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**Criminalized victims: When victims of trafficking for sexual exploitation meet Danish authorities**

Michelle Mildwater, Annick Prieur and Mette Rømer

The article traces the trajectories of 14 women recognized as victims of trafficking in Denmark, zooming in on the outcome of their respective meetings with Danish authorities. It identifies at which junctures and for which reasons many of the recognized victims finally receive as limited protection that they do, in several cases being criminalized by the Danish system. This is discussed in the light of feminist legal theory and critical criminological perspectives on *crimmigration*: the intersection of crime control and immigration control.

In 2000, the United Nations General Assembly adopted the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (also referred to as the *Trafficking* *Protocol* or the *Palermo* *Protocol*), which provides the following definition:

‘*Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, 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.*

Denmark is among the 117 national signatories to the protocol (UNODC – Signatories to the CTOC Trafficking Protocol), which obliges victim protection. Subsequent to the Palermo Protocol (and the July 2002 EU framework decision on human trafficking), Denmark has declared the organization of human trafficking and purchase of sexual services from a trafficked person to be criminal violations (Danish penal code §262). Likewise, in its attempt to protect victims who are in the vulnerable position of lacking legal documents (passport, visa, residence, work permits), the Danish Attorney General has ordered that recognized victims should benefit from the non-prosecution of offences committed as a consequence of trafficking (e.g., when carrying forged documents or residing and working in Denmark without documentation, Rigsadvokaten 2016). Adding to these legal initiatives to prosecute traffickers and protect victims, the Danish government has launched a series of action plans as tools to achieve its international obligations (Danish Government 2018; Spanger 2011), comprising: 1) prevention and outreach work, 2) victim identification together with the provision of assistance and support, 3) prosecution of traffickers, 4) the exchange of knowledge and coordination between actors.

Despite these initiatives, Denmark is criticized for not fully applying the obligations of the Palermo Protocol. In 2016, in their second evaluation report of the Danish national effort, GRETA (the Group of Experts on Action Against Trafficking in Human Beings under the Council of Europe) urged Denmark to review their procedures for identifying the victims of trafficking to ensure that all such victims are identified and officially assessed in order for them to benefit from the right to protection and assistance (GRETA 2016). In the so-called TIP Report, which is the annual Trafficking in Persons Report issued by the Office to Monitor and Combat Trafficking in Persons (J/TIP) under the U.S. State Department (U.S. Department of State 2020), Denmark is no longer among the tier-1 countries in terms of full compliance with the minimum standards for the elimination of trafficking.

Based on the knowledge of the Danish NGOs working in the field and the government Centre against Human Trafficking CaHT - a unit under The National Board of Social Services, in Danish, Socialstyrelsen (Socialstyrelsen 2018, 2019, 2020), most of those trafficked to sexual exploitation in Denmark are women working in the street sex trade or brothels. They are often exploited financially, both by the traffickers in their home countries who organized their travel to Europe (often dangerous routes across the Sahara and the Mediterranean) and by persons organizing the sex trade locally (often former sex workers themselves, called ‘madams’) (Paasche et al. 2016, Plambech 2014b). The victims are forced to pay an alleged debt, often enormous amounts of money, and often on the background of threats and violence towards themselves and/or family members in their home countries (Plambech 2018).

Danish NGOs working with human trafficking report that most of the women encountered in outreach work see no advantage in being officially identified as trafficked due to the risk of being forcefully deported or pressured to accept a voluntary return (Paasche 2016, Plambech 2018, Rømer 2019). Possibly due to this fear, as many as 50 of the 90 officially assessed victims in 2017 disappeared from shelters shortly after identification (Socialstyrelsen (CaHT) 2018:14). CaHT assumes that most of the disappeared women left to continue earning money in the sex industry (Socialstyrelsen 2018). Furthermore, 24 of the 90 victims identified in 2017 were Nigerians who had been officially assessed as victims at least once earlier, meaning that they had left the programme and returned to sex work and exploitation (Socialstyrelsen 2018). The fact that the women leave the shelters is clear evidence that the protection Denmark provides them fails to meet their needs.

