter and the other one was her niece. Both victims grossly contradicted themselves in their testimony compared to the statements they had given during the investigation. The court expressed its understanding of the effects of family relationship on the victims' behaviour,²² and found that it could be assumed that these victims were likely not to tell the truth, in order not to cause any harm to the defendant. The evidence in the case did not rely solely on the testimony of these victims; it included a statement by the landlord who rented out the dwelling that was used as a brothel, testimony from other victims who were not related to the defendants and an expert psychological evaluation of one of the victims which demonstrated indicators of psycho-emotional and sexual abuse. The defendants were found guilty of human trafficking of minors and related charges.²³

In *Urizar (Canada)*,²⁴ the defendant trafficked his girlfriend for sexual exploitation, abusing her physically, verbally, emotionally and sexually. The victim's testimony in court included omissions and lapses of memory, a few exaggerations, contradictions, moments of hesitation, and inconsistencies. Despite these weaknesses, and despite the fact that her testimony was not corroborated, the court ruled that the victim was still credible, using the tools of common sense, the reasonableness of the testimony, the lack of proven motivation to lie, the victim's

²⁰ *Correa Perea*, Mendoza, August 2013, case 2853-C, Argentina. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. ARG060).

²¹ *López López y Novello*, TOCF II, Córdoba, 06/13, Argentina. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. ARG056).

²² The court stated that victims of trafficking in persons, because of their great vulnerability, seem reluctant to tell the truth or give testimonies which are totally coherent. But in this specific case, the victims are not only victims of trafficking but also the daughter and niece of the lady LLL, which adds an extra element that explains why they are not telling the truth. If she told us the truth, she would expose her mother to the risk of a ten years or more penalty. So she has an additional, understandable and valid justification to lie.

²³ The additional charges were: (a) managing and/or operating a brothel; and (b) promoting or facilitating the prostitution of minors.

²⁴ *R. v. Urizar*, File No. 505-1-084654-090, L-017.10, Court of Québec, District of Longueuil, Criminal Division (J.C.Q.), (2010-08-13), 13 August 2010, *Canada and Urizar v. R.*, No. 500-10-004763-106, Court of Appeal, Quebec, 16 January 2013, Canada. The trial court case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. CAN005). For detailed facts, see the in-depth analysis in section 5.2 of the Case Digest.

consistency on the substantive aspects of the testimony, and the court's knowledge of the effects of traumatization. The court commented that under the circumstances it would have been worrisome had the victim been able to testify in detail and in chronological order. The defendant was convicted of several charges, including trafficking in persons, which conviction was affirmed by the court of appeals.

The reasoning of the trial court is more fully expressed in the following quote:

"The assessment of the credibility of a witness is above all the exercise of the same common sense that is used every day by reasonable people to decide whether someone is telling the truth. There is no magic formula for assessing the credibility or reliability of a witness.

[...]

The Court noted, along with the counsel for the Defence, that the cross-examination of the complainant revealed that her testimony contained some omissions and lapses of memory, a few exaggerations, contradictions and moments of hesitation, and even some that could be considered to be inconsistencies. However, it would be illusory to think that a young person who had just lived through a nine-month relationship marked by so much physical, verbal, emotional and sexual abuse would be able to recount all of this in detail and in chronological order; indeed, it would be worrisome if they were able to do so. In the case at bar, the Court is of the view that the complainant is an honest person and that she has no reason to not tell the truth. She personally experienced the incidents she described as well as the full force of these acts. And the verbal abuse she was subjected to explains her memory lapses and omissions with regard to the details of these incidents. As was previously mentioned, it is clear that the fact of having to testify before the Court and having to relive the incidents and the emotions she had felt when she was experiencing them was traumatic for her. The Court is convinced that her memory lapses and her refusal to answer certain questions did not constitute an excuse to try and avoid answering these questions. As awful as her story may seem, her testimony was reasonable, rational and coherent."

R. v. Urizar, Court of Québec, 13 August 2010, Canada (pp. 18-19 and 20-23).

It is worthy of note that the trial court heard the victim's testimony while she was screened from the defendant, in view of the difficulties she was experiencing in testifying in front of him.²⁵

Muñoz y Lezcano (Argentina)²⁶ highlights the detrimental impact on victims when they face their traffickers in court. In this case the court noted that the presence of the defendants in the room strongly affected the victims' ability to speak the truth. This led the court to disregard the victims' testimony during the trial, which contradicted their former statements, and to consider only the statements the victims gave during the investigation. Thus, the court's impressions of the victims' behaviour and demeanour in court helped it to conclude that the statements should be preferred to the testimony.²⁷

In another sexual exploitation case, ***K-165/11 (Serbia)***,²⁸ the victims' testimony contradicted the statements they had made during the investigation in regard to substantive issues.

²⁵ See Court of Appeals conviction, pp. 9-11. There is a specific provision in Canadian law which allows this (Section 486.2 Cr.C. which addresses 'Testimony outside Court Room').

²⁶ *Muñoz y Lezcano*, 15/03/2013, conviction La Pampa (BB), Argentina. The case is available in the UNODC Human Trafficking Case Law Database (UNODC No: ARG061).

²⁷ The victims' testimony was relevant as part of the evidence used to support the conviction of the defendants for the offence of harbouring a minor with the purpose of sexual exploitation. It should be noted that Argentina is a civil law jurisdiction which facilitates the use of statements instead of testimony.

²⁸ *K 165/11 [2011]*, Higher Court in Novi Sad, 14 October 2011, Serbia. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. SRB035). For detailed facts, see the in-depth analysis in section 5.1 of the Case Digest.

In particular, during the investigation the victims claimed that the defendant took all of the money they earned, beat them and did not permit them to leave the house. However, at trial both victims stated that the defendant had behaved well towards them, that they were not beaten and that they voluntarily paid the defendant for the food and clothing he gave them. The Court of Appeals reopened the trial as a result of these inconsistencies. However, it allowed the conviction to stand in view of the victims' explanation of the inconsistencies. One of the victims stated that the inconsistencies were a result of pressure exerted by the defendant's family with whom she came to court and with whom she sat during the hearing of the case. Furthermore, the court considered the victims' trial testimony to be internally illogical. The court found it impossible to believe that the victims had experienced such good treatment at the defendant's house, yet still decided to escape from him and that the victims voluntarily gave all of their money to the defendant in order to help him, when they themselves were in extremely precarious financial situations. In addition, the court relied on experts to explain the inconsistencies between the statements given by the victims during the investigation and the testimony at trial (see section on expert testimony for more details). The court convicted the defendant of recruiting, providing transportation and harbouring two victims for the purposes of prostitution.²⁹

Another example of victim contradictions that did not lead to a ruling on non-credibility is the *Okwuode (Nigeria)*³⁰ case in which the defendant trafficked two young women and forced them into prostitution. Here the court convicted the defendant of trafficking in persons, despite some contradictions in the testimony of one victim, as it viewed the contradictions as minor and not on material points. The court also noted that the case was based on other evidence as well, including the defendant's confessional statements.³¹

In *Connors (United Kingdom)*,³² the Connors family forced their workers to work for little compensation and subjected them to degrading treatment. Most workers were in a vulnerable situation—unemployed, homeless or addicted to alcohol. One of the victims described the defendants as surrogate parents and stated that he did not want to leave them. In later interviews he contradicted these previous statements, described the defendants' behaviour as extremely violent and stated that he wanted to leave but was afraid of being harmed if he did so. In convicting the five defendants of a conspiracy to require a person to perform forced or compulsory labour, the court found the victim's first statement to be a result of intimidation by the defendants.

In *Kalpna Ranganath Galphade (India)*³³ the defendant exploited young women for sexual purposes. One victim's testimony included omissions and inability to testify regarding the location of the premises in which she was held, the names of the girls residing adjacent to the brothel or how many houses were situated adjacent to the house of the defendant. The court, in ruling that her testimony should be given "due credit" nonetheless, explained

²⁹ It should be noted that Serbia, like Argentina, is a civil law jurisdiction which facilitates the evidential use of out of court statements.

³⁰ *Federal Republic of Nigeria and Favour Anware Okwuode*, Charge No. FHC/ASB/24C/09, the Federal High Court of Nigeria, 28 September 2009, Nigeria. Information about this case was obtained from the UNODC Human Trafficking Case Law Database (UNODC Case No. NGA009).

³¹ For more on the defendants' out of court confessions please see section 2.5 below.

³² *R. v. Connors and others*, [2013] EWCA Crim. 324, Court of Appeal, Criminal Division, 26 March 2013, United Kingdom of Great Britain and Northern Ireland. This judgment relates to the appeal against sentence. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. GBR016). For detailed facts, see the in-depth analysis in section 5.11 of the Case Digest.

³³ *The State v. Kalpna Ranganath Galphade*, Case No. 279/PW/2009, Court of Metropolitan Magistrate, Special Court for ITPA (Court of 1st instance), Mumbai, 25 August 2008, India. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. IND028).

these lapses in view of the fact that the victim was not permitted to leave the premises. The defendant was convicted of an array of prostitution and sexual exploitation offences.

In *LG-2010-111760-LG-2010-119397-RG-2011-65 (Norway)*³⁴ the defendant was convicted of human trafficking on the basis of inducing two young Slovak girls to prostitute themselves. He sent a letter to one victim in which he instructed her what to tell the police and the court. In addition, he persuaded a friend of the victim to call the victim and repeat the instructions. The defendant was found guilty of human trafficking and attempting to induce another to give false testimony.

A case which included outright lies in the statements of victims to police and immigration was *Wei Tang (Australia)*.³⁵ Here, the victims lied about their being trafficked and having a boss and about the conditions in which they worked and lived, including where and with whom they had lived. In addition, they initially lied about living in one of the houses run by a woman called “Mummy” who was an uncharged accomplice of the defendant. However the reasons for these lies were explained, in evidence from the victims, as part of the prosecution case. Thus the women gave evidence that they were told by the defendant and others, speaking on behalf of her, that if they were picked up by the authorities, that the police and immigration authorities would put them in jail or detention if they told the truth. They were therefore told to lie as detailed above. This fear was reinforced when the defendant made them hide at another location on certain days and told them that this was to avoid being found by immigration authorities who were likely to raid the brothel on those days. They were also warned about what might happen to them if they escaped. As to not mentioning the house of “Mummy”, it emerged in the victims’ evidence that she was kind to them and that therefore they did not want to get her into trouble. Ultimately, the guilty verdicts returned by the jury on 10 counts of slavery offences indicated that notwithstanding these credibility issues the jury believed the victims about their central allegations.

See also a recent case from the Netherlands,³⁶ in which parts of the statements of the two victims were inconsistent. The court cautioned itself, but held that the victims were credible for the following reasons: the statements were, in essence, consistent as related to the forced working in prostitution and the handing over of earnings to the defendant; they were supported by external evidence; the statements supported each other as to the modus operandi of the defendant; the time which elapsed between the events and the statements may have led to the fading of memory; inconsistencies and contradictions in statements of victims of human trafficking are a well-known phenomenon and do not per definition lead to the conclusion that their statements are unreliable or false.

However, there are also cases in which courts have ruled that the victim was not credible on the basis of inconsistencies and contradictions. In analysing the following cases it is worthy of note that in common law jurisdictions which use juries, an acquittal may result because the jury did not believe the account of the victim, but this will not appear in the written judgement, since jury deliberations are secret, so that the reason for the acquittal will remain speculative.

³⁴ *LG-2010-111760-LG2010-119397-RG-2011-65*, Gulating Court of Appeal, Bergen, 21 January 2011, Norway. The case is also available in the UNODC Human Trafficking Case Law Database (UNODC Case No. NOR005).

³⁵ Third appeal (VSCA): *R. v. Wei Tang* (2009), 23 VR 332; (2009) 233 FLR 399; [2009] VSCA 182. Second appeal (HCA): *R. v. Tang* (2008), 237 CLR 1; (2008) 249 ALR 200; (2008) 82 ALJR 1334; (2008) 187 A Crim. R 252; [2008] HCA 39. First appeal (VSCA): *R. v. Wei Tang* (2007) 16 VR 454; (2007) 212 FLR 145; (2007) 172 A Crim. R 224; [2007] VSCA 134; *R. v. Wei Tang* (2007), VSCA 144 Sentencing decision (VCC): *R. v. Wei Tang* [2006] VCC 637, Australia. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. AUS001. For detailed facts, see the in-depth analysis in section 5.3 of the Case Digest.

³⁶ The Hague District Court, 4 March 2015, 09-827059-14 (not published).

In *Ladha (Canada)*,³⁷ the defendant was acquitted of four counts including human trafficking.³⁸ The alleged victim in this case testified that she was forced to work as a domestic servant in the defendant's home. The court found that her testimony lacked credibility in that it was inconsistent and at times inherently impossible. For example, the alleged victim testified that during a ski trip she carried three sets of skis, poles and boots simultaneously, which the court did not find believable. The court also did not believe that the alleged victim did not remember whether the defendant took her to McDonald's on Sundays, and that she had to work for 18-19 hours a day for 10 months, including on days when there was no one else in the house. The court further found many inconsistencies regarding her education, language skills, and visa application. In addition, some of the statements contradicted the other submitted evidence (see sections 2.3 on "Testimonial evidence of persons other than victims" and 2.8.1 and 2.8.2 on different forms of "Real evidence").

In *Case No. 978 of 12 March 2012 (Argentina)*,³⁹ two women reported to the police that they were victims of human trafficking for sexual exploitation. The court acquitted the defendants because it felt that the alleged victims did not tell the truth and contradicted known facts. For example, they stated that they had never been in Argentina before, although the records of the Department of Migration showed the opposite. There was also other evidence to support the acquittal of the defendants (see section 2.3 on "Testimonial evidence of persons other than victims").

In *Giuseppe Aserio (Germany)*,⁴⁰ the inconsistency of the victim led to the exoneration of the defendant on all trafficking and rape charges, even though an expert opinion was given on the credibility of the victim's testimony. Sometimes the victim's inconsistencies do not prevent a conviction on trafficking charges, but lead to a conviction on a less severe form of human trafficking than would otherwise be the case, or to a lighter sentence.

Thus, in *Soyan Slavov et al (Germany)*,⁴¹ a 16-year-old victim did not tell all relevant aspects of the abuse she suffered. The court nonetheless convicted the defendants of trafficking, by means of a plea bargain, though not the most severe form, on the basis of the victim's testimony, while dismissing the rape charges. The prosecutor's impression was that the victim's partial testimony was a function of her strong trauma.⁴²

A case which is of interest because of a disagreement between the trial court and appeals court regarding the significance of victims' inconsistencies is the *Ranya Boonmee case (Thailand)*,⁴³ which concerned alleged labour abuse of 66 workers in a shrimp processing factory. Evidence submitted included some inconsistent victim testimonies. While the trial court considered the core of the victims' testimonies to be consistent and explained the inconsistencies in the light of the long delay between the rescue and the court hearing, the court of appeals held that

³⁷ *R. v. Ladha*, 2013 BCSC 2437 (CanLII), Supreme Court of British Columbia, Canada.

³⁸ The exact charge was "organizing the coming into Canada of a person by means of fraud or deception, contrary to s. 118 of the Immigration and Refugee Protection Act, S.C. 2001, c. 27 [IRPA]". However, the court noted that this charge is "commonly referred to as 'human trafficking'". *R. v. Ladha*, 2013 BCSC 2437 at para 1.

³⁹ *Case No. 978 of 12 March 2012 (Argentina)*. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. ARG006).

⁴⁰ 255 Js 771/13, High District Court of Berlin, 510 Kls 12/14, Verdict of 1 October 2014, Germany.

⁴¹ 255 Js 495/13, High District Court of Berlin, 508 Kls 49/13, Verdict of 3 February 2014, Germany.

⁴² This information was submitted by a German expert who was the prosecutor who handled the case.

⁴³ The trial court case is *Ranya Boonmee, Kaew Kongmuang and Manus Boonmee*, Case No. 2013/2552, Criminal Court of Bangkok, 9 December 2010, Thailand. The Appeals case is Appeals Court Black Case No. 1704/2554 and Red Case No. 4097/2556, 6 March 2013, Thailand. Information about this case was obtained from the UNODC Human Trafficking Case Law Database (UNODC Case No. THA001) regarding the trial court case. For detailed facts, see the in-depth analysis in section 5.7 of the Case Digest.

these inconsistencies impugned the credibility of the alleged victims and exonerated the defendants for this reason, among others, from charges of conspiring to confine other persons, depriving them of liberty and forcing them to do any act for the perpetrator; and of accepting and retaining workers illegally, including those under the age of 18 and 15 for the purposes of enslavement, compelling them to work under slavery-like practices.

Tools to assess credibility when victims contradict themselves or lie: lessons learned

1. What does internal assessment of testimony yield? (Is it logical? Reasonable? Substantially consistent? Inconsistent only on minor points?).
2. How does the victim's demeanour in court assist? (Does he/she show fear? Evasiveness?).
3. Is there an external explanation to the contradictions or falsehoods? (Trauma, family relations with trafficker, dependency on trafficker, presence of trafficker or his family in court room, fear, threats by traffickers, lapse of time, indoctrination by trafficker).
4. Is there evidence corroborating the victim's story?
5. Can the victim clarify why his statements are inconsistent? Conversely, does the victim have a motive to lie?
6. Can an understanding of the traumatic process undergone by victims yield a more nuanced assessment of credibility? (Can it be considered problematic if testimony is detailed and in chronological order in cases of trafficking? Can certain inconsistencies actually enhance credibility?).
7. Can the victim's testimony in court be heard outside the courtroom or behind a screen or other device so that he or she does not have to face the defendant?
8. Can expert testimony assist the court to evaluate victim credibility?

2.2.1.2 *Delayed complaints/absence of complaints/reluctance to testify*

As a rule, courts take delayed complaints or absence of complaints into consideration in assessing a victim's credibility, on the assumption that a person who has been wronged would complain at the first opportunity, whether to police or other potential saviours.⁴⁴ The same holds true for victims who are reluctant to testify. However, in trafficking cases, victims may be too traumatized to complain or testify at all or to complain shortly after they have experienced exploitation. In addition, victims may fear that their traffickers will harm them or their families. Victims may be related to the traffickers or feel a sense of love or loyalty to them. In other cases, victims may not feel trust towards authorities and the police. The following cases illustrate situations of delayed complaints and reluctance to testify and contextualize why this behaviour did not lead to an assessment that the victim was not credible.

In *R. v. Liu LiRong (Tonga)*,⁴⁵ a case of trafficking for sexual exploitation, the victims first told the story of their exploitation during the trial against an employee of the trafficker who had stabbed them. The defence in the subsequent "trafficking in persons" case against their trafficker claimed that this impugned their credibility. The court ruled that they were credible witnesses nonetheless, because the victims' testimonies corroborated each other. In addition, incidentally, the court used its understanding of the vulnerable situation of the victims in order to explain why they did not complain at the first opportunity. It noted that they were brought to a new, strange and unsympathetic environment; that the victims possessed very

⁴⁴ See Cross and Tapper, *On Evidence*, 12th ed., (Oxford University Press, 2010), pp. 259, 301ff, 406-410, delineating the legal rules around delayed complaints.

⁴⁵ *CR117/10 & AC 13/11*, Tonga. This case was reported by a Tongan expert.

few communications skills; that they may have been reluctant to complain due to the fear that they would not be believed, fear of punishment or even fear of rejection by the defendant whom they had initially trusted.

In *Urizar (Canada)*,⁴⁶ the court recounted, as part of the facts of the case, that the victim complained to police only after nine months of abuse and not during the victim's first escape, but rather after the victim had escaped and then returned to the defendant multiple times. The court noted that the victim did not submit a complaint immediately after one of her escapes due to the following reason: "[s]he stated that she did not have the courage to make a complaint because she loved the accused. She felt torn between the love she felt for him and the abuse he subjected her to."⁴⁷

One aspect that is important to note in this context is the fact that sometimes absence of complaint or a delayed complaint relates only to certain parts of the trafficking experience and not to others. Thus, practitioners sometimes encounter victims who may focus upon the fact that they were denied adequate salary while remaining silent, or only mentioning at a later stage other relevant and even particularly horrifying circumstances, such as restrictions of freedom or isolation.

Thus, in *Lukasz Adamowicz and Jerzy Bala (United Kingdom)*⁴⁸ the victims initially approached the local police force complaining about unpaid wages, though the picture which emerged afterwards included a constellation of other difficult conditions: long work hours of up to 12 hours a day, accommodation in a derelict property at night which they were unable to leave and forcible eviction after a few weeks of unpaid work under threat of physical assault. The additional facts emerged during the course of the investigation. The defendants were convicted of conspiracy to traffic into the United Kingdom for exploitation and conspiracy to traffic within the United Kingdom.

The partial delayed complaint: a practitioner's explanation^a

"I often see a formula that arises, particularly in cases of adult trafficking. The trafficker identifies the victim's vulnerability, targets the victim, creates a hope for the victim and offers to fulfil the hope, thereby creating a dependency which can be as simple as the promise of a job. This is the tactic employed by the trafficker to ensure that the victim has had a hand in his or her own fate which often impacts on the victim's willingness to disclose the whole story, as the trafficker knows. The 'mistakes' the victims make profoundly affect their confidence, identity and self-esteem to the extent that they often want to block out the parts of the story for which they blame themselves, concentrating on the peripheries (such as loss of wages) which have less of a destructive influence on their sense of self. This applies to men and women. Men often do not want to expose their physical or mental ill-treatment, fearing that they will be seen as weak, but are certainly willing to say that they have not been paid, as that is not a reflection of who they are but of what someone else has done wrong."

^a This explanation was given by an expert from the United Kingdom.

⁴⁶ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.2 of the Case Digest.

⁴⁷ See Index of all cases.

⁴⁸ Sheffield Crown Court, 7 October 2010 (unreported). Information about this case was supplied by a United Kingdom expert who informed us that, in the United Kingdom, the only "reported" criminal judgments are those cases which are appealed to the Court of Appeal or higher courts. Judgements relating to Crown Court like this one are unreported. This expert derived details on the case from the police officer who had handled it. For details on the offences see: <http://combattrafficking.eu/sites/default/files/documents/UK%20HT%20gang%20sentenced%20to%20six%20years.pdf> and <http://www.bbc.co.uk/news/uk-england-south-yorkshire-11507393>.

The *Okafor (Nigeria)*⁴⁹ case concerns a reluctance to testify on the part of one victim. The case revolved around the trafficking of Nigerian women for the purpose of sexual exploitation to Senegal. There was a family relationship between one of the victims and the defendant, who was the victim's biological mother. In the light of this relationship the victim was initially reluctant to testify. The Prosecutor addressed this situation by reframing some questions, using different words in view of the victim's tender age and low level of education. The court concluded that the mother daughter relationship had not impacted on the credibility of the victim's testimony. Additional evidence in this case included testimony of law enforcement officials. The defendant was found guilty of three counts of attempting to organize foreign travel to promote prostitution.

Tools to assess credibility when victims do not complain at the first opportunity/ are reluctant to testify: lessons learned

1. Is there an explanation of victim motivation? (Fear? Lack of familiarity with environment? Vulnerability? Family relationship with defendant?)
2. Is there supporting evidence?
3. Can the prosecutor reframe questions in a sensitive way to encourage the victim to testify?

2.2.1.3 *Telling the story like the peeling of an onion*

As seen in some cases discussed in the previous section, sometimes victims tell the whole story bit by bit, like the peeling of an onion. On the face of it, this may lead to the impression that such victims are not credible, as they have not told the whole story at the first opportunity. However, while this may be true in some cases, in other cases such behaviour may be explained by the particular situation of the trafficking victims and their particular vulnerability (including young age, unfamiliar environment, initial lack of trust in public authorities, inability to communicate effectively, ambivalent feelings towards the exploiter) and in the experience of trauma. According to practitioners and as expressed in some cases, creating an environment of trust, promoting a sensitivity to trauma by those interviewing the victims and fostering conditions of physical and psychological safety for the victim, are some of the elements that can help the victim to fully tell his or her story and reveal the details of the ordeal.

One such case is *Kalpna Ranganath Galphade (India)*.⁵⁰ In this case the victim-witness did not disclose certain details to police at the investigation stage, while she did reveal them in her later testimony at the trial. The facts that emerged only at the later trial stage were, however, material to the charge. In particular, before police she stated that she had worked voluntarily as a prostitute, whereas in her trial testimony, she testified that this was involuntary. Still, the court did not view her testimony as non-credible on this basis, but rather explained the phenomenon on the basis of its knowledge and experience of victims of sexual exploitation, thus:

⁴⁹ *Attorney General of the Federation and Felicia Okafor*, Suit No. A/12C/06, 23 May 2007, High Court of Anambra State, Nigeria. The case is also available in the UNODC Human Trafficking Case Law Database (UNODC Case No. NGA006).

⁵⁰ See Index of all cases.

“It is well understood that any girl of tender age, who is pushed into prostitution work and is staying at a brothel is not in a fit state of mind and is under pressure and domination of brothel keeper so much, so that they tend to speak before police what they are tutored by the brothel keepers. Keeping in view this reality, the Honourable Bombay High Court has given necessary directions to all the police officers ... to observe certain rules ... To record the detailed statements of the rescued victim at the place of safety ...”

The State v. Kalpana Ranganath Galphade, Case No. 279/PW/2009, Court of Metropolitan Magistrate, Special Court for ITPA (Court of 1st instance), Mumbai, 25 August 2008.

As in the case, these rules were violated by police, the credibility of the victim was not impugned. In the same case there appears a slightly different explanation whereby the traumatic process undergone by victims of sex trafficking may lead to such behaviour, thus:

“Sex trafficking victims are often unable to respond clearly immediately after rescue, as they are often scared and traumatized when rescued.”

Kalpana Ranganath Galphade

In *Ogiemwanye and others (Germany)*,⁵¹ dealing with the recruitment of a Nigerian victim by means of a “juju” ceremony,⁵² the victim was interviewed by police officers over 10 times. When the trial began she nonetheless mentioned aspects of her plight which she had not previously mentioned. The court addressed this evidentiary issue, but ruled that it did not impugn her credibility, as the information given, though new, did not contradict previous statements.

Another example of this phenomenon appears in *United States v. Rivera*,⁵³ where during the first stage, the victims were willing to talk about how they entered the United States; subsequently they were willing to talk about the exploitation of other workers; and only in the last stage did they tell law enforcement about the exploitation they had suffered as well. The court stated that the victims’ testimonies were sufficient to prove that the three defendants had trafficked the victims for the purpose of sexual and labour exploitation.

How to prevent the “peeling of the onion” phenomenon

Giving the victim time and space: in addressing the “peeling of the onion” phenomenon, some practitioners suggested that it is possible to prevent it or at least lessen it by giving the victim time and space, preferably in a safe shelter, before she or he is interviewed by law enforcement and then trying to gain his trust gradually. This is accepted practice, for example, in the Philippines, Thailand and the United States of America.

⁵¹ Case against *Sophia Ogiemwanye and others*, High District Court of Berlin (Landgericht Berlin), 501 KLS 1/12 (68 Js 633/09), 14 December 2012, Germany.

⁵² “Juju” is defined as objects or acts that are attributed a supernatural power (Oxford Dictionaries, available at: www.oxforddictionaries.com). It is often used by traffickers to terrify the victims into obedience and silence and to ensure the payment of their “debts”. Because of the fear of the consequences of the “juju” ceremony, the victims are reluctant to escape the trafficking situation or to testify against the traffickers. The use of “juju” can be seen in trafficking cases involving victims from Western Africa.

⁵³ *U.S. v. Rivera*, 2012 U.S. Dist. LEXIS 85090, 2012 WL 2339318 (E.D.N.Y.), United States of America. The case is also available in the UNODC Human Trafficking Case Law Database (UNODC Case No. USA150).

2.2.1.4 Individual emotional reactions

Practitioners sometimes encounter victims who tell difficult trafficking stories while engaging in seemingly surprising gestures or emotional reactions such as laughter. Even the same victims in one case may display different emotional reactions during the investigation or trial. These kinds of behaviour may lead to an assumption that a victim's story is not credible, but it may also be assessed in the context of what is known about traumatic processes or other factors. For example, in *K-P4105 (Serbia)*,⁵⁴ in a pretrial video, the court could see that one of the victims behaved timidly while the other behaved aggressively. Neither was deemed non credible and all four defendants were convicted of trafficking in persons.

2.2.2 Corroborated versus uncorroborated victim testimony

In some cases, the only evidence available to the court is the victim's testimony and the defendant's denial. In these cases, courts are called upon to decide whether the victim's testimony suffices to convict a defendant, even when his or her allegations are denied by the defendant and it is a word against word situation. Depending on the individual circumstances of the case, even when consistent and credible victim testimony is presented to the court, such victim testimony, in itself, may be inadequate to support a conviction for trafficking in persons if there are no other pieces of evidence, as the prosecution may not be deemed to have shouldered its burden of proof "beyond reasonable doubt". This may be the case especially in common law systems, where the court is not an active evidence gatherer, but rather relies on the prosecution to fulfil this role. In these systems, the prosecution's failure to adduce further evidence, when it exists, may be viewed as a failure to use its best efforts to present a full picture to the court or even a tacit admission as to the inherent weakness of the evidence not adduced. This may lead to the exoneration of the defendant.

In addition, in certain legal systems, general evidential rules may prohibit conviction on the basis of the testimony of one witness.⁵⁵

In *Kenneth Kiplangat Rono (Kenya)*,⁵⁶ the defendant successfully appealed his convictions of child trafficking and another charge. Though the victim testified, the court reversed on the basis of the dearth of other evidence. The court noted, in particular, the failure of the prosecution to call as a witness the victim's brother, who was present at some point during the encounter, and was a potential alternative suspect. The court also noted the lack of medical evidence of the alleged sexual violation, as well as the failure of the state to prove the age of the girl. The court felt that it would have been possible to verify her age, and that it was telling that the prosecution had failed to do so, as it was an element of the offence charged.

In *C/118/2013 (Belgium)*,⁵⁷ employers were acquitted of a charge of labour conditions contrary to human dignity in the court of appeals due to a number of circumstances,⁵⁸

⁵⁴The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. SRB004).

⁵⁵One example is the "double witness rule" which applies in certain countries. See, for example, the Islamic Republic of Iran's Penal Code, where procurement for prostitution must be proved through two witnesses, provided that the witness is an adult, is sane, and has free will (article 136). Procurement may also be proved by the testimony of two righteous men (article 137), http://www.iranchamber.com/society/articles/trafficking_persons.php#sthash.NILUqek0.dpuf.

⁵⁶*Kenneth Kiplangat Rono v. Republic* [2010], eKLR, Court of Appeal of Kenya at Nakuru, 28 May 2010, Kenya. The case is available in the UNODC Human trafficking Case Law Database (UNODC Case No. KEN001).

⁵⁷*C/118/113* [2013], Court of Appeal, Antwerp, 23 January 2013, Belgium. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. BEL003).

⁵⁸These included the fact that the victim was free to come and go as he wished and that working without a legal permit or working under conditions which do not meet safety norms do not automatically amount to "labour conditions contrary to human dignity", as required by Belgian law.

including a holding by the court whereby the victim's testimony and a document drafted by him noting the number of hours he worked, were not considered sufficient evidence to prove that the victim had indeed worked so many hours.

In some cases courts have convicted in situations of word against word. In these cases courts may assess the credibility of both sets of statements (that of the victim and that of the defendant) and find in favour of the credible statement. An example of this kind of analysis appears in the case of *Jamuad (Philippines)*,⁵⁹ where three minor victim testimonies were countered by the defendant's denial. Nevertheless, the defendant was convicted of trafficking for prostitution, pornography or sexual exploitation of minors. The court ruled that "a witness who testified in a categorical, straightforward, spontaneous and frank manner and remained consistent on cross-examination is a credible witness", and that this will prevail over a mere denial which is an inherently weak defence. The court added that "where there is not showing of improper motive on the part of witnesses for identifying the accused ... the presumption is that they were not so actuated and their testimonies are entitled to full faith and credit". However, it should be noted that in this case there were three victims whose testimonies supported one another versus the denial of the defendant.

Another example is the previously mentioned case of *Urizar (Canada)*.⁶⁰ Here, in a case revolving around sexual exploitation, the court expressly stated that "it is true that the complainant's testimony has not been corroborated; it does not have to be."⁶¹ The court also concluded that the victim had no reason not to tell the truth.

That being said, corroboration can lend support to victim testimony and contribute to a ruling on credibility, as can be seen in many trafficking cases. One of the examples is *López López (Argentina)*,⁶² where the defendant was convicted of human trafficking of minors and related charges despite his denial. The evidence included photographs, a report on the victim's background, testimonies of the police officers and other prostituted women, items seized from the brothel and other evidence.

2.2.3 Cases with partial or no victim testimony

As said, victim testimony is often the central piece of evidence on which trafficking in persons convictions are based. Looking at this reality from another perspective, trafficking in persons cases may fail when such testimonies are absent, either because they are withdrawn by the prosecution or because they result in an exoneration of alleged perpetrators. Practitioners remarked that, especially when dealing with trial by jury, in the absence of a victim, the jury may not care enough to convict.

However, as the cases below will illustrate, the victim's testimony has not always been considered essential. There can be successful prosecutions resulting in convictions, even in the absence of such testimony when other evidence is available, including other witness statements, "real evidence", or even, if permissible in the respective jurisdiction, statements that the victim made during the investigation, but before the court hearings commenced.

⁵⁹ *People of the Philippines v. Dhayme Jamuad and others*, Case No. CBU-86668, Regional Trial Court, 7th Judicial Branch, Cebu City, 28 November 2011, the Philippines. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. PHL037).

⁶⁰ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.2 of the Case Digest.

⁶¹ *Ibid.* trial court, pp.20-23.

⁶² See Index of all cases.

The use of out of court statements may be easier in civil law jurisdictions which more easily admits written statements than do common law jurisdictions. The question arises if this solution would be acceptable to a common law court, and if so, under what circumstances.⁶³

In one such case, *Jochen K. (Austria)*,⁶⁴ involving 17 Romanian victims, though no victim testimony was adduced, defendants were convicted of trafficking in persons, document fraud and defamation. Here, even though the victims were not available for trial, they had made statements during the investigation. The court admitted the protocols of the victims' statements as evidence, ruled that there is no reason to expect that the victims would have changed their testimonies, and relied on those statements for the conviction. The appeal on conviction was dismissed.

Two cases from the Philippines, which is a civil law jurisdiction as regards criminal law, provide further examples of convictions in the absence of victim testimony. The first is *Lito Manalo Anunsencio (Philippines)*,⁶⁵ where the conviction was of recruiting and transporting a minor for sexual exploitation. The minor escaped from the NGO shelter and was unavailable for testimony. However, the court convicted the defendant on the basis of other testimonies,⁶⁶ out of court statements,⁶⁷ and documentary evidence.⁶⁸ Another example is *Martin (Philippines)*,⁶⁹ where the victims were unable to testify in court. The court convicted the defendant of trafficking in persons by maintaining or hiring a person to engage in prostitution or pornography on the basis of oral testimonies of law enforcement officers who conducted the raid on the suspected brothel, documentary evidence and real evidence.⁷⁰

In *Omoruyi (Nigeria)*⁷¹ the defendant was convicted of an attempt to organize foreign travel which promotes prostitution and an attempt to place the victims in servitude as pledge for a debt. The victims were not called upon to testify in this case but an array of other evidence was considered by the court. The prosecution relied heavily on evidence provided by a so-called native doctor and on the testimony of a police officer who investigated the case. Other evidence supporting the conviction included the defendant's statements which were confessional in nature, in that he admitted organizing foreign travel. The defence raised the claim that failure to call the victims to testify was a fatal flaw in the prosecution's defence. The court did not accept this claim. It held:

⁶³ Please see section 2.4 below.

⁶⁴ *Case 130s39/02*, Supreme Court of Austria, 29 May 2002, Austria. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. AUT003).

⁶⁵ *People v. Lito Manalo Anunsencio* (Philippines), Crim. Case No. 06-242304, 22 December 2009, Regional Trial Court, National Capital Judicial Region, Manila, the Philippines. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. PHL020).

⁶⁶ This included testimony of the victim's mother that she had been missing; of the coastguard who arrested the perpetrator; of an NGO worker who provided aftercare to the victim and noticed she seemed afraid and confused; and of a porter who identified the victim when she boarded the ship.

⁶⁷ The statements were from the victim, the coastguard and the victim's mother.

⁶⁸ This included certification from the ship that the victim was on board on the day of the rescue and a birth certificate of the victim proving that she was a minor.

⁶⁹ *People of the Philippines v. Valentino C. Martin and others*, Crim. Case No. CBU-91076, Regional Trial Court, 7th Judicial Region, Branch 7, Cebu City, 3 July 2013, the Philippines. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. PHL067).

⁷⁰ See sections 2.7 on "Documentary evidence" and 2.8 on "Real evidence" for a detailed description of the specific kinds of evidence submitted.

⁷¹ *Attorney General of the Federation v. Constance Omoruyi*, Case No. B/31C/2004, High Court of Justice Edo State of Nigeria, Benin Judicial Division, 22 September 2006, Nigeria. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. NGA002). For detailed facts, see the in-depth analysis in section 5.5 of the Case Digest.

“I find and I hold that the victims of the offences charged are not the only witnesses by which prosecution can prove the that the [sic] victim of a crime is the only person who can give material evidence against [a defendant]. What if it’s a situation where the victim dies, will that be the end of the case? The answer is no.”

Attorney General of the Federation v. Constance Omoruyi, Case No. B/31C/2004, High Court of Justice Edo State of Nigeria, Benin Judicial Division, 22 September 2006, Nigeria.

In some cases, while some victims testify, some fail to do so. Does this inevitably lead to an exoneration? The answer is no, but this depends on the circumstances of the individual case.

On the one hand, the absence of testimony from one or more victims in cases with multiple victims can present an impediment to conviction because the court may find that the prosecution failed in its duty to present the full picture or failed to produce the evidence because of its inherent weakness. However, depending on the circumstances of the individual case, a conviction can still be attained, even when one or several victims does not testify in court. This is, for example, illustrated by the case *Anware Okwuode (Nigeria)*.⁷² In this case the defendant was found guilty of procurement for prostitution, organizing foreign travel which promotes prostitution and deceitful inducement, even though one of the victims did not testify in court because she had died before the beginning of the trial. The court admitted the victim’s previous statement to investigators in evidence and relied on it along with testimonial evidence from another victim. In addition, the defendant confessed to all the elements of the crime. This provided sufficient grounds to support the conviction of the defendant. (Nigeria has a mixed legal system of common law, Islamic law and customary law.)

Tools to assist courts in the absence of victim testimony: lessons learned

1. Examine the reason for failure to produce testimony (Is the victim still alive? Has the victim disappeared? Is otherwise unavailable?)
2. Examine if there is other evidence available and, if so, how much and how persuasive.
3. Check if there is a way to submit the victim’s statements instead of testimony (naturally this will tend to be easier in civil law jurisdictions).

2.3 Testimonial evidence of persons other than victims

The testimony of individuals who observed or interacted with defendants or victims of trafficking can provide support for a trafficking in persons conviction. An example of such evidence is testimony of customers served by victims of trafficking or of neighbours who reside in the vicinity of the premises who may be able to provide facts about the victim’s situation. In addition to neighbours or customers, there may also be individuals similarly situated to the victim and law enforcement officials. These testimonies may serve in place of victim testimony, if the victim is unavailable, or can provide support for victim testimony. On the other hand, such testimonial evidence may also be used in order to secure acquittals. The wealth of testimonies described below can provide practitioners with food for thought when organizing testimonial evidence in a given case.

⁷² See Index of all cases.

In *Case 2832-A (Argentina)*,⁷³ which resulted in the conviction of four defendants for trafficking in persons for forced prostitution, the victims testified. However, in addition the court heard testimony from customers who were “regulars” at the brothel. Other testimonial evidence included individuals who lived near the brothel. The court deemed the testimony of these other witnesses to be particularly important.

In *Desabato y Vargas Leulan (Argentina)*,⁷⁴ the alleged exploitation of the victims was supported by testimony of a woman who had worked previously at the bar owned by one of the defendants. This testimonial evidence confirmed that the victims did not handle money, that they were required to ask for permission to leave the premises and that there was a system of fines in place that the victims had to pay. The defendants were convicted of the crime of trafficking in persons for sexual exploitation, where the victims were older than 18 years of age.

In *Kil Soo Lee (United States)*,⁷⁵ a case that resulted in a conviction of the defendant for holding workers in involuntary servitude and related charges, eyewitnesses from outside the compound where the Vietnamese victims were held, corroborated the victims’ imprisonment and starvation claims. These witnesses testified, for example, that on at least two separate occasions they heard Vietnamese women behind barbed-wire fences crying for food and help. The court denied the defendant’s appeal and upheld the conviction.

*Case No. 1685—2010 (Egypt)*⁷⁶ revolves around sexual exploitation of a minor by a man in his eighties by means of a sham marriage contract, which was facilitated by the parents of the minor, a mediator and a lawyer. The court based its conviction on an array of evidence, some of which was witness testimony, corroborating the victim’s testimony. In particular, a neighbour testified that he had seen the defendant bringing young girls regularly to his house. Furthermore, the uncle of the victim testified about what he knew about the incident from his sister, who was one of the defendants.⁷⁷ During the trial in the Criminal Court of Giza the first defendant was convicted of the crime of sexual abuse and molestation of a minor girl, while the victim’s parents, the mediator and the lawyer who oversaw the marriage formalities were convicted of the crime of facilitating her exploitation in accordance with Article 291 of the Penal Code on child trafficking and exploitation.⁷⁸

In the domestic servitude case *Alzanki (United States)*,⁷⁹ there was an array of testimonies, including from the police officer who interviewed the victim immediately after she fled the apartment, and several nurses and a respiratory health specialist who had been in the defendant’s home to care for the defendant’s ailing child.⁸⁰ This testimonial evidence helped to support the defendant’s conviction for involuntary servitude.

⁷³ *Carrizo, Alcalde, Mendoza*, 17 May 2011, case 2832-A, Argentina. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. ARG019).

⁷⁴ *Desabato y Vargas Leulan*, 9 August 13, File D 3/12, CONVICTION, Córdoba, Argentina. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. ARG057).

⁷⁵ *U.S. v. Kil Soo Lee*, 472 F.3d 638 (9th Cir. 2006), United States of America. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. USA015).

⁷⁶ *Case No. 1685-2010*, Criminal Court of Giza, Appeal No. 9801, Judicial Year 80. A retrial was ordered by the Court of Cassation, Egypt. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. EGY004).

⁷⁷ In Egypt the criminal court may rely on hearsay testimony, if it believes that it is true and faithful and is consistent with the case’s facts.

⁷⁸ The court of cassation ordered a retrial as a result of flaws in the verdict and the case was accordingly sent for a retrial. No second appeal was submitted to the court of cassation.

⁷⁹ *U.S. v. Alzanki*, 54 F.3d 994 (1st Cir. 1995), United States of America.

⁸⁰ The appeals court offered these facts as part of the background of the case.

Police/law enforcement officers as sources of testimonial evidence

Law enforcement officials can often be an important source of testimonial evidence in trafficking in persons case because they can give first-hand accounts of the situation in which they found the victim when he or she was rescued and, for example, in the framework of an entrapment operation. Furthermore, law enforcement officials can be a good source of observations that may shed light on the relationship between the victim and the trafficker or other incriminating or exculpatory evidence uncovered during the investigation.

In *Mwakio (Kenya)*,⁸¹ a police officer testified that he encountered both the victim and the defendant in Tanzania. During that encounter the defendant claimed to be the husband of the victim, although the victim vehemently denied this and stated she was abducted. The court denied the defendant's appeal for his convictions of defilement and child trafficking for sexual exploitation.

In *Sanchez (Philippines)*,⁸² a case concerning the prostitution of minor boys for homosexual relations, the defendant was arrested by police as a result of an entrapment operation. He was convicted of trafficking in persons and child abuse. Testimonies of several police officers involved in the operation were a piece of key evidence in this case. In *Hirang y Rodriguez (Philippines)*,⁸³ another case concerning sexual exploitation of minors, there was an entrapment operation about which the police officers testified in court. The defendant was convicted of qualified trafficking in persons (i.e., aggravating circumstances).

In *Case No. 8959—2012 (Egypt)*,⁸⁴ the testimony of the police officer who conducted the investigation and executed the search warrant was crucial in convicting members of the trafficking network. He testified that through the enquiry of the General Police Department for the Protection of Morals, it was established that some females were being enticed to engage in prostitution in the context of false marriage promises. He added that he searched the first defendant's house, where he found the victims and clients and apprehended the first defendant. Upon searching the house of the third defendant, he seized a bag including *Orfy* contracts (unofficial false marriage contracts)⁸⁵ and a photo of one of the victims.

In *Farrell (United States)*,⁸⁶ the chief of police and county attorney both testified about their encounter with the victims while they were still at the hotel owned by the defendants. As part of the factual background the court highlighted the testimony of the county attorney

⁸¹ *George Hezron Mwakio v. Republic*, [2010] eKLR, Criminal Appeal 169 of 2008, High Court of Kenya at Mombasa, 28 June 2010, Kenya. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. KEN002).

⁸² *People of the Philippines v. Albert D. Sanchez*, Criminal Case Nos. 05-239627-31, Regional Trial Court, National Capital Judicial Region, Branch 48, Manila, 29 October 2009, the Philippines. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. PHL009).

⁸³ *People of the Philippines v. Jeffrey Hirang y Rodriguez*, Criminal Case No. 135682, Regional Trial Court of Pasig City, National Capital Judicial Region, 25 June 2011, the Philippines. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. PHL049).

⁸⁴ *Case No. 8959-2012*, Criminal Court of Haram, Appeal No. 6771, Judicial Year 80. This case is based on a summary and analysis of the decisions of the Criminal Court of Giza Province and the Court of Cassation. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. EGY001). Further details can be found in the in-depth analysis in section 5.8 of the Case Digest.

⁸⁵ According to the Glossary of *The Marriage Contract in Islamic Law in the Shari'ah and Personal Status Laws of Egypt and Morocco*, *Orfy* marriage is a customary marriage (1992, 165). In *The Laws of Marriage in Islam*, the meaning of customary marriage is further explained as a customary marriage which is not officially registered. See <http://www.refworld.org/docid/3ae6ab8910.html> for further information.

⁸⁶ *U.S. v. Farrell*, 563 F.3d 364 (2009), United States of America. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. USA006). For detailed facts, see the in-depth analysis in section 5.4 of the Case Digest.

that “it was ‘very apparent’ that the [victims] were living in fear of the [defendants]”.⁸⁷ In addition, the court noted the testimony of the chief of police that one of the defendants refused to turn over the victims’ immigration documents, and that it was only under threat of arrest for theft that the defendant finally complied with the request. The defendants’ convictions for peonage, document servitude and other charges were affirmed in this case.

NGO workers and civil society members as sources of testimonial evidence

NGO workers who engage in this capacity with victims of trafficking in persons may be an important source of testimonial evidence. Because of their role and experience they may often be able to testify about the physical and psychological state of victims and describe their trauma. In addition, there are also cases where NGO workers have assisted law enforcement in sting operations, posing as potential customers of services provided by trafficking victims.

In *Kalpana Ranganath Galphade (India)*,⁸⁸ two citizens (attached to the NGO called the International Justice Mission) posed as customers in a brothel in order to further a police raid. One of these bogus customers submitted testimony and was termed by the court “a star witness”. This case also included testimony by a social worker who worked in the NGO and described the chain of events during the evening of the police raid. The defendant was convicted of a range of prostitution and sexual exploitation charges on the background of victimization of minor girls, some of whom were forced into prostitution.⁸⁹ The court stressed that the mere participation of NGOs or social welfare institutions in social justice matters “cannot be termed as interested” and ruled that they were independent witnesses. It went on to validate the police decision to use these representatives in the “sting” thus:

“No common man of society would readily accept to perform the role of a customer for visiting a brothel. A stigma and risk is attached to such participation. Therefore, the selection of panchas^a and bogus customers from the members of International Justice Mission in the given set of circumstances is acceptable and appropriate.”

The State v. Kalpana Ranganath Galphade, Case No. 279/PW/2009, Court of Metropolitan Magistrate, Special Court for ITPA (Court of 1st instance), Mumbai, 25 August 2008.

^a“Panchas” is derived from the word “panchnama”, a colloquial term used to describe the documentation undertaken by police at any criminal investigation. When a police officer authorized to conduct search of any place by warrant goes to that place, it is mandatory to call upon two or more independent and respectable inhabitants of the locality and perform the search in their presence. Such witnesses are called “pancha” witnesses.

In *Sridevi et al (India)*,⁹⁰ concerning forced exploitation of a minor girl, a director of the shelter who accepted the victim into the shelter testified. The defence attempted to impugn her credibility by emphasizing minor inconsistencies in her testimony. The court ruled that

⁸⁷ Previously cited.

⁸⁸ See Index of all cases.

⁸⁹ The charges were: keeping or managing or acting or assisting in the keeping or managing of a brothel; living wholly or in part on the earnings of prostitution; procuring a person with or without her consent for the purpose of prostitution and also taking or attempting to take a person or causing a person to be taken from one place to another with a view to his/her carrying on or being brought up to carry on prostitution; detaining someone for sexual exploitation; conducting a brothel close to a public place.

⁹⁰ *Sessions Case No. 112/2007*, the court of the additional metropolitan sessions judge (Mahila Court) at Hyderabad, 26 June 2007, India. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. IND007).

her testimony was credible nonetheless in view of two main considerations: firstly, the inconsistencies did not “in any way disturb the ring of truth existing in the prosecution case”, but rather were minor; secondly, there could not be discerned even a remote motive for the victim lying about the director’s connection to the case. The defendants were convicted of trafficking in persons for exploitation of prostitution. As far as the claim that the witness had a motive to lie, the court ruled thus:

“The mere fact that the organization of P.W. 1 is run by the funds which are provided to it based on the number of victims catered by it cannot be taken to infer that every act of it is motivated by the said benefit. It cannot be assumed that such organizations are started on a profit motive. The basic aim is to help the destitute.”

Sessions Case No. 112/2007, the Court of the additional metropolitan sessions judge (Mahila Court) at Hyderabad, 26 June 2007.

Testimonial evidence of witnesses in favour of the defendants

It is important to add that testimonial evidence of witnesses can, of course, also be used as evidence in support of the defence. Sometimes these witnesses can be brought by the defence to discredit the victim’s story, but also witnesses brought by the prosecution can testify in ways that assist the defence case. This happened, for example, in the following cases:

- In the ***R. v. Ladha (Canada)***⁹¹ case, the prosecution presented the testimonies of three persons—a neighbour, a delivery driver and a handyman—with a view to proving that the alleged victim was employed and exploited by the defendant as a domestic servant. The court found that while this evidence was consistent with the victim’s story that she had worked as the defendant’s maid, it was also consistent with the defendant’s version that the victim was helping out as a houseguest on an extended visit. Additionally, the court held that this evidence did not support the victim’s description of her exploitation. For example, the victim testified that the defendant had prohibited her from sitting on the furniture, claiming she had a bad odour so that she had to sit on the floor; that she had been allowed to sleep only for a maximum of 5 to 6 hours a day. However, the handyman testified that the relationship between the victim and the defendant was very good, without any obvious tension. According to his testimony, the victim was always happy and smiling, and called the defendant “mumma”. The court used this evidence to draw conclusions about the victim’s credibility. The court considered the victim’s allegations improbable and acquitted the defendant on all counts, including human trafficking.
- In ***Case No. 978 of 12 March 2012 (Argentina)***,⁹² concerning alleged human trafficking for sexual exploitation, the defence brought forth as a witness a neighbour living next door to the night club who testified that the alleged victims were free to leave the night club at any time to go shopping and that he often saw them coming back voluntarily. This was used by the defence to controvert the victims’ claim that they were not allowed to leave the premises of the club. In addition, a psychologist, requested to testify by both prosecution and defence, who had met the alleged victims

⁹¹ See Index of all cases.

⁹² See Index of all cases.

before the beginning of the trial testified about her interaction with them, noting contradictions in the victims' statements. She also testified that the victims had refused her offer to move them to another house but that instead they had preferred to move in with one of their clients. The court acquitted the defendants of human trafficking, noting that the women had worked voluntarily and could have left the premises at any time.

- The *Ranya Boonmee (Thailand)*⁹³ case is an example of a successful attempt by the defence to discredit the victims' story by adducing testimony by other similarly situated workers. The case revolved around alleged victims working at a shrimp-processing factory where they were in close proximity to workers who were not identified as victims. The defence offered testimonial evidence from workers who had not been identified as victims in an effort to discredit the alleged victims' claims. Thus, while the victims testified that they were required to live on site in the factory compound, and that they had been required to work long hours without appropriate compensation, other migrant workers at the factory testified that they were not forced to live on-site and that they could leave the factory after work. This testimony, together with the alleged victims' inconsistencies, resulted in an exoneration from charges of accepting and retaining workers illegally, including those under the age of 18 and 15 years old for the purposes of enslavement, compelling them to work in slavery-like practices and another charge.

Sources and importance of testimonial evidence

In many cases the testimony of the victim and the defendant will be the central piece of testimonial evidence.

Other witnesses may assist in understanding the facts of the case and make a decisive contribution to whether the court convicts or not. Particularly valuable witness testimony may come from:

- Customers, serviced by victims of trafficking
- Neighbours
- Police officers/law enforcement officers
- NGO workers supporting trafficking victims
- Medical professionals/psychologists/social workers
- Workers who come to the premises (handymen/delivery workers)
- Similarly situated workers
- Passers-by/eyewitnesses

Witness testimony can support either the case of the prosecution or the case of the defence, depending on the particular circumstances of the case. And of course, as with all testimony, in order to convince the court, the witness testimony must be credible.

2.4 Out of court statements

Out of court statements of witnesses, can, under certain circumstances, provide a useful source of evidence. Such statements may be relied upon to prove the truth of what is asserted or in order to impugn the credibility of a witness. In jurisdictions, which are part of the civil

⁹³ Previously cited. For detailed facts, see the in-depth analysis in section 5.7 of the Case Digest.

law system or in mixed systems,⁹⁴ it is easier to submit out of court statements to prove the truth of what is asserted than is the case in common law systems. In common law systems, the admissibility of such statements must accord with an exception to the rule against hearsay or other rules governing admissibility of evidence. Therefore, it is not surprising that most cases which rely upon “out of court statements” come from civil law or mixed systems, although there are some examples from common law systems as well.

In *Okwuede (Nigeria)*,⁹⁵ the defendant was found guilty of procurement for prostitution, organizing foreign travel which promotes prostitution, and deceitful inducement, even though one of the victims did not testify because she had died before trial. This victim’s previous statement to investigators was admitted into evidence, and the court relied on it along with testimonial evidence from another victim and the defendant’s confession to support the conviction of the defendant.

Sometimes a written out of court statement is even preferred by a court over oral testimony. This was the case in *K-165/11 (Serbia)*,⁹⁶ where the court considered both the victim’s statement, made during the investigation phase, as well as her testimony during the trial and preferred the written statement, viewing the testimony in Court as flawed as a result of the victim’s fear of the defendant’s family with whom she arrived and sat in the courtroom. On the other hand, the court considered that her previous statements had been submitted without such pressure.

In *Lolita Pamintuan (Republic of Palau)*,⁹⁷ the Supreme Court of Palau confirmed the admissibility of numerous written statements from customers of a brothel in which victims were held, though these customers themselves did not appear in court. These statements were quoted during the main trial by the victims and included statements according to which the customer had bought the victim or had paid a certain sum for victims’ services. The court justified the admission of this evidence by determining that the statements were submitted, not as proof of their content, (which related to their purchase of the victims’ services), but rather to prove how the victims perceived their situation, which was relevant to the charge of sexual servitude. In this case, the defendants were convicted of people trafficking, exploiting a trafficked person, advancing prostitution and other crimes. It should be noted, that while Palau has a mixed system of civil, common and customary law, its evidence rules follow the common law⁹⁸ and consequently, the court’s solution is in accordance with common law principles.

2.5 Defendants’ out of court confessions

A defendant’s out of court confession is one form of an out of court statement. However, we address it in this separate section because such out of court confessions may constitute a central piece of evidence in criminal trials.⁹⁹ In addition, it is one kind of out of court

⁹⁴ Mixed systems, such as Kenya, may allow the admission of witness statements to prove the truth of the assertions under certain conditions. See Kenyan Criminal Procedure Code section 154 and 156, in conjunction with section 34 of the Evidence Act which makes admissible statements taken by persons authorized by law to take the evidence on oath under certain conditions.

