



THE FIGHT AGAINST TRAFFICKING IN HUMAN BEINGS IN EU: PROMOTING LEGAL COOPERATION AND VICTIMS' PROTECTION

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LIST OF ACRONYMS AND ABBREVIATIONS

ACCEM – Asociación Comisión Católica Española de Migraciones (Spanish Catholic Association for Migrations)

ACIDI – Alto Comissariado para a Imigração e Diálogo Intercultural (High Commission for Immigration and Intercultural Dialogue)

ACIME – Alto-Comissariado para a Imigração e Minorias Étnicas (High Commission for Immigration and Ethnic Minorities)

ACT – Autoridade para as Condições de Trabalho (Authority for Working Conditions)

ANCI – Associazione Nazionale Comuni Italiani (National Association of Italian Municipalities)

ANITP – Agentia Nationala Impotriva Traficului de Persoane (National Agency against Trafficking in Persons - NATP)

APF – Associação para o Planeamento da Família (Portuguese NGO: Association for Family Planning)

APRAMP – Asociación para la prevención, reinserción y atención a la mujer prostituida (Association for Prevention, Reinsertion, and Attention to Women Prostitutes)

ASAE – Autoridade para a Segurança Alimentar e Económica (Economic and Food Safety Authority)

AT – Autoridade Tributária (*Tax Authority*)

BCOC – Brigade for Combating the Organize Crime

CAP – Centro de Acolhimento e Proteção para Vítimas de Tráfico (Shelter and Protection Centre)

CATS - Police and Judicial Cooperation Unit

CCI – Centers of Crisis Intervention

CCOO – Comisiones Obreras (Workers' Commissions)

CCP – Code of Criminal Procedure (Code de Procédure Criminelle)

CEAR – Comisión Española de Ayuda al Refugiado (Spanish Commission for Refugees)

CEOOR – Centre for Equal Opportunities and Opposition to Racism (Centre pour l'égalité des chances et la lutte contre le racisme)

CEPOL - European Police College

CES – Centro de Estudos Sociais (Universidade de Coimbra, Portugal)

CGRS – Commissioner General for Refugees and Stateless Persons

CIATTEH – Centre d'information et d'analyse en matière de trafic et de traite des êtres humains (Centre for Information and Analysis in the field of Smuggling of and Trafficking in Human Beings)

CICO – Centro de Inteligencia contra el Crimen Organizado

CICP – Center for International Cooperation of Police

CIE – Centro de Internamiento de Extranjeros (Aliens' Internment Centres)

CIG – Comissão para a Cidadania e Igualdade de Género

CNCA – Coordinamento Nazionale Comunità di Accoglienza (National Coordination of Host Communities)

CoE – Council of Europe

CPLP – Comunidade dos Países de Língua Portuguesa

CTIF – Cellule de Traitement des Informations Financières (Central Financial Intelligence Unit)

DCCO – Direction of Combating the Organize Crime within the General Inspectorate of Romanian Police

DCCO – Directions for Combating the Organize Crime

DCP – Department of Criminal Policy (Département de politique criminelle)

DDA – Direzione Distrettuale Antimafia (District Anti-Mafia Directorate)

DG Home-Affairs – Directorate General Home Affairs

DIOCT – Directorate for Investigating Organized Crime and Terrorism within the Prosecutor's Office

DNA – Direzione Nazionale Antimafia (National Anti-Mafia Directorate)

DPO – Dipartimento per le Pari Opportunità (Department for Equal Opportunities)

EC – European Commission

EPAV – Equipas de Proximidade e de Apoio à Vítima (Victim Support Teams)

EPPO - European Public Prosecutor Office

EU – European Union

EU ATC – EU Anti-Trafficking Coordinator

EUROJUST – An European unit composed of national prosecutors, magistrates, or police officers of equivalent competence, detached from each Member State according to their own legal systems

EUROPOL – European Police

FG – Focus group

FPS – Federal Public Service (Service Public Fédéral)

GIRBP – General Inspectorate of Romanian Border Police

GIRG – General Inspectorate of Romanian Gendarmerie

GIRP – General Inspectorate of Romanian Police

GNR – Guarda Nacional Republicana (National Republican Guard)

GRETA – Group of Experts on Action against Trafficking in Human Beings

GUR – Guia de Único Registro (Single Registration Guide)

HORECA – Hotels, Restaurants and Cafés

I – Interview

IAC – Instituto de Apoio à Criança (Institute of Child Support)

IAVE – Investigação e de Apoio a Vítimas Específicas (Investigation and Support for Specific Victims)

IEFP – Instituto de Emprego e Formação Profissional (Employment and Vocational Training Institute)

IEPALA – Instituto de Estudios Políticos para América Latina (Latin America and Africa Political Studies Institute)

ILO - International Labor Organization

INTERPOL –International Police

IOM – International Organisation for Migration

IPA – Institute of Public Affairs

ISS – Instituto da Segurança Social (Social Security Institute)

JIT – Joint Investigation Teams

LOIC – Lei de Organização da Investigação Criminal (Law of Criminal Organisation)

MAE – Ministry of External Affairs

MAI – Ministry of Administration and Interior (affairs)

MIA – Ministry of Internal Affairs

MJ – Ministry of Justice

MLFSPAP – Ministry of Labor, Family, Social Protection and Ageing People

MNE – Ministry of National Education

MS – Member State (of the EU)

NGO – Non-Governmental Organization

NIRM - National Identification Referral Mechanism (of the THB victims)

OAR – Oficina de Asilo y Refugio (Asylum and Refuge Office)

OCMT – Office of Combating Migrants Trafficking

OCT – Office of Combating Trafficking in Persons

OSCE – Organization for Security and Cooperation in Europe

OTSH – Observatório do Tráfico de Seres Humanos (Observatory on Trafficking of Human Beings)

PJ – Polícia Judiciária

PM – Public Ministry

PSP – Polícia de Segurança Pública

RC - NAAPT – Regional Center of NAAPT

RCC - Romanian Criminal Code

RCIMI – The Research Centre on Identity and Migration Issues

RII – Romanian Inspectorate for Immigrations

RNS – National Strategy against Trafficking in Persons

SCTP – Service for Combating Trafficking in Persons

SDI – Sistema Di Indagine (Investigative System)