CaHT annually reports (see, e.g., Socialstyrelsen 2018, 2019, 2020) counts the number of persons identified as victims of human trafficking by Danish authorities, classifying them according to national background, sex/gender, the kind of exploitation to which they have allegedly been subjected, and their current situation (as is known). In the period 2014‒2019, 373 were identified as victims of sexual exploitation, 299 of whom were from Nigeria. We referred to the report from 2017 above, as it is one of the best-documented years with respect to what came out of the sexually exploited victims’ encounters with the Danish authorities. Much nevertheless remains unknown, which is why this article zooms in on what happened to 14 women after they had been officially declared as victims of trafficking to sexual exploitation (between 2014 and 2019): For these victims, *did the encounter with Danish authorities provide them with protection? Did it result in the improvement of their life situation? Or, to the contrary, their continued – possibly even exacerbated – exploitation?*

‘Victim’ is a problematic term. It is not our term of choice, but rather an official category for those considered to have been trafficked. As Hoyle et al. (2011) have pointed out, the definition of trafficking in the Palermo Protocol means that a person may well be considered a victim despite consenting to their exploitation. ‘Prostitution’ is another contested term from the Palermo Protocol. For our purpose, it is unimportant whether we use this term, sexual exploitation or sex work; we are equally aware of the critical questioning of anti-trafficking policies as tools for hindering the immigration of unprivileged people, or even as moralistic interventions against people working in the sex trade (cf. two recent contributions on the issue: Bernstein 2018, Sibley 2020). We will not discuss this, as our aim is much simpler: *We take the Danish authorities’ official policies at face value and question why their practices do not correspond to their aims.*

**Earlier scholarship on the protection of trafficked persons**

Critical trafficking studies have elucidated the numerous weaknesses of the Palermo Protocol regarding its claims pertaining to the protection of the rights and dignity of victims in the criminalization of human trafficking (Coskun 2016, Krieg 2009, Outshoorn 2005), and, further, how the protocol is based on loosely defined concepts open for local interpretations (Lima de Pérez 2016. As the protocol is silent about migration policies, its signing has no impact on border control or the police surveillance of the sex trade. Several studies have demonstrated how those who do not fit the protocol’s narrow representation of an ideal ‘victim’ are criminalized as ‘illegal’ migrants by different Europeans states (Andrijasevic & Mai 2016:3, Davidson 2010, 2016, FitzGerald 2016, Plambech 2014a).

International anti-trafficking policies have been influenced by feminist discourses, human rights advocates, NGOs and different state representatives (Bernstein 2018; Doezema 2002, 2005, Kempadoo 2015, Krieg 2009, Outshoorn 2005). According to Krieg (2009) and Plambech (2014b), when considering the policies derived from the protocol, distinction can be drawn between a human rights-based approach, where humanitarian intentions to protect victims are paramount, versus a law-enforcement approach, where methods such as surveillance, detention, and deportation are used to combat human trafficking. This opposition between these two approaches leaves room for the ratifying states to define and understand trafficking as ‘illegal migration’, which allows victim protection to be overshadowed by extraterritorial border controls and deportation programmes (Andrijasevic 2010, Brunovskis & Surtees 2019, Coskun 2016, Jacobsen & Skilbrei 2010, Kempadoo et al. 2005, Krieg 2009, Outshoorn 2005, Plambech 2014b).

Empirical studies from different countries (e.g., Coskun 2016, FitzGerald 2016, Patel 2011, Skilbrei & Tveit 2007) have explored and discussed how national migration and prostitution policies impact the procedure through which a person is designated as either a deserving ‘victim’ or an ‘illegal’ undocumented immigrant to be deported without humanitarian assistance (Coskun, 2016, Plambech 2014a). In an ethnographic study of Copenhagen’s red-light district, Plambech (2014b) followed the so-called sweeping manoeuvres of the Danish police and the subsequent interrogations of potentially sexually exploited victims. These raids bring mainly Nigerian women into interrogations intended to separate the ‘victims’ from the ‘criminals’ among them. Plambech demonstrates how, in the identification process, the police and social workers assist the state in drawing this line. The ‘trafficking narratives’ told by the women determine whether they will attain the status of legal subjects entitled to humanitarian assistance as victims or are to be deported immediately as ‘criminals’.