⁹⁵ See Index of all cases.

⁹⁶ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.1 of the Case Digest.

⁹⁷ *Lolita Pamintuan et. al v. Republic of Palau*, Criminal Appeal No. 07-001 (Criminal Case Nos. 06-183, 06-212), the Supreme Court of the Republic of Palau, Appellate Division, 14 November 2008, Palau. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. PLW001).

⁹⁸ See Rules of Evidence for the Courts of the Republic of Palau promulgated by the Palau Supreme Court, 7 January 2005 at <http://www.palausupremecourt.net/upload/P1408/13613041813865.pdf>.

⁹⁹ See Cross and Tapper, *On Evidence*, 12th ed. (Oxford University Press, 2010), p. 629.

statement admissible in common law systems, as well as civil law systems, in order to prove the truth of what is stated, if it has been proven to have been elicited voluntarily.¹⁰⁰

Defendants' confessions, whether partial or full, have been important in cases of trafficking and allied crimes. One example is the case of *Okwuede (Nigeria)*,¹⁰¹ where the defendant's out-of-court confession to all the elements of the crime was instrumental in his conviction. Another example is *Omoruyi (Nigeria)*,¹⁰² where even in the absence of victim testimony, the defendant's statements which were confessional in nature,¹⁰³ were instrumental in a conviction for organizing foreign travel which promotes prostitution.

In *Case No. 1685/2010 (Egypt)*,¹⁰⁴ the evidence included out of court confessions by the parents of the victim who were also defendants in the case. They admitted that they had approved the *Orfy*¹⁰⁵ type of marriage of their minor daughter for financial benefits. The trial Criminal Court of Gizah convicted the defendants of child trafficking and other offences, based, in part, on these confessions, in conjunction with other evidence.¹⁰⁶ However, the Court of Cassation has ordered a retrial due to what it considered to be flaws in the judgment of the trial criminal court, including the court's omission to reply to the defendants' defence that the marriage of their daughter was based on a valid marriage contract. The Court of Cassation also held that there was a contradiction in the trial criminal court's reasoning, in relying on the religious opinion issued by the Grand Mufti annulling the marriage,¹⁰⁷ while refusing to critically examine it as requested by the defence. In addition, the trial criminal court did not reply to one defendant's claim that her confession was void because it was given as a result of coercion.

2.6 Expert or professional testimony

Supporting testimonial evidence can also be derived from professionals who submit expert opinions. Jurisdictions differ regarding the rules governing the submission of such evidence, including on questions such as: when does written opinion suffice and when is oral testimony necessary? When may a judge order expert testimony and when must such testimony be submitted by parties in the case? What is the proper ambit of such testimony in order to ensure it does not encroach upon the judge's or jury's function to rule on the issues? However, despite these differences, most jurisdictions allow relevant expert testimony in some form.

Expert opinions can relate to medical matters

Expert opinion on medical matters can be an important evidentiary source in trafficking in persons cases. Medical experts can, for example, assist the court by presenting a medical opinion on the age of a victim; by documenting injuries or the victim's psychiatric situation; or by giving a medical opinion on the question whether a victim was subject to rape.

¹⁰⁰ Ibid.

¹⁰¹ See Index of all cases.

¹⁰² Previously cited. For detailed facts, see the in-depth analysis in section 5.5 of the Case Digest.

¹⁰³ Two of the charges were organizing foreign travel which promotes prostitution and the defendant admitted that he had organized foreign travel.

¹⁰⁴ See Index of all cases.

¹⁰⁵ For more information on *Orfy* marriage, see the Egyptian case in section 2.3 on "Testimonial evidence of persons other than victims".

¹⁰⁶ This included the victim's testimony, police investigation, the victim's uncle's testimony, the testimony of a neighbour who saw the abuser bringing the victim to his house and a religious opinion issued by the Grand Mufti.

¹⁰⁷ For more detail about this religious opinion see section 2.6 on "Expert or Professional Testimony/religious opinion".

Furthermore, a medical opinion regarding the defendant may also be helpful for the court, depending on the circumstances of the case. A concrete example concerned a case in which the defendant claimed that he could not have sexually exploited the victim due to physical incapacity. His claim was countered by an expert medical opinion, as will be seen below.¹⁰⁸

In *Wipaporn Songmeesap (Thailand)*,¹⁰⁹ a 14-year-old Thai girl was enslaved as a domestic worker. The victim was underpaid for her work and was severely physically abused. In this case, in addition to the victim testimony, the testimony of a doctor was submitted who performed a medical examination of the victim and documented her wounds. The doctor's report and his testimony were mentioned as part of the evidential foundation for the conviction of restraining an injured minor for the purposes of enslavement and another charge.

In the *Urizar (Canada)*¹¹⁰ case, involving sexual exploitation of the victim by her boyfriend, the court relied on a medical report to confirm that the victim had suffered injuries to her knees consistent with her claims that the defendant had pushed her downstairs. The defendant was convicted of human trafficking and other charges.

In *Mwakio (Kenya)*,¹¹¹ the court, in denying the defendant's appeal on the issue of the sufficiency of the evidence for his conviction of defilement and child trafficking for sexual exploitation, relied, in addition to other evidence, on a doctor's testimony regarding his medical examination of the victim. This expert testimony corroborated the victim's claim that she had been raped. The court noted that:

"Rape and defilement are both crimes which are perpetrated under the cover of darkness. There is unlikely to be an eye witness. In many cases the only corroboration is medical."

George Hezron Mwakio v Republic [2010] eKLR, Criminal Appeal 169 of 2008, High Court of Kenya at Mombasa, 28 June 2010, Kenya.

In *Hirang y Rodriquez (Philippines)*,¹¹² concerning commercial sexual exploitation of several Filipino girls, four victims were subjected to a dental examination to determine their ages. The examination found that they were all minors. The court relied on the results of the examination in order to rule that this was a case of trafficking of minors which is considered "qualified" trafficking in persons.¹¹³

Also in *Canonoy (Philippines)*,¹¹⁴ in which a 14-year-old girl was employed by the defendant to provide sexual services in his bar, a dentist testified that he had carried out a dental examination of the victim to determine if she already had a third molar tooth. The significance of the presence of a third molar tooth was that "if the patient has no third molar, still below the age of 17 years or minor". Upon checking, the dentist concluded that that the victim

¹⁰⁸ See a full description of *Ernst F (Germany)* in this section.

¹⁰⁹ *Case No. 4994/2550*, Red Case No. 12213/2552, 1st Instance: Criminal Court of Southern Bangkok, 6 November 2009, Thailand. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. THA005).

¹¹⁰ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.2 of the Case Digest.

¹¹¹ See Index of all cases.

¹¹² See Index of all cases.

¹¹³ This denotes trafficking under aggravating circumstances, in this case, in view of the fact that the victim was a minor.

¹¹⁴ *People of the Philippines v. Monette Canonoy*, Crim. Case No. 14206, the Regional Trial Court, 1st Judicial Region, Branch 11, Laoag City, the Philippines. The case is available in the UNODC Human Trafficking Case Law Database (UNODC No. PHL054).

was still a minor and issued a dental certificate, presented in the court as evidence. In the same case, the victim also underwent a medical examination to determine whether or not she had been sexually abused. A medico-legal report was presented in the court, stating that, it was not possible to determine whether or not she was sexually abused. Based on the victim's testimony and the dentist's testimony, the court found the defendant guilty of qualified trafficking in persons.

In *Ernst F (Germany)*,¹¹⁵ the defendant started a sexual relationship with the victim and later forced her to become a prostitute. The victim worked for him as a prostitute for 11 years. During this time, the defendant kept the victim in isolation and raped her on numerous occasions. The victim was also forced to work under difficult conditions, with no vacation days and with all of her earnings going directly to the defendant. The case was characterized by a wide array of medical opinions. Firstly, the victim's detailed evidence was evaluated by an expert witness who was a head physician of the forensic ward of a hospital. He diagnosed the victim as suffering from alcohol addiction and with a dependent personality disorder, which can influence the accuracy of testimony. Nevertheless, he explained that in his assessment the victim was to be deemed credible on the basis of her description of her feelings, which centred on examining her own guilt and responsibility and partially incriminating herself. The court too viewed the victim as credible.¹¹⁶ In addition, the victim's gynaecologist testified as to the signs of rapes and explained that they were in accordance with the victim's testimony. Finally, the defendant's claim that he could not have possibly raped anyone due to erectile dysfunction was evaluated by another medical expert who reported there were no signs of such a condition. The defendant was convicted of human trafficking for sexual exploitation and other sexual charges, including rape.

In *Case 8959-2012 (Egypt)*,¹¹⁷ regarding trafficking for prostitution according to false marriage promises, a forensic medical report found that one of the victims was still a virgin while the other two were not.

Expert testimony in the field of psychology in general and victimology in particular

Expert testimony in the field of psychology in general and victimology in particular is viewed by some courts and some practitioners to be a particularly important source of evidence in trafficking in persons cases, because the victim's personality and psychological state is often central to understanding the case. On the other hand, some practitioners are reluctant to use such "soft science" testimony.

A case from Finland¹¹⁸ concerns a businessman who pretended to own a modelling company in Finland. He invited twelve young Finnish women to interviews during which the women were photographed naked and touched, and some were even raped. Their subsequent work involved providing erotic shows, pornography, striptease and prostitution. The women were also sexually exploited and raped. When the modelling company came to the attention of the

¹¹⁵ *Case No. 1KLs 211 Js 3771/11*, Regional Court Bayreuth, 30 December 2011, Germany. The case is available in the UNODC Human Trafficking Case Law Database (UNODC No. DEU003).

¹¹⁶ According to Section 244 of the Criminal Procedure Code (StPO) the court can deny a request to evaluate the credibility of a victim's testimony by an expert (*aussagepsychologisches Gutachten*), stating that it has sufficient competence to make such an evaluation. Some courts, however, rely on expert evaluation which submits victims to an intense screening process. The expert gives a written and oral opinion in court on his findings. It is then legally difficult for a court to deviate from an expert's opinion.

¹¹⁷ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.8 of the Case Digest.

¹¹⁸ District Court of Helsinki, 7/1 Department, 7 December 2011, Finland. The case is available in the UNODC Human Trafficking Case Law Database (UNODC No. FIN008).

police, the man had already run the business for more than a decade. Expert testimony was necessary to answer the burning questions in this case: How did ordinary Finnish girls and women with ordinary backgrounds find themselves in this abusive situation? Why did they not escape, but instead returned to the abusive situations, even though they were not locked up and did not fear deportation from the country? Why did they not seek the help of police or others? A forensic psychiatrist testified that in sexual violence and exploitation cases, control over the victim is often accomplished by a gradual process of the victim renouncing her bodily integrity and by advanced manipulation techniques. He explained that this incremental process makes it difficult, even for the victim herself, to define the point where she did not give her consent any longer. It also erodes her trust in other people and in the ability of society to protect her. Furthermore, the expert explained that the defendant manipulated the women into believing that they were responsible for their situation, and instilled in them feelings of guilt and worthlessness. The defendant was convicted of trafficking and other sexual offences, including rapes, and sentenced to over 11 years of imprisonment.¹¹⁹

In *Alzanki (United States)*,¹²⁰ the court ruled that the testimony of the expert victimologist was relevant, though its probative value was in question. This expert testified at trial that abused victims often harbour overwhelming fear of their abusers, and do not flee at the first opportunity. The defendant contended that this testimony was not useful to the jury, because it only related to sexual abuse victimology, whereas the case revolved around alleged involuntary servitude. The court denied this claim, stating that “while the more generalized nature of the proffered testimony may temper its probative value to the fact finder, we do not think it can be said that its relevance is negated entirely”.¹²¹ The defendant’s conviction of involuntary servitude was affirmed.

In *Farrell (United States)*,¹²² an expert on human trafficking and domestic-worker exploitation testified about warning signs in the employment context which may indicate the existence of psychological coercion or a climate of fear. She went on to state that many of these signs existed in this case. The court found portions of the expert testimony relevant in affirming the convictions of peonage, document servitude and other charges, as far as they did not usurp the fact-finding role of the jury.¹²³

In *K-165/11 (Serbia)*,¹²⁴ experts were used to help the court assess two victims’ credibility. Victim 1’s testimony at trial differed from her earlier statements given during the investigation stage of the case. A psychiatrist testified that the victim was extremely suggestible and could be easily manipulated. In consequence, according to his opinion, her testimony changed at the trial after she encountered the defendant’s wife who talked to her. On the other hand, the statements delivered during the investigation were not in the presence of the defendant or any of his family members. With regard to Victim 2, a psychologist and social worker testified that her mental development was not consistent with her age (Victim 2 was a minor), that she had lack of knowledge of moral values, was emotionally unstable and incapable of

¹¹⁹ The Supreme Court did not affirm the conviction of trafficking.

¹²⁰ See Index of all cases.

¹²¹ Previously cited.

¹²² Previously cited. For detailed facts, see the in-depth analysis in section 5.4 of the Case Digest.

¹²³ On appeal, the defendants argued that the expert testimony invaded the province of the jury. The court accepted the expert’s testimony when it provided context to understand the actions of the victims, the conditions under which they may have worked and to assess the truthfulness of the allegations made by the victims. However, the court ruled that the expert should not have testified to the strength of the government’s case, the credibility of the witnesses, or on matters that were part of the jury’s fact-finding role. In the end, the court did not find that this error affected the rights of the defendants and held that there was ample evidence for the jury’s findings independent of the expert testimony.

¹²⁴ Previously cited. For detailed facts, see the in-depth analysis in section 5.1 of the Case Digest.

differentiating between socially acceptable and unacceptable behaviour. The court convicted the defendant of recruiting, providing transportation and harbouring the two victims for the purposes of prostitution.

In *López López (Argentina)*,¹²⁵ the defendants ran a brothel in which young women, including minors, worked as prostitutes. The evidence in this case included an expert psychological evaluation of one of the victims, which revealed indicators of psycho-emotional and sexual abuse. Based on this and other evidence, the defendants were convicted of human trafficking of minors and related charges.¹²⁶

See also *Mariño Héctor Oscar (Argentina)*,¹²⁷ in which a psychological report issued by the National Rescue Team¹²⁸ was an essential piece of evidence in understanding the victim's ambiguous testimony, which included the expression of positive feelings towards the defendant. The psychological report included an explanation of her positive feelings for the defendant in that the fact of living with him had generated in her a mechanism of identification with him, which led her to feel that the exploiter was taking care of her. Thus, she normalized the exploitation. The defendant was found guilty of trafficking an adult for sexual exploitation.

In the *Canonoy (Philippines)*¹²⁹ case mentioned earlier in this section, apart from medical examinations, a psychological test, including an IQ test and a personality test, was conducted to evaluate the psychological state of the victim. It was concluded that the victim was not capable of fully understanding the trafficking situation, that she developed some form of anxiety and had a "low self-concept". Based on the array of evidence, including this expert opinion, the defendant was found guilty of qualified trafficking in persons.¹³⁰

In *R. v. Ng (Canada)*,¹³¹ an expert in victimology¹³² provided evidence about indicators which can help identify victims of human trafficking and which seemed to fit the alleged victim. However, he acknowledged that individuals who are not trafficked, but rather, for example, simply irregular migrants, may lie and claim to be trafficked to avoid punishment. The court relied on this equivocation, in addition to other factors, in making its credibility finding and in ruling that the evidence of the expert supported a finding that the alleged victim was involved in an unlawful immigration scheme rather than trafficking.¹³³

Testimony by anthropological or cultural expert

Testimony of anthropological or cultural experts may be useful to explain certain phenomena, and for example the meaning of certain kinds of tattoos with a cultural meaning or the implications of "juju" (witchcraft) ceremonies¹³⁴ on the behaviour of victims and defendants

¹²⁵ Previously cited.

¹²⁶ The additional charges were: (a) managing and/or operating a brothel; and (b) promoting or facilitating the prostitution of minors.

¹²⁷ *Case 22000145/2011/TO1*, 2 September 2014, Tribunal Oral Federal of Bahía Blanca, Argentina. For more details on the facts of the case see section 4.4 on "How to handle the subject of victim consent?".

¹²⁸ The Rescue Team Program (State Government), provides immediate assistance to victims.

¹²⁹ See Index of all cases.

¹³⁰ This denotes trafficking under aggravating circumstances.

¹³¹ See Index of all cases.

¹³² His expertise was in victimology and transnational crime in relation to human trafficking and human smuggling.

¹³³ Interestingly, while the court in *R. v. Ng (Canada)* and *R. v. Orr*, 2013 BCSC 1883 (CanLII), considered the expert qualified, in the *Orr* case, the Court of Appeals of British Columbia overturned a conviction on trafficking charges because it found that the same expert was not properly qualified and ordered a re-trial, *R. v. Orr*, 2015 BCCA 88, Canada.

¹³⁴ See cases involving "juju", described further on in this section.

in trafficking in persons cases. Furthermore, in certain cases the motivation or lack of motivation of the victim to tell the full story can be explained, at least in part, by aspects of his or her culture.

The need for expert testimony on these particular topics may vary from country to country, often depending on how familiar the court is with the anthropological and cultural interface relevant to the case.

Thus in *Cook (United States)*,¹³⁵ the defendant tattooed tribal tattoos on the victim's back with the letter "S" to mark her as a slave and the Chinese symbol for slave on her ankle. Expert testimony established the significance of the Chinese symbols.

In the case of *Omoruyi (Nigeria)*,¹³⁶ the victims took part in a "juju" ceremony during which they took an oath not to run away from the defendant and to repay their debt. In this case, no expert testimony was called, as Nigerians from all strata of society are familiar with "juju" and either believe in it or understand others' belief in it.

However, in other countries, in which a belief in "juju" may seem irrational, and thus militate against the credibility of victims' testimonies, expert testimony has been used.

In the *Anthony Harrison (United Kingdom)*¹³⁷ case, the victims were two minor females from Nigeria who were subjected to "juju" ceremonies to terrify them into obedience and silence and ensure that they pay their "debt". The prosecution enlisted the expertise of an anthropologist with a specific knowledge of Nigeria and witchcraft practices. Evidence given by this witness enabled the jury to better understand the circumstances of the case and why the victims' evidence had been given piecemeal and, was, on the face of it, inconsistent. The use of the expert also assisted the jury to understand the complex relationships between the trafficker and the victims as well as the cultural context. The defendant was convicted of conspiracy to traffic two victims for sexual exploitation and other charges and sentenced to 20 years imprisonment.

In a German case in the High District Court of Mannheim¹³⁸ which involved the use of "juju", victims were reluctant to testify because they believed in a mixture of Christianity and "juju" and did not want to admit their belief in "juju". Moreover, they were afraid of the consequences of the "juju" ceremony if they should testify. In view of the fact that German practitioners did not know about "juju" or believe in it, expert ethnologist testimony was submitted in order to explain the complexity of the victims' belief system and the effects of "juju" in Nigerian culture. This testimony contributed to the conviction on severe human trafficking charges. On the other hand, in two cases in Germany which involved threats by "Juju" priests used to intimidate the victims the court relied on victim testimony, which it deemed credible, to convict on severe human trafficking charges, and no expert testimony was deemed necessary.¹³⁹

¹³⁵ *U.S. v. Cook*, No. 10-00244-02-CR-W-DW, 2013 WL 3039296 at 4 (W.D. Mo. 17 June 2013) aff'd. 782F.3d 983 (8th Cir. 2015), United States of America.

¹³⁶ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.5 of the Case Digest.

¹³⁷ *R. v. Anthony Harrison* (T20117086), 7 July 2011 (judgement of the Crown Court, thus unreported), United Kingdom. See Index of all cases.

¹³⁸ 6KLS 810 Js 13094/01, Germany.

¹³⁹ *Case against Sophia Ogiemwanye et al*, 501 Kls 1/12 (68 Js 633/09) Landgericht Berlin, 14 December 2012, Germany; *Case against Kate Müller*, 533 Kls 33/12 (251 Js 976/12) Landgericht Berlin, 2 October 2013, Germany.

Thus, not in every case in which culture forms a part, is expert testimony necessary. Two additional cases in which victim testimony sufficed include *Kovacs (Australia)*,¹⁴⁰ in which the victim worked in a takeaway food shop, in the view of the public, on a daily basis and yet she did not attempt to report the crime to relatives or members of the public though it included rape. She explained this by telling the court that revealing sexual abuse would shame herself and her mother as members of Filipino society.

Similarly, in *Farrell (United States)*,¹⁴¹ the appellate opinion reveals that the victims reluctantly surrendered their passports to the defendants when asked for them, because of the principle in Filipino culture that respect should be given to employers.

The case of cultural beliefs such as “juju”: when is expert testimony useful?

The value of expert testimony may be culture dependent. This is illustrated in cases involving the use of “juju” (witchcraft) ceremonies to make victims vulnerable to exploitation. Expert testimony may be necessary in countries with no familiarity with this practice (though not uniformly). In countries, where the belief system is prevalent, there will be no need to bring forth expert testimony because the practice will be familiar to the judges/the court, as illustrated by the following jurisdictions:

- Nigeria: “Juju” is familiar to Nigerians: no expert testimony necessary.
- United Kingdom: presentation of expert testimony.
- Germany: presentation of expert testimony in some cases, but not in others.
- Belgium: no presentation of expert testimony needed because the court considers “juju” a form of deception.

Religious opinion

In certain cases, religious opinion can be another form of expert opinion. Such an opinion was submitted in *Case No. 1685/2010 (Egypt)*,¹⁴² relating to a charge of sexual exploitation of a minor. The case revolved around several defendants facilitating sexual exploitation of a minor by means of a sham marriage with a man in his eighties. As part of the evidence in the case, the trial criminal court was presented with a religious opinion or *fatwa*¹⁴³ of the Grand Mufti of the Arab Republic of Egypt concerning the marriage of minor girls. The opinion stated that the father’s guardianship was void by dint of his immorality in accepting such a sham marriage for his daughter and the abhorrent attitude of both parents for forcing their daughter to marry an incompatible person, resulting in an annulment of the marriage. While the trial criminal court convicted the defendants, relying upon this religious opinion as well as on other evidence, the court of cassation ordered a retrial. It held that there was a contradiction in the court’s reasoning, in using this expert opinion while refusing to critically examine it as requested by the defence, especially since the defence was based on the allegation that the marriage contract was valid according to Islamic *Shari’a* principles.

¹⁴⁰ *R. v. Kovacs* [2009], 2Qd R 51, 23 December 2008, Queensland Court of Appeal, Australia. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. AUS015).

¹⁴¹ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.4 of the Case Digest.

¹⁴² See Index of all cases.

¹⁴³ *Fatwa* is a religious opinion issued by an expert (*mufti*) demonstrating a ruling within Islamic law based on evidence, as a response to a specific question.

Is “soft science” testimony useful?—Issues to consider

Expert testimony can be used in a wide array of areas, such as psychology, victimology and anthropology. However, there are differences of opinion among practitioners regarding the usefulness of such “soft science” testimony in comparison with “hard science” testimony such as ballistics, DNA analysis or pharmacology.

The following are the opposing views on the value of this testimony:

Cons:

Not all victims behave in the same ways, making psychology and victimology of limited value; not all victims from one culture behave the same way, making anthropological expert testimony of limited value; such testimony merely opens the door to the defence to produce opposing expert opinions and clouds the issues.

Pros:

Psychology and victimology expertise can be vital to achieve convictions, particularly where subtle means are used, and, for example:

- An understanding of how traffickers’ methods of control work on victims;
- The effects of human trafficking on victims;^a
- How people’s responses may differ in the face of trafficking;
- Victim motivations;^b
- Victims’ personalities;^c
- The nature of the victims’ vulnerabilities and how they are abused;^d and
- An understanding of why the victim consented.

Anthropology and cultural analysis can add the following:

- The meaning of a certain sign such as a tattoo;
- The nature and implications of certain cultural beliefs; and
- The role of stigma in the victim’s behaviour.

^a Examples might be loss of trust, belief in abuser’s power, the need to believe the situation can change.

^b Examples might be love, devotion, fear, unwillingness to face abuser in court.

^c Examples might be gullibility and level of moral development.

^d Examples might be socio-economic situation, educational background, mental development, intelligence.

2.7 Documentary evidence

Documentary evidence is another kind of evidence used in many cases of trafficking in persons and allied crimes. The rules around submission of this kind of evidence differ from jurisdiction to jurisdiction. In particular, common law systems usually require a witness to attest to the circumstances under which the document was drafted and limit the admissibility of documents in various ways.

As is the case with other kinds of evidence, documentary evidence can be used to support the prosecution or the defence case. The examples given below are intended to stimulate thought as to possible sources of documentary evidence in trafficking cases.

In *Urizar (Canada)*,¹⁴⁴ the defendant sent the victim a number of text messages that were submitted as evidence to the court. In this case, the victim's testimony was uncorroborated by other testimony. The text messages provided support for the court's conviction based on the victim's credible testimony. The defendant was found guilty of human trafficking and other charges.

In the case *R. v. Ladha (Canada)*,¹⁴⁵ concerning trafficking for the purpose of domestic servitude, several pieces of documentary evidence were submitted by the defence to undermine the victim's credibility. First, text messages were used to contradict the victim's testimony about the alleged exploitation and a problematic relationship with the defendant. In these text messages, the victim wrote to the defendant "My mother, miss you every day, good night bye" and the defendant replied "Will miss you too. Good night and take care. I love you like my Zahra and Natasha", which did not support the victim's statements about the poor treatment she experienced at the hands of the defendant. Secondly, the defence presented a tape-recorded conversation between a police officer and the defendant at a time when the alleged trafficking was still taking place. During this conversation, the defendant did not criticize the victim, but defended her and described her as an innocent child who must have been pushed to report the crime to the police. The court said that the defendant's statement had "the unmistakable ring of truth to it" and was largely corroborated. Furthermore, airplane tickets purchased by the defendant for the alleged victim were also used as evidence. The victim stated that she was deceived into coming to Canada for six months, but was, in fact, kept in the defendant's house as a domestic servant for a year. The defence argued that the return plane ticket was bought for a date three months after the victim's arrival in Canada, which was consistent with the defendant's story that the original plan was to bring the alleged victim to Canada for a three month visit. The defence claimed that if the defendant had intended to keep the victim working as a maid for as long as possible, it would make no sense to purchase a return ticket for a date three months before the six-month visitor's visa expired. Based on this evidence, the court concluded that the allegations made by the victim were improbable and acquitted the defendant of all counts.

In *Udeozor (United States)*,¹⁴⁶ telephone conversations were recorded between the victim and the defendant's co-conspirator and submitted as evidence during the trial. The conversations related to how the defendant brought the victim into the United States illegally; how he was interested in ensuring that his story and that of the victim matched; and how he inquired of the victim if she had told the police that he beat her. The defendant was convicted of conspiracy to hold another in involuntary servitude and harbouring a juvenile alien. On appeal the court confirmed the convictions and the admission of the recorded conversations. The defendants were convicted of involuntary servitude and other charges.

In *K-133/11(2012) (Serbia)*,¹⁴⁷ a case concerning trafficking of women for exploitation of prostitution, transcripts of phone calls and text messages between two defendants helped to prove their involvement in the crime, as well as the control exercised over the victims. The defendants were found guilty of human trafficking.

¹⁴⁴ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.2 of the Case Digest.

¹⁴⁵ See Index of all cases.

¹⁴⁶ *U.S. v. Udeozor*, 515 F.3d 260 (4th Cir. 2008), United States of America. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. USA039).

¹⁴⁷ *Case No. K-133/11 (2012)*, 9 February 2012, High Court in Novi Sad, Serbia. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. SRB032).

In *Rivera (United States)*,¹⁴⁸ concerning sexual exploitation of women with irregular status in the United States, an immigration officer submitted evidence he had obtained, including a letter one of the defendants had sent to the prosecutor which indicated that the defendant knew of other businesses which harboured aliens and engaged in prostitution, thus proving that he knew of the illegal immigration status of the victims. This was mentioned by the court in its description of the evidence presented to it. All three defendants involved in this case were convicted of multiple charges, including sex trafficking and forced labour.

In *Case No. 8959-2012 (Egypt)*,¹⁴⁹ documentary evidence of 95 unofficial marriage contracts (*Orfy* contracts)¹⁵⁰ provided crucial support to the testimony of victims. The contracts proved that the young girls were led astray to think they were to be married to men from Gulf States, whereas, in reality, they were to provide prostitution services to them. Other documentary evidence included receipts between defendants and lists of names of victims and information about them.

In *Ernst F. (Germany)*,¹⁵¹ there was varied documentary evidence to support a conviction of human trafficking for prostitution and other crimes. This included text messages to clients and letters to a teacher who tried to help the victim.

In *Kamal Jeet Singh v. State (India)*,¹⁵² the defendant operated a widespread national organized crime network that engaged in the recruitment and transport of women for the purpose of engaging in commercial sexual exploitation. The defendant's network supplied girls to hotels and private residences in various cities in India. Documentary evidence was submitted to prove organized prostitution, including mobile phone call records, documents from hotels and a bank, and a large number of air tickets, as well as financial documents (see subsection on financial records). The defendant was found guilty of prostitution, trafficking in persons and organized crime.

In two cases from Germany, which yielded convictions of trafficking, Western Union transcripts showed where the money was channelled and helped to prove the element of exploitation of the victims.¹⁵³

In a case of trafficking for sexual exploitation, *Martin (Philippines)*,¹⁵⁴ notebooks or journals written by the 34 victims were submitted. These recorded the dates they were taken out of the brothel for prostitution purposes, the nationality of the customers, the places to which the victims went, cash advances and other personal matters. Though the victims themselves did not testify, the court admitted this evidence as "entries in the course of business", which is a recognized common law exception to the rule against hearsay and may be submitted

¹⁴⁸ Previously cited.

¹⁴⁹ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.8 of the Case Digest.

¹⁵⁰ See previous footnote explaining the nature of *Orfy* marriage contracts in section 2.3 on "Testimonial evidence of persons other than victims/police or law enforcement as sources of testimonial evidence".

¹⁵¹ See Index of all cases.

¹⁵² *Kamal Jeet Singh v. State*, Criminal Appeal No. 28/2007 and CrI. M.A. Nos. 336 and 338/2007, the High Court of Delhi, 29 January 2008, India. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. IND017).

¹⁵³ High District Court of Berlin (Landgericht Berlin) 504 KLs 12/13 of 20 December 2013; *Case against Sophia Ogiemwanye and others*, High District Court of Berlin (Landgericht Berlin), 501 KLs 1/12 (68 Js 633/09), 14 December 2012, Germany.

¹⁵⁴ See Index of all cases.

even if the persons who made the entries do not testify. The court convicted the defendant of trafficking in persons by maintaining or hiring a person to engage in prostitution or pornography.

In *R. v. Beckford and Stone (Canada)*,¹⁵⁵ two individuals were charged with various offences including human trafficking, sexual assault with a weapon, living on the avails of prostitution and unlawful confinement. In 2012,¹⁵⁶ defence counsel applied for disclosure of certain records in the hands of third parties relating to the victim including medical records and police occurrence reports, claiming that they were relevant to the victim's credibility and reliability. In Canada,¹⁵⁷ the disclosure of records in the hands of third parties for which there is a reasonable expectation of privacy is governed by a statutory scheme which balances the privacy rights of a victim or witness against the fair trial rights of a defendant. Pursuant to the statutory scheme, the court ordered the documents produced and, after reviewing and redacting parts of the police occurrence reports, ordered their release to the defendant. The court further held that additional redactions to two specific addresses of the alleged victim in the occurrence reports could be made by the prosecution, prior to disclosure, if it was determined that releasing the information would pose a security risk for the victim.

Financial records

Financial records are a particularly important form of documentary evidence in cases of trafficking and allied crimes.

In *Wei Tang (Australia)*,¹⁵⁸ a landmark slavery case from Australia concerning the enslavement of five Thai women under debt-bondage conditions in a brothel, business records of the defendants showed a disparity between the payments to the victims compared to that of other women in prostitution in the brothel. The records appeared in a different part of the ledger and included a different percentage of the fees. This served to support the prosecution's case that the victims had not "merely" been prostitutes, but rather had been held under conditions of slavery.

In *R. v. Orr (Canada)*,¹⁵⁹ concerning the alleged trafficking of a Filipino nanny for the purpose of domestic servitude, bank records were presented by the defence to contradict the alleged victim's statements that the remittances to the Philippines made by the defendant totalled less than \$1,000. The records indicated that four remittances were made and exceeded \$1,800. In its sentencing decision, the court noted that it could not find beyond a reasonable doubt that the alleged victim was treated as a "virtual slave". The court of appeals has since ordered a retrial.

¹⁵⁵ *R. v. Beckford*, [2013] O.J. No. 371, Ontario Superior Court of Justice, 28 January 2013, Canada, [2012] ONSC 7365 application for disclosure.

¹⁵⁶ See 2012 ONSC 7365; 276 C.R.R. (2d) 26.

¹⁵⁷ See sections 278.1–278.9 of the Criminal Code, accessible at <http://laws-lois.justice.gc.ca/eng/acts/C-46/page-142.html#docCont>.

¹⁵⁸ Previously cited. For detailed facts, see the in-depth analysis in section 5.3 of the Case Digest.

¹⁵⁹ The trial court case which included this ruling is *R. v. Orr*, 2013 BCSC 1883 (CanLII), Canada, but the Court of Appeals ordered a retrial on the basis of the lacks in the expert witness's qualifications at *R. v. Orr*, 2015 BCCA 88, Canada. The case is available in the UNODC Human Trafficking Case Law Database (UNODC No. CAN015).

Documentary evidence

Documentary evidence can be of particular value in trafficking in persons cases, especially in cases in which testimonies of the victim and witnesses are not enough to provide the court with a full picture of the circumstances of the case or in order to strengthen such testimony.

Documentary evidence may take many forms, including, but not limited to:

- Text messages
- Letters
- Financial records, such as business records and bank records
- Journals or ledgers
- Lists
- Transcripts (e.g. of phone calls)
- Birth certificates, baptismal certificates and school records, to prove the victim's age
- False birth reports, to show a manipulation of age
- A certification from a ship, to prove that the victim was on board
- Plane or other travel tickets
- Passports and other personal documents, including visas
- Contracts including marriage contracts
- Medical or police records

2.8 Real evidence

“Real evidence” can be an important source of evidence in trafficking in persons cases. The term “real evidence” is used to describe objects (including people and animals) submitted for the court’s scrutiny for the purpose of gathering impressions about their properties, rather than their content, which would be considered documentary evidence. In other words, if a document is submitted to court in order to attest to its appearance, for example, if the handwriting of a letter is being explored, it will be deemed “real evidence”, whereas if it is submitted in order to attest to its content, it will be classified as documentary evidence.

“Real evidence” may include photographs, traces, fingerprints, but also human demeanour.¹⁶⁰ While none of the cases reviewed for this Case Digest specifically referred to fingerprints as evidence, this may be due to the fact that in many cases available, the court decision often only references a portion of the evidence submitted to it. On the face of it, it seems that these pieces of evidence could be used to prove the presence of a defendant or victim in a certain place or as evidence of sexual exploitation or the use of a gun in controlling the victim.

“Real evidence”, as all other forms of evidence, may of course be used by prosecution or defence to support their respective cases.

¹⁶⁰ See Phipson and Elliott, *Manual of the Law of Evidence*, (London, Sweet and Maxwell, 1980), pp. 27-28; see also Cross and Tapper, *On Evidence*, (Lexis Nexis, 2004) pp. 64-65 on “Appearance of Persons” and “Demeanor of Witnesses”.

The cases below are intended to provide the practitioner with some ideas respecting possibly relevant real evidence.

2.8.1 Photographs and videos

Photographs or videos can concretize testimony about victims' conditions or their presence in exploitative premises and support other evidence relating to the nature of the connection between victims and defendants. In learning from the following cases, however, caution must be exercised because jurisdictions may have disparate rules about the conditions for the admission of such evidence and, for example, proof of the good working order of the equipment.

In the *Samaesan (Thailand)*¹⁶¹ case concerning labour exploitation of workers from Myanmar, the police received a tip from one of the victim's relatives about the plight of the victims. They were able to gather various kinds of evidence, including photographs of the persons involved in the exploitation taken at the moment when the relative of the victim paid money to the defendant for the victim's release. These photos provided evidentiary support for the conviction of the defendant for deprivation of liberty offences, trafficking in persons for labour exploitation, trafficking in persons committed by an organized criminal group, smuggling of migrants and immigration offences.

In the *Ranya Boonmee (Thailand)*¹⁶² case, the victims were exploited in a shrimp-processing factory. The prosecution presented as evidence, photographs of the shrimp factory, which showed that it was surrounded by a sixteen-foot-high, barbed wire capped wall. The photographs also showed the housing in which the victims lived and that this housing was inside the walls. However, while the trial court convicted the defendants, the court of appeals exonerated them on the basis of inconsistencies in the alleged victims' testimonies and the testimony of similarly situated workers who claimed they had not been forced to live on-site. The charges were of accepting and retaining workers illegally, including those under the age of 15 and 18 years old for the purposes of enslavement and compelling them to work under slavery-like conditions

In *Kaufman (United States)*, the defendants took advantage of severely mentally ill individuals and subjected them to forced labour and involuntary servitude. Evidence in this case included 78 video tapes of the victims performing sexual acts or being touched sexually by the defendants. This evidence was noted only as background and was not part of the holding of the court of appeal. The defendants were convicted on multiple charges including forced labour and involuntary servitude.

In *Hirang y Rodriguez (Philippines)*,¹⁶³ a case concerning sexual exploitation of minors, a properly authenticated videotape was played inside the courtroom during the trial. It showed the defendant talking to the police officers acting as poseur customers about the girls' sexual expertise in bed, including oral sex, and the amounts the customers were to pay to him. The defendant also admitted in the videotape that he rented a van so that the girls could be transported to Chowking for prostitution purposes. It should be noted that the video

¹⁶¹ *Samaesan*, Criminal Court of Bangkok, 28 January 2013, Thailand. The case is available in the UNODC Human Trafficking Case Law Database (UNODC No. THA011).

¹⁶² Previously cited. For detailed facts, see the in-depth analysis in section 5.7 of the Case Digest.

¹⁶³ See Index of all cases.

tape in this case may be considered both documentary and real evidence, given the nature of its content.

In *Muñoz (Argentina)*,¹⁶⁴ two defendants harboured a minor girl and several adult women for the purpose of sexual exploitation. Photos and videos were found on the premises, contributing to prove the sexual exploitation and the age of the women. In addition, photos of the brothel with bars on one side and behind the main area, and a series of rooms with red lights provided supporting evidence.

In a slavery case *Wei Tang (Australia)*,¹⁶⁵ a video of the bedroom where the victims slept was submitted which showed a lack of furniture, thus supporting the prosecution case that the victims were held under conditions of slavery. In addition, the prosecution submitted a video which depicted the victims laughing together while cooking with an agent of the defendant. While the defence claimed that this video proved that the victims had been happy with the conditions under which they were held, the prosecutor who handled the case commented that the video actually showed the opposite—young, vulnerable and sad young women whose laughter seemed forced, and who were thankful for such little things as cooking. In addition, the video served to explain why the victims initially lied to police about the location of the premises in order to protect the agent of the accused with whom the video showed that they had bonded.¹⁶⁶

2.8.2 Equipment and other utensils

Sometimes equipment found at the scene of the crime can be of probative value.

In *Samaesan (Thailand)*,¹⁶⁷ workers from Myanmar, including minors, were exploited by the defendant in the fishing industry. The victims testified that when they refused to work, they were beaten or threatened with death. During a rescue operation, the investigators seized electric shock equipment, which was purportedly used to torture the victims. Based on this evidence and the testimonies of the victims, the court convicted the defendant of trafficking in persons for labour exploitation and other charges.¹⁶⁸

In *Okoya (Nigeria)*,¹⁶⁹ where young women were lured into prostitution and forced to take an oath during a “juju” ceremony, the prosecution presented as evidence an animal tail, as well as other items usually used in “juju” oath taking ceremonies. The evidence was found in the shrine of the so-called native doctor who invoked the oath. The defendant in this case was convicted of procuring for prostitution, organizing foreign travel for the purpose of prostitution, and deceitful inducement to travel from Nigeria to a foreign country. Similarly, in another Nigerian case of trafficking for the purpose of exploitation of prostitution *Omoruyi (Nigeria)*,¹⁷⁰ a wrap used in the “juju” oath taking process, which contained pubic hairs and

¹⁶⁴ Previously cited.

¹⁶⁵ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.3 of the Case Digest.

¹⁶⁶ The information was provided by an Australian expert who prosecuted the case.

¹⁶⁷ See Index of all cases.

¹⁶⁸ Other charges included: deprivation of liberty of others; deprivation of liberty of a child; dishonestly receiving, disposing of, procuring, seducing or taking away of minor; trafficking in persons committed by an organized criminal group; smuggling of migrants; and assisting illegal immigrant to illegally stay in the Kingdom.

¹⁶⁹ *Attorney General of the Federation v. Sarah Okoya*, High Court of Justice, Edo State of Nigeria, Benin Judicial Division, 19 November 2004, Case No. B/15C/2004, Nigeria. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. NGA001).

¹⁷⁰ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.5 of the Case Digest.

had the name of a victim on it, was submitted as evidence. The defendant was found guilty of organizing foreign travel for the purpose of prostitution, deceitful inducement to travel to a foreign country, requiring a person to be used for forced labour, and placing a person in servitude as a pledge for debt owing.

In a sexual exploitation case, *Muñoz (Argentina)*,¹⁷¹ bracelets were found in the defendant's house which denoted the number of clients each victim had serviced. The defendants were found guilty of harbouring women for prostitution.

In *Maycabalong (Philippines)*,¹⁷² unused condoms, contraceptive pills, a vibrator, pornographic materials and sex enhancing pills recovered from the possession of the victims (among other evidence) helped to prove that they were being exploited in prostitution. The defendants were convicted of trafficking in persons for prostitution and pornography. A similar case is *Kalpna Ranganath Galphade (India)*,¹⁷³ in which among the evidence submitted was a packet of condoms which was found under the pillow of a girl who had been paid to engage in prostitution. This was used to prove that prostitution was carried on in the premises. The defendant was convicted of a range of prostitution and sexual exploitation offences.

2.8.3 Banknotes and marked money

Banknotes and marked money are a particular form of important “real evidence” in trafficking in persons cases, exposing money flows linked to the exploitation.

In *Muñoz (Argentina)*,¹⁷⁴ a large sum of money was seized from the bar in which the alleged sexual exploitation had been taking place. The court held that such a large amount of money could not be attributed to the drinks consumed at the premises, as argued by the defendants. Based on this and other evidence, the court convicted the defendants of harbouring women for the purpose of sexual exploitation.

In *Maycabalong (Philippines)*,¹⁷⁵ the police carried out an undercover operation to rescue alleged victims of sexual exploitation and to arrest two traffickers. The police dusted money to be paid to the trafficker with ultra-violet powder. One of the police officers then acted as a customer and handed over the marked bills to the traffickers. Subsequent examination of the hands of the traffickers showed traces of the powder, which proved that the marked money had been received by them. “Real evidence” in this case included the original marked money and photocopies of it. The traffickers were convicted of trafficking in persons for prostitution and pornography. Similar evidence was submitted in other cases from the Philippines, such as *Sanchez*¹⁷⁶ and *Hirang y Rodriguez*.¹⁷⁷

¹⁷¹ See Index of all cases.

¹⁷² *People of the Philippines v. Jackie Maycabalong*, Criminal Case No. BBU-86397, Regional Trial Court, 7th Judicial Region, Branch 17, Cebu City, 30 July 2012, the Philippines. The case is also available in the UNODC Human Trafficking Case Law Database (UNODC Case No. PHL038).

¹⁷³ See Index of all cases.

¹⁷⁴ See Index of all cases.

¹⁷⁵ See Index of all cases.

¹⁷⁶ See Index of all cases.

¹⁷⁷ See Index of all cases.

2.8.4 Biological traces/biological evidence

Biological traces are samples of traces from human bodies collected for the purpose of investigation. They may be collected from the scene of crime, from a deceased person's body, from surviving victims and from suspects. DNA can be extracted from any of the samples and used for comparative analysis. Biological traces, investigated by forensic scientists come from bloodstains, saliva samples (and, for example, from cigarette butts or chewing gum), semen, excretions and tissue samples, such as from skin, nails, teeth, bone or hair. Samples are processed to isolate the DNA and to establish the origin of the samples.¹⁷⁸ As in many crimes, they may prove important in cases of trafficking and allied crimes¹⁷⁹ and in particular when the purpose is sexual exploitation.

An example is *Maurice Richter (Germany)*,¹⁸⁰ in which the defendant was convicted of rape and trafficking on the basis of victims' testimony and biological traces, his DNA being found on one of the rape victims.

An example of other biological evidence sometimes used in trafficking cases is physical examinations of persons in order to ascertain if they are minors. This kind of evidence has been used in Thailand when victims asserted they were adults but looked like minors and for example in *Sarawan and Kongsamre (Thailand)*.¹⁸¹ In this case 20 victims of trafficking were rescued, who all had genuine passports from a neighbouring country identifying that they were above 18. Ten were sent to undergo biological testing to find out their real ages and it was discovered that one was under 15 years of age while the others were over 15 but under 18 years of age. The defendants were convicted of trafficking in persons committed by an organized criminal group and other charges.

2.8.5 Traces of objects

Sometimes traces of objects may prove useful in proving a case. For example, traces of drugs may contribute to prove that victims were drugged; traces of gunpowder may contribute to prove victims were threatened with guns.¹⁸² As seen in a previous subsection addressing banknotes and marked money, traces of ultraviolet powder on the hands of traffickers paid in marked money, were part of the evidentiary foundation of a case from the Philippines.¹⁸³

2.8.6 Witness demeanour and appearance

Witness demeanour is a species of "real evidence", as it allows the court to view the witness' appearance and behaviour first hand and form an impression, without regard to the content of the story he or she is telling. In this way, it differs from testimonial and documentary

¹⁷⁸ See <http://definitions.uslegal.com/b/biological-traces>.

¹⁷⁹ See UNODC *Anti-human trafficking for criminal justice practitioners*, module 7: Crime Scene and physical evidence examinations in trafficking in persons investigations, (2009), pp. 4-7, available at http://www.unodc.org/documents/human-trafficking/TIP_module7_Ebook.pdf.

¹⁸⁰ District High Court Berlin, 539 Kls 31/14 (255 Js 568/14), 11 March 2015.

¹⁸¹ Criminal Court, Sentence delivered on 2012-10-08. The case is available in the UNODC Human Trafficking Case Law Database (Case No. THA010). Additional information on the biological testing was supplied by a Thai expert.

¹⁸² See also UNODC *Anti-human trafficking for criminal justice practitioners*, module 7, previously cited, p. 7 referring to micro-traces of fibre, paint, glass, soil, seeds, fragments of metal.

¹⁸³ *Maycabalong* (Philippines); see Index of all cases.

evidence which relate to content. A number of cases illustrate the importance of this kind of evidence.

In *Urizar (Canada)*,¹⁸⁴ the court noted the victim’s demeanour in court in its assessment of her credibility, and mentioned that the experience of the trial and its duration caused the victim to have some episodes of disorganization. She would start to cry, her memory lapses increased and she would have to request an adjournment. The court’s final assessment was that the victim was credible, and her demeanour provided one foundation for that assessment.

Other cases in which victim demeanour is mentioned as part of the evidence are *Muñoz (Argentina)*¹⁸⁵ in which the victim’s demeanour provided support for her testimony. On the other hand in *R. v. Ng (Canada)*¹⁸⁶ the victim’s “evasive” demeanour served as a piece of evidence opposing her credibility. Similarly in *Giuseppe Aserio (Germany)*,¹⁸⁷ the court held that the victim, who was barely able to speak and cried a lot during proceedings, was overly dramatic and therefore not credible.

In *I. (Austria)*¹⁸⁸ the defendant was convicted of human trafficking under aggravating circumstances¹⁸⁹ and other charges for buying and selling at least five women from Bulgaria to be exploited in prostitution. Among other evidence, the court considered the defendant’s emotionless and detached demeanour in court when he replied to the accusations. It was the Court’s impression that this assisted in proving the apparent ease with which he earned his money as a pimp.

The importance of victim demeanour: a prosecutor’s impressions

An Australian expert who prosecuted the *Wei Tang* (Australia) case^a attested to the importance of victim demeanour in court:

“It made an impression on the court that the victims, who had been prostitutes for many years, had difficulty in describing the sexual acts they were called upon to perform. It could be seen that they were ashamed. Some were angry and some burst into tears which were clearly ‘real’ tears. Thus, during the course of her evidence, one victim openly wept when she recounted how she had been physically inspected by the accused in the presence of others as if she was cattle, and again when she recalled the accused telling the others present that she was ugly compared with the other prostitutes at the brothel. Several jurors seemed moved”.

^a Previously cited; see also the list of all cases provided in Index of all cases. For detailed facts, see the in-depth analysis in section 5.3 of the Case Digest.

Situations in which the victim’s appearance was used as supporting evidence include cases in which the defendants had victims tattoo their bodies to denote the defendants’ ownership over them. This use of tattoos to denote ownership in trafficking cases has been reported in various countries such as the Netherlands.¹⁹⁰

¹⁸⁴ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.2 of the Case Digest.

¹⁸⁵ See Index of all cases.

¹⁸⁶ See Index of all cases.

¹⁸⁷ See Index of all cases.

¹⁸⁸ *41 Hv 11/14g* (Vienna High Court for Criminal Matters), Austria. It is to be noted that this is a court of first instance.

¹⁸⁹ The aggravating circumstance was commission as part of a criminal association.

¹⁹⁰ For more detail, see section 3.1.12 on “signs of ownership”.

In addition, in trafficking cases where “juju” was used, the victims often have specific scarring on their bodies from the “juju” ritual. This appears in *Anthony Harrison (United Kingdom)*¹⁹¹ where the victims had scars on particular parts of their bodies which corresponded to the scars arising from “juju” rituals.

The absence of “real evidence” when it would be expected

Sometimes the lack of certain forms of “real evidence” when one would expect them to appear, can contribute to prove trafficking and allied crimes. For example, if in a brothel, there are no signs of condoms, it may mean that the women are not permitted to ask clients to use them, thus contributing to prove their exploitation.

Sources of “real evidence”

The term “real evidence” is used to describe objects (including people and animals) submitted in evidence for the purpose of gathering impressions about their properties, rather than their content (which would be classified as testimonial or documentary evidence). “Real evidence” can be an important source of evidence in trafficking in persons cases.

“Real evidence” may assume many forms, including, but not limited to:

- Photographs (e.g. of a victim’s appearance, of a situation concerning the defendant/victim or of the living or working conditions of the victim)
- Video-recordings (e.g. of sexual exploitation)
- Tools to hurt someone, such as electric shockers
- Chains and locks which denote imprisonment
- Sex toys and condoms
- Fingerprints, biological traces and traces of objects
- Marked money
- Unexplained large amounts of cash
- Behaviour during testimony (e.g. crying, confusion, lack of emotion, evasiveness)
- Appearance of witness (e.g. tattoos which denote ownership of the perpetrator over the victim)

2.9 Evidence gathered by special investigative techniques

Some jurisdictions seek supporting evidence by means of special investigative techniques such as “stings” or entrapment initiatives; wiretapping; or surveillance of premises or persons. The evidence gathered in these ways can yield testimonial, documentary or “real” evidence. Caution must be exercised in learning from these cases, as different jurisdictions have disparate rules about the admissibility of evidence obtained by using such techniques.

An example of an undercover operation which yielded “real evidence” can be found in *Maycabalong (Philippines)*,¹⁹² in which police, informed of possible sexual exploitation of women by two men, conducted an undercover operation after a three-day long surveillance. During this operation, a police officer posed as a customer and dusted the money to be paid

¹⁹¹ See Index of all cases.

¹⁹² See Index of all cases.

with ultraviolet powder. The defendants were convicted of trafficking in persons for prostitution and pornography.

Similarly, in *Kalpna Ranganath Galphade (India)*,¹⁹³ two citizens posed as customers in a brothel in order to further a police raid. One of these bogus customers subsequently testified and was termed by the court “a star witness”. The defendant was convicted of a range of prostitution and sexual exploitation charges on the background of victimization of minor girls, some of whom were forced into prostitution.

Another special investigative technique which can yield evidence is wiretapping. This technique is not permitted in all jurisdictions and may be resource sensitive. Thus, some jurisdictions such as Bolivia and the Philippines prohibit wiretapping under any circumstances, whereas other jurisdictions such as Egypt, Germany and Israel allow it, if authorized by a judge.

The interception of telecommunications was also used in the cases of *DPP v. Ho and Ho (Australia)*¹⁹⁴ and *DPP v. Ho and Leech (Australia)*.¹⁹⁵ In these trials evidence was submitted of the defendants speaking to each other over the telephone about the victims as “stock”. This proved devastating to the defence case, which was that the defendants’ relationship with the victims was merely one of employer/employee, rather than slavery. This evidence served as part of the basis for conviction on a series of slavery offences.

In *K.P.4105 (Serbia)*,¹⁹⁶ the evidence obtained from wiretapping included conversations of the defendants, who formed part of a group of criminals organized in Italy, Montenegro, Serbia and the Ukraine for the purpose of profiting from trafficking in persons for sexual exploitation. Under Serbian law, in cases where organized crime is involved, the special investigative techniques set out in article 20 of the United Nations Convention against Transnational Organized Crime are allowed. In this case, wiretapping provided substantial evidence to support a conviction of trafficking in persons. In particular, the wiretapping proved that the trafficking in persons was planned over a long period of time; that the defendants discussed how much would be paid for a particular woman; and that they rated the women’s appearance on a numerical scale. This led the court to conclude that the young Ukrainian female victims were treated like objects. The wiretapping evidence was particularly crucial in this case because the intended exploitation had not yet occurred. In this regard, the wiretapping provided significant evidence to prove the purpose of the intended exploitation.

In *Saban (Israel)*,¹⁹⁷ a large network was involved in trafficking women for prostitution over a period of nine years, whereby young women from former Soviet Union Republics were trafficked to Cyprus and Israel. Several members of the network, namely the driver, the “pimp” and the brothel keeper, claimed that they were involved only in “technical” aspects of the operation and did not know that the women were trafficked. Yet they were convicted of human trafficking. The court relied on various pieces of evidence including wiretapping

¹⁹³ See Index of all cases.

¹⁹⁴ *DPP v. Ho and Anor* [2009], VSC 437, Australia, The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. AUS007).

¹⁹⁵ *DPP v. Ho and Leech* [2009] VSC 495, Australia. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. AUS008).

¹⁹⁶ See Index of all cases.

¹⁹⁷ Criminal Case 1016-09, *State of Israel v. Saban et al* (12/1/2012), appealed in Criminal Appeals 4031, 4881, 4916, 4920, 4945/12, *Saban et al v. State of Israel*, Israel.

and recorded meetings with a perpetrator who turned State's evidence. This evidence demonstrated the defendants' knowledge of the trafficking operation. The court concluded that the defendants were all part of the trafficking operation.

In *I. (Austria)*,¹⁹⁸ the defendant was convicted of human trafficking under aggravating circumstances and other charges for buying and selling at least five women from Bulgaria to be exploited in prostitution. Wiretapped telephone conversations between the defendant and his victims contributed to the convictions by: corroborating statements made by the victims about the chronology of events, the type of threats made, the control exercised over them and the demands made by the defendant; establishing the defendant's links to other criminals and the ongoing and his long standing involvement in trafficking women to Austria for the purpose of exploiting them in prostitution; contradicting the defendant's false statements in court; and supplementing statements where the defendant claimed he could not remember.

Wiretapping can also lead to defendants' confessions. Thus in *Adrian Olariu et al (Germany)*,¹⁹⁹ wiretapped conversations which supported the victim's version led to a confession by the defendant. All the defendants were convicted of trafficking for sexual exploitation of minors.

The value of wiretapping: practitioners' views

Prosecutors who have experience with wiretapping enumerated the following advantages:

- It can reveal the chain of perpetrators and their respective roles—instead of limiting charges to the end exploiter.
- It can uncover substantive evidence to add to the mosaic of evidence, such as derogatory language used, the level of brutality applied and the transnational nature of the offence.
- It can reveal the purpose of exploitation, particularly important in cases where the exploitation has not yet transpired.
- It can lead to confessions.
- It can support victim testimony or under certain circumstances even make it unnecessary.
- It can contradict defendants' assertions.
- It can help to prove criminal intent.