SEF – Serviço de Estrangeiros e Fronteiras (Foreigners and Borders Service)

SIMEV - Integrated System to Monitor and Assess Victims of THB

SRC – Specialized Reception Centre (Centres d’Accueil Spécialisés)

TEU – Treaty on the European Union

TFEU – Treaty on the Functioning of the European Union

TGW - Thematic Working Group

THB – Trafficking in human beings

Three Ps – Preventing, Prosecuting and Protecting in THB

TIE – Territorial Inspectorate of Education

TIL – Territorial Inspectorate of Labor

TP – Trafficking in Persons

UCRIF – Unidad Central de Redes de Inmigración Ilegal y Falsedades Documentales
(Unit against Immigration Networks and Forgery of Documents)

UCSC – Università Cattolica del Sacro Cuore (Italy)

UK – United Kingdom

UN – United Nations

UNHCR – United Nations High Commissioner for Refugees

UNICEF – United Nations Children's Fund

UNODC – United Nations Office on Drugs and Crime

VT – Victims of Trafficking

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INTRODUCTION

Trafficking in human beings (THB) has been attracting increasing interest from states, international bodies, non-governmental organisations (NGOs), the media and academia. Yet it remains an understudied phenomenon and it deserves further investigation for four main reasons. First, THB has only recently been recognised as a crime in the legislation of several countries. Second, in what concerns Europe – the focus of this research project – the diversity regarding this phenomenon is very significant. For instance, some countries are categorized as countries of origin; others as countries of destiny and others are simultaneously countries of origin, transit and destination. Moreover, some countries are countries of destination in what concerns trafficking for sexual exploitation, but are also countries of origin with respect to labour exploitation. These characteristics associated with the moving dynamics promoted by migratory movements, economic crisis and changes in the criminal networks complicate the criminal investigation and the support given to the victims. Third, the legislative and practical difficulties in distinguishing international trafficking from migration and in articulating criminal law with the legislation towards human rights, migration, labour and gender at different scales may hinder the protection and empowerment of victims' rights.

Taking into account these difficulties, the purpose of this project was to promote knowledge about THB from the perspective of both law enforcement and victims' rights. We are aware that in the past few years governments have tried to develop strategies for combating trafficking in human being. The main strategy has been based on the creation and strengthening of specific legislation. Since 1996 the European Union (EU) has promoted a number of initiatives concerning THB. These include the STOP programme, followed by AGIS, both aiming at developing a coordinated multidisciplinary approach to preventing and combating THB, training and exchange programmes involving the various parties responsible for combating trafficking at EU level. A framework decision on combating THB (2002/629/HA) was adopted in 2002 with a view to address divergences in legal approaches in EU. With regard to further action, the Brussels Declaration plays an important role. It aims at further developing European and international cooperation, calls for concrete measures, and establishes standards, best practices and mechanisms to prevent and combat THB. In addition, the EU is introducing a framework of common provisions in order to tackle issues such as criminalisation and penalties or aggravating circumstances in the case of trafficking in human beings. The action of the EU is integrated in a broader context of protection against violence, sexual tourism and child pornography.

However, the creation of legislation per se is not enough to combat a crime of such complexity and needs to be combined with national and international instruments for effective law enforcement. The literature consulted emphasises the notion that legal solutions must prevent trafficked victims from being immediately deported, since this constitutes an impediment to their active participation as witnesses and, therefore, to the conviction of traffickers. The literature also underlines the fact that dealing with trafficked people merely in terms of legislation and its implementation is often conditioned by moralist conceptions and their civil and human rights are constantly violated (Anderson and Davidson, 2002: 40; Corrin, 2005; Kempadoo, 2005; Ventrella, 2010). Thus, the fight against this crime must be transnational just as the nature of the crime itself. Until this happens, important documents such as the Palermo Convention, the Warsaw Convention and national laws on these matters will have reduced effectiveness.

Paying attention to this political and legal scenario, the aims of this project were: (1) to understand the specificities of sex and labour THB; (2) to analyse the impact of THB on legislation; (3) to compare the legal tools as well as the judicial cooperation strategies implemented by European countries through an analytical approach that identifies discrepancies and similarities between different legal frameworks; (4) to analyse repressive solutions adopted by states; (5) to examine the integration of cooperation mechanisms into national plans and programs for the transnational coordination of law enforcement agents; (6) to compare country-specific practices in the fight against THB, more specifically to compare investigation and prosecution practices as well as obstacles encountered along the way; (7) to identify the level of protection and support afforded to victims before, during and after criminal proceedings; (8) to reflect on some of the measures described as best practices in the domain of cooperation; (9) to promote workshops with experts, judges, prosecutors and law enforcement agents with a view to sharing experiences within a multilateral cooperation framework; (10) to test guidelines for the harmonisation of legal and judicial cooperation; (11) to promote the training of legal and other actors within this field.

Sex and labour trafficking were selected as case studies for two main reasons. First, the definition of sex trafficking is still rather imprecise, mainly as a result of preconceived ideas. This problem has practical consequences for criminal investigations as well as for the identification and protection of victims. Second, trafficking for the purposes of labour exploitation is still a poorly known phenomenon. Previous studies have shown that many trafficking routes are common, involving the same countries of origin and destination. Moreover, especially when the victims of trafficking are women, they are exploited for both

labour and sexual purposes, although these two forms of exploitation may occur in different phases of their lives.

In the first chapter we make a critical and interdisciplinary review of the literature concerning THB. Studies which focus on THB are generally faced with an initial problem: defining their object of study. Human trafficking is a complex phenomenon and its definition is still very controversial. The broader or narrower scope given to the concept may influence the policies used to combat this crime and it is not rare for governments, international agencies or even NGOs to use the concept and define it according to the political goals of their own particular agendas. It is therefore essential to have a greater and more widespread knowledge of labour and sexual trafficking (countries of origin and destination, profile of traffickers' victims, trafficking routes, forms of coercion, type of recruitment, victims' expectations, etc.). So, in this chapter we try to clarify the theoretical complexity that surrounds this concept and offer a contribution to a prolific post-disciplinary reflection in this matter.