However, the identification process is no simple process in which the police, social worker or others ascribe categories; it is complicated by the women’s unwillingness to share their trafficking narratives due to their fears of the consequences (Brunoskis & Surtees 2019, Coskun 2016, Plambech 2014b; Skilbrei & Tveit 2007). This also complicates the prosecution of traffickers.

A study (Prieur 2019) of the prosecution of cases of trafficking to sexual exploitation in Denmark has revealed how only a small proportion of such cases are ever reported to the police. While the social authorities identified 363 victims trafficked to sex work over a five-year period starting in 2013 (Socialstyrelsen 2018), only five court cases (involving 25 victims) led to sentencing for human trafficking in that time. Hence, very few of the trafficked victims of sexual exploitation in Denmark benefit from the legal protection it would imply to obtain the court’s declaration that an offence towards them has been committed and to see this offence punished. They even more rarely obtain financial compensation (two of the 25 victims in the Prieur study).

The studies cited above approach the same phenomenon as we do, and they concur in showing both the limited protection offered to victims of human trafficking as well as how the status as an ‘illegal’ immigrant trumps the status as victim. Our contribution to this scholarship lies in a *concrete* analysis of how this occurs in the victim‒authorities encounter.

**Theoretical perspective**

Our study addresses a classical question from the sociology of law about the gap between law in books and law in action. It is inscribed in feminist legal scholarship as we seek to show how current legislation and legal practices are not sufficiently supportive of female victims of (sexual) violence. We are also inscribed in the critical criminological understanding of the intersection of crime control and immigration control: so-called *crimmigration*. The core question in both perspectives is what it takes to be entitled to legal protection, and the research frequently deals with infringements of human rights.

According to Fraser (2009), those who counted as what she terms ‘subjects of justice’ used to be the citizens within the borders of a territorial and sovereign state. This is less clear in an era of globalization, however, and the idea of a sharp division between domestic and international space is difficult to maintain. The presumption of sovereign states does not hold when confronted with universal human rights issues and networks of global governance. From a democratic perspective, everyone subjected to a governance structure regulating a particular area of social interaction ought to have an equal say. It is difficult, however, to see how this can be secured when governance structures are transnational. For Fraser (op.cit.: 281), the question of who counts as subjects of justice is important in struggles for economic redistribution, cultural recognition and political representation. It is undoubtedly also crucial in struggles for legal protection. The crimmigration literature explores this issue.

Barker (2017, 2018) discusses how nation-states rely on penal measures in the immigration control needed to maintain their authority. When mass mobility is considered a social threat, penal power reconstitutes the nation-state. Immigration represents particular challenges for Nordic welfare regimes. Barker retraces the nationalist origins of the Swedish welfare ideals and shows how, in the so-called 2015 Refugee Crisis, the interest in protecting the welfare state led to illiberal practices towards those who were not born members of it. She confronts the welfare ideals with the pains caused by the immigration policy, especially for migrant children, and coins the term *benevolent violence* to capture how a welfare ideal may have violent effects. The operation of criminalizing migrants brings some moral weight to the border control, which then turns into the duty of separating the worthy from the wrongdoer. Rather than Fraser’s question about who counts as subjects of justice, the important question for Barker becomes who is entitled to be a member of a welfare state (obviously, the two statuses strongly overlap).

In the Nordic welfare states, penal power serves the dual purpose of repressing and reintegrating the wrongdoers. As Aas (2014) has argued, however, when exercised over individuals without full membership in the nation-state, penal power becomes more one-sidedly exclusionary (op.cit.: 521, emphasis in original): ‘The absence of formal membership is the essential factor contributing towards shifting the nature of penal intervention from reintegration into the society towards territorial exclusion, and towards the development of a particular form of penalty, termed hereby *bordered penalty*’. She documents how penal power in Western Europe is increasingly applied to non-citizens, and not only for punishment of law-and-order problems but also for detainment and deportation. Criminal law and immigration law thus mutually reinforce each other. A two-tier justice is established with a parallel penal system: Non-citizens are placed in separate institutions and subjected to sanctions that are not necessarily termed ‘punishment’. As the detained are not considered members of the society detaining them and they will not be reintegrated into this society, they do not have the same rights as other detainees.