¹⁹⁸ See Index of all cases.

¹⁹⁹ High Court of Berlin, 504 KIs 14/12 (251 Js 1014/12), Verdict of 20 December 2013, Germany.

3. The mosaic of evidence

3.1 Introduction

The previous section dealt with kinds of evidence which have been used in cases of trafficking in persons or allied crimes. This section will address the content of the evidence, discussing which circumstances are relevant to prove trafficking in persons and allied crimes, whether by means of testimonial evidence, documentary evidence or “real evidence”.

Unlike relatively “simple” crimes such as grievous injury or assault, human trafficking is complex, requiring a constellation of circumstances to establish the crime. These circumstances may include evidence of violence, threats, restrictions of freedom, isolation, withholding of pay and more. While no one such circumstance may suffice to establish a crime of trafficking in persons, each may contribute to such a finding.

The concept of a “mosaic of evidence” presented in this section, is to clarify to the reader how to best “build a case” concerning trafficking in persons. The “mosaic of evidence” can be compared to an array of building materials, which together, contribute to the building of a house. The materials are not all of the same weight or centrality, but each can strengthen the edifice.

The mosaic of evidence may also include circumstances, which may lead courts to doubt that the case is one of trafficking in persons, such as the freedom of movement of an alleged victim or his access to family and friend support systems, or victim behaviour which seems to contradict that a crime has been committed. However, just as there is no one single piece of evidence that guarantees a conviction of trafficking in persons, no one single piece of evidence may guarantee an exoneration.

Since this is a Case Digest of evidential rather than substantive matters, it is not intended to provide an exhaustive analysis of the elements of the crime of trafficking in persons. However, substantive issues may be touched on in order to explain why a certain piece of evidence may be relevant to the crime, while taking into account that various national jurisdictions may have different definitions of the crime.

It should be stressed that there is not necessarily a one to one correlation between each circumstance and the three elements of trafficking in persons as defined in the Trafficking in Persons Protocol (i.e., ACT, MEANS and PURPOSE OF EXPLOITATION. See the table included in the introduction section of the Case Digest). This is so in view of the complexity of the crime.

While not every State has adopted all the elements of the definition of trafficking in persons from the Trafficking in Persons Protocol, the Protocol has framed normative discourse around legislation and case law, and the Protocols' elements appear in the legislations of most States or in their case law, or underlie court decisions, even if they are not specified in legislation.²⁰⁰

3.2 Circumstances which can contribute to convictions

The following are examples of circumstances which can be important in building the mosaic of evidence in cases of trafficking in persons or allied crimes. It should be noted, that each of these circumstances may be used to support an element of trafficking in persons (i.e., an ACT, a MEANS and a PURPOSE OF EXPLOITATION), though in itself, it may not constitute an element of the crime. It is usually a constellation of circumstances that are necessary to prove human trafficking or allied crimes.

3.2.1 Violence or force

The Trafficking in Persons Protocol definition requires that the ACT element be accomplished through the use of specified MEANS which can include force. Thus proof of violence can be used to fulfil this element. However, even in national systems which do not require MEANS, violence may support a conviction, in that it can help to prove the element of the PURPOSE OF EXPLOITATION²⁰¹ or the ACT²⁰² and in any case, may help to distinguish between “mere” labour violations and the severe crime of trafficking.

It should be noted that violence can encompass physical, sexual and psychological aspects, as can be seen in the cases described below.

There are many examples of cases in which violence appears as part of the mosaic of evidence. In some countries, which require MEANS to establish the offence of trafficking in persons, use of violence by the perpetrator may constitute proof of this element. In others, it may help to prove part of a relevant element.

Physical violence against the victims including sexual violence

Many cases worldwide include the use of physical violence against victims by the traffickers. In the United States cases which follow, this can be used to prove an element of the offence, as sex trafficking of adults requires “force, fraud or coercion” and forced labour requires coercion.²⁰³ In this context, the use of violence may prove “coercion”.

²⁰⁰ An example is “abuse of a position of vulnerability”, which is part of the element of MEANS in the Trafficking in Persons Protocol. While this element is not specified in some legislations defining trafficking in persons, it may still serve as a factor in court decisions due to the centrality of vulnerability in analyses of trafficking in persons crimes. See UNODC Issue Paper “Abuse of a position of vulnerability and other ‘means’ within the definition of trafficking in persons” (2012).

²⁰¹ See, for example, Canada’s Criminal Code, section 270.04, which in addressing “exploitation” includes “force or another form of coercion” as circumstances which may be considered by the court.

²⁰² See, for example, article 388 of the Criminal Code of Serbia, which includes “hides or holds”, article 165 of the Criminal Code of Moldova, which includes “concealment” and article 3 of Colombia Law No. 985, which includes “captures”. All these ACTS may, of their nature, be violent.

²⁰³ In United States law the MEANS element is established explicitly by force, fraud or coercion for the sex trafficking of adults, see 18 U.S.C. §1591; in the forced labour statute the word “coercion” is absent. However, a definition that includes coercion is supplied in the MEANS listed in the statute, see 18. U.S.C. § 1589.

In *Afolabi (United States)*,²⁰⁴ the defendant trafficked over 20 West African young girls to the United States. The defendant used emotional abuse and violence to force the girls to work long hours at her hair and nail salons, and also allowed several of the girls to be sexually abused. The court rejected the defendant's appeal and concluded that she coerced the victims in ways that included assaulting them and beating them with various implements.²⁰⁵ The charges of which the defendant was convicted included trafficking with respect to forced labour, conspiracy to harbour illegal aliens, conspiracy to commit visa fraud and smuggling illegal aliens.

In *Sabhnani (United States)*,²⁰⁶ the defendants used extreme violence against two Indonesian victims who travelled to the United States to work as domestic servants in the defendants' home. The victims testified that they were subjected to physical and psychological abuse, including beatings. One of the victims had scalding water thrown at her and was forced to eat large quantities of chili peppers until she became violently ill. Both victims were forced to go up and down the stairs numerous times. The defendants were convicted of forced labour, peonage and other charges.

In *Kil Soo Lee (United States)*,²⁰⁷ the defendant enslaved more than 250 workers, mostly young women from Viet Nam and China, in his garment factory. There was significant evidence of violence to support a conviction of holding workers under involuntary servitude, i.e. that they were labouring against their will and under coercion to benefit the perpetrator, and other charges. On appeal for lack of jurisdiction and improper venue, the court offered as background that the victims were physically abused, including beatings, sexual assaults, a choking incident where one of the workers was choked until she could not breathe and an attack by twenty guards against the victims during which the victims were beaten with plastic pipes.

In *Kunarac (International Criminal Tribunal for the Former Yugoslavia)*,²⁰⁸ the defendants Kunarac and Kovac were convicted of enslavement as a crime against humanity according to the Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991. The victims in this case were subjected to significant violence. To support the conviction of Kunarac, the Trial Chamber found that the defendant raped the victims, including "continuously and constantly" raping one of them.²⁰⁹ In the case against Kovac, the Trial Chamber found that when the victims were in the defendant's apartment they were "constantly raped".

In *3K-97/12 (Serbia)*,²¹⁰ the victim was promised a well-paid grape-picking job in Italy. Once in Italy, the victim was picked up by the defendants who tried to persuade him to commit acts of burglary for their profit. When the victim refused to carry out criminal acts, he was repeatedly beaten and locked up in a shack for ten days until he submitted and engaged in multiple thefts. The two defendants were found guilty in their absence of human trafficking.

²⁰⁴ *U.S. v. Akouavi Kpade Afolabi*, 508 Fed. Appx. 111 (3rd Cir.), United States of America. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. USA011).

²⁰⁵ *Ibid.* at 119.

²⁰⁶ *United States v. Varsha Mahender Sabhnani*, 599 F.3d 215 (2nd Cir. 2010), United States of America. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. USA033).

²⁰⁷ See Index of all cases.

²⁰⁸ *Prosecutor v. Kunarac, Kovac and Vukovic*, Cases IT-96-23-T and IT-96-23/1-T ICTY Trial Chamber, 22 February 2001.

²⁰⁹ *Ibid.* at 741.

²¹⁰ *Case No. 3K-97/12*, 3 December 2012, High Court of Kragujevac, Serbia. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. SRB034).

Case III K 114/08 (Poland)²¹¹ concerned forced prostitution of a young woman in Sweden. She was often beaten by the defendant and subjected to physical and psychological violence. Furthermore, the victim was often starved, but she never asked for food because she feared the defendant. The court convicted the defendant of human trafficking and enticement or abduction of another person with the aim of having her engage in prostitution abroad.

A case in which violence was used as a form of disproportionate punishment is **Alzanki (United States)**.²¹² In this case the victim, held in domestic servitude, was thrown against a wall for requesting that the volume of the television be turned down while she was trying to sleep.²¹³ The defendant lost his appeal against a conviction of involuntary servitude. Physical violence or the threat of violence were also used by the defendants in **Connors (United Kingdom)**²¹⁴ to force the victims to perform landscaping services for little to no pay. The defendants were convicted of holding another person in slavery or servitude or requiring them to perform forced or compulsory labour.

In the **Samaesan (Thailand)**²¹⁵ case concerning labour exploitation of workers from Myanmar, the victims were beaten whenever they refused to work. They were also harmed with knives and an electric shocker which frightened them from escaping. The court convicted the defendant of trafficking in persons for labour exploitation and other charges.

The effect on victims of violent abuse of others

Traffickers may not physically abuse all of their victims. However, even observing the bodily injury of others may create a climate of fear that allows traffickers to control their victims. Moreover, sometimes traffickers force some victims to abuse others as a method of control.

In **Webster (United States)**,²¹⁶ concerning commercial sexual exploitation of vulnerable adult and minor females, the defendant forced victims to watch him beat other victims. By doing so he created an environment of fear of physical harm should victims violate any of his rules or refuse to do what he asked. On appeal, this type of psychological abuse was found to be coercion that was sufficient to support the defendant's conviction of sex trafficking through the use of coercion.

In a sexual exploitation case **114/1372/2006 (Romania)**,²¹⁷ the victims were forced to practice prostitution and were regularly beaten. In addition, when the defendants caught one of the victims trying to escape, they beat her again so that her punishment could serve as a deterrent for other women. Based on these facts, the court found all the defendants guilty of human trafficking.

²¹¹ *III K 114/08*, 12 February 2009, District Court of Krakow, Poland. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. POL010).

²¹² See Index of all cases.

²¹³ This information was offered as background by the court.

²¹⁴ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.11 of the Case Digest.

²¹⁵ See Index of all cases.

²¹⁶ *U.S. v. Webster*, 2011, U.S. App. LEXIS 26438 (2011), United States of America. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. USA148).

²¹⁷ *114/1372/2006*, 24 June 2010, Supreme Court of Justice, Romania. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. ROU011).

In a domestic servitude case *Sabhnani (United States)*,²¹⁸ one victim was a witness to the other's violent maltreatment and was even required to maltreat her by taping her body and then pulling the tape off. These facts were mentioned as the background to an affirmation of a conviction on forced labour, peonage and other charges.

In an involuntary servitude case *United States v. Pipkins (United States)*,²¹⁹ on a background of prostitution, the defendant pimps sometimes brutally enforced their control over the victims by means of beatings with belts, baseball bats, or "pimp sticks" (two coat hangers wrapped together). The pimps also punished their prostitutes by kicking them, punching them, forcing them to lie naked on the floor and then have sex with another prostitute while others watched, or "trunking" them by locking them in the trunk of a car to teach them a lesson.

Another case in which victims participated in violence against one another is *D.A. and A.M. (Israel)*.²²⁰ The case concerned a man who gathered around him a number of women by means of his purported religious powers and insights. He gradually exercised more and more control over them, including prompting them to punish themselves and to participate in the punishment of others. He was convicted of holding persons under conditions of slavery in the District Court, pending appeal to the Supreme Court.

Violence is not a requirement for a trafficking in persons case

However, conversely, in order to establish trafficking in persons or allied crimes, it is not necessary to prove violence. This can be seen in a number of cases which did not include this circumstance.²²¹

Violence seen in trafficking cases can be:

- Used to force victims to submit to/remain in the situation of exploitation;
- Not necessarily directed against the victim, but, for example, against co-workers to create a climate of fear; and
- Used as a form of punishment of victims.

Non-exhaustive examples of violence used in trafficking cases include:

- Beatings
- Forcing victims to eat foods that could be harmful
- Electric shock treatment
- Stabbing
- Choking
- Causing scalding
- Sexual assaults and rapes

²¹⁸ See Index of all cases.

²¹⁹ 378 F.3d 1281(2004), United States of America.

²²⁰ *Criminal Cases 6749, 6774-08-11* in Jerusalem District Court, *State of Israel v. D.A. and A.M.* issued on 10 September 2013, pending appeal in Supreme Court.

²²¹ See, for example, *Wei Tang* and *Siliadin*, which appear in the next subsection.

3.2.2 Threats

The Trafficking in Persons Protocol definition requires that the ACT element be accomplished through the use of specified MEANS, which include threat of force. Many national jurisdictions include this MEANS in their trafficking legislation, but even if they do not, it can serve as a circumstance to support the ACT²²² or PURPOSE OF EXPLOITATION.²²³ Moreover, threats can assume various forms, which may be more subtle than threats of force, and for example threats that if the victim leaves the house she will be arrested by the immigration authorities or shot by police. Thus threats can be related to an action by the defendant or by others (like an immigration officer).

Threats of force

The use of threats and the actual use of violence or force seem to be closely linked. Most cases mentioned in the previous section on “Violence or force” also involved the use of various threats, including, for example, *Afolabi (United States)*, *Sabhmani (United States)*, *3K-97/12 (Serbia)*, *Samaesan (Thailand)*, *Connors (United Kingdom)*, *III K 114/08 (Poland)*.²²⁴

The use of threats of force can be seen in many trafficking cases and can assume various forms. It can be employed against the victim or his family member or friend.

In *Farrell (United States)*,²²⁵ workers were threatened that they would be sent back in a small wooden box to the Philippines should they not repay their debt. The court mentioned this fact as indisputable evidence of a threat of physical force which supported the peonage conviction.

In a sexual exploitation case, *Grigore (Germany)*,²²⁶ the defendant told the victim something would happen to her child or her family if she ran away. The defendant was convicted for trafficking by means of deception.

In *Chen (United Kingdom)*,²²⁷ the defendant trafficked Chinese women into the United Kingdom and exploited them as prostitutes. The victims testified that the defendant threatened them by telling them that her boyfriend was a powerful member of a gang, that because of their irregular immigration status they could not go anywhere and that if one of the victims ran away she would murder them. The court noted these threats as part of the coercion employed by the defendant against the victims. The defendant was convicted of all charges, including trafficking for sexual exploitation.

²²² For example, threats might be seen as a support to the ACT of trafficking according to the Canadian Criminal Code. See section 270.01 which includes in the “acts”: “... exercises control, direction or influence over the movements of a person...”.

²²³ For example, if the purpose is “forced labour”, this can include “menace of penalty”.

²²⁴ All previously cited.

²²⁵ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.4 of the Case Digest.

²²⁶ Case against *Constantin Grigore and others*, Az. 528 Qs 105/13 (255 Js 783/13) of 23 September 2013, High District Court (Landgericht Berlin), Germany. For detailed facts, see the in-depth analysis in section 5.10 of the Case Digest.

²²⁷ *The Queen v. Rong Chen, Simon Dempsey and Jason Owen Hinton* [2012] NICC 26, 6 July 2012, Belfast Crown Court, United Kingdom. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. GBR015).

In *7 T 8/2006 (Czechia)*,²²⁸ the defendants used threats to force the victim to engage in prostitution. In particular, they used threats of violence and bodily harm towards the victim by means of acid and harm to the victim's mother. The court found the defendants guilty of human trafficking, rape and extortion.

Subtle threats

As previously mentioned, threats of force are not the only kinds of threats which can help to build a conviction in trafficking cases. There are an array of more subtle threats which can serve this purpose such as threats of financial damage, deportation or shaming.

The following subsections illustrate some forms of such subtle threats.

A particular form of threat: threatening with financial harm

Sometimes the threats relate to financial harm to the victim or his family members. An example may be found in *Calimlim (United States)*,²²⁹ in which the defendants exploited the victim as a domestic servant in their home. The appeals court found that the threat to stop paying the victim, which would impact on her poor family's well-being, constituted serious harm for the purpose of forced labour and supported the defendant's conviction on that charge.

Another particular form of threat: threatening with deportation

Threats of deportation can be seen in *Garcia (United States)*²³⁰ where the defendant eventually pled guilty to committing forced labour, *Rivera (United States)*²³¹ where the defendants in a case of forced labour either made or knew of threats of deportation that were being addressed to the victims. Similarly in *Wei Tang (Australia)*,²³² the Thai victims sold for sexual services were threatened that immigration officials would deport them if they went outside the premises. This information was offered as background as this case was an appeal against the defendant's sentence. The defendant had been convicted of five counts of possessing a slave and five counts of using a slave.

Another particular form of threat: shaming

In some cases, the trafficker threatens the victim that should he or she try to escape, he will reveal shameful facts and, for example, sexual acts.

One case in which the fear of such shame contributed to the victim remaining in her exploitative situation was *Kovacs (Australia)*,²³³ where the victim remained in her situation though she was not locked in her room, was not prevented from leaving the store or house, had access to a telephone, sent and received letters, and was aware that money was being paid

²²⁸ *7 T 8/2006*, 15 December 2006, Regional Court in Hradec Kralove, Czechia. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. CZE028).

²²⁹ *U.S. v. Calimlim*, 538 F.3d 706 (2008), 9 June 2009, United States Court of Appeals for the Seventh Circuit, United States of America. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. USA004).

²³⁰ 2003 U.S. Dist. LEXIS 22088 (W.D.N.Y.). This decision is in response to defendant's motion declaring the forced labour statute unconstitutional.

²³¹ Previously cited.

²³² Previously cited. For detailed facts, see the in-depth analysis in section 5.3 of the Case Digest.

²³³ See Index of all cases.

to her family, despite not receiving wages herself. The court held, however, that this “freedom” was “largely illusory or non-existent”, as subtle means of control were being employed by the perpetrator and in view of the explanation of the victim that in Filipino society what she was undergoing would shame her and her ailing mother. While the case does not explicitly state that the defendant threatened the victim with shaming, it shows how powerful such a threat could be.

In *LB-2012-63028 (Norway)*,²³⁴ the court does mention a subtle threat of shaming in its recounting of the facts. Here the defendants interviewed some 50 Filipino women for an au-pair job in Norway and exchanged a series of e-mails and chats with the women while they were still in the Philippines. During the course of subsequent e-mails and chats conducted by the male defendant, it was made increasingly clear that sexual services would be required. Nevertheless, the victims agreed to come to Norway. The first victim arrived six months earlier than the second and was required to have sexual relations with the defendant. The victim testified that although she knew this would happen, she hoped it would not. She was reluctant at first, but the male defendant reminded her that she had agreed. The defendants did not employ violence or lock and key imprisonment. At most, there was a subtle threat that people in the Philippines would find out if the victim did not consent.

The distinction between subtle threats and innocent warnings

In cases which include subtle threats such as alerting alleged victims of the possibility of their deportation as illegal migrants, defendants may try to claim that their words were grounded in reality and were in the best interests of the victims. It is instructive to study the responses of courts and the distinctions they draw between innocent warnings and culpable threats. For example, in *Calimlim (United States)*²³⁵ the defendants were convicted of obtaining and conspiring to obtain forced labour. They appealed the convictions and argued that they never threatened the victim and that their warnings about potential immigration consequences were in the victim’s best interest. The court rejected this argument thus:

“[...] the [defendants] are arguing that nothing they said or did to [the victim] amounted to a threat. To the contrary, they urge, they meant her no harm and were only telling her these things in her best interest. Perhaps another jury might have accepted this story, but the one that heard their case did not. The key to distinguishing this innocent explanation from the facts of conviction, and the reason why the record contains evidence supporting the jury’s verdict, lies in part in what they did not tell her: that they knew how to set in motion the process that might have resulted in a legitimate green card.”

U.S. v. Calimlim, 583 F.3d 706 (2008), 9 June 2009, United States Court of Appeals for the Seventh Circuit, United States of America.

Seemingly unreasonable threats

Threats do not need to be objectively reasonable as long as they accord with the requirements of the particular national jurisdiction which may vary. Thus, it may suffice to prove that the person who utters the threat intends that it be taken seriously, or that the subject of the threat was subjectively intimidated. In some cases, seemingly unreasonable threats did not

²³⁴ *Appeals Court Case No. LB-2012-63028*, Borgarting Lagmannsrett Judgement (2 April 2013). District Court Oslo Tingrett Judgement (2 February 2012), TOSLO-2011-68460, Norway.

²³⁵ See Index of all cases.

detract from a conviction of trafficking or allied crimes. (See also section 3.3.6.7 on “Seemingly irrational beliefs” and section 3.3.6.7 on “Victim behaviour/seemingly irrational beliefs”).

The following are cases in which the victims, who were not native to the country where they were exploited, were threatened that if they left the premises, they would be killed, tortured or deported, though a belief in this threat seems irrational to anyone familiar with the law enforcement situation in the countries in question (United States of America and Germany). In the first case, *Alzanki (United States)*,²³⁶ the defendants threatened the victim, who was from Sri Lanka, that the United States police would shoot her on sight if she left the house. Despite the “seeming” irrationality of the threat, the court viewed the witness as credible nonetheless, including her account of the threat. The defendant was found guilty of holding a household employee in involuntary servitude.

In the second case, *(215) 3 St Js 723/05 (20/07) (Germany)*,²³⁷ the Ethiopian victim, exploited as a cook of Ethiopian food in a German restaurant, was told that the German authorities were racists and would deport her or even torture, beat and kill her should she seek help. The court mentioned this as one method of control employed by the defendants. In this case the defendants were convicted of human trafficking for labour exploitation.

Threats which rely on a belief in witchcraft curses or spells can be seen in *Afolabi (United States)*,²³⁸ *Omoruyi (Nigeria)*,²³⁹ *Okoya (Nigeria)*,²⁴⁰ and *Harrison (United Kingdom)*.²⁴¹ For fuller treatment of this issue, it is suggested to refer to section 3.3.6.7 on “Seemingly irrational beliefs” and section 2.6. on “Expert and professional testimony”.

An interesting case from the Netherlands shows how fear of “juju” threats was tackled by law enforcement in a creative way: *ECLI:NL:GHARN:2012:BV8582 (Netherlands)*.²⁴² The Nigerian victims in this case lied or would not give a statement because they were afraid of the “juju” threats and did not trust the police (they thought the police were corrupt because of their own cultural background). In order to counter this, the police made sure that the victims first talked to a former victim of human trafficking (“hands-on” expert) and a “juju priest”. He helped the victims to get rid of the curse. Only after this would the police question the victim—sometimes in the presence of the “hands-on” expert.

On the other hand, in *A.G.G.R. (Israel)*,²⁴³ the alleged victims’ belief in the defendant’s threat that he could cause them harm by dint of his supernatural powers, contributed to his exoneration from the crime of holding a person under conditions of slavery. This case concerned a charismatic person who represented himself as endowed with supernatural powers. He gathered around him a number of women and children and allegedly controlled many aspects of their lives by means of a written procedure which included prohibited and permitted acts during all hours of the day. Violation of the rules was attended with punishment. Examples of the rules controlling behaviour included a prohibition to make any purchase,

²³⁶ *U.S. v. Alzanki*, 54 F.3d 994 (1st Cir. 1995), United States of America.

²³⁷ *Case (215) 3 St Js 723/05 (20/07)* in the District Court of Tiergarten, Berlin (20 February 2008), Germany. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. DEU005).

²³⁸ Previously cited.

²³⁹ Previously cited. For detailed facts, see the in-depth analysis in section 5.5 of the Case Digest.

²⁴⁰ Previously cited.

²⁴¹ See Index of all cases. It should be noted that this case is an appeal regarding a sentence rather than an appeal regarding a conviction.

²⁴² Supreme Court, 4 March 2014, *ECLI:NL:HR:2014:477*, Netherlands; See also Dutch National Rapporteur on Trafficking in Human Beings (2009). *Trafficking in Human Beings—Seventh Report of the Dutch National Rapporteur*. The Hague: Bureau NRM, p. 358-367, <https://www.dutchrapporteur.nl/Publications/Seventhreport/index.aspx>.

²⁴³ *Criminal Case 23751-02-10*, Tel Aviv, Jaffa District Court, *State of Israel v. A.G.G.R.*, from September 2014, Israel.

however minor, without his permission, allowing the women to work only in domestic work or as caregivers to the elderly, limiting their right to talk to one another or show marks of affection to one another, separating some of the women from their children, supervising their movements including by means of cameras installed in the residences, requiring them to report to him regarding every action taken by them, even during work days, limiting their use of internet, checking their cellular phones, requiring them to report to him violations of the prohibitions by other women. The court could not understand how Israeli citizens from normative (“ordinary”) backgrounds could believe the defendant’s representations about his powers and this contributed to his exoneration from the offence of holding a person under conditions of slavery, though he was convicted of a series of sexual offences.

Threats

Types of threats seen in trafficking cases include, but are not limited to:

- Death threats
- Threats of force and physical violence towards the victim
- Physical harm to the victim’s family
- Threats of deportation and of arrest by immigration authorities
- Financial harm to the victims or their families
- Religious curses or spells

Threats can be realistic or unrealistic, direct or indirect, of action to be taken by the perpetrator or others, subtle or overt.

Threats can be directed against the victim or against his or her family or loved ones.

3.2.3 Deception

The Trafficking in Persons Protocol definition requires that the ACT element be accomplished through the use of specified MEANS, and lists fraud and deception in this regard. Many national jurisdictions explicitly include this MEANS in their trafficking legislation. However, even if they do not, it can serve as a circumstance to support the ACT²⁴⁴ or PURPOSE OF EXPLOITATION.²⁴⁵

Deception seems to be a prevalent MEANS in cases of trafficking or allied crimes. It can relate to any number of facts, such as the nature of the offer, the conditions under which the victim will work, or the power which the trafficker wields. It can be employed directly against the victim or indirectly towards his family members, particularly if he is a minor. Sometimes the family of the victim is complicit in the deception.

In a sexual exploitation case, *Lolita Pamintuan (Republic of Palau)*,²⁴⁶ Filipino nationals were deceived into coming to Palau to work as waitresses, whereas upon arrival they were forced into prostitution. The defendants appealed the decision of the first instance court that

²⁴⁴ The ACT of abduction may be accomplished through deception.

²⁴⁵ See section 279.04(2)(b) of the Canadian Criminal Code in which the definition of “exploitation” allows the Court to consider various MEANS, including deception.

²⁴⁶ See Index of all cases.

convicted them of numerous charges, including people trafficking and exploiting a trafficked person. The Supreme Court affirmed the convictions.

Another case of deception is *Sridevi et al (India)*,²⁴⁷ where a girl abused by her mother fled her home and, after working as a domestic servant, was fired and picked up at a railway station by a defendant who deceived her by promising to provide her with a good job. However, instead she was transferred to a second defendant who engaged her in prostitution. The defendants were convicted of trafficking for the purpose of exploitation of prostitution.

In *Sanchez (Philippines)*,²⁴⁸ the defendant, under the deceptive pretext of paying for the costs of education and school allowances, recruited minor boys aged 12 to 15. He then brought the victims to a hotel where they were required to work as prostitutes. The court convicted the defendant of trafficking in persons and child prostitution. (It should be noted, though, that the Trafficking in Persons Protocol stipulates that no MEANS are needed to traffic children.)

In *State v. Laojindamane (Fiji)*,²⁴⁹ three Thai women who were recruited to allegedly provide massage services were required to prostitute themselves. The defendants were convicted of aggravated trafficking in persons.

In *Case No. 8959—2012 (Egypt)*,²⁵⁰ young girls were told they would be married to men from the Gulf States who would be able to afford them adequate financial support by means of *Orfy* marriage contracts.²⁵¹ However, in reality they were required to provide sexual services in return for money without real marriage relations. Furthermore, one of the defendants was responsible for constructing an artificial hymen for the victims so that they would appear to be virgins in order re-marry them to new clients and charge higher fees for sexual services. In addition, one of the defendants falsely represented himself as a lawyer and wrote the unofficial *Orfy* marriage contracts in order to support the deception. Some of the defendants were convicted of human trafficking crimes and for running a prostitution network. Interestingly, some of the parents of the victims were indicted as complicit in the deception but were not convicted by the trial court.²⁵² However, on 14 November 2013, the Court of Cassation instructed that a retrial be held due to deficiencies in the reasoning of the trial court.²⁵³

In *K.P.4/05 (Serbia)*,²⁵⁴ the victims, two young Ukrainian women, were promised jobs in Germany. They initially did not believe the offer and asked whether prostitution was involved. However, the defendants assured them convincingly that the jobs only involved exotic dancing and childcare. In doing so, the defendants successfully deceived the victims and brought them

²⁴⁷ Previously cited.

²⁴⁸ Previously cited.

²⁴⁹ *The State v. Phanat Laojindamane and others*, Criminal Case No. HAC323 of 2012, the High Court of Fiji at Suva, 13 December 2012, Fiji. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. FJI002).

²⁵⁰ Previously cited. For detailed facts, see the in-depth analysis in section 5.8 of the Case Digest.

²⁵¹ See previous footnote in section 2.3 on “Testimonial evidence of persons other than victims/police and law enforcement officers as a source of testimonial evidence” for a definition of *Orfy* marriage contracts.

²⁵² This was one of the grounds of the court of cassation for overturning the verdict, as it noted an inconsistency between the conviction of other perpetrators and the non-conviction of the parents.

²⁵³ For full legal reasoning of the court of cassation, see the in-depth analysis of this case in section 5.8 of the Case Digest.

²⁵⁴ See Index of all cases.

to Serbia. The defendants then planned to take the victims to Italy and sell them for sexual exploitation. The victims were rescued in Serbia before the exploitation took place. The defendants were convicted of trafficking in human beings.

In *Grigore (Germany)*,²⁵⁵ the victim did not initially believe the offer of a defendant, who was her cousin, to come to Berlin to care for the elderly because she had been trafficked for sexual exploitation by means of deception on a previous occasion. It was only after the victim's uncle reassured her that she agreed. The defendants then exploited her sexually. Two defendants were convicted of trafficking by means of deception. This case is of particular importance in view of the victim's family members' complicity in the deception and in that there was a conviction even though the victim had reason to suspect the veracity of the offer.²⁵⁶

In *Desabato y Vargas Leulan (Argentina)*,²⁵⁷ the victims were deceived, not about the nature of the work as a prostitute, but rather about the conditions of work in the brothel and the defendant's excessive deductions from the victims' wages for the recruitment, food and medical tests. The defendants were convicted of human trafficking for the purpose of sexual exploitation, where the victims were over 18 years old.

Deception about the conditions rather than the nature of the work also appears in *Dobie (Australia)*.²⁵⁸ Here, two Thai women were lured to Australia. While they were aware that they would be working as prostitutes, the victims were told that they could work whenever they wanted to and that they could take days off each week. These promises were never kept. In addition, contrary to the original promise of generous working conditions, the women received very little compensation for their work. The court noted that the defendant had no intention of keeping his promises and found the defendant guilty of trafficking in persons and other charges.

In *Udeozor (United States)*,²⁵⁹ the defendant travelled to Nigeria and falsely promised the 14-year-old victim's family that she would be adopted and provided with a better education in the United States. Once in the United States, she was required to care for his children and household but received no compensation and was not allowed to attend school. The defendants were found guilty of conspiracy to hold another in a condition of involuntary servitude, involuntary servitude and harbouring an alien for the purpose of commercial advantage or private financial gain.

In *Connors (United Kingdom)*,²⁶⁰ the victims, many of whom were homeless and addicted to alcohol, were promised paid work, food and a home. Instead, they were forced to labour for little to no pay and to live in horrible conditions. The defendants were convicted of holding another person in slavery or servitude or requiring them to perform forced or compulsory labour.

²⁵⁵ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.10 of the Case Digest.

²⁵⁶ See sections 3.2.5.11 on "Emotional vulnerability/family members complicit in trafficking", 3.3.5 on "Complicity in trafficking by victim's family" and 3.3.6.4 on "Victim behaviour in the course of the trafficking process/the naïve or negligent victim".

²⁵⁷ Previously cited.

²⁵⁸ *R. v. Dobie* (2009), 236 FLR 455, 18 December 2009, Queensland Court of Appeal, Australia. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. AUS013).

²⁵⁹ Previously cited.

²⁶⁰ Previously cited. For detailed facts, see the in-depth analysis in section 5.11 of the Case Digest.

Deception

Deception is one of the MEANS by which traffickers lure victims into an exploitative situation. Deception often relates to the following issues:

- Nature of job (e.g., in forced prostitution cases)
- Working conditions (working hours, rest days)
- Pay (excessive deductions/no pay/low pay)
- Living conditions
- Pretext of marriage

Deception can be employed directly towards the victim or indirectly towards his family members, particularly if he or she is a minor. Sometimes the victim's family can take part in the deception.

3.2.4 Subtle means of coercion

Violence, threats and deception are not the only circumstances which need to be considered in trafficking in persons or allied crimes. The Trafficking in Persons Protocol also includes the MEANS of “coercion”²⁶¹ and “abuse of a position of vulnerability”, both of which may include other, more subtle means of control. In States where the national jurisdiction adopts the language of the definition of the Trafficking in Persons Protocol, the establishment of a situation of coercion or abuse of a position of vulnerability would contribute towards proving the MEANS element. In jurisdictions which do not explicitly require a MEANS element, the establishment of a situation of coercion or abuse of a position of vulnerability may still be relevant in order to prove the PURPOSE OF EXPLOITATION or the ACT.

Such subtle means are of central importance in modern trafficking cases. Indeed one practitioner who participated in the Expert Group Meetings convened to develop this Case Digest called the use of them “an essential strategy in the business plan of the modern trafficker”, while another made the point that since violence is resource intensive, necessitating the physical presence of the trafficker and often also requiring tools to exert violence, traffickers often prefer to employ subtle means.

An example of a case with subtle means is *Wei Tang (Australia)*.²⁶² This case did not include threats or physical violence. Moreover, the victims were not locked up, and were properly fed, given accommodation and had access to medical care. Still, the defendants were convicted of slavery. The court took into account a constellation of circumstances, such as long hours of work; the defendant's fostering the victims' fear of detention or arrest by immigration and law enforcement for illegal stay and visa offences and heightening such fear by instructions to fabricate stories for the authorities if caught; withholding the victims' wages; confiscating their passports; not giving them keys to the premises so that if they left, they could not return and had nowhere else to go; and giving the victims instructions so that they would not readily leave the premises without someone to accompany them.

²⁶¹ It is instructive to note that the Travaux Préparatoires, which record the deliberations which preceded the adoption of the Trafficking in Persons Protocol, refer to “coercion” as a broader term than force. Thus, some delegations suggested the word “coercion” in the definition of “forced labour” under the assumption that this was a broader term than “force”. Other delegations expressed reservations about this term (see p. 340, footnote 8).

²⁶² *R. v. Wei Tang* before the Supreme Court of Victoria, Australia [2007], VSCA 134 and before the High Court of Australia [2008], HCA 39, Australia. For detailed facts, see the in-depth analysis in section 5.3 of the Case Digest.

As can be seen in the Wei Tang case, various subtle means of coercion can be employed by traffickers to control the victims. As the subtle means of coercion touch upon many circumstances which can contribute to convictions, examples of them are discussed throughout section 3.2. In particular, please refer to cases of subtle threats in section 3.2.2 (including the use of “juju practices”) and subtle restrictions of freedom in section 3.2.6.

In *Siliadin (European Court of Human Rights)*,²⁶³ the court found the crimes of servitude and forced labour established. The victim was permitted to leave the premises where she was exploited numerous times for specific purposes (such as to take the children to their schools or buy groceries) and was not supervised on those occasions. In addition, no overt violence was used against her. However, the court considered the lack of free time and warnings about possible arrest to have effectively coerced her to remain under servitude and forced labour.

Another case which expressly addresses subtle means is *Bradley (United States)*.²⁶⁴ The defendants were convicted of forced labour for bringing several groups of workers from Jamaica to work in a lumber factory. The workers worked long hours for much lower remuneration than had been promised, were held in difficult living conditions with no running water, electricity and heating, denied medical treatment and threatened. The court clearly stated:

“The government ... need not prove physical restraint: such as, the use of chains, barbed wire, or locked doors, in order to establish the offense of forced labour...”

U.S. v. Bradley, 390 F.3d 145 (N.H.2004).

It is important to note that there is not necessarily a clear-cut distinction between overt and subtle forms of coercion. Sometimes, traffickers use both kinds and move gradually from kindly behaviour calculated to “seduce” the victim to physical violence, restrictions of freedom and overt threats. This can be seen in two cases detailed below under “emotional abuse”: *D.A. and A.M. (Israel)*²⁶⁵ and *Urizar (Canada)*,²⁶⁶ and in addition in *Campbell (United States)*,²⁶⁷ where the defendant at first enticed the women into joining his “family” by offering them comfortable places to live and jobs in massage parlours with no expectation that they perform sexual services. Once he had gained their trust, the offender required the women to break their ties with their relatives and friends and confiscated their identification, immigration documents and money. He then renamed them, branded them with tattoos, abused them and forced them to engage in prostitution for his benefit. He was convicted of sex trafficking.

²⁶³ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.9 of the Case Digest.

²⁶⁴ *U.S. v. Bradley*, 390 F.3d 145 (N.H.2004).

²⁶⁵ Criminal Cases 6749, 6774-08-11 in Jerusalem District Court, *State of Israel v. D.A. and A.M.* issued on 10 September 2013, pending appeal in Supreme Court, Israel, pp. 41-43, paras. 46-48. Please refer, in addition, to the next subsection on “Emotional abuse” for more details.

²⁶⁶ See Index of all cases. Please refer in particular to the Court of Appeals case pp. 2 and 19 and to the next subsection on “Emotional abuse” for more details. For detailed facts, see the in-depth analysis in section 5.2 of the Case Digest.

²⁶⁷ 770 F.3d 556, 559 (7th Cir. 2014) cert. denied, 135 S. Ct. 1724 (2015) reh’g denied, No. 14-8610, 2015 WL 2340955 (U.S., 18 May 2015), United States of America.

See also a case from Finland²⁶⁸ concerning a businessman who pretended to own a modelling company in Finland. He invited twelve young Finnish women to interviews during which the women were photographed naked and touched, and some were even raped. Their subsequent work involved providing erotic shows, pornography, striptease and prostitution. The women were also sexually exploited and raped. When the modelling company came to the attention of the police, the man had already run the business for more than a decade. A forensic psychiatrist testified that in sexual violence and exploitation cases, control over the victim is often accomplished by a gradual process of the victim renouncing her bodily integrity and by advanced manipulation techniques. He explained that this incremental process makes it difficult even for the victim herself to define the point where she did not give her consent any longer. It also erodes her trust in other people and in the ability of society to protect her. The defendant was convicted of trafficking and other sexual offences, including rapes and sentenced to over 11 years of imprisonment.²⁶⁹

The following cases illustrate two specific forms of subtle means of coercion that appear in many trafficking cases, namely emotional abuse and humiliation of victims.

Emotional abuse

Emotional abuse is often achieved by defendants who win the victims' trust and then gradually exert control over them.

In *D.A. and A.M. (Israel)*,²⁷⁰ a man gathered around him a number of women by means of his purported religious powers and insights. He gradually exercised more and more control over them—isolating them from their families and friends; requiring them go out daily to beg and to bring back large sums of money each day; controlling the most basic life functions such as going to the bathroom, eating, drinking, making any purchase, no matter how trivial; punishing them in sadistic ways, purportedly for their spiritual good; and manipulating them to feel guilt and self-hatred. Not only did the women accept this abuse willingly, but they also initiated punishments in order to find favour in his eyes, because they believed in him and trusted him. He was convicted of holding persons under conditions of slavery in the District Court, pending appeal in the Supreme Court.

In *Urizar (Canada)*,²⁷¹ the Court of Appeals stressed the gradual nature of the defendant's methods of control over the victim and their variety—moving from kindness and presents to physical violence, restrictions of freedom, isolation and threats. As a result of this progression of events, the victim loved the defendant, which made it hard for her to leave him.

Constant verbal abuse may be considered another form of emotional abuse. It appears for example in *Pipkins (United States)*,²⁷² in which the defendants were convicted of involuntary servitude for prostituting minor girls who were wholly dependent upon them. While the case included threats of violence and sexual violence, the court also noted continual verbal abuse by the defendants which it termed “mentally sapping wordplay”.²⁷³

²⁶⁸ See Index of all cases.

²⁶⁹ The Supreme Court did not affirm the conviction of trafficking.

²⁷⁰ See Index of all cases.

²⁷¹ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.2 of the Case Digest.

²⁷² See Index of all cases.

²⁷³ *Ibid.* p. 1291.

Humiliation of victims

Conduct which may cause a victim to feel humiliated may assist traffickers in controlling victims through instilling in them a sense of their worthlessness. Examples of trafficking or allied crime cases in which courts mentioned humiliating practices can be found in the following cases:

In the domestic servitude case *Veerapol (United States)*,²⁷⁴ the defendant forced the victim to work long hours performing housework and childcare. In addition, the court noted as background that she was required to kneel on one knee when she brought food to guests. The court convicted the defendant of involuntary servitude and other charges.

In *Kaufman (United States)*,²⁷⁵ the defendants ran a home for the mentally ill. The patients were told that nudity was therapeutic and were required to do their work while naked. In addition, on occasion their clothes were taken away as a means of punishment. Furthermore, the victims were coerced into performing sexual acts with one another and this was videotaped. These facts were part of the factual background in the case. The defendants were convicted of numerous charges, including involuntary servitude.

In the labour exploitation case, *Connors (United Kingdom)*,²⁷⁶ as part of the recitation of the facts the court noted that the victims were forced to shave their heads. The defendants were convicted for holding another person in slavery or servitude or requiring them to perform forced or compulsory labour.

3.2.5 Vulnerabilities of victims

One of the subtle MEANS which appear in the Trafficking in Persons Protocol is “abuse of a position of vulnerability”. In jurisdictions adopting this definition, the vulnerability of the victim is directly relevant. However, even in jurisdictions which do not explicitly mention this MEANS, cases show that the vulnerabilities of victims are a crucial circumstance in achieving a conviction of trafficking or allied crimes. It is these vulnerabilities that assist the court to understand why victims were persuaded to enter into a seemingly risky situation and why they remained.

A summary of possible vulnerabilities appears in the UNODC Model Law against Trafficking in Persons²⁷⁷ and in the UNODC Issue Paper on “the key concept of abuse of a position of vulnerability and other “means” within the definition of trafficking in persons”²⁷⁸ Such a summary also appears in the *Trafficking in Human Beings—Seventh Report of the National Rapporteur of the Netherlands*, which cites several cases which point to a number of different kinds of vulnerabilities.²⁷⁹

²⁷⁴ *U.S. v. Veerapol*, 312 F.3d 1128 (9th Cir. 2002), United States of America. This fact was noted as background in the case. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. USA065).

²⁷⁵ Previously cited.

²⁷⁶ Previously cited. For detailed facts, see the in-depth analysis in section 5.11 of the Case Digest.

²⁷⁷ UNODC *Model Law against Trafficking in Persons* 5 August 2009 includes the following examples of vulnerabilities based on an array of sources: illegal or insecure administrative status, illness, infirmity, pregnancy or any physical or mental disease or disability of the person, including addiction to the use of any substance, or reduced capacity to form judgments by virtue of being a child, age, precarious situation from standpoint of social survival (see pp. 10-11).

²⁷⁸ UNODC Issue Paper on the Key concept of abuse of a position of vulnerability (2012).

²⁷⁹ See *Seventh Report of the Dutch National Rapporteur, Trafficking in Human Beings*, 2009, p. 410 which points to cases which highlight vulnerabilities such as social situation, influence of voodoo, addiction to narcotics and illegal stay in the Netherlands.

One of the issues arising in regard to “abuse of a position of vulnerability” is the question of the required level of involvement of the perpetrator in creating or using this position: Does it suffice that the perpetrator knows that the victim is vulnerable without taking any action? Or is it necessary that the perpetrator actively abuses this vulnerability and takes some action in this regard.²⁸⁰ Various jurisdictions answer this question in different ways, as can be seen in the UNODC Issue Paper on this topic.²⁸¹

While vulnerability is a crucial part of the discourse about trafficking in persons, it is not always evident that the victim is, in fact, vulnerable. Nor is proof of a person’s vulnerability an indispensable requirement to secure a conviction. Indeed, there have been cases of well-educated victims with support systems in the place of exploitation, who have nevertheless been considered victims, as will be seen in the sections below.²⁸² In fact, it is important to bear in mind that anyone can potentially become a victim of trafficking, no matter whether well-educated or illiterate, old or young, man or woman, national or foreigner. Only if there are no false preconceptions about what a “trafficking victim” looks like, will it be possible to detect them.

Vulnerabilities can assume many forms. The following vulnerabilities are particularly frequent and have been highlighted by the cases below.

3.2.5.1 Immigration Status

The fact that an individual does not have a legal permit to work in a country may create or heighten the individual’s vulnerability to being trafficked and thus help to support a conviction.

In *Siliadin (European Court of Human Rights)*,²⁸³ the court found that France violated its obligations under Article 4 of the European Convention on Human Rights according to which “no one shall be held in slavery or servitude” and “no one shall be required to perform forced or compulsory labour”. In finding that the victim was subjected to forced labour, the court noted the victim’s immigration status and how it was abused by the perpetrators.

The Court notes that, in the instant case, although the applicant was not threatened by a “penalty”, the fact remains that she was in an equivalent situation in terms of the perceived seriousness of the threat.

She was an adolescent girl in a foreign land, unlawfully present on French territory and in fear of arrest by the police. Indeed, Mr and Mrs B. nurtured that fear and led her to believe that her status would be regularized.

Siliadin v. France, (App. No. 73316/01) ECHR, 26 July 2005, the European Court of Human Rights, para. 118.

²⁸⁰ See UNODC Issue Paper on “the Key concept of abuse of a position of vulnerability”, 2012. Moreover, this question is yet broader than the issue of vulnerability and arises in regard to many circumstances used to support convictions, and for example, in regard to threats when the perpetrator does not actively threaten the victim, but knows that external circumstances make it impossible for him to flee. See above, section 3.2.2 on “Threats”. It may also appear in restrictions of freedom when the perpetrator does not actively restrain the victim’s freedom, but knows that due to factors such as the remote location of the premises or the victim’s unfamiliarity with the language and culture of the country of destination, he will not be able to leave the premises.

²⁸¹ See Index of all cases.

²⁸² See section 3.2.5.7 on “Lack of education and little education” and section 3.3.3 on “The victim’s support system”.

²⁸³ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.9 of the Case Digest.

Other cases in which courts stressed the vulnerability attaching to lack of legal immigration status include *Wei Tang (Australia)*,²⁸⁴ *Alzanki (United States)*,²⁸⁵ and *Desabato y Vargas Leulan (Argentina)*.²⁸⁶

However, the following cases show that trafficking can take place even among victims who have a legal work permit or are citizens of the country. See, for example, *Bradley (United States)*,²⁸⁷ *Kaufman (United States)*²⁸⁸ and *Urizar (Canada)*.²⁸⁹

3.2.5.2 Socio-economic status

Evidence of a victim's socio-economic vulnerability has been used to prove that the defendant abused the victim's position of vulnerability.

In *Desabato y Vargas Leulan (Argentina)*,²⁹⁰ two Paraguayan females were recruited to Argentina for the purpose of providing sexual services at a bar. The court explicitly found that the victims in this case were vulnerable because of their economic hardships and life circumstances. Moreover, the defendant who recruited the victims was aware of these vulnerabilities, which made it easy for her to convince them to take the job by painting a false picture of what their lives would be like in Argentina. The court found that she abused the victims' positions of vulnerability and convicted her of being a co-perpetrator of the crime of trafficking in persons for sexual exploitation, where the victims were older than 18 years of age.

In *Mondo Juan Carlos (Argentina)*,²⁹¹ two defendants were convicted and sentenced for the crime of human trafficking of minors. The minor victims were sold for sexual exploitation in a whisky bar. The court ruled that the socio-economic vulnerability of the victims proved the MEANS element of "abuse of a position of vulnerability".²⁹² The victims had humble origins and marginal social status.

In *Wei Tang (Australia)*,²⁹³ the trial court found that the victims consented to work as prostitutes for the defendant and to take on a significant debt in order to come to Australia because of their socio-economic vulnerability.²⁹⁴ The defendant contested this finding but the appeals court affirmed it. Although some evidence was brought regarding the women's financial situation before coming to Australia, the court ruled that even without such evidence, an inference could have been drawn about their socio-economic status thus:

²⁸⁴ *R. v. Wei Tang* (2009), 23 VR 332; (2009) 233 FLR 399; [2009] VSCA 182 (17 August 2009) at para 18. For detailed facts, see the in-depth analysis in section 5.3 of the Case Digest.

²⁸⁵ See Index of all cases.

²⁸⁶ See Index of all cases.

²⁸⁷ See Index of all cases.

²⁸⁸ See Index of all cases.

²⁸⁹ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.2 of the Case Digest.

²⁹⁰ See Index of all cases.

²⁹¹ *Criminal Case 862/2012*, Federal Criminal Court of Corrientes, 17 May 2013, Argentina. The case is also available in the UNODC Human Trafficking Case Law Database (UNODC Case No. ARG062).

²⁹² This case involved victims who were minors which meant that, to attain a conviction, no proof of MEANS was necessary. However, the finding of abuse of a position of vulnerability was used as an aggravating circumstance under Argentinian law.

²⁹³ *R. v. Wei Tang* (2009), 23 VR 332; (2009) 233 FLR 399; [2009] VSCA 182 (17 August 2009) at para 18. For detailed facts, see the in-depth analysis in section 5.3 of the Case Digest.

²⁹⁴ *Ibid.* at para 52.

“As to economic circumstances, the submission was that, although each complainant clearly desired to make more money than she could earn in Thailand, this did not permit the conclusion that the decision to work in Australia was a product of ‘economic imperilment’. Once again, there was some evidence given by the complainants as to their financial circumstances. But, even without such evidence, the inference which his Honour drew was almost irresistible. Who but an economically vulnerable woman would enter into a contract ‘to work for no actual cash return over the period of ... some 3 to 6 months, servicing large numbers of men? For a woman to subject herself to sexual enslavement might be thought to bear eloquent testimony to her state of economic desperation.”

R. v. Wei Tang [2009], VSCA 182 (17 August 2009), Australia, para. 55.

In a labour exploitation case, *Connors (United Kingdom)*,²⁹⁵ the court noted in the factual background that the victims were targeted because they were homeless and because most of them did not have jobs. The defendants were convicted of holding another person in slavery or servitude or requiring them to perform forced or compulsory labour.

3.2.5.3 Age

Age, whether young or old, can serve as a form of vulnerability. The United Nations Trafficking in Persons Protocol recognizes the unique vulnerability of minors, as stated in Article 3(c) of the Protocol according to which, in order to prove the crime of child trafficking, there is no need to prove the MEANS element but rather it suffices to prove the ACT and the PURPOSE OF EXPLOITATION. In addition, many jurisdictions consider trafficking a minor as an aggravating factor in the sentence of a trafficker.²⁹⁶ Moreover, even when the victim is not a minor, his or her youth may be considered in an evaluation of vulnerability.

In this context, it is interesting to note that in some jurisdictions, because of the particular vulnerability of young persons, particular attention is paid to trafficking of children while adult trafficking is not equally addressed by the legal and judicial systems. The 2014 UNODC *Global Report on Trafficking in Persons* reveals that the percentage of children among the detected victims of trafficking in persons, differs significantly among regions. For example, between 2010-2012, children comprised a majority of the detected victims in Africa and the Middle East. In analysing this finding, the *Report* notes that the seeming prevalence of child trafficking may be a result of the fact that certain countries in sub-Saharan Africa have only recently included adult trafficking in their criminal codes. As a result of the previous non-criminalization of adult trafficking, most or all of the victims reported by judicial authorities of these countries were children. Data for the 2016 UNODC *Global Report on Trafficking in Persons* confirms these patterns.²⁹⁷ It remains to be seen whether and how the statistics will change, once adult trafficking is prohibited and the first cases on adult trafficking reach and are processed by the courts.

²⁹⁵ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.2 of the Case Digest.

²⁹⁶ See, for example, section 5 of the Prevention of Trafficking in Persons Act 2009, Uganda, in which the maximal punishment is death; article 388(3) of the Serbian Criminal Law which prescribes a minimal sentence of 5 years for trafficking in minors, whereas the sentence for trafficking adults is between 3 and 12 years; section 377A(b) of the Israeli Criminal Law which prescribes a maximal sentence of 20 years for trafficking in minors compared to 16 years for trafficking adults.

²⁹⁷ *Global Report on Trafficking in Persons*, UNODC 2016.

The following cases illustrate instances where the young age of the victim was a factor in establishing an abuse of a position of vulnerability.

In *K.P.4/05 (Serbia)*,²⁹⁸ the victims were two young females and were deceived by the defendants who planned to sexually exploit them for profit in Italy. The victims were rescued in Serbia before they were exploited and the defendants were convicted of trafficking in human beings. The young age of the victims was noted in the background of the case, but was not explicitly considered as a source of vulnerability.

Additional cases in which the young age of the victims (though they were not always minors) was important in contributing to building a case include *Afolabi (United States)*²⁹⁹ and *Jimenez-Calderon (United States)*.³⁰⁰

There are also cases where the inability to prove that the victim was a minor has led to an acquittal of the defendants. This may occur when the charge is child trafficking rather than adult trafficking, or when the applicable national law criminalizes only child trafficking or has only recently criminalized adult trafficking. In these jurisdictions the age of a victim is often a key piece of evidence in a prosecution for trafficking in persons. Thus, in *Kenneth Kiplangat Rono (Kenya)*³⁰¹ the defendant was charged with defilement and child trafficking but the case was eventually dismissed because the prosecution failed to verify the age of the alleged victim and the charges depended on the victim being a minor. Absent this verification, which the court deemed it possible for the State to have ascertained, the convictions against the defendant were quashed.

In *Adjayi et al (Nigeria)*,³⁰² a case where the relevant law required proof of the age of the victim in order to secure a conviction, the defendants were acquitted because the victims were unable to accurately state their respective ages in their testimonies. The charges requiring proof of the age of the victims resulted in acquittals due to the failure to produce adequate evidence.³⁰³

By the same token, relatively older age may also potentially serve as an indication of vulnerability, and in particular when the victim is of an age which makes it hard to find work, thus making her or him vulnerable to trafficking. In this regard, in *Sabhnani (United States)*,³⁰⁴ one of the victims employed in domestic work was 53 years of age and the other was 47 years of age. The defendants were convicted of forced labour, peonage and document servitude. See also *Blackwell (United States)*,³⁰⁵ where defendants were convicted of forced labour for bringing in to the United States a woman from Ghana, 44 years of age, to serve as their unpaid domestic servant and nanny.

²⁹⁸ Previously cited.

²⁹⁹ See Index of all cases. The victim's young age was mentioned by the court in the facts.

³⁰⁰ Previously cited.

³⁰¹ Previously cited.

³⁰² HCL/2C/2005 (Ogun State High Court), Nigeria.

³⁰³ Among the charges were: importation into Nigeria of persons under the age of 18 years knowing that such persons will be forced into prostitution contrary to the Trafficking in Persons law; procurement of persons under the age of 18 to be unlawfully carnally known by another against that law; fraudulent procurement of persons under the age of 18 to have carnal connection with a man within Nigeria and other charges.

³⁰⁴ See Index of all cases.

³⁰⁵ *U.S. v. Blackwell*, 2004-01-08 in United States District Court of Maryland, United States of America. Available in UNODC Human Trafficking Case Law Database (UNODC Case No. USA020).

3.2.5.4 Addiction

Addiction to drugs or alcohol can be a source of vulnerability, as often addicts will be willing to do anything in order to feed their habits. Additionally, traffickers sometimes deliberately create addiction in victims who had not previously been addicted in order to more easily exploit them.