The second chapter is dedicated to the analysis of the fight against THB in the EU. After having looked at the founding principles and objectives of the EU's action in this area, this chapter aims to describe the evolution of legal provisions relating to the incrimination of THB and its sanctions. Additionally, it also offers a briefly discussion on other relevant matters, such as the provisions relating to the liability of legal persons, to the rules applicable in terms of jurisdiction, and to the victims' protection. For each of these aspects, due reference is made to the relevant provisions of the international and Council of Europe instruments.

In the third chapter we explain the methodology used to achieve the objectives explained above. The team resorted to quantitative and qualitative research techniques, and included the following research methods: collection and analysis of relevant bibliography, national legislation, as well as documents produced by European and other international institutions; data collection on THB in all participating country; press analysis; interviews, focus groups, and implementation of a survey in all participating countries; organisation of regular workshops to develop cooperation and coordination strategies. The methodological options, obstacles and concerns are exposed and explained in this chapter.

The following chapters discuss THB in each partner country, including countries of origin and destination of THB: Portugal, Spain, Italy, Belgium, Poland and Romania. These six chapters, divided in six national case studies, provide a portrait of the reality of THB (for sexual and labour exploitation) in each country resorting to the results collected by the different

methods explained in Chapter III and – taking into account the European legislative framework described in Chapter II, and the legislation of each country – it also allows not only to see in all the countries if the instructions and directives from the EU are being implemented, but also to identify possible discrepancies between law in books and law in action.

Finally, in the last chapter we synthesize the main conclusions and present some proposals/ recommendations based on the identification of good practices that can be disseminated at European level as well as obstacles to the efficient cooperation between legal institutions and national public policies in the fight against transnational criminality. This allows us to compare European countries' national laws on THB through an analytical approach and to indicate the discrepancies between the different legal frameworks; to understand the specificities of sexual and labour trafficking in human beings in each country and analyse their impact on legislation; to compare country-specific practices in the fight against trafficking, more specifically to compare investigation and prosecution practices as well as obstacles encountered along the way; to identify the level of protection and support afforded to victims before, during and after criminal proceedings; and to reflect on some of the measures described as best practices in the domain of cooperation.

In addition, this research project will promote the training of legal and other actors in this field, thus shifting the criminal investigation and prosecution paradigms away from a criminalizing and/or punitive approach to trafficking victims. Since in most human trafficking cases the main type of evidence is testimonial, victims are subject to a great deal of pressure. Victims' actual safety depends on: effective transnational regulations and the development of cooperation mechanisms and criminal protection; national and international instruments that defend the rights of trafficking victims and are echoed also in immigration laws; and the development of policies based on a clear definition of human rights, citizenship and global justice.

We hope that all the EU countries will benefit from this research, which adds significantly to the knowledge about the fight against THB, thus helping evaluate and solve existing problems. The measures, the training programme guidelines as well as the reinforcement of judicial cooperation, which are proposed as a result of this investigation, can also be applied to other Member States and, in that way, this project will promote the development of EU justice and security policies, particularly as regards the investigation and prosecution of transnational crime such as THB.

CHAPTER I

TRAFFICKING, SEX AND WORK

IN TRANSIT BETWEEN PARADIGMS

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INTRODUCTION

Human trafficking in its various forms has received unprecedented media coverage in recent years and is now a central topic on the political agenda of various governments and organizations, both regional and international. The publication of a number of international reports indicating that the number of trafficked persons has been consistently increasing, as well as growing investigative journalism coverage, have helped to heighten the interest of various governments in this phenomenon, a reality that constitutes a serious violation of human rights. This is a complex topic and multidisciplinary reflection on the current state of contemporary societies is certainly needed.

Although the problem is by no means new, the last decade has seen the reinforcement of legislation devoted to fighting human trafficking. This reinforcement has mainly involved the criminalisation of human trafficking and its active agents, along with an increase in the rights and support given to victims. While some see this as the best course of action, others argue that there are other aspects which must be addressed so that the measures to fight trafficking and protect its victims can be truly effective. Essentially, the initiatives and political strategies to combat sex trafficking, in particular, have not been accompanied by a consensus on the definition of that specific type of trafficking. In fact, it is quite easy to find competing definitions of trafficking and little agreement among researchers and activists. The extent of the scope of the concept of sex trafficking has an immediate influence on the numbers that are presented, and therefore on the measures to fight it.

The way in which these matters are designated and framed raises questions that transcend the phenomenon of trafficking itself and include ethical, political and philosophical questions about society as a whole. Some very diverse attitudes and views are involved regarding both principles (liberty, autonomy) and strategy (means, efficacy, realism). Contemporary society has been suffering from accelerated and often contradictory change. Thus, while the phenomenon of trafficking has merited growing

visibility and political, legal and social investment, strong levels of structural inequality, greater job insecurity and nationalistic shifts within the European context have led to the emergence of risks and social violence which directly or indirectly help to sustain human trafficking networks and propagate a range of ambiguous modes of exploitation.

Although it is unevenly distributed between the centres and the peripheries of the world economy, human trafficking affects practically all countries and constitutes an aggressive system of control, of abusively taking advantage of and of exercising power over people. According to a report by the United Nations Office on Drugs and Crime – UNODC (2012a), women, men and children are trafficked through hundreds of networks within and between countries. The wide range of estimates presented in the last decade have not garnered consensus regarding the most appropriate method of calculation; instead, they have offered frequently contradictory results¹. According to the International Labour Organization (ILO) (2012), at any given time between 2002 and 2011 there were 20.9 million victims of forced labour in the world. Of these victims, 9.1 million were moved internally or internationally, while 11.8 million were subjected to forced labour in their place of origin or residence. UNODC (2012a) sustains that between 2010 and 2012, information was gathered on approximately 55 000 victims and 50 000 offenders detected around the world. These numbers of detected victims and offenders contrast, as we see, significantly with other estimations, namely those provided by ILO. The ILO provides a new framework in which the various types of forced labour can be considered, one that encompasses the purpose of labour exploitation, sexual exploitation and forced labour imposed by the state (UNODC, 2012a: 68).

