

UiO : **Faculty of Law**  
University of Oslo

# LEGAL PROTECTION FOR VICTIMS OF HUMAN TRAFFICKING

Candidate number: 8016

Submission deadline: 01.12.2018

Number of words: 18877



## Table of content

<b>Introduction.....</b>	<b>3-4</b>
<b>Chapter I General characteristics of human trafficking.....</b>	<b>6-11</b>
1.1 History of Human Trafficking.....	5-6
1.2 Reasons and main models of human trafficking.....	6-11
1.2.1 Reasons of Human Trafficking.....	6-8
1.2.2 Main forms of human trafficking in the modern era.....	8-11
<b>Chapter II Sources of Law in Human Rights Law in the Context of Human Trafficking.....</b>	<b>12-31</b>
2.1 Human Rights Protection in the International Legal Framework (sources of law).....	12-19
2.2 Human Trafficking as a violation of Human Rights.....	19-23
2.2.1 Human Trafficking in the UDHR and the ICCPR.....	19
2.2.2 The Regional Framework of the EU in relation to Human Trafficking.....	19-21
2.2.3 Other Major Treaties that relate to Human Trafficking.....	21-23
2.3. Protection of victims in international law and European Law.....	23-25
2.3.1 International legal protection system of victims of human trafficking.....	23-25
2.4 Interstate treaties and organs of protection of victims of Human Trafficking in Europe.....	25-31
2.4.1. Legal framework of the European law for Human trafficking.....	25-31
<b>Chapter III State obligation for protection, prevention and compensation of victims of human trafficking.....</b>	<b>31-39</b>
3.1 State obligation for protection and promotion of victims of human trafficking.....	33-35
3.2 State obligation for prevention of victims of human trafficking.....	35-38
3.3 State Obligation: Related To Repatriation And Remedies Of Victims Of Human Trafficking.....	37-39
<b>Conclusion.....</b>	<b>40-42</b>

## Introduction

The trafficking of women and children is a grim reality of our time. Despite the fact that slavery was abolished two hundred years ago, in our time the practice has been revived. According to the International Labor Organization (ILO) that there are 40.3 million victims of human trafficking globally<sup>1</sup> each year men, women and children are bought, sold, transferred and detained against their will in condition similar to the slavery we know from history.<sup>2</sup> Human trafficking according to the assessments of experts ranks third in the major activity of international organized crime just behind the arms and drug trade<sup>3</sup>.

The United Nation (UN) Center for International Crime Prevention shows that annually, the global market in human trafficking creates twelve billion US dollars. The UN International Children's Emergency Fund (UNICEF) reports that: if measures are not taken, then trafficking in human beings will soon be similitated with the sale of drugs. Moreover, there is a basis to assume that the profit from human trafficking are directed to the financing of terrorism.<sup>4</sup> Mostly victims of human trafficking are women and girls. Men are much less likely to be trafficked.<sup>5</sup> According to the United States (US) Central Intelligence Agency (CIA); that in Europe men are 2% of the total numbers of victims. Approximately, 80-90% of trafficking victims are sexually exploited.<sup>6</sup> The prominent human rights provided by all international legal documents in the field of human rights are, the right to life, freedom, personal integrity, the right to move freely, choose a place of stay and residence, the right of labor and other lawful activities.

Human trafficking is a serious violation fundamental human rights and this cruel crime is mostly committed by organized group. This problem bears international character and it has been at the center of discussions at the international level for more than a century. Different definitions of human trafficking were formulated in different times in the documents of the UN, ILO, International organizations for migration (IOM), the Council of Europe (CE), as well as a number of forums and conferences devoted to this topic. Despite the growth of information and awareness of the problem of human trafficking, it still remains an unresolved

---

<sup>1</sup> Forced labour, modern slavery and human trafficking, (<https://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>)

<sup>2</sup> Trafficking in Persons Report. Released by the Office to Monitor and Combat Trafficking in Persons. [Electronic resource] – 2002. - June 5. - P. 6. - <http://www.state.gov/g/tip/rls/tiprpt/2002/>

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Conference Human Trafficking in International Law, Professor Tom Obokota, Shool of Law. (<https://www.youtube.com/watch?v=4PU8QubNmmQ&t=240s>)

<sup>6</sup> Caldwell G., Galster S., Steinzor N. Crime & Servitude: An Expose of the Traffic in Women for Prostitution from Newly Independent States // Trends in Organized Crime. – New Brunswick, Summer 1998. - Vol.3, N 4. – P.10-18.

issue in the global context in regard to developing a more precise and legal and policy models that can effectively combat this crime.

Thus, the main research question of this thesis is to disclose human trafficking in terms of human rights. This thesis is divided into three chapters a conclusion and bibliography. In the first chapter this research discloses general characteristics of human trafficking. The paper will start from first section of history describing the source of human trafficking, how human trafficking develops in countries and how people exploit or are exploited through human trafficking. The second section will describe the reasons of human trafficking, definitions of human trafficking and elements of human trafficking. Also, second section will discuss the main forms of human trafficking and define each element separately.

The second chapter will describe the sources of law which focus on human rights law in the context of human trafficking. We will identify which international legal sources are appropriate for protection of victims of human trafficking. Section one will explain what the general international legal instruments for human rights are, how they are related to human trafficking, how accurately they are able to confirm violations human trafficking as violation of human rights. Also, we will look at other special legal instruments for human trafficking that describe violations of human trafficking, and discuss the normative as well as the established definitions and terminology in relation to human trafficking. Section two will examine human trafficking as violations of human rights by discussing the following legal sources, the Universal Declaration for Human Rights, the International Covenant Civil and Political rights, the Regional Framework of the EU in relation to Human Trafficking, as well as some case law and protocols.

Section tree will the turn to the Protection of victims in international law and European Law, Interstate treaties and organs of protection of victims of Human Trafficking in Europe will be set out here.

The third chapter will discuss state obligation for protection, prevention and compensation of victims of human trafficking. We shall explore the difficulty faced by states from a legislative, case law and law enforcement capacity building perspectives, to properly face down this insurmountable issue. From here we will develop a final conclusion on the effectiveness of the international system that exists today and make suggestion on what we believe are the major issues that inhibit the global order to better deal with human trafficking. Based on the laws, the

cases that follows and a historical knowledge of this tragic phenomenon, we hope to offer a perspective that is informed and how to improve the legal system on a global and regional level.

# 1. Chapter I General characteristics of human trafficking

## 1.1 History of Human Trafficking.

Social and legal research illustrates that human trafficking is a social phenomenon that has accompanied humanity throughout the entire period of its development. In order to understand the social characteristic of human trafficking as a social phenomenon we must identify and the origins of this practice. The source of modern human trafficking is slavery.<sup>7</sup>

From ancient times until the 1800's governments recognized and encouraged slavery and saw it as a condition for the success of civilization. However, the practice of slavery distorted the public consciousness of the citizens of slave states. Thus, the moral foundations of slave societies, where different from our own, often having negative consequences in all human relations, even in family relations. This resulted in the development of new forms of slavery, for example, in Rome a child could be enslaved for disobeying his father<sup>8</sup>. According to Assyrian law, a child from a poor family could be transferred to a rich family for "feeding" with the condition of using the child's labor and the controlling of his/her future labor<sup>9</sup>. Such laws have been observed in many societies throughout human history.

The United Kingdom banned slavery in its empire in the early 1800's and since that time slavery has been abolished in most human societies, now reflected in many international conventions, treaties and laws. Thus, slavery being an illegal activity in our present age, has now inhabited the underground world of organized crime.

Slavery is closely connected with prostitution and sexual exploitation. The slave trade has always contained two major factors, the economic exploitation of individuals and the sexual exploitation of women and children<sup>10</sup>.

Sex trade played an important role in the flourishing of the slave market.<sup>11</sup> We can see in many modern states, slavery is and has been associated with prostitution<sup>12</sup> and the exploitation of sex workers. Human trafficking under the influence of different factors evolved into a qualitatively new form of sexual exploitation. This new form actualized current problems and challenges in

---

<sup>7</sup> Book: Human Trafficking edited by Maggy Lee., p.3

<sup>8</sup> Cameron, Sally, and Edward Newman. Trafficking in Humans: Social, Cultural, and Political Dimensions. Tokyo: United Nations University Press, 2008. – P. 14.

<sup>9</sup> Ibid, p.34

<sup>10</sup> Human Rights and Human Trafficking, Fact Sheet No 36 – New York and Geneva, 2014., p.7

<sup>11</sup> The gender dimension of Human Trafficking, Human Misery: The Global Trade in Human Beings. Global Crime and Justice. Westport, Connecticut: Praeger 2009. P.27

<sup>12</sup> Aronowitz, Alexis A. Human Trafficking, Human Misery: The Global Trade in Human Beings. Global Crime and Justice. Westport, Connecticut: Praeger, 2009. – P.27

the middle twentieth century and international community now recognizes human trafficking as an important global problem<sup>13</sup> as the new global problem of modernity is human trafficking.

## **1.2 Reasons and main models of human trafficking.**

### **1.2.1 Reasons of Human Trafficking.**

Philosophers, scientists and legal scholars dedicate their lives to combatting human trafficking. Human trafficking is a wide catastrophe which includes such cruel crimes as slavery or modern slavery, prostitution, sexual exploitation<sup>14</sup>, forced labor, organized crime, migration etc.<sup>15</sup> Women and girls are forced into labor, of which, 99% is of a commercial sex nature. It could be said that human trafficking is based on the exploitation, torture and suffering victims. That is why human trafficking is considered a multidimensional human rights violation<sup>16</sup>.

According to the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children<sup>17</sup>, the definition of human trafficking is determined by the three constituent elements. This paper will discuss in detailed these elements, in order to highlight the most important issues regarding this phenomenon.

The first element *action* can be understood as the recruitment, transportation, transfer, harboring or receiving of persons. This element is connected with the lowest level of exploitation in regard to the transportation of women. Transportation is a general term and does not define any particular means or kind of transportation.<sup>18</sup> Under the transportation of victim we can understand arriving of victims to country of destination and transportation of victim from one place to another in during her job. In the first case transportation does not include exploitation. However, in second case transportation is considered as element of exploitation. Most of the victims during arriving to country of destination do not yet know their future fate and that they are being be deceived. In other words, they are only potential victims.

The second element is the *means* which we understand as, a threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or the giving payments or benefits

---

<sup>13</sup> International Labour Organization, Global Estimate of Forced Labour 2012: Results and Methodology

<sup>14</sup> Book: The International Law of Human Trafficking, Anne T.Gallagher, p.18.

<sup>15</sup> Human Trafficking edited by Magg Lee

<sup>16</sup> Human trafficking and exploitation: A global health concern, Cathy Zimmerman\* and Ligia Kiss  
(<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5699819/>)

<sup>17</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Article 3.

<sup>18</sup> Book: The International Law of Human Trafficking, Anne T.Gallagher, p.30

to a person in control of the victim. This element determines and divides migration smuggling from the trafficking. Trafficking is an exploitation-based offense against a person and does not require movement across borders or any type of transportation. In other words, smuggling is transportation-based and involves movement. Trafficking is exploitation-based.<sup>19</sup>

Thirdly there is the *purpose* which we define as; acts of exploitation, which includes the forcing individuals into prostitution, other forms of sexual exploitation, forced labor, slavery or similar practices as well as the removal of organs. This *purpose* element indicates that the violations are sexual and exploitive and thus the element can clearly be defined as trafficking, because victims at this stage experience actual involuntary violation of their freedoms. Clearly, at this point they know that they are exploited.

All these crimes are directly connected with violations of human rights because victims experience an often brutal absence of their most basic rights<sup>20</sup>. As we have established persons are trafficked for purposes of sexual exploitation and/or forced labor<sup>21</sup>. One of the reason that human trafficking exists today is due to its relationship to poverty, especially in the developing world. Many poorer areas of the world such as in Central Asia, Africa<sup>22</sup>, the Middle East<sup>23</sup>, Latin America and some Balkan countries.<sup>24</sup> girls and young women have been or lured with promises of a better life.<sup>25</sup>

The UN Secretary General said in his report on “International migration and development” that one of there is an alarming demand for cheap labor that has increasingly resulted in forced labor. Difficult economic conditions and severe unemployment in villages and small towns along with poverty, weak social and economic structures, organized crime, government corruption, political instability, armed conflict result in people feeling their homes often without any economic safety. In some countries, custom is privileged, and cultural traditions are the causes of human trafficking and contribute to the globalization of these problems<sup>26</sup>, for example in Kyrgyzstan according to the tradition, when a Kyrgyz man, wants to get married for the first

---

<sup>19</sup> The difference between human trafficking and smuggling

<sup>20</sup> Human Trafficking, edited by Maggy Lee, p.3-7.

<sup>21</sup> Human Rights and Human Trafficking, Fact Sheet No 36 – New York and Geneva, 2014., p.7

<sup>22</sup> Global Sex Workers: Rights, Resistance, and Redefinition / Ed. by Kamala Kempadoo and Jo Doezema. New York, 1998. – 224 p.

<sup>23</sup> Global report on trafficking in persons 2014

<sup>24</sup> Global report 2012 Human Trafficking in persons, p.10.

<sup>25</sup> Ibid.