Abusing an existing addiction

An example of a case where the initial addiction made the victims vulnerable to falling prey to traffickers is ***Connors (United Kingdom)***.³⁰⁶ In this case, the victims were targeted, among other reasons, because they were addicted to alcohol. The traffickers were convicted for holding another person in slavery or servitude or requiring them to perform forced or compulsory labour.

Another case where an existing addiction was an important consideration is ***Sentence No. 004/13 (Argentina)***.³⁰⁷ Here the court noted that the defendant took advantage of the position of vulnerability of the victims, who were drug addicts, in order to exploit them sexually. The defendant was found guilty of trafficking in minors, possession of drugs for their sale or brokerage and use of drugs.

In ***ECLI:NL:RBZLY:2012:BX2627 (Netherlands)***,³⁰⁸ the husband of a woman prostituted her and assaulted her repeatedly. He was convicted of human trafficking and assaults against a life companion. The court found that the wife's addiction to alcohol contributed to her vulnerability in that it, along with other vulnerabilities, led to her inability to adopt an independent attitude, similar to the attitude of an articulate prostitute in the Netherlands. Thus, she was unable to make her own decisions or free choices independently of the defendants (her husband and a co-defendant).

Creating an addiction to increase vulnerability and/or to facilitate exploitation

An example of the creation of addictions in victims can be found in ***Webster (United States)***.³⁰⁹ In this case the defendant gave cocaine to the victims whom he was exploiting for commercial sexual relations. The defendant then threatened to withhold the drugs in order to coerce the victims to prostitute themselves. The appeals court found that this action could be considered an abuse of the vulnerability of the victims which could be considered "force" in the context of the legislation of the United States.³¹⁰

In ***Mondo Juan Carlos (Argentina)***,³¹¹ two defendants were convicted and sentenced for the crime of human trafficking of minors. In describing the background of the facts, the court noted that the victims were forced to drink and take drugs as part of their regular duties.

³⁰⁶ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.11 of the Case Digest.

³⁰⁷ Sentence No. 004/13, 5 March 2013, Oral Federal Criminal Court of Parana, Argentina. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. ARG053).

³⁰⁸ Zwolle-Lelystad District Court, 27 March 2012, *ECLI:NL:RBZLY:2012:BX2627*, Netherlands. See also National Rapporteur on Trafficking in Human Beings (2012). *Trafficking in Human Beings. Case law on trafficking in human beings 2009-2012. An analysis*. The Hague: BNRM, p. 62. <http://www.dutchrapporteur.nl/reports/case-law/>.

³⁰⁹ See Index of all cases.

³¹⁰ United States Trafficking Legislation requires force, fraud or coercion in order to constitute trafficking for sexual exploitation of adults. See 18 U.S.C. §1591.

³¹¹ See Index of all cases.

In *Pipkins (United States)*,³¹² the defendants gave the victims drugs as rewards, among other reasons. The defendants were convicted of involuntary servitude, among other counts.

Sometimes traffickers give a victim drugs in order to facilitate his exploitation and, for example, to lessen his or her inhibitions in performing sexual acts. Such a case is *Urizar (Canada)*,³¹³ where the defendant gave the victim cocaine in order to help her get rid of inhibitions before she began working as a stripper. The defendant was convicted of trafficking in persons, benefitting economically from trafficking, exploitation, extortion and other offences.

Similarly in *Pipkins (United States)*,³¹⁴ one of the reasons ascribed to the defendants in giving the victims drugs was to ensure their functioning in prostitution. The defendants were convicted of involuntary servitude, among other counts.

3.2.5.5 Disabilities

Traffickers often choose victims with physical or mental disabilities, as this tends to create vulnerabilities which they can exploit.

In one such case, *Nr. 20.L4.4846/12 (Belgium)*,³¹⁵ the defendant went to a care home in Slovakia to locate victims who were physically disabled. He told two disabled men that he was their cousin and would take them to his place of residence in Belgium. Thereupon he took the victims to Belgium on several occasions, drove them to parking lots of supermarkets and required them to beg for him. The victims were required to work six days a week and all their earnings were collected by the defendant. During their stays in Belgium, the victims slept in the defendant's car. The court, in its conviction of the defendant for trafficking in persons, noted that the defendant had abused persons who were in a situation of vulnerability since all of the victims were physically disabled.

In *ECLI:NL:HR:2011:BR0448 (Netherlands)*,³¹⁶ the defendant exploited a victim who was mentally impaired. The victim was asked to do household activities such as cleaning and grocery shopping. If he was late or did not execute the chores correctly, the defendant would assault him or require the victim buy marijuana for him with the victim's own money. The defendant never paid the victim for any of the work he performed, nor for any of the expenses incurred in doing the work. Furthermore, the defendant would beat the victim if he happened to fall asleep due to exhaustion. When the court convicted the defendant of trafficking in persons it noted that the defendant wilfully used the victim's vulnerable position to exploit him.

In *Agnieszka Magdalena B. et al (Germany)*,³¹⁷ a couple trafficked deaf-mute victims from Poland for labour exploitation in Germany. This was mentioned in the background of the conviction for human trafficking for labour exploitation.

³¹² See Index of all cases.

³¹³ Previously cited. For detailed facts, see the in-depth analysis in section 5.2 of the Case Digest.

³¹⁴ See Index of all cases

³¹⁵ *Nr. 20.L4.4843/12*, Correctional Tribunal of Nivelles, 25 January 2013, Belgium. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. BEL029).

³¹⁶ Supreme Court of the Netherlands, 20 December 2011, *ECLI:NL:HR:2011:BR0448*. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. NLD008).

³¹⁷ *Case 106 Ls-50 Js 208/07-58/07* in the District Court of Düsseldorf, 26 January 2012, Germany. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. DEU013).

In *Kaufman (United States)*,³¹⁸ the defendants took advantage of severely mentally ill individuals. These facts were noted as background and were not part of the holding of this case, which was an appeal by the defendants for multiple convictions including forced labour and involuntary servitude.

Ironically, it may also be possible that in certain cases these very disabilities may make it difficult for a prosecutor to base a case upon the victims' testimonies which may be impaired by their disabilities.

3.2.5.6 Lack of familiarity with language and/or culture

A victim's lack of familiarity with the language or culture of the country or region of destination can make him particularly vulnerable to exploitation, because he or she feels insecure and his or her ability to change the situation is more limited than would otherwise be the case.

In *Wei Tang (Australia)*,³¹⁹ the fact that the victims knew "little or no English" was listed as a factor by the appellate court in establishing that the defendant had control over the women.³²⁰ The defendant was convicted of five counts of possessing a slave and five counts of using a slave—a total of ten counts.

In *Sabhani (United States)*,³²¹ one of the Indonesian victims spoke no English, did not know what a visa was, and did not know how to drive a car or use an American telephone. These facts formed the background to the affirmation of a conviction on charges of forced labour, peonage and other charges.

In the case of *Liu LiRong (Tonga)*,³²² two Chinese victims were brought to Tonga by a Chinese defendant who forced them into prostitution. The court used its understanding of the vulnerable situation of the victims in order to explain why they did not complain at the first opportunity. It noted that the victims were brought to a new, strange and unsympathetic environment with very few communications skills and may have been reluctant to complain due to their fear that they would not be believed, fear of punishment or even fear of rejection by the defendant whom they had initially trusted.

3.2.5.7 Lack of education or little education

Lack of education or little education can be a factor contributing to a victim's vulnerability, as he or she may lack the basic knowledge to refute the trafficker's representations of reality. This situation may also lead to the victim having low expectations, which in turn may play into the hands of traffickers and facilitate exploitation.

In *Veerapol (United States)*,³²³ the victim was a non-English speaking villager from Thailand with a second grade education. The defendant was convicted of involuntary servitude and

³¹⁸ See Index of all cases.

³¹⁹ *R. v. Wei Tang* (2009), 23 VR 332; (2009) 233 FLR 399; [2009] VSCA 182 (17 August 2009). For detailed facts, see the in-depth analysis in section 5.3 of the Case Digest.

³²⁰ *R. v. Wei Tang* (2009), 23 VR 332; (2009) 233 FLR 399; [2009] VSCA 182 (17 August 2009) at para 29.

³²¹ See Index of all cases.

³²² CR117/10 & AC 13/11. This case was reported by a Tongan expert.

³²³ See Index of all cases. This fact was noted as background in the case. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. USA065).

other charges. In sentencing the district court noted that: “The victim was basically a poor uneducated woman, lacking in sophistication, in the knowledge of the United States laws, and I think that was also exploited, and that was supported by the expert testimony, as well.”

In *Mussry (United States)*,³²⁴ concerning exploitation of domestic workers working under difficult working conditions, the indictment stated that the Indonesian victims “generally had almost no education, were unskilled, spoke little if any English and had never been outside Indonesia.”³²⁵ The court found that the allegations in the indictment, if proven true, would support the coercion necessary to uphold charges of peonage and involuntary servitude.

Similarly, in *Okafor (Nigeria)*³²⁶ the minor victim who was reluctant to testify had a low level of education which required the prosecutor to reframe questions for her.

As mentioned earlier, there have been convictions, though, of trafficking and allied crimes where victims have had adequate education.³²⁷

3.2.5.8 Problematic family history

Sometimes a difficult family history makes a person vulnerable to exploitation. An example can be found in *Sridevi et al (India)*.³²⁸ Here the victim’s father had died during her childhood and she was abused by her mother, who beat her constantly, including burning her leg one day with a fired rod. She fled her mother’s house and became prey to exploitation. In this case the defendants were convicted of trafficking in persons for exploitation of prostitution.

See also *Urizar (Canada)*³²⁹ where the victim came from a difficult family background. In this regard the Court of Appeals mentions that “her home life was troubled; she would see her parents fighting”.³³⁰ The accused, on the other hand, drove an expensive car and was initially seen by the victim as the person who helped her escape her difficult family situation. The court mentions these facts as background to the convictions on trafficking in persons and other charges.

Another case in which this aspect was mentioned by the court is *D.A. and A.M. (Israel)*,³³¹ where the defendant was convicted of holding a person under conditions of slavery, that is the women he gathered around him and was able to control through his claimed spiritual powers. The court described these women as people with problematic pasts, some of whom underwent abuse before joining the defendant’s group. The defendant was convicted in the District Court of holding persons under conditions of slavery pending appeal in the Supreme Court.

³²⁴ *U.S. v. Mussry*, 726 F.2d 1448 (9th Cir. 1984), United States of America.

³²⁵ *Ibid.*

³²⁶ See Index of all cases.

³²⁷ See *D.A. and A.M. (Israel)*, previously cited, where the defence claimed that the victims did not fit into the accepted profile of victims of slavery in that they had high intelligence, were educated and had strong personalities (see p. 38, para 41). It should be noted that this case is pending appeal in the Supreme Court. An Israeli expert who met with some of the victims noted that one was an educated teacher.

³²⁸ See Index of all cases.

³²⁹ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.2 of the Case Digest.

³³⁰ See Index of all cases. See Court of Appeals case, p. 2.

³³¹ See Index of all cases. It should be noted that this case is pending appeal in the Supreme Court.

3.2.5.9 Gender

As the Trafficking in Persons Protocol recognizes, women may be especially vulnerable to trafficking in persons.³³² This can be seen in many cases, though it should not blind us to the potential to exploit men.

Examples of trafficking or allied crimes against females can be found in many cases cited thus far and for example, *Veerapol (United States)*, *Sridevi (India)*, *Siliadin (European Court of Human Rights)* and many more.

3.2.5.10 Pregnancy

Pregnancy is noted as a potential vulnerability in the sources cited by the United Nations Model Law against Trafficking.

An example of a case in which this occurs is *K-165/11 (Serbia)*,³³³ in which one of the victims became pregnant in the course of the trafficking, a fact mentioned by the court when it affirmed a conviction of human trafficking.

Another example of the abuse of pregnancy as a position of vulnerability is found in *Case No. 5383/2010 (Egypt)*.³³⁴ In this case, the defendants took advantage of the particular vulnerability resulting from a pregnancy which took place outside marriage to persuade the woman to sell her baby to them. The defendants then subsequently sold the baby to others. The defendants were convicted of section 291 of the Egyptian Penal Code which criminalizes the offering of a child for sale in the context of criminalizing child trafficking or exploitation.³³⁵

3.2.5.11 Emotional vulnerability

Victims become particularly vulnerable when they have special trust in traffickers and believe that the traffickers would not wish to harm them or subject them to a situation of exploitation. This can mainly be seen in cases in which the victims are romantically involved with the traffickers or when the traffickers are the victims' family members. However, it can also be seen in cases such as *D.A. and A.M. (Israel)*,³³⁶ where a charismatic leader, trusted by his adherents, chose to victimize women whom the Court termed "lost souls" with emotional vulnerabilities such as problematic backgrounds, abuse in the past, and a period of crisis in the present which prompted them to seek a direction in life.³³⁷

³³² This can be seen in the title of the convention: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and in various articles in the Protocol and, for example, articles 6(4) and 9(1)(b).

³³³ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.1 of the Case Digest.

³³⁴ *Case No. 5383/2010*, Alexandria Criminal Court, El-Attarin District, Session 13/4/2010, Egypt.

³³⁵ See also section 2.5 on "Defendants' out-of court-confessions" relating to Case No. 414/2009 (Egypt) in which we noted that in regard to cases involving the selling of children or illegal adoptions, according to an Interpretative Note to article 3 of the Trafficking in Persons Protocol in the Travaux Préparatoires for the Organized Crime Convention and Protocols: "Where illegal adoption amounts to a practice similar to slavery ... it will also fall within the scope of the protocol." See the Travaux Préparatoires, p. 347.

³³⁶ See a full description of *Ernst F (Germany)* in this section.

³³⁷ See Index of all cases. It should be noted that this case is pending appeal in the Supreme Court.

Romantic relationships

Sometimes traffickers create a vulnerability in victims by convincing them that they are romantically attached to them so that the victims feel an emotional obligation towards their exploiters. The “lover boy” phenomenon,³³⁸ a form of deception used in trafficking cases, falls within this category. In these cases the traffickers induce women to fall in love with them and promise a better future with the sole purpose of exploiting the women and girls in prostitution.

In *ECLI:NL:GHARN:2010:BO2994 (Netherlands)*,³³⁹ the defendant became the “lover boy” of the victim and formed a romantic relationship with her, using her vulnerability in order to persuade her to give him money for debts he claimed he had incurred. When the victim had no more money to pay for the debts, the defendant introduced her to the red-light district in Amsterdam. The victim told the defendant that she did not wish to work in prostitution, but he assaulted her on occasion. The victim declared that she was frightened of the defendant. In addition, the defendant strictly controlled the victim’s prostitution, watched her while she was working, set her working schedule and made her prostitute even when she was sick or menstruating. He also stopped her from trying to escape him, held her debit card in his possession, took photographs and videos of her, bought her drugs and cigarettes and even withheld food from her. Moreover, because the victim also cared for his daughter, for whom she felt responsible, she saw no way out and remained in prostitution. The Court used the term “broken spirit” to describe the emotional state of a victim who was unable to offer any resistance to the persistent coercion and pressure exerted on her by the defendant.³⁴⁰ The court held that the defendant manipulated the victim to such an extent that she had no choice but to enter into and remain in prostitution. The court found him guilty of trafficking in persons.

Another case from the Netherlands³⁴¹ concerns a victim who “was so in love with the suspect that she was willing to allow him to manage the money she earned for their joint future.” In convicting the defendant of trafficking, the Court assumed that the defendant was aware of the victim’s love for him, that there was a significant difference of 14 years between their ages and that, at least initially, she was alone in the Netherlands without friends and family, thus creating “a situation of authority arising from an actual state of affairs”.³⁴² Interestingly, the Court assumed that the defendant was aware of this state of affairs since he was involved in a relationship with the victim. He was convicted of trafficking for sexual exploitation and other charges.

A romantic relationship is also mentioned as a cause of vulnerability in the case of *Urizar (Canada)*.³⁴³ In this case, when the victim met the defendant she considered him to be her “saviour” because he helped her escape her difficult family situation and circumstances. She

³³⁸ See, for example, Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, fact sheet accompanying the Ninth report of the Dutch Rapporteur, p. 3.

³³⁹ Arnhem Court of Appeal, 19 October 2010, *ECLI:NL:GHARN:2010:BO2994*, Netherlands. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. NLD007). See also National Rapporteur on Trafficking in Human Beings (2012). *Trafficking in Human Beings. Case law on trafficking in human beings 2009-2012. An analysis*. The Hague: BNRM, p. 59. <http://www.dutchrapporteur.nl/reports/case-law/>.

³⁴⁰ National Rapporteur on Trafficking in Human Beings (2012). *Trafficking in Human Beings. Case law on trafficking in human beings 2009-2012. An analysis*. The Hague: BNRM, p. 59. <http://www.dutchrapporteur.nl/reports/case-law/>.

³⁴¹ Amsterdam Court of Appeal, 30 September 2011, *ECLI:NL:GHAMS:2011:BT6850*, Netherlands.

³⁴² This term appears in Article 273F of the Netherlands Criminal Code, which addresses trafficking in human beings.

³⁴³ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.2 of the Case Digest.

loved him, but what started as a normal relationship, ended as severe sexual exploitation of the victim. The victim later testified that she did not have the courage to make a complaint because she continued to love the defendant even after the exploitation started and felt torn between the love she felt and the abuse to which the defendant subjected her. The defendant was convicted of human trafficking.

In *Case 11-G-2012 (Argentina)*,³⁴⁴ the defendant convinced his girlfriend to work as a prostitute for 15 days to improve their common financial situation and to better support their young child. After these 15 days, when the girlfriend expressed her intention to stop the prostitution, the defendant opposed this and forced the woman to continue the work as a prostitute through the use of violence, threats and constant supervision. The court convicted him of human trafficking for the purpose of sexual exploitation.

Family members complicit in trafficking

Sometimes family members act as traffickers or their accomplices, knowingly and willingly. However, there are also cases in which family members innocently assist traffickers because they believe the false representations by which they claim to be able to improve the lots of the victims. For additional aspects of this subject, see section 3.3.5 on “Complicity in trafficking by victim’s family”.

In *Grigore (Germany)*,³⁴⁵ the victim’s cousin offered her a job to care for the elderly in Berlin. Initially, the victim did not believe this defendant’s story and thought she was trying to deceive her and lead her into prostitution. However, the victim’s uncle then assured her that the offer was legitimate. Relying on her uncle’s assurances, the victim went to Berlin and was forced into prostitution. Both her cousin and uncle were convicted of trafficking by means of deception.³⁴⁶

In *Okafor (Nigeria)*,³⁴⁷ the defendant was a biological mother of one victim which contributed to her reluctance to testify. The defendant was found guilty of three counts of attempting to organize foreign travel to promote prostitution.³⁴⁸

In *ECLI:NL:RBZLY:2012:BX2627 (Netherlands)*,³⁴⁹ a husband was convicted of human trafficking and multiple assaults against a life companion. The defendant prostituted his wife, with whom he had children, both in their home and outside the home. In addition, he repeatedly assaulted her by means of kicking, hitting with full beer bottles and putting her head under water.

See also *ECLI:NL:RBMNE:2013:2679 (Netherlands)*,³⁵⁰ where the defendant instructed his granddaughter on one occasion to shoplift in a supermarket. The court convicted him of human trafficking.

³⁴⁴ *Case 11-G-2012*, 25 February 2013, No. 1 Oral Criminal Federal Court of Cordoba, Argentina. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. ARG055).

³⁴⁵ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.10 of the Case Digest.

³⁴⁶ For detailed facts, see the in-depth analysis in section 5.10 of the Case Digest.

³⁴⁷ See Index of all cases.

³⁴⁸ For more information on this case, see section 2.2.1.2 on “Delayed complaints/absence of complaints/reluctance to testify”.

³⁴⁹ Zwolle-Lelystad District Court, 27 March 2012, *ECLI:NL:RBZLY:2012:BX2627*, Netherlands.

³⁵⁰ Utrecht District Court, 9 July 2013, *ECLI:NL:RBMNE:2013:2679*, Netherlands. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. NLD006).

Vulnerabilities seen in trafficking cases

- Lack of legal immigration status
- Economic hardship
- Other difficult life circumstances (humble origins, homelessness, marginal social status)
- Problematic family history
- Young age
- Gender
- Pregnancy
- Emotional vulnerability (including romantic or family relationships)
- Addiction to drugs or alcohol
- Physical or mental disabilities
- Lack of familiarity with the language or culture
- Lack of education or little education

A note of caution: there is no one preconceived picture of a victim which holds true in all cases. Therefore, while the above vulnerabilities often exist, there are also cases which have yielded convictions where victims were not vulnerable in these ways.

3.2.6 Restrictions of freedom

Restrictions on a person’s freedom of movement are often important in contributing to a conviction of trafficking in persons. They may be used to support the element of MEANS in jurisdictions which require the establishment of a MEANS. However, even in jurisdictions which do not require MEANS, they can support other elements of the crime and, for example, the PURPOSE OF EXPLOITATION or the ACT.³⁵¹

Restrictions of freedom can vary from lock and key imprisonment to constant supervision of movements or more subtle limitations upon freedom, such as confiscating the victim’s passport or personal documents or leaving the victim no leisure time.

3.2.6.1 Lock and key imprisonment

Lock and key imprisonment is the most clear-cut form of restriction of freedom. In these cases the perpetrator locks or chains the victim into a confined space.

An example of a case which included lock and key imprisonment is *Weerapong Saelle (Thailand)*.³⁵² This is a case of labour exploitation in which more than 200 workers were held in a shrimp factory. The factory where the victims were abused was a compound constructed with high barbed-wire capped walls, and included a closed-circuit television monitoring system. The factory doors were locked once the workers had entered their dormitory in order to prevent them from escaping. This evidence was used to support the

³⁵¹ Particularly instructive in this regard is the Canadian Criminal Code which includes in one of the “acts of trafficking”—“... exercises control, direction or influence over the movements of a person ...”

³⁵² *Weerapong Saelee and Anoma Siriyoo Wattananon*, Case No. 7375/2551, Provincial Court Samut Sakorn, 26 November 2010, Thailand. The case is available in the UNODC Human Trafficking Case Law Database (UNODC No. THA003).

convictions of the defendants on counts of enslavement, exploitation of minors and other charges.³⁵³

However, it is instructive to compare this case with *Ranya Boonmee (Thailand)*,³⁵⁴ in which the court of appeals exonerated the defendants on the basis of a similar fact pattern. See the in-depth analysis of this case in section 5.7 of the Case Digest.

In *ECLI:NL:GHSHE:2012:BX0599 (Netherlands)*,³⁵⁵ an asparagus grower held individuals from Poland, Portugal and Romania on her farm and forced them to work seven days a week, ten to fourteen hours a day. The workers could not leave the farm at the end of their workday. They were locked into a building on the farm at the end of the day with a watchdog guarding the door to prevent their escape. The defendant was convicted of the charge that she recruited, housed and employed foreign workers and had taken advantage of their vulnerable position and abused her own position of power.

In *Kalpna Ranganath Galphade (India)*,³⁵⁶ the court noted that the victim had not been permitted to leave the premises in which she was forced into prostitution. This provided an explanation of her lack of ability to testify regarding the area around the premises where she was prostituted. In this case the defendant was convicted of a series of charges including prostitution and sexual exploitation offences.

In a domestic servitude case, *Alzanki (United States)*,³⁵⁷ the victim's freedom of movement was severely restricted. She was forbidden to leave the apartment on her own, to look out of the windows or go onto the balcony. These interdictions were supported by the defendant's violent behaviour.³⁵⁸ The defendant's conviction of involuntary servitude was upheld upon appeal.

In another domestic servitude case, *Giulani (Israel)*,³⁵⁹ the victim was locked in the house of the defendants and not given a key. Though she was permitted to leave the house on occasion (and, for example, to get the newspaper or go to a neighbourhood grocery store), these exits were largely under the defendants' supervision. The defendants were convicted of holding a person under conditions of slavery. The restriction of freedom was a crucial part of the case because in Israeli law "deprivation of freedom" is one of the key elements of the slavery offence. The case is pending appeal to the Supreme Court.

In *3K-97/12 (Serbia)*,³⁶⁰ the victim was repeatedly beaten and locked up in a shack for ten days until he submitted to the will of the traffickers and engaged in multiple thefts for their profit. The two defendants were found guilty in their absence of human trafficking.

³⁵³ The full charges were: (a) to enslave a person or to cause a person to be in a similar position to a slave, having received into the Kingdom 206 foreign illegal workers; (b) contravening section 312 in relation to a person under the age of 15; (c) having accepted, detained and confined women or children or having arranged for such women or children to act or agree to act in order to acquire any unlawful advantage; and (d) exploitation of child workers under the age of 15 years old, payment of wages below the national minimum wage, not having given workers the obligatory holidays and having employed workers without a legal working permit in the factory

³⁵⁴ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.7 of the Case Digest.

³⁵⁵ Court of Appeal Hertogebosch 6 July 2012, *ECLI:NL:GHSHE:2012:BX0599*, Netherlands. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. NLD005).

³⁵⁶ See Index of all cases.

³⁵⁷ See Index of all cases.

³⁵⁸ Ibid. These facts were offered as background by the appeals court.

³⁵⁹ *State of Israel v. Giulani*, 29 February 2012, District Court of Jerusalem, Israel. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. ISR016). (Conviction affirmed by the supreme court, 6 September 2016, Criminal Appeal 6237/12.)

³⁶⁰ *Case No. 3K-97/12*, 3 December 2012, High Court of Kragujevac, Serbia. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. SRB034).

See also *Urizar (Canada)*,³⁶¹ where the defendant locked the victim in her bedroom on occasion and when she tried to come out would shove her back in and lock the door.

3.2.6.2 Confiscation of passports and other personal documents

Another form of restriction of freedom often found in trafficking in persons cases is confiscation of the victim's personal documents. This is a particularly effective method of preventing victims from escaping, since without any personal documents on hand, victims often feel that they have no other option but to submit to exploitation. Evidence of the confiscation of passports or identity documents can therefore be compelling evidence of a defendant's restrictions on a victim's freedom. This evidence is found in a variety of cases.

In some cases the defendants claimed that they had retained the victims' passports from innocent motives such as to keep them safe. However, this claim is not often accepted by courts.

Thus, in a slavery case, *Wei Tang (Australia)*,³⁶² concerning exploitation of Thai women as prostitutes in Australia, the defendants argued that they had retained the victims' passports to keep them safe. The court noted that, although there may be an explanation for the defendants withholding the victims' passports (such as in order to avoid loss or theft of the documents), it was still a restriction of their freedom of movement that impeded their ability to escape or seek legal recourse. The defendant in this case was convicted of five counts of possessing a slave and five counts of using a slave—a total of ten counts.

In *Ho and Anor (Australia)*,³⁶³ the court included the defendant's confiscation of the victims' passports as one proof of his control over their freedom of movement. The victims were brought from Thailand to Australia to work as prostitutes. The defendants were found guilty of multiple charges including possessing a slave.

In the *Bradley (United States)*³⁶⁴ case, two men were housed on the defendants' property and paid below minimum wage to work in the defendants' lumber business. The victims were not kept under lock and key, but the defendants confiscated the passport and plane tickets of one of the victims and exerted supervision over the men when they left the defendants' property. The defendants' convictions of forced labour and related crimes were affirmed.

Further examples of confiscation of passports can be found in *Afolabi (United States)*, *Sabhnani (United States)*, *Connors (United Kingdom)* and *Grigore (Germany)*.³⁶⁵ In *Farrell (United States)*,³⁶⁶ passports, visas and immigration documents were confiscated.

³⁶¹ See Index of all cases. See Court of Appeals case, p. 5. For detailed facts, see the in-depth analysis in section 5.2 of the Case Digest.

³⁶² *The Queen v. Tang* [2008], HCA 39 (28 August 2008). For detailed facts, see the in-depth analysis in section 5.3 of the Case Digest.

³⁶³ Previously cited and see also *DPP v. Ho and Leech* [2009], VSC 495, Australia. This case is available in the UNODC Human Trafficking Case Law Database (UNODC No. AUS008).

³⁶⁴ See Index of all cases.

³⁶⁵ See Index of all cases.

³⁶⁶ See Index of all cases.

See also *ECLI:NL:GHARN:2010:BO2994 (Netherlands)*,³⁶⁷ in which the defendant confiscated the victim's debit card. He was convicted of trafficking in persons.

Withholding personal documents

Confiscating the personal documents of victims is a method of control exerted by traffickers over their victims: without any personal documents on hand, victims often feel that they have no other option but to submit to exploitation. Documents often withheld from victims in trafficking cases may include, but are not limited to, the following:

- Identity documents
- Passports
- Visas
- Debit cards
- Work permits
- Air or other travel tickets

3.2.6.3 Constant supervision

Another method of restricting a victim's freedom that has been used by traffickers to control their victims is constant supervision.

In *Rivera (United States)*,³⁶⁸ the defendants drove the victims to and from the bars where the victims were required to perform commercial sexual acts. When the victims asked to leave, the defendants reminded the victims of their illegal immigrant status, tracked down victims who did not report for work and brought them back, and watched the victims when they were working at the bars to prevent escape. The defendants also prohibited the victims from going outside. These facts were used as background by the court in rejecting the motion to set aside the verdict. The defendants were convicted on a number of charges including forced labour and sex trafficking by means of force, fraud, or coercion and sexual exploitation by means of force, fraud or coercion.

In *Farrell (United States)*,³⁶⁹ a case which concerned labour exploitation of Philippine nationals in a hotel in the United States, workers were not permitted to leave their apartment without permission from their employers, even to visit the drugstore. When they went bowling with co-workers (from their second jobs), they were driven to and from the bowling alley by the employer and he remained there to supervise them. An employer also supervised the victims while they opened their personal mail, all of which was sent to the hotel where they worked. In addition, the workers were required to tell employers how much money they had sent back to the Philippines and to report their expenses so that the employers could determine how much money they would allow each worker to spend and send home. During the second stage of employment, the workers were required to ask permission before making private phone calls. The court expressly mentioned these circumstances as important in the conviction of peonage.

³⁶⁷ See Index of all cases.

³⁶⁸ See Index of all cases.

³⁶⁹ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.4 of the Case Digest.

In *Grigore (Germany)*,³⁷⁰ the victim was watched by one defendant all day and was forced to prostitute herself on the street. Two defendants were convicted of trafficking by means of deception.

In *Case 11-G-2012 (Argentina)*,³⁷¹ concerning forced prostitution of a young woman by her boyfriend, the defendant constantly supervised the victim. He watched her all the time while she was on the street waiting for customers and also waited for her in front of the hotel in which she provided the sexual services. In addition, the defendant took all of the money she earned. The court found him guilty of human trafficking for the purpose of sexual exploitation.

Constant supervision was also an aspect of the *Giulani (Israel)*³⁷² case, as seen above and in *Urizar (Canada)*,³⁷³ where, even though the defendant continually told the victim she could go, when she tried to escape to her parents he would come to their residence or tail their car.

3.2.6.4 Subtle restrictions: instilling fear

Restrictions of freedom need not be physical and may be achieved through subtler means, including by instilling fear of leaving the premises. This can be done by telling the victim that it is dangerous to go outside or that immigration officials will arrest him or her if he or she leaves the premises.

One example of such restrictions appears in the *Wei Tang (Australia)*³⁷⁴ case in which women from Thailand were sold for sexual services. Three of the four victims in this case slept in a room at the house of the manager of the brothel who was known as “Mummy”. The victims were told to “remain within the house so as not to be seen by immigration officials”.³⁷⁵ The defendant in that case was convicted of 10 counts of slavery offences. The trial court found that the victims were under the control of the defendant, even in the absence of lock and key imprisonment. It ruled that:

“Physical and mental control was exercised over these women in a far more subtle but effective way [than imprisonment]. A relationship of dependence existed from the start and was fostered. Fear of the authorities was cultivated.”

R. v. Wei Tang (2009), 23 VR 332; (2009) 233 FLR 399; [2009] VSCA 182 (17 August 2009) at para. 29.

The same approach can be seen in the case of *Kovacs (Australia)*,³⁷⁶ where the victim was not locked in her room, was not prevented from leaving the store or house, had access to a telephone, sent and received letters, and was aware that money was being paid to her family, despite not receiving wages herself. The court held, however, that this “freedom” was “largely illusory or non-existent”, as subtle means of control were being employed by the perpetrator,

³⁷⁰ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.10 of the Case Digest.

³⁷¹ See Index of all cases.

³⁷² See Index of all cases. (Conviction affirmed by the supreme court, 6 September 2016, Criminal Appeal 6237/12.)

³⁷³ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.2 of the Case Digest.

³⁷⁴ *R. v. Wei Tang*, (2009) 23 VR 332; (2009) 233 FLR 399; (2009) VSCA 182 (17 August 2009). For detailed facts, see the in-depth analysis in section 5.3 of the Case Digest.

³⁷⁵ *Ibid.* at para 18.

³⁷⁶ See Index of all cases.

and in view of the explanation of the victim that in Filipino society what she was undergoing would shame her and her ailing mother.

3.2.6.5 *Subtle restrictions: nowhere to go*

Sometimes, the restriction upon freedom arises from objective circumstances in which the victim has nowhere to go and no place to hide.

In ***Kunarac (International Criminal Tribunal for the former Yugoslavia)***,³⁷⁷ while lock and key imprisonment was used, the case also included a stage where it was no longer used and the victims were even given the keys to the house in which they were held. Despite this, the Tribunal found as part of defendant Kunarac's conviction for enslavement that:

"The [victims] were not free to go where they wanted to, even if ... they were given the keys to the house at some point... The Trial Chamber accepts that the girls ... had nowhere to go, and had no place to hide from [Defendant Kunarac], even if they had attempted to leave the house."

Prosecutor v. Kunarac, Kovac and Vukovic, Cases IT-96-23-T and IT-96-23/1-T ICTY Trial Chamber, 22 February 2001, para. 740.

3.2.6.6 *Subtle restrictions: financial dependence*

Another subtle means used by traffickers to restrict the freedom of movement of a victim is the victim's financial dependence.

ECLI:NL:RBROE:2010:BO4108 (Netherlands)³⁷⁸ is an example of this type of restriction of freedom. In this case, foreign workers without work permits were recruited to the Netherlands to work on a mushroom plantation. They received very little pay for their work and this financial situation meant the victims were dependent on the defendant. Moreover, while they were free to return to Poland, the defendant only fully paid them when they returned from Poland to his farm. Thus, the defendant used the salary owing to them as a guarantee of their return. The defendant was convicted of human trafficking and exploitation.

In the ***Connors (United Kingdom)***³⁷⁹ case, involving forced labour in the landscaping business, the court found the victims' movement was restricted because of financial as well as other dependencies. In convicting the defendants for holding another person in slavery or servitude or requiring them to perform forced or compulsory labour it was found that:

"[i]t was not necessary to prove that the complainants were physically detained or imprisoned because they were controlled by threats, exploitation and indeed infantilisation so that each of them was deprived of the resources and will to get away".

R. v. Connors and others, [2013] EWCA Crim 324, Court of Appeal, Criminal Division, 26 March 2013, United Kingdom of Great Britain and Northern Ireland.

³⁷⁷ See Index of all cases.

³⁷⁸ *ECLI:NL:RBROE:2010:BO4108*, 26 October 2010, First Instance Court of Roermond, Netherlands. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. NLD004).

³⁷⁹ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.11 of the Case Digest.

In *Dann (United States)*,³⁸⁰ where the defendant was convicted of forced labour, attempted forced labour, document servitude and other related charges, the appeals court connected between the non-payment to the victim and his freedom to leave the abusive situation, thus:

“For an immigrant without access to a bank account and not a dollar to her name, a juror could conclude that the failure to pay her—and thus the lack of money to leave or live—was sufficiently serious to compel [the victim] to continue working.”

U.S. v. Dann, 652 F.3d 1160 (2011).

3.2.6.7 Subtle restrictions: lack of leisure time

Employing victims without giving them any leisure time effectively restricts their ability to come and go as they like. This form of subtle restriction of freedom was explicitly mentioned by the court in *Giulani (Israel)*,³⁸¹ where in addressing the restrictions of the victim’s freedom, the court considered it relevant that the victim was available to the defendants 24 hours a day and had no vacation days or routine breaks.

In *Wei Tang (Australia)*,³⁸² the court similarly cites the victims’ lack of leisure time as a component of the restrictions of freedom exerted by the defendant.

In *Siliadin (European Court of Human Rights)*,³⁸³ the court held that the crimes of servitude and forced labour were established. The court explicitly found that even though the victim left the premises where she was exploited numerous times for specific purposes (such as to take the children to their schools or buy groceries) and was not supervised on those occasions, she still did not have freedom of movement. It is instructive to quote the court’s reasoning, citing lack of free time and fears of arrest by police as factors in viewing a victim’s movements as restricted:

“the [victim], who was afraid of being arrested by the police, was not in any event permitted to leave the house, except to take the children to their classes and various activities. Thus, she had no freedom of movement and no free time”.

Siliadin v. France (App. No. 73316/01), ECHR 26 July 2005, the European Court of Human Rights, para. 127.

In this case, the court found that France violated its positive obligations under Article 4 of the European Convention of Human Rights mandating States to guarantee the rights of people not to be held in slavery, servitude or forced labour.

³⁸⁰ *U.S. v. Dann*, 652 F.3d 1160 (2011), United States of America. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. USA019).

³⁸¹ See Index of all cases. It should be noted that this case is pending appeal in the Supreme Court.

³⁸² See Index of all cases. For detailed facts, see the in-depth analysis in section 5.3 of the Case Digest.

³⁸³ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.9 of the Case Digest.

Forms of restrictions of freedom of movement

Restrictions of freedom of movement are not necessarily limited to lock and key imprisonment: There are many other forms of subtle restrictions of movement that traffickers can use to control their victims.

As illustrated by the cases cited above, forms of restriction of freedom may include:

- Lock and key imprisonment (e.g., locking the door, barbed wire around premises)
- Constant supervision
- No other place to go and no place to hide
- Financial dependence
- Instilling fear in victims to prevent their leaving premises (e.g., of authorities)
- Advising a victim not to go outside, referring to probable risks and dangers
- Withholding personal documents
- Giving the victim no leisure time, thus impeding his or her coming and going at will

3.2.7 Isolation

Isolation of victims from support systems is a feature that frequently appears in the mosaic of evidence in convictions for trafficking and allied crimes. In jurisdictions which have adopted the Trafficking in Persons Protocol's definition, elements proving isolation can be related to the MEANS element. In jurisdictions which do not include a MEANS element in their definition of trafficking, elements indicating isolation can impact upon the PURPOSE OF EXPLOITATION of the trafficking, or even the ACT of trafficking.

Traffickers often attempt to isolate victims to maintain control over them, as well as to prevent the possibility of other people encouraging the victims to leave. This is done by intentionally isolating victims by prohibiting them from using the telephone or e-mails or by blocking the victims' access to friends and family. Moreover, traffickers may make use of existing barriers which naturally isolate victims such as lack of knowledge of the language and culture of the place of exploitation or the remote location of the premises.

There is a clear connection between the steps that traffickers take to isolate their victims and the previous section on restriction of movement, as isolation can effectively create a situation in which the victim has nowhere to go and no one to turn to and thus no opportunity to escape.

In a labour exploitation case, *Farrell (United States)*,³⁸⁴ employers forbade workers to speak with anyone outside of the hotel in which they worked. They were also forbidden to socialize with Americans, to speak to non-Filipino workers at the hotel and even to accept rides from their co-workers. Isolation was expressly mentioned by the court as one of the circumstances which provided the foundation for a conviction of peonage.

In *Afolabi (United States)*,³⁸⁵ a case in which the defendants trafficked several Togolese women to the United States for the purpose of forced labour, the court noted that the

³⁸⁴ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.4 of the Case Digest.

³⁸⁵ Previously cited, para 119.

defendants separated the victims from their families and school community, that the victims did not know anyone else in the place where they were exploited and that a defendant forced them to lie to their parents. All three defendants were convicted of forced labour, trafficking for forced labour and related crimes.

In a sexual exploitation case of Thai women, *Dobie (Australia)*,³⁸⁶ the court noted that “While you did not keep the women locked up, you did not need to. They were isolated by culture, by language and poverty. You manipulated their isolation and frightened them with threats”. The defendant was found guilty of trafficking in persons and other related charges.

In *Veerapol (United States)*,³⁸⁷ the defendant was convicted of involuntary servitude. The court noted as background that the defendant isolated the Thai victim by forbidding her to read a newspaper in her own language, to go out of the house to shops and to speak with guests who visited the defendant’s house or frequented the defendant’s restaurant. She was also forbidden to use the telephone or to send mail.

In *Urizar (Canada)*,³⁸⁸ the defendant moved the victim into his friend’s apartment at one stage, took away her cellular phone each time he left the apartment, insisted that she abandon her studies and refused to allow her to give her new address to her mother. These facts were mentioned as part of the background of convictions of human trafficking and other charges.

In *Giulani (Israel)*³⁸⁹ the victim worked in the defendants’ home as a domestic worker. The defendants did not allow her to leave the house unescorted or unsupervised and on occasion refused her requests to be permitted to attend church. On one occasion, when she was permitted to attend a church, the defendants drove her to a church situated at a distance from their residence, even though there was one close by, and waited for her until the service was finished. In addition, while the victim was permitted to make phone calls and send text messages, her contact with people was limited, and especially with one friend in Israel. Contact with this friend was allowed only on occasion and supervised by defendants or their family members. The court mentioned isolation as one of the circumstances which contributed to a conviction of holding another person under conditions of slavery. The case is under appeal to the Supreme Court.

In *Alzanki (United States)*,³⁹⁰ the defendant was convicted of involuntary servitude. The court noted as background that the victim, who was from Sri Lanka, was forbidden to leave the house, go out on the porch or even look out of the window. She was also forbidden to use the telephone, the mail or to speak to anyone except family members of the defendant.

In *Chen (United Kingdom)*,³⁹¹ four victims were exploited in a brothel. Two of the women were required to work as prostitutes, the other two as housekeepers. The court, in finding that the primary defendant coerced the women, stated that “[t]here was also isolation of these women. Their daily and only function was to be used so that [the defendant] could gain financially”.³⁹² The primary defendant was convicted of trafficking within the United

³⁸⁶ Previously cited.

³⁸⁷ Previously cited.

³⁸⁸ Previously cited. For detailed facts, see the in-depth analysis in section 5.2 of the Case Digest.

³⁸⁹ See Index of all cases. It should be noted that this case is pending appeal in the Supreme Court.

³⁹⁰ See Index of all cases.

³⁹¹ See Index of all cases.

³⁹² Ibid. para. 12.

Kingdom for the purposes of sexual exploitation as well as other related crimes. The other two defendants were convicted of lesser crimes.

Sometimes it is the isolated location of the premises where victims are held that makes it impossible for them to escape the exploitative situation or to contact authorities or families. In *Ministerio Público Federal v. Gilberto Andrade (Brazil)*,³⁹³ 19 workers were exploited at a farm which was located 220 kilometres from the nearest city. The court noted that this distance prevented any efforts to escape, and that the workers were consequently entirely subject to the will of the defendant. The defendant was convicted of slave labour and other charges.

Isolation

Trafficking victims can be isolated in a variety of ways.

Specific acts initiated by the trafficker, such as limiting access to:

- Family and friends
- Work or school
- Community (e.g., attendance at church)
- Cars or public transport
- Telephones and Internet
- Towns and cities where help may be more accessible
- Other people

Use of existing barriers to communication, such as:

- Remote locations
- Victim's lack of knowledge of language and culture of place of exploitation

3.2.8 Low pay or absence of pay

Particularly low pay or absence of pay can be important in contributing to a conviction of trafficking in persons or allied crimes. Whether or not jurisdictions follow the elements of the crime as defined in the Trafficking in Persons Protocol, usually an element of EXPLOITATION needs to be established, or at least a purpose which encapsulates exploitation (like slavery or practices similar to slavery or forced labour). Particularly low pay or absence of pay can contribute to proving this element.

In *ECLI:NL:GHSHE:2012:BX0599 (Netherlands)*,³⁹⁴ an asparagus grower held individuals from Poland, Portugal and Romania on her farm and forced them to work seven days a week, ten to fourteen hours per day. The victims were paid a salary but it was far below the legal minimum standard. Furthermore, the defendant did not pay the workers at the end of every month as they had originally agreed upon, but instead only at the end of the season. The defendant was convicted of the charge that she recruited, housed and employed foreign

³⁹³ *Ministerio Público Federal v. Gilberto Andrade*, No. 2000.37.002913-2, 23 April 2008, Penal Court of the State Maranhao, Brazil. The Case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. BRA002).

³⁹⁴ Previously cited.

workers, had taken advantage of their vulnerable position and also abused her position of power. The facts about the salary were mentioned as background for the conviction.³⁹⁵

In *ECLI:NL:RBROE:2010:BO4108 (Netherlands)*,³⁹⁶ Polish nationals were exploited by the defendant at his farm. Among other facts, the court mentioned that they did not receive their salary on time or at all. The court convicted the defendant of human trafficking, and explicitly mentioned hard working conditions as a circumstance important to the conviction.

In *Farrell (United States)*,³⁹⁷ the victims were paid \$3 per room for cleaning hotel rooms. It took approximately one hour to clean each room. In addition, the defendants deducted travel expenses from their pay, though this was forbidden by the authorities. This evidence was noted by the court as background when it affirmed convictions for peonage, document servitude and other charges.

In a domestic servitude case, *Sabhmani (United States)*,³⁹⁸ one victim received no money in hand. Instead, half of the sum she had been promised was paid to her daughter in Indonesia. This fact formed the background to an affirmation of convictions of forced labour, peonage and other charges.

In *Connors (United Kingdom)*,³⁹⁹ the victims laboured for a family-owned landscaping company and were promised paid work. However, they received little or no pay. In the appeals decision this was mentioned as part of the factual background. The defendants were convicted of holding another person in slavery or servitude or requiring them to perform forced or compulsory labour.

However, caution must be exercised in not giving undue emphasis to the purely economic aspect of a case.

In *S.K. (United Kingdom)*,⁴⁰⁰ the appeals court allowed the appeal against a conviction for facilitation of the arrival of a person into the United Kingdom with intent to exploit him. The appeals court's reasoning was that the trial judge's instructions to the jury placed undue emphasis upon the disadvantageous economic relationship between employer and employee, which would have been fitting in an employment law context, but was not strong enough to establish guilt in regard to a crime that may carry a significant punishment. It should be noted in this context that the definition of "exploitation" in the particular offence at issue refers to slavery, servitude and forced labour.

This case highlights the importance of not ascribing undue importance to any one circumstance, especially if that circumstance is low pay only, in which case often a more appropriate charge might be a labour or exploitation offence rather than a trafficking in persons charge.

³⁹⁵ The description of this case is based on a summary in the UNODC case law database, which does not include a detailed analysis of how the court used these facts.

³⁹⁶ Previously cited.

³⁹⁷ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.4 of the Case Digest.

³⁹⁸ See Index of all cases.

³⁹⁹ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.11 of the Case Digest.

⁴⁰⁰ *R. v. S.K.* [2011], EWCA Crim. 1691, 8 July 2011, England and Wales Court of Appeal (Criminal Division), United Kingdom. The case is available in the UNDOC Human Trafficking Case Law Database (UNODC Case No. GBR020).

Pay-related issues typical for trafficking in persons cases may include but are not limited to:

- No pay
- Very low pay
- Irregular payments
- Unreasonable deductions
- Wage cuts

Note of caution: if pay-related facts are the only circumstance in the mosaic of evidence, caution should be exerted in concluding that a severe crime of trafficking or allied crimes has been committed.

3.2.9 Difficult work conditions

One frequent element which forms part of the mosaic of evidence in convictions of trafficking or allied crimes is difficult working conditions. The absence of pay or low pay is an important part of these conditions and because of its centrality, a separate section is devoted to it (see 3.2.8 directly above). Other difficult work conditions may include long hours, lack of leisure time or very little leisure time, little sleep, or little or no safety equipment. These circumstances clearly impact on the element of PURPOSE OF EXPLOITATION where that is part of national legislation. However, even if national legislation does not explicitly require the establishment of exploitation, difficult work conditions may impact upon specific PURPOSES OF EXPLOITATION (such as slavery or forced labour), the ACT or the MEANS.

In *Case No. 2012/3925 (Belgium)*,⁴⁰¹ a case involving labour exploitation of employees in a service which provided cleaning of toilets in motorway rest areas, the court noted that the mere fact that the employees worked 15 hours per day, seven days per week, is sufficient to find the defendants guilty of human trafficking.⁴⁰² Similarly, in *Case No. 668/09 [2010] (Belgium)*,⁴⁰³ concerning Chinese workers illegally working in a restaurant, the court found the defendants guilty of human trafficking. The court held that the working conditions of the victims violated human dignity, in particular because the Chinese workers had not received any salary, did not know how much they would receive for their work and worked for six days and sometimes seven days a week.

However, in another Belgian case, *C/118/2013 (Belgium)*,⁴⁰⁴ the Appellate Court reversed the conviction of the trial court, partly because mere departure from safety norms and employment without a legal permit could not be considered against human dignity according to the charge of “labour conditions contrary to human dignity”.

⁴⁰¹ *Case No. 2012/3925*, First Instance Court of Gent, 19th Chamber, Belgium. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. BEL030).

⁴⁰² However, the constellation of facts also included victims who were foreign nationals and did not understand the contract, and in addition, a very small salary.

⁴⁰³ *Case No. 668/09*, Court of Appeal, Gent, Belgium, [2010]. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. BEL002).

⁴⁰⁴ Court of Appeal (Hof van beroep.), Antwerp, Belgium, 23 January 2013, Belgium. This case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. BEL003).

In *ECLI:NL:RBROE:2010:BO4108 (Netherlands)*,⁴⁰⁵ Polish nationals were exploited by the defendant at his farm. Apart from not receiving their salary on time or at all, the workers were required to work very long hours of up to 70–80 hours per week and had very limited rest periods or days off. The workers had no work permit and no health insurance in the Netherlands. The court convicted the defendant of human trafficking, and explicitly mentioned hard working conditions as a circumstance important to the conviction.

See also *Kovacs (Australia)*,⁴⁰⁶ where the victim was required to work seven days a week, up to 17 hours per day, for little or no pay. At trial, the Court heard evidence that on weekdays she worked from 6 a.m. to 6 p.m. in the shop, followed by between four and five hours of domestic work at the defendant’s house, where she cared for three small children and performed household duties. She was also required to work in the shop on Saturdays between 6 a.m. and 12 p.m. and performed domestic work the remainder of the weekend. She was not allocated any work-free days.

Another example of difficult work conditions can be found in *Farrell (United States)*,⁴⁰⁷ a case in which workers’ free time was considerably constricted; they worked 13 hours a day, seven days a week and were required to work in two jobs. As a result, they often experienced sleep deprivation. The court expressly mentioned these working conditions as a circumstance relevant to the conviction on the charge of peonage.

In *Sabhnani (United States)*,⁴⁰⁸ the victims were required to work long hours—from about 4 or 5 a.m. until late at night, seven days a week, entailing sleep deprivation. The court mentioned these facts as background to affirming a conviction of peonage, forced labour and other charges.

In *Alzanki (United States)*,⁴⁰⁹ the victim was compelled to work fifteen hours a day performing domestic duties. The defendant required the victim to clean on a “constant basis with caustic and noxious chemicals, without the benefit of respiratory protection, and her requests for rubber gloves were refused”.⁴¹⁰ The defendant’s conviction of involuntary servitude was upheld upon appeal.

In *Wei Tang (Australia)*,⁴¹¹ the victims worked in the defendant’s brothel, six days a week, “serving up to 900 customers over a period of four to six months”.⁴¹² Frequently, the victims also worked on the seventh day, which was considered their “free” day, since on their free day they were permitted to keep \$50 per customer while on other days the money they earned was kept by the defendant.⁴¹³ The defendant was convicted of ten counts of slavery offences.

Most of the cases cited are also characterized by an absence of an employment contract, substantive divergence from it, or lack of understanding of its terms.

⁴⁰⁵ Previously cited.

⁴⁰⁶ See Index of all cases.

⁴⁰⁷ Previously cited. For detailed facts, see the in-depth analysis in section 5.4 of the Case Digest.

⁴⁰⁸ See Index of all cases.

⁴⁰⁹ See Index of all cases.

⁴¹⁰ See Index of all cases. These facts were offered as background by the appeals court.

⁴¹¹ *The Queen v. Tang* [2008], HCA 39 (28 August 2008). For detailed facts, see the in-depth analysis in section 5.3 of the Case Digest.

⁴¹² *The Queen v. Tang* [2008], HCA 39 (28 August 2008) at 14.

⁴¹³ \$50 of it was applied to pay off their “debt” which the defendant told them was between \$40,000 and \$45,000 and the rest was kept by the defendant.

The note of caution expressed at the end of the section on absence of pay or low pay is relevant here too, in that if difficult working conditions are the only circumstance, this may not suffice for a conviction on trafficking in persons or allied crimes, but rather be more fitting for a labour law charge. However, substandard working conditions are a strong indicator of human trafficking and should be examined carefully.

Examples of difficult working conditions in trafficking cases

- Excessive working hours
- Limited or no rest periods and days off
- Working without a contract or breach of contract
- Absence of social benefits (social security, insurance, paid leave, sick leave)
- Exposure to toxic chemicals
- Working in bad/extreme weather conditions^a
- Sleep deprivation
- Dangerous or unsafe work
- Lack of protective equipment (including condoms in sexual exploitation cases)

Note of caution: if difficult work conditions are the only circumstance in the mosaic of evidence, caution should be exercised in concluding that a severe crime of trafficking or allied crimes has been committed.

^a Mentioned by some experts during the Expert Group Meetings conducted to develop this Case Digest.

3.2.10 Poor living conditions

Poor living conditions can be an indication of exploitation and therefore relevant evidence to support a conviction of trafficking or allied crimes, especially when the alleged victim lives at the place of his work, or under the trafficker's supervision. These conditions can be used to contribute to proof of PURPOSE OF EXPLOITATION or specific purposes of exploitation, or in jurisdictions which do not require these elements, they can furnish proof of the ACT or MEANS. Examples include inadequate accommodations or sleeping facilities, crowded accommodations, lack of sanitation, lack of privacy, insufficient food.

Squalid and crowded accommodation, insufficient beds, lack of sanitation and heating, lack of privacy

In *Chen (United Kingdom)*,⁴¹⁴ four victims were forced to work in a brothel, two as prostitutes and two as housekeepers. The court noted as part of the facts that the conditions in the brothels were “squalid” and that the defendant imposed those conditions on the victims. In addition, three workers were forced to share one bed, which meant that on any given night one worker would sleep on the floor. The defendant was convicted of several charges, including trafficking for sexual exploitation and controlling prostitution for gain. Two other defendants were convicted of aiding and abetting the defendant.

⁴¹⁴ See Index of all cases.

In *Connors (United Kingdom)*,⁴¹⁵ the defendants were convicted of holding another person in slavery or servitude or requiring them to perform forced or compulsory labour. The court noted as part of the facts that the victims were housed in poor conditions without running water or heat. The pets of the defendants were allowed to defecate on the floor where some of the victims lived.

In *Ministerio Público Federal v. Gilberto Andrade (Brazil)*,⁴¹⁶ 19 workers were exploited at the defendant's farm. The workers had no access to drinking water or sanitation. They lived in shelters made of canvas with insufficient protection from rain. These circumstances contributed to the conviction of the defendant on charges of slave labour and fraudulent recruitment.

*Abdel Nasser Youssef Ibrahim (United States)*⁴¹⁷ is a case in which the defendants trafficked an Egyptian victim for the purpose of domestic servitude. The victim slept on a dirty folding mattress in a small, windowless converter room in the defendants' garage. The court used this as a background for the conviction of holding a person in involuntary servitude, obtaining labour or services by threats of serious harm or physical restraint, and harbouring an illegal alien.

In the case of *Farrell (United States)*,⁴¹⁸ during an initial phase of the exploitation workers were provided with accommodation by their employers. Seven workers shared one two bedroom apartment for which they each paid a large sum relative to the rent paid by employers. They were not given a key to the apartment, so that they were forced to leave the door unlocked at all times. Frequently one employer would arrive unannounced and search through the workers' belongings. At a later stage, conditions further deteriorated with some workers remaining without a bed on which to sleep. The court expressly mentions these poor living conditions as important to the conviction of the charge of peonage.

