

# FINAL REPORT

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BILATERAL

“LEGAL RESEARCH GROUP”

ON HUMAN TRAFFICKING

**elsa**

The European Law Students' Association

ANKARA

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# FOREWORD

## 1. WHAT IS ELSA?

ELSA is a non-political, non-governmental, non-profit making, independent organisation which is run by and for students. ELSA has 43 Member and Observer countries with more than 375 Local Groups and 50,000 students. It was founded in 1981 by 5 law students from Poland, Austria, West Germany and Hungary. Since then, ELSA has aimed to unite students from all around Europe, provide a channel for the exchange of ideas and opportunities for law students and young lawyers to become internationally minded and professionally skilled. Our focus is to encourage individuals to act for the good of society in order to realise our vision: “A just world in which there is respect for human dignity and cultural diversity”. You can find more information on [www.elsa.org](http://www.elsa.org).

## 2. LEGAL RESEARCH GROUPS IN ELSA

A Legal Research Group (LRG) is a group of law students and young lawyers carrying out research on a specified topic of law with the aim to make their conclusions publicly accessible. Legal research was one of the main aims of ELSA during our early years. When ELSA was created as a platform for European cooperation between law students in the 1980s, sharing experience and knowledge was the main purpose of our organisation. In the 1990s, our predecessors made huge strides and built a strong association with a special focus on international exchange. In the 2000s, young students from Western to Eastern Europe were facing immense changes in their legal Legal Research Group on Labour Law | FOREWORD 4 systems. Our members were part of such giant legal developments such as the EU expansion and the implementation of EU Law. To illustrate, the outcome of the ELSA PINIL (Project on International Criminal Court National Implementation Legislation) has been the largest international criminal law research in Europe. In fact, the final country reports have been used as a basis for establishing new legislation in many European countries. The results of our more recent LRGs are available electronically. ELSA for Children (2012) was published on Council of Europe's web pages and resulted in a follow up LRG (2014) together with, among others, Missing Children Europe. In 2013, ELSA was involved in Council of Europe's 'No Hate Speech Movement'. The final report resulted in a concluding conference in Oslo that same year and has received a lot of interest from academics and activists in the field of discrimination and freedom of speech. The results of the LRG conference, a guideline, have even been translated into Japanese and were presented in the Council of Europe and UNESCO!

### **3. WHAT IS THE LEGAL RESEARCH GROUP ON HUMAN TRAFFICKING?**

The Bilateral Legal Research Group on Human Trafficking is a cooperation between ELSA Ankara and ELSA Komotini. The cooperation derived from a need to keep up the legacy of ELSA International LRGs. We designated the issue of human trafficking for this LRG as it is a crucial problem both for the region and the world. The LRG can be seen as another significant step towards establishing collaborations to tackle common problems.

In order to conduct the research, our academic supervisors provided us a foundation for the Academic Framework to ensure that researching and uploading the relevant national legislation would go smoothly. Based on those materials 2 ELSA Local Groups analysed their national legislation and compiled a thorough report.

## Acknowledgements

The achievements of the Bilateral Legal Research Group on Human Trafficking would not have been possible without the kind support and help from many individuals.

Our LRG Team would first and foremost like to thank and congratulate the Local Research Groups for their extraordinary effort. More than 10 students and academics from 2 countries have participated as Researchers, Coordinators, and Supervisors. Thanks to your great work, this project has put the topic of human trafficking on the agenda of many law students and you have provided a valuable source of information for readers who seek to learn more about the legislation on human trafficking around the region (Turkey & Greece).

Academic and institutional support is crucial for a student initiative. We are very grateful for the assistance we received from Assc. Prof. Dr. Gülüm Özçelik and Dr. Virginia Tzortzi. Without you, we would not have been able to guarantee the success of the project.

Thankfully yours,

*Can, Can Sarp, Christos, Defne, Natalia, Nadide,*

*Team of Bilateral Legal Research Group on Human Trafficking*

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## Academic Framework

1. Define and explain the concepts of "human trafficking" and "victim of human trafficking" and assess the causes of human trafficking.
2. What are the national provisions to be applied as regards the crime of human trafficking? Explain and assess also by referring to case law.
3. Explain whether there exists any international and national instruments as regards protection of child and women trafficking victims and discuss which further steps should be taken for effective protection of such vulnerable groups.
4. Explain the similarities and the differences between human trafficking and migrant smuggling.
5. How are the victims of human trafficking identified? What are the challenges in the identification of victims and what could be the best strategies?



# Local Reports

**ELSA Ankara**

**ELSA Komotini**

## 1. Define and explain the concepts of “human trafficking” and “victim of human trafficking” and assess the causes of human trafficking.

### ELSA Ankara

#### 1.A.1.1 Legal Definition of Human Trafficking

The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime (also known as **the Palermo Protocol**) provides the internationally accepted definition of human trafficking.

This Protocol (which is in force) was signed by United Kingdom on 14 December 2000 and ratified on 9 February 2006. It provides for a definition of trafficking which has since become a widely accepted standard and has been used in other international instruments. It also outlines protection for victims.

Article 3 of **the Protocol** defines trafficking as:

*“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.*

The impact of the Palermo Protocol has been remarkable. **166** countries have become parties to the Protocol.<sup>1</sup> However, human trafficking is still a low-risk crime and lucrative for criminals because only 136 states have defined human trafficking as a crime.

#### 1.A.1.2 Components of Human Trafficking

-Human Trafficking has three core components:<sup>2</sup>

- a. The act;** refers to the way in which the person is recruited or moved,
- b. The means;** of trafficking which includes threat of or use of force, deception, coercion, abuse of power or position of vulnerability,

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<sup>1</sup> The Protocols include: Protocol against the Smuggling of Migrants by Land, Sea and Air, G. A. Res. 55/25, U. N. Doc. A/RES/55/25 (Nov. 15, 2000); Protocol to Prevent, Suppress and Punish Trafficking in Persons ;Especially Women and Children, G. A. Res. 55/383, U. N. Doc. A/55/383 (Nov. 15, 2000)

<sup>2</sup> [http://www.unodc.org/unodc/en/human-trafficking/faqs.html#What\\_is\\_human\\_trafficking](http://www.unodc.org/unodc/en/human-trafficking/faqs.html#What_is_human_trafficking)

Example: This could be the situation when someone decides to make a trip to take up a job which doesn't actually exist,

**c. The purpose;** refers to the motivation of the trafficker, the way in which they are seeking to exploit the victim.

For instance, the purpose could be about their labour, sexual exploitation or even their organs. There is one exception in the case of children human trafficking is the recruitment transportation, transfer, harboring and receipt of a child for the purpose of exploitation. Only **the act** and **the purpose** are included on account of children's vulnerability.

### 1.A.1.3 Common Types of Human Trafficking

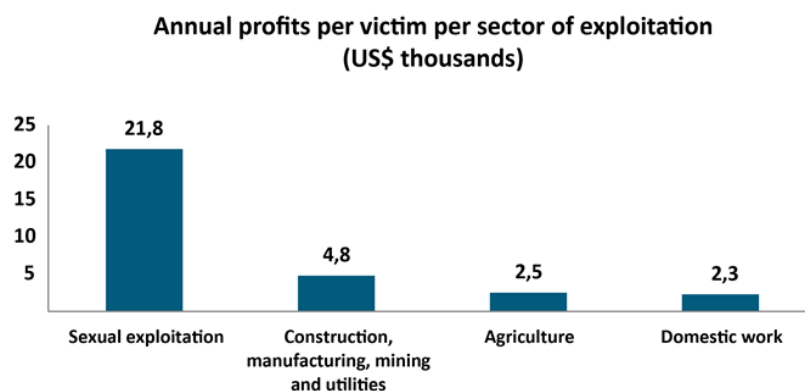
Sex trafficking, forced labour and debt bondage are the three most common types of human trafficking.

#### 1.A.1.3.1 Forced Labour

Forced labour can be understood as work that is performed **involuntarily** and **under the menace of any penalty**. It refers to situations in which persons are coerced to work through the use of violence or intimidation, or by more subtle means such as manipulated debt, retention of identity papers or threats of denunciation to immigration authorities.

According to a 2012 **International Labour Organization (ILO)** report<sup>3</sup>, 21 million people are victims of forced labour. The Asia-Pacific region accounts for the largest number of forced labourers in the world with 11.7 million victims (56 percent of the global total value), followed by Africa with 3.7 million (18 percent) and Latin America with 1.8 million victims.

Forced labour<sup>4</sup> generates annual profits of US\$ 150 billion.



<sup>3</sup> [http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_181961/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_181961/lang--en/index.htm)

<sup>4</sup> [http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_243201/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_243201/lang--en/index.htm)

### 1.A.1.3.2 Sex Trafficking

Sex trafficking is the recruitment, transportation, transfer, harbouring or receipt of persons who under threat, force, coercion, fraud, deception or abuse of power are sexually exploited for the financial gain of another.

According to International Labour Organization's statistics, worldwide, it's estimated that there are **4.5 million** victims of sex trafficking.

According to UNODC **161** countries are reported to be affected by human trafficking by being a source, transit or destination country. People are reported to be trafficked from **127** countries to be exploited in **137** countries, affecting every continent and every type of economy.<sup>5</sup>

**600.000-800.000** men, women and children are trafficked across international borders each year. Approximately **%80** are women and girls and **%50** are minors.

According to the *United Nations Office on Drugs and Crime "A Global Report on Trafficking in Persons"* the most common form of human trafficking is sexual exploitation(%79). The victims of sexual exploitation are predominantly women and girls. Surprisingly, in %30 of the countries which provided information on the gender of traffickers, women make up the largest proportion of traffickers.

### 1.A.1.3.3 Debt Bondage

Debt bondage occurs when a person is forced to work to pay off a debt. They are tricked into working for little or no pay, with no control over their debt.

Most or all of the money they earn goes to paying off their loan. The value of their work becomes invariably greater than the original sum of the money borrowed.

Bonded labour is widespread mostly in **South Asian** countries such as **India** and **Pakistan**<sup>6</sup>. Often entire families have to work to pay off the debt taken by one of their members. Sometimes, the debt can be passed down to the next generations and children can be held in debt bondage because of a loan their parents had taken decades ago.

## 1.A.2. Who is a Victim of Human Trafficking?

In pursuant of "Identifying Victims of Human Trafficking: Inherent Challenges and Promising Strategies From the Field"<sup>7</sup> current stereotypes depict the victim of human trafficking as innocent young girls from foreign countries who are manipulated, lied to, and often kidnapped and forced into prostitution. However it is not just young foreign girls who are trafficked. Men, women, children of all ages and legal residents can all fall prey to traffickers and there are many victims of labour trafficking in addition to sex trafficking. They often come from countries or communities

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<sup>5</sup> UNODC, Trafficking in Persons: Global Patterns Kristiina Kangaspunta International Symposium on International Migration and Development Turin, 28-30 June 2006

<sup>6</sup> <https://www.antislavery.org/slavery-today/bonded-labour> , <https://www.antislavery.org/what-we-do/india-debt-bondage>

<sup>7</sup> <https://aspe.hhs.gov/report/identifying-victims-human-trafficking-inherent-challenges-and-promising-strategies-field>

with high rates of crime, poverty, and corruption; lack of opportunities for education; lack of family support and/or have a history of physical and/or sexual abuse.

Victims face many challenges in accessing help. Their traffickers may confiscate their identification documents and money. They may not speak English or the language of the country they are staying in. They may not know where they are, because they have been moved frequently. They are often not allowed to communicate with family or friends. And they may have trouble trusting others, due to their traffickers' manipulation and control tactics.

UNICEF estimates that there are around 21 million trafficked people around the world. This include around 5.5 million children. Human trafficking is a crime that is gendered; the primary victims are women and girls.<sup>8</sup>

### **1.A.3. Causes of Human Trafficking**

According to the *United Nations Office on Drugs and Crime*<sup>9</sup>; the root causes of trafficking are various and they often differ from one country to another. Trafficking is a complex phenomenon that is often driven or influenced by social, economic, cultural and other factors. Many of these factors are specific to individual trafficking patterns and to the states in which they occur. There are, however, many factors that tend to be common to trafficking in general or those that are found in a wide range of different regions, patterns or cases. One such factor is that the desire of potential victims to migrate is exploited by offenders to recruit and gain initial control or cooperation, only to be replaced by more coercive measures once the victims have been moved to another state or region of the country, which may not always be the one to which they had intended to migrate to. Some of the common factors are local conditions that make populations want to migrate in search of better conditions such as poverty, oppression, lack of human rights violations, lack of social or economic opportunities, dangers of conflict or instability and similar conditions. Political instability, militarism, civil unrest, internal armed conflicts and natural disasters may result in an increase in trafficking. The destabilization and displacement of populations increase their vulnerability to exploitation and abuse through trafficking and forced labour. War and civil strife may lead to massive displacements of populations, leaving orphans and street children extremely vulnerable to trafficking.

#### **1.A.3.1 Human trafficking generates a huge profit.**

According to the ILO, the human trafficking industry generates a profit of \$150 billion per year. Two-thirds of this profit is made from commercial sexual exploitation, while the remainder comes from forced economic exploitation such as domestic work and agriculture. Human trafficking is the fastest-growing and second-largest criminal industry in the world, after drug trafficking.

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<sup>8</sup> [http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms\\_575479.pdf](http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf)

<sup>9</sup> [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_142722.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_142722.pdf)

### **1.A.3.2 Poverty, natural disasters and a search for a better life.**

According to The Polaris Project<sup>10</sup> traffickers look for people who are susceptible to coercion into the human trafficking industry. Those people tend to be migrants, fleeing their homes either because of economic hardships, natural disasters or political instabilities. The displacement of populations increases individuals' emotional vulnerability, and in most cases they do not have the financial support to protect themselves. This makes them potential subjects to abuse through trafficking.

### **1.A.3.3 War**

According to **Center for Global Impact (CGI)**<sup>11</sup> armed conflicts can lead to massive forced displacements of people. Wars lead to large numbers of orphans and street children who are especially vulnerable to trafficking.

### **1.A.3.4 Social and Cultural Practices**

**The Borgen Project**<sup>12</sup> states that many societies and cultures devalue, abuse and exploit women and girls, creating perilous living conditions for these women. With little opportunities for upward mobility and with little value attributed to women and girls, they are more susceptible to human trafficking.

### **1.A.3.5 Cases of human trafficking are difficult to identify.**

Some challenges in identifying victims of human trafficking may arise because victims are well-hidden or highly traumatized. Those that are traumatized are unlikely to divulge information to investigators, either because they are scared to confront law enforcement, or because they are too troubled to respond. Consumers of human trafficking also contribute to the crime's hidden nature, according to a report by **the National Human Trafficking Hotline**<sup>13</sup>. Both traffickers and consumers are aware of the huge risk they take by participating in this illegal behaviour and will do their best to cover up any illicit activity.

### **1.A.3.6 Women and children are targets.**

In some societies, the devaluation of women and children make them far more vulnerable to trafficking than men. Traditional attitudes and practices, early marriage and lack of birth registration further increase the susceptibility of women and children. They are also targeted because of the demand for women in sex trafficking. A report by **Equality Now**<sup>14</sup> states that 20.9 million adults and children are bought and sold worldwide into commercial sexual servitude, forced labour and bonded labour. Women and girls make up 98 percent of the victims trafficked for sexual exploitation.

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<sup>10</sup> <https://borgenproject.org/5-causes-of-human-trafficking> , [http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_243201/lang-en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_243201/lang-en/index.htm) , <http://humantraffickinghotline.org/resources/2016-national-hotline-annual-report>

<sup>11</sup> <http://centerforglobalimpact.org/cgi-kids/4-causes-of-human-trafficking>

<sup>12</sup> <http://centerforglobalimpact.org/cgi-kids/4-causes-of-human-trafficking>

<sup>13</sup> <http://humantraffickinghotline.org/resources/2016-national-hotline-annual-report>

<sup>14</sup> <https://www.equalitynow.org/sex-trafficking-fact-sheet>

## **ELSA Komotini**

### **1.K Human Trafficking**

#### **1.K.1 Legal Definition**

Human trafficking is a devastating human rights violation that remains largely invisible to the public eye. Human trafficking is a multidimensional phenomenon that evolves with quick tempo and continually takes new forms thus it is difficult to define. . It has been characterised as the global crime of the 21<sup>st</sup> century. A main characteristic of it is that it greatly prevents the freedom of will of the victim. It can take different forms including sexual exploitation, obligation to work, removal of body organs etc.