<sup>26</sup> International Migration and development: Report of the Secretary // Sixty-ninth session Item 21 (a) of the provisional agenda «Globalisation and interdependence International migration and development» // United Nations, A/69/XXX General assembly Distr.: General 30 July 2014.



time, he picks a bride and starts to arrange her kidnapping. Such crime can be classified as human trafficking within one country.<sup>27</sup>

### **1.2.2 Main forms of human trafficking in the modern era.**

There are forms of human trafficking such as bonded labor or debt bondage, chattel slavery, early and forced marriage, forced labor, commercial sexual exploitation of children and women, involuntary domestic servitude, slavery by descent, child trafficking, child labor, child soldiers.<sup>28</sup>

Bonded labor is closely associated with slavery. Victims are convinced into taking noncommercial black-market loans that the victim often finds unable to repay. Repayment is often not only financial; loan sharks may also take the debtors shelter or food and kidnap or torture them until they repay.

Chattel slavery is defined when individuals are bought and sold as commodities. Such form of trafficking were practiced in the US until 1865<sup>29</sup>. For example today chattel slavery in countries with the most chattel slavery include the East African countries of Mauritania and Sudan. Within these countries people can experience being bought and sold as if they were a commodity. Mostly women and young girls are sold in due poverty, corruption etc.<sup>30</sup>

Early and forced marriage directly concerns women and girls. Women or girls are forced married without choice<sup>31</sup>. Law enforcement and judicial organs often do not consider or ignore such actions to constitute crimes, rather, they are conferring to the national traditions.<sup>32</sup> States should bear full responsibility for these crimes.

Thus, force marriage is a form of trafficking even if it occurs within the territory of a state. Force marriage results in crimes including violence or rape against the consent of victim.

Forced labor is characterized by an individual being forced to work against her or his will, without compensation, with restrictions on freedom, and under violence or the threat of violence. This term is also sometimes used in reference to all forms of human trafficking.<sup>33</sup>

Today forced labor is practiced more than other forms. People migrate from poor countries to

---

<sup>27</sup> Bride kidnapping in Kyrgyzstan: crime and tradition overlap (<https://www.irishtimes.com/news/world/asia-pacific/bride-kidnapping-in-kyrgyzstan-crime-and-tradition-overlap-1.2456467>)

<sup>28</sup> From Human trafficking to human rights, edited by Alison Brysk and Austin Choi-Fitzpatrick, p.173

<sup>29</sup> Ibid.

<sup>30</sup> Eight facts about chattel slavery (<https://borgenproject.org/eight-facts-chattel-slavery/>)

<sup>31</sup> International Migration and development: Report of the Secretary // Sixty-ninth session Item 21 (a) of the provisional agenda «Globalisation and interdependence International migration and development» // United Nations, A/69/XXX General assembly Distr.: General 30 July 2014

<sup>32</sup> Kyrgyzstan: New rape case highlights need for immediate action to end appalling “bride kidnapping” practice. [z\(https://www.amnesty.org/en/latest/news/2018/06/kyrgyzstan-new-rape-case-highlights-need-for-immediate-action-to-end-appalling-bride-kidnapping-practice\)](https://www.amnesty.org/en/latest/news/2018/06/kyrgyzstan-new-rape-case-highlights-need-for-immediate-action-to-end-appalling-bride-kidnapping-practice)

<sup>33</sup> Ibid.

rich countries to earn money. And people cannot know that they are working over time without compensation because they do not know their rights or have been denied access to justice by their exploiters. Moreover, they agree because of lack of legal knowledge and their status as foreigners. In some countries obligatory summer labor in for all citizens forces entire populations to do unpaid labor. For example, every year the government of Uzbekistan forcibly mobilizes over a million citizens to grow and collect cotton<sup>34</sup>. In this case the state is actually the trafficker of its own citizens and thus the violator of the rights we have discussed. Therefore, forced labor is a situation where people are forced to work not under their own will, but under the threat of violence or other forms of punishment, and their freedom is severely limited.

Women and girls are disproportionately affected by forced labor, accounting for 99% of the victims of commercial sex<sup>35</sup>. If we look at a case law example, *Siliadin v. France*<sup>36</sup> is helpful in our understanding of forced labor. The applicant, a Togolese national having arrived in France in 1994 with the intention to study, was made to work instead as a domestic servant in a private household in Paris. Her passport confiscated, she worked without pay, 15 hours a day, without a day off, for several years. The applicant complained about having been a domestic slave. The Court concluded that the applicant had been held in servitude, in violation of Article 4 (prohibition of slavery, servitude, forced or compulsory labor) of the European Convention on Human Rights.<sup>37</sup> Thus, this case defined human trafficking concerning to forced labor, but forced labor is one of the elements of human trafficking<sup>38</sup>. Secondly the court found the state to have responsibility in this case. The state therefore is primarily responsible in the fight against human trafficking.

Involuntary domestic servitude is a form of forced labor which starts off when an individual seeks out domestic work. Trafficking begins from when the employer uses force, fraud and/or coercion to maintain control over the individual and to cause the worker to believe that she or he has no other options but to continue in the position<sup>39</sup>.

Sex trafficking is an extremely terrible form of human trafficking in which a commercial sex act is committed through the use of force, fraud, or coercion<sup>40</sup>. Victims of sex trafficking can

---

<sup>34</sup> Human right report May 25, 2018 (<https://www.hrw.org/news/2018/05/25/new-research-shows-forced-labor-still-rampant-uzbekistan>)

<sup>35</sup> International Labor Organization website (<https://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>)

<sup>36</sup> *Siliadin v. France*, Application no. 73316/01

<sup>37</sup> Slavery, servitude, and forced labour ([https://www.echr.coe.int/Documents/FS\\_Forced\\_labour\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Forced_labour_ENG.pdf))

<sup>38</sup> See above, section 1.2 Reasons and main models of human trafficking.

<sup>39</sup> Human Trafficking, Interdisciplinary perspectives. Mary C. Burke.

<sup>40</sup> What is Human Trafficking? (<https://oag.ca.gov/human-trafficking/what-is>)

be girls, boys, women, or men-although the majority are girls and women. As we have said before, this form of trafficking is the source of the highest levels of suffering and devaluation of human dignity. This form includes a variety of methods of control over the victim, namely; confinement, physical abuse, forced drug use etc.

Victims suffer from psychological and physical pain during their servitude and thus the result is an extremely high mortality rate<sup>41</sup>. In China there is a developing black market for brides. In 2013 according to statistic in China there is a gender imbalance of 697, 2 million men to 663, 4 million women. Men, especially those who live in rural regions struggle to find brides. According to social media in China women from Vietnam, Cambodia, are sold per person at around 2.5 thousand US dollars<sup>42</sup>.

Child trafficking involves displacing a child for the purpose of economic exploitation. In the case of children, force, fraud and coercion do not need to be demonstrated. For example, UNICEF states, that 1, 2 million children are exploited in the aim of trafficking<sup>43</sup>.

Child trafficking means that children are sold for the sexual exploitation or child labor.<sup>44</sup> For example, India has world's highest number of stunted children, child workers in due poverty. Around 31 millions, of children are work forced, this is highest number in the world.<sup>45</sup> Children suffer physically and psychologically. Harmful conditions adversely affect their health. The Worst Forms of Child Labour Convention No.182<sup>46</sup> clarifies what constitutes this violation. Also, the definition "unconditional" includes the using, procuring or offering of a child for prostitution, for the production or pornography or for pornographic performances and the use, procuring or offering of a child for illicit activities.<sup>47</sup> Also here, child soldiers involves children forced into labor or sexual exploitation by armed forces. In this case, traffickers may be government military forces, paramilitary organizations, or rebel groups.

Human trafficking is also one of the most highly profitable types of organized criminal activity. According to the United Nations Office on Drugs and Crime, human trafficking around the world is estimated at \$ 32 billion. According to other sources this activity is estimated at \$ 105,

---

<sup>41</sup> Human Trafficking: The Role of the Health Care Provider (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3125713/>)

<sup>42</sup> Buth Reaksmei Kongkea, "Police raid terminates alleged virginity sale," Phnom Penh Post, June 2, 2014

<sup>43</sup> URL: [http://www.un.org/slavery/trust\\_fund/slavery\\_form.html](http://www.un.org/slavery/trust_fund/slavery_form.html).

<sup>44</sup> Human Trafficking- Human Rights, Law and Practice, Sandhya Drew, p.114

<sup>45</sup> India has world's highest number of stunted children

<sup>46</sup> C182 - Worst Forms of Child Labour Convention, 1999 (No. 182), Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Entry into force: 19 Nov 2000)

<sup>47</sup> <https://oko-planet.su/politik/politiklist/289127-raby-i-rabovladelcy-torgovlya-lyudmi-v-sovremennom-mire.html>, have been translated from Russian into English.

2 billion. That means that it is impossible to assess the real financial figures of such criminal activity.<sup>48</sup>

In the modern conditions of globalization, migration has increased, therefore, human trafficking has acquired a much more transnational character. Human trafficking is carried out with the aim of labor and sexual exploitation, illegal adoption, trafficking of human organs and tissues. In 2004, the 57th session of the International Health organization on called participants of the organization to accept measures for the protection of poor and vulnerable groups of people from transportation and sale of organs and tissues.<sup>49</sup> In addition, the attention of law enforcement bodies to the problem of human trafficking is growing as they try control the processes of migration and the activity of international criminal groups which carried out the human trafficking. But on the other hand, the efficiency of activity of organized criminal groups are supported by corrupt relations with law enforcement bodies, customs officials, consuls and migration services. Moreover, according to the report by the State Department of the US, corruption in the government is one of the main causes of human trafficking.<sup>50</sup>

Human trafficking acquires an international character and is closely connected with other crimes as fraud, extortion, money laundering, bribery of officials, "hiring" drugs, etc. <sup>51</sup> Kevin Beils writes that: "might be sure, that the owner of a brothel is connected with organized crime, but ... organized crime includes the police and the government. In addition, the support of modern slavery seems not just like criminal activity, but like capitalism".<sup>52</sup> Here we can see that the state responsibility exhibits weak power, corruption, and allows of violation of human rights. In Thailand but also in the Philippines, Cambodia and Indonesia including the islands of Bantam and Karman, sex work also accounts for a high percentage of the GDP<sup>53</sup>.

Some experts note that human trafficking is a much more profitable business than the trade in drugs and weapons. Drugs and weapons can be sold only once, while the services of a woman or a slave can be sold again and again. Therefore, the registered growth of organized crime and its further globalization lead to the spread of human trafficking and their further exploitation.<sup>54</sup>

---

<sup>48</sup> URL: <http://www.unodc.org/unodc/human-trafficking-fund.html>.

<sup>49</sup> Ibid.

<sup>50</sup> ILO Action Against Trafficking In Human Beings. International Labor Organization, 2008. – 33 p.

<sup>51</sup> Book: Louise Shelley, Human Trafficking: A Global Perspective (Cambridge University Press, 2010).

<sup>52</sup> Bales K. Disposable People: New Slavery in the Global Economy. Berkeley and Los Angeles: University of California Press, 1999. – P. 24.

<sup>53</sup> Bales K. Disposable People: New Slavery in the Global Economy. Berkeley and Los Angeles: University of California Press, 1999. – P. 122

<sup>54</sup> Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report. - US State Department, 2005.

## II. Chapter II Sources of Law in Human Rights Law in the Context of Human Trafficking

### 2.1 Human Rights Protection in the International Legal Framework (sources of law)

International law comprises various sources, which in order of priority are: jus cogens or peremptory norms of international law, international conventions, international custom and practice and general principles of law and judicial decisions.<sup>55</sup>

The international protection of victims of human trafficking, can firstly stem from jus cogens international law principles.<sup>56</sup> These norms are linked with international customary law which prohibits slavery as component of human trafficking.<sup>57</sup> Moreover jus cogens norms prohibit torture, genocide or crime against humanity, discrimination including segregation. These norms are fundamental to the maintenance of an international legal order.<sup>58</sup> It is important to note that international courts play main role in the protection of human trafficking victims. For example, there are not many cases in the international criminal courts or international tribunals. As was said before, human trafficking is a crime against humanity. Article 7 of the Rome Statute prohibits enslavement, which by virtue of sections 7 (2) (c) means: “the exercise of any or all of the powers attaching to the rights of ownership over the person and includes the exercise of such power in the course of trafficking in persons, in particular of women and children.”<sup>59</sup>

Article 5(c) of the Statute of the International Criminal Tribunal for the former Yugoslavia prohibits enslavement but does not defined it.<sup>60</sup> This is a point that bears critical character without definition of such cruel crime. In the case *Prosecutor v Kunara, Kovac and Vukovic* the Trial Chamber (on 22 February 2001) and the Appeals Chamber (on 12 June 2002) considered the issue of the enslavement as a crime as humanity.<sup>61</sup> Thus, protection, prevention, respect deriving from international norms can be enforced in the regional and national sphere.<sup>62</sup> As this chapter mentions, there are a number of international treaties, covenants and protocols since the Universal Declaration of Human Rights was drafted in 1948.<sup>63</sup> The UN Charter prevails over all other treaties.<sup>64</sup> Other relevant international treaties include the International Covenant on Civil and Political Rights (1966)<sup>65</sup> that proclaimed “no-one shall be held in slavery

---

<sup>55</sup> Human Trafficking- Human Rights Law and Practice, p.12

<sup>56</sup> Identifying Jus Cogens Norms: The Interaction of Scholars and International Judges, p.3

<sup>57</sup> See first chapter

<sup>58</sup> Human Trafficking and Human Rights Law and Practice, p.13.