In *Sabhnani (United States)*,⁴¹⁹ concerning the domestic servitude of two Indonesian women, one victim slept on a carpet and later on a floor mat in the kitchen. This was compounded by other difficult living conditions. The court convicted the defendants of peonage, forced labour, document servitude and another charge.

In a case *ECLI:NL:GHSHE:2012:BX0599 (Netherlands)*,⁴²⁰ the owner of an asparagus plantation employed foreign workers. The workers were poorly housed, for example, in terms of lack of sanitation and ventilation: some rooms did not have windows. The defendant was convicted of human trafficking. Poor living conditions were explicitly mentioned by the court as a circumstance that contributed to proving exploitation.

Deprivation of food, sleep and adequate clothing

Withholding adequate nutrition, sleep or clothing can be another form of poor living conditions found in trafficking in persons or allied crimes cases.

⁴¹⁵ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.11 of the Case Digest.

⁴¹⁶ See Index of all cases.

⁴¹⁷ *U.S. v. Abdel Nasser Youssef Ibrahim*, 29 June 2006, United States of America. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. USA037).

⁴¹⁸ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.4 of the Case Digest.

⁴¹⁹ See Index of all cases.

⁴²⁰ Previously cited.

In a sexual exploitation case, *Lolita Pamintuan (Republic of Palau)*,⁴²¹ victims were deprived of food and their weight was monitored. The defendants were convicted of people trafficking, exploiting a trafficked person and other charges.

In a labour exploitation case *Agnieszka Magdalena B. et al (Germany)*,⁴²² deprivation of food was mentioned as a background fact to the conviction for human trafficking for labour exploitation.

In *Sabhmani (United States)*,⁴²³ concerning the domestic servitude of two Indonesian women, the victims were not given enough food to eat, which forced them to search for food in the garbage. The victims were also subjected to sleep deprivation. In addition, one victim was not given adequate clothing, but rather wore rags which exposed her private parts. The court convicted the defendants of peonage, forced labour and document servitude and another charge.

*Case III K 114/08 (Poland)*⁴²⁴ concerned forced prostitution of a young woman in Sweden. The victim was often starved, but she never asked for food because she feared the defendant. The court convicted the defendant of human trafficking and enticement or abduction of another person with the aim of having her engage in prostitution abroad.

Non-exhaustive examples of difficult living conditions in trafficking cases

- Inadequate accommodation (no bed, inadequate sleeping accommodation, no bathroom, etc.)
- Substandard hygiene
- Limited or no running water or heat
- Crowded accommodation
- Sleep and food deprivation
- Lack of privacy
- Lack of adequate clothing

3.2.11 Lack of access to medical care

Lack of access to medical care is another element mentioned in several cases where the court convicted defendants of trafficking in persons or allied crimes. Whether or not jurisdictions espouse the definition of trafficking in the Trafficking in Persons Protocol, this circumstance may connect to the PURPOSE OF EXPLOITATION, which is usually present in some form or to the ACT of trafficking, which in some jurisdictions, includes an element of control or objectification.⁴²⁵

⁴²¹ Previously cited, see p. 31 of decision.

⁴²² See Index of all cases.

⁴²³ See Index of all cases.

⁴²⁴ Previously cited.

⁴²⁵ As to legislation with an element of objectification, see Israel's criminal law, section 377A(a) in which the "act" is "a transaction in a person". See also the Thai Anti Trafficking in Persons Act in which the "acts" include "buying, selling, vending". Both these laws seem to require objectification of the victim which may be proven, at least in part, by not allowing him access to medical care. As to legislation with an element of control, see section 279.01 of the Canadian Criminal Code which includes in one of the "acts of trafficking"—"... exercises control, direction or influence over the movements of a person ..."

In *Wipaporn Songmeesap (Thailand)*,⁴²⁶ the victim was held as a domestic servant. She was tortured and beaten but not provided with access to medical care. The defendant was convicted of restraining an injured minor for the purposes of enslavement and of committing bodily harm and thereby causing the victim grievous bodily harm, whereby she was in severe bodily pain for over twenty days.

In *Alzanki (United States)*⁴²⁷ the defendant was convicted of involuntary servitude. On appeal, the court noted as background that the household duties the defendant required of the victim had deliberately risked her health. The defendant required the victim to clean on a “constant basis with caustic and noxious chemicals, without the benefit of respiratory protection, and her requests for rubber gloves were refused”.⁴²⁸ When the fumes overcame the victim causing her to faint and then fall and injure her ribs, the defendants withheld medical treatment. In addition, he also refused to allow the victim to seek dental treatment for an abscessed tooth. The defendant’s conviction of involuntary servitude was affirmed in this case.

In *Udeozor (United States)*,⁴²⁹ the defendants exploited the Nigerian victim as their domestic slave. The victim was subjected to physical abuse but never received any medical attention after being beaten. This was mentioned by the court as part of the factual background. The defendants were convicted of involuntary servitude and other charges.

*Sabhani (United States)*⁴³⁰ concerns exploitation of two Indonesian women as domestic servants. The victims were denied medical care even when they were sick or injured. The court noted this fact as background to its affirmation of a conviction on forced labour, peonage and other charges.

In *Connors (United Kingdom)*,⁴³¹ a labour exploitation case, the court noted in the facts that multiple victims were denied access to medical care. One victim fell through the roof of a garage and was denied medical care until he was unable to work. Even at this point, after taking him to the hospital the defendants forced him to leave early and return to work within three days. The court convicted the defendants of holding another person in slavery or servitude or requiring a person to perform forced or compulsory labour.

3.2.12 Signs of ownership: objectification of the victim

Signs of ownership, by which the victim appears to be owned by the defendant, are used to support convictions in cases of trafficking and allied crimes, as they attest to an objectification of the victim, and as such may be seen as a manifestation of his exploitation: in these cases there are clear signs that traffickers treat the victim like a commodity rather than as a fellow human being.

Some jurisdictions have legislated ACTS to which ownership is directly relevant.⁴³² In addition, in cases which revolve around slavery or enslavement and use the definition which

⁴²⁶ Previously cited.

⁴²⁷ See Index of all cases.

⁴²⁸ See Index of all cases. These facts were offered as background by the court.

⁴²⁹ Previously cited.

⁴³⁰ Previously cited.

⁴³¹ Previously cited. For detailed facts, see the in-depth analysis in section 5.11 of the Case Digest.

⁴³² See, for example, the Egyptian Law No. 64 of 2010 regarding Combating Human Trafficking, Article 2 which includes in the ACTS “the sale, offer for sale, purchase or promise thereof”. See also, the Thai Anti Trafficking in Persons Act, section 6(1), in which trafficking includes: “Buying, selling, vending”.

appears in the 1926 Slavery Convention, signs of ownership are directly relevant, as this convention defines slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”.

In *Kunarac (International Criminal Tribunal for the Former Yugoslavia)*,⁴³³ one of the defendants sold two of the victims to two soldiers for DM 500 (approximately Euros 250). The Trial Chamber found sufficient evidence to support that this occurred and used this evidence as a factor in convicting this defendant of enslavement as a crime against humanity.⁴³⁴

In *Alzanki (United States)*,⁴³⁵ after the victim complained and fled to the police, the defendant complained that she should be returned because “she belonged to him” and “he had a contract for her”.⁴³⁶ This information was provided as background by the appeals court. The defendant’s conviction of involuntary servitude was affirmed in this case.

In *Urizar (Canada)*,⁴³⁷ the defendant told the victim that he “had control over her, that she belonged to him and that he could do anything he wanted to her”.⁴³⁸ The defendant wanted the victim to tattoo “his name on her body because he said that he wanted the other guys in bars to know that she belonged to him”.⁴³⁹ The court noted this as part of the factual recitation of the victim’s testimony. The defendant was convicted of several charges, including trafficking in persons.

The use of tattoos to denote ownership in trafficking cases has been reported in various countries such as the Netherlands.⁴⁴⁰

It also appears in quite a few cases from the United States where there were convictions for sex trafficking. Thus, see *Cook (United States)*,⁴⁴¹ where the defendant tattooed a bar code on the victim’s neck; a tribal tattoo on her back with the letter “S” to mark her as a slave; and the Chinese symbol for slave on her ankle. This was done to mark his ownership over her.

Another such case is *Doe (United States)*,⁴⁴² in which the defendant forced the victim to have his nickname tattooed on her forearm so that, even if she left, everyone would know she belonged to him.

A similar case is *Davis (United States)*,⁴⁴³ where the defendant had the victim tattooed with his pimp moniker “Sir Lewis” on the back of her neck.

⁴³³ See Index of all cases.

⁴³⁴ *Prosecutor v. Kunarac, Kovac and Vukovic*, Cases IT-96-23-T and IT-96-23/1-T, ICTY Trial Chamber, 22 February 2001, at para. 780-782.

⁴³⁵ See Index of all cases.

⁴³⁶ *Ibid.*, section I of case.

⁴³⁷ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.2 of the Case Digest.

⁴³⁸ *Ibid.*, trial court at page 10.

⁴³⁹ *Ibid.*, trial court at page 11, court of appeals decision at page 4.

⁴⁴⁰ An expert from the Netherlands commented that tattoos are often used in the Netherlands by traffickers in the sex industry to “mark” the prostitutes. The tattoos show the name/symbol of the “owner” of the girl. See <http://www.dutchrapporteur.nl/reports/case-law>.

⁴⁴¹ See Index of all cases.

⁴⁴² See Index of all cases.

⁴⁴³ See Index of all cases.

In *K.P.4105 (Serbia)*,⁴⁴⁴ the evidence obtained from wiretapping included conversations during which the defendants appraised the physical characteristics of the women before the actual exploitation took place, evaluating them on a numerical scale. The defendants in this case were convicted of trafficking in human beings.

In *Wei Tang (Australia)*,⁴⁴⁵ a case in which the defendants were convicted of slavery offences, the appeals court noted that the defendant had exercised powers of possession attaching to ownership, such as making women an object of purchase, restricting the women's movements and using their services without commensurate compensation. In *DPP v. Ho and Ho (Australia)*⁴⁴⁶ and *DPP v. Ho and Leech (Australia)*,⁴⁴⁷ wiretapped conversations in which revealed that the defendants had referred to the victims as "stock" were part of the basis for conviction on slavery offences.

3.2.13 Debt bondage

Debt bondage can constitute a crucial circumstance in trafficking in persons or allied crimes convictions. In jurisdictions which adopt the Trafficking in Persons Protocol's definition, it can be used to prove the PURPOSE OF EXPLOITATION, but also one of the MEANS, for example, "coercion". Furthermore, certain national anti-trafficking legislation refers expressly to debt bondage in the definition of trafficking or slavery, such as Australia and Uganda.⁴⁴⁸ Sometimes, in addition, debt bondage appears in legislation as a standalone crime.⁴⁴⁹ However, whether or not national legislations expressly refer to debt bondage, if it is present in a case it can contribute to a conviction for trafficking in persons or an allied crime.

Debt bondage is defined in the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery as: "the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined." As such, it may be seen as one of the means by which traffickers control their victims.⁴⁵⁰

Debt bondage occurs when a person pledges himself against a loan, but the length and nature of the service are not defined and the labour does not reduce the original debt. Sometimes the debt is passed down to subsequent generations.⁴⁵¹ Sometimes perpetrators create this debt by charging exorbitant prices for minimal goods or services.

⁴⁴⁴ See Index of all cases.

⁴⁴⁵ Previously cited. For detailed facts, see the in-depth analysis in section 5.3 of the Case Digest.

⁴⁴⁶ See Index of all cases.

⁴⁴⁷ See Index of all cases.

⁴⁴⁸ See section 270.1 of the Criminal Code of Australia, which, besides the main definition of slavery, which relies on the 1926 Slavery Convention, adds: "including where such a condition results from debt or contract made by the person". See also section 271.1A where it appears as one of the forms of exploitation in trafficking in persons. See also the Prevention of Trafficking in Persons Act 2009 of Uganda, section 2(d), where debt bondage appears in the definition of exploitation.

⁴⁴⁹ See section 271.8 in Australia's Criminal Code, which has a specific offence of debt bondage.

⁴⁵⁰ It is worthy of note that in the deliberations which preceded the adoption of the Trafficking in Persons Protocol, the Special Rapporteur on violence against women also suggested that debt bondage be included in the MEANS element of the trafficking definition (p. 354 of the Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto Notes by the Secretariat).

⁴⁵¹ See Bales, *Disposable People* (University of California Press, 2000), pp. 19-20.

The following cases are examples of cases in which debt bondage appears:

In the case of *Farrell (United States)*,⁴⁵² the workers' debts increased progressively. First the employers charged each worker an excessive sum of \$1,200 as the purported cost of a processing fee, although this was the sum they had paid for all the workers together. They also charged workers for transportation to and from the Philippines and subsequently began to charge them for transportation to and from work and for personal items that they supplied, but that the workers neither requested nor desired. All this transpired along with a drastic reduction of the salary workers had been promised, so that they were required to obtain outside employment in order to repay the debt. In addition, even though the employers paid only a sum of \$375 per month for renting premises which housed the workers, they charged the seven workers who resided there \$150 each, thus reaching a total of \$1,050 per month. The defendants were convicted of peonage and other charges.

In *Ho and Anor (Australia)*,⁴⁵³ in convicting the defendants of slavery offences, the court stressed that they had contracted with the victims by means of "highly exploitative debt arrangements". This pattern recurs in *Wei Tang (Australia)*,⁴⁵⁴ where the defendants were convicted of slavery offences. Here the victims signed a contract with the defendants promising to work as prostitutes in Australia. The contracts stated that each of the victims would owe a debt of between \$40,000–\$45,000 to the defendant. The victims were required to work six days a week, receiving no money for their services as this was seen as payment for their debts; only on the seventh day of each week were they permitted to receive payment for services. A similar case from Australia is *Seiders (Australia)*,⁴⁵⁵ where the defendants were convicted of servitude charges.

In *Ministerio Publico Federal v. Gilberto Andrade (Brazil)*,⁴⁵⁶ 19 workers were exploited and housed in slave-like conditions at the defendant's farm. All the workers incurred an initial debt that was impossible to repay. This was because the defendant artificially maintained the debt, including through charging excessive prices for clothes, food, medicines and even working tools. The defendant was convicted of charges including slave labour and fraudulent recruitment.

In *Ibarra (Argentina)*,⁴⁵⁷ the court noted that the defendants created a situation of debt bondage for the victims. They did not pay the victims and they charged them for food, clothes and other necessities. In addition, the victims were fined as punishment for bad behaviour. The defendants were convicted of aggravated human trafficking and economic exploitation of the prostitution of others through the use of coercion and intimidation.

In *ECLI:NL:RBGRO:2000:AA8975 (Netherlands)*,⁴⁵⁸ a Nigerian victim was told that she could work as a hairdresser in the Netherlands. The victim was told she had a debt of \$35,000 and threatened by means of "juju" that if she did not pay, horrible things would happen to

⁴⁵² See Index of all cases. For detailed facts, see the in-depth analysis in section 5.4 of the Case Digest.

⁴⁵³ See Index of all cases.

⁴⁵⁴ *R. v. Wei Tang*, (2009) 23 VR 332; (2009) 233 FLR 399; [2009] VSCA 182 (17 August 2009). For detailed facts, see the in-depth analysis in section 5.3 of the Case Digest.

⁴⁵⁵ *Sieders v. R.; Somsri v. R.* [2008], NSWCCA 187, 13 August 2008, Court of Criminal Appeal, Australia. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. AUS005).

⁴⁵⁶ See Index of all cases.

⁴⁵⁷ *Ibarra, Defeis, Sosa, y Córdoba, Expte. 18/11*, No. 2 Oral Criminal Federal Court of Rosario, (2012-06-29), Argentina. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. ARG058).

⁴⁵⁸ Groningen District Court, 12 December 2000, *ECLI:NL:RBGRO:2000:AA8975*, Netherlands. Information on this case was supplied by an expert from the Netherlands.

her and her family. She was forced to work as a prostitute. The defendants were convicted of trafficking.

In *Borisov (Israel)*,⁴⁵⁹ a Moldovan victim was exploited as a prostitute in Israel. Debt bondage was expressly mentioned by the Supreme Court as an important factor in the conviction for trafficking for the purpose of prostitution.

Non-exhaustive examples of how to establish debt bondage

- Establishing an initial debt not related to actual expenses
- Charging exorbitant prices for items or services supplied by employer
- Forcing victim to purchase items he does not want or need
- Charging victims for services for which the employer never paid
- Increasing the debt as a form of punishment

When these actions are coupled with reduced salaries, they ensure a continual state of growing debt, which can never be fully paid.

3.2.14 Climate of fear

Several cases use the term “climate of fear” to describe the situation of alleged victims. In jurisdictions which adopt the Trafficking in Persons Protocol’s definition of trafficking, this circumstance may be relevant to prove the MEANS used by the traffickers; in other jurisdictions, it may be relevant to establishing the ACT or the PURPOSE OF EXPLOITATION.

In a labour exploitation case *Ministerio Publico Federal v. Gilberto Andrade (Brazil)*,⁴⁶⁰ the defendant kept the workers in a climate of fear and violence, conspicuously wielding a gun to intimidate them. He fostered his reputation of being a violent man accustomed to beating workers. In consequence, workers were afraid to escape. The defendant was convicted of slave labour, fraudulent recruitment and hiding cadavers. The court mentioned the climate of fear as an aggravating circumstance.

The term “climate of fear” appears in *Farrell (United States)*,⁴⁶¹ where the government expert testified that several warning signs attesting to non-voluntary labour were present in the case and that the workers were working in a “climate of fear”.⁴⁶² The term also appears in the court’s summary of the facts of the case. Circumstances which contributed to this climate included the following: employers would summon workers who violated their arbitrary rules to the hotel office and reprimand them; under those circumstances the workers testified that they were afraid of one of the employers. Furthermore, employers regularly held meetings with workers during which they reproached them for various transgressions such as spending money without permission. During these meetings workers were threatened. The meetings

⁴⁵⁹ *Borisov et al v. State of Israel*, 10 October 2003, Criminal Appeal 1609,2293/03 before Supreme Court, Israel. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. ISR008).

⁴⁶⁰ See Index of all cases.

⁴⁶¹ See Index of all cases. For detailed facts, see the in-depth analysis in section 5.4 of the Case Digest.

⁴⁶² *Ibid.* Section III of case. See also description of facts supporting the peonage conviction in section IIA of the case, which included the workers’ subjective fear of the Farrells and section IB of case dealing with background facts according to which one worker was “paralyzed with fear”.

became increasingly hostile as time progressed. Meetings were called late at night and workers were required to attend even if they had previously gone to sleep. Meetings often lasted until the early hours of the morning and would include continuous yelling if workers did not follow orders. On one occasion a worker testified that one of the employers was so angry that he feared he would punch him. He also said he was paralyzed by fear. A police officer who visited the workers testified that the workers were terrified of the employers and refused to speak in front of them. The defendants also represented themselves as friends of people in power, which added to the atmosphere of fear. The defendants were convicted of peonage.

In *Webster (United States)*,⁴⁶³ the defendant forced victims to watch him beat other victims. The court noted that, by doing so, he created an environment of fear of physical harm if victims violated any of his rules or refused to do as he asked.⁴⁶⁴ The court found that this environment of fear was coercive and provided sufficient evidence to sustain a conviction of sex trafficking through the use of coercion.

See also *D.A. and A.M. (Israel)*,⁴⁶⁵ in which the Court noted this climate of fear as part of the background facts to the conviction of “holding a person under conditions of slavery”.

3.2.15 Duration of abuse

The Trafficking in Persons Protocol does not require that trafficking in persons take place over any specified minimum period of time. In fact, the Protocol does not require that the actual exploitation ever transpire in order that the crime of trafficking be committed. It is sufficient to prove that the victim was recruited, transported, harboured, etc., by the illegal MEANS for the PURPOSE OF EXPLOITATION. The Protocol does not require that the PURPOSE OF EXPLOITATION be realized.

However, while a short course of exploitation does not necessarily preclude a conviction for trafficking in persons or allied crimes, it may make it more difficult for the prosecution to persuade the court to convict. In addition, the duration of abuse may be an appropriate consideration for sentencing, once the crime has been established.

Please note that a separate section is dedicated to evidential issues in trafficking cases in which the actual exploitation never occurred (see section 4.3 on “How to prove trafficking where the intended exploitation never transpired”). Therefore, this section does not analyse the full ambit of this issue but rather addresses the principles which govern the relevance of duration and the application of these principles to convictions and sentencing.

Principle governing the relevance of duration

The principle governing the relevance of duration is established in *Kunarac (International Criminal Tribunal for the former Yugoslavia)*.⁴⁶⁶ There, the court mentions duration as one of the factors that need to be taken into consideration in determining whether enslavement was committed. However, the court also notes that duration should not be a conclusive indicator. In this case, two defendants were found guilty of “enslavement as a crime against humanity”

⁴⁶³ See Index of all cases.

⁴⁶⁴ Ibid. at 4.

⁴⁶⁵ Previously cited, page 47, para 50. It should be noted that this case is pending appeal in the Supreme Court.

⁴⁶⁶ Previously cited.

for their exploitation of a number of female victims. The victims were raped repeatedly by the defendants and were required to perform household chores. The duration of the exploitation was approximately four months in one case and six months in the other.⁴⁶⁷

The court held:

“The duration of the suspected exercise of powers attaching to the right of ownership is another factor that may be considered when determining whether someone was enslaved; however, its importance in any given case will depend on the existence of other indications of enslavement.”

Prosecutor v. Kunarac, Kovac and Vukovic, Cases IT-96-23-T and IT-96-23/1-T ICTY Trial Chamber, 22 February 2001, para. 542.

Convictions despite short duration of exploitation

The following cases illustrate convictions despite short periods of exploitation:

In *Anos (Philippines)*,⁴⁶⁸ the victims were recruited to work as waitresses in Malaysia but instead found themselves forced to work as prostitutes. In this case, the exploitation was for a limited duration, approximately five days, at which point it ended when the Malaysian Immigration Police raided the bar. The court noted that the elements of trafficking in persons were present and convicted the defendant of trafficking in persons.

In *5 To 23/2010 (Slovakia)*,⁴⁶⁹ the victim was forced by the defendant and other unspecified persons to work as a prostitute but she escaped after two days and informed the police. Despite the short period of exploitation, the defendant was convicted of being an accomplice to trafficking in persons.

In *Pipkins (United States)*,⁴⁷⁰ the defendants were convicted of involuntary servitude and a number of other crimes. One of the victims was only with the defendant for a short time. However, this limited time did not preclude a finding of involuntary servitude. While the court based its ruling on the language of the national statute, perhaps other jurisdictions can still learn from the court’s reasoning. In particular, on appeal the court found that the involuntary servitude statute:

“[...] requires that involuntary servitude be for “any term,” which suggests that the temporal duration can be slight. Thus, the language of [the statute] negates [the defendant’s] argument that [the victim] was never in involuntary servitude because she freely travelled between pimps. The record supports a finding that [the defendant] held [the victim] in involuntary servitude for at least part of the time that she prostituted for him.”

U.S. v. Pipkins, 378 F.3d 1281 (2004).

⁴⁶⁷ In the case against Defendant Kunarac, the Trial Chamber found that the victims were held for five to six months. *Prosecutor v. Kunarac, Kovac and Vukovic*, Cases IT-96-23-T and IT-96-23/1-T ICTY Trial Chamber, 22 February 2001 at para. 732. In the case against Defendant Kovac, the victims were held for a period of about four months. *Prosecutor v. Kunarac, Kovac and Vukovic*, Cases IT-96-23-T and IT-96-23/1-T ICTY Trial Chamber, 22 February 2001 at para. 765.

⁴⁶⁸ Previously cited. For detailed facts, see the in-depth analysis in section 5.6 of the Case Digest

⁴⁶⁹ *5 To 23/2010*, 18 May 2010, Banska Bystrica Regional Court, Slovakia. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. SVK037).

⁴⁷⁰ Previously cited.

In *ECLI:NL:RBMNE:2013:2679 (Netherlands)*,⁴⁷¹ the defendant instructed his granddaughter on one occasion to shoplift in a supermarket. The court discussed whether this behaviour amounted to human trafficking. The court concluded that the defendant transported and transferred the victim to the supermarket for the purpose of gaining a financial benefit. Although there was no evidence that such exploitation took place on any other occasions, the court explained that there is no minimum time duration required in order for exploitation to occur and convicted the defendant of human trafficking.

Relevance of duration to convictions and sentencing

While there is no minimum duration of exploitation necessary to convict on charges of trafficking and allied crimes, the longer the period during which the exploitation is carried on, the easier it may be to prove the crime. Thus, in *Kaufman (United States)*,⁴⁷² victims were held for periods ranging from one year to 25 years; the defendants were convicted of involuntary servitude and forced labour. In *Veerapol (United States)*,⁴⁷³ the victim was exploited for a period of 6 years. In *Siliadin*,⁴⁷⁴ the period of involuntary servitude was measured in years. While in these cases the courts did not explicitly mention the importance of the long duration to the convictions, in *Giulani (Israel)*⁴⁷⁵ the court explicitly mentioned the relatively long period of abuse (22 months) in enumerating the facts which led to the conviction of holding a person under conditions of slavery.

Furthermore, duration of abuse may also be a factor relevant to sentencing once the crime has been established. For example, in the sexual exploitation case *Lifshin and Ben (Israel)*,⁴⁷⁶ the court mentioned the extended duration of abuse as an aggravating factor when determining the amount of punitive damages after a conviction on trafficking for prostitution. In *6 K 3/10 (Serbia)*,⁴⁷⁷ the defendants forced the victim to prostitute for four days, after which the victim managed to escape. The court found the defendants guilty of trafficking in human beings but considered the short duration of abuse as a mitigating factor when deciding on the sentence.

Duration of exploitation

- Duration may be considered as a factor in establishing the crime, but is not conclusive.
- Convictions have been attained even in cases with short duration.
- The longer the duration, the easier to convict and the more severe the sentence may be and conversely the shorter the duration, the more difficult it may be to convict and the less severe the sentence may be.

⁴⁷¹ Previously cited.

⁴⁷² Previously cited.

⁴⁷³ Previously cited.

⁴⁷⁴ Previously cited. For detailed facts, see the in-depth analysis in section 5.9 of the Case Digest.

⁴⁷⁵ Previously cited. It should be noted that this case is pending appeal in the Supreme Court.

⁴⁷⁶ *Anonymous v Alexander Lifshin and Armen Ben*, 25 January 2010, District Court Tel Aviv-Yafo, Israel. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. ISR006).

⁴⁷⁷ *6 K 3/10, 30*, March 2011, Higher Court in Subotica, Serbia. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. SRB012).

3.2.16 The relevance of cultural beliefs and practices

Sometimes, cultural beliefs and practices of victims may provide an explanation for their behaviour. In particular, victims may behave in a way which at first glance seemingly erodes their credibility, whereas a closer look reveals that the behaviour is a function of their cultural background.

Thus, as seen in previous sections, among communities which believe in “juju”, a form of witchcraft, these ceremonies may prove to be effective threats which govern the behaviour of victims. For more details on this issue, see section 2.2.1.5 on “Seemingly irrational beliefs”; section 2.6. on “Expert and professional testimony”; and section 3.2.2 on “Threats/seemingly unreasonable threats”.

Another example of the impact of cultural beliefs can be found in *U.S. v. Farrell*.⁴⁷⁸ In this case the defence claimed that Filipino workers voluntarily gave their employers their passports. However, in reality they did not act “voluntarily” but rather acceded to their employers’ request as part of the Filipino culture of honour and respect towards employers, as established by the court.

Sometimes cultural stigma causes victims to refrain from fleeing their situations. Such a case was *Kovacs (Australia)*,⁴⁷⁹ where the victim, although repeatedly raped, did not flee and did not complain immediately. The court found that “shame and embarrassment in Filipino society, not just to her but also her ailing mother, had stopped her saying anything”.

3.3 Circumstances which may weaken a case

In order to illustrate the full spectrum of the mosaic of evidence, we will touch upon evidentiary circumstances that may militate against a conviction on trafficking in persons or allied crimes. We do not purport to address all possible defence claims or all possible sources of weakness, but only those of most weight and most often used in actual cases.

Such circumstances may include, for example, evidence that supports the thesis that the victim was free to move or that he was free to say “no” with impunity or that he or she had a support system on which to rely. Further weaknesses may arise in cases where there is selective treatment of alleged victims compared to similarly situated persons or when the family of the victim is complicit in his or her trafficking. This relationship may raise various psychological impediments which may weaken the prosecution case and require special treatment in order to counter.

In addition, victim behaviour during the crime is one of the most common circumstances used by defence advocates to try to weaken the prosecution’s case. Some of these behaviour patterns are discussed in detail in section 2.2 on “Victim testimony” and focus on the victim’s reactions in the context of the trial process in the wake of the exploitation or abuse, whereas here we focus on the victim’s reactions in the context of the exploitation or abuse. In addition, a central set of circumstances which may weaken a case relates to a victim’s consent

⁴⁷⁸ Previously cited. For detailed facts, see the in-depth analysis in section 5.4 of the Case Digest.

⁴⁷⁹ Previously cited.

or seeming consent to the crime. Most of the material in this section revolves around this reality.

The issue of victim consent is crucial to any case on trafficking in persons. It is for this reason that it appears in other sections strewn over the breadth of this Case Digest, including section 2.2.1 on “Typical weaknesses of victim testimony” and section 3.2, dealing with circumstances which may contribute to convictions (and in particular the sections regarding “Threats”, “Subtle means of coercion”, “Restrictions of freedom”). Because of the centrality of the issue of consent in trafficking cases, it is also addressed in section 4.4 which is dedicated to this topic. While there is a risk of repetition, there may also be a value in highlighting how important this factor can be.

3.3.1 The victim’s freedom to come and go

When the evidence shows that the victim was free to come and go as she or he liked, this may weaken a case of trafficking or allied crimes. For jurisdictions which adopt the Trafficking in Persons Protocol’s definition, this can be seen to contradict the existence of MEANS. For jurisdictions that do not have the requirement of MEANS, it can impact on the EXPLOITATIVE PURPOSE.

No conviction because the victim was free to move

An example of the potential of this circumstance to weaken a case appears in *CI118I 2013 (Belgium)*,⁴⁸⁰ where an appeals court exonerated the defendants from a charge of “labour conditions contrary to human dignity”. One of its considerations was that the victim was free to come and go as he wished.

Conviction despite the defendant or the victim claiming freedom of movement

Because lack of freedom of movement can be an important element in building a trafficking in persons case, circumstances which prove freedom of movement will tend to weaken the case, especially when the victim him/herself claims freedom of movement because he or she, for whatever reason, wants to portray his or her situation in a certain way. However, such claims may not necessarily convince the court. In the following cases, the court convicted the defendants in spite of the fact that freedom of movement was an issue.

In *Liu LiRong (Tonga)*,⁴⁸¹ the defence claimed that the victims could have complained to the police because they were free to move about and had access to cellular phones. In view of the totality of circumstances, which included forced prostitution, threats and confiscation of passports, the court convicted the defendant nonetheless.

In case *Not. Nr. 1214/07 (Belgium)*,⁴⁸² human trafficking convictions were secured against two defendants for the labour exploitation of a victim as a sailor on a boat, even though the victim claimed he had agreed to the conditions and could come and go as he wished.

⁴⁸⁰ Previously cited.

⁴⁸¹ Previously cited.

⁴⁸² *Not. Nr. 1214/07*, 25 January 2010, Appellate Court of Gent, Belgium. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. BEL 001).

In *Pipkins (United States)*,⁴⁸³ the defendants challenged their conviction of involuntary servitude because the victim was “free to go at any time”.⁴⁸⁴ In this context, the court mentioned that the rules of the trade allowed the girls to move from one pimp to another of their own initiative. Despite this, the defendants’ claim was not accepted by the court who took into consideration that the victim was forced to sell herself for sexual services and give the defendant all the money due to his threats of physical violence and his forcing her to perform sexual acts.

In *Giulani (Israel)*,⁴⁸⁵ the district court convicted the defendants of holding a person under conditions of slavery (one of the elements of which is deprivation of freedom), even though the defence claimed that she had been a free agent, permitted to leave the house on occasion. The court ruled that the victim had been deprived of her freedom on the basis of a constellation of circumstances which included: no weekly vacation day or any other vacation days which would have allowed her physical and emotional distance from her work; no regular breaks which meant that she was available for the defendants all the time; even though she was given some privacy in her room, this room was in the house of the defendants and she was dependent upon their decisions with no way to oppose them and stand on her own rights, in part, because she was denied the possibility of taking care of herself as a free human being. The court mentioned as crucial facts the detention of the victim’s passport and the defendants accompanying her when she went to places at a distance from their home. In view of these circumstances the court ruled that: “[T]he defendants denied her true freedom. The relative freedom which was given ... in the narrow confines of her small room ... was certainly not sufficient and cannot contradict ... that her freedom was denied.”

See also a Netherlands case, decided by a Court of Appeals and subsequently by the Supreme Court: *ECLI:NL:HR:2015:1100 (Netherlands)*⁴⁸⁶ and *ECLI:NL:GHARL:2013:8522 (Netherlands)*,⁴⁸⁷ in which it was ruled that the mere possibility of a victim to escape her situation, as shown by her travelling abroad, is not enough to bring about the exoneration of a defendant on charges of trafficking. The victim had met the defendant in Morocco, married him and moved to the Netherlands when she was 18 years old and illiterate. She had travelled abroad several times during the alleged period of exploitation. The evidence showed that the defendant abused her and forced her to work in prostitution and to hand over what she earned to him. He was convicted of human trafficking.

As seen when considering the cases cited above in section 3.2.6 on “Restrictions of freedom”, courts tend to see restrictions of movement in a far broader way than mere lack of lock and key imprisonment. Courts will carefully assess the totality of circumstances and will not draw the line at lock and key imprisonment, but include restrictions arising from far more subtle methods of control. As discussed earlier in the Case Digest, these forms of control may include supervision by the alleged perpetrators or the abuse by the perpetrator of victims’ vulnerabilities and for example precarious financial situation, dependence upon the perpetrators, or immigration status.

⁴⁸³ Previously cited.

⁴⁸⁴ Ibid. p. 1297.

⁴⁸⁵ Previously cited. It should be noted that this case is pending appeal in the Supreme Court

⁴⁸⁶ Supreme Court, 21 April 2015, *ECLI:NL:HR:2015:1100*, Netherlands.

⁴⁸⁷ Court of Appeal Arnhem-Leeuwarden, 8 November 2013, Netherlands.

Claims about victim freedom to come and go

Courts respond in different ways to such claims:

I. *EXONERATIONS*

Do not seem to occur when there is lock and key imprisonment, constant supervision or force. More likely to occur when more subtle means are used.

II. *CONVICTIONS*

Very likely in cases of lock and key imprisonment or constant supervision. In cases with more subtle means, courts have considered the following “circumstances which effectively restricted victims”:

- A relationship of dependence between trafficker and victim;
- The trafficker cultivates a fear of the authorities;
- The victim has nowhere to go—a function of external circumstances and the perpetrator’s actions;
- The victim is constrained financially though physically he could leave;
- The victim has no leisure time to allow him to come and go;
- The trafficker withholds the victim’s passport or other personal documents.

3.3.2 The victim’s power to say “no” with “impunity”

The victim’s power to say “no” to the trafficker without the trafficker employing means of control against him can be interpreted to be a sign of autonomy, inconsistent with trafficking in persons or allied crimes. In jurisdictions which adopt the Trafficking in Persons Protocol’s definition of trafficking, this may impact on the MEANS element in that, if the trafficker does not exert control over a victim who says “no” using any of the MEANS described in the Protocol, this element is missing and it is a sign that he is not committing the crime. In other jurisdictions, this may impact on the ACT element or the PURPOSE OF EXPLOITATION.

Whether the victim’s ability to refuse the wishes of the exploiter will or will not be considered by the court to constitute a level of autonomy that would contravene a trafficking in persons conviction, will depend on the totality of circumstances of the individual case, i.e., its individual mosaic of evidence.

In *Anos (Philippines)*,⁴⁸⁸ a victim refused to comply with the defendant’s orders to have sexual relations with customers at a bar, and was not forced to do so. However, the victim was still required to sit at a table in the bar and entertain customers. The defendant was convicted of trafficking in persons. In making this finding, the court focused on the totality of circumstances in this case, which included the recruitment, transportation and transfer of the victims to Malaysia by the defendant, her receipt and harbouring of the victims once in Malaysia, her deception towards the victims, and her intent to exploit the victim for prostitution and sexual exploitation.

3.3.3 The victim’s support system

In cases where the victim is shown to have a good system of support in place which can include friends, family, or community, courts may not believe that he or she was trafficked.

⁴⁸⁸ Previously cited. For detailed facts, see the in-depth analysis in section 5.6 of the Case Digest.

Implicit in this is the assumption that trafficking can succeed only when victims are isolated from support systems. And, in fact, traffickers often strive to isolate victims, as can be seen in cases as described above in section 3.2.7 on “Isolation”.

Exonerations taking into account victims’ support systems

A case in which the existing victims’ support systems contributed to an exoneration from the charge of “holding a person under conditions of slavery” was *A.G.G.R. (Israel)*.⁴⁸⁹ The case concerned a charismatic man who gathered around him a number of women and their children and exerted control over them in various ways, including requiring them to work and transfer all their earnings to him. In exonerating him from the slavery charge, the court commented that all the alleged victims had passed their lives in normative society and were well aware of the difference between normative life and life with the defendant. There was no obstacle to their leaving except a psychological obstacle.

Similarly, in *Aserio Giuseppe (Germany)*,⁴⁹⁰ the court exonerated the defendant of trafficking because it found that the victim could have told her parents about the exploitation in prostitution at any time, as she and the defendant lived with her parents when the exploitation began. The court did not deem the victim’s explanation sufficient—that the relationship with her mother and stepfather was problematic. It also found that the victim could have opened up to police and social workers at any time.

Convictions despite victims’ support systems

However, as the cases cited below demonstrate, depending on the individual circumstances of the case, the fact that there is some form of a support system that the victim can rely on is not always enough to make a trafficking conviction untenable.

Thus, in a trafficking case revolving around sexual exploitation, *Urizar (Canada)*,⁴⁹¹ while the court noted that the victim’s relationship with her family was difficult, it also found that the victim was a Canadian citizen conversant with the language and culture who did, in fact, return to her family once her situation deteriorated. Moreover, her parents lived near the residence of the defendant where she was abused. Nevertheless, these positive factors did not prove conclusive to the court and the defendant was nonetheless convicted of trafficking and other crimes. The court noted that the victim had no money when she met the defendant, that she had a difficult relationship with her family and that the defendant forced her to take drugs. The combination of these factors made her vulnerable, despite a potential support system. The court of appeals explicitly addressed this point in affirming the conviction thus: “The fact that this control, this direction, this influence over the complainant’s movements occurred in a location near her parents’ residence, has no impact on Urizar’s guilt.”⁴⁹²

In another sexual exploitation case, *Sieders (Australia)*,⁴⁹³ the court noted that one of the women victims was given a cellular phone and permitted to call her family in Thailand. Nevertheless, this did not prevent a conviction on servitude charges.

⁴⁸⁹ Previously cited.

⁴⁹⁰ Previously cited. For a more detailed description, see section 3.2.2 on “Threats/seemingly unreasonable threats”.

⁴⁹¹ Previously cited. For detailed facts, see the in-depth analysis in section 5.2 of the Case Digest

⁴⁹² Ibid. See Court of Appeals conviction, page 21.

⁴⁹³ Previously cited.

In *Farrell (United States)*,⁴⁹⁴ the victims developed good relationships with other workers in a fast food outlet in which they worked and went bowling with them. This did not prevent a conviction on charges of peonage and other crimes in view of the fact that the employers prohibited contact with other workers and constantly supervised the victims, including during the bowling outings.

3.3.4 Selective treatment of alleged victims compared to persons in same situation

Sometimes, cases of trafficking reveal that different persons in one place of work or occupation were treated differently by alleged traffickers. This selective treatment can be a calculated strategy by the trafficker, who may feel that it is enough to intimidate victims by mistreating only some persons in order to show them what awaits them if they “misbehave” (see section 3.2.1 on “Violence or force”). In this regard, one practitioner commented that at least as regards the MEANS of violence, it is resource intensive and therefore traffickers may limit it in general or to certain victims only.

However, there may be cases in which such selective treatment influences courts to impugn the alleged victims’ credibility. Such a case was *Ranya Boonmee (Thailand)*.⁴⁹⁵

A central weakness in the mosaic of evidence concerned similarly situated workers who testified that they were not exploited, were not forced to live on-site and could leave the factory after work, contrary to the testimony of the alleged victims. The trial court did not view these testimonies as central in discounting the prosecution’s case in view of the alleged victims’ testimonies and the photographs adduced by the prosecution, which showed that the compound was enclosed by capped barbed wire and that the workers’ accommodations were within the compound. However, the court of appeals did view these testimonies as strong evidence militating against conviction, especially since the alleged victims’ testimonies were inconsistent. As a result, while the trial court convicted the defendants, the court of appeals exonerated them of the charges of: 1) conspiring to confine other persons, depriving them from liberty and forcing them to do any act for the doer, and 2) accepting and retaining workers illegally, including those under the age of 18 and 15 years old for the purposes of enslavement, compelling them to work in slavery-like practices.

The different evaluation of evidence by the trial court and the court of appeal is an excellent illustration of how two judicial tribunals may evaluate the same evidence differently.

3.3.5 Complicity in trafficking by victim’s family

Sometimes the trafficker and his/her victims have a family relationship, which can create complexities when prosecuting the case. For example, victims are often reluctant to testify against their family members; they may not even consider themselves to be victims of crime because of their relationship with the traffickers and they may more easily believe family members’ deceptions. However, sometimes victims’ families are innocent facilitators of

⁴⁹⁴ Previously cited. For detailed facts, see the in-depth analysis in section 5.4 of the Case Digest.

⁴⁹⁵ Previously cited. Information about this case was obtained from the UNODC Human Trafficking Case Law Database (UNODC Case No. THA001) and a Thai expert. For detailed facts, see the in-depth analysis in section 5.7 of the Case Digest.

trafficking, when they themselves believe traffickers' deceptions and hope they will improve the lot of the victims. In these cases, and especially when family members are themselves vulnerable, courts may find it difficult to decide if they were victims of the deception or active participants in it. See also section 3.2.5.11 on family relationships as a source of vulnerability.

In a sexual exploitation case *López López (Argentina)*,⁴⁹⁶ one of the victims was the defendant's daughter and the other victim was her niece. Although both victims grossly contradicted themselves in their testimony compared to the statements they gave during the investigation, the court expressed its understanding of the effects of family relationship on the victims' behaviour. The court found that it could be assumed that these victims were not likely to tell the truth in order not to cause any harm to the defendant. It is to be noted that the evidence in the case did not rely solely on the testimony of these victims and included an expert psychological evaluation of one of the victims, which revealed indicators of psycho-emotional and sexual abuse. The defendants were found guilty of human trafficking of minors and related charges.

"It is usual that this kind of persons (victims of trafficking in person), because of their great vulnerability, seem reluctant to tell the truth or give testimonies totally coherent. But in this specific case, the victims are not only victims of trafficking but also daughter and nephew of the lady LLL, which adds an extra element that explains why they are not telling the truth. If she told us the truth, she would expose her mother to the risk of a ten years or more penalty. So she has an additional, understandable and valid argument, to lie."

López López y Novello, TOCF II, Córdoba, 06/13, Argentina. Translation supplied by Mr. Marcello Columbo, an expert practitioner from Argentina.

In the sexual exploitation case, *Okafor (Nigeria)*,⁴⁹⁷ there was a family relationship between one of the victims and the defendant, who was the victim's biological mother. The victim was initially reluctant to testify. The prosecutor dealt with this by continually reassuring the witness and reframing some questions, in view of her tender age and low level of education, in order to assist the victim to give unbiased testimony. The court concluded that the relationship between the daughter and mother had not impacted on the credibility of the victim's testimony. The defendant was found guilty of three counts of attempting to organize foreign travel to promote prostitution.

In *Case No. 1685/2010 (Egypt)*,⁴⁹⁸ parents facilitated the sexual abuse of their minor daughter by marrying her, by means of a sham marriage contract, to a person in his eighties and subsequently not heeding her pleas for relief when he sexually abused and beat her. Because of this, the victim threatened to commit suicide. According to a request by the public prosecution, the Grand Mufti of Egypt provided the following *Fatwa*⁴⁹⁹ to the court:

⁴⁹⁶ Previously cited.

⁴⁹⁷ Previously cited.

⁴⁹⁸ Previously cited. The case includes a Trial Court decision by the Criminal Court of Giza Province and a ruling of the Court of Cassation ordering a retrial and has been summarized and analysed by an Egyptian expert.

⁴⁹⁹ *Fatwa* is a religious opinion issued by an expert (*mufti*) demonstrating a ruling within Islamic law based on evidence, as a response to a specific question.

“There is *ijmaa* (consensus) among Islamic scholars that righteousness is a requirement for guardianship, such that guardianship cannot be established for an immoral (corrupt) parent, and that forcing his daughter to marry an incompatible person is a sign of a guardian’s immorality, and that this kind of marriage disregards compatibility, and even lacks the minimal respect for humanity, is a sign of the guardian’s immorality, which consequently renders his guardianship void and annuls this type of marriage contract, for lack of the requirements and real foundations of marriage.”

Condemning the behaviour of the parents towards their daughter, the Grand Mufti stated:

“When the daughter sought her parents’ protection (as a result of the sexual abuse she was suffering from), they let her down terribly.”

Case No. 1685-2010, the Criminal Court of Giza, a retrial ordered by the Court of Cassation, Egypt.

The trial court based its decision on the Grand Mufti’s religious opinion and convicted the parents of facilitating the victim’s exploitation in accordance with Article 291 of the Penal Code on child trafficking and exploitation. The trial court’s decision annulled the marriage, invalidated the marriage contract, convicted the parents and sentenced both of them to one year in prison after applying article 17 of the Penal Code, which allows the judge to mitigate the penalty. However, the Court of Cassation ordered a retrial as a result of flaws in the verdict and the case was accordingly sent for a retrial. No second appeal was submitted to the court of cassation.

In *Grigore (Germany)*,⁵⁰⁰ the victim’s cousin offered her a job to care for the elderly in Germany. The victim did not initially believe her and thought that the defendant was trying to deceive her in order to engage her in prostitution. The victim’s uncle assured her that the offer was legitimate. Relying on her uncle’s assurances, the victim went to Germany and was forced into prostitution. Both cousin and uncle were convicted of trafficking by means of deception.⁵⁰¹

In *Afolabi (United States)*,⁵⁰² the defendant trafficked more than 20 West African young girls to the United States for the purpose of forced labour in her hair and nail salons as well as sexual exploitation. The defendant was the biological aunt of a number of the victims. The court convicted her of trafficking with respect to forced labour, conspiracy to harbour illegal aliens, conspiracy to commit visa fraud and smuggling illegal aliens.

*Siliadin (European Court of Human Rights)*⁵⁰³ is an example of possibly innocent complicity of family members in the trafficking process. Thus, the victim’s father made the initial arrangement and her uncle encouraged her to return to the abusive situation. In addition, at least one of these relatives testified for the defendants during one of the trials.

A case which highlights the difficulties courts face when trying to evaluate the role of victims’ family members is *Case No. 8959-2012 (Egypt)*,⁵⁰⁴ where the trial court exonerated parents whose daughters had been prostituted by means of false marriage contracts, whereas the court of cassation ordered a retrial on this basis, among others. The trial court apparently accepted

⁵⁰⁰ Previously cited. For detailed facts, see the in-depth analysis in section 5.10 of the Case Digest.

⁵⁰¹ For detailed facts, see the in-depth analysis in section 5.10 of the Case Digest.

⁵⁰² Previously cited.

⁵⁰³ Previously cited. For detailed facts, see the in-depth analysis in section 5.9 of the Case Digest.

⁵⁰⁴ Previously cited. For detailed facts, see the in-depth analysis in section 5.8 of the Case Digest.

the parents' claim that they did not know the marriages were a sham and may have also considered the parents' own difficult financial situation which was exploited by the network. In addition, it seemed to adopt an assumption that as parents, they would want their daughters to be married through legitimate channels and would not intentionally collude at engaging them in prostitution. On the other hand, the court of cassation, in its ruling, seems to be expressing a doubt about the parents' innocence, perhaps in view of the fact that the victims were exploited several times. Interestingly, the Egyptian Trafficking Law expressly states that in regard to minors the consent of the person responsible for the minor is irrelevant, thus recognizing the possibility of parents' and guardians' complicity in this crime.

Family complicity in trafficking and allied crimes

Family complicity in trafficking and allied crimes is not a rare phenomenon. This complicity may be innocent, with the family member believing that the trafficker will change the victim's life to the better, OR it may be with criminal intent.

Family complicity can create the following complexities:

- Tendency of victim to believe the family member and thus allow himself to be trafficked, even if he initially suspects the offer is not bona fide
- Unawareness on the part of the victim that he has been victimized
- Unwillingness of victim to testify against the family member
- Difficulty in deciding if the family member is an innocent victim of deception or a trafficker

Cases with family members as defendants may call for special treatment:

- A particularly sympathetic treatment of victim by the court
- An understanding by the court of the influence of the family relationship on the victim's testimony
- The reframing of questions by the prosecution and/or the court
- Submission of evidence other than the victim's testimony
- Submission of expert testimony

3.3.6 Victim behaviour in the course of the trafficking process

Victim behaviour can present problems in securing convictions in trafficking cases. In section 2.2 on "Victim Testimony", we discussed victim behaviour in the context of the trial process and found that it can weaken a case. This section, on the other hand, is devoted to victim behaviour in the course of the trafficking process. This may include not coming forth right away, not fleeing when an opportunity arises, returning to an abusive employer and even consenting to severe exploitation. While all of these forms of behaviour are generally viewed by courts as impinging on the credibility of victims, cases worldwide show that these behaviour patterns are common in cases of trafficking and allied crimes. In order to address this reality, courts have found various solutions and not impugned credibility on this basis alone, but rather viewed it in the context of the totality of surrounding circumstances.

As said above, much of this behaviour revolves around victim consent or seeming consent to the crime—a topic which is directly addressed in section 4.4, which is devoted to victim consent.

3.3.6.1 Failure to escape or seek help

There is often an expectation, either implicitly or explicitly, that legitimate victims of crime would naturally seek out help or escape at the first opportunity. When victims fail to act in this way, sometimes courts impugn their credibility.

However, analysis of cases worldwide reveals that this is behaviour typical to victims of trafficking and allied crimes and that the reasons for it may not necessarily be lack of credibility. It should be noted that these cases may include both those in which the victim clearly did not consent to the crime and those in which he seemingly did.

Thus, while in some cases courts do view this behaviour as weakening victim credibility, in most they carefully examine all the surrounding circumstances in order to assess its significance.

Conviction despite the victim not trying to escape

In many cases, despite the victim's failure to escape at the first opportunity, convictions of trafficking and allied crimes have been affirmed.

In some of the cases in which victims failed to escape, the background is one of overt violence, clearly creating an impediment to escape. Such was the case of *Samaesan (Thailand)*,⁵⁰⁵ where the defendant beat the victims, cut them with knives and tortured them with electric shocks. According to the court, this environment made the victims too frightened to escape, even given the opportunity to do so. The defendant was convicted of trafficking for labour exploitation, trafficking committed by an organized criminal group and other charges.

However, even when cases do not include that type of violence, failure to escape does not necessarily prevent a conviction.

In *Kovacs (Australia)*,⁵⁰⁶ the victim worked in a takeaway food shop, in the view of the public on a daily basis, and yet it took five months for her to escape. The court understood that the very fact that she was not under "lock and key" or "total ownership" is indicative of the level of subtle control Kovacs exerted over her. Indeed, when asked why she did not attempt to leave or report the situation (including rapes) to relatives, she stated as her reason the shame that she and her mother would feel as members of Filipino society. The decision highlighted that despite the apparent freedom of a person to leave, they may still be enslaved by a number of more subtle factors.

In *Giulani (Israel)*,⁵⁰⁷ the Filipino victim did not try to flee even when opportunities arose. The court ruled that this behaviour is not a reason in itself to negate the crime of holding a person under conditions of slavery. In thus ruling, the court showed awareness of the fact that often victims come from vulnerable populations, as illustrated by the facts of the case which concerned a foreign young woman not familiar with the country or with her surroundings, whose passport was detained, who was threatened that she would be arrested should she leave the house and who had only one friend in Israel. For her, escape was a drastic step

⁵⁰⁵ Previously cited.

⁵⁰⁶ Previously cited.

⁵⁰⁷ Previously cited. It should be noted that this case is pending appeal in the Supreme Court.

and she lived in the hope that conditions would improve. On the other hand, the court held that if it is proven that the victim had a continuous opportunity to flee over time and did not make use of it, this might weaken the element of “deprivation of freedom” necessary to establish the crime.

In *Sieders (Australia)*,⁵⁰⁸ the failure of the victims to escape from a brothel did not prevent the appeals court from affirming the conviction of sexual servitude, though escape was not absolutely impossible. The court considered circumstances such as social or moral pressure, and even a limitation because of economic resources or a person’s own abilities. The court added that there was no obligation on a victim to escape at the first opportunity in order to classify the case as one of sexual servitude. It is noteworthy that this case did not include overt violence or lock and key imprisonment.

In *Bradley (United States)*,⁵⁰⁹ two men were housed on the defendants’ property and paid below minimum wage to work in the defendants’ lumber business. The victims were not held under lock and key, but were deterred from fleeing by means of threats consisting of the defendants sharing what they were planning to do to the last employee who ran away. Although the victims did not escape at the first possible opportunity, the defendants’ convictions of forced labour and related crimes were affirmed.

In a labour exploitation case, *Farrell (United States)*,⁵¹⁰ the victims did not attempt to escape even though they held jobs at locations which were unsupervised by the defendants and often walked to and from these jobs unsupervised. This did not prevent a conviction for peonage or document servitude.

In *Sabhani (United States)*,⁵¹¹ the two victims did not leave the premises where they were abused, nor did they otherwise attempt to escape during the two month periods in which the defendants left the county annually. In analysing the facts of the case, the court explained that one perpetrator told a victim that the police would shoot her if she left the premises and that her husband would be arrested in Indonesia. Their failure to escape did not prevent the affirmation of the conviction for forced labour, peonage and other crimes.

In *Bibbs (United States)*,⁵¹² the defendant, on appeal, claimed his conviction for involuntary servitude was inappropriate because the victims admitted that they had one or more opportunities to avoid continued service with the defendant. The court found that the State had proved its case by more than sufficient evidence. This evidence included multiple victims testifying that they had attempted to escape on one or more occasions and had been prevented from doing so, that they were beaten for attempting to escape and threatened should they attempt to escape. One victim testified that he did not leave the defendant’s employ because he feared that he would be physically harmed by the defendant.

See also a Netherlands case decided by a Court of Appeals and subsequently by the Supreme Court, *ECLI:NL:HR:2015:1100 (Netherlands)*⁵¹³ and *ECLI:NL:GHARL:2013:8522 (Netherlands)*,⁵¹⁴ the Court ruled that the mere possibility of a victim to escape her situation

⁵⁰⁸ Previously cited.

⁵⁰⁹ Previously cited.

⁵¹⁰ Previously cited. For detailed facts, see the in-depth analysis in section 5.4 of the Case Digest.

⁵¹¹ Previously cited.

⁵¹² *U.S. v. Bibbs*, 564 F.2d 1165 (5th Cir. 1977), United States of America. See Index of all cases.

⁵¹³ Previously cited.

⁵¹⁴ Previously cited.

as shown by her travelling abroad several times, is not enough to bring about the exoneration of a defendant on charges of trafficking.⁵¹⁵

As these cases cited above demonstrate, when assessing the weight of evidence regarding a victim's failure to escape, courts tend to take into consideration all the surrounding circumstances in order to understand the victim's behaviour. As a rule, they do not automatically impugn the victim's credibility on this basis alone.

Considering the victim's failure to escape in the context of sentencing

Case law demonstrates that the failure of a victim to escape can be an important consideration in determining the sentence in a trafficking in persons case. However, rather than being considered a mitigating factor, courts may consider the fact that the victim failed to escape despite the opportunity to physically do so as an aggravating factor. Such a scenario can be understood to be a clear manifestation of the fact that the victim's will has been broken by the exploiter.