According to The United Nations Convention against Transnational Organized Crime, known as the UN Palermo Protocol (signed by 74 states) “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.”<sup>15</sup>

According to this definition human trafficking has to include 1 element of the following:

1. An action (recruitment, transportation, transfer, harbouring, receipt)
2. The means (threat, use of force, coercion, abduction, fraud, deception, abuse of power of a position of vulnerability)
3. Goals (for exploitation or the purpose of exploitation, which includes exploiting

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<sup>15</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, article 3 (a). <sup>2</sup> Alexis A. Aronowitz, Human Trafficking, Human Misery-the global trade in human beings, Praeger, 2009, p.1,2



the prostitution of others, other forms of sexual exploitation, forced labor or services, slavery or similar practices, and the removal of organs)<sup>16</sup>

### **1.K.1.2 Forms of Human Trafficking**

Human trafficking is the third most profitable criminal business after the drug and weapon trade.<sup>2</sup> 4.000.000 people get trafficked annually, 1.000.000 of which are children, according to the European Parliament. Globally it is estimated that 27.000.000 get trafficked and the overall profit reaches 5-7.000.000 Euros.<sup>3</sup> Its profitability is due to the low labour costs, the easy restocking of human goods and the low risk of punitive actions. Human trafficking is one of the most grievous crimes in the world. It involves many different types of offences, all of which prevent the victim from exercising his freedom of will. Crimes are perpetrated on the body of the victims: exploiting them sexually, obliging them to work under abject conditions, or removing body organs, among other forms of exploitation. Trafficking in human beings for sexual exploitation is the most prevalent form of trafficking in the European Union. According to statistical data of European Commission report for 2013-2014, 67% of victims of human trafficking (total 15.846 registered victims) were sexually abused.<sup>17</sup>

### **1.K.1.3 The Process of Human Trafficking**

The trafficking of human beings is a complex phenomenon that can be viewed as a process rather than a single offense. The first stage is the recruitment of a person. The second stage involves the transportation and entry of the victim into another country (when the phenomenon crosses the borders). The third one is the exploitation during which the victim is forced into sexual or labor abuse and slavery.<sup>18</sup> During the trafficking process, due to the complexity of the phenomenon many crimes may be committed such as money laundering. The paradox of this crime is that when the phase of recruitment occurs, the traffickers are very gentle with the victims since they promise a better way of living. The traffickers use violence only when they transfer the victims to another city (Internal Trafficking) or country (International Trafficking).

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<sup>16</sup> Maria\_João Guia, *The Illegal Business of Human Trafficking*, Springer, 2015, p.44 <sup>3</sup> Δικατερίνη Κουφογιώτη, *Σωματεμπορία* (άρθρο 351 Π.Κ), σελ 5

<sup>17</sup> Report from the Commission to the European Parliament and the Council. Report on the progress made in the fight against trafficking in human beings (2016)

<sup>18</sup> Alexis A. Aronowitz, *Human Trafficking, Human Misery-the global trade in human beings*, Praeger, 2009, p.9



Human trafficking has 3 levels as a sociological problem:

1. The Political and Local Recognition
2. The Identification and Quantification (estimates must be made) of the phenomenon
3. The Individual and Community Recognition of the problem<sup>19</sup>

### **1.K.2 Victims of human trafficking**

The victims of human trafficking are often characterised as the new slaves of the 21st century. Groups that are vulnerable to become victims are women and children, early school leavers, unaccompanied children, children with disabilities, the Roma community etc. The victims of trafficking can be found in any sector in which there is a demand for cheap labor and in which police, aid, human rights, and anti-trafficking organizations look to find them. But the victims of trafficking will not always be recognized as such. Their status as trafficked victims to a large extent will depend on whether there is adequate legislation and awareness of the plight of trafficked victims. Countries lacking legislation defining labor exploitation as trafficking will treat persons found in such situations as illegal migrants—that is, as criminals, not victims. Traffickers choose to trade in humans because there are low start-up costs, minimal risks, high profits, and large demand. For organized crime groups, human beings have one added advantage over drugs: they can be sold repeatedly.

Victims are made to feel inferior because of the psychological control of their handlers; they are not treated as a human being but simply as a saleable commodity. Many victims are proficient in their native language but lack of other language skills limits their self-esteem, and provides additional control for their handler who will control their documentation (passport, birth certificate, and personal papers) and all aspects of their lives. That total control makes it difficult for victims to take the initiative to escape from their environment because they are often invisible within the society they are placed.<sup>20</sup>

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<sup>19</sup> Maria\_João Guia, *The illegal business of human trafficking*, Springer, 2015, p.4,5

<sup>20</sup> Michael J. Palmiotto, *Combating Human Trafficking, A Multidisciplinary Approach*, CRC Press, 2015, p. 91

## The Distribution of Victims in Exploitative Conditions by Gender and Age

Victim by Gender and Age	Exploitation	Percent
Adult women	Forced or coerced	
	Commercial sex	33
Girls (under the age of 18)	Forced or coerced commercial sex	23
Adult women	Other forms of exploitation	14
Girls (under the age of 18)	Other forms of exploitation	11
Boys (under the age of 18)	Forced or coerced commercial sex	10
Boys (under the age of 18)	Other forms of exploitation	6
Adult men	Other forms of exploitation	3
Adult men	Forced or coerced commercial sex	1

Source: U.S. Mission to the European Union (2005b).

### 1.K.3 Causes of human trafficking

#### 1.K.3.1 General Factors

The main cause that human trafficking has taken such dimensions is the ignorance around the subject.

Furthermore, a decisive factor for the existence of Human Trafficking is the vulnerability of the victims and their social invisibility. The vulnerability is a notion different to poverty. (Poverty is more of a context to Human Trafficking, not a specific cause). The vulnerability is based on poverty, lack of democratic culture, gender inequality, violence against women, conflict, lack of social integration, lack of opportunities and employment, of access to education, child labour and discrimination. Trafficking has expanded because of the improvement of the transportation infrastructure and also because of the decline of transportation costs. The end of the Cold War resulted in the rise of regional conflicts and the decline of borders, leading to an increased number of economic and political refugees. Furthermore, many rebel groups turned to illicit activity, including human trafficking, to fund their military

actions and obtain soldiers. Demand has also increased as producers depend more on trafficked and exploited labor to stay competitive in a global economy in which consumers seek cheap goods and services, including easily available and accessible sexual services.<sup>21</sup>

Women are extremely vulnerable victims due to the unequal power relations in patriarchal societies, the sexualisation of women and their objectification for consumption. Also, it has been found that women and Children seem to be the most vulnerable in trying to better themselves. Another cause is the low law enforcement rates in the most countries including the lack of capacities and capabilities of prosecutors and the lack of victim protection in the source or destination countries. In this phenomenon contributes the limited cooperation between source, transit and destination countries as the blame is often pushed to one another to justify themselves. Also, the corruption among enforcement units (police and immigration officers) doesn't help the situation. Moreover, the victims often don't speak because they fear the revenge of the prosecutors or they have to testify thus re-experience all the horrible things they've lived. In addition, it is very common that they don't see themselves as victims maybe because they compare with their previous living conditions that could be worse.

Other causes could be the economic crises in many European countries, the economic emergence of some countries, the globalisation, the poverty, the lack of work opportunities 'the gender discrimination, the economic and political instability, the civil unrest in conflict areas, the domestic violence, the illegal immigration, the sex tourism, the corruption, the faulty legal systems.

### **1.K.3.2 Specific Factors**

#### **1.K.3.2.1 Poverty**

Although the poverty factor is frequently cited as one of the main causes of trafficking, according to Mike Dottridge poverty is a context and not the specific cause of Human Trafficking due to the fact that most people in very bad economic situation are not trafficked.<sup>22</sup> However, we cannot ignore that financial crisis in many European countries leads to unemployment and people seek for a better work opportunities and way of

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<sup>21</sup> Maria\_João Guia, *The illegal business of human trafficking*, Springer, 2015

<sup>22</sup> Maria\_João Guia, *The Illegal Business of Human Trafficking*, Springer, 2015, pp.24-25

living in other countries. This urge of people for better standard of living make people more vulnerable to trafficking because traffickers promise jobs and stability in order to recruit their victims.<sup>23</sup>

#### **1.K.3.2.2 Lack of education**

The lack of access to education leads to encroachment of fundamental human rights and people who are subject to violation of their rights cannot react and oppose because of their unawareness of the situation. A phenomenon that abuses people's fundamental rights and dignity is trafficking.

#### **1.K.3.2.3 Globalization**

Trafficking has increased significantly with globalization. Free Market, free trades and a greater mobility of goods and people are some factors which facilitate trafficking to prosper.<sup>24</sup>

#### **1.K.3.2.4 War and natural disasters**

Wars and natural disasters such as tsunami and earthquake have left millions of people homeless and impoverished. Perpetrators of trafficking exploit the beggary and the vulnerability of these people and promise to help them to recover and better opportunities of living in order to recruit them as victims.

#### **1.K.3.3 Comment**

It has been identified through data that the general public is skeptical that human trafficking exists in today's society and, in particular, in their communities. There is a need for greater public awareness and a comprehensive understanding of the crime of human trafficking and its victims.<sup>25</sup>

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<sup>23</sup> <http://centerforglobalimpact.org/cgi-kids/4-causes-of-human-trafficking/>

<sup>24</sup> Louise Shelley ,Human Trafficking. A global perspective, Cambridge University Press, 2010. p. 37

<sup>25</sup> Michael J. Palmiotto Combating Human Trafficking, A multidisciplinary approach, CRC Press, 2015, p. 91 14 Unric.org

## **2. What are the national provisions to be applied as regards the crime of human trafficking? Explain and assess also by referring to case law.**

### **ELSA Ankara**

Human trafficking was explicitly regulated in Turkish Criminal Code<sup>26</sup> for the first time in 03.08.2002. Although Turkey had various other regulations and punishments concerning different aspects of human trafficking before, such as article 179 of Criminal Code (numbered 765, dated March 1, 1969) which imposes sanction to the act of illegitimately depriving persons from their freedom, and article 23 of Turkish Civil Code<sup>27</sup> which mentions the illegality of remission of freedom or restriction of freedom in a way that contradicts law and morals, or the articles n. 435 and 436 of the Criminal Code (numbered 765, dated March 1, 1969) of which could be applied to regulate the acts of forcing persons into prostitution and sexual exploitation, the addition of article 201b to the Criminal Code (numbered 765, dated March 1, 1969) that directly regulates the offense of human trafficking is a positive step towards raising awareness regarding the issue. The crime of human trafficking is regulated as the following in article 201b of the Criminal Code (numbered 765, dated March 1, 1969):

*“(1) Persons who provide, kidnap or shelter or transfer a person (s) from one place to another unlawfully and by force, threat or violence or misconduct of power or by executing acts of enticement or taking advantage of control power on helpless persons in order to force them to work or serve for others or to send them away where he/she is treated almost like a slave or to make them give away their organs, are sentenced to penal servitude from five years to ten years and a heavy fine of no less than one billion liras.*

*(2) In case of execution of acts which constitute offense in the definition of first subsection, the consent of the victim is considered void.*

*(3) In case of kidnapping, providing, sheltering or transfer of a person(s) who is under the age of eighteen, the offender is subject to the punishments indicated in the first subsection even if he did not execute the acts causing offense.*

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<sup>26</sup> Turkish Criminal Code Law n. 765 | 1956 | Türk Ceza Kanunu

<sup>27</sup> Turkish Civil Code | 2002 | Türk Medeni Kanunu

*(4) In the case of offenses that are mentioned above are committed as organised crimes, the offenders will be sentenced to punishments increased by one.”*

This provision has been made due to Turkey's international responsibilities.<sup>28</sup> With Turkey's ratification of United Nations Convention against Transnational Organized Crime (also referred to as Palermo Protocol) and the supplementing Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children<sup>29</sup> (Law n. 4804) and Protocol Against the Smuggling of Migrants By Land, Sea and Air<sup>30</sup> (Law n. 4803), the convention and the supplementing protocols have been integrated into Turkey's domestic law. Both protocols charge all contracting countries with the responsibility to establish necessary regulations to make the smuggling of migrants and trafficking of humans actions, defined by the convention, into legally recognized criminal offenses. Henceforth, the act of human trafficking was, for the first time, incorporated into Turkey's domestic law.<sup>31</sup>

Article 80 of the Turkish Criminal Code<sup>32</sup>, which replaced the previous Criminal Code of 1926, regulates the offense of human trafficking as the following:

*“(1) Persons who provide, kidnap or shelter or transfer a person (s) from one place to another unlawfully and by force, threat or violence or misconduct of power or by executing acts of enticement or taking advantage of control power on helpless persons in order to force them to work or serve for others or to send them away where he/she is treated almost like a slave or to make them give away their organs, are sentenced to imprisonment from eight years to twelve years and punished with punitive fine up to ten thousand days.*

*(2) In case of execution of acts which constitute offense in the definition of first subsection, the consent of the victim is considered void.*

*(3) In case of kidnapping, providing, sheltering or transfer of a person(s) who is under the age of eighteen, the offender is subject to the punishments indicated in the first subsection even if he did not execute the acts causing offense.*

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<sup>28</sup> Kuloğlu Turan, “Uluslararası Belgelerde ve Türk Hukukunda İnsan Ticareti” (thesis2010)

<sup>29</sup> United Nations Convention against Transnational Organized Crime supplementing Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children Law n. 4804 | 2003 | Sınırşan Örgütlü Suçlara Karşı Birleşmiş Milletler Sözleşmesine Ek İnsan Ticaretinin, Özellikle Kadın ve Çocuk Ticaretinin Önlenmesine, Durdurulmasına, ve Cezalandırılmasına İlişkin Protokol

<sup>30</sup> United Nations Convention against Transnational Organized Crime supplementing Protocol Against the Smuggling of Migrants By Land, Sea and Air Law n. 4803 | 2003 | Sınırşan Örgütlü Suçlara Karşı Birleşmiş Milletler Sözleşmesine Ek Kara, Deniz ve Hava Yoluyla Göçmen Kaçakçılığına Karşı Protokol

<sup>31</sup> Kuloğlu Turan, “Uluslararası Belgelerde ve Türk Hukukunda İnsan Ticareti” (thesis2010)

<sup>32</sup> Turkish Criminal Code Law n. 5237 | 2004 | Türk Ceza Kanunu

*(4) Security precautions are applied for the legal entities committing such offenses.”*

The material elements as foreseen by this article include providing, kidnapping, sheltering or transferring persons from one place to another. However, these acts must be carried out by the intention to make victims work or serve for others, or to send them away where (s)he will be subjected to captivity and similar practices, or to make them give their organs away. First subsection of the article furthermore determines the usage of agents of act as the constituent elements in order for the aforementioned elements of crime done for the aforementioned intentions to be considered a crime. These agents of acts are threats or violence or misconducts of power or executing acts of enticement or taking advantage of control power on helpless persons.

Second subsection mentions that with the existence of offenses forenamed in the first subsection, the will of the victim will be disregarded. For example, if one person's will towards giving away their organs is the result of the offenses, this declaration will be neglected for the formation of the crime of human trafficking.

The third subsection of the article gives way to the formation of the crime of human trafficking even if the offenses mentioned in the first section as constituent elements are not present in order to protect persons who are under the age of eighteen.

The fourth and last subsection deals with the situation of legal entities committing such offenses, and regulates that they will be subjected to security precautions of their own.

Article 80 of Criminal Code (numbered 5237, dated September 26, 2004) is the same as 201b in the previous Criminal Code (numbered 765, dated March 1,1969) in terms of regulations concerning elements of the crime, but differs from it in two areas. Firstly, the sanctions foreseen for the crime of human trafficking is five to ten years in prison and a fine of no less than one billion liras in the Criminal Code of 1969, however, the Criminal Code of 2004, the current one, predicts eight to ten years in prison and a punitive fine of ten thousand days as a sanction. Second, the committal of crime being an organized one used to count as a matter of aggravation in the Criminal Code of 1969, but the Criminal Code of 2004 does not address it.

In addition to article 80 of Criminal Code, Turkey has other legislative regulations concerning the prevention of human trafficking, which are not criminal regulations by themselves but serve as a provision and as means of protection, that are as follows:



- Articles 17 and 18 in Constitution of the Republic of Turkey<sup>33</sup>, of which regulate personal inviolability, corporeal and spiritual existence of the individual and prohibition of forced labour, and article 19 which states that no one shall be deprived of one's liberty, even by the hands of one's self
- Article 7 of Law on The Work Permit of Foreigners Application Regulation<sup>34</sup>
- Articles 48 and 49 of Law on Foreigners and International Protection<sup>35</sup>, which concern residence permits for victims of human trafficking and its renewal or cancellation
- 5395 Child Protection Law<sup>36</sup> articles 4 and 5, which mention fundamental principles and regulate the safety measures and precautions to protect and safeguard the rights of juveniles
- 5682 Passport Law<sup>37</sup> articles 4 and 8, which deal with persons who come in to the Republic of Turkey without proper documents and persons who are forbidden to enter to the Republic of Turkey

In light of these provisions taken by the Turkish government, the most important factor contributing to making a case eligible for being a human trafficking crime is the clear absence of **will**. Looking at the case law, the Court of Cassation often rules many alleged human trafficking crimes as only prostitution crimes because the victims show no indication of being forced into prostitution or being helpless; but rather engaging in such activities by their own will and for money reasons. Thereunder article 80 of 5237 Criminal Code, in order for there to be a trafficking of humans crime, the offender must provide, kidnap, shelter or transfer victims “*[...]by force, threat or violence or misconduct of power or by executing acts of enticement or taking advantage of control power on helpless persons in order to force them to work or serve for others [...]*”. An example of this notion could be given as the Court of Cassation's decision case numbered E. 2016/15853 K. 2016/18706. The Court of Cassation found the perpetrators in this case wrongly and overly punished as the crimes listed did not accurately correspond to the actual event. The perpetrators were charged with aiding the crime of prostitution and trafficking of humans. The Court ruled that, since there was lack of evidence showing the helplessness of the persons, and that human trafficking required perpetrators to take advantage of those helpless persons and force them into working or serving for others, the case at hand was, in fact, not a human trafficking crime but only a prostitution crime one. Further, another important factor contributing to the crime of human trafficking is the element of deception carried

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<sup>33</sup> Constitution of the Republic of Turkey Law n. 2709 | 1982 | Türkiye Cumhuriyeti Anayasası

<sup>34</sup> Law on The Work Permit of Foreigners Application Regulation Law n. 4817 | 2003 | Yabancıların Çalışma İzinleri Hakkında Kanun

<sup>35</sup> Law on Foreigners and International Protection Law n. 6458 | 2013 | Yabancılar ve Uluslararası Koruma Kanunu

<sup>36</sup> Child Protection Law Law n. 5395 | 2005 | Çocuk Koruma Kanunu

<sup>37</sup> Passport Law Law n. 5682 | 1950 | Pasaport Kanunu



out by the perpetrator. According to a different decision case made by the Court of Cassation, numbered E. 2010/1440 K. 2010/5953, in order for the compromise of human trafficking crime regulated in article 80 of the Criminal Code (numbered 5237, dated September 26, 2004), the offender must use “[...] *force, threat or violence or misconduct of power or by executing acts of enticement or taking advantage of control power on helpless persons [...]*” as agents of act. The mutual quality of these agents is having negative effects on the will of victims and forcing them to act in ways they do not wish to act. The will of victims should be broken by the offender through these agents so that victims could seemingly declare a false will and be forced to act in ways the article counts as elements of crime. In the case at hand, the offender was not found guilty by the Court of Cassation of trafficking of humans because there was no evidence pointing out to acts of enticement executed by the offender, and on the contrary, the victim showed clear will to engage in acts of prostitution.