<sup>59</sup> Human Trafficking- Human Rights law and Practice, p. 36.

<sup>60</sup> The Statute of the International Criminal Tribunal for the former Yugoslavia, Article 5(c) ([http://www.icty.org/x/file/Legal%20Library/Statute/statute\\_sept09\\_en.pdf](http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf))

<sup>61</sup> Case No IT-96-23\_T and IT-96-23/1-T

<sup>62</sup> Human Trafficking-Human Rights law and practice, p.39

<sup>63</sup> Universal Declaration of Human Rights. Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948.

<sup>64</sup> Human trafficking and Human rights Law and Practice, p. 14.

<sup>65</sup> International Covenant on Civil and Political Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49.

and servitude;” as well as the International Covenant on Economic, Social and Cultural Rights (1966)<sup>66</sup>, which recognizes the right to work as well as to just and favorable working conditions. Article 1 of the UDHR provides that all people are born free and equal in dignity and rights. Article 3 says everyone has the rights to life, freedom and personal inviolability. Article 4 says that no one shall be held in slavery or servitude, slavery and the slave trade shall be prohibited in all their forms. Article 25 of the Declaration provides everyone has a right to a decent standard of living, medical care, social service and right to be compensated in the case of ill.

Article 8 of ICCPR provides that no one can be enslaved, slavery of all kinds and trafficking of slaves is prohibited. In Article 6 of the current Convention, it states that everyone has the right to life, and that it is an inalienable right of every person, no one can be deprived of life and secured by the state member. Then Article 7 highlights that no one shall be subjected to cruel, inhuman or degrading treatment. Moreover no one shall be unwillingly subjected to medical or scientific experiments.

Also at the international level in the field of human rights, are the adoption key documents: International Covenant on Economic, Social and Cultural Rights 1966<sup>67</sup> (ICESCR); Convention on the Rights of the Child 1989<sup>68</sup>; Convention on the Elimination of All Forms of Discrimination against Women 1979, etc.

In December 2000, the 55th session of General Assembly UN signed the Convention Against Transnational Organized Crime<sup>69</sup> and supplemented this instrument with the United Nations Protocols to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (UNPPSPTP)<sup>70</sup> and the Protocol Against the Smuggling of Migrants by Land, Sea and Air.<sup>71</sup> Thus these documents on the highest international level determined duties of states for fighting against Human Trafficking.

Moreover the UNPPSPTP firstly consist of an agreed legally binding definition “human trafficking” on the International level.<sup>72</sup> Here it is important to note that human trafficking

---

<sup>66</sup> International Covenant on Economic, Social and Cultural Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.

<sup>67</sup> International Covenant on Economic, Social and Cultural Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966

<sup>68</sup> Convention on the Rights of the Child Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49

<sup>69</sup> United Nations Convention against Transnational Organized Crime and the Protocols Thereto. Adopted by the UN General Assembly: 15 November 2000, by resolution 55/25. Entry into force: 29 September 2003, in accordance with article 38.

<sup>70</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000.

<sup>71</sup> Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime. Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000 (not in force).

<sup>72</sup> The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Article 3.

differs from “Smuggling of migrants”.<sup>73</sup> The aim of smuggling of migrants is transportation across borders for the extraction of direct or indirect financial or other material benefit, the aim of human trafficking is exploitation, financial and other material benefit.<sup>74</sup> Moreover, human trafficking not only includes a transnational element, but also it can occur at a national level. The underlying document against human trafficking is the Convention adopted by the General Assembly UN from 21 of March of 1950 for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.<sup>75</sup> Under the Article 9 of the current Convention in the case of lack of treaty about the extradition, the criminal will be prosecuted and punished according to its own state.<sup>76</sup> The extradition cannot be satisfied if accused person was judged in another state and he has already served his sentence or reduced in conformity with the laws of that foreign State.<sup>77</sup> Certainly the convention has made a contribution to the fight against human trafficking. It calls state parties to the mutual cooperation in the field of prosecution of accused in the crime related to human trafficking.

The next international document is Convention ILO No 105 for Forced Labor from 25 of June. The ILO adopted a number of conventions on forced labor which are relevant to human trafficking.<sup>79</sup> The current convention establishes a ban for using forced or compulsory labor as: remedy of political impact or education or as measure of punishment for the existence or for the expression of political views beliefs, method of mobilization and using of labor for the needs economic developing, remedy of supporting labor discipline, remedy of punishment for the participation in demonstrations, measures of discrimination for race, social or national affiliation or religion.<sup>80</sup>

The next important International document concerning the fight against the trafficking of children is Optional protocol No 2 to the Convention of the UN for rights of child, also related human trafficking, child prostitution and child pornography.<sup>81</sup> This document introduced the definition of “trafficking of children”, “child prostitution” and “child pornography”.<sup>82</sup> According to the current Protocol, Article 1 provides ban the sale of children, child prostitution

---

<sup>73</sup> The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Article 3.

<sup>74</sup> Ibid.

<sup>75</sup> Convention For The Suppression Of The Traffic In Persons And Of The Exploitation Of The Prostitution Of Others. Adopted by General Assembly in its resolution 317 (IV) of 2 December 1949. Entry into force: on 25 July 1951

<sup>76</sup> Ibid, Article 9

<sup>77</sup> Convention For The Suppression Of The Traffic In Persons And Of The Exploitation Of The Prostitution Of Others, Article 10.

<sup>78</sup> Abolition of Forced Labour Convention, 1957 (No. 105) Convention concerning the Abolition of Forced Labour (Entry into force: 17 Jan 1959) Adoption: Geneva, 40th ILC session (25 Jun 1957).

<sup>79</sup> Human trafficking and Human right law and practice, p.18.

<sup>80</sup> Human trafficking and Human right law and practice, p.18.

<sup>81</sup> Optional protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography. Adopted by General Assembly in its resolution 54/263 of 25 May 2000.

<sup>82</sup> Ibid, Article 2.

and child pornography as provided for by the present Protocol.<sup>83</sup> Article 3 states that, the activity is a criminal offence, regardless whether where committed, these crimes at the national or transnational level or at individual or organized basis. It includes a suggestion that, delivering or accepting, by any method, in the aim of sexual exploitation or transfer of organs of the child for profit or engagement of the child in forced labor is a criminal offence.<sup>84</sup>

Also, it provides acceptance of appropriate measures for the protection of rights and interests of children victims at all stages of criminal proceedings, assistance to other participating states with connection to the fulfillment of investigations or criminal proceedings or the procedure of extradition.<sup>85</sup>

The next important International document concerning human trafficking is the UN Convention Against Transnational Crime.<sup>86</sup> This international legal document and its supplementary protocols were created with the aim of developing consistent co-operational standards, effective prevention and control of transnational organized crime. This Convention introduced the definition “organized criminal group”. It means groups of three or more people, which constitutes in during of determined period with the aim commit of one or some seriously crimes.<sup>87</sup> The next definition is “serious crime”, a crime that has created the deprivation of liberty of a person, and deserves a sentence of a maximum period of not less than four years or more severe punishment.<sup>88</sup> The next definition is “the crime of transnational character”, it means a crime which was committed in more then one state, but a substantial part of its preparation, planning, direction or control takes place in another state. It is committed in one state but involves an organized criminal group that engages in criminal activities in more than one state or it is committed in one state but has substantial effects in another State.<sup>89</sup>

Protocol No2 to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, strengthens the United Nations Convention against Transnational Organized Crime supplements the UN Convention Against Transnational Organized Crime.<sup>90</sup> The Protocol has judicial importance as an international legal document concerning human trafficking, as a supplemented document to other international documents, but not replacing them.<sup>91</sup> Currently

---

<sup>83</sup> Ibid, Article 1

<sup>84</sup> Ibid, Article 3

<sup>85</sup> Ibid, Article 2

<sup>86</sup> United Nations Convention against Transnational Organized Crime and the Protocols Thereto. Adopted by the UN General Assembly: 15 November 2000, by resolution 55/25. Entry into force: 29 September 2003, in accordance with article 38.

<sup>87</sup> Ibid, Article 2 (a)

<sup>88</sup> Ibid, Article 2 (b)

<sup>89</sup> Ibid, Article 3 (2)

<sup>90</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000

<sup>91</sup> Ibid.



Protocol No2 provides a definition “human trafficking” and “exploitation”.<sup>92</sup> According to the Article 9 of the Protocol there are complex activities related to the suppression of human trafficking.<sup>93</sup>

The next document is Protocol №1 against the Smuggling of Migrants by Land, Sea and Air.<sup>94</sup> It provides cooperation mechanisms between states-members in reaching the aims of the protection of the rights of smuggling migrants.<sup>95</sup> Currently the protocol has developed some interesting instruments to differentiate the smuggling of migrants without the aim of exploitation and human trafficking. The protocol introduced concepts such as the “smuggling of migrants”, "Illegal entry", "counterfeit document for entry (exit) or identity card".<sup>96</sup>

It is necessary to note Protocol 2 fixed the cooperation between states-parties in the fight against human trafficking for different issues.<sup>97</sup>

For example, ensuring legal assistance to the victims of human trafficking and their protection, receive medical, psychology and material assistance, advice and information in relation of juridical rights, linguistic rights etc.,<sup>98</sup> mutual legal assistance in the investigation, criminal persecution and court proceedings with the crimes according to the Convention, joint investigations, taking appropriate measures related to providing effective protection from likely retaliation or intimidation of witnesses, collection and analysis of information on the nature of organized crime, exchange between States Parties such information. New international-legal acts related to counteracting human trafficking and the use of slave labor included:

- Resolution 2006/27 Economic and Social Council of the UN “Strengthening international cooperation in preventing and combating trafficking in human beings and protecting victims of trafficking” from 27 of July 2006.
- Resolution of the UN 61/180 from 20 of December 2006 “ On Improving the Coordination of Efforts to Combat Trafficking in Human Beings ”
- Resolution 2008/33 Economic and Social Council of the UN from 25 of July 2008 “On Improving the Coordination of the activity of the United Nations and other efforts to combat with human trafficking

---

<sup>92</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000, Article 3

<sup>93</sup> Ibid, Article 9

<sup>94</sup> Protocol № 1 against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime. Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000.

<sup>95</sup> Ibid, Article 2

<sup>96</sup> Ibid, Article 3

<sup>97</sup> Protocol 2, Article 2(c)

<sup>98</sup> Ibid, Article 6.

• Resolution of the General Assembly of the UN 61/180 from 10 of November 2008 “On Improving of the Coordination for the fighting with human trafficking”

The term “human trafficking” was used in the Convention of the UN for fighting with human trafficking and with exploitation of prostitution with third persons from 21 of March 1950.<sup>99</sup>

In the current document, prostitution and human trafficking are mentioned together because in the scope of international law, prostitution and other forms of sexual exploitation are recognized as one of the main aims of human trafficking<sup>100</sup>. If there was not such goal, such crimes as human trafficking would not accept threatening challenges. This goal, exploitation in relation to sex work is in "perpetual motion" allowing to develop into crimes such as “human trafficking”. According to this legal act sexual exploitation was criminalized as a socially dangerous assault. Moreover, it is incompatible with dignity and value of personality and the well-being of a person, family and society”<sup>101</sup>

The international definition of human trafficking is provided also in the protocol “Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children”<sup>102</sup>.

In the current protocol the definition of human trafficking includes three main criteria, that is: 1) acted with the aim of exploitation of person; 2) with the use of force or use threat or other kinds of enforcement, deception, abusing of power or vulnerable of condition or bribe in kind of payment or benefits for the consent of the control person; 3) puts the person ("victim") in the position of the exploited, similar to the position of a slave.

However, in the current Protocol there is not a precise definition of exploitation, this definition is undisclosed in other international legal documents. For example, another important document, the Vienna Declaration and Programme of Action adopted in 1993 at the second world conference for human rights<sup>103</sup> prohibits of all kinds of violence: “*violence on the ground of sex and other forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated*”.<sup>104</sup>

<sup>99</sup> The United Nations Convention against Trafficking in Persons and the Exploitation of the Prostitution of Others by March 21, 1950.

<sup>100</sup> Human Trafficking: A Brief Overview ([http://siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/244362-1239390842422/6012763-1239905793229/Human\\_Trafficking.pdf](http://siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/244362-1239390842422/6012763-1239905793229/Human_Trafficking.pdf))

<sup>101</sup> Preamble of the Convention.

<sup>102</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000.

<sup>103</sup> Vienna Declaration and Programme of Action, World Conference on Human Rights, Vienna, 14 to 25 June 1993, United Nations Doc. A/CONF.157/23 (1993).

<sup>104</sup> Vienna Declaration and Programme of Action, World Conference on Human Rights, Vienna, 14 to 25 June 1993, United Nations Doc. A/CONF.157/23 (1993), para 18.

Let us also mention, the Declaration on Crime and Public Security, according to Article 1, organized human trafficking is a crime committed with the aim of exploitation of persons.<sup>105</sup> Here again we observe that Human Trafficking is understood as comparable with such crimes as terrorism, illicit trafficking in arms and drugs, money laundering received from the crime and related to international transnational organized crimes in international law. Also, the Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography<sup>106</sup> has shown how the international community as attempted to draw attention to these issues. According to the document “*Sale of children means any act or transaction whereby a child is transferred by any or group of persons to another for remuneration or any other consideration.*”<sup>107</sup> Thus, the concept of “human trafficking” used in international law can be considered as a modern type of slave trade or coercing a person to the position similar with the position of slave.