In *Chen (United Kingdom)*,⁵¹⁶ defendant Chen pled guilty and was convicted of trafficking within the United Kingdom for the purposes of sexual exploitation and related charges. Though the victims weren't physically detained and could have left the premises, this did not serve as a mitigating factor in sentencing them, but rather as an aggravating factor in that the court understood that the victims' liberty had been denied by the defendant's threats and by his exploitation of their vulnerabilities.

In a labour exploitation case *Connors (United Kingdom)*,⁵¹⁷ the court, in commenting on the evidence, contextualized the failure of some victims to escape in finding that "[t]hey lost the independence of will required to leave. They even, as I heard, regarded the life of an unpaid worker as preferable to life on the streets".⁵¹⁸ The defendants were convicted of holding another person in slavery or servitude or requiring them to perform forced or compulsory labour.

3.3.6.2 *Returning to an abusive employer*

At first glance, behaviour by which an alleged victim returns to an abusive employer may be considered to impugn his credibility, under the assumption that if a heinous crime was committed against him, he would not have seemingly voluntarily returned to the same situation. However, in trafficking in persons cases worldwide, where this behaviour has occurred it has not necessarily led to exonerations of defendants. The following cases yielded convictions even in the face of such victim behaviour. The courts' reasoning in these cases is instructive.

In *Khan (United Kingdom)*,⁵¹⁹ the Attorney General appealed the defendants' sentences as being unduly lenient for convictions of conspiracy to traffic persons for the purpose of exploitation. The defendants owned a restaurant in the United Kingdom and recruited nine men from the Middle East and the Indian subcontinent to work for them. Although the

⁵¹⁵ For a fuller description of this case, see section 3.3.1 on "Victim's freedom to come and go".

⁵¹⁶ Previously cited.

⁵¹⁷ Previously cited. For detailed facts, see the in-depth analysis in section 5.11 of the Case Digest.

⁵¹⁸ *Ibid.* at para 39.

⁵¹⁹ *R. v. Khan* [2010], EWCA Crim. 2880. The case is available at <http://www.bailii.org/ew/cases/EWCA/Crim/2010/2880.html>.

working conditions were poor and the victims were verbally abused, the victims returned to the abusive situation after having been permitted to return home. Despite this, the court affirmed the convictions. In doing so, the court addressed both the victims' explanation and the subtext running underneath it, thus:

"They said they were promised that their working conditions would be improved and the offenders' behaviour towards them would change. They were led to believe that they were valued employees ... The unspoken but clear explanation for the workers' preparedness to return to the risk of further subjection and helplessness was the contrast between the economic circumstances of the families they left behind and even the degraded expectation of a job in the UK. They would need to borrow money to fund their return to the UK and, in the process, be driven further into dependence upon the goodwill of the offenders."

R. v. Khan [2010], EWCA Crim. 2880, at para. 18.

Another example of victims returning to an abusive employer occurred in the *Farrell (United States)*⁵²⁰ case. In this case, the defendants were convicted of peonage, document servitude and other related charges for bringing in nine Filipino workers to work as housekeepers in a hotel owned by the defendants and employing them under abusive conditions which included debt bondage. At one point, the victims returned to the Philippines but thereafter they returned to the United States to work for the defendants once again. The defendants were convicted nonetheless. The following is the explanation of the appeals court when affirming the defendants' convictions:

"The fact that the workers left the country and then returned does not automatically make their employment voluntary. . . the workers would not have been able to pay their debt by working in the Philippines, and they believed that the [defendants] would physically harm them if they failed to pay. Thus a reasonable jury could conclude that the workers believed they had no choice but to return to United States [sic] and did not do so voluntarily."

U.S. v. Farrell, 563 F.3d 364 (2009).

In *Urizar (Canada)*,⁵²¹ the victim escaped many times, and then returned after the defendant pressured her to do so. The court did not make an explicit finding about this cycle of escape and return to the defendant in its credibility analysis, but it was mentioned as part of the facts of the case. The defendant was convicted of trafficking and other crimes.

See also *ECLI:NL:RBROE:2010:BO4108 (Netherlands)*,⁵²² in which foreign workers without work permits were recruited to the Netherlands to work on a mushroom plantation for very little pay. While they were free to return to Poland, the defendant only fully paid them when they returned from Poland to his farm. Thus, the defendant used the salary owing to them as a guarantee of their return. The defendant was convicted of human trafficking and exploitation.

See also *I. (Austria)*,⁵²³ where the defendant was convicted of human trafficking under aggravating circumstances and other charges. Though one of the victims returned to the

⁵²⁰ Previously cited. For detailed facts, see the in-depth analysis in section 5.4 of the Case Digest.

⁵²¹ Previously cited. For detailed facts, see the in-depth analysis in section 5.2 of the Case Digest.

⁵²² Previously cited.

⁵²³ Previously cited.

defendant, the court did not impugn her credibility on that basis but rather found an explanation in that she feared that he would act on his threats to kill her child and burn down her house back home.

Once again, the reasoning of the courts reveals that they do not tend to automatically discount a victim's credibility on the basis of his return to an abusive situation. They rather look at the totality of the surrounding circumstances in an effort to understand the pressures experienced by the victims, even if these are not supported by physical force.

3.3.6.3 Previous voluntary prostitution

In some cases, evidence is introduced by which alleged victims of trafficking voluntarily engaged in prostitution before they were trafficked. This is an attempt to prove that what is alleged as trafficking is really nothing more than voluntary prostitution to which the alleged victims consented. To counter this, certain national legislation⁵²⁴ explicitly considers any evidence which bears on the former voluntary prostitution of alleged victims of trafficking irrelevant. In addition, as the cases cited below demonstrate, courts from jurisdictions which do not have explicit provisions in their law have also come to the same conclusion.

There are a number of such cases from the United States of America.⁵²⁵ In *Cephus (United States)*,⁵²⁶ the court ruled that it would have been irrelevant to allow the defendants to cross-examine an alleged victim about her former voluntary prostitution. The defendants had been convicted of a variety of offences, including sex trafficking by force, fraud or coercion. The court, on appeal, explained its ruling thus:

“But the testimony sought to be elicited by the cross-examination would have been irrelevant. Even if no promises were made to [the victim], this would not be evidence that she consented to be beaten and to receive no share of the fees paid by the johns she serviced. And even if she knew going in, from her prior experience, that [the defendant] probably would beat her, it was still a crime for him to do so. And finally the fact that she'd been a prostitute before does not suggest that he didn't beat and threaten her—that was his modus operandi and there's no evidence that he would have made an exception for [the victim].”

U.S. v. Cephus, 2012, WL 2609316 (C.A.7 (Ind.)), 6 July 2012, United States Court of Appeals, Seventh Circuit, United States of America, para. 4.

The inadmissibility of this evidence [that is previous voluntary prostitution] was confirmed in *Roy (United States)*.⁵²⁷ The defendant appealed a conviction of sex trafficking through force, fraud, or coercion by contending that the lower court should have admitted evidence

⁵²⁴ See Philippines, An Act to Institute Policies to Eliminate Trafficking in Persons, Especially Women and Children, Republic Act 10364, 2012, section 17-B: “The past sexual behaviour or the sexual predisposition of a trafficked person shall be considered inadmissible in evidence for the purpose of proving consent of the victim to engage in sexual behaviour, or to prove the predisposition, sexual or otherwise of a trafficked person.”

⁵²⁵ It is to be noted that Rule 412 of the Federal Rules of Evidence of the United States of America limits the relevance of this type of evidence.

⁵²⁶ *U.S. v. Cephus*, 2012, WL 2609316 (C.A.7 (Ind.)), 6 July 2012, United States Court of Appeals, Seventh Circuit, United States of America. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. USA130).

⁵²⁷ *U.S. v. Roy*, 2013, WL 5673419 (E.D. Ark.), 15 October 2013, District Court for the Eastern District of Arkansas, United States of America. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. USA149).

that the victim had engaged in prostitution before and after he exploited her. The court, citing *Cephus*, found that this evidence was inadmissible.

In *Maksimenko (United States)*,⁵²⁸ a case involving the forced labour of multiple women as exotic dancers in a Detroit strip club, the government successfully motioned to limit evidence of the former sexual behaviour of the victims who testified. The court agreed to do so, stating that:

“[a]bsent a showing of relevance, inquiry into either woman’s sexual history with persons other than Defendant is expressly prohibited under [United States federal evidentiary rules]. And, it would be particularly appropriate to prohibit Defendant from making extended inquiry into each woman’s profession to establish implied consent since they were compelled by Defendant to work as strip club dancers and, per the Government, to engage in sexual behaviour on stage and in private rooms.”

U.S. v. Maksimenko, 2007, U.S. Dist. LEXIS 10056; 2007 WL 522708, 8 March 2006, District Court for the Eastern District of Michigan, at. 7.

In *McIvor and Tanuchit (Australia)*,⁵²⁹ Thai women brought to Australia to engage in prostitution had previously been prostitutes in Thailand. This fact did not prevent a conviction on charges of slavery. The same holds true of *Wei Tang (Australia)*.⁵³⁰

In a sexual exploitation case *Laojindamane (Fiji)*,⁵³¹ in its instructions to assessors the court mentioned that:

“before I leave the evidence of the two girls, there is just one thing I should mention. Three of the counsel for the defence suggested to the girls that they worked for a strip club and that they sold themselves for money and that they had travelled overseas for sex before. There was no evidence produced to establish that and therefore the girls should never have been asked those questions. I ask you to put from your mind those suggestions made by counsel. It is prejudicial evidence that should never have been raised.”

The State v. Phanat Laojindamane and others, Criminal Case No. HAC323 of 2012, the High Court of Fiji at Suva, 13 December 2012, Fiji.

See also *I. (Austria)*, in which a victim had voluntarily engaged in prostitution in Bulgaria before arriving in Austria and had agreed to be a prostitute in Austria. Nevertheless, the Court convicted the defendant of human trafficking under aggravating circumstances. The court noted that the victim had acted under the impression that she would receive 50 per cent of her earnings, whereas in reality this was not the case.

⁵²⁸ *U.S. v. Maksimenko*, 2007, U.S. Dist. LEXIS 10056; 2007 WL 522708, 8 March 2006, District Court for the Eastern District of Michigan, United States of America. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. USA022).

⁵²⁹ *R. v. McIvor and Tanuchit*, 2010, NSWDC 310, 28 October 2009, New South Wales Criminal Court of Appeal, Australia. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. AUS014).

⁵³⁰ Previously cited.

⁵³¹ Previously cited.

3.3.6.4 *The naïve or negligent victim*

In some cases, victims may seem naïve, gullible or even negligent. Sometimes the naiveté or negligence may lead courts to impugn the victim's credibility. However, as seen in the case of other forms of victim behaviour, courts tend to explore the totality of the circumstances in order to assess the significance of this form of victim behaviour.

In *Grigore (Germany)*,⁵³² for example, the victim was a former victim of trafficking. However, even though, on the basis of her former experience, she initially suspected that she might again be subjected to sexual exploitation, she finally believed the defendant after her uncle convinced her that this time she need not worry. Once again, she was subjected to sexual exploitation. Though one could argue that she should have known better, the court still convicted the defendant.

Another example of seemingly “negligent” victims can be found in *K.P4105 (Serbia)*.⁵³³ The victims, two young Ukrainian women, were promised jobs in Germany. They initially did not believe the offer and asked whether prostitution was involved. However, the defendants assured them that the jobs only involved exotic dancing and childcare. In doing so, the defendants successfully deceived the victims and brought them to Serbia. The defendants then planned to take the victims to Italy and sell them for sexual exploitation. The victims were rescued in Serbia before the exploitation took place. The defendants were convicted of trafficking in human beings, though one could argue that their initial suspicions and subsequent recruitment, nonetheless, displayed negligence or extreme naiveté.

In *LB-2012-63028 (Norway)*,⁵³⁴ the defendants interviewed some 50 women in the Philippines for a job performing au pair work in Norway. They then exchanged a series of e-mails and chats with the victims over an extended period of time, most of which were conducted by the male defendant. In the first e-mails, in which rapport and trust were built with the victims, there was no mention or even hint that sexual services would be required. The e-mails asked about the victims' families and how the victims supported themselves. After a while, the victims were asked by the male defendant to send pictures of themselves. Eventually, during the course of subsequent chats and e-mails, it was made increasingly clear by the male defendant that sexual services would be required. Nevertheless, the victims agreed to come to Norway. The first victim arrived six months earlier than the second and was required to have sexual relations with the defendant. The victim testified that although she knew this would happen, she had hoped it would not. The second victim, who arrived six months later, refused to engage in sexual relations. The defendants were convicted of human trafficking, though one could argue that their behaviour displayed negligence or naiveté.

Though these cases did not explicitly address victim negligence or naiveté as a consideration in evaluating credibility, the fact that the courts convicted despite it, is indicative that it did not influence their final decisions.

3.3.6.5 *Illegal acts committed in the course of trafficking*

Sometimes, in the course of the trafficking experience, victims of human trafficking commit crimes. This can be seen in cases all over the world and may seemingly lead courts to impugn the credibility of such victims. However, in various cases worldwide courts have convicted

⁵³² Previously cited. For detailed facts, see the in-depth analysis in section 5.10 of the Case Digest.

⁵³³ Previously cited.

⁵³⁴ Previously cited.

the defendants nonetheless. One common form of illegality is use of false or fraudulent passports or visas. For example, in *Anos (Philippines)*,⁵³⁵ the victims travelled to Malaysia with fake passports; in *Wei Tang (Australia)*,⁵³⁶ the Thai victims travelled to Australia on tourist visas that had been obtained without disclosing the true purpose of their travel and thus were in Australia illegally. Indeed, the facts of the case mention that three of the women participated in the subterfuge to obtain these visas, though the extent of the subterfuge is not clear. In *Ho and Anor (Australia)*,⁵³⁷ the victims came to Australia from Thailand knowingly using false documentation. In all these cases, despite the illegalities committed by the victims, the defendants were convicted of trafficking or allied crimes.

Another common example of illegality is illegal stay in the country of destination. This transpired, for example, in *Siliadin (European Court of Human Rights)*.⁵³⁸ Despite the fact that the victim's immigration status was never normalized by the defendants, this did not affect her credibility in court. Furthermore, the way in which victims are exploited can be illegal in itself: victims may be forced to commit crimes related to illegal drugs;⁵³⁹ steal for their trafficker;⁵⁴⁰ be forced to prostitute themselves in jurisdictions where prostitution is illegal; or be required to beg where begging is a criminal offence. In these cases too, convictions may be attained.

An example of a case in which the court did not find the credibility of the victim undermined by the fact that she was involved in stealing, is a Dutch case revolving around a young Albanian victim who was sold by her parents to the defendant with whom she lived under slave-like conditions of exploitation in the household. As part of her exploitation, the victim was also forced to commit several thefts. The victim testified at trial and the defendant countered this testimony with the argument that the victim's testimony was not credible because she had committed thefts. He submitted a love letter as an exhibit in which the victim wrote that she had committed the thefts voluntarily. The judge did not believe the defendant and found that the letter had been written under coercion and that the defendant had forced his victim to commit the thefts in order to undermine the credibility of her future testimony against him. The defendant was convicted of human trafficking. Both the appeals court and the Supreme Court upheld the earlier judgment.⁵⁴¹

In addition to committing illegal acts closely related to their own exploitation, in some cases trafficking victims may commit illegal acts because they become traffickers themselves who actively participate in exploiting others.⁵⁴² This Case Digest addresses illegal behaviour on the part of victims in a limited way, as far as this behaviour may be seen to impugn their

⁵³⁵ Previously cited. For detailed facts, see the in-depth analysis in section 5.6 of the Case Digest.

⁵³⁶ Previously cited. For detailed facts, see the in-depth analysis in section 5.3 of the Case Digest.

⁵³⁷ Previously cited.

⁵³⁸ Previously cited. For detailed facts, see the in-depth analysis in section 5.9 of the Case Digest.

⁵³⁹ *R. v. L. and others* [2013] EWCA Crim. 991, United Kingdom, in which the drugs convictions of three trafficking victims on drugs charges were quashed in view of new information on their status as victims of trafficking.

⁵⁴⁰ See *ECLI:NL:RBMNE:2013:2679*, Netherlands, previously cited, revolving around a grandfather who engaged his 10 year old granddaughter in shoplifting.

⁵⁴¹ The full case was not available but is cited in Dutch National Rapporteur on Trafficking in Human Beings, Trafficking in human beings, Seventh Report of the Dutch National Rapporteur (2010), p. 248 as cited in OSCE, Office of the Special Representative and Co-ordinator, Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking for Combating Trafficking in Human Beings. Information on the case was supplied by an expert from the Netherlands.

⁵⁴² See, for example, *Garcia et al*, 6 March 2008, Criminal Appellate Court of the Supreme Court of Justice, Colombia. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. COL005); *Grigore* (Germany) previously cited; *R. v. D.S.* [2005] VSCA 99, Australia. This case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No: AUS009). While these cases attest to the fact that sometimes former victims of trafficking become active traffickers, they do not address courts' evaluation of the credibility of such former victims in trials against their traffickers. Thus, their utility is limited to highlighting the existence of the phenomenon.

credibility or not. The broader subject of criminalization versus non-criminalization of trafficking victims is not addressed here. This is a particularly complex subject⁵⁴³ which is linked to many theoretical and practical issues, leading to a variety of approaches on the part of States. This subject goes beyond the scope of this Case Digest and could possibly be addressed by a future Case Digest. However, it should be noted that, the specific circumstances of the case permitting, adopting an approach of non-criminalization of victims of trafficking in persons may impact upon evidence in several ways. Firstly, it may encourage victims to self-identify; secondly, it may encourage victims to testify; and finally, it may impact upon the quality of a victim's evidence, under the assumption that the safer a victim feels, the better his or her testimony is likely to be.

3.3.6.6 *Individual behaviour: different victims may behave differently*

Victims of trafficking can react in different ways to crimes committed against them. This can raise questions as to the credibility of those who behaved differently than did similarly situated victims. In section 2.2.1.4 on “Weaknesses in victim testimony/individual emotional reactions” we addressed individual behaviour of victims in the context of the criminal justice process, whereas in this section we address such behaviour in the course of the trafficking crime. The following cases provide some examples of situations in which differing behaviour of various victims in the course of the crime, did not prevent convictions on trafficking or allied crimes.

Thus, in *LB-2012-63028 (Norway)*,⁵⁴⁴ two victims reacted differently to the expectations of the defendant that they engage in sexual relations with him. While one did so, despite her reluctance, the other refused, though she had understood that this would be required of her. The defendants were convicted of trafficking.

Another case in which victims displayed disparate reactions to the same kind of exploitation is *Connors (United Kingdom)*,⁵⁴⁵ where some victims fled whereas others did not. The defendants were convicted of conspiracy to require a person to perform forced or compulsory labour.⁵⁴⁶

One practitioner stressed that victims come in “many shapes and sizes” and that we should not allow our preconceived view of what a victim looks and sounds like to influence our assessment of his or her credibility.

3.3.6.7 *Seemingly irrational beliefs*

Sometimes victims believe traffickers' irrational and patently false assertions, even though a seemingly “reasonable person” would tend to reject or doubt them. Sometimes this can lead

⁵⁴³ Among the questions which arise are: do other criminal defences present in national laws suffice without enacting a specific provision? And should such a provision entail non-criminalization or only non-punishment? For some more guidance see the relevant chapter on non-criminalization in UNODC's human trafficking tool kit http://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_6-1.pdf; as well as the UNODC Model Law against Trafficking in Persons (2009) (Art. 10). See also: Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, OSCE, 2013 “Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking”.

⁵⁴⁴ Previously cited.

⁵⁴⁵ Previously cited. For detailed facts, see the in-depth analysis in section 5.11 of the Case Digest.

⁵⁴⁶ See also *Mussry (United States)*, previously cited, where the court found that the allegations in the indictment, if proven true, would support the coercion necessary to uphold charges of peonage and involuntary servitude, this despite the fact that some of the persons similarly situated to the victims had successfully escaped whereas the victims did not.

courts to doubt victims' credibility and hesitate before convicting the alleged trafficker of such a serious crime. Please note that the word "seemingly" is used here to express the fact that an assessment of what is irrational and what is rational may depend on the eye of the beholder and require a subjective assessment of the beliefs of the victim, particularly where cultural or religious beliefs are involved. It should be noted that in many of these cases the use of irrational, untrue statements or threats by traffickers may be related to their abuse of the victim's position of vulnerability.⁵⁴⁷

Exoneration in a case including irrational beliefs

In one such case, ***A.G.G.R. (Israel)***,⁵⁴⁸ the alleged victims' belief in the defendant's threat that he could cause them harm by dint of his supernatural powers contributed to his exoneration. The court could not understand how Israeli citizens from normative backgrounds could believe the defendant's representations about his powers and this contributed to his exoneration from the offence of holding a person under conditions of slavery, though he was convicted of a series of sexual offences.

Convictions in cases including irrational beliefs

However, the following cases of trafficking in persons illustrate a range of situations where, despite victims' seemingly unreasonable beliefs, the courts, on the contrary, accepted these beliefs as an element contributing to the traffickers' criminal conduct and thus, supporting their convictions. Such "seemingly" irrational beliefs may, for example, be a function of the fact that a victim, not native to the country of destination, feels insecure and is consequently easily deceived as a result of his or her unfamiliarity with his environment, or where his vulnerability is deliberately abused by the trafficker⁵⁴⁹ on account of his religious convictions, superstitions or cultural beliefs, such as a belief in witchcraft.

The following are cases in which the victims, who were not native to the country where they were exploited, were threatened that if they left the premises, they would be killed, tortured or deported, though a belief in this threat seems irrational to anyone familiar with the law enforcement situation in the countries in question (United States of America and Germany). In the first case, ***Alzanki (United States)***,⁵⁵⁰ the defendants threatened the victim, who was from Sri Lanka, that the United States police would shoot her on sight if she left the house. Despite the "seeming" irrationality of the threat, the court viewed the witness as credible nonetheless, including her account of the threat. The defendant was found guilty of holding a household employee in involuntary servitude.

In the second case, ***(215) 3 St Js 723/05 (20/07) (Germany)***,⁵⁵¹ the Ethiopian victim was threatened that if she left the premises she would be deported, beaten, tortured or killed by the racist German authorities. The court mentioned this as one method of control employed by the defendants. The defendants were convicted of human trafficking for labour exploitation

⁵⁴⁷ See UNODC Issue Paper on "Abuse of a position of vulnerability and other 'means' within the definition of trafficking in persons", 2012.

⁵⁴⁸ Previously cited. For a more detailed description of the case, see section 3.2.2 on "Threats/seemingly unreasonable threats".

⁵⁴⁹ See UNODC Issue Paper on Abuse of a position of vulnerability previously cited.

⁵⁵⁰ *U.S. v. Alzanki*, 54 F.3d 994 (1st Cir. 1995), United States of America.

⁵⁵¹ *Case (215) 3 St Js 723/05 (20/07)* in the District Court of Tiergarten Berlin (20 February 2008), Germany. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. DEU005).

Other cases of irrational threats relate to the use of “juju”⁵⁵² (a form of witchcraft) to threaten victims who believe in it. This is an example of situations where the irrationality is in the eyes of the beholder, as “juju” is a cultural belief among all strata of Nigerian society⁵⁵³ and as such, not considered to be irrational there as the case might be in other countries.

Thus, in the case of *Afolabi (United States)*,⁵⁵⁴ the defendant used “juju” to threaten and intimidate the Nigerian victims as part of the forced labour or trafficking process. The defendant was convicted of forced labour, trafficking with respect to forced labour and other related crimes. Similar cases which include threats made on the basis of juju rituals are: *Omoruyi (Nigeria)*,⁵⁵⁵ *Okoya (Nigeria)*⁵⁵⁶ and *Anthony Harrison (United Kingdom)*.⁵⁵⁷ See also a series of cases from the Netherlands with convictions on trafficking in persons where “juju” was used in this way: *ECLI:NL:GHARN:2012:BV8582 (Netherlands)*,⁵⁵⁸ *ECLI:NL:HR:2014:477 (Netherlands)*⁵⁵⁹ and *ECLI:NL:RBGRO:2000:AA8975 (Netherlands)*.⁵⁶⁰ In none of these cases did the victims’ belief in “juju” render them non-credible in the eyes of the courts.⁵⁶¹

On the subject of unreasonable threats, see section 3.2.2 on “Threats/seemingly unreasonable threats” for more detail.

In a Thai case⁵⁶² investigated by police as a trafficking in persons case, a victim rescued from a brothel in South Africa and returned to Thailand related that she had been recommended by a woman in Thailand to meet another woman to arrange for her to work in the United States where the woman claimed that she herself had worked in a restaurant for a good salary. However, after meeting the alleged trafficker, the victim was given a ticket to South Africa and told that the United States and South Africa have a common border—a seemingly ridiculous claim. The victim was seen as credible by police in view of her vulnerability, clearly revealed by her lack of basic education, which led her to be easily deceived. However, since she knew only the nicknames of both alleged traffickers but no other details, the police could not identify and locate them, for which reason arrest warrants were not issued.

Another case which relies on purportedly cultural practices, as do the cases revolving around “juju”, is *Jumale and Zakaria (United Kingdom)*.⁵⁶³ One defendant told the child that it was part of his culture for a girlfriend to have sex with their boyfriends’ friends and family.

⁵⁵² See explanation of “juju” and additional cases in section 2.1.1.3 on “Telling the story like the peeling of an onion” and section 2.6 on “Expert or professional testimony”.

⁵⁵³ This information was supplied by a Nigerian expert.

⁵⁵⁴ Previously cited.

⁵⁵⁵ Previously cited. For detailed facts, see the in-depth analysis in section 5.5 of the Case Digest.

⁵⁵⁶ Previously cited.

⁵⁵⁷ Previously cited.

⁵⁵⁸ Arnhem Court of Appeal, 12 March 2012, *ECLI:NL:GHARN:2012:BV8582*, Netherlands.

⁵⁵⁹ Supreme Court 4 March 2014, *ECLI:NL:HR:2014:477*, Netherlands. It is to be noted that this case and the previous case concern the same large scale investigation which included 40 victims. The Supreme Court addressed only a point of law—the method of obtaining the statements of the victims.

⁵⁶⁰ Groningen District Court, 12 December 2000, *ECLI:NL:RBGRO:2000:AA8975*, Netherlands. Information on this case was supplied by an expert from the Netherlands.

⁵⁶¹ For more information on the use of “juju”, see Leman and Janssens, “Creative Adaptive Criminal Entrepreneurs from Africa and Human Trafficking in Belgium: Case Studies of Traffickers from Nigeria and Morocco”, *International Journal of Criminology and Sociology*, 2013, 2, 153-162. Information about this article was supplied by an expert from the Netherlands.

⁵⁶² Even though this case never reached trial and was reported to UNODC by the Thai participant to the Expert Group Meeting on the Digest, it was decided to include it as it reflects a pattern present worldwide.

⁵⁶³ Reported as Attorney General’s Reference No. 126 of 2014 [2015], EWCA Crim. 128, para. 7.

Though this is a seemingly irrational statement, the victim’s belief in it did not prevent a conviction of trafficking a child for sexual exploitation and related offences.

Note that in these cases, vulnerabilities such as unfamiliarity with the country of destination, lack of education or young age were part of the facts. (For further information on these vulnerabilities see sections 3.2.5.6 on “Unfamiliarity with language and/or culture”; 3.2.5.7 on “Lack of education or little education”; and 3.2.5.3 on “Age”.)

3.3.6.8 *Cultural explanations for victim behaviour*

As can be seen in the section above, a particularly important kind of explanation of victim behaviour relies on the culture of origin of victims. See section 3.2.16 which details various forms of cultural beliefs and practices which can impact on victim behaviour such as delays in complaints, voluntarily giving up passports and not fleeing when given the opportunity to do so. Also see sections 2.2.1.3 on “Telling the Story like the Peeling of an Onion”; 2.6 in regard to anthropological or cultural testimony; 3.2.2 on seemingly unreasonable threats; 3.3.6.7 on “Seemingly Irrational Beliefs”.

Looking more closely at victim’s behaviour

Below are some forms of victim’s behaviour, during the course of trafficking crimes, that at first glance may weaken human trafficking charges against the defendant:

- Failure to escape or seek help
- Returning to an abusive employer
- Previous voluntary prostitution
- Displaying naïve or even negligent behaviour
- Committing illegal acts in the course of trafficking
- Behaving differently from other victims
- Seemingly irrational beliefs

As a rule courts do not exonerate automatically on the basis of such victim behaviour, but rather explore the totality of circumstances to gauge its significance.

Sometimes, the court may come to conclusions that, at first glance, may seem counterintuitive, thus:

- The failure to escape or seek help may actually support a picture of exploitation rather than negate it, in that the victim may be so helpless and dependent that he/she is too paralyzed to act.
- Certain forms of behaviour may be explained by the cultural factors in the victim’s background: for example, he may be too ashamed to report the crime or may accede to the trafficker’s demands due to codes of honour or belief.
- Other arguments, such as previous voluntary prostitution, may be deemed irrelevant to assessing the case before the court, and as an attempt by the defence to divert the court’s attention from the actual exploitation that the victim was subjected to.

4. Particularly difficult evidential challenges

4.1 Introduction

In human trafficking cases there are particularly difficult evidential challenges revolving around elements of the crime which require specific attention by criminal justice practitioners building a case. These transcend the strictly evidential problems discussed above.

Firstly, trafficking in persons may be carried out by an organized criminal group involving a chain of traffickers, such as local agents, recruiters, transporters and the actual “exploiters”.⁵⁶⁴ It may be particularly challenging to prove that the actors involved in the “pre-exploitation” phase knew that the victim was going to be exploited and thus to secure their convictions.

Secondly, according to the Trafficking in Persons Protocol, actual exploitation does not have to occur for the crime of trafficking to take place. It is sufficient to prove that the defendant intended, through the use of ACTS accomplished through particular MEANS, to subject the victim to exploitation. However, in cases where a victim was never exploited, it can be difficult to prove trafficking.

Thirdly, the Trafficking in Persons Protocol states that consent of the victim to the intended exploitation is irrelevant when any of the MEANS have been used. However, despite this statement which recurs in various national legislation or case law, it appears that the consent of victims is often highly relevant in practice.⁵⁶⁵ The issue of consent can play a vital role in victim identification, as well as affecting the victim’s credibility during the trial.

4.2 How to prove the chain of trafficking?

Often, trafficking in persons is committed in the context of an organized crime network. The close connection between trafficking and organized crime is reflected in the fact that the

⁵⁶⁴ See National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children (2014). *Trafficking in Human Beings: Visible and Invisible II. Summary of the quantitative report 2008-2012*. The Hague: National Rapporteur, pp. 16-17 according to which human traffickers seldom commit their offences alone which makes it important to endeavour to apprehend other links in the network. It was found, for example, that in 38 per cent of the 77 investigations studied, the National Police, the Royal Dutch Marechaussee and the Inspectorate of the Ministry of Social Affairs and Employment had uncovered “criminal cooperatives” comprising more than two members.

⁵⁶⁵ This was also one of the major findings of the UNODC Issue Paper on the Role of “consent” in the Trafficking in Persons Protocol (2014). https://www.unodc.org/documents/human-trafficking/2014/UNODC_2014_Issue_Paper_Consent.pdf

Trafficking in Persons Protocol supplements the United Nations Convention against Transnational Organized Crime and draws on the mother Convention in many ways. Thus, it is no surprise that many trafficking cases include networks of criminals. These cases present particular evidential problems.

It is beyond the scope of this Case Digest to address in detail all, or even most, of the challenges of cases involving organized crime groups. In view of the complexity of this topic, we hope to address it in a future Case Digest. However, in view of its importance we chose to touch upon various specific evidential issues which crop up when trafficking involves a chain of actors.

While it may be relatively easy to prove that the “end exploiter” acted with criminal intent, it can be more difficult to prove that actors in the chain preceding the exploitation (e.g., the recruiter or transporter) knew that the victim was going to be exploited and, as such, are part of the chain of trafficking. Additional problems arise when some of the alleged perpetrators are, in themselves, vulnerable people. Cases with transnational actors can be even more complex, sometimes necessitating cooperation among countries of origin, transit and destination.

The following cases illustrate some of the specific problems posed by these questions.

Case No. 8959—2012 (Egypt)⁵⁶⁶ reflects a complicated chain of trafficking. A criminal organization colluded to arrange false marriages between young girls in dire economic straits, some of whom were minors, and men from the Gulf States. The false marriages were a tool to prevail upon the girls and their parents to allow the girls to give sexual services to these men. In addition to this basic deception, there were others used to support it. One defendant pretended to be a lawyer, which enabled him to issue false marriage certificates. Yet another defendant was responsible for constructing an artificial hymen for the victims so that they could appear to be virgins. This was done in order to be able to charge higher fees and enable the girls to be re-married. Two of these defendants prepared two private apartments for the purpose of prostitution. The case also included four defendants who were men from the Gulf States who desired to engage in sexual relations with the young women. Another three defendants were the parents of victims who facilitated the prostitution of their daughters in return for financial gain, and took them to the apartments used as brothels to offer them to the other defendants.

The trial criminal court convicted the professional criminals (who had colluded at recruiting the girls, arranging the apartments, preparing the false marriage contracts and constructing artificial hymens) of trafficking in women for the purpose of prostitution in exchange for financial awards. They exonerated the parents of the girls and the men from the Gulf States who engaged in the sexual relations.

Throughout the case, the trial court stressed the knowledge of all actors in the chain of trafficking regarding the scheme, as this was the condition for convicting them. In this regard, the fact that the third defendant had 95 unofficial marriage contracts in his home pointed to his guilty knowledge. Moreover, those defendants who, by their own admission, knew of the actions of the fourth defendant—who was responsible for constructing an artificial hymen for the victims—demonstrated by this their intent to exploit the victims. On the other hand, in acquitting the clients the court relied on a document provided by a Gulf Embassy by

⁵⁶⁶ Previously cited. For detailed facts, see the in-depth analysis in section 5.8 of the Case Digest.

which at least one client had official permission allowing him to marry in Egypt, which served to prove his innocence. This court also acquitted the parents of the victims, apparently in view of their testimony by which they were persuaded that the girls would be married and on the basis of their difficult financial situation which was exploited by the network. The trial court, accordingly, considered that this fact negated the special intent required in trafficking crimes. The trial court also based its exoneration of the parents on the assumption that no parent would allow his or her daughter to be exploited in prostitution.

The court of cassation confirmed the acquittal of the clients on the basis of the document submitted by the Embassy, which being issued before the initiation of criminal proceedings, proved that the clients had no criminal intent. However, it ordered a retrial in respect to the other defendants because the evidence should have produced a unified conviction or acquittal, both of professional criminals and parents alike. In deciding this, the court noted that the number of sham marriages could point to the parents' guilty knowledge.

This complex case illustrates the difficulties in addressing a multiplicity of defendants whose criminal intent must be proven. It also reflects the heightened difficulties present when family members of victims participate in the trafficking process. In these cases, it is particularly difficult to decide if the family should be convicted as perpetrators or seen as quasi victims whose vulnerabilities are being exploited. While the trial court apparently accepted the parents' claim that they did not know the marriages were a sham, the court of cassation, in the wake of a challenge by the public prosecution, expressed a doubt about this in view of the fact that the victims were exploited several times. For example, the court noted that one of the parents knew that his daughter had been engaged in three sham marriages.

Another case which includes a chain of trafficking, this time in a transnational context, is *Laojindamane (Fiji)*.⁵⁶⁷ The case revolved around the question of the guilty knowledge of the chain of actors. There were two men (one Thai and one a Hong Kong national) who accompanied young Thai women from Thailand via Hong Kong to Fiji, where they were told they would be masseurs. Once in Fiji, the girls discovered that they were expected to provide sexual services. Among the defendants were those who had brought them to Fiji and, in addition, a Chinese Fijian who served as a driver and escort and another Chinese Fijian who appeared to be in control of the "business". It also appears from the court documents that there was a Hong Kong businessman based in Bangkok who was the leader of the trafficking network, but he was not a defendant in this case.

During the trial, the Thai defendant claimed that he only came to Fiji to find a job and that he first met the victims on the plane from Thailand to Hong Kong. The court noted that there was evidence⁵⁶⁸ to prove that the Thai defendant planned the transportation of the girls together with the Hong Kong defendant, and that he accompanied them, along with the Hong Kong defendant, to Fiji. Both defendants then claimed that they were but "unsophisticated players with no previous criminal history and they were unwittingly caught in this net of international trafficking".⁵⁶⁹ The court noted that both defendants performed acts to facilitate or otherwise assist in trafficking, thus:

⁵⁶⁷ Previously cited.

⁵⁶⁸ The court documents do not reveal what kinds of evidence were used in the case, but it appears that the Court meant the victims' testimonies.

⁵⁶⁹ *Ibid.* para 27, sentencing decision.

“[...] neither the first or second accused could have been as unwitting of the circumstances as they claim to be.

The criminal enterprise had all the hallmarks of international organized crime as the State submit in their very comprehensive and helpful submissions: “It is apparent that [the 1st accused and the 2nd accused] were responsible for representing and protecting the interests of an organized crime boss out of Bangkok, Thailand.”

The State v. Phanat Laojindamane and others, Criminal Case No. HAC323 of 2012, the High Court of Fiji at Suva, 13 December 2012, Fiji, para. 14 of the Sentencing decision.

Both the Thai and Hong Kong defendants were convicted of human trafficking.

The third defendant, the Chinese Fijian escort, was convicted of domestic trafficking in that he was involved in facilitating the transport of the victims to their destination and in driving them to and from their clients. The fourth defendant was, according to the victims’ testimonies, the “boss in Fiji” and was convicted of two counts of sexual servitude. The court noted that:

“The fact that it was an organized crime enterprise was apparent throughout the trial with references to persons in Thailand, China and Fiji who were involved in the project. There was evidence that the fourth accused had made a claim that he was the “mafia boss in Fiji” and he is to be regarded then as a pinnacle of the organization putting this operation into effect.”

The State v. Phanat Laojindamane and others, Criminal Case No. HAC323 of 2012, the High Court of Fiji at Suva, 13 December 2012, Fiji, para. 45 of the Sentencing decision.

A number of cases stress the importance of convicting each link in the chain of human trafficking, from key figures to “small fry”.

For example, in an Israeli case, *Burnstein (Israel)*,⁵⁷⁰ the defendant worked as a broker between a brothel owner (who was a covert police agent) and persons who were “selling” two women for prostitution. Although the transactions did not materialize, and the defendant did not receive any benefits for brokering, he was still convicted of trafficking in persons for the purpose of prostitution. In considering whether the defendant’s actions amounted to trafficking in persons, the court emphasized the importance of interpreting the trafficking provision in the Criminal Law according to its purpose. The court held that the provision aimed at protecting fundamental human rights and should be interpreted broadly so as to encompass every link in the chain which supported and facilitated trafficking in persons, including the broker.

In another Israeli case, *Saban (Israel)*,⁵⁷¹ a large network was involved in trafficking women for prostitution. The case concerned trafficking extending over a period of nine years, whereby young women from former Soviet Union Republics were trafficked to Israel and Cyprus. The women were held under difficult conditions, including forced prostitution by some of them; imprisonment; being forced to give up a large part of their earnings to the defendants; subject

⁵⁷⁰ *Burnstein v State of Israel*, 23 February 2005, Supreme Court, Israel. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. ISR010).

⁵⁷¹ Criminal Case 1016-09, *State of Israel v. Saban et al* (12/1/2012), appealed in Criminal Appeals 4031, 4881, 4916, 4920, 4945/12, *Saban et al v. State of Israel*, Israel.

to constant supervision and control by the defendants, including by means of threats and acts of violence.

The defendants played different roles in the trafficking operation, including the head of the operation, driver, bookkeeper, etc. Several members of the network, namely the driver, the “pimp” and the brothel keeper, claimed that they were involved only in “technical” aspects of the operation and did not know that the women were trafficked. Yet they were convicted of human trafficking. The court examined their statements and found various inconsistencies and contradictions, including in comparison to the victims’ testimonies. The court also relied on wiretapping and recorded meetings with a perpetrator who turned State’s evidence, and demonstrated the defendants’ knowledge of the trafficking operation. The court concluded that the defendants were all part of the trafficking operation.

The case presented special problems in that it was exceptionally large scale and included investigation material from the Russian Federation, the Ukraine and Belgium. The indictment included 150 prosecution witnesses, of whom 2 were state witnesses and 28 witnesses were from abroad, including complainants and policemen from the Ukraine and Army Prosecutors from the Russian Federation. Most of the witnesses arrived in Israel in order to testify financed by the government of Israel. Two witnesses testified in the Ukrainian Embassy by means of video.

Sometimes the chain of trafficking includes corruption, as can be seen in a court ruling from Argentina.

*Causa C 2359 (Argentina)*⁵⁷² concerned a conviction of two men for trafficking women from Paraguay for the purpose of sexual exploitation. In this case, it seems that the police and local authorities knew about the exploitation but turned a blind eye to it. In its decision, the court noted that:

“[...] it is necessary to avoid repeating fossilized mistakes when conducting the investigation of these types of crimes, to prevent the key figures in the chain of human trafficking from going unpunished. In the future, these irregularities ought to be dealt with, so that the whole chain of human trafficking is exposed; a chain that counts with the connivance of police and local administrative authorities”.

Causa C 2359, 4 July 2011, Federal Criminal Court of La Plata, Argentina, pp. 11-12.

In *Garcia et al (Colombia)*,⁵⁷³ a criminal network was behind trafficking of Colombian women to Hong Kong, Singapore and Indonesia. The criminal group recruited the women, arranged for their travel and transported them to the bars where they would subsequently be exploited. The network included the recruiter, his assistant and other facilitators. Some of the defendants were former victims of trafficking. The court convicted all seven defendants of human trafficking and conspiracy to commit a crime. The defendants argued that they should be tried separately without the presumption that they were members of an organized group, but the court held that the actions carried out by each and every one of the defendants were attributable to all defendants in view of the sufficiency of evidence proving that the defendants were part of one trafficking chain.

⁵⁷² *Causa C 2359*, 4 July 2011, Federal Criminal Court of La Plata, Argentina.

⁵⁷³ *Garcia et al*, 6 March 2008, Criminal Appellate Court of the Supreme Court of Justice, Colombia. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. COL005).

Investigating the full chain of trafficking

Trafficking in persons is a complex crime that often involves not just one, but a whole chain of traffickers. The close connection between trafficking and organized crime is reflected in the fact that the Trafficking in Persons Protocol supplements the United Nations Convention against Transnational Organized Crime.

Among the crucial issues which may arise:

- Proving the criminal intent of all links in the chain: As a rule, criminal law requires the prosecution to prove the guilty knowledge of all the links in the chain. While it may be relatively easy to prove the guilty knowledge of the exploiter, it can be more difficult to prove that actors in the chain preceding the exploitation (e.g., the recruiter or transporter) knew the victim was going to be exploited, and as such, are part of the chain of trafficking.
- Quasi victims or perpetrators? When some of the alleged perpetrators are, in themselves, vulnerable people, courts are faced with a dilemma whether to convict them as perpetrators or to view them as quasi victims. These can include relatives of victims or former victims.
- Transnational chains of trafficking: When members within the chain of trafficking are located in different countries/jurisdictions, this presents practical and theoretical difficulties as in situations where exploitation took place in country a, while the victims were recruited in countries b and c and transported via country d.

Possible examples of perpetrators in the chain of trafficking:

- The leader who organizes the scheme
- Drivers who escort the victims to clients
- Those who accompany the victim from his or her place of origin to the place of exploitation
- The supervisor at the place of exploitation
- Various professionals such as, lawyers or those pretending to be lawyers, doctors, social care professionals
- Former victims
- Relatives of victims

The importance of prosecuting all links of the chain, especially the kingpins

This may require the use of special investigative techniques, cooperation within a justice system and across borders, a thorough investigation of money flows, and above all, the patience and determination of the police and prosecution to do so and not just stop at the relatively easy success of identifying the potentially 'lower level' traffickers involved at the end of the chain.

4.3 How to prove trafficking where the intended exploitation never transpired?

The Trafficking in Persons Protocol does not require that actual exploitation occur in order to establish the crime of trafficking in persons. It is sufficient to prove that a trafficker intended the exploitation by doing one or more ACTS perpetrated by one or more MEANS. Some national legislation even expressly states that the fact that the intended exploitation did not transpire does not constitute a defence to the crime.⁵⁷⁴ In addition, some case law expressly states that trafficking is a crime of preparation that penalizes the exploitative purpose without requiring actual exploitation to occur.⁵⁷⁵

⁵⁷⁴ See, for example, section 26 of Tonga's Transnational Crimes Act, 2007.

⁵⁷⁵ See *I. (Austria)*, previously cited, though in that case exploitation had, in fact, transpired.

Still, in cases in which the exploitation never ensued, even though it was intended, there are particular evidentiary problems in proving the intention of exploitation. These difficulties may lead the court to convict on charges of attempted trafficking. However, depending on the individual circumstances of the case, a conviction for trafficking may also be possible.⁵⁷⁶ It is, of course, also possible that the court may not have sufficient evidence to convict at all, i.e., either for attempt or for the completed crime. The following examples illustrate cases in which courts have convicted defendants, even when faced with a scenario of intended exploitation that has not yet transpired.

Convictions of attempt to commit human trafficking or allied crimes

In ***Omoruyi (Nigeria)***,⁵⁷⁷ the victims were still in Nigeria when they were apprehended by law enforcement. While they had already agreed to go abroad to work as prostitutes, they had not yet performed any sexual acts. The defendant was found guilty of an attempt to organize foreign travel for prostitution and an attempt to place the victims in servitude as pledge for a debt. The court was assisted by an evidential foundation which proved the defendant's intention to exploit. In particular, the evidence included the testimony of a native "juju" doctor regarding an oath taken by the girls by which they would not flee and would pay their debts. Additionally, there was testimony from law enforcement and the defendant's statements which were confessional in nature. Interestingly, the conviction was ruled upon though the victims did not testify.

In ***Jungers (United States)***,⁵⁷⁸ the defendants were convicted of attempted sex trafficking of a minor, although the intended exploitation did not transpire. Both defendants were apprehended by means of a sting operation set up by law enforcement in which an advertisement was posted online by the police, pretending to be a man offering his girlfriend's underage daughters for sex. The defendants were arrested when they came to the location where they thought they would meet the underage girl who would then perform the commercial sexual act. The convictions were affirmed in the defendants' appeal, despite the fact that the actual exploitation had not yet transpired.

Convictions of completed trafficking in persons offences

The ***People v. Lito Manalo (Philippines)***⁵⁷⁹ case involves a conviction for recruiting and transporting a minor for sexual exploitation. The minor victim, who had been taken aboard a boat in order to sexually exploit her, was rescued before the exploitation transpired. Moreover, she was unavailable for testimony during the trial, as she had escaped from the NGO shelter where she was housed after the rescue. Nevertheless, the defendant was convicted of a full-fledged trafficking offence and not of an attempt. The court concluded that there was no doubt that the defendant recruited the victim for the purpose of prostitution. Instrumental to the conviction was a solid foundation of evidence which included testimony of persons other than the victim and, for example, a coast guard official, the mother of the

⁵⁷⁶ See National Rapporteur on Trafficking in Human Beings (2012). *Trafficking in Human Beings. Case law on trafficking in human beings 2009-2012. An analysis*. The Hague, BNRM.

⁵⁷⁷ Previously cited. For detailed facts, see the in-depth analysis in section 5.5 of the Case Digest.

⁵⁷⁸ *U.S. v. Jungers*, 702 F.3d 1066, United States of America.

⁵⁷⁹ Previously cited.

victim and a social worker who interviewed the victim, statements of the victim and other persons and documentary evidence.⁵⁸⁰

In *K.P. 4105 (Serbia)*,⁵⁸¹ the Ukrainian victims were rescued in Serbia before they were exploited. The evidence gathered from wiretapping provided critical support for the defendants' convictions of trafficking in human beings. The court concluded that all the elements that constitute the crime of human trafficking were met in this case.

Another case where there was a conviction of trafficking for prostitution, though the exploitation had not yet transpired is *Burnstein (Israel)*,⁵⁸² where the defendant was a broker between a person who wished to “purchase” women for prostitution (and was a covert police agent) and persons “selling” two women for this purpose. Though the transactions never materialized and the defendant did not receive any remuneration, he was convicted in view of the strong evidence adduced, including the testimony of the “purchaser” who was a police agent and in view of the approach of the court to interpret the trafficking law broadly so as to encompass every link in the chain of trafficking.

In conclusion, while cases with no actual exploitation present special evidential challenges, it is possible to surmount them by means of a solid foundation of evidence.

4.4 How to handle the subject of victim consent?⁵⁸³

The Trafficking in Persons Protocol includes a clear statement whereby if any of the MEANS are present, the victim's consent is irrelevant. However, even in jurisdictions which explicitly adopt such a position, in legislation or case law,⁵⁸⁴ the consent of the victim is often a central focus of trials on trafficking and allied crimes. This can clearly be seen in cases.

The subject of victim consent has already been addressed in various contexts in this Case Digest, and for example in the sections treating weaknesses in victim testimony, and weaknesses in the mosaic of evidence. However, in this section the focus will be on courts' explicit approaches to this subject.

Some courts rely on clear statements in their legislation or case law in order to address victim consent.

For example, in Tonga the relevant legislation clearly states that consent is not a defence for offences of trafficking in persons or trafficking in children.⁵⁸⁵ In the sexual exploitation case

⁵⁸⁰ For more detail on the kinds of evidence submitted in this case see section 2.2.3 on “Cases with partial or no victim testimony”. An additional case from the Philippines, where the court convicted on trafficking charges though the exploitation had not yet transpired, is *People v. Ogalesco*. In this case the defendant was convicted of qualified trafficking for sexual exploitation (meaning trafficking under aggravating circumstances) on the basis of the victims' testimonies.

⁵⁸¹ Previously cited.

⁵⁸² Previously cited.

⁵⁸³ For more in-depth information, please see the UNODC Issue Paper on the Role of consent in the trafficking in persons protocol (2014).

⁵⁸⁴ Some legislations, such as those of Spain and Kenya, adopt the Trafficking in Protocol's approach; others, such as the Philippines and Thailand, hold consent to be irrelevant whether or not MEANS have been used; still others, such as Norway and Israel, rely on case law rather than legislation. For a more complete treatment of systems of national legislation, see the UNODC Issue Paper on the Role of consent in the trafficking in persons protocol (2014).

⁵⁸⁵ See section 26 of Transnational Crimes Act, 2007, of Tonga.

Liu LiRong (Tonga),⁵⁸⁶ the court in its legal ruling differentiated between victims of sexual crimes, where lack of consent is an element of the crime, and victims of trafficking for sexual exploitation, where lack of victim consent is not an element of the crime, in order to rule that victim consent was irrelevant. It is of note that the actual facts of this case supported the non-consent of the victims in that they were initially deceived regarding the nature of their work and later forced to be prostitutes, threatened not to complain to the authorities and their passports confiscated. However, the court ruling goes beyond these facts to provide general legal guidance that consent is irrelevant in crimes of trafficking in persons.

Similarly, Israeli case law explicitly states that lack of consent is not an element of the crime of trafficking for prostitution, as can be seen in *Aldenko (Israel)*.⁵⁸⁷ This holds true even when the trafficker does not make use of violence or overt threats.⁵⁸⁸ Similarly, in the crime of “holding a person under conditions of slavery”, courts have accepted this approach and anchored it in fundamental values similar to those which pertain to the crime of trafficking. In both crimes, courts have stressed that consent cannot justify insufferable violations of basic human rights and dignity.⁵⁸⁹

However, even if courts recognize that victim consent is not relevant, it appears that consent is often highly relevant in practice.⁵⁹⁰ The UNODC Issue Paper on the Role of Consent in Trafficking in Persons observed that heavy reliance on victim testimony in trafficking cases may also enhance the focus on consent.⁵⁹¹ In addition, it found that apparent consent, in particular in situations when asserted by the victim himself/herself, can make cases difficult to prosecute and lead prosecutors to be reluctant to submit indictments.⁵⁹²

That said, as the following examples illustrate, cases may involve victims’ consent and still result in a conviction.

Convictions, where the court examined the “totality of circumstances” when addressing the issue of victim consent

In *LB-2012-63028 (Norway)*,⁵⁹³ the defendants interviewed some 50 Filipino women for an au-pair job in Norway and exchanged a series of e-mails and chats with the women while they were still in the Philippines. Most of the chats were conducted by the male defendant and during the course of subsequent e-mails and chats it was made increasingly clear by him that sexual services would be required. Nevertheless, the victims agreed to come to Norway. The first victim arrived six months earlier than the second and was required to have sexual relations with the defendant. The victim testified that although she knew this would happen, she hoped it would not. She was reluctant at first, but the male defendant reminded her that

⁵⁸⁶ Previously cited.

⁵⁸⁷ Criminal Appeal 10545/04, Israel.

⁵⁸⁸ See Criminal Appeal 3204/03 *State of Israel v. Yaish Ben David* in which the Supreme Court handed down a more severe sentence than the District Court because it viewed the crime of trafficking as violating fundamental human rights, including liberty and freedom of will. This case is available at the UNODC Human Trafficking Case Law Database (Case No. ISR007).

⁵⁸⁹ See *D.A. and A.M.*, previously cited, page 41, para. 45, and *Giulani*, previously cited, p. 14, para. 12. (Case *D.A. and A.M.*, pending appeal in the supreme court. Case *Giulani*, conviction affirmed by the supreme court, 6 September 2016, Criminal Appeal 6237/12.)

⁵⁹⁰ This is one of the key findings of the UNODC Issue Paper on “Consent” previously cited. https://www.unodc.org/documents/human-trafficking/2014/UNODC_2014_Issue_Paper_Consent.pdf.

⁵⁹¹ *Ibid.* p. 9.

⁵⁹² *Ibid.*

⁵⁹³ Previously cited.

she had agreed. The defendants did not employ violence or lock and key imprisonment. At most, there was a subtle threat that people in the Philippines would find out if the victim did not consent. The victim was also told that if she did not agree, she would need to pay her own ticket to return to the Philippines. The same situation repeated itself with the second victim who arrived six months later. However, she reneged on her initial consent and sought help. A large part of the trial in the district court was devoted to the issue of victim consent. The court convicted the defendants of human trafficking, noting that consent can always be withdrawn and that the first victim's reluctance to engage in sexual relations showed that her consent had been withdrawn. The appeals court took the position that the victims could not validly consent and noted that the vulnerability of the victims had been abused.⁵⁹⁴

The *Wei Tang (Australia)*⁵⁹⁵ case highlights how courts address the subject of victim consent. While the court held explicitly that lack of consent was not an element of the crime of slavery, it still addressed it by building a profile of the victims in order to understand the circumstances which led to trafficking and the place of victim vulnerability in the seeming consent. In this case, the victims signed a contract with the defendants promising to work as prostitutes in Australia. The contracts stated that each of the victims would owe a debt of between \$40,000–45,000 to the defendant. The defendant did not employ deception, violence or lock and key imprisonment against the victims and the defence argued that evidence of consent should go against the defendant's culpability. The court, on appeal, disagreed and found that voluntarily signing the employment contracts and agreeing to work in prostitution did not mitigate the defendant's criminal responsibility:

"But this was very serious offending nonetheless [regardless of consent], for the reasons we have given. The women were, as the jury found, enslaved by the applicant. They were not free to choose whether or when they worked in the brothel. The evidence of one complainant was that she was not permitted to refuse customers. Two others gave evidence that, although they had never sought to refuse a customer, they did not believe they could do so."

R. v. Wei Tang (2009), 23 VR 332; (2009) 233 FLR 399; [2009] VSCA 182 (17 August 2009), para. 43.

Consent in this case was understood by the court in the context of the totality of circumstances. The Court considered that the victims were "effectively restricted" to the premises. Only on rare occasions did they leave with the consent of the defendants or under supervision. The circumstances which effectively restricted them included the long hours of work, the fear of detection by immigration authorities and law enforcement, fostered by the defendant's warnings and instructions not to leave without someone to accompany them, and the detention of their passports. In addition, the victims underwent difficult working conditions, isolation, absence of pay six out of seven days, debt bondage and signs of ownership, as they were "purchased".