### **ELSA Komotini**

The phenomenon of trade in human beings and human smuggling affects every country in the world.<sup>38</sup> Despite the universality of this modern form of slavery it seems that a plethora of different factors,<sup>39</sup> for example, economical, institutional and geographical ones, create an unequal division of labor between countries.<sup>40</sup> The problem is particularly explicit in Europe, where smuggling and trafficking in humans is disparate between different states. Specifically, Germany, Greece, Italy, Belgium and Netherlands are considered as “major destinations”, due to the intensity of this phenomenon.<sup>41</sup>

Greece, being a transport hub, per excellence, between three continents and, a member of the EU, is definitely both a destination and a transit country for human traffickers and human smugglers. As a result, the Greek legislator’s main focus has been human trafficking in an attempt to follow the international regulations and provisions, in order to best tackle the specific crime.<sup>42 43</sup>

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<sup>38</sup> Freedom Project. (2013). Human trafficking affects every country in the world. from <http://www.thefreedomproject.org/human-trafficking/>.

<sup>39</sup> Athanasia.P. Sukioutou Human trafficking in the Balkans page 21 Sakkoulas 2003.

<sup>40</sup> “Countries were examined as source, transit, and origin countries and then placed on a scale of Very High, High, Medium, Low, and Very Low. [...] while 10 ranked very high as destination countries (Belgium, Germany, Greece, Israel, Italy, Japan, the Netherlands, Thailand, Turkey, and the United States). See UNODC (2006a, 2006b)” by Alexis A Aronowitz, *Human Trafficking Misery The Global Trade In Human Beings*, Global Crime and Justice, pp 233

<sup>41</sup> Louise Shelley, *Human Trafficking A Global Perspective-Trafficking in Europe*, George Mason University, pp. 20

<sup>42</sup> Nikolas Hatzinikolaou, The drifting of the vulnerable victim in the crime of human trafficking- Dialogue with case-law, *Criminal LawN*©/2009, pp. 492

<sup>43</sup> E. Simeonidou-Kastanidou, Human trafficking worldwide and its criminal confrontation under the Greek Law and E. Simeonidou-Kastanidou, *New Law 3064/2002 for Human trafficking* , 2003 page 13.

The first major statute in the Greek legal system that penalized and systematized an efficient regulatory system regarding the crime of human trafficking was Law 3064/2002 (GG 248/A/15-10-2002). The ultimate “ratio” of the statute was the compliance of Greece with the Global standards and the country obligations stipulated by the EU.<sup>68</sup> The latter Law introduced many changes into the Greek penal code and managed to regulate all forms of human trafficking.<sup>44</sup> The legislation allowed for the development of an elaborate legal framework composed of various statutes. Consequently, under the scope of the Greek legal system, the crime of human trafficking is currently addressed from a procedural and a substantial law perspective.

### **2.K.1. The integration of law 3064/2002 and its contribution to the Greek criminal law.**

#### **2.K.1.2 The dilemma of permitted analogy in criminal law**

Of the changes this law brought about, the most crucial ones were, firstly, the introduction of article 323A Criminal Code, 348A CC and article 351A CC secondly, the amendments to articles 338 CC, 340 CC, 344 CC, 348 CC, 351CC.<sup>45</sup> Additionally this law incorporated aggravating reasons that increase punishment for the perpetrator and, most importantly, it introduced the state’s obligation to offer protection and assistance to the victims. Specifically, article 323A CC, regulates the exploitation of a victim in order to remove their cells/organs or cases of forced labor. Moreover Law 3875/2010 N article 323ACC and introduced the distinction between forced labor and the exploitation of victims mendicity. This distinction helped to fill a legal gap that judges had to face when dealing with cases of forced mendicity. The arising questions were firstly, the allowed enforcement of art.323 A C.C. in the absence of enforcing the labour or of receiving the salary, and secondly, the allowed enforcement of this article in the case of coercion of the victim in mendicancy. The latter questions dealt with the

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<sup>68</sup> Nikolas Hatzinikolaou, Criminal suppression of illegal migration and trafficking of people in the Greek legal order: seeking the cohesive value of acuteness of punishment and victim-centred approach, *Criminal Law*2/2008, pp. 220-221

<sup>44</sup> Plenary decision by the National Committee for Human Rights, 14.6.2007, “Human Trafficking – the State of Affairs in Greece.” *Criminal Law*10/2008, pp. 1209-1210 <sup>4</sup> As above.

<sup>45</sup> Hereby C.C

major dilemma of criminal law; Prohibition of analogy or permitted interpretation of the penal statute ( *nullum crimen nulla poena sine lege scripta et certa*).<sup>46</sup>

The recent judgment 68/2011 of the First Instance Judicial Court of Peloponnese enlightened the necessary modifications of the Greek criminal law system.<sup>47</sup> Thus it described that forced labour is *“the act of working for foreign employers [...] while the perpetrator receives the victim’s money [...] or the act of working straight for the perpetrator. [...] Meanwhile, the crime of mendacity requires firstly the coercion of mendacity and foremost the coercion of the victims to give all their money to the perpetrators”*.<sup>48</sup>

### **2.K.1.2.2 Theoretical issues under the scope of criminal law**

Article 351 CC regulates the case of sexual exploitation of victims of trafficking, this article falls under the relevant chapter of the criminal code, i.e., crimes against a person’s sexual freedom and is considered one of the most important articles of the chapter. Although article 323A CC and 351CC prescribe the same actus reus, art. 351 is different since its purpose is more specific; the confrontation on sexual exploitation. Due to the complexity of the elements of the crimes, the Greek case law expresses its reservations on the application of art. 351 and 323A, thus according to theory, the confluence between the aforementioned articles is “apparent”, leading to the prosecution for one solely crime. In contrary, bearing in mind that trafficking is mainly related to the sexual exploitation of the victims, the Greek case law distinguishes the crimes of sexual slavery and human trafficking, concluding to the application of each criminal prescriptions and the criminal prosecution of both of the crimes.<sup>49</sup> Furthermore, Law 4198/2013 -which was enacted in compliance with EU Directive 2011/365/EE for the prevention and protection of human trafficking and its victims- incorporated into

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<sup>46</sup> Prohibited Analogy & Permitted Interpretation of Penal Statutes; A Contribution to the Methodology of Criminal Law Kostantinos Tsinas, 2008

<sup>47</sup> ΣυμβόλιμηΚαλάμ 68/2011, ΠονΔικ 10/2011 page1061-1062

<sup>48</sup> Kostas Ch.Chrysogonos, Civil and Social Rights, 2nd Edition, Ant.-N.Sakkoulas publications, Athens-Komotini, 2004, pp.92. Nikolaos Kourakis, Punishment and anticriminal policy, Poinika Chronika, 2007, pp.293, Georgios Dikaosyni,1990,pp.300 Chronika, 2007, pp.293, Georgios Dikaosyni,1990,pp.300 N. Triantafyllou, Analogy in criminal trial, Elliniki

<sup>49</sup> Supreme Court’s decision No. 854/2010, Judicial council of Aegean Court of Appeals, Decision No. 32/2005. Furthermore, Poiniki Dikaosini, 2005/672, Poinika Chronika, 2011/29, Poiniki Dikaosini, 2015/920.

the *actus reus* of article 351, the act of "exposing the victim to risk", a situation in which the victim ends up completely helpless due to the perpetrator's actions. Moreover, concerning the condition stipulated in the article regarding severe health damage, Law 4198/13 clarifies that under the term 'severe' includes both physical and mental health damages.<sup>50</sup>

### **2.K.1.2.3 Human trafficking and organized crime**

Another necessary addition that law 3064/2002 introduced into the Greek legal system, was the inclusion of articles 323A CC and 351A CC into the list of article 187. This regulation essentially introduced human trafficking into the list of organized crime, and these changes shaped the procedural law to be applied in cases of an organized trafficking network.

Specifically, article 187 CC defines a criminal organization as, a structured team with continues activity composed by three or more persons that seeks to commit more than one of the felonies prescribed in article 181.1CC.<sup>51</sup> In Greece for 2016 as the "Review for the serious and organized crime in Greece for 2016, conducted by the Hellenic Police, concluded that 16 criminal organizations employed in trading in humans were dismantled half of those organizations had international scope and used to cooperate with international criminal shells.<sup>52</sup> It is also clear from case law illustrations that articles 323CC and 187CC are closely related and jointly enforced. Moreover, both case law and the data collected by the Hellenic police suggest that the modus operandi of those criminal organizations remained constant ever since Law 3064/2002 was introduced.<sup>53</sup> The perpetrators usually exploit the vulnerable position of the victims or their bad economic position. Furthermore, their main method of action in order to secure the victims consent was to provide them with false promises in relation to the working conditions and payment in the country of exploitation.

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<sup>50</sup> SC Decisions No.383/2015, No.955/2016, No.1031/2016, No.1682/2016

<sup>51</sup> Athanasia Sykiotou, European Union – Organized crime- Illegal trafficking in human beings: an eccentric dynamic- dialectical relationship, *Criminal chronicles* NH 2008, pp202.

<sup>52</sup> Hellenic Police Headquarters Security and Order Branch Public Security Division Analysis Unit, *Essay on the serious and organized crime for Greece for 2016*, <http://www.astynomia.gr/images/stories/2017/files17/07112017ethsiaekthesi2016.pdf>

<sup>53</sup> ΕφΑΘ2993/2004, ΒουΣυμβΕφΘεσ491/2007, ΕφΑΘ1571/2003, ΕφΠατρQ110/2011, ΜΟΔΣεεQQ3746/2005, ΕφΑΘ1152/2005.

#### **2.K.1.2.4 Issues related to criminal procedure**

Tackling human trafficking is achieved with combining substantial and procedural law. These legislations also reformed Criminal procedure specific articles to ensure efficient treatment of the issue. This was achieved by regulating jurisdiction in such cases and by introducing divergence from standard criminal procedure (in the evidential procedure and in the process of investigation), as will be shown. From a policy perspective, it allows Greek authorities to deal effectively with the most common forms of human trafficking. Regarding jurisdiction, the changes affected the competent court to judge the felonies related with the trade in human beings.<sup>54 55</sup>

The next major reform introduced particularities in the evidential procedure. Additionally, this is the first important step diverging from the standard procedure in cases of victims of human trafficking, which was introduced with article 226A CPC.<sup>56</sup> In the case of adult victims of human trafficking, article 226B CPC is enforced. The article was introduced with Law 4198/2013 (GG 215/A/11-10-2013) in order to extend the protection dictated by article 226A CC to also include adult victims.<sup>57</sup>

Differences in the process of investigation were also adopted for the successful examination of cases. Regarding the pre-trial stage, when investigations are held, the regulation of organized crime forced the Greek legislator to introduce aberrations from the standard procedure, through Law 2928/2001. The existing system that also incorporates victims of human trafficking entered into force with the enactment of Law 4198/2013 (GG 215/A/11-10-2013), Preventing and Combating Trafficking in Human Beings and Protecting its victims and other provisions-Transposition of the 2011/36/EU Directive. In particular, article 253A CPC was introduced. The article presented

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<sup>54</sup> Particularly, regarding the felonies stipulated by article 323A CC , paragraphs 1, 2, 4, 5, 6, article

<sup>55</sup> CC and article 351ACC competent court to judge them - according to article 109 of the Greek Criminal Procedure Code-, is the Joint Jury Court.. If such felonies are committed by an organized crime network, article 187, par1 CC concludes that the judgment of these cases falls under the jurisdiction of a three-member court, in contrast to the jurisdiction of a joint jury court.

<sup>56</sup> The article introduced major changes and dictated that, in the case of underage children victims of infringement of their sexual freedom, the presence of mental health professionals when victims are testifying is obligatory. A psychiatrist prepares the minor for the judicial examination. The testimony of the child has to be conducted by independent officers for the protection of underage people

<sup>57</sup> Explanatory Memorandum to the draft law on the prevention and combating of human trafficking and the protection of its victims rights., 21.08.2013

different modes of protection for victims of human trafficking, while harmonizing the existing legal framework by virtue of Directive 2011/36/EU.<sup>58</sup> The novelty of this article is that the investigation for many crimes is allowed to include special questioning acts.

## **2.K.2 Effective protection of the victims**

The analyzed provisions would be incomplete if they did not entail the thorough protection of the victims, e.g. the suspension of their prosecution in case of their illegal residence in Greece, their psychological and legal assistance, in order to feel safe and integrated in the society. In order to achieve those ends, the Greek legislator introduced the Presidential Decree No 233 (GG 204/A/28-8-2003).<sup>59</sup> With PD No 233, as a basis

many more laws were introduced that specified and clarified the conditions regarding both the suspension of the victims' deportation<sup>60</sup> and the provided assistance while residing in the country.<sup>61</sup>

As often is the case, so called "victims" can exploit the system.<sup>62</sup> The Greek legal order protects victims by allowing them reside in the country and be affected welfare. This

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<sup>58</sup> Angelos Konstandinidis, *Criminal Procedure*, Sakkoulas, Athens, 2017, pages 360- 370 <sup>88</sup> Articles 187 CC (organized crime), 187A, 207, 208.1, 208A, 323A, 338.1 (condition regarding an underage victim), 342, 348a, 348B 348G, 351 and 351A.

<sup>59</sup> PD No 233 was already foreshadowed by Law 3064/2002 in article 12 and it regulated the protection and support of victims of crimes pertaining to articles 323, 323A, 349, 351 and 351 A of the Penal Code. Moreover, article 1, introduced a very progressive legal norm, which dictates that support and help should be provided regardless of the victim's cooperation with the police.

<sup>60</sup> Law 3274/2004 (GG 195/A/19-8-04) (Art. 34., par. 7) : on residence permit for victims of trafficking, states the suspension of the deportation of aliens (illegally residing in the country) who denounce actions of procuring, while it is stated that the regulation is also applied proportionally to human trafficking victims by virtue of of article 12 par.2 of Law 3064/2002. The suspension of deportation lasts until the court's final decision has been taken. <sup>91</sup> And Law 3386/2005 (GG 212/A/23-8-2005) on Entering, residing and social integration of third country nationals into Greek territory, article 1, par.i, provides the definition of a human trafficking victim and, moreover, article 9, par. D3 dictates that issuing a residence permit is also allowed for victims of trafficking. Law 3536/2007 (GG 42/A/23-2-2007), on the matter of a residence permit for victims of trafficking, amends articles 44, 46, 48 of 3386/05 law by adding more conditions, one of which is that in order for the residence permit to be authorized, the applicant must own a passport and have been granted with an entry visa, regardless of its validity, and must also state the reason which makes it necessary for them, as a third-country citizen, to remain in the Greek Territory.

<sup>61</sup> Support to victims, according to Law 3064/2002 (GG 248/A/15-10-2002) and PD No 233 (GG 204/A/28-8-2003) was also regulated, specifically by article 12 of Law 3064/2002, as amended by Law 3875/2010(GG 212/A): Support is offered regarding the protection of the life, health, personal and sexual freedom of the victims, if such goods are under serious threat. Additionally, accommodation and food is provided for the time necessary, also an interpreter is appointed. For underage victims care is taken so that they may be included in programs related to education and a vocational career.

<sup>62</sup> ΠλμΑΘ 2648/2008 Poinika chronika ΝΘ/2009 page 63



may be abused by other migrants who falsely accuse the persons to whom they offer their services, in order to receive protection from the authorities to 'escape' their prosecution for illegal residence and avoid deportation.<sup>63 64</sup>

### **2.K.2.1 Some critical remarks regarding criminal procedure**

Despite the broad legislative framework, various problems arise during the criminal prosecution of human trafficking and how it is addressed within Greek legal procedures. A very important procedural issue that arises in many cases is the absence of the women-victims during the court hearing, a fact that, unfortunately, occurs because their deportation has already taken place by the time the case is heard. However, Laws 2901/2001 (44.7) and 3064/2002 (12.2) provide for the suspension of deportation of human trafficking victims who are illegally residing in the country. While Law 3386/2005 (48.3) also regulates the suspension of the deportation during the circumsppection period, "so that victims can recover and be able to escape the influence of the perpetrators of relevant offenses and to make an unsolicited decision on their cooperation with the prosecution authorities",

Unfortunately -since the suspension of the deportation procedure requires very strict conditions, such as a passport and a prior entry visa- deportation of human trafficking victims not only leads them back to poverty, but also enhances the risk of their illegal reentry into the human trafficking network. This act certainly doesn't solve the problem; what it does is enhance it, since, after this procedure, victims are even more vulnerable to become victims of unpaid work and sexual exploitation.