According to recommendations adopted on 19 of May 2000 by the Committee of Ministers of European Council states that:<sup>108</sup> “*trafficking in human beings for the purpose of sexual exploitation includes the procurement by one or more natural or legal persons and/or the organization of the exploitation and/or transport or migration – legal or illegal – of persons, even with their consent, for the purpose of their sexual exploitation, inter alia by means of coercion, in particular violence or threats, deceit, abuse of authority or of a position of vulnerability.*”<sup>109</sup>

Thus, human trafficking consist of sexual exploitation, labor exploitation, domestic servitude, forced marriage, forced criminality.<sup>110</sup> Human trafficking is a serious crime bearing transnational character committed basically by organized criminal groups, during a determined period and acted out with the aim to commit one or more serious crimes, to receive directly or indirectly financial or other material benefit. These are: recruitment, transportation, transferal, harboring of a person, committing other transactions in relation to a person, carried out with

<sup>105</sup> United Nations Declaration on Crime and Public Security // United Nations, General Assembly Resolution 51/59, Action against corruption, 12 December 1996., Article 1

<sup>106</sup> 54/263. Optional protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography Resolution adopted by the General Assembly 25 May 2000 (A/54/L.84)]

<sup>107</sup> Ibid. Article 2.

<sup>108</sup> Committee of Ministers. Recommendation No. R (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation

<sup>109</sup> Committee of Ministers. Recommendation No. R (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation

<sup>110</sup> <https://www.stopthetraffik.org/about-human-trafficking/spot-the-signs/>

their consent or without their consent for the purpose of exploitation and/ or placing a person in slave conditions.<sup>111</sup>

## **2.2 Human Trafficking as a violation of Human Rights.**

### **2.2.1 Human Trafficking in the UDHR and the ICCPR**

Under the Article 1 the declaration highlights, that “*all people are born free and equal*”.<sup>112</sup> Article 2 says that “*every man should have all rights and freedoms provided by the Declaration regardless any different*”. Articles 3-21 disclose civil rights and political freedoms including the rights to life, freedom and security, equality before law, on citizenship and participating in management of its country, ban on the slavery, ban on arbitrary detention, right to work. This declaration must be signed by every state that wishes to be a member of the UN and therefore has an obligation to respect protect and fulfill this mandate.<sup>113</sup> The next treaty is ICCPR which prohibits human trafficking that all persons within the state and protects of their rights without distinction of any kind. This covenant is designed to provide equality before the law and protection for everyone.<sup>114</sup> Article 8 prohibits slavery and servitude.<sup>115</sup> Article 9 provides the right to liberty and security of persons, and that no one shall be subjected to arbitrary arrest or detention.<sup>116</sup> The Human Rights Committee has specified that foreigners have full rights like citizens (except for the right to vote), protected by law, and may not be arbitrarily deprived of life. They may not be subjected to torture or to cruel, inhumane or degrading treatment or punishment.<sup>117</sup>

### **2.2.2 The Regional Framework of the EU in relation to Human Trafficking**

The next treaty is the European Convention for Human Rights<sup>118</sup> which covers all the countries that are members of the Council of Europe. The Council of Europe is the main European Institution for the safeguarding and protecting human rights, democratic development and the rule of law.<sup>119</sup> Article 4 of the current convention prohibits slavery, servitude as well as forced labor and compulsory work.<sup>120</sup> Article 4 does not provides definition human trafficking, this

---

<sup>111</sup> See first chapter

<sup>112</sup> UDHR, Article 1

<sup>113</sup> Ibid, Articles 3-21

<sup>114</sup> International Instruments Concerning Trafficking in Persons, p.1

([https://www.ohchr.org/Documents/Issues/Women/WRGS/OnePagers/IntInstrumentsconcerningTraffickingpersons\\_Aug2014.pdf](https://www.ohchr.org/Documents/Issues/Women/WRGS/OnePagers/IntInstrumentsconcerningTraffickingpersons_Aug2014.pdf)) <sup>115</sup>

ICCPR, article 8

<sup>116</sup> Ibid, Article 9

<sup>117</sup> The International law of Human trafficking, Anne T. Gallagher, p.148

<sup>118</sup> European Convention for Human Rights as amended by Protocols Nos. 11 and 14 supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16

<sup>119</sup> Defining Human Trafficking and identifying its victims, Venla Roth, p.106.

<sup>120</sup> ECHR, Article 4

article does not state that forced labor is human trafficking. This treaty may not provide the definitions needed to accurately administer justice as it does not cover the nature of human trafficking discussed in chapter one. According to this article the ECHR in the case *Siliadin v. France* (2005) clarified the meaning of the prohibition of forced labor and servitude. Describing shortly, *Siliadin, a 15 year old girl of Togolese origin, arrived in France with Mrs. D, a French national of Togolese origin, on a tourist visa. It had been agreed that Siliadin would work at Mrs. D's home until the cost of her airfare had been reimbursed and that Mrs. D would enrolled her in school and take care of her immigration matters. Instead, Mr. and Mrs. D. took Siliadin's passport and forced her to work as an unpaid housemaid. She was later "lent" to Mr. and Mrs. B, who decided to "keep her" as an unpaid housemaid and child caretaker, working 15 hour days, seven days a week. She was not paid, not sent to school and her immigration matters were never handled.* Thus in this case the ECHR considered that the applicant had, at the least, been subjected to forced labor and held in servitude within the meaning of Article 4 of the Convention<sup>121</sup> In another case is *Rantsev v. Cyprus and Russia* (2010)<sup>122</sup> , a twenty year old Russian woman was trafficked from Russia to Cyprus. The court found Russia and Cyprus in violation the convention.<sup>123</sup> The court noted that the violations were forced labor and exploitation. Moreover, the court also found the defendants in violation of articles 2 and article 5 which dealt with the failure of the Cypriot authorities to investigate the current case,<sup>124</sup> and the detention of the victim in a private apartment.<sup>125</sup> In 2005 the Council of Europe adopted the European Convention on Action Against Trafficking in Human Beings<sup>126</sup> that recognizes trafficking in human beings constitutes a human rights violation and an offence to human dignity and integrity.<sup>127</sup> For instance article 10 identifies victims that are directly related to the trafficked persons. Especially paragraph 1 of Article 10 provides state responsibility to prevent and combat human trafficking, to collaborate with other state organs and appropriate organizations.<sup>128</sup> In this case it seems strange that such a big disputed case the court employed only article 4, whereas they could have employed article 10 or other appropriate conventions

---

<sup>121</sup> Case *Siliadin v. France*, Application no. 73316/01

<sup>122</sup> *Rantsev v. Cyprus and Russia*, Application no. 25965/04

<sup>123</sup> *Ibid.*

<sup>124</sup> European Convention for Human Rights and Fundamental Freedoms Article 2.

<sup>125</sup> European Convention for Human Rights and Fundamental Freedoms Article 5.

<sup>126</sup> Council of Europe Convention on Action against Trafficking in Human Beings \* Warsaw, 16.V.2005

<sup>127</sup> *Defining Human Trafficking and identifying its victims*, Venla Roth, p.109.

<sup>128</sup> Council of Europe Convention on Action against Trafficking in Human Beings \* Article 10,

Court interpretation and rulings in cases inform how the Council of Europe protects of victims from trafficking. However, it is not enough for the Council of Europe just to making rulings as states also should closely examine human trafficking in regard to both the state of origin and the state of destination.

Another violation of human rights in the context of human trafficking is the limiting of freedom of movement,<sup>129</sup> for example when victims of human trafficking are locked indoors<sup>130</sup> with the aim of hiding criminal activity and preventing contact with the outside environment. This happens mostly in the country of destination, when traffickers take away all the legal documents of victims.

Certain provisions of some human rights instruments are especially relevant to the situation of trafficked persons. Even if there is not a direct mention of the term “trafficker or trafficking”, a relevant treaty will cover all elements which consist of human trafficking. For instance, the ICESCR states that no state may make a distinction based on sex, nation or social origin<sup>131</sup>, rights to do work freely, choosing and work under conditions protecting fundamental freedoms of the individual.<sup>132</sup> It also provides rights to just and favorable conditions of work, mutual consent of both parties to marriage, right to physical and mental health.<sup>133</sup>

### **2.2.3 Other Major Treaties that relate to Human Trafficking**

The next treaty is Convention on the Elimination of all Forms of Discrimination Against Women.<sup>134</sup> It provides for the elimination of discrimination by the states against of any person. It also enshrines a commitment to suppress all forms of trafficking of women and the exploitation of sex workers, the right to free choice of employment and rights to health care and services.

The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984)<sup>135</sup> gives definition of torture. Torture is an act where severe pain or suffering, physical or mental, is intentionally inflicted for purposes including: punishment, intimidation or coercion and by person acting in official capacity. This convention is directly

---

<sup>129</sup> ICCPR, Article 12

<sup>130</sup> Rantsev v. Cyprus and Russia, Siliadin v. France, V.F. v. France (application no. 7196/10), M. and Others v. Italy and Bulgaria (no. 40020/03)

<sup>131</sup> ICESCR, Article 2 (2)

<sup>132</sup> ICESCR, Article 6 (1)

<sup>133</sup> ICESCR, Article 7

<sup>134</sup> Convention on the Elimination of All Forms of Discrimination against Women Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979 entry into force 3 September 1981, in accordance with article 27(1)

<sup>135</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987, in accordance with article 27 (1)

related to the victims of human trafficking, because victims can be tortured, for example, using sleep or nutritional deprivation as well as physical and sexual violence.<sup>136</sup>

The Convention on the Elimination of All Forms of Racial Discrimination (1965), Article 5 states that people have the right to equality before the law, especially right to: equal treatment before all organs of justice, security of persons and protection by the state against violence of bodily harm whether inflicted by government officials or by any individual etc.<sup>137</sup> This provision relates to cases when law enforcement bodies discriminates between victims and traffickers. Mostly discrimination occurs in the country of destination because victims are often illegal immigrants in the destination country, they are repeatedly punished more harshly than the traffickers.<sup>138</sup> Article 2 of the ICESCR states that simply because an illegal migrant either deserve protection, compensation, rehabilitation,<sup>139</sup> trafficked persons must not be subjected to discriminatory treatment on the ground social status, immigration status...<sup>140</sup>

The Convention on the Rights of the Child (1989)<sup>141</sup> is a convention that provides legal protection against physical and mental violence, injury, abuse, neglect or negligent maltreatment or exploitation, including sexual abuse, rights to education, protection from all forms of sexual exploitation and sexual abuse, protection from abduction, sale or traffic. The Optional Protocol to the Convention on the Rights of Child on the Sale of Children, Child Prostitution and Child Pornography (2000) is another important protocol. It provides for the prohibition of child prostitution and child pornography<sup>142</sup>.

The Slavery Convention (1926) states that, slavery is the status or condition of a person over whom any or all of the powers attached to the right of ownership are exercised. State parties have to prevent and suppress slave trade, prevent compulsory or forced labor.<sup>143</sup>

---

<sup>136</sup> Trafficking in Human Beings Amounting to Torture and other Forms of Ill-treatment, p.20 ([http://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/thb\\_amounting\\_to\\_torture\\_and\\_other\\_forms\\_of\\_ill-treatment\\_0.pdf](http://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/thb_amounting_to_torture_and_other_forms_of_ill-treatment_0.pdf))

<sup>137</sup> International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) 21 December 1995 (entry into force 04 January 1969), Article 5.

<sup>138</sup> FOREIGN RELATIONS AND INTERCOURSE CHAPTER 78-TRAFFICKING VICTIMS PROTECTION, Para 17 ([http://uscode.house.gov/view.xhtml?req=\(title:22%20section:7101%20edition:prelim\)](http://uscode.house.gov/view.xhtml?req=(title:22%20section:7101%20edition:prelim)))

<sup>139</sup> Article 2 (2 ) ICESCR : The States Parties undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind .....or other status

<sup>140</sup> Trafficking in Human Beings: Identification of Potential and Presumed Victims A Community Policing Approach SPMU Publication Series Vol. 10, p.27 (<https://www.osce.org/secretariat/78849?download=true>)

<sup>141</sup> Convention on the Rights of the Child Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49

<sup>142</sup> Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography , Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000 entered into force on 18 January 2002

<sup>143</sup> Slavery Convention Signed at Geneva on 25 September 1926 Entry into force: 9 March 1927, in accordance with article 12

The next Convention is Supplementary Convention on the Abolition of Slavery, the Slave trade and Institutions and Practices Similar to Slavery (1956).<sup>144</sup> Article 1 abolishes all slavery-like practices including debt-bondage and serfdom. Forced marriage and sale/transfer of children for labor exploitation.<sup>145</sup>

The next Convention which is directly related to trafficking is The Migrant Worker Convention which was adopted in 1990.<sup>146</sup> Article 41 of the current Convention is related to this case. It states that for documented migrants, they should enjoy the rights to equal benefits with regards to access to state educational and health services<sup>147</sup>.

According to the article 2.1 of the Convention of the International Labor Organization, the term *forced* or *compulsory* labor means any job or service requiring under the punishment from anybody,<sup>148</sup> if the victim of human trafficking rejects work and service and does not receive money or material compensation that means slavery job.<sup>149</sup> Moreover the victim can be killed if they refuse to comply with the demand of their captors. The traffickers will exploit the vulnerabilities of their victims as they may not speak a local language, they do not have passports, legal residence, work permission etc.