The victims' vulnerabilities are particularly emphasized by the court, consisting of illegal immigration status, difficult economic situation and lack of familiarity with language and

⁵⁹⁴ The Norwegian Penal Code, section 224 includes in the MEANS "misuse of another person's vulnerability".

⁵⁹⁵ *R. v. Wei Tang* (2009), 23 VR 332; (2009) 233 FLR 399; [2009] VSCA 182 (17 August 2009). For detailed facts, see the in-depth analysis in section 5.3 of the Case Digest.

culture of country of destination.⁵⁹⁶ The defendant's conviction of five counts of possessing a slave and five counts of using a slave was affirmed.

In *Ho and Anor (Australia)*,⁵⁹⁷ the victims came to Australia from Thailand knowing that they were going to work as prostitutes and knowingly using false documentation. Nonetheless, the court found that the victims were held under conditions of slavery. To support this finding the court focused on the situation of the victims and on the totality of circumstances. These included: "highly exploitative debt arrangements"; confiscation of passports; constant supervision by the defendants, including transporting the victims between the brothels and their residence and supervision on the rare occasions when victims were permitted to go shopping or purchase food; not giving the victims keys to their residence; being required to work 6 days a week to pay off the debts the defendants claimed they owed; minimal remuneration for services; and long hours.

Another example of a conviction despite the victim's seeming consent, appears in *Mariño Héctor Oscar (Argentina)*.⁵⁹⁸ The case concerns an 18 year old Paraguayan girl who was sexually exploited in a night club brothel. The victim arrived in Argentina knowing she would be engaging in prostitution; no deception or force was employed in recruiting her for this purpose. However, the conditions in the brothel were different from what she had been told. Once she arrived, the defendant exercised physical and psychological violence against her. The victim's testimony was ambiguous. She stated in her written testimony that she knew she would be engaged in prostitution and along with her story of being beaten and threatened by the defendant, expressed positive feelings towards him, stating that he sometimes treated her kindly and that he took care of her. The court used other evidence, besides this testimony, to form a full picture of the case. This included a medical forensic report which confirmed that the victim had been beaten and a psychological report which established that she had relatively low intellectual capacity, a lack of social skills and a very poor level of education. She also had a problematic past including mistreatment by her parents. This report, issued by the National Rescue Team,⁵⁹⁹ also included an explanation of her positive feelings for the defendant in that the fact of living with him had generated in her a mechanism of identification with him, which led her to feel that the exploiter was taking care of her. Thus, she normalized the exploitation.

The defendant was found guilty of trafficking an adult for sexual exploitation. The court held that the testimony of the victim that she was not victimized but rather taken care of by the trafficker must be considered within the constellation of other circumstances, and not in isolation from them, including the findings of the medical and psychological reports.

In *Urizar (Canada)*,⁶⁰⁰ the victim initially consented to engage in exotic dancing at the suggestion of the defendant. Subsequently, when the victim did not wish to do so, she testified: "... he'd say, you wanted this, you were the one who wanted this, because the first time I had said yes."⁶⁰¹ Not only did her initial consent not prevent the defendant's conviction on trafficking charges, but it was shown that he used that consent to exert psychological pressure upon her to remain in the same situation. In affirming the conviction

⁵⁹⁶ Discussed in section 3.2.5 on "Vulnerabilities of victims".

⁵⁹⁷ Previously cited.

⁵⁹⁸ Previously cited.

⁵⁹⁹ An Argentinian expert explained that the Rescue Team Program (State Government), provides immediate assistance to victims.

⁶⁰⁰ Previously cited. For detailed facts, see the in-depth analysis in section 5.2 of the Case Digest.

⁶⁰¹ See Court of Appeals case, page 20.

on trafficking, the court of appeals expressly states that it is based on the evidence as a whole (which included evidence of physical and sexual violence, restrictions of freedom, isolation, threats and vulnerabilities).

Another case in which the victim's initial consent did not prevent a conviction on human trafficking charges is *I. (Austria)*.⁶⁰² Here, a series of seemingly consensual acts were explained by the court so as to show there had been no real consent. Thus, though the victim had agreed to live in Austria and work as a prostitute for the defendant's nephew, the court noted that she had done so under the deceptive impression that she would receive 50 per cent of her earnings, which was not the case. In addition, she allowed sexual intercourse to happen "only because she was beaten". Interestingly, the court did not view this victim's lack of resistance the second and third times as authentic consent though she had resisted the first time. The court explained this lack of resistance as arising "clearly under the influence of the circumstances she had to endure the first time which were still fresh in her mind". In addition, the victim's return to the defendant was explained by the court "in view of her concerns that he would act on his threats to kill her child and burn down her house back home". Thus each consensual act was seen in the context of the circumstances of the case which included nefarious MEANS such as deception, threats and violence.

A most interesting case which focuses on seeming consent comes from Finland.⁶⁰³ It concerns a businessman who pretended to own a modelling company. He invited twelve young Finnish women to interviews during which the women were photographed naked and touched, and some were even raped. Their subsequent work involved providing erotic shows, pornography, striptease and prostitution. The women were also sexually exploited and raped. When the modelling company came to the attention of the police, the man had already run the business for more than a decade. The burning questions in the case revolve around consent and include: how did ordinary Finnish girls and women with normative backgrounds find themselves in this abusive situation? Why did they not escape, but instead returned to the abusive situations, even though they were not locked up and did not fear deportation from the country? Why did they not seek the help of police or others? A forensic psychiatrist testified that in sexual violence and exploitation cases, control over the victim is often accomplished by a gradual process of the victim renouncing her bodily integrity and by advanced manipulation techniques. He explained that this incremental process makes it difficult, even for the victim herself, to define the point where she did not give her consent any longer. It also erodes her trust in other people and in the ability of society to protect her. Furthermore, the expert explained that the defendant manipulated the women into believing that they were responsible for their situation and instilled in them feelings of guilt and worthlessness. The defendant was convicted of trafficking and other sexual offences, including rapes, and sentenced to more than 11 years of imprisonment.⁶⁰⁴

Convictions in which the court understood victim consent as a manifestation of victims' vulnerabilities

As seen in the preceding cases, courts are often able to understand the victim's seeming consent in view of the totality of the circumstances and especially, his or her vulnerabilities.

⁶⁰² Previously cited.

⁶⁰³ Previously cited.

⁶⁰⁴ The Supreme Court did not affirm the conviction of trafficking.

The following cases emphasize the place of vulnerabilities in courts' understanding of victim consent.

In *Ramaj (United Kingdom)*,⁶⁰⁵ although no evidence had clearly shown that the victim was unwilling to be involved in prostitution, one of the defendants was convicted of trafficking into the UK for sexual exploitation. In affirming the conviction, the appeals court noted that as regards the sentence: “[a]n aggravating feature in this case is that [the victim] was an 18-year-old, just out of school—naive, gullible and inexperienced in the ways of the world”.

In a sexual exploitation case *6B_277_2007 (Switzerland)*,⁶⁰⁶ the court commented that the victims' initial consent was grounded in poverty and acute hardship, which led only to “formal consent” as distinguished from “autonomous consent”. The court mentioned previous court decisions in which it was held that while informed consent may preclude a conviction for trafficking in persons, the consent of a victim alone, especially if the victim is in a situation of vulnerability, would not amount to valid consent. The court also noted that some of the victims were minors as well. The defendants were convicted of trafficking in persons for sexual exploitation.

In *Martinez, Sardina (Argentina)*,⁶⁰⁷ three defendants were convicted of receiving and harbouring for sexual exploitation six girls over 18 years of age and abusing their position of vulnerability in a brothel situated in a remote location. While victim testimony was weak (they did not see themselves as victims), the psychological report was a determining factor in the conviction as it established the vulnerabilities of the girls. In the wake of this report, the court held that the victims did not see themselves as victims due to fear, shame, survival mechanisms and lack of confidence. Nevertheless, it ruled that other evidence proved that the defendants had sexually exploited the girls, who were at the time of the events extremely vulnerable.

By understanding that traffickers often target victims because of their vulnerabilities, and more than that, play on those vulnerabilities in order to keep them under subjection, courts better understand why victims seem to consent and realize that such consent is or should be irrelevant to the crime.⁶⁰⁸

Convictions in cases with seeming victim consent in which the courts considered the cultural beliefs of victims

In certain cases, cultural beliefs and practices are used by the court to understand how the victims seemingly consented to their exploitation. For further information on the importance of cultural beliefs and practices in trafficking cases see also: sections 2.6 on “Expert and professional testimony”; 3.2.2 on “Threats/seemingly unreasonable threats”; 3.2.16 on “The relevance of cultural beliefs and practices”; 3.3.6.7 on “Seemingly irrational beliefs”; and 3.3.8.8 on “Victim behaviour/cultural explanations for victim behaviour”.

In *Farrell (United States)*,⁶⁰⁹ the defendants were convicted of peonage, conspiracy to commit peonage and document servitude. One of the facts in the mosaic of evidence concerned

⁶⁰⁵ *R. v. Ramaj and another*, Criminal Case [2006], EWCA Crim. 448, United Kingdom. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. GBR010).

⁶⁰⁶ *Case 6B_277/2007*, 8 January 2008, Federal Court Lausanne, Switzerland. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. CHE003).

⁶⁰⁷ *Case FBB 3100269/2010/TO1*, Tribunal Oral Federal de La Pampa, March 2014, Argentina.

⁶⁰⁸ We refer to section 3.2.5 on “Vulnerabilities of victims”, which addresses this subject in greater detail.

⁶⁰⁹ Previously cited. For detailed facts, see the in-depth analysis in section 5.4 of the Case Digest.

the workers' compliance in surrendering their passports, visas and immigration documents to their employers, though many were reluctant to do so. The court noted that this behaviour emanated from the "honour and respect" that the victims' culture demanded to show to their employers".

Sometimes cultural stigma causes victims to refrain from fleeing their situations, which might be viewed as consent to their exploitation. Such a case was *Kovacs (Australia)*,⁶¹⁰ where the victim, though repeatedly raped and continuously exploited, did not flee and did not complain immediately. It was explained thus: "shame and embarrassment in Filipino society, not just to her but also her ailing mother, had stopped her saying anything".

Cases which bring culture into high relief are those respecting Nigerian victims, whose trafficking is attended with "juju" rituals performed by native priests or doctors who remove from the victims various body parts in order to bind them by means of a curse should they try to escape or not repay their debts. While the girls may seem to consent to their plight, they are really controlled by means of threats. We refer to the in-depth case analysis of the *Omoruyi (Nigeria)*⁶¹¹ case, which appears in section 5.5 of this Case Digest for a more detailed analysis of consent issues which arose in that case.⁶¹²

Exoneration cases

In one recent case, a court exonerated the defendant from a charge of "holding a person under conditions of slavery" (though he was convicted of various sexual crimes), because of a lack of understanding on the part of the court as to why the victims consented to remain with him. The case is *A.G.G.R. (Israel)*,⁶¹³ where the court could not understand why native women who were citizens of Israel from normative backgrounds did not leave the defendant. The court noted that the obstacles to so doing were only psychological.

Similarly, in *Case No. 978 of 12 March 2012 (Argentina)*,⁶¹⁴ two women reported to the police that they were victims of human trafficking for sexual exploitation. In acquitting the defendants, the court relied heavily on the fact that the women entered Argentina knowing that they were going to become prostitutes, so that seemingly they had consented to be prostituted.⁶¹⁵

*Ranya Boonmee (Thailand)*⁶¹⁶ is another example of an exoneration⁶¹⁷ on the basis of alleged victim consent. In its exoneration of the defendants, the court of appeals relied heavily on the seeming consent of the alleged victims to their situation and on the innocent behaviour

⁶¹⁰ Previously cited.

⁶¹¹ Previously cited. For detailed facts, see the in-depth analysis in section 5.5 of the Case Digest.

⁶¹² In regard to the use of "juju" in general, we also refer to sections 2.6 on "Expert and professional testimony"; 3.2.2 on "Threats/Seemingly unreasonable threats"; 3.2.4 on "Subtle means of coercion"; 3.2.16 on "The relevance of cultural beliefs and practices"; 3.3.67 on "Seemingly irrational beliefs" and 3.3.6.8 on "Victim behaviour/cultural explanations for victim behaviour".

⁶¹³ Previously cited. See section 3.3.3. "The victim's support system" for a more detailed description of the case.

⁶¹⁴ *Case No. 978 of 12 March 2012 (Argentina)*. See also section 2.1.1.1 on "Inconsistent statements and outright falsehoods" in victim testimony for more information concerning victim contradictions in this case. The case is available in UNODC Human Trafficking Case Law Database (UNODC Case No. ARG006).

⁶¹⁵ The expert from Argentina commented that the court could have negated the victims' seeming consent due to an abuse of a position of vulnerability, but it did not do so.

⁶¹⁶ Previously cited. For detailed facts, see the in-depth analysis in section 5.7 of the Case Digest.

⁶¹⁷ The charges were conspiring to confine other persons, depriving them from liberty and forcing them to do any act for the doer, and accepting and retaining workers illegally, including those under the age of 18 and 15 years old for the purposes of enslavement, compelling them to work in slavery-like practices.

of the defendants. Thus, the court stressed that the alleged victims had voluntarily crossed the border into Thailand illegally in order to work; that there was no indication of unwillingness to work during the police raid on the premises; that it was agreed that the defendants pay transportation costs from the alleged victims' villages which would then be deducted from the victims' wages; that there was no restriction of freedom on the alleged victims beyond what was done in the case of other workers and that the motivations of the defendants in this regard were innocent. This case is of particular interest because the trial court convicted on the basis of the same evidence, whereas the court of appeals exonerated (see the in depth analysis of this case in section 5.7).

In another case, *ECLI:NL:GHAMS:2013:BZ8534 (Netherlands)*,⁶¹⁸ the Court exonerated the defendant from one of the human trafficking charges for which he was prosecuted, as the victim had stated that nobody had forced her to work in prostitution or to hand over the money she earned. In light of the victim's assertions of consent, the Court concluded that the materials in the file did not establish the use of MEANS or the presence of EXPLOITATION.

How courts handle victim consent

I. Exonerations

II. Convictions

Courts may convict even when victim consent is proven. The following have been taken into consideration:

- Language of legislation or case law. (Is consent explicitly irrelevant?)
- How can consent be explained? Totality of circumstances. (Are overt violence, force, threats, deception used? Is there debt bondage? Acute vulnerabilities? Difficult work and living conditions? Lack of pay or minimal pay? Restriction of freedom?)
- Stages of consent. Has consent been withdrawn? Does the trafficker use the victim's initial consent as a subtle form of coercion? Conversely, is the use of a MEANS during an initial phase still influencing the actions of the victim in a subsequent stage?
- Distinction between formal consent and autonomous consent.
- Close examinations of ways in which victims are not free. (Can they refuse to work? Can they choose living conditions?)
- Psychological mechanisms (e.g., identification with the trafficker, shame, fear, survival mechanisms).
- Traffickers' methods of control. (An incremental process whereby victims renounce bodily integrity? Leading victims to feel responsible for their situation?)
- Cultural beliefs and circumstances. (Is it part of the victim's culture to respect and obey his or her employer? To anticipate stigma if the exploitation is revealed? To believe in threats grounded in cultural practices?)
- Statement of values. Can there be valid consent to severe exploitation? To violations of human dignity?

⁶¹⁸ Amsterdam Court of Appeal, 11 April 2013. *ECLI:NL:GHAMS:2013:BZ8534*, Netherlands. This case was supplied to us by an expert from the Netherlands.

5. In-depth analysis of selected cases

The above sections of this Case Digest have dealt with each issue in a hermetically isolated way in the interests of analysis. However, it is equally important to see how the various issues mesh in one case, with each piece of evidence enriching and supporting the others. As mentioned in the introduction, the first sections are like the tools and the building blocks of a house, whereas the in-depth analyses of cases are like the edifice itself. Or, to use yet another metaphor, the first sections are like the skeleton of the body, exposing the structure of issues, while this final section resembles the muscles which move that skeleton. It is hoped that this section will allow practitioners an opportunity to examine issues in a fuller and more detailed context.

Each case analysed below begins with a list of the kinds of evidence used in the case. However, it should be noted that these listings may be incomplete, as sometimes the court does not mention all of the submitted evidence in its decision. This may often be the case in appeals decisions, which may focus only on a portion of the evidence.

5.1 K-165/11 (Serbia)⁶¹⁹

This case includes the following kinds of evidence: victim testimony characterized by inconsistencies and expert testimony. Strengths in the mosaic of evidence include restrictions on freedom, violence, absence of pay, exploitative work conditions, isolation, abuse of a position of vulnerability (age, socio-economic status, mental disabilities, personality weaknesses, pregnancy), and relatively long duration of the crime. Weaknesses in the mosaic of evidence include failure of the victim to escape when given an opportunity to do so. A particularly difficult issue appearing in this case is seeming consent of the victim to severe exploitation.

The defendant in this case was convicted of trafficking in persons. This conviction was affirmed on appeal.

The defendant was a male Serbian citizen who was a mechanic by profession. He trafficked the victims in this case from the beginning of 2007 until 1 October 2008, with a three-month break from 7 November 2007 to 7 February 2008 when he was detained for a different

⁶¹⁹ *K 165/11* [2011], Higher Court in Novi Sad, 14 October 2011, Serbia. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. SRB035).

crime. In the defendant's absence his son trafficked the victims separately. Victim 1 was born in 1983 and Victim 2 was born in 1993 and was only 15 at the time of the crime.

The defendant exploited the hardships of Victim 1 in order to recruit her to offer sexual services for the defendants' profit, including the fact that she was unemployed without any financial means to enable her to live, at a later stage pregnant, and that she and her boyfriend did not have a place to stay. After she accepted, he drove her every night to a street that was known as a popular spot for prostitution. He would then park his car nearby and supervise the victim, the number of customers she accepted and the amount of money she was earning. The victim usually earned between 11,000–12,000 Serbian dinars per night, all of which she was required to give to the defendant. He then drove her back to his house and did not allow her to go out except once during the day around 1 p.m., when she was required once more to give sexual services for some three hours, earning an additional 5,000–6,000 dinars for the defendant.

Even when the victim became pregnant, the defendant forced her to continue to provide sexual services until a few days before the birth. Victim 1's boyfriend abandoned her a month before she gave birth. The defendant picked her up from the hospital and made Victim 1 continue to provide sexual services starting only 4–5 days after she gave birth. The defendant's wife took care of the baby while Victim 1 was being prostituted.

In mid-2008, the defendant demanded that Victim 1 find another girl to provide sexual services for his benefit because he was not satisfied with his profit. At a train station, Victim 1 met a 15-year-old girl (Victim 2), who had escaped from a children's home and had no family or place to go. Victim 1 took Victim 2 to the defendant's house where he, together with his son, recruited her as well and convinced her to engage in sexual services for their benefit.

After Victim 2's arrival, the defendant drove both victims together to the street to prostitute themselves. He took all the money they earned. They were not allowed to leave the defendant's house when they were not working and they were often beaten by the defendant and his son.

On 1 October 2008, the two victims escaped. When the defendant and his family fell asleep they took Victim 1's baby and fled, taking a train to the town of Subotica.

During the investigation, the victims said the defendant took all of the money they earned, beat them and did not let them out of the house.

When the victims arrived at the court with the defendant's family they changed their statements about what had happened to them. At trial both of the victims stated that the defendant behaved nicely to them, that they were not beaten and that they voluntarily gave the defendant money for the food and clothing the defendant supplied to them.

The court rejected this changed testimony and instead relied on the information the victims gave during the investigation. The court concluded that the testimony in the trial was influenced by the defendant, because both of the victims came to the trial with the defendant's son and wife. In addition, the court found the victims' trial testimony to be internally illogical. The court found it impossible to believe that the victims had enjoyed such good conditions at the defendant's house but still decided to escape, and that they voluntarily gave all of their money to the defendants when the victims themselves were in extremely precarious financial situations.

The court also relied on expert testimony to understand why the victims changed their statements. A commission of experts composed of psychologists and social workers testified that Victim 1 was extremely suggestible and could be easily manipulated by the person who committed the crime. In consequence, Victim 1's testimony changed at the trial after she encountered the defendant's wife who talked to Victim 1. On the other hand, the statements Victim 1 gave during the investigation were given without the presence of the defendant or any of his family members. Another expert testified about the minor, Victim 2, and explained that Victim 2's mental development was not consistent with her age, that the level of her social, emotional and educational background resulted in her being unaware of socially accepted behaviour and the meaning of good and bad, and that she was emotionally unstable.

The conviction relied on the strength of the mosaic of evidence which included severe restrictions on freedom, violence, absence of pay, exploitative work conditions, isolation, abuse of a position of vulnerability (age, socio-economic status, mental disabilities, personality weaknesses, pregnancy) and the relatively long duration of the crime.

However, while this case resulted in a conviction for human trafficking in persons, the case raises many issues that practitioners frequently have to address. For example, arguably Victim 1 had an opportunity to escape her situation when she was in the hospital and thus not physically under the control of the defendant. In addition, both victims were not under the supervision of the defendant when they prostituted themselves during the afternoons. Only at night were they under the direct control and supervision of the defendant. Though this issue was not explicitly raised in court, the conviction would seem to attest to the fact that this seeming freedom was not conclusive. The court seemed to understand that the victims did not have actual freedom, as the totality of circumstances put them under control of the trafficker.

Another crucial issue in this case, though not explicitly addressed by the court, was the original seeming consent of both victims to prostitute themselves for the benefit of the defendant. While the court does not analyse this aspect of the case, the conviction shows that the court did not consider this fact to be conclusive.

Another issue on which this court was silent, but may be of concern to practitioners, is the role of Victim 1 in recruiting Victim 2. This evokes another case mentioned in this Case Digest, *Garcia et al (Colombia)*,⁶²⁰ in which former victims became part of the chain of trafficking and were prosecuted and convicted. However, in this case, there was no discussion of criminalizing Victim 1 for these actions, though we do not know if the prosecutor submitted an indictment against her.

Finally, this case shows how the vulnerabilities that traffickers often exploit can also create obstacles for practitioners during the investigation and prosecution of the case. In this case the victims completely changed their stories during the trial. This was at least partially explained by expert testimony as a consequence of their vulnerabilities. The court in this case was able to successfully convict the defendant because it was furnished an explanation to the contradictions.

⁶²⁰ *Garcia et al*, 6 March 2008, Criminal Appellate Court of the Supreme Court of Justice, Colombia. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. COL005).

5.2 Urizar (Canada)⁶²¹

The kinds of evidence contained in the case include victim testimony which was inconsistent and uncorroborated and, in addition, law enforcement testimony, testimony by a female friend of the defendant, photographic evidence, a medical report, a letter from the victim's school, analysis of calls to and from defendant's cellular phone, and Facebook and text messages.

The strengths in the mosaic of evidence include violence, deception, threats, no pay, difficult work conditions, restrictions of freedom by means of supervision and lock and key imprisonment isolation, vulnerabilities (consisting of socio-economic status, difficult family situation, and romantic attachment to the defendant), subtle form of coercion by means of humiliation and signs of ownership.

Weaknesses in the mosaic of evidence include the victim's behaviour (delayed complaint, returning to abuser time after time) and the fact that the victim had a support-system other than the defendant. A particularly difficult issue which appears is seeming consent to severe exploitation.

The defendant was convicted of charges of trafficking in persons, benefitting economically from trafficking, exploitation, extortion and other charges. The conviction on trafficking and exploitation were affirmed by the court of appeals.

In December 2008 the defendant met the victim in a bar. They quickly began dating. The defendant was charming to the victim and "treated her like a princess". He bought her clothes and paid for trips to the hairdresser and for manicures. At the time, the defendant drove a Jaguar and told the victim that he earned a lot of money.

On the other hand, the victim had no money and her family situation was "not very good".⁶²² The victim would argue with her father, whom she thought was a stingy person, and she witnessed her parents arguing. She told the defendant she wanted to earn money and he convinced her to work as an exotic dancer. The defendant insisted that the victim take cocaine in order to help her get rid of inhibitions before she began working. The victim agreed. The defendant drove the victim to work and picked her up after she finished. The defendant immediately forced the victim to give him the money she had earned. The victim was in shock and did not understand what was happening, but the defendant quickly reassured her that her money would be safe and that he would not spend it. Soon after this, the defendant told the victim he had lost his job and complained that he had no money. By this point the victim had already fallen in love with him and viewed him as her saviour because he helped her leave her family situation and earn money.

The victim began working more often, and the defendant became possessive and was violent towards her. The defendant continued to take the victim's money until one day the victim asked him to give her some of the money she had earned in order to buy a coat. The defendant said he did not have any money. The victim felt betrayed and decided never to see him again and to return to her parents' house. The defendant did not want to let the victim go and phoned her at her parents' home telling her he loved her and apologized. The victim returned to the defendant. This began a cycle of the defendant abusing the victim and taking

⁶²¹ *R. v. Urizar*, File No. 505-1-084654-090, L-017.10, Court of Québec, District of Longueuil, Criminal Division (J.C.Q.), (2010-08-13), 13 August 2010, and *Urizar v. R.*, No. 500-10-004763-106, Court of Appeal, Quebec, 16 January 2013, Canada. The trial court case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. CAN005).

⁶²² See Index of all cases.

her money, followed by the victim eventually leaving the defendant only to have the defendant pursue her again until she returned.

The defendant eventually moved the victim into his friend's apartment, took away her cellular phone whenever he left the apartment and refused to allow her to give her new address to her mother. He also forbade her to continue with her studies. He "told her that he had control over her, that she belonged to him and that he could do anything he wanted to her".⁶²³ The defendant wanted the victim to tattoo his name on her body to send the message to men at the bar that "she belonged to him". He humiliated her, telling her that she wasn't even good enough to be a whore.⁶²⁴ Over time, the defendant's pursuit of the victim, when she left him, escalated. This included going to her parents' home, making his way inside, demanding that she return to him and threatening her. The victim returned to the defendant the next day. This cycle of escape, pursuit and threats, and then return continued over a period of nine months until August 2009 when the victim convinced the defendant to let her go visit her mother and during that visit the victim filed a complaint with the police.

The evidence against the defendant in this case was based primarily on the victim's testimony, although there was some support as will be analysed below.

Since the victim's testimony was the primary piece of evidence, the credibility of the testimony was a central issue in the case. The testimony contained omissions, lapses of memory, contradictions, hesitations and exaggerations and the victim even refused to answer some questions. Still, the court dealt with this with what it termed the tools of common sense; it explored the internal reasonableness of the testimony and its consistency in substantial aspects, the lack of motivation to lie on the part of the victim and its knowledge of the effects of traumatization. The court even held that it would have been worrisome had the victim been able to testify in detail and in chronological order, given the difficult circumstances she underwent. It is of note that the trial court heard the victim's testimony while she was screened from the defendant's view in the light of the difficulties she experienced in testifying while he could view her.

Though the victim's testimony was held to be credible, it was not corroborated in its substantive aspects by other testimony. While the court was well aware of this, it expressly ruled that corroboration was not necessary.

However, the testimony was supported by other evidence, including photographs, a medical report, testimony of a law enforcement official, phone call records and text messages. These pieces of evidence were used by the court in the following ways:

1. The police officer testified about the victim's demeanour when he interviewed her. He found her to be "exhausted, nervous, anxious and frazzled";⁶²⁵ he also noted that her cellular phone was constantly vibrating.
2. A search of the defendant's apartment yielded erotic photographs of the victim.
3. The medical report confirmed injuries to the victim's knees; the court found that these injuries were consistent with the victim's claim of being injured from the defendant pushing her down the stairs.

⁶²³ See Index of all cases.

⁶²⁴ See Court of Appeals case, pages 4 and 20.

⁶²⁵ *R. v. Urizar*, File No. 505-1-084654-090, L-017.10 at page 17, Court of Québec, Criminal Division (J.C.Q.), (2010-08-13).

4. The court relied on the text messages to show that the defendant knew the victim was working as a stripper and that he owed her money.
5. The record of the phone calls from the defendant's phone did not directly support the conviction, but showed that many calls were made from the defendant's phone to the victim's phone number and her mother's phone number.
6. The defence submitted a letter from the victim's school and testimony from a female friend of the defendant claiming that the victim's complaint emanated from jealousy of her. The court found that the letter from the victim's school confirmed the victim's claim that the defendant asked her to quit school because the letter reported an increase in absenteeism at that time. The court gave no weight to the testimony of the female friend of the defendant, finding the testimony useless as it related to the merits of the criminal issues in the case and potentially biased because the witness had "an obvious interest in favouring" the defendant because she was a long-time friend of his and "has been in love with him for a year".⁶²⁶

Evidential strengths mentioned in the factual background which may have contributed to the conviction included: violence, deception, threats, restrictions of freedom, subtle forms of coercion which included humiliation, no pay, difficult work conditions, restrictions of freedom, isolation, vulnerabilities (consisting of socio-economic status, difficult family situation and romantic attachment) and signs of ownership.

Seemingly, there were weaknesses in the mosaic of evidence of this case. For example, the victim escaped and returned to the defendant many times. The victim was Canadian, spoke the language of those around her, had permission to work legally and had family support nearby. The victim's complaint was delayed for nine months. None of these seeming weaknesses precluded the conviction. Indeed, both the trial court and the court of appeal found explanations for them in the totality of the circumstances of the case. For example, the return to the abuser time after time and the delay in complaining was explained by the emotional vulnerability of the victim who was romantically attached to the defendant and wished to believe the situation would improve; the contradictions in the victim's testimony were explained by the trauma she had undergone; remaining in the situation despite a family support system nearby was explicitly held to be irrelevant to the defendant's guilt by the Court of Appeals and the trial court noted that the victim had no money when she met the defendant, that she had a difficult relationship with her family and that she was romantically attached to the defendant. The combination of these factors made her vulnerable, despite a potential support system.

This case also highlights the larger issue of victim consent to extreme exploitation. While the court did not address this issue explicitly, the conviction of the defendant, despite the victim's seeming consent to the exploitation, shows that the victim's consent was not considered relevant to the conviction. Moreover, not only did her initial consent not prevent the defendant's conviction on trafficking charges, but it was shown that he used that consent to exert psychological pressure upon her to remain in the same situation.⁶²⁷ In affirming the conviction on trafficking, the court of appeals expressly states that it is based on the evidence as a whole (which included physical and sexual violence, restrictions of freedom, isolation, threats and vulnerabilities).

⁶²⁶ *R. v. Urizar*, File No. 505-1-084654-090, L-017.10, at page 23, Court of Québec, Criminal Division (J.C.Q.), (2010-08-13).

⁶²⁷ See Court of Appeals case, page 20.

Another interesting point highlighted by this case is the gradual nature of traffickers' control methods and their variety. Thus, the defendant began by "seducing" the victim with kindness and presents and only gradually moved to physical violence, restrictions of freedom, isolation and threats. This was explicitly noted by the court of appeals as a particularly important part of the defendant's exercise of control over the victim.⁶²⁸

5.3 Wei Tang (Australia)⁶²⁹

The kinds of evidence in the case include victim testimony and, in addition, testimony of an individual who was originally a co-defendant. While the court notes that there was a "voluminous body of evidence" presented in this case, the appeals decisions do not list the evidence. However the decision notes that much of the evidence "was not contested".⁶³⁰

The strengths in the mosaic of evidence include vulnerabilities (consisting of illegal immigration status, difficult economic situation and lack of familiarity with language and culture of country of destination) subtle restrictions of freedom (including by means of subtle threats and passport and air ticket detention), subtle threats, difficult working conditions, isolation, absence of pay six out of seven days, debt bondage and signs of ownership. Weaknesses in the mosaic of evidence include no violence or lock and key imprisonment, signs of autonomy (permission to work and earn money on their own one day a week before the debt was repaid, and in general after payment of debt), adequate food and medical care, relatively short duration (4-6 months), returning to an abusive employer, previous voluntary prostitution and failure to escape or seek help. A particularly difficult issue that appears is seeming consent to severe exploitation.

The defendant was convicted on five counts of possessing a slave and five counts of using a slave.

This was the first case in which Australian courts interpreted the concept of slavery as expressed in Australian legislation. The context was Thai women prostituted in Australia. The case was dealt with by several instances, the Victoria County Court, the Supreme Court of Victoria acting as a court of appeal and the High Court of Australia.

The case revolved around five Thai women who voluntarily entered into oral agreements in Thailand to work as prostitutes in Australia. All five had previously worked as prostitutes. They understood that they would have to repay a debt before they could earn money, but that once their debt was paid they could earn money as prostitutes.

By going to Australia, they incurred a debt of between 40,000 and 45,000 Australian dollars which had to be paid by having sexual relations with men in Australia. While the debt took into account the sum of \$20,000 which had to be paid to the recruiters in Thailand, the travel expenses of the women and the women's living expenses in Australia, the exact sums

⁶²⁸ See Court of Appeals case, page 19, sections 78-80.

⁶²⁹ Third appeal (VSCA): *R. v. Wei Tang* (2009), 23 VR 332; (2009) 233 FLR 399; [2009] VSCA 182. Second appeal (HCA): *R. v. Wei Tang* (2008) 237 CLR 1; (2008) 249 ALR 200; (2008) 82 ALJR 1334; (2008) 187 A Crim. R 252; [2008] HCA 39. First appeal (VSCA): *R. v. Wei Tang* (2007), 16 VR 454; (2007) 212 FLR 145; (2007) 172 A Crim. R 224; [2007] VSCA 134; *R. v. Wei Tang* [2007], VSCA 144 Sentencing decision (VCC): *R. v. Wei Tang* [2006], VCC 637. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. AUS001).

⁶³⁰ *R. v. Wei Tang* [2007], VSCA 134. at para 19 Supreme Court of Victoria, Court of Appeal.

were never explained or justified. The women were not always aware of the precise terms of the debt or of the living conditions in Australia.

They travelled on tourist visas that had been obtained without disclosing the true purpose of their travel and thus were in Australia illegally. Three of the women participated in scheme to obtain these visas, though the extent of the scheme is not clear. They were escorted by one or two people, usually an elderly couple so as not to arouse suspicion.

When they arrived in Australia, they were purchased by a syndicate of which the defendant had a 70 per cent interest. The syndicate then sent to Thailand the sum of \$20,000 as purchase price for the woman.

They worked in a licensed brothel owned by the defendant. Upon arrival, they had little money, spoke little English and knew no one in Australia. Upon arrival, their passports and return airline tickets were detained. They had no choice regarding their accommodations, but rather were obliged to reside in specific apartments. At one such house they were told to remain in the house so as not to be seen by immigration officials.

Until they repaid their debts, the women did not receive any of the money they earned by prostitution. For each client the brothel charged \$110, and out of that \$50 was offset to pay the women's debt. The rest was appropriated by the defendant and others. The victims were required to work long hours 6 days a week, but on the seventh day of each week the women were permitted to earn their own money of \$50 per client or to have a free day. Over a period of 4-6 months the women served up to 900 clients.

The women were well provisioned, fed and provided for. Their medical needs were attended to. They were not kept under lock and key. However, they were "effectively restricted" to the premises. Only on rare occasions did they leave with the consent of the defendants or under supervision. The court ruled that the circumstances which effectively restricted them included the long hours of work, fear of detection from immigration authorities, fear of visa offences, advice to be aware of immigration authorities or tell them false stories and instructions not to leave without someone to accompany them.

When two of the five women repaid their debts their passports were returned to them and the restrictions placed on them were lifted. They were then free to live in accommodation of their own choosing, to choose their hours of work and to be paid for their prostitution. They voluntarily continued to work under these conditions.

The defendant was convicted of five counts of possessing a slave and five counts of using a slave.⁶³¹ As much of the evidence in the case was not disputed, only the testimonial evidence of an individual who was originally a co-defendant was explicitly relied upon by the high court.⁶³² The weaknesses in the mosaic of evidence did not prohibit a conviction of slavery.

⁶³¹ The Australian legislation under review was Chapter 8 of the Criminal code which deals with "offences against humanity, Division 270 which addresses offences of slavery. The following are the relevant provisions:

"270.1 Definition of slavery – For the purposes of this Division, slavery is the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person.

270.2 Slavery is unlawful – Slavery remains unlawful and its abolition is maintained [...]

270.3 Slavery offences – (1) A person who, whether within or outside Australia, intentionally: (a) possesses a slave or exercises over a slave any of the other powers attaching to the right of ownership; or [...] (c) enters into any commercial transaction involving a slave [...]; Penalty – Imprisonment for 25 years".

⁶³² *The Queen v. Tang* [2008], HCA 39.

According to the court, the consent of the victim does not mean that there is no offence of slavery, as absence of consent is not a necessary element of the offence. A contract between the defendant and the victims is not inconsistent with the offence, but rather the terms of slavery may arise from a contract.

The following victims' behaviour might have led the court to doubt their credibility or negate the crime. However, it was not deemed relevant:

1. *Victim consent does not negate crime:* The victims concluded oral agreements by which they knew they would be working in prostitution and that they would have to repay debts before they began to earn money. Though it is not clear if they knew the sum of the debt or the living conditions, they were aware of and agreed to the central points. This did not detract from the conviction and the court stated clearly that lack of consent is not an element of the crime.
2. *Victims worked in the sex industry in Thailand before arriving in Australia:* This was not deemed relevant to the crime.
3. *Three victims participated in deceptive acts to obtain visas:* Three of the victims participated in deceptive acts to obtain visas, which was relevant to their credibility. In view of this, the court permitted the defence to cross examine the victims about their complicity in visa fraud, but ultimately the convictions indicate that the jury still believed them about the central allegations.
4. *Two victims voluntarily continued to work after repaying their debt:* Though two of the victims voluntarily continued to work after repaying their debt, the court did not consider that this behaviour negated the crime or affected their credibility.
5. *Victims admitted lying under oath:* An important issue of credibility was that all the victims admitted during the trial that they had previously lied on oath in several of their statements to police and immigration authorities according to which they had not been trafficked and had no "boss"; and about the conditions in which they worked and lived, including where and with whom they had lived. In addition, they initially lied about living in one of the houses run by a woman called "Mummy" who was an uncharged accomplice of the defendant. However, the reasons for these lies were explained in evidence from the victims as part of the prosecution case.

Thus, the women gave evidence that they were told by the defendant and others, speaking on their behalf, that if they were picked up by the authorities, the police and immigration would put them in jail or detention if they told the truth. They were therefore told to lie as detailed above. This fear was reinforced when the defendant made them hide at another location on certain days (Thursday and Fridays) and told them that this was to avoid being found by immigration authorities who were likely to raid the brothel on those days. They were also warned about what might happen to them if they escaped. As to not mentioning the house of "Mummy", it emerged in the victims' evidence that they did not mention her because she was kind to them and they did not want to get her into trouble.

The prosecutor who handled the case, recorded in her notes of the evidence, the statements of one of the victims with the following chilling examples of these fears:

“(Tang and others) threatened me that (there was a) large mafia in Melbourne who would kill me if I tried to escape. I was told that (Tang’s) husband was powerful and knew police and Immigration who would come after me. I knew traffickers had the phone numbers and addresses of my family in Thailand, I was afraid of escaping for their safety and mine, and I was told about trafficked girls who escaped who had been killed.”

Ultimately the guilty verdicts returned by the jury indicated that, notwithstanding these credibility issues, the jury believed the victims about their central allegations.

Several other typical defence claims appear in the case. These did not prevent the court from convicting:

1. Victims were adults above the legal age of consent.
2. Victims’ work and the brothel they worked for were legal.
3. Victims were not imprisoned in the brothel or in their places of residence. One even managed to form a personal relationship.
4. The debt the victims were to pay was a function of costs incurred by the recruiters including obtaining visas, arranging transportation, providing return air fares, paying for escorts, providing accommodation and a profit margin. The debt needs to be considered in the context of the law, culture and economy of Thailand where it was orally agreed.
5. Passports were detained in order to keep them in a safe place and avoid loss or theft.
6. Victims enjoyed good conditions: a free day each week during which they could earn money; adequate food.
7. The victims’ testimony was tainted by self-interest, as testimony against the defendant was their only way of remaining in Australia.
8. Victims were not subjected to rape, violence or other such offences.

It should be noted that the defendant was convicted despite the relatively short duration of the crimes (4-6 months).

5.4 Farrell (United States)⁶³³

This case includes a variety of evidence: victims’ testimonies, law enforcement testimony, testimony from the county attorney, expert testimony, and documentary evidence.

Strengths in the mosaic of evidence include deception, threats, vulnerabilities (including immigration status, little money, dependency upon defendants for housing and transportation, creditor-debtor relationship), restrictions of freedom (including constant supervision over movements, mail and money, searching through victims’ belongings, and passport, visa and immigration documents detention), low pay, debt bondage, exploitative work conditions (including long hours, no leisure time, sleep deprivation), difficult living conditions (including

⁶³³ *U.S. v. Farrell*, 563 F.3d 364 (2009), United States of America. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. USA006).

crowded accommodation, lack of beds, lack of privacy), isolation, explanation of seemingly voluntary victim behaviour by means of cultural beliefs and practices, climate of fear. Weaknesses in the mosaic of evidence include failure to escape, returning to abusive employers, giving up passports to employer deliberately, some support system in the form of co-workers in a fast food outlet. A particularly difficult evidential issue was the seeming consent of the victims to their exploitation.

On a factual level, it is of interest that the defendants used law enforcement, politicians and abuse of the immigration system to coerce workers to accede to exploitative conditions.

Two defendants were convicted of peonage, document servitude and other related charges. The convictions were affirmed on appeal.

The defendants recruited nine Filipino workers to work as housekeepers in a hotel that they owned. The defendants applied for visas for all the victims for which they paid \$1,200 as the total sum. The defendants supplied employment contracts to all of the victims which provided for a work schedule of six days a week at eight hours a day with a pay rate of \$6.05 an hour and included holiday and overtime pay. The contracts also stipulated that the defendants would provide housing and that the victims would pay the defendants \$150 a month for this expense. Finally the contracts stated that the defendants were responsible for the transportation costs of transporting the victims to and from the United States as required by United States law.

Before the victims were interviewed for their visas, the defendants met with all of them in the Philippines, informed them that they, the defendants, would not be paying for the transportation costs, as required by United States law but that if the victims told the United States officials this information, their visas would be denied. Subsequently, the defendants instructed the victims not to disclose this. The victims were also told that they would not receive holiday or overtime pay and that the victims would be required to repay the defendants for their portion of the \$1,200 processing fee.

While in the Philippines, the defendants initially had some trouble obtaining visas for the victims. They told the victims about these problems and showed them a letter from a Congress person in South Dakota that would remedy the problem. Soon after this, the visas were approved and the victims were led to believe that the defendants were well connected politically. The court noted this circumstance as evidence that the victims subjectively feared the defendants and felt compelled by them, thus supporting the peonage conviction.⁶³⁴

When the victims arrived in the United States, the defendants demanded that the victims hand over their passports, visas and immigration documents. Many of the victims did not want to relinquish these documents but obeyed because of the cultural norm in the Philippines to “honour and respect” their employers. The defendants reduced the victims’ pay to \$3 an hour and also charged each person the full cost of the total processing fee even though the defendants only paid a total of \$1,200 for all the victims’ visas. Additional charges began to be added to the victims’ debt such as transportation to and from work and personal items that the victims neither desired nor requested. The victims fell quickly into even more “debt” than they had initially incurred, and the “debt” was increasing at a rapid pace.

⁶³⁴ Peonage is prohibited by 18 United States Code Chapter 77, Section 581. It is defined by case law as: a condition of enforced servitude, by which the servitor is restrained of his liberty and compelled to labour in liquidation of some debt or obligation, real or pretended, against his will. Among the relevant cases which define the elements of the offence are (D.C.) 123 Fed. 071; *In re Lewis* (C.C.) 114 Fed. 903; *U. S. v. McClellan* (D.C.) 127 Fed. 971; Rev. St. U.S. See Black’s Law Dictionary Online, 2nd ed. at <http://thelawdictionary.org/peonage>.

Since it would clearly be impossible for the victims to repay this “debt” at the salary they were receiving, the defendants required the victims to obtain additional employment outside the hotel. The defendants helped the victims find employment in fast-food and other service industry jobs. This meant that they worked even longer hours than formerly and suffered sleep deprivation and absence of leisure time. The victims were not permitted to leave the hotel owned by the defendants without asking permission. The victims were usually prohibited from speaking to people outside the hotel and to non-Filipino workers at the hotel. In one instance, the American workers from a fast-food restaurant, where one of the victims worked, invited several victims to go bowling. One of the defendants drove the victims and remained at the bowling alley with them. The victims were not allowed to accept rides home from their American co-workers, so they had to walk home in freezing weather.

Seven workers shared one two-bedroom apartment for which they each paid a large sum relative to the rent paid by their employers. They were not given a key to the apartment so that they were forced to leave the door unlocked at all times, and frequently one employer would arrive unannounced and search through the workers’ belongings. During the second stage of their employment conditions were even worse, with some workers without a bed on which to sleep. The court expressly mentions living conditions as important to the conviction on the charge of peonage.

Even though the victims were working long hours at the hotel and at their second jobs, their “debts” were steadily increasing. The defendants maintained extreme control over the victims’ earnings both from the hotel and the outside jobs. The defendants would set limits on how much money the victims were allowed to send home. Defendants held regular meetings to berate the victims for their debts and to remind them of the need to repay them. Minutes were sometimes taken at these meetings. The defendants would threaten to have the victims deported if they failed to pay. They also threatened to have them sent back to the Philippines in a box (this threat appeared in the minutes of at least one meeting).

With their visas about to expire, all of the victims were still in debt to the defendants even though they had given up most of their earnings. At this point, the defendants required the victims to write letters requesting reemployment. While none of the victims wanted to continue to work for the defendants, all of them felt that it would be impossible to repay their debt working in the Philippines. The victims travelled home to the Philippines, resigned to the fact that they would have to return to the United States and continue to work for the defendants.

The defendants restarted the visa process and the victims’ debts continued to increase with another round of processing fees and transportation costs. This time the defendants gave the victims copies of fake checks to show United States officials when the victims went to obtain their visas. The checks were supposed to show that the victims had been paid in accordance with the employment contracts, even though they had not been. The visas were approved and the victims returned to the same situation in the United States.

Eventually one victim was able to escape by lying and saying she must return to the Philippines because her mother was dying. One of the defendants escorted her to security at the airport and only then returned her passport. This victim never returned to the United States to work for the defendants, but the defendants would not leave her alone. They wanted to ensure that she pay her debt and they harassed her via e-mail and telephone to that end. Because of this harassment, the victim contacted the United States Embassy in the Philippines

and an investigation was initiated. Two other victims attempted to escape and the defendants threatened them and called the police and FBI to have them arrested. A police officer talked to the victims and noted that the victims were “terrified” and that they refused to talk in front of the defendants. The police officer left but later returned because he feared that the defendants had used him to intimidate the victims

This case included the following kinds of evidence: testimony of the victims themselves, testimony from the chief of police and the county attorney, expert testimony and documentary evidence. The documentary evidence consisted of: immigration petitions, employment contracts, debt contracts and minutes of meetings the victims were forced to attend to discuss their debt.

A legal issue arose concerning expert testimony:

The expert testimony was given by an expert in human trafficking and domestic worker exploitation who testified about certain warning signs that often indicate the employee is not working voluntarily but rather in a “climate of fear” or psychological coercion. She further testified that she believed several of these signs were present in the case. The court ruled that this testimony was only relevant insofar as it provided this broader context in order to aid the jury to understand the workers’ actions, to understand the conditions under which they laboured and to assess the truthfulness of their allegations. However, expert testimony usurped the jury’s functions when the expert expressed an opinion on the strength of the government’s case and the credibility of its witnesses and when it expressed the opinion that the workers were not controlling their money—a fact which should have been left to the jury to find out.

The following issues were addressed in this case which relate to the mosaic of evidence. In learning from the issues below, it should be noted that the defendants were convicted of peonage which requires: “compulsory service in payment of a debt”.⁶³⁵ Thus involuntariness is part of this crime which impacts upon issues of consent.

1. *Victim consent:* The defendants argued that the victims’ employment was voluntary and used as proof the fact that the victims returned to work following their trips to the Philippines. They also maintained that the victims could have stopped working at any time if they were willing to return to the Philippines. This argument was rejected by the court which brought into account the defendants’ coercive acts which compelled the workers to stay in the United States. In this regard the court noted the defendants’ obduracy in collecting their debts and their threat to hunt victims down and harm them if they did not pay, in conjunction with the fact that it would have been difficult, if not impossible, for the workers to meet their obligations on salaries in the Philippines.⁶³⁶
2. *Seemingly innocent threats:* The defendants claimed that they were legally entitled to explain to workers that their visas were contingent on continued employment. However, the court distinguished between this seemingly innocent explanation and the reality, by which the defendants threatened to call in immigration authorities for breach of arbitrary rules, including a prohibition on speaking to people outside the hotel.

⁶³⁵ See previous footnote for citations.

⁶³⁶ See section 3.3.6.1 on “Failure to escape or seek help” for the court’s analysis of this issue.

3. *Victim failure to escape:* The court ruled that even if the victims had opportunities to escape at certain points, it is reasonable to conclude that the employment was involuntary at least at some points.
4. *Facts explicitly mentioned as important to the conviction:* This case is interesting in that the court explicitly mentions certain facts as important to a conviction of peonage.

Among the facts mentioned as important are the following: threats of physical force and calling in immigration authorities; the workers' difficult working and living conditions which did not allow leisure time, resulted in sleep deprivation and included non-payment or minimal payment; the victims' particular vulnerabilities (immigration status, little money, dependency upon defendants for housing and transportation, creditor-debtor relationship); the victim's fear of one defendant's volatile temper and of both defendants' seemingly powerful position; the defendants' continual isolation of the workers; the defendants' constant supervision of victims' movements, mail, money; the defendants' keeping a key to the victims' residence so that they could conduct random inspections while refusing to allow the workers a key of their own, the victims' debt bondage where at no point was the value of the workers' labour sufficient to liquidate the debt and there was no limit to the length of the services required to satisfy the obligation.

5.5 Omoruyi (Nigeria)⁶³⁷

In this case, the intended exploitation never transpired and a threat was used by the defendant that some might qualify as seemingly irrational. The court, however, viewed the threat as serious enough to result in an intimidation of the victims. The case is also of interest in that the victims did not testify, and yet the prosecution was able to prove its case by means of the defendant's confessional statements, the testimony of a native doctor and the testimony of a law enforcement officer.

The kinds of evidence in this case include testimony from law enforcement and from a so-called native doctor, the defendant's confessional statements made during the investigation, and documentary and real evidence.

The mosaic of evidence was limited in view of the fact that the exploitation never transpired and included only details about the subtle means of coercion in the form of "juju" threats which were effective due to cultural beliefs and practices.

Particularly difficult issues present in this case are the hurdles in proving a case when the exploitation has not yet transpired and seeming victim consent to exploitation.

The defendant was found guilty of an attempt to organize foreign travel for prostitution and an attempt to place the victims in servitude as pledge for a debt.

In this case the victims, young women, were required to go to a native doctor and participate in a "juju" (witchcraft) ceremony that bound them to the defendant in providing sexual services to clients abroad. During the ceremony the victims were obliged to take a "juju"

⁶³⁷ *Attorney General of the Federation v. Constance Omoruyi*, Charge No. B/31C/2004, 22 September 2006, High Court of Justice, Edo State of Nigeria, Nigeria. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. NGA002).

oath which required them to pledge, under threat of a curse of death, not to run away and to pay the defendant money.⁶³⁸ The native doctor confirmed the victims' understanding that they would be going to Italy to engage in prostitution. After this oath the native doctor collected the victims' pubic hairs, fingernails and in some cases panties, and kept them in wraps with the victims' names on them.

In more detail, the following is the language of the oath:

"[I]f I run away from my madam let Ogun kill me. Also if I refuse to pay the madam the money agreed upon let Ogun kill me."

Attorney General of the Federation v. Constance Omoruyi, Charge No. B/31C/2004, 22 September 2006, High Court of Justice, Edo State of Nigeria, Nigeria.

The victims were still in Nigeria when they were apprehended by law enforcement. While they had taken the oaths and agreed to go abroad for purposes of prostitution, they had not yet performed any sexual acts.

This case is particularly interesting in that the victims did not testify. The evidence included the following:

1. *Defendant's statements*: During the investigation the defendant made statements which were confessional in nature. However, during the trial he contradicted these previous statements.⁶³⁹ The court admitted the statements in evidence.
2. *Testimony of native doctor*: The evidence provided by the native doctor was heavily relied on by the prosecution. The court too, found the native doctor's testimony to be a "vivid account of the role played by the [defendant] in procuring the [victims] mentioned in the charge for foreign travel".⁶⁴⁰ The court accepted and believed the native doctor's testimony on the defendant's role in the oath taking.
3. *Testimony of law enforcement officer*: The police officer testified about his investigation of the defendant and the native doctor and his gathering of evidence. The officer also laid the foundation for the documentary and real evidence submitted to the court.
4. *Documentary evidence*: The documentary evidence included the following items found in the defendant's house: a Nigerian passport in the name of one of the victims, an address book/diary, and a small notebook. Additional documentary evidence included travel documents belonging to the victims such as ECOWAS member State travel documents and certificates of vaccinations for the victims. The court mentions this evidence as background, but relies on the testimonial evidence previously described to support the convictions.
5. *"Real evidence"*: At the home of the native doctor "real evidence" was found in the form of a wrap that contained the pubic hairs of one of the victims and had her name on it. In addition, three passport photographs of victims were found in the defendant's house.

⁶³⁸ See section 3.2.4 on "Subtle means of coercion" for the exact language of the pledge.

⁶³⁹ He claimed he had been tortured and had been given a prepared statement by the police to sign. The court did not find these claims credible.

⁶⁴⁰ *Omoruyi*, *Ibid.*

Core issues raised in this case include:

1. *Exploitation not yet transpired*: In this case, the exploitation had not yet transpired. The defendant was convicted of an attempt to organize foreign travel for the purpose of prostitution on the basis of an array of testimonial, documentary and real evidence.
2. *Victim consent*: Seemingly, the victims willingly undertook the “juju” oath to travel abroad for purposes of prostitution. In view of this, the court acquitted the defendant of the charge of deceitful inducement in connection with trafficking in persons because the court believed the victims knew where they were going and for what purpose and therefore there was no element of deceit. However, the court convicted the defendant of placing a person in servitude as a pledge for a debt, despite the seeming consent of the victims. This was in light of the evidence provided by the native doctor about the oath the victims were required to take. The court found that there was “abundant and copious evidence that the oath is to bond [the victims]”.⁶⁴¹ Thus, the victims’ seeming consent to exploitation did not preclude this conviction. Additionally, the mere fact that the victim consented to leave the country for the purposes of prostitution was not a defence to the charge of organizing foreign travel which promotes prostitution.
3. *Failure to call victims to testify*: The defence argued that the failure to call the victims to testify was a fatal flaw in the prosecution’s case. The court disagreed and found that the victim of a crime is not the only person who can provide evidence against a defendant. As an example, the court used a case where the victim dies and asked if that would leave the court without recourse. It answered in the negative.⁶⁴²
4. *Relying on the testimony of an accomplice*: The defence argued that the native doctor’s testimony should be disregarded because he should be viewed and treated as an accomplice. The court took this issue seriously and acknowledged the risk in basing a conviction on the native doctor’s testimony in isolation. However, the court found that the evidence of the native doctor, when combined with the defendant’s confessional statements were “sufficient materials upon which can rely and prove its case”.⁶⁴³
5. *Seemingly irrational threat*: This issue was not raised explicitly in the court’s ruling, but may be of interest to practitioners. Seemingly, in many countries, the threat in the “juju” oath could be seen as irrational and consequently of insufficient effectiveness to influence reasonable persons. However, in this case it was understood to have strength and weight, as belief in such curses is prevalent in all strata of Nigerian society.⁶⁴⁴ For further information on seemingly irrational threats which may be a product of cultural beliefs see above,” 2.6 on “Expert and professional testimony”; section 3.2.2 on “Threats/seemingly unreasonable threats”; section 3.2.16 on “The relevance of cultural beliefs and practices” and section 3.3.6.7 on “Seemingly irrational beliefs”.

⁶⁴¹ Ibid.

⁶⁴² See section 2.2.3, “Cases with partial or no victim testimony” for the court’s analysis on this issue.