At the same time, in order for such favorable legislation to apply, it is required that the victims themselves should denounce the perpetrators and report the offences against them. However, what this means is that the competent authorities should inform the victims regarding this option and, of course, that the latter have the courage to speak up about such sensitive information, particularly while they are still in a state of fear and feel uncertain about their exploiters.

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<sup>63</sup> NB/2002: "Key considerations for addressing cross-border crime by criminal law" Charalambakis Aristotelis Criminal chronicles, page 100

<sup>64</sup> Criminal chronicles NZ:"Particularities of the criminal proceedings against foreigners" Theocharis Dalakouras, 2007 page 193-197

So, while victims are deported, the perpetrators take advantage of this situation by suspending the trial so that the victim's appearance is rather unlikely to happen. On the occasion of the 37-46/2005 case in the joint jury court, -and since the case had already been suspended once- during the hearing, the court refused to allow a second suspension, while it accepted the proposal of the defense of non-reading the victims sworn statements, since that would be violating article 6.3 ECHR and that would result in absolute annulment of the procedure. What is interesting is that a different court decision supports reading such statements, when it is impossible for the victims to be present at the hearing (365 Criminal Procedure Code), and that their statement is absolutely necessary to confirm the truth.

### **2.K.3 International legal instruments**

Undoubtedly international law is a valuable contribution to the elaboration of the national provisions relating the status of victims of human trafficking. Firstly, under the provisions of the Additional Protocol to the UN Convention against Transnational Organized Crime<sup>65</sup>, it mainly focuses on the prevention of trafficking and the protection and assistance of the victims, with full respect of their human rights.<sup>66</sup>

#### **2.K.3.1 European Union and Council of Europe legal actions**

**2.K.3.1.1** Regarding the European region, the European Union and the Council of Europe have issued their own legal acts for the protection of victims of human trafficking. The EU has issued on 2011 and 2012 the Anti-Trafficking Directives, which contain more information about the criminal procedure, e.g the beginning of the criminal procedure is irrelevant of a previous accusation or complaint of the victim.<sup>67</sup>

**2.K.3.1.2** In accordance with the Council of Europe, it is stated that the provisions of the 2005 Convention on Action against Trafficking in Human Beings, are mainly humanitarian, thus they focus on the physical, psychological, social and financial

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<sup>65</sup> Greece ratified it on 13/12/2003, yet it had not entered into force until 11/1/2011.

<sup>66</sup> Articles 1-3 of the UN Protocol. See also, Louise Shelley, *Human Trafficking -A Global Perspective*, Cambridge, 2010.., Since cooperation among States is set as priority of the Directive, it is predicted the capability of establishing criminal jurisdiction outside the territory, inter alia, where: a) the offence is committed against one of its nationals or a person who is an habitual resident in its territory; b) the offence is committed for the benefit of a legal person established in its territory; or c) the offender is an habitual resident in its territory.

<sup>67</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA



recovery to the victims, which is offered regardless of the cooperation of the victim with the criminal authorities.<sup>68</sup> Additionally it sets the provision of a 30 days period of recovery, during of which victims are exempted from detainment or interrogation for regarding their illegal entrance and residence in the State's territory.<sup>69</sup>

#### **2.K.4. Critical analysis under the light of the European Court of Human Rights**

This research would be incomplete, if it were not presented the actual compliance of Greece to the legal provisions and mainly, the "de-stigmatization" of the victims and their integration to society. The last five years, the foregoing immigrant flows were being so intense, which has unfortunately led to the increase of victims, irrespective of their sex, thus, both men, women and children are forced to labor and sexual exploitation. Specifically:

1) L.E. v. Greece: The Court found in particular that the effectiveness of the preliminary inquiry and subsequent investigation of the case had been compromised by a number of shortcomings.<sup>70</sup> With regard to the administrative and judicial proceedings, the Court also noted multiple delays and failings with regard to the Greek State's procedural obligations. In this case the Court also held that there had been a violation of Article 6 § 1 of the Convention<sup>71 72 73</sup>, finding that the length of the proceedings in question had been excessive for one level of jurisdiction and did not meet the "reasonable time" requirement

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<sup>68</sup> Articles 12-16 of the CoE Convention on Action against Human Trafficking. The latter conforms to the scope of the Convention of the Rights of Child, thus children have a non negotiable right to protection and care.

<sup>69</sup> Therefore, it should be born in mind that the contribution of NGO's or individual specialists, such as lawyers or psychologists is crucial. More information on the restorative role of the GRETA campaign on <https://www.coe.int/en/web/anti-human-trafficking/greta>

<sup>70</sup> (no. 71545/12) 21 January 2016. This case concerned a complaint by a Nigerian national who was forced into prostitution in Greece. Officially recognised as a victim of human trafficking for the purpose of sexual exploitation, the applicant had nonetheless been required to wait more than 9 months after informing the authorities of her situation before the justice system granted her that status. She submitted in particular that Greece failed to comply with its positive obligations under Article 4 of the Convention

<sup>71</sup> Right to a fair trial within a reasonable time

<sup>72</sup> March 2017. applicants – 42 Bangladeshi nationals – were recruited in Athens and other parts of Greece between the end of 2012 and early 2013, without a Greek work permit, to work at the main strawberry farm in Manolada. Their employers failed to pay the applicants' wages and obliged them to work in difficult physical conditions under the supervision of armed guards. The applicants alleged that they had been subjected to forced or compulsory labour, submitting that Greece failed to adopt preventive and punishing measures

<sup>73</sup> September 2016

2) *Chowdury and Others v. Greece*<sup>74</sup>: The Court held that there had been a violation of Article 4 § 2 of the Convention<sup>104</sup>, finding that the applicants had not received effective protection from the Greek State, due to the ineffective investigation into the offences.

3) Yet, although this pending application has not been judged yet, on *T.I. and Others v. Greece*<sup>105</sup>, the applicants, recognized as victims of human trafficking accuse Greece of its failure to discharge its obligations to penalize and prosecute acts relating to human trafficking in their cases<sup>103</sup>.

### **2.K.5 Conclusion of the researched topics**

At this final point of our research and having analyzed the theoretical and practical aspects of the criminalization and prosecution of human trafficking, it is concluded that, Greece, though its ratifications and integration of international Conventions and Protocols to the national legal system, fails to comply with procedural issues.

The recent case-law of the ECHR has proven that the national authorities tend to disobey their procedural obligations due to a “reasonable time”, resulting in inefficient protection of the victims. Undoubtedly, the national authorities should take into consideration the specific circumstances of each complaint, especially in cases of children victims, due to their vulnerability. Secondly, these procedural hurdles could be solved with the contribution of organized anti-trafficking institutions and committees. For instance, the institution of the Greek Ombudsman may assist the legal protection of the victims, but not their further recovery and integration. Consequently, the establishment of monitoring systems such as GRETA and H.ELP, could allow victims to raise their voice.<sup>75</sup>

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<sup>74</sup> The Court gave notice of the application to the Greek Government and put questions to the parties under Articles 4 (prohibition of slavery and forced labour), 6 (right to a fair trial) and 13 (right to an effective remedy) of the Convention. See also Maria Joao Guia, *The Illegal Business of Human Trafficking*, Springer

<sup>75</sup> Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of the Parties. HELP is the European program for human rights education for legal professionals.

**3. Explain whether there exists any international and national instruments as regards protection of child and women trafficking victims and discuss which further steps should be taken for effective protection of such vulnerable groups.**

**ELSA Ankara**

First of all, “The Convention on the Elimination of All Forms of Discrimination Against Women” includes provisions about the governments to avoid and discard all forms of trafficking in women and exploitation of prostitution of women. It mainly provides that, trafficking is incompatible with the human rights and it is especially against the women rights and women’s dignity.<sup>76</sup>

“The Convention on the Elimination of All Forms of Discrimination Against Women”, which is referred to as CEDAW by the United Nations, is the most effective and reliable source for women rights today. In order to show that the parties of the convention is against the trafficking of women, Article 6 of the convention could be used which says:

“States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”<sup>77</sup>

There is a common point in international documents; promulgating the women & child trafficking is considered as a crime in domestic laws. Therefore, in order to protect the fundamental rights of such women & child victims; necessary precautions should be taken to punish the act of women & child trafficking.

Trafficking of women&child is the highest level of the infringement of the personality rights. “The Universal Declaration of Human Rights” states that, “Everyone has the right to life, liberty and security of person.”<sup>78</sup>. As regards, women & child trafficking is considered as a kind of slavery, Declaration also says that “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”<sup>79</sup> Additionally, thinking about the aim of

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<sup>76</sup> International Instruments Concerning Trafficking in Persons, August 2014

<sup>77</sup> The Convention on the Elimination of All Forms of Discrimination Against Women, Article 6, 18 December 1979

<sup>78</sup> The Universal Declaration of Human Rights, Article 3

<sup>79</sup> The Universal Declaration of Human Rights, Article 4

trafficking of women & child eventually causes exposure to inhumane treatments against the victims sexually and mentally. The Declaration also states that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”<sup>80</sup>

Similar to “The Universal Declaration of Human Rights”; “European Convention on Human Rights” says that; “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”<sup>81</sup> More specifically, with its 4th Article, it supports that including women & children, “No one shall be required to perform forced or compulsory labour.”<sup>82</sup>

Also, there is a qualified source name “The Council of Europe Convention on the Action Against Human Trafficking”. One of its main aims is; considering that all actions or initiatives against trafficking in human beings must be non-discriminatory, taking gender equality between women & men into account as well as adopting a child-rights approach.<sup>83</sup> It also includes in the preamble part that shall the members of the Council of Europe should consider the recommendations of the Committee of Ministers. When we turn into the recommendations, firstly the Recommendation No. R (2000) 11 of the Committee of Ministers to member states on action against trafficking in human beings for the purpose of sexual exploitation. This Recommendations states in its appendix part second heading that “Take action to apprehend, prosecute and punish all those responsible for trafficking, and to prevent sex tourism and all activities which might lead to forms of trafficking.”<sup>84</sup> At the same part of the Recommendation, it also provides that “Take appropriate legislative and practical measures to ensure the protection of the rights and the interests of the victims of trafficking, in particular the most vulnerable and most affected groups: women, adolescents and children.”<sup>85</sup> As regards to the trafficking of women and child, this recommendation is too important to negate. Actually, these recommendations also provides information about what needs to be done. To exemplify; it states that “Provide appropriate information, such as documentation, videos and leaflets on trafficking

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<sup>80</sup> The Universal Declaration of Human Rights, Article 5

<sup>81</sup> European Convention on Human Rights, Article 3

<sup>82</sup> European Convention on Human Rights, Article 3, Sentence 2

<sup>83</sup> The Council of Europe Convention on the Action Against Human Trafficking, Preamble

<sup>84</sup> Council of Europe, Committee of Ministers, Recommendation No. R (2000) 11 of the Committee of Ministers to member states on action against trafficking in human beings for the purpose of sexual exploitation, Appendix, Sentence 4

<sup>85</sup> Council of Europe, Committee of Ministers, Recommendation No. R (2000) 11 of the Committee of Ministers to member states on action against trafficking in human beings for the purpose of sexual exploitation, Appendix, Sentence 2

in and the sexual exploitation of women, children and young persons to diplomatic representatives, public authorities, the media, humanitarian NGOs and other public and private bodies working in the countries of origin of potential victims.<sup>86</sup> Additional ways to overcome the negative effects of women & child trafficking may be exposed in the future and this Recommendation must be consulted by the States. The assizes that are worth to mentioned can be listed as:

-Organize information campaigns with a gender perspective in order to increase public awareness of the hazardous situations that may lead to trafficking and the negative effects of such trafficking and, in particular, discredit the notion that there are easy gains to be made from prostitution; these campaigns should be directed at all parties concerned, particularly female immigration applicants and women refugees.<sup>87</sup>

- Introduce or step up sex education programs in schools, with particular emphasis on equality between women and men and on respect for human rights and individual dignity, taking into account the rights of the child as well as the rights of his or her parents, legal guardians and other individuals legally responsible for him or her.<sup>88</sup>

-Ensure that school curricula include information on the risks of exploitation, sexual abuse and trafficking that children and young people could face and ways of protecting themselves; this information should also be circulated to young people outside the education system and to parents.<sup>89</sup>

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<sup>86</sup> Council of Europe, Committee of Ministers, Recommendation No. R (2000) 11 of the Committee of Ministers to member states on action against trafficking in human beings for the purpose of sexual exploitation, Prevention/Awareness-raising and information, Sentence 13

<sup>87</sup> Council of Europe, Committee of Ministers, Recommendation No. R (2000) 11 of the Committee of Ministers to member states on action against trafficking in human beings for the purpose of sexual exploitation, Prevention/Awareness-raising and information, Sentence 11

<sup>88</sup> Council of Europe, Committee of Ministers, Recommendation No. R (2000) 11 of the Committee of Ministers to member states on action against trafficking in human beings for the purpose of sexual exploitation, Prevention/Education, Sentence 16

<sup>89</sup> Council of Europe, Committee of Ministers, Recommendation No. R (2000) 11 of the Committee of Ministers to member states on action against trafficking in human beings for the purpose of sexual exploitation, Prevention/Education, Sentence 17

-Combat the long-term causes of trafficking, which are often linked to the inequalities between economically developed countries and those that are less developed, particularly by improving the social status as well as the economic condition of women in the latter.<sup>90</sup>

-Take into account in the economic, social, migration or other policies, the need to improve women's condition and prevent trafficking in human beings and sex tourism.<sup>91</sup>

-Disseminate information on the possibilities of legal migration in order to make women aware of the conditions and procedures for obtaining visas and residence permits.<sup>92</sup>

-Provide, where possible, victims of trafficking, particularly children and witnesses, with special (audio or video) facilities to report and file complaints, and which are designed to protect their private lives and their dignity and reduce the number of official procedures and their traumatizing effects.<sup>93</sup>

-Governments are invited to consider signing and ratifying, if they have not already done so, the Council of Europe's Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990), the Revised European Social Charter (1996) and the Additional Protocol to the European Social Charter providing for a System of Collective Complaints (1995), the European Convention on the Exercise of Children's Rights (1996), the Convention on the Elimination of all forms of discrimination against Women (1979) and its Optional Protocol (1999), as well as the United Nations Convention on the Rights of the Child (1989) and/or to consider withdrawing existing reservations to these instruments.<sup>94</sup>

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<sup>90</sup> Council of Europe, Committee of Ministers, Recommendation No. R (2000) 11 of the Committee of Ministers to member states on action against trafficking in human beings for the purpose of sexual exploitation, Prevention/Long-term action, Sentence 23

<sup>91</sup> Council of Europe, Committee of Ministers, Recommendation No. R (2000) 11 of the Committee of Ministers to member states on action against trafficking in human beings for the purpose of sexual exploitation, Prevention/Long-term action, Sentence 24

<sup>92</sup> Council of Europe, Committee of Ministers, Recommendation No. R (2000) 11 of the Committee of Ministers to member states on action against trafficking in human beings for the purpose of sexual exploitation, Prevention/Long-term action, Sentence 25

<sup>93</sup> Council of Europe, Committee of Ministers, Recommendation No. R (2000) 11 of the Committee of Ministers to member states on action against trafficking in human beings for the purpose of sexual exploitation, Assistance to and protection of victims/Victim support, Sentence 28

<sup>94</sup> Council of Europe, Committee of Ministers, Recommendation No. R (2000) 11 of the Committee of Ministers to member states on action against trafficking in human beings for the purpose of sexual exploitation, Measures for co-ordination and co-operation/At international level, Sentence 56

Palermo Protocol: The Convention for the Control of Transnational Organized Crimes, signed on 12 December 2000 in Palermo, and the appendix of the Protocol on the “Prevention, Suspension and Punishment of Human Trafficking, Particularly the Trade of Women and Children”. The aims of this protocol are stated as follows; “Preventing and fighting human trafficking by giving special importance to women and children, to protect and assist the victims of such trade, with full respect for their human rights, to develop cooperation between States Parties in order to achieve these objectives.”<sup>95</sup>

As regards to the international documents on women & child trafficking, “United Nations Convention against Transnational Organized Crime” also mentioned this issue and tried to solve this by drafting the Convention. “Protocols to Combat Transnational Organized Crime and to Combat Human Trafficking and Migrant Smuggling to the Convention” is the related part of the Convention about women & child trafficking and in the Resolution adopted by the General Assembly of the Convention which is included in the Annex 2 “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime”.

