

HUMAN TRAFFICKING



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Prologue

This research analyses the phenomenon of human trafficking. Human trafficking is considered a serious problem in the whole world and one of the most profitable crimes. The offense of human trafficking must be considered the twenty first century form of slavery. It is occurring in developed countries as well as undeveloped countries.

Specifically, we will try to define and explain the terms of "human trafficking" and "victim of human trafficking" and assess the causes of this phenomenon. Moreover, the victims of human trafficking cannot be easily identified, so in this research we will explain the characteristics and the challenges of the identification of victims and what could be the best strategies. Then, human trafficking and smuggling are both forms of irregular migration and share some similarities but they have some differences as well which we will display. What is more we will explain whether there exist any international and national instruments as regards protection of child any women trafficking victims and discuss which further steps should be taken for effective protection of such vulnerable groups. Finally, this research indicates what are the national provisions to be applied as regards the crime of human trafficking referring to case-law.

A) Define and explain the concepts of “human trafficking” and “victim of human trafficking” and assess the causes of human trafficking.

1. Human Trafficking

1.1 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 21st 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.’¹¹

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)

¹ 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). ² Alexis A. Aronowitz, Human Trafficking, Human Misery-the global trade in human beings, Praeger, 2009, p.1,2

3. Goals (for exploitation or the purpose of exploitation, which includes exploiting the prostitution of others, other forms of sexual exploitation, forced labor or services, slavery or similar practices, and the removal of organs)²

1.2 Forms of Human Trafficking

Human trafficking is the third most profitable criminal business after the drug and weapon trade.² 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.³ 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.⁴

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

² Maria_João Guia, *The Illegal Business of Human Trafficking*, Springer, 2015, p.44

³ Αικατερίνη Κουφογιώτη, *Σωματεμπορία (άρθρο 351 Π.Κ)*, σελ 5

⁴ 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)

which the victim is forced into sexual or labor abuse and slavery.⁵ 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).

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 problem⁶

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

⁵ Alexis A. Aronowitz, *Human Trafficking, Human Misery-the global trade in human beings*, Praeger, 2009, p.9

⁶ Maria_João Guia, *The illegal business of human trafficking*, Springer, 2015, p.4,5

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.⁷

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).

⁷ Michael J. Palmiotto, *Combating Human Trafficking, A Multidisciplinary Approach*, CRC Press, 2015, p. 91

3. Causes of human trafficking

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.⁸

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.

⁸ Maria_João Guia, *The illegal business of human trafficking*, Springer, 2015

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.

3.2 Specific Factors

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.⁹ 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 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.¹⁰

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.

⁹ Maria_João Guia, *The Illegal Business of Human Trafficking*, Springer, 2015, pp.24-25

¹⁰ <http://centerforglobalimpact.org/cgi-kids/4-causes-of-human-trafficking/>

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.¹¹

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.

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.¹²

B) How are the victims of human trafficking identified?

¹⁴It 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

¹¹ Louise Shelley, *Human Trafficking. A global perspective*, Cambridge University Press, 2010. p. 37

¹² Michael J. Palmiotto *Combating Human Trafficking, A multidisciplinary approach*, CRC Press, 2015, p. 91 ¹⁴ Unric.org

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.¹³ 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.

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.

¹⁴Usually human trafficking victims can be discovered in some of the mention below situations:

- 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·

¹³ Aspe.hhs.gov

¹⁴ NHTD

h. Begging, street peddling, or door-to-door sales.

¹⁵Victims of human trafficking may exhibit any of the following:

- 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.

¹⁶Certainly, 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. 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

¹⁵ Toolkit to combat trafficking in persons, Inter-agency coordination group against Trafficking in Persons, United Nations

¹⁶ Koufogioti Aikaterini, article 323A of the criminal code, page 12

- Delayed presentation of medical care
- Burn marks
- Frequent change of location or domicile

¹⁷ Psychological and Behavioral Clues Being able to indicate the psychological and emotional consequences of human trafficking can also be helpful in identifying victims. 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;
- 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;

¹⁷ NHTD

- 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.

¹⁸*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. 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 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

¹⁸ The Essential Abolitionist: What you need to know about human trafficking & modern slavery (2016.)