⁶⁴³ *Omoruyi*. Previously cited.

⁶⁴⁴ This information was supplied by a Nigerian expert.

5.6 Anos (Philippines)⁶⁴⁵

This case has significant issues involving duration of abuse and circumstances which may weaken a case such as the victim's power to say no with impunity.

Kinds of evidence submitted by the prosecution were testimony from two victims, law enforcement testimony, documentary and "real evidence". The defence introduced testimonial evidence from the defendant and an individual similarly situated to the victims and, in addition, documentary evidence.

The strengths in the mosaic of evidence include restriction of freedom, threats, deception and vulnerabilities (in regard to illegal immigration status, socio-economic situation and unfamiliarity with language and culture of country of destination). Weaknesses in the mosaic of evidence include the victim's power to say no with impunity, the illegal actions of the victims and the short duration of the abuse (five days).

The defendant in this case was convicted of trafficking in persons.

This case concerns two female victims, Victim M and Victim J, who were recruited in the Philippines for jobs in Malaysia. The victims were told the jobs would be to serve as waitresses or cashiers in a restaurant. In order to travel to Malaysia, the victims were told to procure fake passports. They did so and travelled to Malaysia with those documents.

The victims arrived at their destination in Malaysia on the evening of 17 November 2006. They were told to eat, take a bath and prepare to go to work. Victim M initially refused to go to work because she was very tired from the trip, but the defendant insisted. Once they arrived at the business where they would be working, the victims learned that it was not a restaurant, but rather a bar, and that they would be required to earn money by means of sexual relations with men who frequented the bar.

Victim M told the defendant that she would not do this job. The defendant told her that there was never a waitress job available, and that if she refused to do this job then she would not earn any money. During the first night one customer wanted to book Victim M and she still refused. The defendant was angry. The victims stayed at the bar from 9 p.m. in the evening until 2 a.m. the following morning. Neither victim entertained customers during this time.

The victims were required to work from 9 p.m. in the evening until 2 a.m. the following morning every day. Victim M continued to refuse to book customers for sexual relations. She would only sit at a table with the customers while they drank. In this way, Victim M could earn a portion of each drink the men bought for her.

From this vantage point, which allowed her to see the defendant's position at the bar, Victim M received the impression that the defendant was not the owner of the bar, but rather the "mamasang" or pimp. Victim M observed the defendant and saw that she was not serving any customers, but rather was occupied in connecting victims with customers for bookings to provide sexual services. One day, at the residence where the victims were staying, the

⁶⁴⁵ *People v. Anos* promulgated by a Regional Trial Court branch 12 Zamboanga City, year 2011. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. PHL051).

defendant's sister brought two women to the house to train the victims on how to have sexual relations and they demonstrated various positions.

On 21 November 2006, on the fifth day of being exploited at the bar, the bar was raided by Malaysian immigration officials. The victims and the defendant were arrested and taken first to a detention cell and then to a detention facility where they were kept for one month and seventeen days. Eventually the victims and the defendant were deported back to the Philippines. Upon their arrival in the Philippines, they were immediately interviewed and the defendant was arrested on the same day.

The kinds of evidence submitted in this case by the prosecution included:

1. Testimonial evidence

- (a) Victim testimony: Testimony was heard from the two victims.
- (b) Law enforcement testimony: Testimony was heard from two law enforcement officers who testified about the arrest of the defendant, identified the defendant in court, and helped lay the foundation for certain pieces of documentary evidence.

2. Documentary evidence

- (a) Fraudulent documents used to create fake passports for the victims, such as a voter's affidavit, clearance from the National Bureau of Investigation, an authenticated copy of a Certificate of Live Birth, Baptismal Certificate and school identification card.
- (b) The fake Philippine passport obtained by Victim M on the basis of these documents.
- (c) The boat ticket for the trip to Malaysia for Victim M (issued in the name on the fake passport) and the stamp evidencing entry into Malaysia on page 4 of the fake passport.
- (d) A two-page letter given to Victim M by the defendant while she was in jail in Malaysia requesting her to sign it. The letter purported to be from the victim, was addressed to her parents and stated that she was fine, when in fact she was in jail. She refused to sign and her refusal angered the defendant.
- (e) Documents obtained by Victim J in order to secure a passport and the passport she used.
- (f) Victim J's boat ticket and evidence that she did not pay for the ticket.

3. Real evidence:

A spaghetti-strapped maroon blouse that Victim J was forced to wear by the defendant when she worked in the bar in Malaysia.

The evidence presented by the defence included the testimony of the defendant as well as an individual in the same situation as Victims M and J. In its presentation of the facts, the court notes that the similarly situated individual did not file a case against the defendant because "she did not like the hassle of doing so".⁶⁴⁶

⁶⁴⁶ *People v. Anos*, promulgated by a Regional Trial Court branch 12, Zamboanga City, year 2011. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. PHL051).

The court strongly relied on the victims' testimony and the documentary evidence presented by the prosecution to find that "there can be no iota of a doubt" that the elements required to support a trafficking in persons conviction exist in this case. When evaluating the evidence presented by the defence the court found that the "detailed, direct and straightforward testimonies" by Victims M and J overwhelmed the defence. In fact the testimonies of the defendant and the similarly situated individual, "actually even corroborated" material points in the prosecution's case.

Core issues raised in the case included:

There were seemingly important weaknesses in the mosaic of evidence in this case which might have conceivably led the court to acquit the defendant, though these are not explicitly addressed by the court. However, they did not preclude a conviction:

1. *Relatively short duration:* The victims were held for five days before they were apprehended by immigration officials. While the court does not comment on the duration of the abuse, it finds this situation to be a "classic case of trafficking in persons"⁶⁴⁷ so that the limited duration of the abuse did not seem to be a factor in the court's decision.
2. *Victims' illegal actions:* The factual background of the case mentions that both victims took part in producing and using fraudulent passports. While it is true that this issue is not explicitly addressed by the court, the conviction, despite the illegal activity of the victims, shows that the court did not impugn the victims' credibility on this basis alone.
3. *Victim's ability to say "no" with impunity:* The court does not address the victim's refusal to provide sexual services as a fact which weakens its finding of trafficking in persons, but rather only as the factual background of the case. The court finds that the defendant used fraud to convince the victims to agree to go to Malaysia for employment and that the real purpose for the recruitment, transport, transfer, receipt, and harbouring of the victims was for the purpose of prostitution and/or sexual exploitation which was sufficient to support a conviction.

While the court does not address this issue, the facts cited by it, clarify that though Victim M refused to engage in sexual relations with impunity and was not physically forced to do so, this freedom did not extend to freedom to work or live elsewhere. Moreover, she still continued working for the defendant by sitting with customers at the tables in the bar. Perhaps this factual background helps to explain the conviction.

Thus the strengths in the mosaic of evidence, mentioned in the factual background of the case, seem to have contributed to the conviction, including the threats of the defendant, his deception, the restriction of freedom in that the victims were required to work and live on the premises with no freedom to work or live elsewhere, and the vulnerabilities of the victims (their illegal status, low socio-economic situation and unfamiliarity with the language and culture).

⁶⁴⁷ Ibid.

5.7 Ranya Boonmee (Thailand)⁶⁴⁸

This case is of particular importance because it highlights various issues explored in this Case Digest by illustrating how two courts can evaluate the same evidence in different ways. Thus, while the trial court convicted, the court of appeals reversed on the basis of the same mosaic of evidence which included: vulnerabilities (women migrant workers without legal status), threats, restriction of freedom, isolation, low pay, exploitative work conditions and, in particular, the long hours of work. Weaknesses in the mosaic of evidence included: inconsistent testimony of the victims and testimony of similarly situated migrant workers who worked in the same workplace and were not victimized. A particularly difficult evidential problem was the victims' seeming consent to their situation.

Among the kinds of evidence submitted were the testimony of the alleged victims, of migrant workers who worked in the same factory, of law enforcement and social workers who participated in the raid, which rescued the alleged victims and of defendants, and "real evidence", which included photographs of the workplace, including the dormitory which housed the victims inside the factory walls.

The defendants were charged with conspiring to confine other persons, depriving them from liberty and forcing them to do any act for the doer; and accepting and retaining workers illegally, including those under the age of 18 and 15 years old for the purposes of enslavement, compelling them to work in slavery-like practices. While they were convicted by the trial court, they were exonerated by the court of appeals.

On 16 September 2006, migrant workers without legal status were found in a shrimp-processing factory in Thailand. More than 300 workers were found working in the factory and 66 out of these workers were identified during the investigation as victims of trafficking in persons. In the trial, 14 alleged victims, whose testimony was inconsistent, were witnesses in court, whereas 22 migrant workers testified as the defendants' witnesses that they had not undergone difficult conditions in the factory.

The majority of the alleged victims were women; only three were men. The prosecution attempted to prove that the victims were forced to live on site in the factory compound; that they were required to work long hours and that they were not compensated appropriately. The prosecution also attempted to prove that they were threatened with punishment if they did not work. However, there were other migrant workers at the factory who testified that they were not forced to live on site and that they could leave the factory after work.

Kinds of evidence in this case included:

1. Testimony of victims, characterized by inconsistencies and nonetheless considered credible by the trial court, but non-credible by the court of appeals.
2. Testimony of law enforcement and social workers who participated in the raid on the premises and testified about the appearance of the site and some of whom testified about the physical appearance of the victims.

⁶⁴⁸ The trial court citation is *Ranya Boonmee, Kaew Kongmuang and Manus Boonmee*, Case No. 2013/2552, Criminal Court of Bangkok, 9 December 2010, Thailand. The Appeals case citation is Appeals Court black case number 1704/2554 and red case number 4097/2556, 6 March 2013. Information about this case was obtained from the UNODC Human Trafficking Case Law Database (UNODC Case No. THA001) and a Thai expert.

3. Testimony of similarly situated workers who testified they had not been exploited, forced to live on site or prohibited from leaving after work.
4. Photographs of the premises showing that the factory was surrounded by a 16-foot-high, barbed wire capped wall. The photos also showed the housing in which the victims lived and that this housing was inside the wall of the compound.

This case is of particular interest because it highlights typical issues in cases of trafficking by means of different assessments of the evidence by the trial court and the court of appeals. These revolve around the following weaknesses in the mosaic of evidence:

1. *Testimony of other similarly situated workers:* A central weakness in the mosaic of evidence concerned similarly situated workers who testified that they were not exploited, were not forced to live on site and could leave the factory after work. The trial court did not view these testimonies as central in discounting the prosecution's case in view of the alleged victims' testimonies and the photographs adduced by the prosecution. However, the court of appeals did view these testimonies as strong evidence militating against conviction.
2. *Inconsistencies in alleged victim testimony:* The testimony of the alleged victims included some inconsistencies. The trial court did not consider that these inconsistencies impugned the credibility of the alleged victims, because the core of the alleged victims' testimonies was consistent and because the inconsistencies could be explained in light of the long delay between the rescue and the court hearing. In addition, there was also support in the form of photographic evidence and testimony of police and social workers. However, the court of appeals viewed the inconsistencies as impugning the credibility of the victims, especially in view of the testimony of similarly situated workers.
3. *Alleged victim consent to their situation:* In its exoneration of the defendants, the court of appeals relied heavily on the seeming consent of the alleged victims to their situation and on the innocent behaviour of the defendants. Thus, the court stressed that the alleged victims had voluntarily crossed the border into Thailand in order to work; that there was no indication of unwillingness to work during the police raid on the premises; that it was agreed that the defendants pay transportation costs from the alleged victims' villages which would then be deducted from the victims' wages; that there was no restriction of freedom on the alleged victims' freedom beyond what was done in the case of other workers and that the motivations of the defendants were innocent in this regard (see next subsection).
4. *Restrictions of freedom or innocent caution:* Whereas the trial court considered the alleged victims' residence within the walls of the factory and prohibition to exit after work hours to be a restriction of freedom, the court of appeals found innocent explanations for this. For example, the defendants provided accommodation to all workers, and not only to the victims, not for the purpose of restricting freedom, but merely for convenience, as the nature of work required the workers to stay in the factory many hours; the defendants did not allow the alleged victims to leave the factory because they feared they would be arrested by police due to their illegal status. In addition, it was pointed out that the defendants did occasionally allow the alleged victims and other workers to leave the factory to visit temples and go to hospitals.

5.8 Case No. 8959—2012 (Egypt)⁶⁴⁹

Case No. 8959-2012 (Egypt) involves a diverse chain of actors who carried on a trafficking for prostitution ring, with each defendant fulfilling a different role. While some were professional criminals, others were the parents of the victims and clients who desired to engage in sexual relations under the screen of false *Orfy* marriage contracts.⁶⁵⁰ The case raises various issues including victim consent and how to prove the intentional involvement of a chain of defendants in the trafficking. It also raises the issue of when family members of victims can be considered complicit in trafficking them.

The case involved a variety of evidence which included testimonies—of victims, their parents, two police officers and two neighbours; expert evidence—in the form of a medical report and a report of a forgery expert; documentary evidence in the form of bogus marriage contracts, receipts between two defendants, information and lists of the names of the victims found in the home of the third defendant; “real evidence”, including a photograph of one of the victims, was also found in the third defendant’s home.

The mosaic of evidence included vulnerabilities (some victims were minors and all were young; they were poor; and parents were complicit in the trafficking); a complex web of deception and severe exploitation in prostitution.

A criminal organization colluded to arrange false marriages between young girls in dire economic straits, some of whom were minors, and men from the Gulf States in order to prevail upon the girls and their parents to allow them to give sexual services to these men under cover of false marriage contracts. In addition to this basic deception, there were others used to support it. One defendant pretended to be a lawyer, which enabled him to issue false *Orfy* marriage certificates. Yet another defendant was responsible for constructing an artificial hymen for the victims so that they could appear to be virgins. This was done in order to be able to charge higher fees and enable the girls to attract new customers. Two of the defendants prepared two private apartments for the purpose of prostitution. The case also included four defendants who were men from the Gulf States who desired to engage in sexual relations with the young women. Another three defendants were the parents of victims who facilitated the prostitution of their daughters in return for financial gain and took them to the apartments used as brothels to offer them to the other defendants.

Kinds of evidence in this case included:

1. *Testimonial evidence:*
 - (a) Victims’ testimony – One victim testified that one defendant had arranged more than one marriage for her in exchange for profits which were divided between them. She added that one of her marriages had only lasted for 10 days and that she had remarried before the lapse of the period required by law.
 - (b) Police witnesses – testified regarding the investigation and search warrant which revealed victims and clients in the house of the first defendant and 95 false

⁶⁴⁹ *Case No. 8959-2012*, Criminal Court of Haram and Appeal No. 6772, Judicial Year 82, Egypt. This case is based on a summary and analysis of the decisions of the Criminal Court of Giza Province and the Court of Cassation submitted by an Egyptian expert. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. EGY001).

⁶⁵⁰ See definition of *Orfy* marriage contracts in previous footnote in section 2.5 on “Defendants’ out-of-court confessions”.

marriage contracts in the home of the third defendant. They also testified regarding the defendants' statements whereby they admitted that they facilitate this type of marriage.

2. *Neighbours' testimonies*: Neighbours to the premises in which prostitution took place testified that they noticed numerous girls and men regularly come to the house.
3. *Documentary evidence*: The most important form of documentary evidence was 95 "official marriage" contracts discovered in the home of the third defendant, which were used to deceive the victims that they were entering into marriages when, in fact, they were prostituting themselves. Other documentary evidence included receipts between two defendants and lists of information and names of victims discovered in the third defendant's home. Another interesting piece of documentary evidence was a document provided by a Gulf Embassy in Cairo which attested to the fact that one of the men from the Gulf States had official permission allowing him to marry in Egypt, thus confirming his innocence of any criminal intent.
4. *"Real evidence"*: A photograph of one of the victims was discovered in the home of the third defendant.

The trial criminal court convicted the professional criminals (who had colluded at recruiting the girls, arranging the apartments, preparing the false marriage contracts and constructing artificial hymens) of trafficking in women for the purpose of prostitution in exchange for financial awards. It exonerated the parents of the girls and the men from the Gulf States who engaged in the sexual relations. Both the convicted defendants and the public prosecution appealed the case before the court of cassation.

The court of cassation confirmed the acquittal of the men from the Gulf States, but ordered a retrial of the others because the evidence did not justify differentiating between the parents of the girls and the other defendants.

Core issues raised in the case included:

1. *How to prove knowledge of all defendants in the chain of trafficking*: The Trial Court addressed the issue of *mens rea* or criminal knowledge of the defendants regarding the criminal purposes of the operation in a few contexts. The defendants, who by their own admission, knew of the actions of the fourth defendant, who was responsible for constructing an artificial hymen for the victims, demonstrated by this their intent to exploit the victims. On the other hand, in acquitting the clients, the court relied on a document provided by a Gulf Embassy by which at least one client had official permission allowing him to marry in Egypt, which, being issued before the initiation of criminal proceedings, proved his innocent intentions and that of his brother and friends in that they intended real marriage contracts. This court also acquitted the parents of the victims, apparently in view of their testimony by which they were persuaded that the girls would be married and on the basis of fact that the network had exploited their difficult financial situation. The trial court considered that this fact negated the special intent required in trafficking crimes. The trial court also based its exoneration of the parents on the assumption that, as parents, they would want their daughters to be married through legitimate channels and would not intentionally collude at engaging them in prostitution. This assumption was reversed by the court of cassation.

The court of cassation confirmed the acquittal of the clients on the basis of the trial court reasoning, whereby the document submitted by the Gulf Embassy was issued before the initiation of criminal proceedings, thus proving that the clients had no criminal intent. However, it ordered a retrial in respect of the other defendants in view of the following:

- The trial court had based its acquittal of the parents on mere assumptions and speculations without any solid evidence to support it, and
 - The evidence presented before the Trial Court should have produced a unified conviction or acquittal of the professional criminals and parents alike, as the evidence showed the parents knew the girls had been exploited in sham marriages several times.
2. *Victim consent*: Seemingly, the victims knew they would be called upon to engage in sexual relations with the men from the Gulf States. Even if they were initially deceived and thought they would be married, when this transpired a few times, with little time elapsing between the marriages (as testified by one of the victims), they could seemingly be viewed as consenting to their prostitution. In its decision, the court refers to Egyptian law which states that the consent of the victim to exploitation in any of the forms of human trafficking shall be irrelevant as long as any of the means stipulated in Article 2 of this law have been used and, in regard to minors, consent is irrelevant even if no means have been used.⁶⁵¹ Since some of the victims were minors, even if they seemingly consented, this is irrelevant. As to the others—the trial court, in convicting the defendants, may have relied on the MEANS of “deception” or “exploitation of a position of vulnerability or need”.⁶⁵² Such a position of vulnerability might be the victims’ poverty, their youth, or even the complicity of their parents in the trafficking.
 3. *When can parents be considered complicit?* This complex case reflects the heightened difficulties present when family members of victims participate in the trafficking process. In these cases, it is particularly difficult to decide if the family should be convicted as perpetrators or seen as quasi victims whose vulnerabilities are being exploited. The trial court apparently accepted the parents’ claim that they did not know the marriages were a sham and may have also considered the parents’ own financial vulnerability. In addition, it seems to adopt an assumption that as parents, they would want their daughters to be married through legitimate channels and would not intentionally collude at engaging them in prostitution. The court of cassation ordered a retrial. In this, it seems to be expressing a doubt about the parents’ innocence, perhaps in view of the fact that the victims were exploited several times.

5.9 Siliadin (European Court of Human Rights)⁶⁵³

The mosaic of evidence in this case includes subtle threats, deception, vulnerabilities (consisting of immigration status, age, and lack of familiarity with language and culture, family relationships), restrictions of freedom (including by means of constant supervision, detention

⁶⁵¹ See Law No. 64 of 2010 regarding Combating Human Trafficking, Article 3.

⁶⁵² *Ibid.* Article 2.

⁶⁵³ *Siliadin v. France* (App. No. 73316/01) ECHR, 26 July 2005, European Court of Human Rights. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. FRA010).

of passport, fear of arrest and lack of free time), isolation, absence of pay, difficult work conditions, difficult living conditions, signs of ownership (in that one family lent her to another without her consent) and duration of abuse. Weaknesses in the mosaic of evidence include freedom to come and go, returning to an abusive employer, a family support system whom she did not complain to, no violence or lock and key imprisonment. A particularly difficult issue was the seeming consent of the victim to her exploitation.

In this case, the European Court of Human Rights ruled that the victim had been held under forced labour or servitude.

A female minor aged 15 years and 7 months was sent from Togo to France by her father in order to work for a Togolese family, with the understanding that they would regularize her immigration status and allow her to study in school once she had repaid them for the price of her air ticket. Instead, this family took away her passport and made her an unpaid housemaid. After a few months this family “lent” her to another family to assist with household work and this family “decided to keep her.”

In this second family, she worked 7 days a week, 15 hours a day (from 7:30 a.m. until 10:30 p.m.). In addition to doing all the household work, she also had to clean a studio flat in the same building. She slept on a mattress on the floor of the baby’s room and was expected to look after him if he woke up. She was occasionally allowed to go out of the house in order to attend mass on Sundays, to take the children to their activities or to go shopping. She was not paid for this work, though on occasion she was given small gifts of money for family celebrations. Her passport continued to be in the possession of the family. This situation continued for about a year and a half.

The victim escaped with the aid of a Haitian citizen and worked in her house where she looked after her two children and received adequate accommodation and payment.

In obedience to her uncle, the victim returned to the family for whom she had worked with the understanding that they would regularize her immigration status. However, the situation remained essentially unchanged. She was in this situation for several years.

The victim had met with her uncle and father during her time as a housemaid and she also had the opportunity and funds to call her uncle from outside the home of her employers. According to her uncle, she did not complain about her situation to him and he said he had offered to give the victim money but that she had never asked for any.

At some point, she managed to recover her passport and confided in a neighbour who alerted a specialized NGO (Committee against Modern Slavery) that filed a complaint to the prosecutor’s office.

It is noteworthy that the Siliadin case was heard by four French instances and was thereafter deliberated upon by the European Court of Human Rights, which ruled that the victim had been held under forced labour or servitude—both of which are severe offences entailing deprivation of basic liberty. The following is additional legal background to assist in understanding the case.

- *French Law:* At the time of the case, France did not have legislation which criminalized forced labour, slavery or servitude and the family was indicted according to two French sections of the Criminal Law criminalizing: performance of services without payment or in exchange for payment that is manifestly disproportionate to the amount

of work carried out by taking advantage of a person’s vulnerability—with a punishment of two years imprisonment and subjecting an individual to working or living conditions which are incompatible with human dignity by taking advantage of that individual’s vulnerability or state of dependence—with a punishment of two years imprisonment. The four French courts who dealt with the case analysed it according to these sections.

- *European Convention of Human Rights*: Article 4 of the European Convention of Human Rights prohibits slavery, servitude and forced labour. States who are parties to the convention are obligated to ensure that their legislative system is effective in giving effect to these prohibitions. The European Court of Human Rights analysed if the case fell into “slavery”, “servitude” or “forced labour” and then ruled on the question if France’s legislation fulfilled her obligations to effectively prohibit these phenomena.

The analysis below is based upon the ruling of the European Court of Human Rights which also alludes to the rulings of the French courts and the evidence presented before them.

Court ruling

1. *Conviction though no overt threats or violence*: In this case there were no overt threats or violence. However the court did not find these to be necessary elements of the crimes. The victim did not claim that the defendants physically assaulted her or threatened her with physical harm. However, they nurtured her fears of arrest and deceived her about regularizing her immigration status and allowing her schooling. The court found that although she was not threatened explicitly her reality put her in the “equivalent situation in terms of the perceived seriousness of the threat”.⁶⁵⁴
2. *The importance of the victim’s vulnerability, including family complicity*: The victim’s position of vulnerability as a minor was relevant to the court which stated that “as a minor, she had no resources and was vulnerable and isolated”.⁶⁵⁵ Another interesting facet of the case, though it was not addressed explicitly by the court, was the victim’s family’s complicity in her trafficking in that her father made the initial arrangement and her uncle encouraged her to return to the abusive situation. At least one of these family members subsequently testified in a way beneficial to the defence. Even if family members had the best of intentions, their involvement made the victim more vulnerable to exploitation. It is noteworthy that the defence attempted to counter the victim’s vulnerability by claiming that the victim knew French and was familiar with Paris. However, the court did not accept this as a counter to the above vulnerabilities.
3. *Broad understanding of restrictions of freedom*: The victim was not under lock and key imprisonment and she was permitted to leave the house to do specific tasks and errands for the family and to go to Mass on Sundays without being supervised. Despite this, the court ruled that the supervision over her movements, the lack of free time and fears of arrest by police, can be factors in viewing a victim’s movements as restricted.

⁶⁵⁴ Ibid. at para. 118.

⁶⁵⁵ Ibid. at para. 126.

“the [victim], who was afraid of being arrested by the police, was not in any event permitted to leave the house, except to take the children to their classes and various activities. Thus, she had no freedom of movement and no free time.”

[...]

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Siliadin v. France (App. No. 73316/01) ECHR, 26 July 2005, European Court of Human Rights. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. FRA010), para. 127.

4. *Sporadic presents do not constitute payment*: The court found that the victim did not receive payment for the tasks performed, even though she did receive small sums of money occasionally, despite the fact that she had enough money to call her uncle from telephone boxes, and despite the defendant’s claims that they were creating a “nest egg” for the victim that she would receive upon her departure.
5. *The victim’s behaviour or seeming consent*: The victim in this case behaved in ways that could conceivably have led the court to doubt her credibility or view her as consenting to her situation. However, the court displayed an understanding that these behaviours were a function of the victim’s situation of isolation and vulnerability. The following are examples:
 - The victim did not complain to her father or uncle of the conditions when she met them and did not ask them for money. Nor did she complain in the presence of the defendant’s mother while staying with her.
 - The victim returned to the defendants’ house a few months after she escaped from it, in obedience to her uncle.

5.10 Grigore and others (Germany)⁶⁵⁶

The kinds of evidence included in this case are victim statements, victim testimony, and police statements. It should be noted that the case cantered almost exclusively on the victim’s testimony.

The mosaic of evidence in this case includes deception, threats of harm to child and family, vulnerabilities (consisting of lack of familiarity with language and culture, poor education and poverty and family complicity in the crime), restrictions of freedom including constant supervision and confiscation of personal documents, difficult conditions (long hours of prostitution) and no payment. Weaknesses in the mosaic of evidence include the victim’s seeming “negligence”, as she had been trafficked before, and the short duration of the exploitation

The prosecutor indicted three defendants: Constantin, his father Alexandru who was the victim’s uncle, and Diana Monica, who was the victim’s cousin. Constantin and Diana Monica were indicted together but the case was separated by the court, as Diana Monica

⁶⁵⁶ High District Court (Landgericht Berlin), case against *Grigore and others*, Az. 528 Qs 105/13 (255 Js 783/13) of 23 September 2013, Germany.

was considered a juvenile. The defendant Alexandru was indicted later after he was extradited from Spain.

Two of the court's chambers found the victim to be credible and convicted the defendants Monica and Alexandru on charges of trafficking by means of deception, whereas another chamber acquitted Constantin.

In March 2012, a 26-year-old Romanian woman was called by her cousin Monica in her home village in Romania. Monica asked whether the victim would like to come to Germany to care for an elderly lady. She told her cousin that the job would be facilitated by her boyfriend, Constantin. As the victim had been deceived by other persons from her village before in 2010 who led her into prostitution against her will in Germany, she was sceptical of the offer. Monica's offer was then backed by the victim's uncle, Alexandru, who eventually convinced her to travel to Germany.

Constantin and Alexandru thereupon brought the victim to Germany, where her identification papers were taken from her and she was forced to conduct sexual relations as a street prostitute. She was forced to work all night, her earnings were collected by Monica and given to Constantin and both defendants supervised her all day. She was threatened that if she tried to escape, something would happen to her child and family. The victim managed to escape 48 hours later. She was consecutively interviewed by police, taken into a shelter for victims of trafficking and received legal and social assistance.

Court ruling

Based on the victim's statements and additional police investigations, search warrants and arrest warrants were issued by the court on request of the prosecutor, and both Monica and Constantin were arrested. Upon their appeals against their arrest warrants, two chambers of the court overturned the two arrest warrants and ruled that the victim's story was not credible as she had been trafficked before, and thus should have seen what was coming.⁶⁵⁷

The prosecutor appealed these two decisions, arguing that the two chambers had not evaluated the evidence correctly. Specifically, the prosecutor pointed out that the defendants were all family members whom the victim had trusted, and based on this specific kind of trust she decided to believe them and follow them to Germany. The court then overturned the decisions and reinstated the arrest warrants.⁶⁵⁸ Both defendants were arrested again in Romania and extradited. The case then went to trial.

During the trial against Monica a new chamber of the court heard the victim in the courtroom and deemed her story to be credible.⁶⁵⁹ Monica was consequently convicted for severe trafficking by means of deception. As a mitigating circumstance the chamber considered the fact that Monica was herself a victim of trafficking and had acted under duress when she helped Constantin to recruit her own cousin the victim in this case.

The trial against Constantin convened in May 2014. He was acquitted by the chamber because the victim was not deemed credible enough. The court stated that they believed the

⁶⁵⁷ Ibid.

⁶⁵⁸ High Court of Berlin (Kammergericht), Decision on Appeal of Arrest Warrant in Case against *Grigore and others*, 255 Js 783/13 of 11 November 2013.

⁶⁵⁹ High District Court of Berlin (Landgericht Berlin), 507 Kls 7/14 (255 Js 783/13), verdict of 8 April 2014.

victim had fabricated her story.⁶⁶⁰ The ruling relied not only on inconsistencies among the alleged victim's statements, but also on contradictions with other testimonies on material points and on the inherent implausibility and illogicality of her testimony.

Alexandru was extradited from Spain in fall 2014 and convicted for human trafficking by the means of deception. He was sentenced to two years of imprisonment. The low sentence was justified because his plea bargain spared the victim another – third – testimony before the court. He also apologized to the victim and paid her damages.⁶⁶¹

Among the issues raised:

1. *Victim behaviour as impacting upon credibility (the “negligent victim”)*: The victim in this case had been previously trafficked and suspected that the offer was not genuine. This led the court to impugn her credibility, on the assumption that having been trafficked previously, she should have known better, thus making her story hard to believe. However, the court apparently accepted the prosecution's approach, that in view of family complicity (in that Monica was the victim's cousin, and her uncle persuaded her that the offer was genuine), her credibility was not necessarily impugned. Thereupon, during Monica's trial another chamber of the court heard the victim's testimony and ruled that it was credible. However, in the trial against Constantin, the court ruled that the victim's testimony was not credible in view of the inconsistencies and illogicality of her testimony.
2. *Family complicity as facilitating trafficking*: In this case, the involvement of family members was the crucial factor which led the victim to believe the deception. Thus, it can be viewed as a subtle means of coercion, psychological in nature and falling short of force but facilitating the trafficking process.
3. *Short duration of abuse*: According to the facts of the case, the victim was exploited for 48 hours. This is a relatively short time frame. While the court does not deal with this aspect of the case explicitly, it saw fit to convict Monica and Alexandru despite it, thus showing that a trafficking conviction can be established even if the duration of the abuse is short term. However, the short duration of the crime served as a mitigating factor regarding the sentences.
4. *Impact on sentence when former victim is a trafficker*: The facts of the case reveal that one of the traffickers, Monica, was formerly trafficked herself which, along with the duress under which she acted, was considered a mitigating circumstance when deciding on her sentence.

5.11 R. v. Connors (United Kingdom)⁶⁶²

The kinds of evidence in this case included victim testimony with inconsistent statements and evidence gathered from police investigations including “real evidence” such as photographs.

⁶⁶⁰ High District Court of Berlin (Landgericht Berlin), 528 Kls 12/14 (255 Js 783/13), verdict of 19 June 2014.

⁶⁶¹ High District Court of Berlin (Landgericht Berlin), 537 Kls 1/15 (255 Js 544/13), verdict of 12 March 2015.

⁶⁶² *R. v. Connors and others* [2013], EWCA Crim. 324, Court of Appeal, Criminal Division, 26 March 2013, United Kingdom of Great Britain and Northern Ireland. It was referred to by a United Kingdom expert and is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. GBR016).

The mosaic of evidence included violence, threats of violence, verbal abuse, deception, vulnerabilities (homeless, friendless, addicted to alcohol, mental health difficulties), restrictions of freedom (including telling them they could never leave), the victims having nowhere to go and confiscation of personal documents, isolation, low pay or absence of pay on occasion, difficult work conditions, poor living conditions, lack of access to medical care, and humiliation of victims. Weaknesses in this case included the behaviour of victims who acted as overseers of other victims and the failure to escape.

The defendants were convicted of holding another person in slavery or servitude or requiring them to perform forced or compulsory labour. The case was appealed on sentencing issues, and the convictions were affirmed on appeal.

Facts of the case—mosaic of evidence

The five defendants were all members of the same family. The family owned a caravan park and recruited vulnerable individuals by means of false promises of paid work, food and a home. The victims were recruited because of their vulnerabilities; most were homeless, friendless and addicted to alcohol. Some victims suffered from mental health difficulties. All had been vulnerable in some way. The defendants forced the victims to work for the family business as labourers. The court described the victims' situation thus:

"...these men were usually paid something like £10 per day, for a day's work, and sometimes £5 or occasionally £20 per day, but on other days they were not paid at all. They worked very long hours, sometimes seven days a week. They would be expected to work in very poor conditions without proper equipment or clothing. The accommodation provided for them was of a very poor standard indeed, sometimes without heating or even running water. On occasion they were subjected to violence or the threat of violence as well as verbal abuse. If they did not understand instructions, or failed to complete their work properly, a number were slapped and punched, and subjected to physical abuse if they were considered to be disobedient or became drunk. Some were told that they could never leave, and were threatened with physical reprisals if they did so. Several "absconded", some never to return, but some were found by members of the family and brought back to work. Many of these who gave evidence at trial felt that they should not leave, sometimes because of the threat of violence, but sometimes also because if they did leave, the life that lay ahead of them would very often be one of homelessness and destitution. Some of their State Benefit documentation taken from them and kept by the family. Nevertheless benefits were collected on their behalf, but seldom passed to them. This provided substantial funding for the conspirators, to be added to the profits made from work, performed by a cheap, degraded, vulnerable, intimidated and sometimes physically assaulted workforce. One manifestation of this level of control was that many of those exploited were effectively deprived of the will to leave, and others were too demoralised to seek to leave, and yet others believed that the world outside had nothing better to offer them."

[2013] EWCA Crim. 1165, Court of Appeal, Criminal Division at para. 12.

The victims were socially isolated, had to shave their heads and were denied access to medical care when they were injured. One of the victims fell through a garage roof and the defendants would not let him go to a hospital or a doctor. Eventually the victim could not walk and was taken to the hospital. The defendants told the victim to hurry up and he was forced to discharge himself early. The victim was forced back to work within three days.

One of the victims changed his story significantly after his initial statement to police. During his initial statement he described the defendants as carefully nurturing him to help him beat his addiction to alcohol. He called them his “best friends” and his “surrogate parents”.⁶⁶³ He stated that the defendants kept him in line but that he was treated fairly and that there was no violence beyond a playful slap. When describing this interview, the court noted that this victim was “plainly intimidated” by two of the defendants.⁶⁶⁴ When interviewed a second time, this victim provided evidence of violence, isolation, lack of access to medical care, no pay and forced labour that was consistent with the evidence provided by other victims. The court did not question the victim’s credibility despite his inconsistent statements; the first statement was seemingly viewed as one taken under intimidation and was not believed.

The defendants would force some of the victims to recruit new victims and keep them in line. One victim was “expected to lie to any new workers who were recruited and when they became disillusioned and to reassure them that they would eventually be paid. His mission was to keep them ‘sweet’”.⁶⁶⁵ A second victim described it thus, “[g]radually, as you were on the site longer and longer, you became appreciated in the sense that you became responsible for watching other workers, reporting on them, pulling them back. But if you did not comply, you yourself received a crack [a back-handed slap].”⁶⁶⁶ The victim felt guilty about slapping other victims but knew if he did not do it he would be subjected to worse violence.

Court ruling

The appeals court described the information provided by the victims as a “detailed account of persistent ill-treatment and humiliation, and clear evidence of servitude and forced labour”.⁶⁶⁷ The trial court judge found that based on the evidence provided, “over very many years hundreds of workers were recruited from the streets and very many will have received violent and degrading treatment ... there were only a small number who were so degraded that their self-esteem and courage to take matters into their own hands were wholly undermined. They lost the independence of will required to leave.”⁶⁶⁸ By understanding the failure of some victims to escape within the context of being degraded by the defendants the court was able to overcome this potential weakness in the mosaic of evidence. All of the defendants were convicted of holding another person in slavery or servitude or requiring them to perform forced or compulsory labour.

Core issues addressed:

1. *Failure to flee explained by a combination of factors:* The court did not impugn the victims’ credibility because some failed to flee. The ruling referred to a combination of factors and even saw it, in part, as a function of the control exerted by the defendants thus: “One manifestation of this level of control was that many of those exploited were effectively deprived of the will to leave, and others were too demoralised to seek to leave, and yet others believed that the world outside had nothing better to offer them”. Thus, the victims’ vulnerabilities played a role in their failure to flee, as well as other factors.

⁶⁶³ Ibid. at para 15.

⁶⁶⁴ Ibid. at para 15.

⁶⁶⁵ Ibid. at para 21.

⁶⁶⁶ Ibid. at para 31.

⁶⁶⁷ Ibid. at para 25.

⁶⁶⁸ Ibid. at para 39.

2. *Inconsistent statements not deemed to render the victim non-credible:* One victim in the case contradicted himself; his first statement did not criminalize the defendants, whereas his second did. However, the court did not impugn his credibility due to this, but rather saw the first statement as a product of intimidation.
3. *Victims as accomplices to the crime:* The facts of the case show that some victims were employed by the defendants in assisting in the recruitment of others and keeping them in line in order to avoid being punished by the defendants. There is no explicit discussion of this facet of the case in terms of its impact on victim credibility or criminalization of these victims.
4. *Victims as individuals with individual reactions:* When reviewing the facts of the case, it is clear that not all victims reacted in the same way to the same set of circumstances. Thus, some fled and some did not, having lost the will to do so. While the court did not express this insight explicitly, it arises from the facts and provides some guidance for practitioners that there is no one reaction pattern which applies to all victims, but rather there can be a variety of individual reactions to exploitation according to the “different shapes and sizes of each victim”.

Annex. Index of cases

Argentina

Correa Perea, Mendoza, August 2013, case 2853-C, Argentina. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. ARG060](#)).

López López y Novello, TOCF II, Córdoba, 06/13, Argentina. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. ARG056](#)).

Muñoz y Lezcano, 15 March 2013, conviction La Pampa (BB), Argentina. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. ARG061](#)).

[Case 22000145/2011/TO1](#), 2 September 2014, Tribunal Oral Federal of Bahía Blanca, Argentina.

Case No. 978 of 12 March 2012 (Argentina). The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. ARG006](#)).

Causa C 2359, 4 July 2011, Federal Criminal Court of La Plata, Argentina. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. ARG039](#)).

Carrizo, Alcalde, Mendoza, 17 May 2011, case 2832-A, Argentina. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. ARG019](#)).

Criminal Case 862/2012, Federal Criminal Court of Corrientes, 17 May 2013, Argentina. The case is also available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. ARG062](#)).

Desabato y Vargas Leulan, 9 August 2013, File D 3/12, CONVICTION, Córdoba, Argentina. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. ARG057](#)).

Sentence No. 004/13, 5 March 2013, Oral Federal Criminal Court of Parana, Argentina. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. ARG053](#)).

Case 11-G-2012, 25 February 2013, No. 1 Oral Criminal Federal Court of Cordoba. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. ARG055](#)).

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Australia

R. v. Wei Tang, before the Supreme Court of Victoria, Australia [2007], VSCA 134 and before the High Court of Australia [2008], HCA 39. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. AUS001](#)).

R. v. Dobie [2009], 236 FLR 455, 18 December 2009, Queensland Court of Appeal, Australia. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. AUS013](#)).

R. v. Kovacs [2009], 2Qd R 51, 23 December 2008, Queensland Court of Appeal, Australia. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. AUS015](#)).

Sieders v. R.; Somsri v. R. [2008] NSWCCA 187, 13 August 2008, Court of Criminal Appeal, Australia. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. AUS005](#)).

DPP (Cth) v. Ho & Anor [2009] VSC 437 (29 September 2009).

R. v. McIvor and Tanuchit [2010], NSWDC 310, 28 October 2009, New South Wales Criminal Court of Appeal, Australia. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. AUS014](#)).

Austria

Case 130s39/02, Supreme Court of Austria, 29 May 2002, Austria. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. AUT003](#)).

Belgium

C/118/113 [2013], Court of Appeal, Antwerp, 23 January 2013, Belgium. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. BEL003](#)).

Nr. 20.L4.4843/12, Correctional Tribunal of Nivelles, 25 January 2013, Belgium. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. BEL029](#)).

Case No. 2012/3925, First Instance Court of Gent, 19th Chamber. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. BEL030](#)).

Case No. 668/09, Court of Appeal, Gent, Belgium [2010]. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. BEL002](#)).

Not. Nr. 1214/07, 25 January 2010, Appellate Court of Gent, Belgium. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. BEL001](#)).

Brazil

Ministerio Publico Federal v. Gilberto Andrade, No. 2000.37.002913-2, 23 April 2008, Penal Court of the State Maranhao, Brazil. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. BRA002](#)).

Canada	R. v. Urizar, File No. 505-1-084654-090, L-017.10, Court of Québec, District of Longueuil, Criminal Division (J.C.Q.), (2010-08-13), 13 August 2010, and Urizar v. R., No. 500-10-004763-106, Court of Appeal, Quebec, 16 January 2013. The trial court case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. CAN005).
	R. v. Ng, 2007, BCPC 204 (CanLII), Provincial Court of British Columbia, Vancouver, 21 June 2007, Canada. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. CAN002).
	R. v. Ladha, 2013, BCSC 2437 (CanLII), Supreme Court of British Columbia, Canada.
	R. v. Orr, 2013, BCSC 1883 (CanLII), Supreme Court of British Columbia. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. CAN015).
	R. v. Beckford [2013], O.J. No. 371, Ontario Superior Court of Justice, 28 January 2013, Canada.
Colombia	Garcia et al, 6 March 2008, Criminal Appellate Court of the Supreme Court of Justice, Colombia. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. COL005).
Czechia	7 T 8/2006, 15 December 2006, Regional Court in Hradec Kralove, Czechia. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. CZE028).
Egypt	Case No. 1685-2010, the Criminal Court of Giza, a retrial ordered by the Court of Cassation, Egypt. The summary and analysis was submitted by an Egyptian expert. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. EGY004).
	Case No. 8959-2012, Egypt. This case is based on a summary and analysis of the decisions of the Criminal Court of Giza Province and the Court of Cassation submitted by an Egyptian expert. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. EGY001).
	Case No. 414/2009, Kasr El-Nile District. The decision was appealed to the Court of Cassation, Appeal No. 11268/79K, 1 July 2010, Egypt. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. EGY002).
	Case No. 5383/2010, Alexandria Criminal Court, El-Attarin District, Session 13/4/2010. The summary and analysis was submitted by an Egyptian expert.
Fiji	The State v. Phanat Laojindamane and others, Criminal Case No. HAC323 of 2012, the High Court of Fiji at Suva, 13 December 2012, Fiji. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. FJI002).
Finland	Helsinki District Court, Judgment R 11/1073. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. FIN008).

Germany

Case against Sophia Ogiemwanye and others, High District Court of Berlin (Landgericht Berlin), 501 KLs 1/12 (68 Js 633/09), 14 December 2012, Germany. (Not available online.)

Case (215) 3 St Js 723/05 (20/07) in the District Court of Tiergarten Berlin (20 February 2008). The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. DEU005](#)).

Case No. 1KLs 211 Js 3771/11, Regional Court Bayreuth, 30 December 2011, Germany. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. DEU003](#)).

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India

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Esher Singh v. Andhra Pradesh (2004), 11 S.S.C. 585, para. 23, as quoted in Kalpana Ranganath Galphade ([UNODC Case No. IND028](#)).

Sessions Case No. 112/2007, the Court of the additional metropolitan sessions judge (Mahila Court) at Hyderabad, 26 June 2007, India. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. IND007](#)).

Kamal Jeet Singh v. State, Criminal Appeal No. 28/2007 and Crl. M.A. Nos. 336 and 338/2007, High Court of Delhi, 29 January 2008, India. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. IND017](#)).

Israel

State of Israel v. Giuliani, 29 February 2012, District Court of Jerusalem, Israel. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. ISR016](#)). (Conviction affirmed by the supreme court, 6 September 2016, Criminal Appeal 6237/12.)

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Anonymous v. Alexander Lifshin and Armen Ben, 25 January 2010, District Court, Tel Aviv-Yafo, Israel. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. ISR006](#)).

	Brechman et al v. State of Israel, 1 May 2006, Supreme Court, Israel. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. ISR009).
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	Criminal Case 23751-02-10, Tel Aviv—Jaffa District Court State of Israel v. A.G.G.R., September 2014. (Not available online.)
	Criminal Case 1016-09, State of Israel v. Saban et al (12 January 2012), appealed in Criminal Appeals 4031, 4881, 4916, 4920, 4945/12 Saban et al v. State of Israel. (Not available online.)
Kenya	Kenneth Kiplangat Rono v. Republic [2010], eKLR, Court of Appeal of Kenya at Nakuru, 28 May 2010, Kenya. The case is available in the UNODC Human trafficking Case Law Database (UNODC Case No. KEN001).
	George Hezron Mwakio v Republic [2010], eKLR, Criminal Appeal 169 of 2008, High Court of Kenya at Mombasa, 28 June 2010, Kenya. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. KEN002).
Netherlands	Supreme Court, 20 December 2011, ECLI:NL:HR:2011:BR0448 . The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. NLD008).
	Supreme Court, 4 March 2014, ECLI:NL:HR:2014:477 .
	Supreme Court, 21 April 2015, ECLI:NL:HR:2015:1100 .
	Arnhem Court of Appeal, 19 October 2010, ECLI:NL:GHARN:2010:BO2994 . The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. NLD007).
	Arnhem Court of Appeal, 12 March 2012, ECLI:NL:GHARN:2012:BV8582 .
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	Arnhem-Leeuwarden Court of Appeal, 4 April 2014, ECLI:NL:GHARL:2014:2644 .
	Groningen District Court, 12 December 2000, ECLI:NL:RBGRO:2000:AA8975 .
	Roermond District Court, 26 October 2010, ECLI:NL:RBROE:2010:BO4108 . The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. NLD004).

Zwolle-Lelystad District Court, 27 March 2012, [ECLI:NL:RBZLY:2012:BX2627](#).

Utrecht District Court, 9 July 2013, [ECLI:NL:RBMNE:2013:2679](#). The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. NLD006](#)).

District Court The Hague, 4 March 2015, 09-827059-14 (not published).

Nigeria

Federal Republic of Nigeria and Favour Anware Okwuode, Charge No. FHC/ASB/24C/09, Federal High Court of Nigeria, 28 September 2009, Nigeria. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. NGA009](#)).

Attorney General of the Federation v. Constance Omoruyi, Case No. B/31C/2004, High Court of Justice Edo State of Nigeria, Benin Judicial Division, 22 September 2006, Nigeria. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. NGA002](#)).

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Attorney General of the Federation and Felicia Okafor, Suit No. A/12C/06, 23 May 2007, High Court of Anambra State, Nigeria. The full decision was supplemented by information from a Nigerian expert. The case is also available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. NGA006](#)).

Attorney General of the Federation v. Jean Adjayi (M), Gilbert Ganyiside (M) and Alake Iroko (F). Charge No. HCL/2C/05 (Ogun State High Court), Nigeria. (Not available online.)

Norway

LG-2010-111760-LG2010-119397-RG-2011-65, Gulating Court of Appeal, Bergen, 21 January 2011, Norway. The case is also available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. NOR005](#)).

[Appeals Court Case No. LB-2012-63028](#), Borgarting Lagmannsrett Judgement (2 April 2013). District Court Oslo Tingrett Judgement (2 February 2012), TOSLO-2011-68460.

Palau

Lolita Pamintuan et al v. Republic of Palau, Criminal Appeal No. 07-001 (Criminal Case Nos. 06-183, 06-212), Supreme Court of the Republic of Palau, Appellate Division, 14 November 2008, Palau. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. PLW001](#)).

Philippines	People of the Philippines v. Dhayme Jamuad and others, Case No. CBU-86668, Regional Trial Court, 7th Judicial Branch, Cebu City, 28 November 2011, Philippines. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. PHL037).
	People v. Lito Manalo Anunsencio (Philippines), Criminal Case No. 06-242304, 22 December 2009, Regional Trial Court, National Capital Judicial Region, Manila. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. PHL020).
	People of the Philippines v. Valentino C. Martin and others, Criminal Case No. CBU-91076, Regional Trial Court, 7th Judicial Region, Branch 7, Cebu City, 3 July 2013, Philippines. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. PHL067).
	People of the Philippines v. Albert D.J. Sanchez, Criminal Cases Nos. 05-239627-31, Regional Trial Court, National Capital Judicial Region, Branch 48, Manila, 29 October 2009, Philippines. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. PHL009).
	People of the Philippines v. Jeffrey Hirang y Rodriguez, Criminal Case No. 135682, Regional Trial Court of Pasig City, National Capital Judicial Region, 25 June 2011, Philippines. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. PHL049).
	People of the Philippines v. Monette Canonoy, Criminal Case No. 14206, the Regional Trial Court, 1st Judicial Region, Branch 11, Laoag City, Philippines, August 17, 2012. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. PHL054).
	People of the Philippines v. Jackie Maycabalong, Criminal Case No. BBU-86397, Regional Trial Court, 7th Judicial Region, Branch 17, Cebu City, 30 July 2012, Philippines. The case is also available in the UNODC Human Trafficking Case Law Database (UNODC Case No. PHL038).
	People v. Anos, promulgated by a Regional Trial Court branch 12, Zamboanga City, 30 June 2011. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. PHL051).
Poland	III K 114/08, 12 February 2009, District Court of Krakow, Poland. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. POL010).
Romania	114/1372/2006, 24 June 2010, Supreme Court of Justice, Romania. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. ROU011).
Slovakia	5 To 23/2010, 18 May 2010, Banska Bystrica Regional Court, Slovakia. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. SVK037).

Serbia	Case No. K 165/11 [2011], Higher Court in Novi Sad, 14 October 2011, Serbia. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. SRB035).
	See K.P. 4/05 (Serbia), analysed in section on in-depth cases. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. SRB004).
	Case No. K-133/11 (2012), 9 February 2012, High Court in Novi Sad. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. SRB032).
	Case No. 3K-97/12, 3 December 2012, High Court of Kragujevac, Serbia. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. SRB034).
	Case No. 6 K 3/10, 30 March 2011, Higher Court in Subotica, Serbia. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. SRB012).
Switzerland	Case No. 6B_277/2007, 8 January 2008, Federal Court Lausanne, Switzerland. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. CHE003).
Thailand	Ranya Boonmee, Kaew Kongmuang and Manus Boonmee, Case No. 2013/2552, Criminal Court of Bangkok, 9 December 2010, Thailand, Appeals Court Black Case No. 1704/2554 and Red Case No. 4097/2556, 6 March 2013. Information about this case was obtained from the UNODC Human Trafficking Case Law Database (UNODC Case No. THA001).
	Wipaporn Songmeesap, Case No. 4994/2550, Red Case No. 12213/2552, 1st Instance: Criminal Court of Southern Bangkok, 6 November 2009, Thailand. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. THA005).
	Samaesan, Criminal Court of Bangkok, 28 January 2013. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. THA011).
	Weerapong Saelee and Anoma Siriyoowattananon, Case No. 7375/2551, Provincial Court Samut Sakorn, 26 November 2010, Thailand. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. THA003).
Tonga	Liu LiRong (Tonga), CR117/10 & AC 13/11. The case is available in the UNODC Human Trafficking Case Law Database (UNODC CASE No. TON001).
United Kingdom	R. v. Connors and others [2013], EWCA Crim. 324, Court of Appeal, Criminal Division, 26 March 2013, United Kingdom of Great Britain and Northern Ireland. The case is available in the UNODC Human Trafficking Case Law Database (UNODC Case No. GBR016).
	R. v. Harrison [2012] EWCA Crim. 225, the Court of Appeal Criminal Division, 2 February 2012, United Kingdom of Great Britain and Northern Ireland. (Appeal regarding a sentence. Case not available online.)
	Osolase case, at Canterbury Crown Court, 29 October 2012 at http://www.thelawpages.com/court-cases/osezua-elvis-osolase-9446-1.law

The Queen v. Rong Chen, Simon Dempsey and Jason Owen Hinton [2012], NICC 26, 6 July 2012, Belfast Crown Court, United Kingdom. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. GBR015](#)).

R. v. S.K. [2011], EWCA Crim. 1691, 8 July 2011, England and Wales Court of Appeal (Criminal Division), United Kingdom. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. GBR020](#)).

[R. v. Khan \[2010\]](#), EWCA Crim. 2880.

R. v. Ramaj and another, Criminal Case [2006], EWCA Crim. 448. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. GBR010](#)).

R. v. L.M. and others [2-10] Ass ER (D) 202 (Oct); [2010] EWCA Crim. 2327. The case is also available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. GBR007](#)).

United States

U.S. v. Rivera, 2012, U.S. Dist. LEXIS 85090, 2012 WL 2339318 (E.D.N.Y.), United States of America. The case is also available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. USA150](#)).

[U.S. v. Alzanki](#), 54 F.3d 994 (1st Cir. 1995), United States of America.

U.S. v. Akouavi Kpade Afolabi, 508 Fed. Appx. 111 (3rd Cir.), United States of America. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. USA011](#)).

U.S. v. Kil Soo Lee, 472 F.3d 638 (9th Cir. 2006), United States of America. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. USA015](#)).

U.S. v. Farrell, 563 F.3d 364 (2009), United States of America. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. USA006](#)).

U.S. v. Udeozor, 515 F.3d 260 (4th Cir. 2008), United States of America. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. USA039](#)).

U.S. v. Kaufman, 546 F.3d 1242 (10th Cir. 2008), United States of America. The convictions of the defendants were affirmed in this case. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. USA014](#)).

U.S. v. Varsha Mahender Sabhnani, 599 F.3d 215 (2nd Cir. 2010), United States of America. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. USA033](#)).

U.S. v. Webster, 2011, U.S. App. LEXIS 26438 (2011), United States of America. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. USA148](#)).

U.S. v. Calimlim, 538 F.3d 706 (2008), 9 June 2009, United States Court of Appeals for the 7th Circuit, United States of America. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. USA004](#)).

[2003 U.S. Dist. LEXIS 22088](#) (W.D.N.Y). This decision is in response to defendant's motion declaring the forced labour statute unconstitutional.

U.S. v. Veerapol, 312 F.3d 1128 (9th Cir. 2002). This fact was noted as background in the case. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. USA065](#)).

U.S. v. Mussry, 726 F.2d 1448 (9th Cir. 1984).

U.S. v. Bradley, 390 F.3d 145.

U.S. v. Dann, 652 F.3d 1160 (2011). The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. USA019](#)).

U.S. v. Abdel Nasser Youssef Ibrahim, 29 June 2006, United States of America. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. USA037](#)).

U.S. v. Pipkins, 378 F.3d 1281(2004).

U.S. v. Bibbs, 564 F.2d 1165 (5th Cir. 1977).

U.S. v. Roy, 2013, WL 5673419 (E.D. Ark.), 15 October 2013, District Court for the Eastern District of Arkansas. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. USA149](#)).

U.S. v. Cephus, 2012, WL 2609316 (C.A.7 (Ind.)), 6 July 2012, United States Court of Appeals, Seventh Circuit, United States of America. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. USA130](#)).

U.S. v. Jungers, 702 F.3d 1066.

ICTY [Prosecutor v. Kunarac, Kovac and Vukovic](#), Cases IT-96-23-T and IT-96-23/1-T ICTY, Trial Chamber, 22 February 2001.

ECHR *Siliadin v. France* (App. No. 73316/01) ECHR 26 July 2005, European Court of Human Rights. The case is available in the UNODC Human Trafficking Case Law Database ([UNODC Case No. FRA010](#)).



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