In the British context, Bosworth (2017) points to similar blurred lines between administrative detention and criminal punishment. For several reasons, the former may be experienced as harder than the latter, including weaker legal rights, the lack of right to home visits, and the uncertainty about when and to what the detainees will be released.

In the following, we will show how the status as a victim of trafficking to prostitution is in practice overruled by the status as an (illegal) immigrant. This raises questions regarding the role of the Palermo Protocol and the national laws sanctioning trafficking. As Scoular (2010) has pointed out concerning prostitution, legislation may have more symbolic than practical effects. One practical but unintended consequence of prostitution laws may be that they contribute to framing the spatial organization of prostitution as well as how authorities and NGOs respond to it. They may also serve to shape general norms and identities for those involved in the trade. In that sense, legislation can be productive in a series of other ways than the intended ones. This reasoning also seems to work for trafficking laws, as they send a signal of disapproval to the general public and lay the foundations for different forms of social and healthcare work directed at the victims; nevertheless, the effect on the trafficking itself may be negligible.

**Data sources and ethical concerns**

Lacking legal residency, most women trafficked for sexual exploitation attempt to pass unnoticed, and many live with fears and traumas (Brunovskis & Surtees 2010, D’Cunha et al. 2002, Dunkerley 2018, Rasmussen 2011). This puts both practical demands on how researchers can access these trafficked women (Choo et al. 2010, Spanger 2017, Tyldum 2010) and ethical demands on how to treat sensitive information without putting research subjects at risk of negative consequences or re-traumatization. The two researchers behind this study, Prieur and Rømer, therefore chose to work closely with social workers in the field to approach the women in an ethically acceptable manner. We collaborated most closely with the NGOs Ami-Ami, Reden Aalborg and HopeNow. The latter NGO is headed by Michelle Mildwater, who has been working as a counsellor and trauma therapist with this target group for 13 years, and she provided access to 12 cases for this analysis. Mildwater has had numerous meetings, interviews and therapy sessions with these women, often over several years (2014‒2019). Due to her role in the collection and analysis of the data, she is included as a co-author of this article. Together with Prieur, the 12 cases have been examined for this article. Prieur and Rømer have met with and interviewed three of these 12 women together with two others. All five interviewees have consented to information sharing. Only anonymized case descriptions without biographical details have been written down, as our focus is strictly on the women’s encounters with Danish police and legal authorities and not on the sensitive parts of their stories. As one of the twelve HopeNow cases was brought to court, we will also draw on the court sentence for this case (freely accessible on the internet). The names used below are all pseudonyms.

Mildwater has selected cases representing the range of different outcomes of the encounters with the authorities, and she has followed the chosen cases from the victims’ first encounter with the Danish authorities (sometimes earlier) until their current situation, when this analysis is being written. Of the 14 women, 11 are from Nigeria, two from Kenya and one from Brazil (the latter has obtained Spanish citizenship). As the majority of officially assessed victims of sexual exploitation are Nigerians, the case selection mirrors the Danish trafficking statistics (Socialstyrelsen 2020), which predominantly number victims identified after police raids in red-light districts or brothels.

All but two of the 14 cases have been officially assessed as victims of trafficking (these two were deported from Denmark after HopeNow had identified them as trafficking victims but before their official assessment). The Immigration Office and Danish courts are the only agents with the authority to declare officially whether a person with citizenship in a country outside of the Schengen area is a victim of trafficking. In most cases, this decision is based on an identification of victims made by the CaHT or an NGO entitled to make such assessments.

Danish authorities have thus believed the essential parts of these 14 women’s stories and recognized them as victims. We do not need to take a stand on the veracity of their stories, as our focus is on whether recognized victims obtain the protection to which they are entitled. Police, immigration authorities and social workers have all experienced how such stories may change over time, and assessing truthfulness can be difficult. Many of the women are so traumatized that it is difficult for them to maintain the chronology of events. For our purpose, then, veracity is not an important methodological problem. We zero in on the outcome of their meetings with Danish authorities, which we know in the selected cases.