“The UN Convention on the Rights of the Child” is also mentions the field of women & child trafficking by saying that; “States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.”<sup>96</sup>

Considered the “Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography” state parties to the present Protocol believes that, there are many factors that affects the trafficking of child such as; underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctional families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behavior, harmful traditional practices, armed conflicts. Therefore, from here, it should be understood that, to try to reduce these negative factors directly leads the society more conscious to defend themselves against trafficking.<sup>97</sup>

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<sup>95</sup> Palermo Protocol, Article 2

<sup>96</sup> The UN Convention on the Rights of the Child, Article 33

<sup>97</sup> UN OHCHR, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, child prostitution and child pornography, 25 May 2000



“Council of Europe Convention on Prevention of Violence Against Women and Domestic” which mainly aims to ‘protect women against all forms of violence’<sup>98</sup> approaches the women trafficking issue not specifically but in general by mentioning the ‘Fundamental rights, equality and non-discrimination’<sup>99</sup>, ‘State obligations on the basis of women rights’<sup>100</sup>, ‘Gender-sensitive policies’<sup>101</sup>, ‘Integrated policies and data collection including comprehensive and co-ordinated policies, financial resources, non-governmental organizations and civil society’<sup>102</sup>, ‘General obligations’<sup>103</sup>, ‘Awareness-raising’<sup>104</sup>, ‘Education’<sup>105</sup>, ‘Training of professionals’<sup>106</sup>, ‘Preventive intervention and treatment programs’<sup>107</sup>, ‘Participation of the private sector and the media’<sup>108</sup>, ‘Protection and support’<sup>109</sup>, ‘Substantive law including sexual violence and rape, female genital mutilation, forced abortion and forced sterilization, sexual harassment’<sup>110</sup>. As it can be observed, these topics that this Convention states are advert to very major points on the violence of women-kind and they directly connected to the the trafficking of women considering the dreadful aim of women trafficking. This Convention is also known as “Istanbul Convention”. Similar to Council of Europe “Convention on Prevention of Violence Against Women and Domestic”, there is a convention which focuses on children named

“Convention on Contact concerning Children” and this Convention is more general and basic. Much more specifically about the children, there is “Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse”. According to the facts,

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<sup>98</sup> Council of Europe Convention on preventing and combating violence against

women and domestic violence, Chapter I – Purposes, definitions, equality and non-discrimination, general obligations, Article 1 – Purposes of the Convention

<sup>99</sup> Council of Europe Convention on Prevention of Violence Against Women and Domestic, Article 4

<sup>100</sup> Council of Europe Convention on Prevention of Violence Against Women and Domestic, Article 5

<sup>101</sup> Council of Europe Convention on Prevention of Violence Against Women and Domestic, Article 6

<sup>102</sup> Council of Europe Convention on Prevention of Violence Against Women and Domestic, Chapter II

<sup>103</sup> Council of Europe Convention on Prevention of Violence Against Women and Domestic, Article 12

<sup>104</sup> Council of Europe Convention on Prevention of Violence Against Women and Domestic, Article 13

<sup>105</sup> Council of Europe Convention on Prevention of Violence Against Women and Domestic, Article 14

<sup>106</sup> Council of Europe Convention on Prevention of Violence Against Women and Domestic, Article 15

<sup>107</sup> Council of Europe Convention on Prevention of Violence Against Women and Domestic, Article 16

<sup>108</sup> Council of Europe Convention on Prevention of Violence Against Women and Domestic, Article 17

<sup>109</sup> Council of Europe Convention on Prevention of Violence Against Women and Domestic, Chapter IV

<sup>110</sup> Council of Europe Convention on Prevention of Violence Against Women and Domestic, Chapter V



victims of trafficking are exposed to sexual harassment and these types of conventions which are against sexual exploitation and sexual abuse conventions have incontrovertible importance for the victims and the governments, who have the ability to suppress this problem, on the basis of human trafficking.

### **ELSA Komotini**

Sexual and labor exploitation are undeniably two of the most widespread forms of Human Trafficking and the overwhelming majority of the victims seem to be women and children, according to the report of the United Nations Office on Drugs and Crime.<sup>111</sup> Considering that Human Trafficking networks are usually evolved on an international level, the international community is rendered responsible to tackle the phenomenon efficiently through the implementation of a concrete legal framework and the establishment of the necessary instruments.

The cornerstone of the legal confrontation of Human Trafficking is the United Nations Convention against transnational organized crime along with the UN trafficking in persons Palermo Protocol. In particular, the protocol sets as a crucial aim the elimination of the specific crime, especially among women and children, and the accomplishment of a high level foreign collaboration between each state's agencies and bodies in order to eliminate all forms of human trafficking. The urge of the protection of the victims is also pointed out as a priority of the United Nations.<sup>112</sup> Furthermore, through the Protocol's provisions, the broadening of the definition of human trafficking is attempted in order to facilitate the tracking of any forms of Human Trafficking.<sup>113</sup> The criminalization of such activities that encroach fundamental human rights, had as a result the increase of the number of states that condemn human trafficking through their domestic legislation.<sup>114</sup> To achieve the implementation of the abovementioned provisions the United Nations Office on Drugs and Crime established the United Nations Global Initiative to Fight Human Trafficking.

The Council of Europe adopted the Convention on Action Against Human Trafficking to promote the coordination among the member states, taking into consideration

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<sup>111</sup> [http://www.unodc.org/documents/data-and-analysis/glotip/2016\\_Global\\_Report\\_on\\_Trafficking\\_in\\_Persons.pdf](http://www.unodc.org/documents/data-and-analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf)

<sup>112</sup> Article 2 of the Palermo Protocol

<sup>113</sup> Article 3 of the Palermo Protocol

<sup>114</sup> The number of countries which criminalized Human trafficking increased from 33 to 158, through 2003 to 2016, report of UN office on Drugs and Crime

especially women and children by encouraging the parties to pay the needed attention and ratify the necessary international treaties in order to further protect the most vulnerable ones. Additionally, the “Global Plan of Action to combat trafficking in persons” is an important effort of the United Nations to promote more efficiently the battle against the specific crime.

To further protect both children and women, as they are thought to be more vulnerable to human trafficking, the United Nations has drawn up the Convention on the Elimination of All Forms of Discrimination against Women, where parties are required to establish the needed legislation and take further actions to eradicate this kind of human rights violation.<sup>115</sup> The UN Convention on the rights of children and the optional protocol on the sale of children mandates the protection of children from any form of human trafficking and encourages the states-parties to ensure that the proper measures for the children’s safety are taken and are properly implemented.<sup>116</sup>

a project on the human trafficking and today approximately 25 members The European Commission established the anti-trafficking policy<sup>58</sup> to support and enhance the coordination between the EU member states and tackle the crime more efficiently. In 5<sup>th</sup> of April 2011 the directive 2011/36/EU was published, which replaced the Council’s framework Decision 2002/629/JHA. The main objective of this reform was the promotion of a better protection of the victims and simultaneously the easier prosecution of the traffickers.<sup>117</sup>

Except of the aforementioned legal framework that exists either at an international or a regional level, the existence of the International Criminal Police organization is inevitable for the needed coordination of the national agencies, to ensure that such a crime with international dimensions is efficiently confronted. Some of the most important operations of INTERPOL the last decade against the forced child labor are the operation Akoma, Nawa and Tuy.<sup>118</sup> During such operations, the officers of INTERPOL

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<sup>115</sup> <http://www.un.org/womenwatch/daw/cedaw/>

<sup>116</sup> UN Convention on the rights of the child, articles 33 and 35

<sup>117</sup> EU policy “TOGETHER AGAINST THE TRAFFICKING IN HUMAN BEINGS” [https://ec.europa.eu/anti-trafficking/institutions/eu-anti-trafficking-coordinator\\_en](https://ec.europa.eu/anti-trafficking/institutions/eu-anti-trafficking-coordinator_en) <sup>58</sup> <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32011L0036>

<sup>118</sup> These operations were held in 2015, 2014 and 2012, respectively, and more than 600 children were saved in total. (<https://www.interpol.int/Crime-areas/Trafficking-in-human-beings/Operations>)

arrested a considerable number of traffickers. The European Union Law Enforcement Agency, EUROPOL, has also been fighting against human trafficking in Europe. EUROPOL, in order to achieve the elimination of human trafficking, follows the European Union's Policy Cycle and the European's Union Strategy on eradicating the Human Trafficking within the member states of EU. The agency, in 2017, commenced participate in it.<sup>119</sup> In Greece, the existence of national instruments, which have as a goal the combat as well as the protection of child and woman trafficking victims, has become urgent since the number of migrants from Middle East, Asia and Africa has been increased for the last five years. A big percentage among the migrants are unaccompanied children and single women that are more vulnerable in human trafficking. More precisely, according to the UN Office on Drugs and Crime Report<sup>61</sup> in 2006 about the situation in Greece, it has been shown that the great majority of victims are reported to be women and girls trafficked for sexual exploitation and to a lesser extent, children are also reported to have been trafficked. In this section, we will describe the role and the functions of three national instruments: The Office of the National Rapporteur on Human Trafficking, and the National Commission of Human Rights.

The Office of the National Rapporteur on Human Trafficking plays an active role through undertaking initiatives based on the program "pro-active Prosecution, Protection, Prevention and Partnership". There are four particular responsibilities of that Office in compliance with the Law 4216/2013 of the Council of Europe Convention on Action against Trafficking in Human Beings and the anti-trafficking EU Directive (2011/36/EC/ Law 4198/2013). Following this EU Directive, the Ministry of Foreign Affairs established The Office of the National Rapporteur on Trafficking in Human Beings in 2013. One of the initiatives that has been supervised by that Office but managed by the National Centre for Social Solidarity of the Ministry of Labor/ EKKA is the Formal Establishment of the National Referral Mechanism (NRM). This mechanism aims to build an environment of coordination and partnership among all actors involved in combating trafficking in persons. This category of actors does not only refer the police and prosecutors that specifically deal with law enforcement, but also involves additional front-line professionals, such as labor inspectors, health providers, migration services, local administration authorities and other stakeholders.

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<sup>119</sup> <https://www.europol.europa.eu/crime-areas-and-trends/crime-areas/trafficking-in-human-beings>

Another aim of the Office is to raise awareness through campaigns. “The Office’s strategic planning is to combine a two-fold emphasis, both on the law enforcement imperative and on addressing the root -causes of trafficking.<sup>120</sup> One of the large-scale campaigns organized by the Office is “BREAK THE CHAIN- BtC” that has actions all over Greece on 1st and 2nd of December when is the International Day for the Abolition of Slavery.<sup>121</sup> At that day theater plays and documentaries have been shown and meaningful discussion have been taken place in schools about the victims of human trafficking. Apart from educational programs in schools, the Office works towards engaging key private stakeholders for the promotion and establishment of “slave-free” supply chains. As a consequence, the Mechanism has signed a Memorandum of Cooperation with the Corporate Social Responsibility Hellas Network (CSR Hellas), aiming at raising awareness among businesses by conducting trainings of professionals. The Office of the National Rapporteur is putting much effort to facilitate capacity-building activities through a strategic partnership with the State Institute of Training (National Center of Public Administration & Local Government) for the implementation of annual anti-trafficking seminars. One of its recent accomplishment is the establishment of parliamentary sub-committee against human trafficking. The Hellenic Parliament has set up a sub-committee on human trafficking under the hub of the Special Permanent Committee for Equality, Youth & Human Rights issues. The Committee is responsible for monitoring developments, legislative updates and the overall implementation of policies and measures.

The second national instrument is the National Committee of Human Rights.<sup>122</sup> The main role of this Committee is the human rights protection on the domestic and international system, but it focuses especially on the proper information of the Greek public opinion about human rights-related issues and on providing guidelines to the Greek Parliament so that developments regarding human rights protection can be achieved. Moreover, the Committee co-operates and maintains contacts with a network of international organizations, such as the United Nations Organisation, the Council of Europe, the OSCE, with National Human Rights Institutions of other States and most

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<sup>120</sup> <https://www.mfa.gr/exoteriki-politiki/pagkosmia-zitimata/paranomi-diakinisi-prosopon.html> <sup>63</sup>

<http://www.breakthechain.gr/>

<sup>121</sup> <http://www.breakthechain.gr/>

<sup>122</sup> <http://www.nchr.gr/index.php/el/2013-04-03-10-13-40/2013-04-03-10-14-20>

importantly with national or international non-governmental organizations that are devoted to specific purposes like the protection of children or sexually abused women. Since the Committee has a wide range of responsibilities and actions, it also played an active role during the discussions about 'this modern type of slavery' in 19<sup>th</sup> April of 2007. According to the decision about the situation in Greece with reference to human trafficking, the Committee encouraged the role of the National Rapporteur about the assessment of the national actions as well as the role of local authorities by taking as an example the way other European countries have dealt with the combat of human trafficking.

It becomes apparent that national instruments with the collaboration of international organizations, NGOs and the Hellenic Police Unit put a lot of effort not only to increase public's awareness for one of the most serious forms of organized crimes but also take action through the investigation and prosecution traffickers. However, according to the 2017 Trafficking in Persons Report of the Office of U.S Department of State, the government not only decreased investigations, prosecutions, and convictions but also conducted inadequate control procedures and insufficient assessments at the migrant entry points and camps'.<sup>123</sup> Consequently, the Greek government needs to take some further steps in order to monitor and fight child and woman trafficking.

Unfortunately, despite the measures that have already been taken by governments, the international and national instruments and the significant help of NGOs, the problem of human trafficking still remains unsolved with main victims the children and the women. There are still many fields that need to be taken into consideration, many things to change and further steps to be taken in order to eliminate this phenomenon.

To begin with, the lack of the appropriate control at the borders during the entrance progress in many countries helps the traffickers to illegally pass the victims. In fact, in many countries there are geographical spots that have no control at all and have been transformed into passages for all of the criminal society. Furthermore, many treaties, such as the Schengen, allow to citizens to pass from a country to another easily without sufficient control. Thus, many trafficking victims cannot be tracked and the human trafficking is increased. Furthermore, the economic crisis leads to corruption. Civil servants such as border guards, police and custom officers usually facilitate trafficking

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<sup>123</sup> <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271195.htm>

by taking bribes to augment their low salaries, which are frequently not sufficient to provide a living wage. However, in the cultures of corruption that prevail official such as consular officer, judges and prosecutors contribute to this phenomenon because without whom their businesses could not function.

Stateless people and refugees have no legal protection at all. That makes them the easy target. These people leave under awful circumstances, especially women and children that are the most vulnerable. Human traffickers often represent themselves as saviors who will provide the victims with a better future. They often promise them that they will help them cross the borders, find jobs, offer protection to women and give their children a powerful family. The lack of protection from the States gives them the opportunity to disappear the victims without leaving traces. Often in belligerent regions the peacekeepers who are sent by the leaders often support the trafficking of women.

The main victims of human trafficking are as well women and children who come from undeveloped countries. These victims are in a bad financial position, are not educated and they often come from a violent or non-existent family environment. Some women come from countries where their rights are being underestimated, as well. Without having anywhere to call for help these victims cannot be saved. Women who have faced psychological violence despite their society status or their financial situation are most likely to end up as human trafficking victims' due to the fact that they are controlled most easily.

The refugees, the stateless, the women from undeveloped countries and the violence victims are not the only victims. Internet is used as a tool to promote human trafficking, as well. The traffickers are able to communicate with their victims, learn about them and arrange meetings with them to kidnap them. They often represent themselves as secret admirers, model agencies in women that show their will to find true love or to be famous.

To resolve these problems, we further steps ought to be taken, not only in a national but in an international level, as well. First of all, we have to eliminate the lack of control at the borders. One step that needs to be taken by every country is to investigate which geographical spots have no control at all and have national authorities to make sure that none passes from there. As for the already existence control at the borders we should create an international system standards with the European SIS (Schengen Information

System) in order to exchange information and be able to locate Human-Trafficking circuits. Moreover we should increase the control at the borders and the responsible authorities should make sure that the appropriate control has been done especially when it comes to children because they are the easiest to be transferred.

On the other hand, we should fight corruption. In order to achieve this, we have to find new and more efficient systems of accountability. To do this we need more controls on any level of authority by many national supervisors who will have international supervisors as well, who will then all together prepare a statement about the authorities that have been checked and sent it to a national and international data base so as to have a complete picture of what happens worldwide.

We should also take further steps for the protection of stateless and refugees. International cooperation between states and NGOs will help as to move a step further. We should promote the already existing organizations by funding them while we should create more not only in a national but in an international level as well in order to help these people in general and mostly the people who need special protection such as women and children .We should provide them with whatever is needed and to make sure that they have an authority to help them in case they feel in jeopardy. We should also ensure that the people who will contact them are the appropriate stuff and are well educated so as to help them repatriate.

A further step that needs to be taken is the protection of women and children who come from undeveloped counties, bad family environment, are uneducated, have no rights and more. For all these situations, the answer is the global society. We should promote and protect their rights by all means, we have to help them not to fall victims to trafficking. Even if the national framework does not allow their help, international organizations, help lines, direction action groups should take action. There should also be free psychologists, lawyers and centers that they can find protection. Every nation should also have seminars about human trafficking as to inform every citizen about how you fell victim and how to help if you fund a victim of this crime.

Seminars about internet and human trafficking will be useful as well. These seminars should be mandatory in schools and especially in high schools because in their teenage years women have more interaction with social media. We should also create a system that will be able to locate fake businesses profiles and delete them .In this way human



traffickers will be unable to find victims by presenting themselves as model agencies or famous companies.

#### **4. Explain the similarities and the differences between human trafficking and migrant smuggling.**

### **ELSA Ankara**

Human trafficking and migrant smuggling are two of the most significant crimes which are being committed broadly around the world. To determine the similarities and the differences, we must first look at their definitions.

Human trafficking is described in Article 3 of the “Protocol to Prevent, Suppress and Punish Trafficking in Persons especially women and children” which is supplemented through the “United Nations Convention against Transnational Organized Crime”. The use of force against a victim is an exploitation of the individual which can be seen in numerous ways such as sexual exploitation, the use of forced labor or services, slavery, as well as the forced removal and illegal trade of organs. According to Turkish Criminal Code, culprit of this crime is defined as the person who ‘kidnaps, provides shelter or transfers victim(s) from one place to another unlawfully and by force, threats, violence, by misconduct of power, by acts of enticement or by taking advantage of influence over their dependents, in order to force them to work, serve compellingly or to send them away where the victim(s) might be treated as slave.’<sup>124</sup>

Migrant Smuggling is defined in the “Smuggling of Migrants Protocol” as the migrants who are trying to “obtain, directly or indirectly, a financial or other materialistic benefit, of the illegal entry of a person into a State of which the person is not a national or a permanent resident.”<sup>125</sup> According to the Turkish Criminal Code, culprits are defined as people who are ‘directly or indirectly involved in; a) illegal entry of a foreigner in the country or facilitate his stay in the country, and b) illegal immigration of Turkish citizens or foreigners to abroad.’<sup>126</sup> It also states that, as it is a crime against the permanent settlement of country, attempt of this crime will also be punished in a similar way.<sup>127</sup>

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<sup>124</sup> Turkey: *Criminal Code* [Turkey], Law No. 5237 , 26 September 2004, available at: <http://www.refworld.org/docid/4c447a5f2.html> [accessed 20 April 2018]

<sup>125</sup> Dauvergne, C. (2008) *Making People Illegal: What Globalization Means for Migration and Law*. Cambridge: Cambridge University Press.