All the above are primary international legal instruments that reinforce the concept that protecting persons from human trafficking is the protection of human rights. Also it is important to note that UN Special Rapporteur have to contribute to mechanisms of protection. Moreover UN organs, International organizations, NGOs and the media have a responsibility to connect and monitor cases of victims from human trafficking.

### **2.3. Protection of victims in international law and European Law.**

#### **2.3.1 International legal protection system of victims of human trafficking.**

The legal protection approach is the conceptual basis that is employed in dealing with human trafficking on the basis of international human rights standards and respectively directed to promoting and protecting human rights. In other words legal protection of victims of human trafficking normatively relies on the international legal protection standards such as equality

---

<sup>144</sup> Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery Adopted by a Conference of Plenipotentiaries convened by Economic and Social Council resolution 608(XXI) of 30 April 1956 and done at Geneva on 7 September 1956 Entry into force: 30 April 1957, in accordance with article 13

<sup>145</sup> Ibid, Article 1

<sup>146</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families Adopted by General Assembly resolution 45/158 of 18 December 1990

<sup>147</sup> Ibid, 41.

<sup>148</sup> Abolition of Forced Labour Convention, 1957 (No. 105) Convention concerning the Abolition of Forced Labour (Entry into force: 17 Jan 1959) Adoption: Geneva, 40th ILC session (25 Jun 1957).

<sup>149</sup> Human Trafficking, Edited by Maggy Lee,p.3



and nondiscrimination, universality of rights, and the rule of law.<sup>150</sup> International law protects the rights of victims through International legal instruments which are signed by states.<sup>151</sup> The states have to adopt domestic rules according to the International law that do not violate human rights. Regardless if it is a state of origin or a state of destination or non-state actor, they are obliged protect, prevent, promote, respect and compensate the rights of victims of human trafficking. International legal instruments should be precisely in their terminology and definitions in each of the articles that describe the specific elements that constitute human trafficking.

International protection is not only done through the creation of International legal documents but also through assisting member states to implement these practices “on the ground”. International institutions including ILO, UNICEF, United Nations Office on Drugs and Crime (UNODC)<sup>152</sup> supranational and intergovernmental institutions such as Interpol, Europol, Eurojust and of course FRONTEX, NGO are obliged by International duties and rights. One of the challenges here is the lack of political will of some member states to comply with International treaties. One of the reasons for this is that states, who are concerned with their sovereignty may at times reject or have reservations to some recommendations by international human rights bodies. For example, by the Trafficking Report 2017 the United States declared China was among the world's worst offenders in human trafficking<sup>153</sup> whereas China has signed basic treaties for human rights<sup>154</sup> and human trafficking<sup>155</sup> except of ICCPR. In other words, China does not fully meet the minimum standards for the elimination of trafficking and is not making significant efforts to do so according to the USA report<sup>156</sup>.

For productive protection of victims of human trafficking, International courts, tribunals and other institutions should be stricter with states parties. One of the ways states can promote international human rights law is to encourage the creation and assist the development of regional human rights organs, for example creating an Asian Court of human rights. There are

---

<sup>150</sup> Human Rights–Based Approach to Trafficking the Work of the United Nations Office of the High Commissioner for Human Rights ([https://www.americanbar.org/publications/judges\\_journal/2013/winter/human\\_rightsbased\\_approach\\_to\\_trafficking\\_the\\_work\\_of\\_the\\_united\\_nations\\_office\\_of\\_the\\_high\\_commissioner\\_for\\_human\\_rights/](https://www.americanbar.org/publications/judges_journal/2013/winter/human_rightsbased_approach_to_trafficking_the_work_of_the_united_nations_office_of_the_high_commissioner_for_human_rights/))

<sup>151</sup> Human Trafficking and Human Security *edited by* Anna Jonsson, p.67

<sup>152</sup> Human Trafficking Kathryn Cullen-DuPont, p.234

<sup>153</sup> US Lists China Among World's Worst Human Trafficking Offenders (<https://www.voanews.com/a/us-declares-china-among-worlds-worst-human-trafficking-offenders-3918098.html>)

<sup>154</sup> UN Treaty Bodies and China (<https://www.hrichina.org/en/un-treaty-bodies-and-china>)

<sup>155</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons

<sup>156</sup> 2018 Trafficking in Persons Report (<https://www.state.gov/j/tip/rls/tiprpt/countries/2018/282632.htm>)

courts for human rights in America, Europe, and Africa but not in Asia, yet Asian states are one of the main offenders in relation to human trafficking<sup>157</sup>.

There should be more international law organs where victims can directly apply to, rather than through domestic law courts because of the international nature of human trafficking. Also, it is advisable that states parties should work more with multinational enterprises in developing better networks to combat human trafficking. Business and international police cooperation could transform the issue as states are clearly not able to solve this issue on their own. However, it is still the state who is ultimately responsible for fostering cooperation.

As said Conny Rijken: *“a concept of state sovereignty must be accepted in which states take responsibility to protect their citizens in the most effective way by intensified cooperation with other states....”*<sup>158</sup>

Under the legal protection approach all aspects of national and international measures in the fight against human trafficking is based on the rights and duties of states. Accordingly we should pay attention to the necessity of protecting human rights and freedoms, dignity and value of human personality, consisting social progress and conditions of life of citizen and person in whole through the legal personality of the state.

## **2.4 Interstate treaties and organs of protection of victims of Human Trafficking in Europe.**

### **2.4.1. Legal framework of the European law for Human trafficking.**

Considering the European Union (EU) approach to human trafficking is highly important as most countries of destination for human trafficking victims are EU member states. Moreover, the human trafficking that occurs within the EU comes from eastern Europe to west and north Europe. Perhaps the legalization of prostitution is the challenge for today's society and the industry may be the root cause for the problems which this thesis discloses.

This section provides an overview of those rights based on the conventions of the Council of Europe for human trafficking, EU directives, framework decisions and the European Court of Human Rights case-law. The EU International legal base is supplemented by a range of regional agreements relating to human trafficking, including the Convention of Council of Europe on Action against Trafficking in Human Beings (European Trafficking Convention).<sup>159</sup> While the

---

<sup>157</sup> *Southeast Asia's refugees* and displaced people are victimized by human traffickers, but the crime usually goes unreported. (<https://www.imf.org/external/pubs/ft/fandd/2018/09/human-trafficking-in-southeast-asia-caballero.htm>)

<sup>158</sup> Human Trafficking Kathryn Cullen-DuPont, p.234

<sup>159</sup> Council of Europe Convention on Action against Trafficking in Human Beings [Electronic resource] // Council of Europe. Mode of access: URL: <http://convention.coe.int/Treaty/EN/Treaties/Html/197.htm>

Protocol to Prevent, Suppress and Punish Trafficking in persons, Especially Women and Children (Palermo Protocol) <sup>160</sup> does not contain a definition of “victim”, the European Trafficking Convention address this point, stipulating that a victim is *any natural person who is subjected to trafficking in human beings as defined*<sup>161</sup>. It also provides protection and assistance to the victims of human trafficking. This is problematic because the document which prevent, suppress and punish trafficking must contain the definition of victim to identify and punish him.

The European Trafficking Convention does not cover the rights and duties derived from other international instruments to which Parties to the present Convention are Parties or shall become Parties and which contain provisions on matters governed by this Convention. <sup>162</sup> This Convention is opened for signing not only for members of Council of Europe, but also state-members of European Community.

The reason for this convection is that it is necessary to create such a legally binding document at the regional level related to the protection of victim rights, respecting personality. Moreover, it reaffirms the issues concerning human rights and criminal persecution engaging in illegal activity.<sup>163</sup> This convention does not compete with other acts adopted at the universal and regional level but improves protection and discloses provided standards. This convention provides measures for reducing demand for services of victims from human trafficking. This convention provides for suppressing and preventing human trafficking, persecution and punishment of offenders.

The convention accents further attention to different forms of preventive activity of the state with the aim of suppressing human trafficking. Moreover, it strengthens the coordination between different organs bearing responsibility for the suppressing and fighting against the current phenomenon, by such means as: research, information, awareness raising and education campaigns, social and economic initiatives and training programmers, in particular for the persons vulnerable to trafficking and for professional concerned with trafficking in human beings.<sup>164</sup>

This Convention obliges the participants to adopt necessary measures including ways to extend, by the appropriate organs, reliable information on the conditions permitting legal immigration.

---

<sup>160</sup> Protocol to Prevent, Suppress and Punish Trafficking in persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, done Nov.15,2000..

<sup>161</sup> European Trafficking Convention Article 4 (e)

<sup>162</sup> European Trafficking Convention Article 40, para 1

<sup>163</sup> Ibid, Article 29.

<sup>164</sup> Ibid, Article 5

More importantly it promotes that persons would have accurate information on legal opportunities for migration, working visas, their rights and duties. The innovation of this Convention comparing with Palermo Protocol and other treaties is that it appears to remedy a whole section of complex of measures for consolidation of protection and respecting of victim rights. Moreover, it requires from the states to adopt particular procedures for the identifying of victims<sup>165</sup> whereas in the protocol nothing said about this measure. Identification of the victim of human trafficking contributes to recognize their basic rights, timely assistance, and also helps avoid the situations when victims are treated as criminals or illegal migrants. European Trafficking Convention more extensive than the Protocol for assistance to the victims<sup>166</sup>, the convention orders a thirty days period for the rehabilitation to the victim<sup>167</sup> and the granting necessary residence permits and visas for victims during.<sup>168</sup>

The Framework Decision of the Council of the European Union on Combating Trafficking in Human Beings from 19 of July 2002<sup>169</sup> and Directive of the Council of the European Union 2004/81/CE from 29 of April 2004<sup>170</sup> concerning residence permit granting to victims-citizens of third countries. This Council Framework decision covers illegal migrants. The Council Framework decision of 15 March 2001 on the standing of victims in criminal proceedings<sup>171</sup> also relates to issues in human trafficking.

The Council of Europe also elaborated two legal documents specially dedicated to human trafficking in the aim of sexual exploitation of women and children. These are recommendation № R (2000) 11 of the Committee of ministers to the state-members for Protection of Children from Sexual Exploitation<sup>172</sup> and recommendation № R (2001) 16 of the Committee of ministers to state-members for Protection of Children from Sexual Exploitation.<sup>173</sup> Human Trafficking is an activity which can be committed by organized criminal groups using corruption connections with the aim to evade the law. This is also connected with money

---

<sup>165</sup> European Trafficking Convention, Article 10

<sup>166</sup> Ibid, Article 12

<sup>167</sup> Ibid, Article 13

<sup>168</sup> Ibid, Article 14

<sup>169</sup> Council framework decision of 19 July 2002 on combating trafficking in human beings (2002/629/JHA) [Electronic resource]. Mode of access: URL: [http://ec.europa.eu/anti-trafficking/sites/antitrafficking/...en\\_1.pdf](http://ec.europa.eu/anti-trafficking/sites/antitrafficking/...en_1.pdf)

<sup>170</sup> Council directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities [Electronic resource]. Mode of access: URL: [http://www.goc.gov.tr/files/files/2004\\_81\\_EC.pdf](http://www.goc.gov.tr/files/files/2004_81_EC.pdf)

<sup>171</sup> Council framework decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA) [Electronic resource]. Mode of access: URL: <http://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/framework...1.pdf>

<sup>172</sup> Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw, 16.V.2005) [Electronic resource]. Mode of access: URL: [http://www.edqm.eu/sites/default/files/explanatory\\_report-trafficking\\_human\\_beings-may2005.pdf](http://www.edqm.eu/sites/default/files/explanatory_report-trafficking_human_beings-may2005.pdf)

<sup>173</sup> Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw, 16.V.2005) [Electronic resource]. Mode of access: URL: [http://www.edqm.eu/sites/default/files/explanatory\\_report-trafficking\\_human\\_beings-may2005.pdf](http://www.edqm.eu/sites/default/files/explanatory_report-trafficking_human_beings-may2005.pdf)

laundering with the aim of hiding the income made through the crimes, but money laundering can also be carried out outside such a context.

There are also other legal instruments developed by the Council of Europe which are appropriate to our topic. Moreover, especially the protection of human rights, child rights, social rights, rights of victims, data rights, the fight against corruption, money laundering, cyber security and treaties for international cooperation in the field of criminal-legal analysis.

The next international legal documents for our consideration are the following which can be read in the footnotes<sup>174</sup>.

In this recommendation, the Parliamentary Assembly recommended to the Committee of Ministers:

- 1) How might they start to elaborate the European Trafficking Convention, which would complement other international instruments by virtue of their special relation to human rights and the protection of victims and the inclusion of the notion of equality
- 2) ensure that the European Trafficking Convention could contain provisions providing for:
  - including crime human trafficking to the criminal law of member states of Council of Europe
  - harmonization of the punishment implemented to the human trafficking.
- 3) ensure establishment of effective jurisdiction in relation of persons, suspecting in the human trafficking in especially by the way of procedure of extradition and implemented the principle *aut dedere aut judicare* to all cases concerning human trafficking.