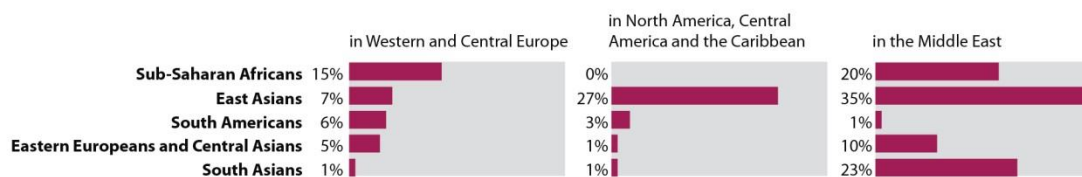
Map I.1 shows the transnational flows, with Western and Central Europe, North and Central America and the Caribbean, and the Middle East as destination zones and

¹ The UNODC (2012a) report dogmatically states that the International Labour Organization (ILO) provides the most reliable data.

Eastern Europe and Central Asia, East Asia, South Asia, Sub-Saharan Africa and South America as places of origin.

MAP I.1 – TRANSNATIONAL FLOWS – 2007-2010

MAP 9: Transnational flows: Nationalities of victims detected in some major destination regions, shares of the total number of victims detected there, 2007-2010



Atelier de cartographie de Sciences Po, 2012

SOURCE: UNODC – UNITED NATIONS OFFICE ON DRUGS AND CRIME (2012A: 48)2

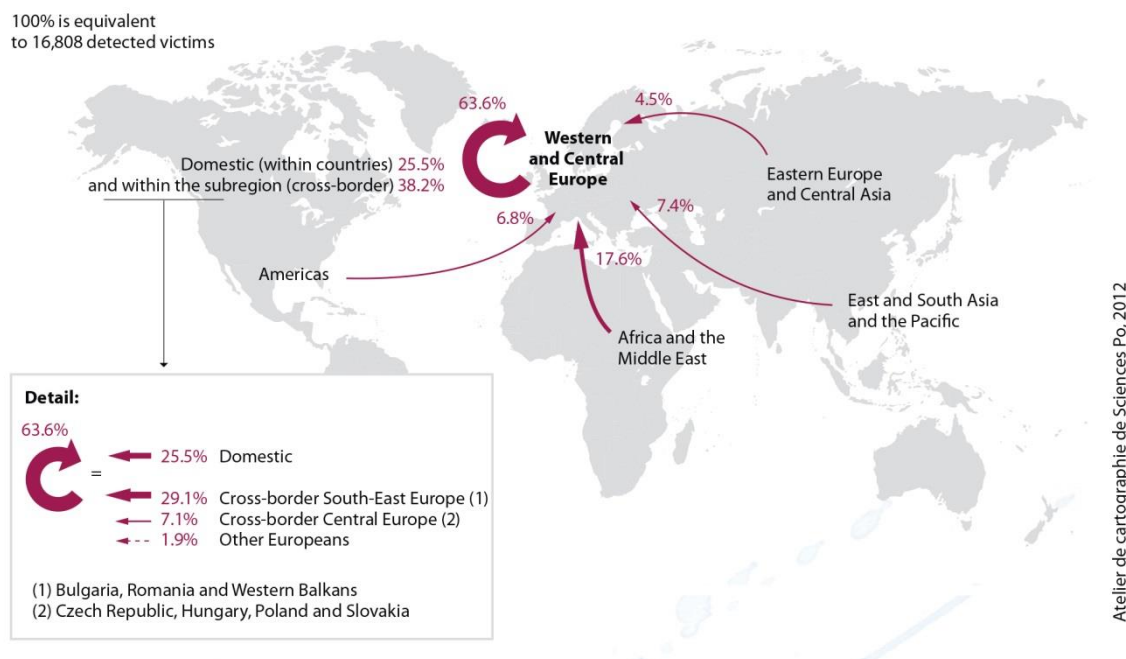
2 Available at: http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf.

<http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf>.

Map I.2. shows the origins of victims trafficked to Western and Central Europe.

MAP I.2 – ORIGIN OF VICTIMS – 2007-2010

MAP 12: Origin of victims trafficked to Western and Central Europe, share of the total number of victims detected there, 2007-2010



SOURCE: UNODC – UNITED NATIONS OFFICE ON DRUGS AND CRIME (2012A: 57)³

This theoretical chapter has two sections. The first gives a brief, exploratory account of the epistemological and political debates about human trafficking. In this section, different permutations between models and technologies of exploitation and oppression are placed in dialogue, so as to better understand the insidious way in which they operate and the problematic character of the constituent boundaries of human trafficking, taking a close look at the discursive and ideological devices that mediate the relationship of the state and society with the phenomenon. This first section equally seeks to operationalize the theory proposed by Boaventura de Sousa Santos (2003) regarding the emergence of *social fascisms*, investigating its timeliness for understanding the practices, the contexts and the social atmosphere surrounding human trafficking. The second section makes use of the *law in books – law in action*

³ Available at: <http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf>

relationship to critically frame and problematize some of the more relevant socio-legal dimensions which have emerged in the literature on legal, judicial and police responses to human trafficking for labour and sexual exploitation.