<sup>126</sup> Turkey: *Criminal Code* [Turkey], Law No. 5237 , 26 September 2004, available at: <http://www.refworld.org/docid/4c447a5f2.html> [accessed 20 April 2018]

<sup>127</sup> Ibid.



Human trafficking and migrant smuggling are crimes which have been recognized globally and they are not allocated according to the political areas or natural resources; this means they can take place anywhere in any country. A report released by UN stated that 2.5 million people are trafficked annually across international borders.<sup>128</sup> Both offenses hold the violation of human rights as, the process of smuggling migrants is extremely dangerous as well as illegal, especially because migrants experience severe humiliation. Human traffickers are often coercive whereby they also appear to be deceptive and abusive towards the migrants. Both are profitable businesses for the traffickers as the legal process of migration tends to be cheaper, but for the illegal process, migrant smuggling requires a huge amount of money due to the nature of the act. For human traffickers they get rid of the expense of salaries and they contact the illegal sectors that supplies required get through legal process over a long time or when there is no way to migrate in a legal way, but they mitigate the process and in remuneration for this service people who benefit from it are forced to pay hefty amount. Profits that are earned through human trafficking, varies widely, as reported by the US State Department (2004), 'human trafficking generates \$9.5 billion per year'.<sup>129</sup> UNICEF has also speculated an amount which is between \$7 billion and \$10 billion. However, the highest amount of profit that was produced through trafficking victims was revealed to be \$31.6 billion per year, investigated through a study conducted by the International Labor Organization Commission.<sup>130</sup> The causes of human trafficking and migrant smuggling might be the presence of security vacuums, high restrictions on the legal process of migration or the services that are in high demand but not legally supplied are severe in an area. For the first case, they secure an opportunity to commence operations but for the second, necessity for this service arrives and they become more professional and more relentless. The changes of United States restrictions showed that reliance on human smugglers increased and the prices drove up since border-crossing became more difficult and dangerous.<sup>131</sup> For both crimes, criminal networks should exist since for all the steps of both crimes, there needs to be people who are specialized in that sphere. However, from this point the differences become observable. As the research showed, the network for smuggling is mostly generated by small groups all around the world since they are mostly managed by acquaintances of

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<sup>128</sup> UN (2008) *UN-Backed Container Exhibit Spotlights Plight of Sex Trafficking Victims*. 6 Feb. United Nations News Centre. At <http://www.un.org/apps/news/st...p?NewsID=25524&Cr=trafficking&Cr1>, accessed November 2012.

<sup>129</sup> US State Department. At <http://www.state.gov/g/tip/rls/tiprpt/index.htm>, accessed November 2012. Has all the annual reports on of the State Department Office to Monitor and Combat Trafficking in Persons. The reports contain specific country information and statistics.

<sup>130</sup> Belser, P. (2005) *Forced Labor and Human Trafficking: Estimating the Profits. Special Action Programme to Combat Forced Labor Working Paper* (42). Geneva: ILO. At <http://digitalcommons.ilr.cornell.edu/forcedlabor/17>, accessed November 2012.

<sup>131</sup> Guerette, R., and Clarke, R. (2005) *Border Enforcement, Organized Crime, and Deaths of Smuggled Migrants on the United States-Mexico Border*. *European Journal on Criminal Policy and Research* (11) (2), 159–74.

the families or relatives. But for human trafficking it is observed that the networks are mostly generated by grand groups and sometimes transnational criminal groups.<sup>132</sup>

Differences are also important to comprehend the general concept of the crimes. Firstly, it should be noted that individuals are subjected to human trafficking; however, migrant smuggling is a crime that is mostly seen as being a crime against the state. The reason why it is a crime which is committed against the state is the need to take border crossing action which is breach of immigration law. In addition to this, human trafficking can occur either within a country, in the form of domestic trafficking but for migrant smuggling it needs to be across international borders.<sup>133</sup> Subsequently, the main difference is that smuggling, while often undertaken in dangerous or degrading conditions, involves migrants who have consented to the smuggling. Trafficking victims, have either never consented or, if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive actions of the traffickers.<sup>134</sup> Mostly the documents of humans that are subjected to trafficking are taken and they are tried to be hidden from any authorities. The migrants that are subjected to smuggling are using falsified documents to ease their entrance to states. Many studies showed that the human trafficking is mainly based on women but there are no statistics that show us the same for smuggling. It is seen that the crime of trafficking is committed mostly for sexual exploitation purposes and thus it affects women the most. As UN Office of Drugs and Crime (UNODC) stipulates, 79% of global trafficking involves sexual exploitation purposes.<sup>135</sup> In addition, human smuggling can turn into trafficking and victims can be subjected to the oppression in domestic places<sup>136</sup> since they are defenseless after the service of smuggling and they are expected to take care of themselves. Eventually, migrants who consented to be smuggled are mostly the victims of the countries that they are trying to escape from and mostly the political issues pave the way for this movement, they leave their countries to reach better opportunities. On the other hand, human trafficking doesn't come out as a specific result of aspects of political changes. Both have different economic reasons and results but the rise of human smuggling can be related to the needs which are heightened demands of employers<sup>137</sup> at some places since this encourages them to be illegal migrants. Migrants

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<sup>132</sup> Chin, K.L. (2001) *The Social Organization of Chinese Human Smuggling*. In D. Kyle and R. Koslowski (eds.) *Global Human Smuggling: Comparative Perspectives*. Baltimore: Johns Hopkins University Press, pp. 216–34.

<sup>133</sup> UNODC (2006) *Trafficking in Persons: Global Patterns*. Vienna: United Nations Office on Drugs and Crime. At [http://www.unodc.org/pdf/traff...kinginpersons\\_report\\_2006ver2.pdf](http://www.unodc.org/pdf/traff...kinginpersons_report_2006ver2.pdf), accessed November 2012.

<sup>134</sup> ASEAN (2007) *ASEAN and Trafficking in Persons: Using Data as a Tool to Combat Trafficking in Persons*. Geneva: ASEAN and IOM.

<sup>135</sup> UN.GIFT (2009) *Trafficking in Persons: Analysis on Europe*. UNODC: Vienna.

At [http://www.unodc.org/documents...ing\\_in\\_Persons\\_in\\_Europe\\_09.pdf](http://www.unodc.org/documents...ing_in_Persons_in_Europe_09.pdf), accessed December 2012.

<sup>136</sup> Graycar, A. (1999) *Trafficking in Human Beings*. Paper presented at the International Conference on Migration, Culture and Crime, Israel.

<sup>137</sup> Kwong, P. (1997) *Forbidden Workers: Illegal Chinese Immigrants and American Labor*. New York: New Press.

can look after their own interests but humans that are subjected to trafficking cannot decide for their profits since they are under control, thus for human trafficking there is only one side guilty but for migrant smuggling, all attenders of the crime are guilty.

## **ELSA Komotini**

### **4.K.1 Similarities**

Human trafficking is considered as one of the most serious forms of violation of human rights. Given this fact it is quite easy to state that the victims will be people in a vulnerable position, among them are migrants. First of all, it is imperative to examine not only the definitions but also the current data in the field of human trafficking and migrant flows, especially in connection with the crime of smuggling.

#### **4.K.1.1 Data and definitions**

A recent report on trafficking, demonstrates an increase in the number of detected victims of trafficking and, in general, a new pattern in the appearance of this particular violation, as it now concerns not only women, but also men, children and, furthermore, new forms of exploitation, such as forced labour, have made an appearance.<sup>138</sup> Among the victims, a very challenging group is that of migrants. The recent researches indicate a link between trafficking and migrating flows especially with the comparison on trafficking victims and recently arrived migrants.<sup>139</sup> This stage is crucial as during the migration route it appears that many factors could lead to the increase of these persons' vulnerability.<sup>140</sup> In the recent years, the dreadful events in Syria and other conflicted areas have led to massive flows of people who are in a desperate need both to escape from their origin's country and a possible forced recruitment from an armed group. However, the countries of Europe are concerned with a divergent group, which is that of migrant smugglers.

For the purposes of the analysis below, it is imperative to examine the definitions of the terms above.

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<sup>138</sup> Global Report on Trafficking in Persons, pg 6, United Nations Office on Drugs and Crime, 2016

<sup>139</sup> Id. Pg. 9

<sup>140</sup> Id

According to the article 3 of the United Nations Trafficking Protocol, human trafficking is described as:

“the recruitment, transportation, transfer, harboring 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 labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”

In the Protocol against the Smuggling of Migrants by Land, Sea and Air, article 3, the definition for smuggling is the following:

“The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of illegal entry of a person into a State Party of which the person is not a national or permanent resident.”

On the first sight, we can detect that a crucial part in the term of smuggling is the crossing of international borders. In the case of a person who pays the transportation costs before entering in the destination country, we have to deal with a smuggling state, only if the person terminates his or her relationship with the transporter.<sup>141</sup> Therefore, both definitions include the transportation of persons, and more specific migrants. Although the majority insists in the illegal nature of smuggling, the limits seems to blur in many cases. At first, we should notice that is unstable to determine from the first point if a migrant is illegal or not. The following exams can clearly demonstrate this argument:

- a) Migrant arriving with passport and visa in the destination country (legal entry) and choose to remain although the visa has expired (illegal)
- a) Legal departure in the destination country and destroy of the necessary legal documents upon arrival (illegal)

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<sup>141</sup> A. Aronowitz, *Human Trafficking, Human Misery: the global trade in human beings* (Global Crime and Justice, 2009), pg 3

b) Illegal entry in the destination country and asylum application (legal).<sup>142</sup>

These examples indicate how intertwined are both of human trafficking and migrant smuggling.

Another issue which indicates how difficult is to differentiate these two terms is the inability, in most of the cases, to identify whether an individual is a victim or trafficking or a smuggler, during a border control.<sup>143</sup> For these reason, although the recent reports highlight the similarity between the terms, cannot provide accurate numbers separately for trafficking victims and migrant smugglers. The percentage is estimated around 80 percent of mixed migration cases crossing the Mediterranean.<sup>144</sup>

#### **4.K.1.2 The element of vulnerability**

In the widely accepted definition of human trafficking, we are coming across the factor of vulnerability. Thus, it is imperative to search if this factor is apparent in migrants' flows.

It is generally accepted that among the most vulnerable are those who are socially deprived, a characteristic that apparent in people with low income, poor education and lack of employment.<sup>145</sup> it is also clear that the aim of human trafficking, categorized as a transnational organized crime, is the making of possibly biggest profit. As A. Aronowitz refers: "Trafficking could be viewed as a by-product of migration, from which organizations profit from peoples' mobility. Researchers have argued that trafficking should be studied as a business that acts as the "middleman" in the global movement between origin and destination countries. Thus, trafficking networks can be viewed as

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<sup>142</sup> *Id.* pg 5

<sup>143</sup> *Id.* pg 19

<sup>144</sup> Tuesday Reitano, Laura Adal and Mark Shaw, *Smuggled Futures: The Dangerous Path of the Migrant from Africa to Europe*, Geneva, The Global Initiative against Transnational Organized Crime, May 2014 <http://www.globalinitiative.net/?p=10200>.

<sup>145</sup> *supra* Aronowitz, pg 24

business organizations”.<sup>146</sup> Traffickers target everyone who could be valuable for their trade and particularly across borders. They may traffic victims who can move freely across borders or those who require visas. In cases where people are willing to migrate but unable to obtain regular access to the desired destination, traffickers may offer the false pretense of a legal entry during recruitment. They lure victims by promising safe travel and entry into the desired destination country, and then deceive them into exploitative situations.<sup>147</sup> Common means by which migrants often become victims of human trafficking are debt redemption, which formed during the smuggling process, through exploitative form of work or counterfeiting documents provided by the traffickers in order to deceive migrants who are in search of work outside their country.<sup>148</sup> Others similar forms of corruption are the illegal obtain of documents upon arrival, settlement between traffickers – local police authority etc.

Furthermore, we can detect the same state of vulnerability in another group of migrants, those who are victims of persecution during conflicts in their country. Given the urgent need to move from a belligerent zone, they often have no choice but to choose an illegal way in order to obtain asylum.<sup>149</sup> A 2015's report by International Centre for Migration Policy Development (ICMPD), demonstrated a substantial increase in trafficking cases, in the field of Middle East and, especially, Syrian Arab Republic.<sup>150</sup> An armed conflict forms an opportunity for traffickers to perform their illegal activities, when taking advantage of the lack of economic opportunities, forced displacement and, in some cases, the destruction of family links, which leads in the increasing of vulnerability.<sup>151</sup>

#### **4.K.1.3 Coercion: An overlapping point**

One of the leading arguments supporting the difference between human trafficking and migrant smuggling is that victims of trafficking have clearly been subjected in a form of coercion in order to be exploited by their traffickers, when migrant smugglers have made a “deal” with their transporters by giving their permission so that is possible to move in the country of their preference, in a manner that no form of coercion is detected. However, this argument seems unable to explain the complexity of these two states.

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<sup>146</sup> *Supra*, A. Aronowitz, pg 24

<sup>147</sup> *Supra*, Global Report, pg 60

<sup>148</sup> *id.*

<sup>149</sup> *Id.*, pg 61

<sup>150</sup> International Centre for Migration Policy Development (ICMPD), Targeting vulnerabilities: The Impact of the Syrian War and Refugee Situation on Trafficking in Persons, December 2015

<sup>151</sup> *Supra*, Global Report, pg 64

Although the smuggler and the migrant are partners, there is a high possibility of an inequality in a commercial transaction. In best case, the relationship between smuggler ends in the destination country. Unfortunately, in various stages of this illegal relationship the migrant could suffer exploitation. The main reason is that the consent has been given under the pretense of a better future in the destination country. A common example of deception is that of promised jobs in the legitimate economy such as nannies, domestic servants, hotel chamber maids or unskilled workers, only for the victims to find themselves forced into sexual slavery.<sup>152</sup> A more complex form of coercion is this who contains the psychological factor. The traffickers use threats of violence or report to immigration officials the illegal procedure. In this manner, they capture migrants, keeping them in live and preventing them from seeking assistance from the authorities.<sup>153</sup> This overlapping point is also evident in the Protocol against the Smuggling of Migrants by Land, Sea and Air, in article 5, with the following provision:

*“Article 5. Criminal liability of migrants*

*Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol.”*

Even though the opinions upon the element of coercion differ, we can only agree that whether a person has been trafficked or smuggled is unclear at the beginning of his or her journey, given the fact that deception or exploitation may not be apparent until later stages. According to an opinion, which clearly demonstrates the similarity between human trafficking and migrant smuggling, the comparison between these two states is referred as an “artificial distinction between trafficking and smuggling, between deserving and undeserving victims of human trade”.<sup>154</sup>

#### **4.K.2 Differences**

However, it is crucial to examine the differences between human trafficking and migrant smuggling. To begin with, in human trafficking the force is used or consent is obtained through fraud, deception, or coercion, unless under 18 years of age. The person being trafficked may or may not cooperate. Contrariwise, in migrant smuggling the person

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<sup>152</sup> *Supra*, A. Aronowitz, pg 2

<sup>153</sup> *id.*

<sup>154</sup> Maggy Lee, *Human Trafficking 29*, William Publishing, Portland USA, 2007



being smuggled generally cooperates and consents to the smuggling.<sup>155</sup> As border controls have improved, migrants are deterred from attempting to illegally cross them themselves and are diverted into the hands of smugglers. Migrant smuggling is a highly profitable business in which criminals enjoy low risk of detection and punishment. As a result, the crime is becoming increasingly attractive to criminals. Migrant smugglers are becoming more and more organized, establishing professional networks that transcend borders and regions.

We also observe that the victim in human trafficking is forced to labor and/or exploitation but in migrant smuggling persons that smuggled are violating the law; that means they are not victims by law. So, in this case there is generally no actual or implied coercion. Trafficked victims are enslaved, subjected to limited movement or isolation, as long as documents may have been confiscated. In that illegal case is not needed to involve the actual or physical movement of the victim. smuggled persons, even if they are living and working under exploitive conditions, are free to leave and look for better opportunities. Trafficked victims are not so fortunate.<sup>156</sup> They are at the mercy of those to whom they must repay a debt or to those who have seized their documentation or are threatening to harm their families back home. Trafficking for sexual exploitation and for forced labour are the most prominently detected forms, but trafficking victims can also be exploited in many other ways. Victims are trafficked to be used as beggars, for forced or sham marriages, benefit fraud, production of pornography or for organ removal, to mention some of the forms countries have reported. Trafficking for various types of marriage has been sporadically reported in the past but is now emerging as a more prevalent form. In South-East Asia, this often involves forced marriages, or unions without the consent of the woman (or girl). Trafficking for sham marriages mainly takes place in affluent countries. Trafficking for forced labour in the fishing industry is commonplace in several parts of the world. This can happen, for example, on board big fishing vessels on the high seas, carried out by large companies that trade fish internationally, or in on-land processing facilities. It can also happen more locally, such as in African lake areas where the fishing tends to be small-scale and the catch is sold in street markets. Trafficking for sexual exploitation and for forced labour in a range of economic sectors are reported nearly everywhere. At least 10 countries have reported

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<sup>155</sup> Human Trafficking, Human Misery ,The Global Trade in Human Beings, Alexis A. Aronowitz pg 8

<sup>156</sup> <https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html?ref=menuaside>



trafficking for the removal of organs. Other forms of reported trafficking, such as the ones mentioned above, are sometimes locally acute, but less internationally widespread.<sup>157</sup> Smuggled migrants are vulnerable to life-threatening risks and exploitation; thousands of people have suffocated in containers, perished in deserts or dehydrated at sea. Generating huge profits for the criminals involved, migrant smuggling fuels corruption and empowers organized crime.