**Analytical approach: Forms of protection provided**

The analysis concerns the kind of protection received by the 14 victims. Here, we will explain what we look for, as protection assumes different forms:

*Legal protection* concerns the prosecution of crimes and a victim’s right to have their concerns considered and to not be prosecuted for crimes related to their exploitation (i.e., residing and working in Denmark without permits, carrying false identity papers etc.). Concerning the 14 women, none of their traffickers has been prosecuted, and none of the victims have therefore received legal aid to end the exploitation; however, some have benefited from non-prosecution and been released after arrest despite lacking documents.

*Financial protection* concerns the possibilities to earn a living without being exploited. After official assessment as a victim of trafficking, the individual is provided for during a 30-day reflection period (possibly extended by 120 days when considering the International Organization for Migration option of AVR – assisted voluntary return – with support of DKK 50,000 (approx. €6500) for repatriation to their home country). Victims may thus receive a small amount of cash, but no access to legal earnings permitting them to pay off debts or to provide for their families. Most of the 14 women examined here have had their basic needs met during shorter or longer periods, but only one has accepted and received the AVR.

*Socio-medical protection* concerns social, psychological and medical services, as well as clothing, food, juridical advice and assistance when detained or risking deportation. In Denmark, this is largely provided by NGOs, and most (if not all) of the examined women have enjoyed this form of protection.

*Spatial protection* regards physical safety. Those officially identified as trafficked are offered temporary placement in shelters. Almost all of the identified victims of trafficking are non-Danish residents, and even the EU citizens among them may only obtain legal residency in Denmark if they find legal means to support themselves. Non-EU citizens may apply for asylum, but trafficking-victim status does not in itself qualify for asylum. Only two of the 14 women examined have obtained residency (both after giving birth to a Danish child).

Based on the different forms of protection listed that correspond to the rights for victim protections (cf. the national action plan Danish Government 2018), the 14 cases have been divided in three categories based on the outcome of their respective encounters with Danish authorities; that is, in terms of how the protection received has impacted their life situation. There are three possible outcomes: *improvement*, *continuation* or *deterioration*. We assess three women as having seen their situation improved due to having received some protection. Seven women continue their turbulent lives. The last four have experienced deterioration.

**Life situation improved: Routes towards a more protected life**

For three women, their exploitation has been brought to an end, and identification as victims of trafficking by Danish authorities has helped to improve their life situation. Two have obtained legal residency, while one was voluntarily returned.

*Isabel,* a Brazilian citizen who had obtained Spanish citizenship before she left for Denmark, believing she was to work in a hotel. She was forced to perform sex work in Danish brothels for six years. Over time she became involved with a Danish customer and had a child with him, who later obtained Danish citizenship. The police would not investigate her traffickers because she was not deemed to be in a *current* relation of exploitation, instead handing her case to the immigration authorities who, due to her status as an EU resident unable to provide for herself in Denmark, decided to deport her to Spain. After an initial refusal, she obtained the right to family reunification with her Danish child after the intervention of NGO Reden Aalborg, which had also helped her to find fulltime employment.

*Ruby* worked in prostitution until she ran away from her madam to a Danish man with whom she had fallen in love and wanted to marry; however, she could not marry him as long as she was in Denmark illegally. She became pregnant, and HopeNow helped her to get medical support during the pregnancy and childbirth without risk of violating confidentiality, which otherwise could have resulted in deportation. Shortly before giving birth, she acquiesced to being identified as a victim of trafficking, which meant the right to stay in the reflection period. As her baby obtained Danish citizenship through the father, and the child’s father guaranteed economically for her, she was able to obtain permission to marry her child’s father and thereafter also family reunification with her child and husband. Ruby is currently studying and wants to become a social worker.