1. TRAFFICKING IN HUMAN BEINGS: SOME EPISTEMOLOGICAL REFLECTIONS

The exercise of investigating and critically reflecting upon human trafficking involves a latent contradiction: on the one hand, there is a political and epistemological obligation to uncover the mechanisms of domination, exploitation and oppression that reach different sectors of contemporary society; on the other, there is mistrust of the dominant discourse which more or less consciously or deliberately reproduces a number of biases and generalisations that, within the rhetoric of fighting crime and protecting victims and through improbable tactical-political alliances, ultimately serve to preserve a markedly conservative moral economy (Colipca and Stan, 2012). Silva *et al.* (2005) consider this issue at the very heart of academia: "the good political intentions of some researchers seem to feed a moral panic and, in the name of defending human rights, they end up stimulating practices which restrict the rights of certain individuals, principally prostitutes and foreigners" (Silva *et al.*, 2005: 182). From this angle, the conservative bias mainly tends to reach the subaltern social groups and spheres, such as women, immigrants and sex work, leaving untouched the most controversial and problematic topics embraced by the subject. Critical literature converges upon this diagnosis:

Concerns over the trafficking of women began in the late 19th century and early 20th century with anxieties over the migration of individual women and the capture and enslavement of women for prostitution. In the 19th century, the intensification of female migration as an independent and self-determined strategy soon created a certain fear of the immorality that might be introduced into Western countries, specifically due to the perception that women had migrated to work as prostitutes. This led to a racially and sexually based panic that gave rise to the fear of white slave trafficking (Santos et al., 2010:9)⁴

⁴ Translation is the responsibility of the authors.

In the same vein, although not without a more finely-tuned questioning and complexification, it is emphasised that

when travelling abroad, Brazilian women – particularly the poorer and darker ones – are increasingly seen as potential 'victims' who need the protection of the state and of anti-trafficking NGOs, thus affecting their constitutional rights to come and go (Silva *et al.*, 2005: 182)⁵.

Jennifer Lynne Musto (2009) even alludes to the contrast between the superficial way in which the phenomenon is socially received and addressed and its frequently (and not accidentally) unchallenged roots: “modern day slavery is more an ahistorical catch-all phrase and elusive spectre, inciting moral outrage and charitable voyeurism without in fact changing the economic conditions within which it flourishes” (Musto, 2009: 284). Any academic, political or socio-legal approach to the phenomenon of human trafficking thus raises a number of preliminary concerns.

First, in spite of national and international efforts to harmonise the criteria for collecting data on the phenomenon, there is still great suspicion as to their reliability⁶. This suspicion has been noted repeatedly in the relevant literature (cf. Mattar, 2008; Loff, 2004), and it is intimately linked with what Silva *et al.* (2005) call *moral panic*, as mentioned above. This moral panic corresponds to a movement of social and institutional alarm which, through the use of violent, disconcerting or stereotypical images (Andrijasevic, 2007; Wolken, 2006), frightening numbers and pornographic and semantically charged examples, such as slavery, spread considerable anxiety in people and urged public policy to respond, particularly through the available repressive mechanisms. In an apparently paradoxical way, regarding the role of the media and television and cinema productions featuring attractive and tempting yet fictitious images about the phenomenon of sex trafficking and the profiles of its victims, Cynthia Wolken (2006) provocatively states that “sex trafficking has everything – beautiful helpless girls, drugs, violence, sex and money – it is the voyeur’s dream come true” (Wolken, 2006: 416).

⁵ Translation is the responsibility of the authors.

⁶ Regarding the statistical engineering of trafficking in the North American context under the Bush administration, cf. Wolken (2006: 412-414).

From this social phenomenon there emerges the idea that an anti-trafficking industry was created to feed the agendas of national and international non-governmental organizations (NGOs) (cf. Musto, 2009: 284), government departments and the repressive apparatus of states. This assertion, still retaining certain ideological assumptions and aims, compels careful reflection both about the nature and anatomy of human trafficking and about the nature and anatomy of the perceptions, the actors and the discourses surrounding it, which have gained ground within the public debate. At any rate, the dangers of an under- or over-estimation of the phenomenon have already been noted in Santos *et al.* (2009). Furthermore, in spite of the distortions and potential perverse side effects attributed to it, the heuristics of the concept of slavery has been utilised in contemporary critical thinking, as seen, for example, in the first volume of the publication *(In)Visível* (2012)⁷ on the subject. On the same terminological lines, Cynthia Wolken's article on feminist legal theory and human trafficking begins pithily: "human trafficking is modern day slavery" (Wolken, 2006: 407). In the same year, Klara Skrivankova (2006: 229) also begins her article with the statement that "human trafficking is the fastest growing form of slavery today" (Skrivankova, 2006: 229), referring any clarification to www.antislavery.org. Nearly a decade earlier, Vincenzo Ruggiero gave the subtitle of "Slaves in Contemporary Europe" to his socio-legal article about human trafficking (Ruggiero, 1997). However, a number of academics remain somewhat sceptical about the validity and pertinence of this metaphor. Jennifer Lynne Musto (2009), for example, asks: "do such comparisons bring scholars closer to more intelligible nuanced understanding of these intersecting phenomena or rather do they prompt terminological conflations devoid of context and meaning?" (Musto, 2009: 283).

Slavery, a social practice which confers rights of ownership of one human being on another, was common around the world in antiquity. With European expansion and the beginnings of the formation of the world system that occurred at the end of the 15th century with the maritime voyages of Portugal and Castille, an era which some

⁷ <http://revistainvisivel.com/revista-um/revista-invisivel-edicao-um.pdf>

authors call early modernity (cf. Mignolo, 2000), slaves began to be trafficked intercontinentally. The trafficking of people by way of transatlantic slavery thus figures in history as an economic and migratory flow that is a constituent of modernity, according to Paul Gilroy (1992) in "Black Atlantic". Today, the prominence of human trafficking shows us that the abolition of slavery in many countries did not put an end to the scourge of human trafficking, nor to the niche that it occupies in the economic and migratory routes of modernity (Santos *et al.*, 2009).

On the one hand, when we think of human trafficking and how this phenomenon has gained relevance, we also find transnational fluxes that achieve rationales and economic gain, albeit without any respect for the self-determination of the individuals. And even though this informal illegal phenomenon, which is controlled by criminal organisations, differs in every way from the centrality of slavery in the formation of the world system, it nonetheless retains an inextricable relationship with it. On the other hand, some historiographical incursions seek to confer greater historical continuity and explanatory ambition on the concept: for example, Henrique Espada Lima (2005) uses Robert Castel's argument to deconstruct the myth of free labour when confronted with the possible expectation of freedom inherent in the abolition of slavery:

under the rule of 'liberty' expressed in terms of the anti-social utopia of the market, ex-slaves could face a threat as great as or greater than slavery itself: the 'modern' reality of social exclusion. The old coercions and controls could thus be easily replaced by the coercion of misery (Lima, 2005: 311)⁸.