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.¹⁹ 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.²⁰ The international measures and movements became even greater in the decade of 1960. 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.²¹

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

¹⁹ 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)

²⁰ 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

²¹ The Illegal Business of Human Trafficking- Maria Jião Guia, Springer, chapter 2.4, page 25, paragraph 1, 2) Human Trafficking- Aikaterini S. Koufogiotti , page 7, 2)The International Politics of Human Trafficking- Gillian Wylie, palgrave macmillan, page 7, paragraph 2,3

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.²²

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.²³

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».²⁴

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

²² 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

²³ The Illegal Business of Human Trafficking- Maria Jião Guia, Springer, chapter 2.4, page 25, paragraph 3

²⁴ 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)

- 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.²⁵

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

²⁵ Human Trafficking- Aikaterini S. Koufogiotti, page 8, paragraph 2

of human trafficking will be more feasible, because of the transnational character of the crime.²⁶

C) Explain the similarities and differences between human trafficking and migrant smuggling.

A. 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.

I. Data and definitions

A recent report on trafficking²⁷, 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 appearance²⁸. 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

²⁶ 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 ²⁷Global Report on Trafficking in Persons, pg 6, United Nations Office on Drugs and Crime, 2016

https://www.unodc.org/documents/data-and-analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf

²⁸Id.

and recently arrived migrants²⁹. This is stage is crucial as during the migration route it appears that many factors could lead in the increase of these persons vulnerability³⁰. 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 of the 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 the one of migrant smugglers. For the purposes of the analysis below, it is imperative to examine the definitions of the terms above.

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 transporter³¹. 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

²⁹Id. Pg. 9

³⁰Id

³¹A. Aronowitz, *Human Trafficking, Human Misery: the global trade in human beings* (Global Crime and Justice, 2009), pg 3

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)
- b) Illegal entry in the destination country and asylum application (legal)³².

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 control³³. 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 Mediterranean³⁴.

II. 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 employment³⁵. 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

³²*Id.* pg 5

³³*Id.* pg 19

³⁴Tuesday 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>.

³⁵*supra* Aronowitz, pg 24

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 business organizations”³⁶. 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 situations³⁷. 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 country³⁸. 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 asylum³⁹. 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 Republic⁴⁰. 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 vulnerability⁴¹.

III. 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

³⁶*Supra*, A. Aronowitz, pg 24

³⁷*Supra*, Global Report, pg 60

³⁸*id.*

³⁹*Id.*, pg 61

⁴⁰International Centre for Migration Policy Development (ICMPD), Targeting vulnerabilities: The Impact of the Syrian War and Refugee Situation on Trafficking in Persons, December 2015

⁴¹*Supra*, Global Report, pg 64

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.

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 slavery⁴². 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 authorities⁴³. 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 smuggling⁴⁴, the comparison between these two states is referred as an “artificial distinction between trafficking and smuggling, between deserving and undeserving victims of human trade”.

B.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

⁴²*Supra*, A. Aronowitz, pg 2

⁴³*id.*

⁴⁴Maggy Lee, *Human Trafficking* 29, William Publishing, Portland USA, 2007

being smuggled generally cooperates and consents to the smuggling⁴⁵. 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 fortunate⁴⁶. 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 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. ⁴⁷ Smuggled migrants are vulnerable to life-threatening risks and exploitation; thousands of people have suffocated in containers, perished in deserts or

⁴⁵Human Trafficking, Human Misery ,The Global Trade in Human Beings, Alexis A. Aronowitz pg 8

⁴⁶<https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html?ref=menu>side

⁴⁷ Global Report on Trafficking in Persons, 2016, pg 8

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.⁴⁸

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

⁴⁸Human Trafficking, Human Misery ,The Global Trade in Human Beings, Alexis A. Aronowitz pg 7

- 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.⁴⁹

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).

⁴⁹<https://www.humanrightsfirst.org/resource/human-trafficking-numbers>

- 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.⁵⁰

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.
- 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).¹
- 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

⁵⁰<https://www.humanrightsfirst.org/resource/human-trafficking-numbers>

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.⁵¹

⁵¹ http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2017_Highlights.pdf

D) Explain whether there exist 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.

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 Crime⁵². 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 Nations⁵³. 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 Trafficking⁵⁴. 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 legislation⁵⁵. 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.