For Isabel and Ruby, the official assessment as a victim did not protect them from deportation. It was the child – for Isabel in combination with work, for Ruby in combination with marriage – that opened the path to residency. Still, they needed help and protection from NGOs in their encounter with the Danish authorities to obtain this right.

*Karen* had paid off most of her debt after four years of sex work and thereafter in cleaning and beauty services (without a work permit). She had remained under the authorities’ radar and successfully avoided arrest. She postponed being officially assessed as a victim, fearing loss of business opportunities and possible prosecution for her illegal residency and/or tax violations. Her dilemma was that the traffickers threatened to kidnap her child in the home country unless she paid the totality of her debt, but she could not postpone the identification as trafficked in Denmark until all her debt was paid, as she would then risk no longer being regarded as *currently* trafficked. Mildwater advised her, building up her trust and accompanied her to the police station at the optimal time for identification. After identification, she accepted a voluntary return (AVR) to her country of origin. Returning home was a viable alternative, as she had paid most of her debt and had a supportive family in her home country. For most other women, repatriation is perceived as dangerous due to debts to traffickers or other serious problems, including accusations of witchcraft and family conflicts.

While all three women have resided in Denmark illegally for several years in violation of immigration laws, they did benefit from the right to non-prosecution for trafficking-related offences; still, they needed an NGO by their side to benefit from the different forms of protection to which they were entitled.

**Life situation unchanged: Unprotected turbulence continues**

Seven of the women in our cases have been or were at the time of our last meeting due to be deported to another EU country (usually Italy). Trafficked persons who have been registered as asylum seekers in another EU member state before coming to Denmark are routinely returned to this transit country instead of their country of origin (in accordance with the Dublin Regulation, which states that the EU member state that first received an asylum seeker maintains responsibility for their case).

*Felicia* came to Sweden through Italy, where she had lived with her children as an asylum seeker for five years without telling her trafficking story. Her application for asylum drew out due to disagreement between Sweden and Italy over the responsibility for her application. Despite not having the right to travel abroad, she went on a trip to Tivoli in Copenhagen with her children. Upon their return, the Swedish police returned the family to Denmark despite their Swedish asylum ID. Due to disagreement between Denmark and Sweden, they were kept in a Danish asylum centre for six months before being allowed to return to Sweden. HopeNow had then identified her as trafficked and connected her to a Swedish NGO, which helped with the paperwork. The family seems to have fallen victim to political disagreements between Denmark and Sweden, as well as between Sweden and Italy.

Felicia was still paying on her debt to the traffickers when she encountered the Danish authorities, but only small amounts, so she was out of sexual exploitation. This was not the case for the six others. For them, the meeting with Danish authorities implied a continuation of their difficult lives, as the exploitation of them probably continues, however in another country.

When her madam died, *Lydia* had been working in prostitution in Italy for more than 15 years and had yet to pay off her entire debt. She had not obtained asylum in Italy but had benefitted from an amnesty given to several thousands of undocumented immigrants. She had thereafter obtained a legal contract as a domestic servant. She had learnt Italian, paid her taxes and had received documents that supposedly allowed her to travel in Europe. Upon being arrested in the past, however, she had received a Schengen ban and been placed in the EU fingerprint database. After threats from the madam’s brother who claimed she still owed money, she accepted to go work for him in Norway during a two-week vacation from her job. On a bus at the Swedish border, she was stopped and returned to Denmark, where she was accused of having fraudulent documents and imprisoned. After telling her trafficking story to HopeNow some weeks later, she was returned to Italy but had in the meantime lost her job. Her story is one of criminalization due to bureaucratic errors.

Both *Patricia* and *Celia* came to Denmark from Italy to work in prostitution after their traffickers had put heavy pressure on them and on their families in Nigeria (including murder) to have them pay their alleged debts. They were both arrested shortly after their arrival. Although HopeNow identified both as trafficked, Patricia was immediately deported to Italy, while Celia was released to a shelter. We do not know whether she returned to Italy or left the shelter to live underground in Denmark.