This statement can be easily applied to sex work. People should be free to sell their sexual availability as labour, although this position is far from consensual. However, in the forms of overexploitation, of which sexual trafficking is one example, people who sell their sexual availability as labour are also forced to sell not only their availability, but their freedom and identity as well and are linked to social exclusion and precarious worlds. Second, it is important to stabilise a concept of trafficking that

⁸ Translation is the responsibility of the authors.

serves two purposes: scientific rigour and analytical operationality. Scientific rigour concerns the special attention which has to be paid to the empirical diversity in question, to the degree to which the latter fits current normative categories, to the effect of theory on the selection and description of practices and to the resulting epistemological implications. As Jennifer Lynne Musto notes (2009: 282), “trafficked persons are thus closely connected, experientially and epistemologically, to their smuggled and voluntary economic migrant counterparts”. Analytical operationality is related to the greater or lesser potential for inserting the concept into a consistent sociological narrative, allowing an understanding of the objective rationales, the institutional roles, the social representations, the cultural imaginaries and the power relations that structure human trafficking in a complex and unequal world.

1.1. TRAFFICKING AS EXPLOITATION AND OPPRESSION: SOME APPROACHES

Although they differ, the concept of human trafficking cannot be separated from the concept of exploitation⁹ (Santos *et al.*, 2009; Musto, 2009: 284; Munro, 2008: 256). This seemingly evident and innocuous observation has the potential to allow human trafficking to be perceived as a phenomenon that is contained within a social rationale that is broader than the capitalist, colonial and patriarchal system, one which involves and combines the commoditization and (abusive, predatory and alienating) appropriation of work, epistemic-cultural violence and hierarchies structured on the basis of sex. To some extent, exploitation would be a common denominator of the different oppressive forms of human trafficking, as defined in different European legal systems.

As Santos *et al.* (2008) mention, the Marxist concept of “primitive accumulation of capital” helps us to better understand the emergence of this sub-humanity of which human trafficking is such a remarkable expression. Marx holds that one of the conditions for capitalist wealth is the exploitation of labour. Although based upon the

⁹ “Capitalist societies worldwide are in permanent need of these and other forms of over-exploitation to maintain capital as we know it. With neoliberal globalisation, this has become even more evident.” (Santos *et al.*, 2009)

idea of free labour, the truth is that capitalism has a tendency to use not only the labour force, but also physical space, the environment and nature in a destructive way. Capital has a tendency to weaken or destroy its own conditions of production, since the constant crises caused by rising costs always lead to new attempts to restructure the conditions of production in order to lower them. These conditions of production mean that everything is treated as a commodity, including the labour force. Such characteristics of capitalism were quite clear in its inception, when the accumulation of wealth necessarily entailed slavery, pillaging, and the creation of colonies. But these forms of over-exploitation are not confined to the arena of capitalism. Capitalist societies worldwide are in permanent need of these and other forms of over-exploitation to sustain capital as we know it. With neoliberal globalisation, this has become even more evident.

The accumulation-exploitation pairing, however, is neither a sufficient nor a self-explanatory concept for the phenomenon of human trafficking. The (empirical, normative, analytic) distinction between trafficking for labour exploitation and trafficking for sexual exploitation¹⁰ (not forgetting the other types set out in different legislations) is common. This distinction involves two intimately related components: one political and one epistemological. From a political point of view, trafficking for sexual exploitation has received attention from states for far longer and, in spite of recent legislative changes, it benefits from having greater weight when it comes to designing strategies to fight human trafficking. Various factors help to explain this, and it is important to highlight the moral universe¹¹ that is its reference and the different censorial nuances to which all mediators, victims and aggressors are subject. In fact, the trade in and/or exploitation of sex and the world of prostitution constitute symbolically powerful scenarios, which have historically been met with distinct political discourses and several regulatory solutions. A huge variety of oppressive practices and dynamics against women coexisted within those scenarios, even though their

¹⁰ "I use the distinction between 'sex' and 'labour' only because this language has been foisted on the human trafficking framework to subordinate "labour" to "sex" trafficking and present them as distinct categories. As I discuss later, they are anything but and the distinction blurs to the point of near irrelevance." (Wolken, 2006: 407)

¹¹ Lorenzo Bordonaro and Filipa Alvim (2008: 10) revisit Mary Douglas's idea that questions of moral purity and pollution become an object of special concern when they foresee a paradigmatic threat to the social structure.

respective experiences and perspectives, *opportunities* and constraints, aspirations and biographies had been silenced or neglected by the state and by academia. As we will see (from an epistemological point of view), the growing visibility of sex trafficking as an autonomous reality worthy of specific repression encompasses a larger socio-political movement among whose outcomes are surprising alliances between actors and substantially antagonistic conceptions which converge in an anti-trafficking agenda with considerable influence over public policy:

human trafficking has also mobilized and created strange bedfellows. Alliances between conservative male Christian traditionalist legislators and both pro-sex and anti-sex feminists are the norm; unfortunately, the current feminist frameworks currently winning in the lobby are contributing to ineffective policies for protecting trafficking victims. The dangerous consequence of these policies is that most victims are left unable to access relief (Wolken, 2006: 408-409).

Labour trafficking finds its historical lineage in slavery as a system of capitalist accumulation based upon abyssal lines which separated, as already mentioned, the human from the sub-human, making slaves someone else's property. Different (but not disconnected) from the patriarchal pudency with which society accommodated sexual coercion and exploitation, labour trafficking, which, like sex trafficking, is a meeting point for different oppressive axes (socio-economic, racial, geographical), obeys schemes of capture, circulation and profitability of labour. Although these are multifaceted in terms of both the sector of activity – agriculture, civil construction, industry - and the intensity and violence practised, there was a reactive motivation within public policy that combines a demand for human rights with economic pressure against the dumping¹² that this labour force can lead to in the market.