⁵² http://www.unodc.org/documents/data-and-analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf

⁵³ Article 2 of the Palermo Protocol

⁵⁴ Article 3 of the Palermo Protocol

⁵⁵ 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

The Council of Europe adopted the Convention on Action Against Human Trafficking to promote the coordination among the member states, taking into consideration 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 violation⁵⁶. 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 implemented⁵⁷.

a project on the human trafficking and today approximately 25 members The European Commission established the anti-trafficking policy⁵⁸ to support and enhance the coordination between the EU member states and tackle the crime more efficiently. In 5th 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 traffickers⁵⁸

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

⁵⁶ <http://www.un.org/womenwatch/daw/cedaw/>

⁵⁷ UN Convention on the rights of the child, articles 33 and 35

⁵⁸ EU policy “TOGETHER AGAINST THE TRAFFICKING IN HUMAN BEINGS”

https://ec.europa.eu/anti-trafficking/institutions/eu-anti-trafficking-coordinator_en⁵⁸

<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32011L0036>

operation Akoma, Nawa and Tuy⁵⁹. During such operations, the officers of INTERPOL 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 60 .

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 Report⁶¹ 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

⁵⁹ 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>)

⁶⁰ <https://www.europol.europa.eu/crime-areas-and-trends/crime-areas/trafficking-in-human-beings>

⁶¹http://www.nchr.gr/images/pdf/apofaseis/emporia_anthrpwn/Apofasi_gia_trafficking.08.2007.pdf

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. 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.’⁶² One of the large-scale campaigns organized by the Office is “BREAK THE CHAIN- BtC”⁶³ that has actions all over Greece on 1st and 2nd of December when is the International Day for the Abolition of Slavery. 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.⁶⁴ 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

⁶² <https://www.mfa.gr/exoteriki-politiki/pagkosmia-zitimata/paranomi-diakinisi-prosopon.html>

⁶³ <http://www.breakthechain.gr/>

⁶⁴ <http://www.nchr.gr/index.php/el/2013-04-03-10-13-40/2013-04-03-10-14-20>

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 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 19th 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,⁶⁵ 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'. 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

⁶⁵ <https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271195.htm>

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 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.

E) What are the national provisions to be applied as regards the crime of human trafficking?

The phenomenon of trade in human beings and human smuggling affects every country in the world. ⁶²Despite the universality of this modern form of slavery it seems that a plethora of different factors, for example, economical, institutional and geographical⁶³ ones, create an unequal division of labor between countries⁶⁴. The problem is particularly explicit in Europe, where smuggling and trafficking in humans is disparate between different states. Specifically, Germany, Greece, Italy, Belgium and Netherlands⁶⁵ are considered as “major destinations”, due to the intensity of this phenomenon.

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

⁶²Freedom Project. (2013). Human trafficking affects every country in the world. from [http://www.thefreedomproject.org/human- trafficking/](http://www.thefreedomproject.org/human-trafficking/).

⁶³ Athanasia.P. Sukioutou Human trafficking in the Balkans page 21 Sakkoulas 2003.

⁶⁴“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

⁶⁵Louise Shelley, Human Trafficking A Global Perspective-Trafficking in Europe, George Mason University, pp. 20

trafficking in an attempt to follow the international regulations and provisions, in order to best tackle the specific crime.^{66 67}

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.⁶⁸ The latter Law introduced many changes into the Greek penal code and managed to regulate all forms of human trafficking.⁶⁹ 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.

1.2. The integration of law 3064/2002 and its contribution to the Greek criminal law.

1.2.1. The dilemma of permitted analogy in criminal law

⁶⁶ Nikolas Hatzinikolaou, The drifting of the vulnerable victim in the crime of human trafficking- Dialogue with case-law, Criminal LawNØ/2009, pp. 492

⁶⁷ 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.

⁶⁸ 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 Law2/2008, pp. 220-221

⁶⁹ Plenary decision by the National Committee for Human Rights, 14.6.2007,“Human Trafficking – the State of Affairs in Greece.” Criminal Law10/2008, pp. 1209-1210 ⁴ As above.

Of the changes this law brought about, the most crucial ones was, firstly, the introduction of article 323A Criminal Code⁷⁰, 348A CC and article 351A CC secondly, the amendments to articles 338 CC, 340 CC, 344 CC, 348 CC, 351CC.4 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 major dilemma of criminal law; Prohibition of analogy or permitted interpretation of the penal statute⁷¹ (nullum crimen nulla poena sine lege scripta et certa).