The recommendation (2002) 5 Committee of Ministers Member-states for Protection of Women from the Violence<sup>175</sup> determines violence in the relation of women including trafficking and proclaims that violence in relation to women encroaches on their rights and their basic freedoms, and also creates the prevention for the full or partial realization of those rights. Inter-American Convention for the suppressing, punishment and eradicating of violence in relation to women<sup>176</sup> proclaims in its preamble that violence against women is a violation of human rights and

---

<sup>174</sup> European Convention on Extradition of 13 December 1957<sup>174</sup>.,European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and its Additional Protocols<sup>174</sup>.;The European Social Charter of 18 October 1961 and the European Social Charter (revised) of 3 May 1996 <sup>174</sup>.;European Convention on Compensation for Victims of Violent Crimes of 24 November 1983<sup>174</sup>.;Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime Act of 8 November 1990<sup>174</sup>.;European Convention on the Exercise of Children's Rights, Strasbourg, 25.I.1996<sup>174</sup>.;The Criminal Law Convention on Corruption of 27 January 1999 and the Convention on Civil Liability for Corruption of 4 November 1999<sup>174</sup>.;The Parliamentary Assembly returned to this issue in 2003 in its Recommendation 1610 (2003) on migration related to trafficking in women and prostitution.

<sup>175</sup> Recommendation Rec (2002) 5 on the protection of women against violence (adopted by the Committee of Ministers on 30 April 2002 at the 794-th meeting of the Ministers' Deputies).

<sup>176</sup> Inter-American Convention On The Prevention, Punishment And Eradication Of Violence Against Women "Convention Of Belem Do Para" <http://www.oas.org/juridico/english/treaties/a-61.html>

freedoms. Article 2 adds human trafficking to the list violations of the human rights and freedoms women. The EU on 19 of July 2002 on human trafficking<sup>177</sup> establishes that “human trafficking is the serious crime of basic rights and dignity”<sup>178</sup>.

Contractual control bodies of the UN in especially the Committee for Human Rights and The Committee for Elimination of Discrimination in relation to women consider human trafficking as violation of human rights.

From the amount of legislation developed on this topic by the EU on this topic, we can see that human trafficking has become a problematic issue in Europe. This phenomenon, concerning men, women and children reached an unprecedented scale. As we have clearly stated before this is a new form of slavery emerging in our modern age. Article 4 of ECHR prohibits slavery and forced labor.<sup>179</sup>

Moreover the Council of Europe Convention of Trafficking in Human Beings and its Explanatory Report<sup>180</sup> proclaimed *the definition, trafficking in human beings consists of a combination of three basic: .....for the purpose of exploitation, which includes “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 or organs components, each to be found in a list given in the definition*

In other words this Convention of the Council of Europe recognizes:

- 1) Human trafficking as violation of human rights
- 2) special attention paid to assisting victims and protecting their rights;
- 3) comprehensive sphere of implementing and covering:
  - all forms of human trafficking: national or transnational related or unrelated with organized crime
  - all victims of human trafficking. The Convention implemented to everyone who is victim of human trafficking men, women or child.
- 4) Establishment of complex rights of juridical frames for protection of rights of victims and witnesses according to binding measures.
- 5) The establishment of effective and independent mechanism of control.

---

<sup>177</sup> 2002/629/JHA: Council Framework Decision of 19 July 2002 on combating trafficking in human beings (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32002F0629>)

<sup>178</sup> Ibid. para. 3

<sup>179</sup> ECHR , Article 4

<sup>180</sup> Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report, p. 37

Therefore, the drafters of the Convention deemed it necessary to clarify that the return of the victim should be carried out with due regard to ensuring the rights, safety and dignity of that person.<sup>181</sup> Also victims are protected from cruel and inhuman treatment and have the rights to personal and family life. In this regards the drafters decided that it is important to pay attention to the case law of the European Court of Human Rights in relation of Article 3 of the ECHR. In other words, the victims cannot be returned, extradited or deported. In the case “*Sering v. UK*”<sup>182</sup> in the context of extradition, the Court concluded, that similar decision can in violation of Article 3, and in the result the state should be responsible according to the convention. In such a case their should be reasons to believe that the extradited person will face a real risk of being subjected to torture or inhuman or degrading treatment or punishment in a country that requires his extradition.

International cooperation is very important in the fight against human trafficking. This is also one of the ways to protect victims. Moreover, this is the obligation and responsibility of states to cooperate and fight against human trafficking. Article 32 of the Council of Europe Convention on the Action against Trafficking in Human Beings establishes particular principles for the cooperation which should be dominant in the International environment.

Firstly, the parties to the treaty have to cooperate with each other "as much as possible". Current principles require states to fulfill comprehensive cooperation with each other and minimize barriers to the free and rapid international dissemination of information and evidence.

Secondly Article 32 contains the main part of obligations to cooperate: cooperation should include the suppression and prevention of human trafficking<sup>183</sup>, protection and victim assistance<sup>184</sup>, as well the investigation and execution of criminal cases recognized according to the current convention<sup>185</sup>. In addition with Article 19 the cooperation may be executed only between those parties which consider adopting such legislative and other measures as may be necessary to establish as criminal offenses under its domestic law.<sup>186</sup>

The parties are also obliged to cooperate with each other according to legal norms of the current Convention. In terms of International cooperation with the aim of protection and assistance to the victims, Article 33 provides special measures in relation to persons who are in danger. Article 34 (4) provides for the transmission of any information, which is necessary for the

---

<sup>181</sup> Ibid. Article 16 (2)

<sup>182</sup> ECtHR - *Soering v. The United Kingdom*, Application No. 14038/88, 7 July 1989 (<http://www.asylumlawdatabase.eu/en/content/ecthr-soering-v-united-kingdom-application-no-1403888-7-july-1989>)

<sup>183</sup> Council of Europe Convention on Action against Trafficking in Human Beings, Article 32 (1)

<sup>184</sup> Ibid, Article 32 (2)

<sup>185</sup> Ibid, Article 32 (3)

<sup>186</sup> Ibid, Article 19

protection of rights under the articles 13, 14 and 16 of the current Convention. Important issues in the investigation and judicial trials of criminal cases are legal norms of chapter VI of the current Convention which does not cancel and/or change legal provisions of appropriate international and regional instruments for mutual legal assistance and extradition, mutual agreements between parties, appropriate norms of domestic law concerning international cooperation.

In the current sphere the relevant international instruments include European Convention for Extradition. There is a Council framework Decision dated 13 June 2002 on the European arrest warrant and the surrender procedures of suspects between Members States.<sup>187</sup> Also relevant are conventions for laundering, search, seizure and confiscation of proceeds of crime for the cooperation in the arrest of incomes for human trafficking, identification and establishment of location, freezing accounts and confiscating assets relating to human trafficking.

Thus, the cooperation in criminal matters should continue under the mentioned instruments and other dual and multilateral agreements relating to extradition and mutual assistance implemented in criminal matters. The mutual assistance might be derived from the agreements based on unified legislation or the principle of reciprocity. Such an approach lies at the heart of other Council of Europe Conventions including the European Convention for Extradition.

Such a system is based on unified rules, i.e. Scandinavian countries or countries with a system based on the principle of reciprocity, i.e. Ireland and the United Kingdom, to regulate their relationship only on the basis of this system. Such legal rules have to be accepted because these states did not regulate their relations according to International agreements, but they regulated on the basis of agreements by the adoption of unified domestic laws or based on the principles of reciprocity.<sup>188</sup>

---

<sup>187</sup> 2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States - Statements made by certain Member States on the adoption of the Framework Decision (<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32002F0584>)

<sup>188</sup> Trafficking in Human Beings [Electronic resource] // Council of Europe. Mode of access: URL: <http://conventions.coe.int/Treaty/EN/Treaties/Html/197.htm>



### **3. Chapter III State obligation for protection, prevention and compensation of victims of human trafficking**

#### **3.1 State obligation for protection and promotion of victims of human trafficking.**

This section will establish how productive state protection and promotion of the rights of victims can eliminate human trafficking. States have an obligation to enact legislation on the trafficking in human beings, as set out in the Council of Europe Convention on Trafficking (2005)<sup>189</sup> and supported by Court's case-law.<sup>190</sup>

Furthermore, international treaties are primary sources of obligations for states with respect to victims of human trafficking.<sup>191</sup> The obligation to protect victims from human trafficking is also the obligation to protect persons from enslavement<sup>192</sup>, from forced labor, sexual violence, torture, slavery, kidnaping etc.<sup>193</sup> The state which ratified the international treaty undertakes measures to ensure that their own national legislation, policies or practices meet the requirements of the treaty and are consistent with its standards. These obligations are enforceable in international courts and tribunals with appropriate jurisdiction, such as the International Court of Justice, the International Criminal Court or the European Court of Human Rights, and may be enforceable in domestic courts, depending on domestic law.<sup>194</sup> In discussing constitutional order in domestic law, most countries have a constitution that acts as the highest law of the state. Therefore, the constitution of a UN member state or a EU state should provide for principles that promote human rights as their highest value.

For example according to a 2018 Human Trafficking report, the Russian government does not fully comply the minimum standards, for the elimination of trafficking and it is not making significant efforts to do so. Although Russian signed and ratified international legal documents for human trafficking.<sup>195</sup> Law enforcement bodies in Russia detained and deported potential forced labor victims without screening for signs of exploitation, and prosecuted victims forced into prostitution for prostitution offenses. Moreover, neither were there any reports made or assistance given to any victims nor where there any funding or programs for trafficking victims,

---

<sup>189</sup> See Chapter IV of the Council of Europe Convention on Trafficking (2005) and also the Palermo Protocol, both ratified by Cyprus and Russian Federation;

<sup>190</sup> *L v Lithuania* judgment of 11 September 2007, *Gorelishvili v Georgia* judgment of 5 June 2007, *Svipsta v Latvia* judgment of 9 March 2006;

<sup>191</sup> Article 17 of the Convention CETS 197 requires the state, in applying its victim-protectoin measures, to ârprnote gender equality and to use gender mainstreaming in the development, implementation and assessment of the measures.

<sup>192</sup> See the case *Kunarac, Kovac and Vukovic* where trial Chamber concluded that enslavement is like crime against humanity.

<sup>193</sup> See chapter 1 the components of human trafficking.

<sup>194</sup> Human Rights and Human Trafficking, Fact Sheet No 36 – New York and Geneva, 2014., p. 9

<sup>195</sup> United Nations Convention against Transnational Organized Crime; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime

shelters remained closed due to lack of funding and the situation has no doubt been exacerbated by a government that is increasingly hostile toward civil society.<sup>196</sup>

State protection should consist of non-criminalization of victims, provision of immediate protection and support<sup>197</sup>, provision of legal assistance including temporary residency and safe and voluntary return. More over children should be under specific and enhanced protection.<sup>198</sup> As Gallagher says, in the last decades, states have identified progress in legal frameworks in relation to the protection of victims' rights. But today as we see the problem is still relevant. The Global Estimates of Modern Slavery states that according to a new report more than 40 million people were living in modern slavery last year. More than 25 million people were forced into labor and another 15 million people were living in forced marriages.<sup>199</sup>

If the state does not protect victims of this crime it occurs again and again. State control and careful investigation by state authorities are the most important element in this issue. In the Case of *Rantsev v Cyprus and Russia* the state of origin Russia and the State of destination both are responsible. The ruling shows that, If the person indeed is a victim in the country of destination and crossed border legally, is not found violating migration law, such victim should have access to the said rights and protections.<sup>200</sup> In addition the victim should be considered not only as victim of human rights violations<sup>201</sup> but also the victim of crime.<sup>202</sup> One of the problems here is that the state places too much emphasis on the immigration status of victims and thus fails to recognize the history of the manner in which victims are trafficked and fails to recognize credible victims thus leading to a violation of their human rights. In other words, victims of trafficking are being wrongly sent to immigration detention centers despite police awareness that they are victims of exploitation, research by a migration charity indicates.

---

<sup>196</sup> OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS  
2018 Trafficking in Persons Report (Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime)

<sup>197</sup> For example, the European Trafficking Convention provides that if there are reasonable grounds to believe that a person is a victim of trafficking, that person is to be provided with immediate support and not to be removed until the formal identification process is completed: *ibid.* at Art.10 (2).

<sup>198</sup> *Ibid.* 277

<sup>199</sup> Report: 40 million people victims of modern slavery (<https://www.dw.com/en/report-40-million-people-victims-of-modern-slavery/a-40581375>)

<sup>200</sup> The International law of Human Trafficking Anne T. Gallagher, p.273

<sup>201</sup> The UN General Assembly's "Basic Principles and Guidelines on the Rights to a Remedy and Reparation" defines victims of gross violations of human rights as "persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omission that constitute gross violation of international human rights law.

<sup>202</sup> The Declaration of Basic Principles for Victims of Crime and Abuse of Power defines "victim of crime" as "persons who... have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws": US General Assembly, "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power".

According to 2017 Trafficking in Persons Report - The Government of Equatorial Guinea does not fully meet the minimum standards for the elimination of trafficking and is not making significant efforts to do so. The government continued to deport undocumented migrants without screening them to determine whether they were victims of trafficking or referring them to assistance services.<sup>203</sup> Also in Lebanon the government did not directly protect victims or fully implement victim identification but arrested, detained, or deported persons for crimes committed as a result of being subjected to trafficking.<sup>204</sup>

It is unacceptable that trafficked persons are detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons. For example, in the case *R v. N and Le*, before the ECtHR, a Vietnamese minor who had been arrested on a cannabis farm and sentenced to 20 months imprisonment had his conviction confirmed by the UK Court of Appeal even though a conclusive decision by the UK Border Agency (UKBA) had identified him as a victim of trafficking.<sup>205</sup>

Thus the state is responsible to respect human trafficking victims and consider them as victims suffering from human trafficking. Moreover, we can see that a lack of respect for the principle of non-punishment of victims leads always to further loss of rights and the degradation of human dignity. It is most unfortunate that such an important problem is so misrepresented by the judicial rulings as in the examples mentioned above. However, we recognize that there is a huge burden on states to accommodate illegal migrants or trafficked persons. It is perhaps because the present legal language fails to recognize some of the structural as well as the semantic issues pertaining to human trafficking, discussed in chapter one, that these problems continue to be a scourge on the domestic judicial systems of the world.