From an epistemological point of view, there are convincing arguments both for and against a labour paradigm (Chuang, 2013) for all forms of exploitation (labour and sexual). This is a debate which has earned a key and complexified role within the framework of feminist perspectives, particularly regarding prostitution or sex work

¹² 'Dumping' is a practice that consists of selling products, goods or services at prices extraordinarily below the stipulated fair price.

(Musto, 2009), reviving old dichotomies of social theory, such as structure and action or autonomy and *false consciousness*. The concept of false consciousness, Marxist in origin but with explanatory potential for other forms of domination and/or oppression (notably patriarchal), relates to the mystifying and alienating effects of ideology on the self-awareness of its subjects, damaging to their own interests and favouring the dominant social order and power hierarchy (*status quo*). The political and epistemological positions adopted in this domain – abolitionists (Yen, 2008), regulationists (Davidson, 2006), and others (Levy and Jacobsson, 2013; Snajdr, 2013) – as well as conceptions about the state and law, the weight given to male domination and the privileged grammar of dignity¹³, crucially influence the approach developed towards the topic of sex trafficking (Limoncelli, 2009: 262); they shape the way agency and subjection are observed, the way victim status is framed, assigned and problematised, the way the violence involved is characterised, and the way agendas and priorities for intervention are established. Fernando Bessa Ribeiro (2008) alleges that the effects of these political and epistemological bases on the social construction and delimitation of that reality have often led, more or less consciously and/or intentionally,

to the equivalence of prostitution to forced prostitution; to the transmutation of clandestine emigration, namely for sex work, into human trafficking; to the normalisation of the subordination of the prostitute to the pimp; to the choice of prostitution as always being imposed by economic determinisms; to the exaltation, almost always without any empirical foundation, of the perverse and deviant character of the sexuality and the desires of the client; to the scorn for the ability to be agents of those who dedicate themselves to the sex trade (Ribeiro, 2008: 23)¹⁴.

In spite of everything, and in a manner more focused on the issue of trafficking, Cynthia Wolken (2006: 418-419) considers that this debate can turn out to be useless or fallacious given the fact that trafficking, besides involving rigid criteria in its legal delimitation, at the very outset discards the issue of consent. Her argument is

¹³ Jennifer Lynne Musto (2009: 283), taking account of the literature on the rhetoric of trafficking, revisits the idea that the denial of human rights, in particular the denial of dignity, constitute the meeting points between human trafficking and slavery.

¹⁴ Translation is the responsibility of the authors.

understandable, particularly because of the advantage that this classification does not rely on the conduct or characteristics of the victim to attribute the crime to its perpetrators. At any rate, the impact of the different political and epistemological attitudes on the observation of the phenomenon must be emphasised. Given the general and abstract principles regarding the matter, prudent, localised and perhaps strategic readings will certainly be less definitive in their conclusions but more sensitive to the contradictions that constitute it.

Four fundamental points should be stressed: 1) all forms of (subordinate) labour can be conceived as the result of exploitative relations, generating differentiated levels of prejudice and constraint over workers and benefiting from greater or lesser legal coverage; 2) human trafficking is an illegal¹⁵, violent and coercive form of labour exploitation which deserves greater criminal censure; 3) sex work can be understood as a product of the intersection of exploitative relationships (due to third-party economic benefits), of relationships of patriarchal oppression (of women) and of colonial relationships (immigrants); 4) sex trafficking encompasses very diverse readings and realities, and can be an illegal, coercive and violent exploitation of sexual services (with emphasis on exploitation) or even a form of rape (with emphasis on oppression).

Each of these points contains uncertainties and contradictions, potentialities and limits. The way the networks work, the expectations of the trafficked subjects, the opportunities and life projects at stake, the tactics of control and intimidation, the provision and colonisation of intimacy, the psychological terrorism, are all topics widely discussed in the institutional literature and, as a whole, they are fundamental to a critical understanding of human trafficking. Could it be that these social systems are out of touch or incongruous with the broader civilising context to which they belong? On the contrary. Trafficking is not a problem that can be solved (solely) through

¹⁵ Vincenzo Ruggiero (1997) broadly characterises the phenomenon as combining a variety of legal, semi-legal (mainly in the case of subcontracts) and completely illegal activities which involve the contribution of diverse actors working within, outside or on the fringes of organised crime (Ruggiero, 1997: 231).

repressive devices of order and security, for it is a violent manifestation of socio-economic, sexual and racial inequalities (Fowler *et al.*, 2010). Those inequalities are sources and resources of power inscribed in a social structure that sustains them. Thus, as Cynthia Wolken points out,

human trafficking does not occur in social and political isolation. When the circumstances that allow for and support the forceful theft of human labour are de-constructed, human trafficking is squarely located within the larger context of workers' rights, immigrant rights and *human rights* (Wolken, 2006: 409).

This reality is singled out by Janie Chuang (2010), when she denounces the defective character of the epistemological positions and principles that are often called upon to descriptively and normatively frame human trafficking for sexual purposes. As she sees it, the political and legal reform of prostitution: (1) does not respond to the combination of social, economic and cultural factors (such as poverty and discrimination) which lead people to take on the risk of migratory projects in an atmosphere that is hostile towards immigration rights and labour protection; (2) does not resolve the problems of the exploitation of the migrant population, which constitutes the last and lowest rung of the labour hierarchy, enjoying little or no formal labour protection; (3) does not influence the demand side of the trafficking equation. They are valid arguments. Still, how the state intervenes (explicitly or implicitly) in the domain of sex work exploitation may not be entirely indifferent or irrelevant in matters of human trafficking. In a comparative statistical study, Cho *et al.* (2013) sought to determine the impact of the legalisation of prostitution on human trafficking. The authors based their study on two rival (and aseptic) hypotheses borrowed from economic theory: either trafficking would rise, because of the scale effect (market expansion); or trafficking would diminish, because of the substitution effect (transfer to a legal market). Even taking a broad set of variables and indicators into account, it would be difficult to make their conclusions definitive and above suspicion, thanks as much to the ambition of the study as to the methodological limitations. Furthermore, the authors themselves recognize that “a full evaluation of the costs and benefits, as well as of the broader merits of prohibiting prostitution, is beyond the scope of the present article” (Cho *et al.*, 2013: 76). The pointers indicate a

prevalence of the first hypothesis (a rise in trafficking with the legalisation of prostitution), which is not surprising, given the visibility that is exacerbated by the regulatory interference of the state and the possible unravelling of the mechanisms that suppress the search for legal protection.