The recent judgment 68/2011 of the First Instance Judicial Court of Peloponnese⁷² enlightened the necessary modifications of the Greek criminal law system, 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 mendicity requires firstly the coercion of mendicity and foremost the coercion of the victims to give all their money to the perpetrators”*.⁷³

⁷⁰ Hereby C.C

⁷¹ Prohibited Analogy & Permitted Interpretation of Penal Statutes; A Contribution to the Methodology of Criminal Law Kostantinos Tsinas, 2008

⁷² ΣυμβΠλημΚαλαμ 68/2011, ΠοινΔικ 10/2011 page1061-1062

⁷³ 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 N. Triantafyllou, Analogy in criminal trial, Elliniki Dikaiosyni,1990,pp.300

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 crimes⁷⁴ 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 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 damage.⁷⁵

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

⁷⁴ Supreme Court's decision No. 854/2010, Judicial council of Aegean Court of Appeals, Decision No. 32/2005. Furthermore, Poiniki Dikaiosini, 2005/672, Poinika Chronika, 2011/29, Poiniki Dikaiosini, 2015/920.

⁷⁵ SC Decisions No.383/2015, No.955/2016,No.1031/2016,No.1682/2016

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 181.1CC⁷⁶. In Greece for 2016 as the “Review for the serious and organized crime in Greece for 2016”⁷⁷, conducted by the Hellenic Police, concluded that 16 criminal organizations employed in trading in humans were dismantled⁷⁸ half of those organizations had international scope and used to cooperate with international criminal shells⁷⁸. It is also clear from case law illustrations that articles 323CC and 187CC are closely related and jointly enforced⁷⁹. Moreover, both case law and the data collected by the Hellenic police⁸⁰ suggest that the modus operandi of those criminal organizations remained constant ever since Law 3064/2002 was introduced. 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 payment⁸¹ in the country of exploitation.

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

⁷⁶ Athanasia Sykiotou, European Union – Organized crime- Illegal trafficking in human beings: an eccentric dynamic- dialectical relationship, Criminal chronicles NH 2008,pp202.

⁷⁷ 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/files/17/07112017ethsiaekthesi2016.pdf>⁷⁸

As above

⁷⁸ As above

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ΕφΑΘ2993/2004,ΒουΣυμβΕφΘεσ491/2007,ΕφΑΘ1571/2003,ΕφΠατρ110/2011,ΜΟΔΣεpp3746/2005,ΕφΑΘ1152/2005.

⁸⁰ As above

⁸¹ As above

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 beings⁸²⁸³.

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 CPC⁸⁴. 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.⁸⁵

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 different modes of protection for victims of human trafficking, while harmonizing the existing legal framework by virtue of Directive 2011/36/EU⁸⁶⁸⁷. The novelty of this

⁸² Particularly, regarding the felonies stipulated by article 323A CC , paragraphs 1, 2, 4, 5, 6, article

⁸³ 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.

⁸⁴ 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

⁸⁵ Explanatory Memorandum to the draft law on the prevention and combating of human trafficking and the protection of its victims rights., 21.08.2013

⁸⁶ As above

⁸⁷ Angelos Konstandinidis, Criminal Procedure, Sakkoulas, Athens, 2017, pages 360- 370 ⁸⁸ 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.

article is that the investigation for many crimes is allowed to include special questioning acts.

87 88

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)⁸⁸. 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^{89 91} and the provided assistance while residing in the country.⁹⁰

⁸⁸ 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.

⁸⁹ 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. ⁹¹ 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.

⁹⁰ 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.

As often is the case, so called “victims” can exploit the system.⁹¹ The Greek legal order protects victims by allowing them reside in the country and be affected welfare. This 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.^{92 93}

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 circumspection 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.

⁹¹ ΠλημΑΘ 2648/2008 Poinika chronika ΝΘ/2009 page 63

⁹² NB/2002: “Key considerations for addressing cross-border crime by criminal law” Charalambakis Aristotelis Criminal chronicles, page 100

⁹³ Criminal chronicles NZ: "Particularities of the criminal proceedings against foreigners" Theocharis Dalakouras, 2007 page 193-197

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.

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.

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 Crime⁹⁴, it mainly focuses on the prevention of trafficking and the protection and assistance of the victims, with full respect of their human rights⁹⁵.

⁹⁴ Greece ratified it on 13/12/2003, yet it had not entered into force until 11/1/2011.

⁹⁵ 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.