### **3.2 State obligation for prevention of victims of human trafficking**

States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons.<sup>206</sup> The prevention of such crimes consist of creating of strong domestic legislation to prevent and combat trafficking in persons, to protect victims of trafficking in persons, especially

---

<sup>203</sup> 2017 Trafficking in Persons Report - Equatorial Guinea (<https://www.refworld.org/docid/5959ecd5a.html>)

<sup>204</sup> 2018 Trafficking in Persons Report - Lebanon (<https://www.state.gov/j/tip/rls/tiprpt/countries/2018/282691.htm>)

<sup>205</sup> The Principle of Non-Punishment of Victims of Trafficking in Human Beings: A Quest for Rationale and Practical Guidance, Dr Marija Jovanovic, p.44

<sup>206</sup> OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS Recommended Principles and Guidelines on Human Rights and Human Trafficking

women and children, from revictimization. Taking measures to raise levels of social protection and to create employment opportunities for all.<sup>207</sup> Taking appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of gender equality, the right to equal pay for equal work and the right to equality in employment opportunities<sup>208</sup>

Take the policy of Norway for example. The Constitution of Norway adopted in 1814 establishes an obligation of state power to respect and protect human rights<sup>209</sup>. Human rights and democracy are key elements of the basic values of Norwegian society.<sup>210</sup> Norwegian law provides that everyone in Norway may enjoy universal human rights and basic freedoms.<sup>211</sup>

In the field of the prevention of human trafficking Norway has ratified the Convention Against Transnational Organized Crime and the Palermo Protocol in 2003 and also the Convention of the European Council for Combatting Human Trafficking in 2005. Human trafficking in Norway is criminal offence. In national legislation human trafficking is prohibited by the article 224 of the Criminal code.<sup>212</sup>

It is necessary to note the first plan of activity by the Norwegian government to develop legal clarity in this field. The Norwegian research council initiated a project aimed to study the problem of human trafficking which includes data for methods of transport of children from Moldova to Norway. During the realization of this plan, a national system of reaction was created in relation to the cases of human trafficking and support of women and children from human trafficking.<sup>213</sup>

The law adopted by Norway in 2009 banned payment for sex services on the basis of the Swedish model which after implementation exhibited a marked improvement in the Kingdom's efforts against trafficking in Norway. Thus after the Swedish law, which was adopted in 1998, Norway became the second country in the world, which codified in its law that the purchasing of sex is a criminal offence but not the sale of sex.<sup>214</sup> In 2010 the government of Norway

---

<sup>207</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Article 9.

<sup>208</sup> Toolkit to Combat Trafficking in Persons ([https://www.unodc.org/pdf/Trafficking\\_toolkit\\_Oct06.pdf](https://www.unodc.org/pdf/Trafficking_toolkit_Oct06.pdf))

<sup>209</sup> The Norwegian Constitution was adopted on 17 May 1814 and is the second oldest written Constitution in the World still in existence. (<https://www.stortinget.no/en/In-English/About-the-Storting/The-Constitution/>)

<sup>210</sup> The Constitution of the Kingdom of Norway, Article 2, ([https://lovdata.no/dokument/NLE/lov/1814-0517/ARTIKKEL\\_1#ARTIKKEL\\_1](https://lovdata.no/dokument/NLE/lov/1814-0517/ARTIKKEL_1#ARTIKKEL_1))

<sup>211</sup> Ibid.

<sup>212</sup> Criminal Code of the Kingdom of Norway (English version) (Act of 22 May 1902 No. 10 as subsequently amended, most recently by Act of 1 July 1994 No. 50) [Electronic resource]. – Mode of access: URL:<http://www.legislationline.org/documents/id/8909>

<sup>213</sup> Review of the Norwegian Ministry of Foreign Affairs Portfolio on Human Trafficking, Executive Summary, p.5

<sup>214</sup> Why Norway banned the purchase of sexual services: Ideas and prostitution policy, p.12

adopted more decisions related to human trafficking and increased the period of incarceration for traffickers even though there are few cases appearing in courts.<sup>215</sup> So in 2012 the police in Bergen arrested six Romanian citizens of child trafficking, the minors were also from Romanian and were forced by their traffickers to engage in theft, begging and drug trafficking.<sup>216</sup>

When the state promotes and facilitates human rights perspectives in national law, accordingly with regional and international anti-trafficking laws and policies, the national legislation can direct not only the prevention of human trafficking but also the timely punishment of traffickers. By also increasing economic development, reducing unemployment, creating social programs for families, etc. states can also combat the sources of human trafficking. These factors are more important for the prevention of human trafficking. Even trafficking protocols require states to establish positive measures, establish comprehensive policies, programs and measures to prevent and combat trafficking and to protect victims from revictimization.<sup>217</sup>

The prevention should be directed at root causes of human trafficking, for example inappropriate regulation, poverty, corruption, discrimination<sup>218</sup>. Certain occupations such as prostitution and domestic service can produce, promote or exacerbate vulnerability through inappropriate regulation or lack of legal protection, low visibility.<sup>219</sup> There are a wide range of measures for prevention from migration policies to strengthening the criminal justice and the punishment of traffickers who so often operate with impunity.<sup>220</sup>

Regarding a country of destination, states should adopt appropriate legislative and other measures necessary to establish, as criminal offences, trafficking, its component acts and related conduct.<sup>221</sup> In the prevention, it is very important that cooperation of the country of origin and destination. For example, there is cooperation between the Italian government and Albania. The Italian government has funded television information campaigns in Albania and training projects for Albanian girls.<sup>222</sup> Another is the agreement between Moldova and the Ukraine that ministerial committees hold the responsibility for issuing licenses to firms who arrange

---

<sup>215</sup> United against human trafficking. The Government's Plan of Action against Human Trafficking (2011–2014), p.22

<sup>216</sup> Report from the Coordinating Unit for Victims of Trafficking 2014, p.58

<sup>217</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women, Children, supplementing the United Nations Convention against Transnational Organised Crime, done Nov. 15, 2000.

<sup>218</sup> OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS Recommended Principles and Guidelines on Human Rights and Human Trafficking p. 1, para 4.5

<sup>219</sup> The International Law of Human trafficking, Anne T.Gallagher, p.415

<sup>220</sup> Ibid, p.414

<sup>221</sup> Ibid,p.2

<sup>222</sup> Reference Guide for Anti-Trafficking Legislative Review with particular emphasis on South Eastern Europe, p.19.

employment for people abroad and may also suspend licenses if they find persons in violation of the law. In other words, potential migrants have the possibility to check, via these committees, if a company offering work abroad is registered and licensed according to the law. Unfortunately, there are not many agreements between countries in combat human trafficking. It would be effective if more states of origin and destination could create similar agreements after case law has identified that there is in fact a human trafficking problem between their territories. Traffickers often capitalize on the lack of cooperation between governments to hide the full scope of their criminal enterprise. The transnational nature of many trafficking crimes requires increased efforts by governments to cooperate with each other. Governments must adhere to their obligations under Articles 2 and 10 of the Palermo Protocol, which require cooperation and information-sharing among governments' law enforcement, immigration, and other relevant authorities to investigate and prosecute trafficking (r).

Accordingly, we recommend states should fund and organize awareness raising and information campaigns in the countries of origin, in order to prevent trafficking in human beings. Such campaigns should be developed and be undertaken by countries of origin in cooperation with countries of destination and even countries of transit as well as NGOs.

This is by no means an easy task however it is always necessary for states to contribute in developing programs that offer livelihood options, including basic education, skills training and literacy, especially for women and other traditionally disadvantaged groups. To eliminate child trafficking the state should improve children's access to educational opportunities and increasing the level of school attendance, in particular by girl children. It is therefore essential that greater international cooperation is achieved in a world the state's ability to control its territorial sovereignty is constantly challenged by the interconnectedness of human trafficking.

### **3.3 State Obligation: Related To Repatriation And Remedies Of Victims Of Human Trafficking**

Receiving compensation is important for victims of trafficking not only because of the financial component but also because of the symbolic justice associated with the compensation. Compensation expresses that something illicit has been done and thus constitutes a first step to overcoming the trauma inflicted by the abuses persons have suffered at the hands of

traffickers.<sup>223</sup> Remedies confirm the status of trafficked persons as victims of crime and victims of human rights abuse. The provisions of the Organized Crime Convention and the Trafficking in Persons Protocol requires that some appropriate procedures are established to provide access to restitution or compensation.

States can provide remedies through direct compensation via state organs or indirectly through the controlling of traffickers but, in any case, they should be responsible for remedies. Directly in this case is when appropriate authorities compensate material, medical, psychological and social assistance support. Alternately indirectly, in our case means, a remedy given via the controlling and use law enforcement against traffickers to compensate remedies through appropriate authorities. Trafficked persons are often prevented from access to compensation because they do not know about their right to receive compensation and the necessary procedural steps to take. Therefore, information provided by law enforcement or private lawyers is an important prerequisite for such access.

A. T. Gallagher notes that today there are international treaties that oblige members to ensure victims have access to remedies. For example the UDHR<sup>224</sup> OP-ICESCR<sup>225</sup> provides that the Committee will only consider a communication after all available domestic remedies have been exhausted, unless domestic remedies are unreasonably prolonged.<sup>226</sup> CEDAW<sup>227</sup> and ICCPR require State parties to ensure ‘‘that any person whose rights or freedoms are violated shall have an effective remedy.<sup>228</sup> Also other International legal instruments such as ECHR,<sup>229</sup> African Carter,<sup>230</sup> provides remedies for victims. The Convention on the Elimination of All Forms of Racial Discrimination, the Convention against torture<sup>231</sup> require States to provide enforceable rights to fair and adequate compensation including the means for as full rehabilitation as

---

<sup>223</sup> Toolkit to Combat Trafficking in Persons, GLOBAL PROGRAMME AGAINST TRAFFICKING IN HUMAN BEINGS, p.163.

<sup>224</sup> UDHR, at Art.8: ‘‘everyone has the rights to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

<sup>225</sup> On 10 December 2008, the General Assembly adopted the Optional Protocol to the ICESCR (OP-ICESCR) which allows for the CESCR to receive and consider individual communications/complaints under violation of their rights. OP-ICESCR is an international treaty establishing complaint and inquiry mechanisms for the ICESCR. It can only be exercised under two conditions: a) If the complainant’s country is a party to OP-ICESCR; and b) the individual complainant has exhausted all domestic and regional remedies they can directly take their case to the committee under OP-ICESCR.

<sup>226</sup> International Covenant on Economic, Social and Cultural Rights, A Handbook ([http://www.pwescr.org/PWESCR\\_Handbook\\_on\\_ESCR.pdf](http://www.pwescr.org/PWESCR_Handbook_on_ESCR.pdf))

<sup>227</sup> Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979

<sup>228</sup> The International Law of Human Trafficking, Anne T.Gallagher, p.356.

<sup>229</sup> European Convention for Human rights, Article 13 ‘‘everyone whose rights and freedoms as set forth in this convention are violated shall have an effective remedy before a national authority’’

<sup>230</sup> African Charter, Article 7(1)(a)

<sup>231</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987, in accordance with article 27 (1)

possible.<sup>232</sup> In addition the Convention Rights of the Child, The Migrant Workers Convention, the Rome Statute of the International Criminal Court grants the Court consider financial reparations to victims.<sup>233</sup> Below case law example of how these issues have been tackled.

Obligation to investigate allegations of trafficking in the European Court of Human Rights (ECtHR) case of C.N. v the United Kingdom,<sup>234</sup> the Court found that the UK violated article 4 of the EcHR by failing to investigate the claim of trafficking for domestic servitude. The lady was trafficked into domestic servitude but UK determined that her claims were not acceptable. The Court found that the investigation was insufficient in part because at the time of alleged offending, there was no specific offence of ‘domestic servitude’ and no apparent weight was attributed to C.N’s allegations that her passport was taken, that the alleged offender had not kept her wages for her as agreed, and that she was threatened with denunciation to immigration authorities, even though these factors were amongst those identified by the ILO as indicators of forced labor. In light of the ‘purely procedural’ nature of the violation of article 4, and the government’s ‘genuine concerns about the applicant’s credibility’, C.N. was awarded €8,000 in respect of non -pecuniary damage as well as legal costs.<sup>235</sup>

We can see from the examples above is that both cases show a growing understanding of human trafficking at a domestic, regional and international level. However, in both cases this understanding is limited and is often un codified in domestic law despite UN or regional court rulings on legal definitions. Furthermore, even if these laws exist on the domestic level, with all the correct legal definitions that courts have suggested and we have discussed, there is often a lack of legal training in these laws or standards leaving legal professionals and law enforcement agencies ill-equipped to deal with the problem of remedies and the other issues pertaining to victims of human trafficking.