Furthermore, no requirement to cross an international border is needed, trafficking can occur within a country. Persons also are exploited in labor/services or commercial sex acts. On the other hand, the activity of smuggling facilitates the illegal entry of person(s) from one country into another and always crosses an international border. The migrants are free to leave, change jobs, etc. The modus operandi of migrant smugglers is diverse. Highly sophisticated and expensive services rely on document fraud or 'visa-smuggling'. Contrasted with these are low cost methods which often pose high risks for migrants and have led to a dramatic increase in loss of life in recent years. Migrant smugglers constantly change routes and modus operandi in response to changed circumstances often at the expense of the safety of the smuggled migrants.

A necessary condition of smuggling is that person must be attempting illegal entry or only be in country illegally. On the other hand, many cases of trafficking in persons do not involve the crossing of international borders – some 42 per cent of the detected victims are trafficked domestically - there are some links between cross-border trafficking and regular migration flows. Certain trafficking flows resemble migration flows, and some sizable international migration flows are also reflected in cross-border trafficking flows.

Other differences detected between trafficked victims and smuggled persons are their legal status in the country of destination once they have come to the attention of non-governmental organizations (NGOs) or enforcement agencies. Trafficked persons are (or should be considered) victims and entitled in many countries to special protection. Illegal migrants, unless they are granted asylum, are considered violators of immigration law and subject to arrest and deportation.<sup>158</sup>

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<sup>157</sup> Global Report on Trafficking in Persons, 2016, pg 8

<sup>158</sup> Human Trafficking, Human Misery ,The Global Trade in Human Beings, Alexis A. Aronowitz pg 7

Following there are some percentages about the number of human trafficking and migrant smuggling victims.

According to a September 2017 report from the International Labor Organization (ILO) and Walk Free Foundation:

- An estimated 24.9 million victims are trapped in modern-day slavery. Of these, 16 million (64%) were exploited for labor, 4.8 million (19%) were sexually exploited, and 4.1 million (17%) were exploited in state-imposed forced labor.
- Forced labor takes place in many different industries. Of the 16 million trafficking victims exploited for labor
  - 7.5 million (47%) forced labor victims work in construction, manufacturing, mining, or hospitality
  - 3.8 million (24%) forced labor victims are domestic workers
  - 1.7 million (11%) forced labor victims work in agriculture
  - 71% of trafficking victims around the world are women and girls and 29% are men and boys.
  - 15.4 million victims (75%) are aged 18 or older, with the number of children under the age of 18 estimated at 5.5 million (25%).
  - The Asia-pacific region accounts for the largest number of forced laborers— 15.4 million (62% of the global total). Africa has 5.7 million (23%) followed by Europe and Central Asia with 2.2 million (9%). The Americas account for 1.2 million (5%) and the Arab States account for 1% of all victims.
  - Human trafficking does not always involve travel to the destination of exploitation: 2.2 million (14%) of victims of forced labor moved either internally or internationally, while 3.5 million (74%) of victims of sexual exploitation were living outside their country of residence.
  - Victims spend an average of 20 months in forced labor, although this varied with different forms of forced labor.<sup>159</sup>

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<sup>159</sup> <https://www.humanrightsfirst.org/resource/human-trafficking-numbers>

## **Human Trafficking is Big Business**

- Human trafficking earns profits of roughly \$150 billion a year for traffickers, according to the ILO report from 2014. The following is a breakdown of profits, by sector:
  - \$99 billion from commercial sexual exploitation
  - \$34 billion in construction, manufacturing, mining and utilities
  - \$9 billion in agriculture, including forestry and fishing
  - \$8 billion dollars is saved annually by private households that employ domestic workers under conditions of forced labor
- While only 19% of victims are trafficked for sex, sexual exploitation earns 66% of the global profits of human trafficking. The average annual profits generated by each woman in forced sexual servitude (\$100,000) is estimated to be six times more than the average profits generated by each trafficking victim worldwide (\$21,800), according to the Organization for Security and Cooperation in Europe (OSCE).
- OSCE studies show that sexual exploitation can yield a return on investment ranging from 100% to 1,000%, while an enslaved laborer can produce more than 50% profit even in less profitable markets (e.g., agricultural labor in India).
- In the Netherlands, investigators were able to calculate the profit generated by two sex traffickers from a number of victims. One trafficker earned \$18,148 per month from four victims (for a total of \$127,036) while the second trafficker earned \$295,786 in the 14 months that three women were sexually exploited according to the OSCE.
- While sexual exploitation generates profits, forced labor saves costs. In one case, Chinese kitchen workers were paid \$808 for a 78-hour work week in Germany. According to German law, a cook was entitled to earn \$2,558 for a 39-hour work week according to the OSCE.<sup>160</sup>

On the other hand,

- The number of international migrants worldwide has continued to grow rapidly in recent years, reaching 258 million in 2017, up from 220 million in 2010 and 173 million in 2000.

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<sup>160</sup> <https://www.humanrightsfirst.org/resource/human-trafficking-numbers>

- Over 60 per cent of all international migrants live in Asia (80 million) or Europe (78 million). Northern America hosted the third largest number of international migrants (58 million), followed by Africa (25 million), Latin America and the Caribbean (10 million) and Oceania (8 million).<sup>1</sup>
- In 2017, two thirds (67 per cent) of all international migrants were living in just twenty countries. The largest number of international migrants (50 million) resided in the United States of America. Saudi Arabia, Germany and the Russian Federation hosted the second, third and fourth largest numbers of migrants worldwide (around 12 million each), followed by the United Kingdom of Great Britain and Northern Ireland (nearly 9 million).
- In 2016, the total number of refugees and asylum seekers in the world was estimated at 25.9 million. Turkey hosted the largest refugee population worldwide, with 3.1 million refugees and asylum seekers, followed by Jordan (2.9 million), the State of Palestine (2.2 million), Lebanon (1.6 million) and Pakistan (1.4 million).
- In 2017, of the 258 million international migrants worldwide, 106 million were born in Asia. Europe was the region of birth of the second largest number of migrants (61 million), followed by Latin America and the Caribbean (38 million) and Africa (36 million).
- In 2017, India was the largest country of origin of international migrants (17 million), followed by Mexico (13 million). Other countries of origin with large migrant populations include the Russian Federation (11 million), China (10 million), Bangladesh (7 million), Syrian Arab Republic (7 million) and Pakistan and Ukraine (6 million each).
- Women comprise slightly less than half of all international migrants. The share of female migrants fell from 49 per cent in 2000 to 48 per cent in 2017. Female migrants outnumber male migrants in Europe, Northern America, Oceania and Latin America and the Caribbean, while in Africa and Asia, particularly Western Asia, migrants are predominantly men.
- In 2017, the median age of international migrants worldwide was 39 years, a slight increase from 38 years in 2000. Yet in some regions, the migrant population is becoming younger. Between 2000 and 2017, the median age of international migrants declined in Asia, Latin America and the Caribbean, and Oceania.
- Between 2000 and 2015, positive net migration contributed to 42 per cent of the population growth observed in Northern America and 31 per cent in Oceania. In

Europe, instead of growing by two per cent, the size of the population would have fallen by one per cent in the absence of a net inflow of migrants.

- Since the International Conference on Population and Development in 1994, the issue of international migration and its relation to development has risen steadily on the agenda of the international community. The 2030 Agenda for Sustainable Development includes several migration-related targets and calls for regular reviews of the progress toward their achievement using data disaggregated by, inter alia, migratory status.
- In response to large movements of refugees and other migrants, the General Assembly adopted the New York Declaration for Refugees and Migrants on 19 September 2016. The Declaration calls for the development of two global compacts, both to be adopted in 2018. Whereas a proposed refugee compact is being developed under the auspices of the United Nations refugee agency (UNHCR) and will be presented in 2018 for consideration by Member States, the development of the migration compact is being led by the General Assembly.
- The ratification of five United Nations legal instruments concerning international migration, while progressing, remains uneven. As of September 2017, 37 Member States had ratified all five legal instruments, while 13 Member States had ratified none of them.<sup>161</sup>

## **5. How are the victims of human trafficking identified? What are the challenges in the identification of victims and what could be the best strategies?**

### **ELSA Ankara**

#### **5.A.1.1 Identification of the Victims of Human Trafficking**

Victim identification in human trafficking is essential not only to recognize individuals as victims and refer them to various international and national victim support organizations to provide proper protection but also to determine and punish the offenders. Through the “United Nations

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<sup>161</sup>[http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2017\\_Highlights.pdf](http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2017_Highlights.pdf)

Trafficking in Persons Protocol”<sup>162</sup> many countries and NGOs imposed regulations to criminalize human trafficking, thereby, determined policies to identify human trafficking victims.<sup>163</sup> Also, “UNHCR Recommended Principles and Guidelines on Human Rights and Human Trafficking” stresses that ‘a failure to identify a trafficked person correctly is likely to result in a further denial of that person’s rights. States are therefore under an obligation to ensure that such identification can and does take place.’<sup>164</sup> As a result of these international regulations, standardized checklists are created consisting of indicators to facilitate the identification of victims. However, it should be pointed out that indicators are not proofs only by themselves but ‘observing an indicator should be the starting point for further enquiries’.<sup>165</sup>

One of the detailed indicators and interview form was prepared by UN Migration Agency (IOM)<sup>166</sup>. IOM carries out the process as follows: Firstly, personal data is being collecting to reveal the victim’s demographics such as name, age, sex, origin country and ethnicity. Gathering data is important to find out who the victim is and what he/she expects from the organization. Then indicators of human trafficking are being investigating, which basically are about whether there is a condition of physical/psychological/sexual abuse, withholding of identity/travel documents, giving of alcohol/drugs, possessing false documents.<sup>167</sup> In addition to these, checking for physical or psychological violence signs, sex-abuse signs, and excessive working conditions is crucial in determining whether the person is labor or child or women trafficking victim.<sup>168</sup> The method of the identification is as important as gathering information. Since victims of human trafficking are usually damaged and vulnerable, some measures should be taken at the process of identification. Questioning should be done in a safe and peaceful environment and in a language which the victim can understand; medical, psychological assistance should be provided; and victim should

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<sup>162</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children 2003 < <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx> > accessed March 4 2018.

<sup>163</sup> UNODC Global Report on Trafficking in Persons 2012 <[http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking in Persons 2012\\_web.pdf](http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf) > accessed February 28 2018.

<sup>164</sup> UNODC Combatting Trafficking in Persons 2009 < [http://www.unodc.org/documents/human-trafficking/UN\\_Handbook\\_engl\\_core\\_low.pdf](http://www.unodc.org/documents/human-trafficking/UN_Handbook_engl_core_low.pdf) > accessed March 17 2018.

<sup>165</sup> UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners Module 2 <[http://www.unodc.org/documents/human-trafficking/TIP\\_module2\\_Ebook.pdf](http://www.unodc.org/documents/human-trafficking/TIP_module2_Ebook.pdf) > accessed February 28 2018.

<sup>166</sup> IOM Victim of Trafficking: Screening Interview Form < <http://www.unhcr.org/4ae57fea9.pdf> > accessed March 4 2018.

<sup>167</sup> *ibid*

<sup>168</sup> UNODC Toolkit to Combat Trafficking in Persons 2008 < [http://www.unodc.org/documents/human-trafficking/Toolkit-files/07-89375\\_Ebook\[1\].pdf](http://www.unodc.org/documents/human-trafficking/Toolkit-files/07-89375_Ebook[1].pdf) > accessed February 28 2018.

not be treated as a criminal.<sup>169</sup> After questioning and identifying the victim, necessary procedures are implemented by the authorities.

Turkey, being a party to the international conventions on human trafficking, imposes regulations in domestic law. According to “Regulation on Fight against Human Trafficking and Protection of Victims”<sup>170</sup>, which supplements “Law on the Foreigners and International Protection”,<sup>171</sup> identification of a trafficking victim starts when anyone who is aware of the crime of human trafficking shall notify the Chief Public Prosecutor or the line of emergency aid.<sup>172</sup> Directorate of Migration Management operates 157 emergency aid line for this purpose. After the notification, law-enforcement bodies contact the Directorate of Migration Management in cases where it can be evaluated within the scope of the crime of human trafficking and staff assigned by the directorate interviews the victim in a suitable environment, taking into account the psychological situation in which they are involved in.<sup>173</sup> Some of the fundamental questions asked during the interviews are:

- How was the first contact between victim and trafficker established?
- How was the victim brought to Turkey?
- How were the victim’s travel expenses covered?
- Are the victim’s travel documents and passport forged?
- How are the working conditions of the victim?
- Is the freedom of movement of the victim restricted by someone else?<sup>174</sup>

Individuals identified as victims are subjected to different processes: They can be referred to hospitals if they need medical treatment or returned to their countries or police investigation can be initiated if they are found guilty.<sup>175</sup>

#### **5.A.1.2. Challenges and Best Strategies in the Identification of Victims**

Victim identification in human trafficking is a difficult process both in Turkey and in the world. Failure to cooperate with the victim because of various reasons and failure to provide

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<sup>169</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children 2003, art 6 para 4.

<sup>170</sup> Regulation no. 29656 (Regulation on Fight Against Human Trafficking and Protection of Victims) 2016 [İnsan Ticaretiyle Mücadele ve Mağdurların Korunması Hakkında Yönetmelik]

<sup>171</sup> Law n. 6458 (Law on the Foreigners and International Protection) 2013 [Yabancılar ve Uluslararası Koruma Kanunu].

<sup>172</sup> Regulation no. 29656, 16.

<sup>173</sup> *ibid* 17.

<sup>174</sup> *ibid* annex-1.

<sup>175</sup> *ibid* 18.



suitable environment and conditions constitutes few of the main challenges. It is not easy to reach out and contact the victims because they are being kept against their wills. Traffickers use various techniques and tools to keep victims enslaved and isolate them from the public, frequently by using violence.<sup>176</sup> Also, they seize victims' passports and travel documents to prevent them from escaping.

As a result, victims usually suffer psychological damage and fear which gets in the way of contacting the authorities. This situation is mostly observed in women trafficked into sexual exploitation. These women are generally not comfortable at interviews after they have been rescued with the help of security forces, they tend to hide their stories and refrain from giving information about the trafficker. Women intimidated by traffickers are convinced that there are affiliates of traffickers in the police organization too, so, they think that if they speak out, traffickers will harm them or their family.<sup>177</sup> Best strategy to address this challenge is seeking help from civil experts with experience on the subject and who are sensitive to victims' needs. Experts who understand the psychology of traumatized women can convince these women to talk and cooperate.<sup>178</sup> Therefore, working with experts/psychologists and interpreters, creates a safe environment and when needed, support from interpreters may facilitate taking up challenges while identifying vulnerable victims. "Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children", supplementing the "United Nations Convention against Transnational Organized Crime", also known as "Palermo Protocol" emphasizes in article 6, the importance of implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons. As a party to "Palermo Protocol", Turkey regulates implementing measures like medical, psychological and material assistance in "Regulation on Fight Against Human Trafficking and Protection of Victims"<sup>179</sup>.

Especially in Turkey, inadequate physical facilities of the law enforcement bodies where possible victims being held negatively affects the victim identification process. Although it was noted that the traffickers caught in operations and the victims were not confronted, it was observed that this was not actually possible due to inadequate physical facilities.<sup>180</sup> This challenge affects victims' interviewing process negatively since they feel under the threat of the traffickers and fear to cooperate with law enforcement bodies. In addition, due to the lack of staff and time,

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<sup>176</sup> UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners Module 2.

<sup>177</sup> Murat Sever, Oğuzhan Ömer Demir and Yavuz Kahya, *Türkiye'de İnsan Ticareti Mağduru Tespit Süreçlerinin Değerlendirilmesi* IOM Publications, [2012], 60, [Turkish].

<sup>178</sup> *ibid* 61.

<sup>179</sup> Regulation no. 29656 18/2.

<sup>180</sup> Sever, Demir and Kahya, *Türkiye'de İnsan Ticareti Mağduru Tespit Süreçlerinin Değerlendirilmesi* 65.

time allocated to the interviews is kept short and necessary psychological assistance cannot be provided, especially when the number of victims brought is high.<sup>181</sup> In order to handle this challenge, the coordination should be provided among the institutions involved in victim identification process in social and psychological aspects and law enforcement bodies, also, the shortage of staff and physical facilities should be filled by providing adequate finance.