The case that went to court also involves a woman who ended up being returned to another European country. *Miranda* was arrested after having solicited sexual services to an undercover police officer. CaHT officially assessed her as trafficked. Nonetheless, after two weeks in custody, she was deported to Spain, where she had legal residency. HopeNow complained, however, and the immigration authorities reviewed their decision and stated she should not have been deported. Six months later, in 2014, the Supreme Court ruled that as her offences (working and residing without legal documents) were directly linked to her being trafficked, the lower court decisions to keep her in custody and to deport her were unlawful. (<http://www.hoejesteret.dk/hoejesteret/nyheder/Afgorelser/Documents/224-13.pdf>)

Two women were still waiting for a decision on their cases at the time of data collection: *Judy* and *Francisca* had both sought asylum in Denmark after being arrested, they had lived in asylum camps, and they had left these camps after threats from their traffickers towards themselves and their families in Nigeria. Unrelated to sex work, Judy was again stopped by the police and returned to prison, since which time we have no information regarding her whereabouts. Francisca left Denmark on her own accord and sought asylum in France, where she even found employment. After a fingerprint check, however, the French authorities discovered she had given false information about her identity. She was returned to Denmark and detained several months in prison despite being an identified victim. She was released to an asylum centre, where she re-entered the asylum-seeking process.

For Felicia, the exploitation had already come to an end, but the encounter with Swedish and Danish immigration authorities complicated her case and delayed her reintegration. The situations of the six others have in no way improved after their respective encounters with the Danish authorities. Their exploitation probably continues. In all seven cases, the women’s status as illegal immigrants overruled their status as victims of trafficking. European states seem to strive to escape responsibility for these trafficked persons.

**Life situation in downfall: Increased vulnerability for exploitation**

The following cases are examples of downfall.

Both *Joy* and *Cassie* have been officially identified as trafficked, and their respective applications for asylum have been denied. To the frustration of the authorities and their lawyers alike, they have told vague and/or inconsistent stories. It was first late in the process that they revealed the involvement of their own family members in their trafficking, which renders repatriation particularly dangerous. While Joy was waiting in prison for her deportation to be arranged, she managed to escape while hospitalized for an asthma attack, and she is now living underground. After unsuccessfully appealing her denial of asylum, Cassie escaped from a deportation centre and is now also underground with people involved in crime.

*Mercy’s* traffickers had provided her with false papers, for which she was imprisoned after her arrest. After having been officially assessed as trafficked, she was transferred to a shelter, but left it shortly after. She is currently living underground together with a drug dealer.

*Grace* was arrested twice, each time released to a shelter after being identified as trafficked. The second time she accepted an AVR but changed her mind after learning that her child in Nigeria had died. She left the shelter and returned to sex work due to threats. She got pregnant, had an abortion, took a break from sex work and paused the payment of her debt. When she was rearrested (in a situation unrelated to sex work), she was working as a hairdresser and was not considered ‘currently trafficked’, as she was not currently paying off her debt. After six months in prison, she was deported to Nigeria and initially detained by the Nigerian police, but released after intervention from a local NGO that had been contacted and paid by HopeNow.

For all four women, the meeting with Danish authorities increased their vulnerability instead of providing protection; and the scant protection offered was only temporary. Faced with the risk of deportation to their home countries, three of the women preferred to go underground. The fourth was deported to Nigeria, where she was left with nothing, as she was deported without the AVR.

**Concluding discussion**

We do not know the frequency with which the different outcomes described above occur, but we know that most of the officially assessed victims disappear from shelters or are sent to other European countries. Tracing the paths of these 14 women makes clear that across the differences between their cases, they are all confronted with a web of immigration and criminal law that in most of these cases has overruled the trafficking legislation that should have protected them.

It is worth mentioning that one reason for the poor protection provided is that these women *are* difficult to help. Due to fear and traumatization, their stories are not always true or consistent. They rarely want to collaborate with the police for the prosecution of their traffickers and they usually use the protection offered (as asylum seekers or recognized victims placed in shelters) to gain time, where after they return to being exploited. From the women’s perspective, continued sex work appears to be regarded as the lesser evil, as cooperation with Danish authorities will neither pay their debts nor feed their children.