---

<sup>232</sup> Torture Convention, Article 14.

<sup>233</sup> Anne T. Gallagher, p.356.

<sup>234</sup> Case of C.N. v. the United Kingdom

<sup>235</sup> [https://sherloc.unodc.org/cld/case-law\\_doc/traffickingpersonscrimetype/gbr/2012/case\\_of\\_c.n.\\_v.\\_the\\_united\\_kingdom.html](https://sherloc.unodc.org/cld/case-law_doc/traffickingpersonscrimetype/gbr/2012/case_of_c.n._v._the_united_kingdom.html)



## **Conclusion**

In conclusion of our study we have established the following,

In Chapter 1 the paper described the history of human trafficking and that the phenomenon has occurred since the dawn of early civilization was not differentiated from slavery. It was a legally accepted practice in most human civilizations. After the gradual universal abolition of chattel slavery in the 1800's most of the activity involved in the trafficking of human beings as slaves moved underground. Today, the type of slavery we see is linked with international criminal organizations that know sex slavery is far more profitable than selling drugs and weapons, which can only be sold once. Traffickers force minors, women and men, into engaging in illegal sexual services, force them to do hard labor, and other horrendous acts that we have discussed in detail. What is most concerning is that so many people have become victims of human trafficking, and that so many of those people end up working in the sex industry, prisoners of the sex trade. With so many conflicts in the world today, be they economic or a destructive civil war, people are on the move to find better lives. So many have lost their freedom that this has become a global security risk.

Modern slavery, prostitution, sexual exploitation, forced labor, organized crime, migration, human trafficking has a part to play in all these categories. The ILO recognized more than 12,3 million people are victims most of them women and girls who forced labor and commercial sex. We have identified the manner in which human trafficking occurs Action, Means and Purpose. The first component is considered as the recruitment, transportation, transfer, harboring or receiving of persons. We understood that the main distinction between smuggling and human trafficking is freedom of choice. Trafficking is involuntary. It includes forced exploitation of labor or services. Smuggling is voluntary.

One of the great challenges here is that the law enforcement bodies are unable to enforce these laws because of a lack of training or resourced; a lack of political will to institute international standards in regards to human trafficking; or that some states are so corrupt that the elements of the state run the crime syndicates that organize the human trafficking activity even though on paper they may be signatory members of conventions that promote human rights. In Chapter Two we discussed the Sources of Law in the international framework and the regional framework in relation to human trafficking. International law has various sources, which in

order of priority are: international principles as jus cogens, international conventions, international custom and practice and judicial decisions.

The international framework for our topic involves International treaties for human rights that prohibit all elements of human trafficking. For example, slavery, forced labor, and torture. There are also treaties which directly relate to human trafficking. These treaties contain definitions of human trafficking used by the legal systems of our global civilization, defining what exploitation is, the trafficking of children, child prostitution and so on. In addition, International treaties on human trafficking provide articles that oblige the state to be held responsible in combatting human trafficking. We discussed how important cooperation between states are and how often there are not enough proactive structures in place to help states cooperate due to the transnational characteristics of human trafficking.

Also, we discussed the European legal framework. The human trafficking that occurs within the EU comes from eastern Europe to west and north Europe. We understood that Palermo protocol does not define the victims of human trafficking whereas the European Trafficking Convention describe the definition of victim. In other words, European Trafficking Convention improved the European legislation. Turning to the ECHR, it also does not provide a clear and precise definition of human trafficking nor does it include forced labor in this definition. This is problematic for courts as we have observed in the court in the case *Siliadini v France*, which found forced labor but did not qualify as human trafficking. We have established that case law is also important source of human rights as it is constantly highlighting the deficiencies in the law in regard to human trafficking. One of the strong points here is that the European Trafficking Convention expands membership to “third” countries in order to address the multinational character of this problem.

In chapter three we discussed state responsibility to protect, prevent and compensate victims of human trafficking. There are international legal instruments and domestic laws which ensure respect for the rights of victims, although not all states are efficient in the actual implementation of these standards. Through case law the state also combats human trafficking.

If domestic law is robust in this regard the state is able to take decisive action against human trafficking. Inter-State cooperation, especially in developing systems that can create remedies for victims is very important, however, the burden to protect, prevent and provide remedies normally falls to the state of destination. This creates many problems for states and we have identified that greater capacity needs to be build both in legal documents and actual regional law enforcement systems. Domestic law is primary vessel through which international treaties

are realized. So it is essential that international treaties include accurate language that informs legal institutions or the realities of a phenomenon and the necessary rights that should accompany the needs of those whose rights have been violated. If treaties do not reflect accurately the situation of victims, for example not including forced labor as part of human trafficking, the state has no way of really realizing its true obligations to the people being trafficked within its borders. State responsibility is not only to protect of victims but to create good conditions for citizens. If look at root causes of human trafficking we understood that is corruption, poverty, unemployment etc.

In closing we find that, the international system is developing standards that are not yet uniform in their understanding of human trafficking, and that on the domestic level, there is much to be done in this regard. However, some countries have been successful by taking initiatives by themselves in introducing dynamic holistic legal standards and cooperating with other states, rather than waiting for new legal practices to emerge somewhere else in the world. However, this generally occurs in states with strong democracies, and thus the issue of political will in less developed states makes the full legal implementation of effective standards difficult. We nevertheless suggest the following legal and structural developments that we have found to be helpful in dealing with these issues. A regional and domestic legal code that criminalizes the purchasing of sex, not the selling of sex. A legal code that accurately defines all the parts and processes of human trafficking so that nobody can fall through the cracks, ie: making sure forced labour, sexual violence, forced marriage and other crimes are shown to have connections with the issue at hand in certain circumstances. Another suggestion is that courts must endeavor to ensure to establish practices that provide appropriate remedies that reflects the gravity of the crime committed. For example, if someone has been raped, forced into domestic service without pay, and then only given a few sessions of psychological assistance, or deported, this cannot be considered an appropriate remedy. Courts must try to look at what has occurred in the life of the victim rather than focus on their immigration status. Alternately, we understand that human trafficking is a gargantuan problem that is extremely difficult for states of destination, let alone states of origin to tackle. Yet, we have no choice but to build greater levels of cooperation and punish those who continue to profit from this trade harshly. In the end states and the law exists to improve human life, and thus we must never stop trying to develop better systems in our ever changing world.

## **Bibliography:**

### ***Books:***

From Human Trafficking to Human Rights, reframing contemporary slavery, edited by Alison Brysk and Austin Choi-Fitzpatrick, 2012

The International Law of Human Trafficking, Anne T. Gallagher 2010

Book: Louise Shelley, Human Trafficking: A Global Perspective (Cambridge University Press, 2010).

Human Trafficking-Human Rights, Law and Practice by Sandhya Drew 2009

Human Trafficking edited by Maggy Lee, 2007

Human Trafficking- Human Rights Law and Practice

Human Trafficking and Human Security edited by Anna Jonsson, 2009

### ***International legal documents:***

Universal Declaration of Human Rights

International Covenant on Civil and Political Rights.

Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime,

African Charter for Human Rights

Torture Convention

International Covenant on Economic, Social and Cultural Rights

United Nations Convention against Transnational Organized Crime;

Convention against Transnational Organized Crime;

Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations

Convention on the Rights of the Child

The Statute of the International Criminal Tribunal for the former Yugoslavia

Convention For The Suppression Of The Traffic In Persons And Of The Exploitation Of The Prostitution Of Others

United Nations Declaration on Crime and Public Security

54/263. Optional protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography

Committee of Ministers. Recommendation No. R (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation

The Protocol to Prevent, Suppress and Punish Trafficking in Persons

C182 - Worst Forms of Child Labour Convention, 1999 (No. 182), Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour  
Vienna Declaration and Programme of Action, World Conference on Human Rights, Vienna, 14 to 25 June 1993, United Nations Doc. A/CONF.157/23 (1993).

Council of Europe Convention on Action against Trafficking in Human Beings

Slavery Convention Signed at Geneva on 25 September 1926 Entry into force: 9 March 1927, in accordance with article 12

### ***Academic Articles:***

Forced labour, modern slavery and human trafficking,

International Labour Organization, Global Estimate of Forced Labour 2012: Results and Methodology

The gender dimension of Human Trafficking, Human Misery: The Global Trade in Human Beings. Global Crime and Justice. Westport, Connecticut: Praeger 2009

Cameron, Sally, and Edward Newman. Trafficking in Humans: Social, Cultural, and Political Dimensions. Tokyo: United Nations University

Caldwell G., Galster S., Steinzor N. Crime & Servitude: An Expose of the Traffic in Women for Prostitution from Newly Independent States

Aronowitz, Alexis A. Human Trafficking, Human Misery: The Global Trade in Human Beings. Global Crime and Justice. Westport, Connecticut: Praeger, 2009.

Human trafficking and exploitation: A global health concern, Cathy Zimmerman\* and Ligia Kiss

Global Sex Workers: Rights, Resistance, and Redefinition / Ed. by Kamala Kempadoo and Jo Doezema. New York, 1998

Human Trafficking: The Role of the Health Care Provider

Buth Reaksmey Kongkea, "Police raid terminates alleged virginity sale," Phnom Penh Post, June 2, 2014

ILO Action Against Trafficking In Human Beings. International Labor Organization, 2008

Bales K. Disposable People: New Slavery in the Global Economy. Berkeley and Los Angeles: University of California Press, 1999

Identifying Jus Cogens Norms: The Interaction of Scholars and International Judges,  
Human Trafficking and Human Rights Law and Practice  
Human Trafficking: A Brief Overview  
Human Trafficking Kathryn Cullen-DuPont  
Defining Human Trafficking and identifying its victims, Venla Roth,  
Trafficking in Human Beings Amounting to Torture and other Forms of Ill-treatment  
FOREIGN RELATIONS AND INTERCOURSE CHAPTER 78-TRAFFICKING VICTIMS  
PROTECTION  
Trafficking in Human Beings: Identification of Potential and Presumed Victims A  
Community Policing Approach SPMU Publication Series Vol. 10  
Human Rights–Based Approach to Trafficking the Work of the United Nations Office of the  
High Commissioner for Human Rights  
US Lists China Among World's Worst Human Trafficking Offenders  
UN Treaty Bodies and China

***Reports:***

Global report on trafficking in persons 2014  
Global report 2012 Human Trafficking in persons,  
Human Rights and Human Trafficking, Fact Sheet No 36 – New York and Geneva, 2014.  
Trafficking in Persons Report. Released by the Office to Monitor and Combat Trafficking in  
Persons.  
International Migration and development: Report of the Secretary // Sixty-ninth session Item  
21 (a) of the provisional agenda «Globalisation and interdependence International migration  
and development» // United Nations, A/69/XXX General assembly Distr.: General 30 July  
2014.  
India has world's highest number of stunted children  
Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report. -  
US  
State Department, 2005  
2018 Trafficking in Persons Report

***Case law:***

Siliadin v. France, Application no. 73316/01

Case No IT-96-23\_T and IT-96-23/1-T

Rantsev v. Cyprus and Russia, Application no. 25965/04

“C.N. and V. (CN and V.) against France

Christine Goodwin v. The United Kingdom, complaint No. 28957/95, § 71, ECHR 2002-VI

Case of C.N. v. the United Kingdom

***Internet sources:***

<https://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>

<https://www.youtube.com/watch?v=4PU8QubNmmQ&t=240s>

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5699819>

<https://eu.dailyworld.com/story/opinion/columnists/2017/09/06/difference-between-human-trafficking-and-smuggling/621095001/>

<https://www.irishtimes.com/news/world/asia-pacific/bride-kidnapping-in-kyrgyzstan-crime-and-tradition-overlap-1.2456467>

<https://borgenproject.org/eight-facts-chattel-slavery>

<https://www.amnesty.org/en/latest/news/2018/06/kyrgyzstan-new-rape-case-highlights-need-for-immediate-action-to-end-appalling-bride-kidnapping-practice> <https://oag.ca.gov/human-trafficking/what> [https://www.echr.coe.int/Documents/FS\\_Forced\\_labour\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Forced_labour_ENG.pdf)

<https://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>

<https://www.hrw.org/news/2018/05/25/new-research-shows-forced-labor-still-rampant-uzbekistan>

[http://www.un.org/slavery/trust\\_fund/slavery\\_form.html](http://www.un.org/slavery/trust_fund/slavery_form.html).

<https://oko-planet.su/politik/politiklist/289127-raby-i-rabovladelcy-torgovlya-lyudmi-v-sovremennom-mire.html>, have been translated from Russian into English.

[www.unodc.org/unodc/human-trafficking-fund.html](http://www.unodc.org/unodc/human-trafficking-fund.html)

[http://siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/244362-1239390842422/6012763-1239905793229/Human\\_Trafficking.pdf](http://siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/244362-1239390842422/6012763-1239905793229/Human_Trafficking.pdf)

<https://www.stophetraffik.org/about-human-trafficking/spot-the-signs/>

<http://ec.europa.eu/anti->

[trafficking/sites/antitrafficking/files/thb\\_amounting\\_to\\_torture\\_and\\_other\\_forms\\_of\\_ill-treatment\\_0.pdf](http://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/thb_amounting_to_torture_and_other_forms_of_ill-treatment_0.pdf)

<https://www.hrichina.org/en/un-treaty-bodies-and-china>

<https://www.state.gov/j/tip/rls/tiprpt/countries/2018/282632.htm>