Another challenge is criminalization of victims at the process of identification. Victims are frequently 'subjected to prosecution for using false travel documents, having left the state illegally or having worked in the sex industry', so, criminalization possibility prevents victims from contacting with authorities.<sup>182</sup> "UNHCR Recommended Principles and Guidelines on Human Rights and Human Trafficking" points out that trafficked persons 'shall not be detained, charged or prosecuted' like criminals unless it has been proven that they are involved in illegal activities.<sup>183</sup> In order to address the issue of criminalization of trafficking victims, States should impose regulations in domestic laws and implement them through the authorities so that victims trust them and report their victimization before it gets worse.<sup>184</sup> The regulation in Turkish law that imposes 'persons who are strongly suspected of being human trafficking victims are not subject to deportation in the identification process'<sup>185</sup> can be an example of non-criminalization regulation.

Another point about challenges in identification of human trafficking victims is that target countries in illegal migration are unable to distinguish trafficked victims from irregular migrants. Individuals exposed to human trafficking in these cases are treated as irregular migrants by being deported or held in return centers.<sup>186</sup> "Recommended Principles and Guidelines on Human Rights and Human Trafficking" of the UNHCR emphasizes that:

The critical additional factor that distinguishes trafficking from migrant smuggling is the presence of force, coercion and/or deception throughout or at some stage in the process — such deception, force or coercion being used for the purpose of exploitation. While the additional elements that distinguish trafficking from migrant smuggling may

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<sup>181</sup> *ibid* 66.

<sup>182</sup> UNODC Global Report on Trafficking in Persons 2012.

<sup>183</sup> 2002 UNHCR Recommended Principles and Guidelines on Human Rights and Human Trafficking <<http://www.unhcr.org/protection/migration/4bf6454c9/recommended-principles-guidelines-human-rights-human-trafficking.html>> accessed March 17 2018.

<sup>184</sup> *ibid*.

<sup>185</sup> Regulation no. 29656, 18/7

<sup>186</sup> Sever, Demir and Kahya, *Türkiye'de İnsan Ticareti Mağduru Tespit Süreçlerinin Değerlendirilmesi* 33.

sometimes be obvious, in many cases they are difficult to prove without active investigation. A failure to identify a trafficked person correctly is likely to result in a further denial of that person's rights.<sup>187</sup>

Therefore, in identifying victims of human trafficking and smuggled migrants, there are different indicators. It should be pointed out that illegal migrants usually consent to being smuggled unlike trafficked persons. In some cases, smuggled migrants take advantage of this difference and pretend to be human trafficking victims, so, authorities should carefully analyze the findings during the process of identifying.

### **ELSA Komotini**

It is estimated that the phenomenon of human trafficking constitutes the third bigger "criminal business" after the illegal drug and gun trade since from these illegal businesses of the organized crime, it is estimated that in the year 2000 accrued in a global level economic incomes of the scale of 2,4 trillion euro. According to UNO, UNICEF and European Council, about 4 million people are being trafficked each year. From these people, about a million concerns children who are being victims of trade and being trafficked in a global scale. Reports of the European Commission indicate that about 500.500 trafficking victims, because of use of violence, threat, fraud, or bribery are entering West Europe each year while enough hundreds of millions of people are being trafficked inside or through the European Union each year. Most of the victims are being usually pushed to prostitution (43%) or forced labor (32%)

Researchers have proved that the choice of the victims by the traffickers was based on specific criteria which have been repeated in most of the trafficking victims.<sup>188</sup> Current stereotypes portray the victim of human trafficking as innocent young girls from foreign countries who are manipulated, lied to, and often kidnapped and forced into prostitution. However, it is not just young international girls who are trafficked. Men, women, children of all ages, normal citizens, and legal residents can all become victims of traffickers, and there are many victims of labor trafficking in addition to sex trafficking.

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<sup>187</sup> 2002 UNHCR Recommended Principles and Guidelines on Human Rights and Human Trafficking.

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Aspe.hhs.go

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However, all trafficking victims share common characteristics that make them vulnerable to traffickers. They often come from countries or communities with high rates of crime, poverty, and corruption; lack opportunities for education and family support (e.g., orphaned, runaway or thrown-away, homeless, family members collaborating with traffickers); and/or have a history of physical and/or sexual abuse.

**Usually human trafficking victims can be discovered in some of the mention below situations<sup>189</sup>:**

- a. Prostitution and escort services; · Pornography, stripping, or exotic dancing; ·
- b. Massage centers; · Sexual services publicized on the Internet or in newspapers;·
- c. Agricultural or ranch work;·
- d. Factory work or sweatshops;·
- e. Businesses like hotels, nail salons or home-cleaning services; ·
- f. Domestic labor (cleaning, childcare, eldercare, etc. within a home); ·
- g. Restaurants, bars, or cantinas; or·
- h. Begging, street peddling, or door-to-door sales.

**Victims of human trafficking may exhibit any of the following<sup>190</sup>:**

- A. Evidence of being controlled either physically or psychologically; · Inability to leave home or place of work; ·
- B. Inability to speak for themselves or share one's own information;· Information is provided by someone accompanying the individual;·
- C. Loss of control of one's own identification documents (ID or passport); ·
- D. Have few or no personal possessions; ·
- E. Owe a large debt that the individual is unable to pay off; or·
- F. Loss of sense of time or space, not knowing where they are or what city or state they are in.

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<sup>189</sup> NHTD

<sup>190</sup> Toolkit to combat trafficking in persons, Inter-agency coordination group against Trafficking in Persons, United Nations

Certainly, many victims are aware from the beginning that they are going to be prostitutes; they just can't suspect how inhuman the conditions will be and how big their exploitation will be.<sup>191</sup> Some other are being deceived through advertisements about the nature of the job that their employer promises to them or they hope to get married through this job.

Some of the most important indicators of human trafficking victims are indicated below:

- Stated age older than appearance
- Frequent or forced abortions
- Accompanying individual insists on providing translation, refuses to leave exam room or answers for the patient
- Scripted or mechanically recited history
- Tattoos or marks that may indicate ownership (names, brands, logos)
- Evidence of physical violence
- Delayed presentation of medical care
  - Burn marks
  - Frequent change of location or domicile

**Psychological and Behavioral Clues Being able to indicate the psychological and emotional consequences of human trafficking can also be helpful in identifying victims.**<sup>192</sup> Victims often:

- a. Develop general feelings of helplessness, shame, guilt, self-blame, and humiliation;
- b. Suffer from shock and denial, or show symptoms of post-traumatic stress disorder, phobias, panic attacks, anxiety, and depression;
- c. Suffer from sleep or eating disorders;
- d. Become addicted to drugs and/or alcohol as a way to cope with or "escape" their situation, or as a method of control used by their traffickers;

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<sup>191</sup> Koufogioti Aikaterini, article 323A of the criminal code, page 12

<sup>192</sup> NHTD

- e. Become emotionally numb, detached, and dissociated from the physical and mental pain or Experience “trauma bonding” with the trafficker, positively identifying with the trafficker and believing that, despite repeated abuse, the trafficker is a loving boyfriend, spouse, or parent.

**Physical Effects of Human Trafficking: While not all victims of trafficking have physical indicators that aid identification, many victims suffer serious health issues, some of which may include the following:**

- a. Signs of physical abuse, such as bruises, broken bones, burns, and scarring;
- b. Chronic back, visual, or hearing problems from work in agriculture, construction, or manufacturing;
- c. Skin or respiratory problems caused by exposure to agricultural or other chemicals;
- d. Infectious diseases, such as tuberculosis and hepatitis, which are spread in overcrowded, unsanitary environments with limited ventilation;
- e. Untreated chronic illnesses, such as diabetes or cardiovascular disease; or
- f. Reproductive health problems, including sexually transmitted diseases, urinary tract infections, pelvic pain and injuries from sexual assault, or forced abortions.

Despite the fact that there are some serious indicators in order to suspect that someone is a victim of human trafficking, it remains extremely difficult to diagnose such a case. The most common problems that the people face when it comes to recognizing and dealing with a case of human trafficking is the lack of awareness not only on behalf of the competent officials but also on behalf of the victims themselves.

*More specifically*, most victims of trafficking don't put the term *human trafficking* to their own victimization, so they rarely self-identify as a trafficking victim.<sup>193</sup> Victims usually don't know about human trafficking, just as most people in general don't know about human trafficking.

When victims do report being victimized, they usually report a different type of crime; they say they were “forced into prostitution” or “forced to work” against their will, they

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<sup>193</sup> The Essential Abolitionist: What you need to know about human trafficking & modern slavery (2016.)

may state that they were threatened with physical violence or actually assaulted, but they are reporting as victims of assault, not trafficking.

The lack of self-identification is very important, because if a crime is not reported, there is no record of its occurrence and the officer cannot deal with such a crime properly.

Most often, the response to any criminal activity begins with someone reporting a crime, usually by dialing 911. Most local police officers and sheriff's deputies perform what is referred to as "reactive policing"; they react to a reported crime. (While federal agencies such as the Federal Bureau of Investigation [FBI] and Homeland Security Investigation/Immigration and Customs Enforcement [HSI/ICE] also conduct human trafficking investigations, most victims of crime contact local law enforcement agencies to report their victimization.) This lack of reporting is a serious reason why the officers don't believe and don't state that there is human trafficking.

In addition to the lack of human trafficking awareness among its victims, police officers and detectives are also unable to recognize trafficking—usually due to inadequate training on the topic. If a victim reports being "forced into prostitution," but the officer taking the report or investigating the case doesn't know the difference between prostitution and trafficking, the case may never get examined as a case of human trafficking. Even greater difficulty can be found in identifying cases of labor trafficking, as most law enforcement officers never receive any training on labor law or violations of wage and hour employment regulations.

The very first step towards the anti-trafficking policies of nowadays were taken right after World War 2, when movements to protect the victims of crimes began to be observed.<sup>194</sup> Since the scope of crimes, which encroach the human dignity, is worldwide, the initial measures against them were international. In 1948, the Universal Proclamation of Human Rights and the optional Protocol were contracted.<sup>195</sup> The international measures and movements became even greater in the decade of 1960.

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<sup>194</sup> The Illegal Business of Human Trafficking- Maria Jião Guia, Springer, chapter 2.4, page 25, paragraph 1, 2) Human Trafficking- Aikaterini S. Koufogiotti, page 6, paragraph 2, 3) The International Politics of Human Trafficking- Gyllian Wylie, palgrave macmillan, page 50, paragraph 4, page 51, paragraph 1 and page 64, paragraph 3)

<sup>195</sup> Human Trafficking- Aikaterini S. Koufogiotti , page 7, paragraph 1 2) The International Politics of Human Trafficking - Gillian Wylie, palgrave macmillan, page 52, paragraph 3 and page 64 , paragraph 2



Some significant examples are the International Agreement for the personal and civil rights in 1966 and the International Agreement for the economic, social and educational rights.<sup>196</sup>

After that, United States of America started establishing some anti-trafficking programs and many other countries followed its lead.

However, these measures were not appropriate and specified enough to combat complex phenomenon as human trafficking. Nevertheless, numerous national legal systems did not absorb them substantially and properly. Therefore, the Protocol of the Contract of United Nations was agreed. Its aim was the restriction and punishment of human trafficking in general, while trafficking of women and children consisted its main concern.<sup>197</sup>

The European Union starts to be activated in the topic of human trafficking later, with the Decisions 2006/618 and 2006/619 of the Council in twenty fourth of June, 2006. They were to clarify the conclusion of the Protocol, which completes the Contract of United Nations, on behalf of European Union.

Furthermore, the Council with the Directive 2004/81 arranged the residence title, which is provided to third - country national victims of human trafficking or cooperation in illegal immigration and who cooperates with the relevant State authorities.<sup>198</sup>

Last but not least, the anti- trafficking Convention with number 2011/36/EU comes to replace the Guidelines 2002/696 of Commission and improve the previous relevant movements. Its purpose is preventing and combating trafficking in human beings and protecting its victims. Because of that, it is also called «Anti-trafficking Directive».<sup>199</sup>

The Member -States of European Union incorporated the Directions in their legal

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<sup>196</sup> The Illegal Business of Human Trafficking- Maria Jião Guia, Springer, chapter 2.4, page 25, paragraph 1, 2) Human Trafficking- Aikaterini S. Koufogioti , page 7, 2)The International Politics of Human Trafficking- Gillian Wylie, palgrave macmillan, page 7, paragraph2,3

<sup>197</sup> Human Trafficking- Aikaterini S. Koufogioti , page 7, The International Politics of Human Trafficking - Gillian Wylie, palgrave macmillan, page 52, paragraph 3 and page 64 , paragraph 2

<sup>198</sup> The Illegal Business of Human Trafficking- Maria Jião Guia, Springer, chapter 2.4, page 25, paragraph 3

<sup>199</sup> Report from the Commission to the European Parliament and the Council, Report on the progress made in the fight against trafficking in human beings (2016) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims)

systems. For instance, Greece institutionalized the following laws;

- 3064/2002 on combating trafficking in human beings, crimes against the sexual freedom, pornography of underage people and, generally, economic exploitation of sexual life and providing help to the victims of them.
- 4198/2008 on preventing and combating trafficking in human beings and protecting its victims.
- 4216/2013, which consists the ratification of the contract of the European Council for the action against trafficking.<sup>200</sup>

Although the anti-trafficking Directive was innovative and more effective than the previous measures, the data collection methods remained similar to those in 2010. Thereby, Commission in its report on the progress made in the fight against trafficking in human beings realized that there are still many disabilities that need to be faced. With Recital 27 and Article 19 the report was divided into three main sections; trends, results of specific anti-trafficking sections and statistics provided by the Member- States. Commission recognized the effort of Member -States to investigate crime and identify potential victims. However, it considered that more intensive measures had to be taken and it was committed to contribute in this development of the anti-trafficking policies of Member - States. (Report from the Commission to the European Parliament and the Council, Report on the progress made in the fight against trafficking in human beings (2016) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims)

Taking everything into account, it is clear that many measures have been implemented, in order to investigate trafficking and especially identify and presume its victims. Even though, states should approve the measures, which help them identify the victims of trafficking. They should adopt a victim centered approach, since that way will be able to achieve a significant reduction of this particular crime. For example, they could increase investigations and train investigators, prosecutors and judges by developing guidelines. When the improvement of national anti-trafficking policies is seceded, states should start cooperate at European or international level. This way the combating

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<sup>200</sup> Human Trafficking- Aikaterini S. Koufogioti, page 8, paragraph 2

of human trafficking will be more feasible, because of the transnational character of the crime.<sup>201</sup>

## Conclusion

The crime of human trafficking is not a crime that is of concern only to a single country, it is an organized international crime. For this reason combating human trafficking, especially reaching out to the international criminal organizations and eliminating them emerges as a very important phenomenon. Promotion of human rights, fighting crime and in terms of public health protection, Turkey and Greece are striving to make a difference as powerful actors of the region. In this context the international community, in cooperation with the law enforcement officers, should raise awareness levels on these crimes. It should also be noted that the hidden structure of human trafficking and the fact that it is handled by professional criminal organizations, there are not sufficiently holistic information about the crime.

The saying “human trafficking and migrant smuggling is definitely a human right issue, but it cannot (should not) be dealt as a human right issue” reveals the complexity of human trafficking especially concerning its link to migrant smuggling. It is accepted that the crime of smuggling should be challenged by competent authorities. What is imperative though is not only to examine the root causes of migration but also, and more importantly, to invent the right tools which will provide a more accurate procedure of identification of the victims. Concerning the immense flows of migrants and the difficulty in collecting data about the conditions under these people enter the destination country, it is clear that attention must be given in the protection of every trafficked person, migrant or not, and also regarding the punishment of the traffickers, which includes arresting the offenders and dismantling the criminal networks that exploit the victims.

All things considered, regulations concerning the crime of human trafficking in both Turkish and Greek legal systems were first introduced mainly due to both countries' international responsibilities, and were made in compliance with global standards. United Nations Convention against Transnational Organized Crime plays an integral role in both legal systems. With the increase in immigrant in-flow to both Greece and Turkey, which are popular transit countries due to their critical position between two continents, the risks and dangers of human trafficking and human smuggling have risen and consequently the importance of regulations and provisions to

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<sup>201</sup> Report from the Commission to the European Parliament and the Council, Report on the progress made in the fight against trafficking in human beings (2016) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims 2) The Illegal Business of Human Trafficking- Maria Jião Guia, Springer, page 27, paragraph 6 3)Office of the

be taken increased. It is, further, very crucial to define the crime of trafficking of humans precisely and clearly lest it be confused with crime of sex work/slavery or mendicancy. Both the Turkish system and the Greek system stress on the presence of exploitation of helpless or vulnerable victims at the hands of perpetrators. Furthermore, as can be seen from case law examples, the will of the victim needs to be in fraud or in mistake, therefore ineligible, or absent altogether in order for courts to classify an act as trafficking of humans. The offense's tie to organized crime in a broader sense is also an important factor to be taken into consideration. Of course, all of these provisions foreseen by both Turkish and Greek systems would have fallen short in achieving proper humanitarian ideals without regulating ways to help the victims in discussion, such as suspending their deportation or providing psychological care and legal assistance and making sure these persons are integrated into the society.

We have found it fitting to share a poem for the end of our research. This piece of literature has been selected to highlight *what we are* to the crime of human trafficking and imply *what shall we do* i.e. to take action.

**The Witnesses<sup>202</sup>**

*There the black Slave-ship swims  
Freighted with human forms  
Whose fettered, fleshless limbs  
Are not the sport of storms.*

*There are the bones of Slaves;  
They gleam from the abyss;  
They cry, from yawning waves,  
We are the Witnesses*

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<sup>202</sup> [http://www.blackcatpoems.com/1/the\\_witnesses.html](http://www.blackcatpoems.com/1/the_witnesses.html)