From the perspective of the Danish authorities, it must appear rather meaningless to repeat the circuit of arresting women working in the sex trade without work and residency permits, then providing them with protection, only to see them disappear before again turning up in the streets. Nevertheless, this is what the aforementioned Supreme Court decision obliges them to do; the Supreme Court has decided that the status as victim overrules the status as an offender of immigration laws. But this decision remains ‘law in books’, as it does not correspond to ‘law in action’; that is, how the law is applied.

Compared to what we have described above, the situation currently appears to be even worse. In order to prevent identified victims from disappearing, Danish police have started to confiscate their passports when they hand them over to the NGO Reden-Aalborg shelter. The main reason for the lack of protection provided is that immigrant status overrules victim status. It is the immigration laws that keep the trafficked women underground and prevent them from being identified as victims. And even when identified, the immigration regulations in many ways overrule the Palermo Convention. Consequently, several women are pushed into an underground existence that exacerbates their vulnerability.

A clear example of how immigration status trumps victim status occurred in March 2021 and was reported to us from Reden-Aalborg. It is telling about the police’ priorities: The police made a fake appointment with a woman working in escort prostitution. She turned up and was arrested, as she was a Nigerian citizen without legal residency. Her Danish driver also had his identity checked, but the police released him. Whether he was her pimp or was otherwise involved in her trafficking cannot have been of interest to the police, as they did not check his phone. As the police considered her as a potentially trafficked person, she was first cared for by Reden-Aalborg, but after being interviewed by CaHT, the immigration authorities decided she did not appear to be in a *current* situation of trafficking. She was put in custody and is currently awaiting deportation to Nigeria – without the right to AVR.

Adding to immigration laws now comes the epidemic law put into work for combatting COVID-19. Also in March 2021, HopeNow was contacted by an Eastern European woman who had arrived in Copenhagen the week before. She had placed an advert in an escort guide and booked a hotel room. However, a man who had made an appointment with her, produced police identification when he arrived and told her she was under arrest. At the police station, police issued her with a fine of DKK 10 000 (€ 1350) referring to the corona virus law forbidding businesses involving close contact with clients. The application of this law is reported to be frequent also with regard to street prostitution and brothels.

Together with the 14 cases presented above, these examples cast light on the trafficked persons’ difficulties in counting as “subjects of justice” (Fraser 2009). The status as subjects of justice entitled to legal protection is in practice reserved to national citizens. The women’s status as recognized victims does not protect them from criminalization by immigration laws, whereby they are exposed to what Aas (2014) terms ‘bordered penality’.

Still, they meet a welfare state that in many respects appears to be genuinely preoccupied with their wellbeing and provides them with a series of services (often outsourced to NGOs). In Denmark, the social rights of victims of trafficking are assured through their access to basic health services, even as illegal immigrants. Through NGOs, they may be provided with some social and psychological support, as well as some material support, such as food and clothing. When arrested, they are entitled to legal support. Denmark also pays for AVRs. However, all other forms of state support depend on residency.

They are thus confronted with an ambivalent state or with benevolent violence (Barker 2017). As Franko et al. (2020) have stated, Nordic societies are hard on the outside and soft on the inside: ‘these societies have framed themselves as exceptionally generous, tolerant, and inclusive welfare states, and yet, at the same time, they function as exclusive clubs in which equality, security, and individual freedom are ultimately restricted to fellow members’.

The case of trafficked persons is a complicated nexus between human rights and social rights, the former being considered universal whereas the latter are tied to citizenship. While the former should in principle overrule the latter, this is not the case in practice. Rather paradoxically, weaker welfare states, such as Italy or Spain, which are less generous with the recognized victims, provide victims with more opportunities, as they can more easily survive in the black economy.

How can the recognized victims of human trafficking to prostitution be better protected in Denmark? While more resources to the police might secure better investigations and the prosecution of some cases, what would help the trafficked persons most would be if European countries would agree on letting the status as trafficking victim trump the status as illegal immigrant. This would require that all states encountering trafficked persons on their territory instead of trying to send the women away as fast as possible would cooperate in taking responsibility for them, and would listen to the women and to the social workers representing them, with the aim of finding individually adapted solutions.

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