3.1. European Union and Council of Europe legal actions

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 Directives⁹⁶, 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.

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 recovery to the victims, which is offered regardless of the cooperation of the victim with the criminal authorities⁹⁷. 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 territory⁹⁸.

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. Greece⁹⁹: The Court found in particular that the effectiveness of the preliminary inquiry and subsequent investigation of the case had been compromised by

⁹⁶ 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

⁹⁷ 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.

⁹⁸ 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>

⁹⁹ (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

a number of shortcomings. 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 Convention¹⁰⁰¹⁰¹¹⁰², 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

2) *Chowdury and Others v. Greece*¹⁰³:. The Court held that there had been a violation of Article 4 § 2 of the Convention¹⁰⁴, 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*¹⁰⁵, 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 cases¹⁰³.

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.

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

¹⁰⁰ Right to a fair trial within a reasonable time

¹⁰¹ 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 ¹⁰⁴ Prohibition of forced labour

¹⁰² September 2016

¹⁰³ 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

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.EL.P¹⁰⁴, could allow victims to raise their voice.

Conclusion

It is widely accepted that the main scope of anti-trafficking policies is to protect the potential victims. Therefore, the importance of the identification of victims is vital. As already referred, everyone could experience the phenomenon of human trafficking. However, there are several criteria, which traffickers take into account while they choose their victims. So, all trafficking victims share some common characteristics, such as the fact that they come from countries with high rates of poverty or that they lack opportunities for education and family support.

Nevertheless, the difficulty in recognizing a potential victim remains insurmountable. Despite of the numerous clues that are able to indicate human trafficking

¹⁰⁴ 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.

(psychological, behavioral, physical), the authorities often fail to diagnose the situation. This is due to the lack of human trafficking awareness among victims, who refuse to characterize themselves as victims of human trafficking, and police officers. Consequently, the measures that have been taken so far either at European Union either at international level appear to be not effective enough. Thereby, states should improve their strategies and try to approach the victim with a more perceptual optic, in order to facilitate the process of identification. For example, they could develop information campaigns to promote awareness for human trafficking to public and strengthen the capacity of law enforcement agencies to arrest and prosecute those involved.

As it wisely said, “human trafficking and migrant smuggling is definitely a human right issue, but it cannot (should not) be dealt as a human right issue”.¹⁰⁵ The aforementioned analysis reveals in the most comprehensive way the complexity of human trafficking especially concerning the link between migrant smuggling. It is, without doubt, accepted that the crime of smuggling should be confronted by the competent authorities, regarding the recent incline of number of migrants who cross the European borders. 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 in the punishment of the traffickers, which includes arresting the offenders and dismantling the criminal networks that exploit the victims.

A legal framework has been developed, in order to combat human trafficking and protect women and children, who are its more common victims. Especially, the United Nations and European Union have taken actions and have contracted numerous conventions referring to this topic. Some significant examples are the Convention on Action Against Human Trafficking of the Council of Europe and the UN Global Plan

¹⁰⁵ Bengia Vickey, Should human trafficking and migrant smuggling be dealt as human rights issue ?, https://www.academia.edu/9088923/should_human_trafficking_and_migrant_smuggling_be_dealt_as_human_rights_issue_

of Action to combat trafficking in persons. Moreover, organizations were created to take part in the elimination of human trafficking. International Criminal Police Organization (INTERPOL) and European Union Enforcement Agency (EUROPOL) have developed a great role so far.

As a result, states criminalized human trafficking in their national legislation. In Greece, two national organizations have been found; The Office of the National Rapporteur on Human Trafficking and National Commission of Human Rights. They collaborate with international organizations, NGOs and the Hellenic Police Unite to increase public's awareness and take action through the investigation.

Even though, these meters are not efficient enough. More measures need to be taken, such as the elimination of the lack of control in borders, fight of corruption and international cooperation to protect woman and children, providing free psychologists, lawyers and centers.

Greece is considered as one of the "major destinations" for human trafficking. The national provisions that regulate this subject are found in Law 3064/2002, Law 3875/2010 and in articles 323 CC, 351 CC (that regards sexual exploitation) and 187 CC that puts human trafficking in the list of organized crime. Also, Law4198/2013 and article 253A CPC. However, a problem that occurs with the current regulation is that victims are often deported before the jury and that the national authorities tend to disobey the procedural obligations.