1.2. HUMAN TRAFFICKING IN THE ERA OF SOCIAL FASCISMS

Strictly speaking, human trafficking as it is criminally defined operates at the margin of the institutional systems which legitimise and regulate the exploitation of labour in capitalist economies. Although much older, these systems find a reference within the post-war capital-labour pact in terms of labour rights and citizenship, thus protecting labour relations from adopting forms that are predatory, aggressive and likely to render workers vulnerable, and encompassing both salary guarantees and patterns of functional interaction in the workplace. The abuse of power over subordinates is therefore anticipated and limited. It is no accident that, because of the nature (and value) of the harmed legal assets and of the censure that it deserves from society, human trafficking is not (just) a labour offence, but a crime. There is, however, an important exception.

With the sedimentation of neoliberal globalisation beginning in the 1980s, we have seen a de-socialisation of capital in which social rights can no longer be guaranteed. This has helped to increase the vulnerability of millions of people around the world (Santos *et al.*, 2009). In Europe, particularly on its peripheries, the relaunching of capital accumulation in the last few years has been sustained by a shock therapy commonly known as austerity (Blyth, 2013; Santos, 2012). This has accentuated and made (more) evident the revolutionary neoliberal project of revenge and destruction of contracts, of bonds of solidarity and redistribution, and the social cleansing and (literal) punishment of poverty: the Norwegian government, for example, is preparing to pass a law that prohibits begging, under which anyone identified as begging in a public place could face fines and a three-month prison

sentence¹⁶. This measure is closely related to a repressive policy directed at Romanian Roma with the government presuming a link between begging and criminality.

But let us return to the social contract. The creation of wealth throughout the 20th century was subject to a series of public regulations, some imposed by the state and some not, to enable some redistribution of wealth as well as the creation of conditions to protect non-wealthy people. We are talking about social and economic rights, particularly unemployment allowances, public health, education and social security. These measures of social redistribution were fundamental to the creation of a network that mitigated social risk by preventing people from plunging into sudden poverty. This network is today so weakened that the loss of a job can leave even middle-class people helpless. In this scenario of the failure of nationally created regulations, capitalism is much freer to pursue its objectives as a form of global economic organisation, with increasingly striking consequences (Santos *et al.*, 2009). The new morphology of labour (flexibility, informality, atypical work, false autonomy, insecurity) (Antunes, 2008) and the normative internalisation of the idea of *human capital* (Matos, 2012) in global (and flexible) capitalism, along with the emergence of what António Casimiro Ferreira calls the *labour law of exception* (Ferreira, 2012), show that the classic means of regulating labour exploitation have renewed their sources of legitimacy and their mechanisms of producing tolerance and social consent. It is no accident that Cynthia Wolken (2006: 409) dedicates one of her works on trafficking to the trafficked migrant workers who revealed that they consider their situation – which involved the use of force, fraud and coercion – an intrinsic part of the working world and, as such, did not show any awareness of the crime of which they were victims, or its seriousness, or of the flagrant violation of their rights. The political economy of fear and the sophistication of the technologies exercising control over workers clash more and more both with radical anti-capitalist proposals, and with the (modest) agenda of *decent work* itself (ILO, 2012). This means that the boundary between civilisation and barbarism, which can be defined in terms of a system of practices and values which

¹⁶ Cf. <http://www.publico.pt/mundo/noticia/governo-noruegues-quer-proibir-os-mendigos-1659056>

combine the principles of the rule of law with a substantive democracy based on redistribution and recognition (cf. Fraser, 2002), is becoming increasingly blurred.

For example: ILO Convention 29¹⁷, from 1930, which especially targets colonial administrations, is aimed at the abolition of forced labour that is tolerated or imposed by the state¹⁸. On 12 May 2014 the Portuguese government announced the implementation of a measure to "set the unemployed and social assistance beneficiaries to clean and monitor the country's forests"¹⁹. The logic of social rights gives way to that of punishing poverty: there is recruitment, there is coercion²⁰, there is vulnerability and there is exploitation²¹. Thus, the political heritage of labour citizenship, although it is frequently romanticised (through conviction or strategy), has been transformed into a new consensus or regime of truth²² (Foucault, 1979). This, far from the extreme, pornographic examples of trafficking that occupy the collective imaginary, shelters (and promotes) corrosive practices of exploitation (Sennett, 2000) and authoritarian power relations which resonate with the logics that this crime obeys. This does not mean that the crime of trafficking is merely a legal label that is surgically selective for the common practices widespread in contemporary society: it simply means that the boundaries that protected subordinate labour are being increasingly challenged by modes of labour management that communicate with the technologies

¹⁷ http://www.ilo.org/public/portugue/region/eurpro/lisbon/pdf/conv_29.pdf

¹⁸ For more details about the Convention and its context, cf. OTSH (2014) http://www.ilo.org/public/portugue/region/eurpro/lisbon/pdf/relatorio103_iv1_pt.pdf

¹⁹ *Diário de Notícias*, available at: http://www.dn.pt/inicio/portugal/interior.aspx?content_id=3858265

²⁰ Cf. the concept of *monopoly over legitimate violence* (or *monopoly over the legitimate use of physical force*) of Max Weber, presented and developed in his work *Politics as a Vocation*

²¹ Cf. Article 3 of the UN Protocol to prevent, suppress and punish human trafficking (2000): "trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation." Available at: http://www.otsh.mai.gov.pt/cms/files/conteudos/convention_%20traff_eng.pdf

²² "Each society has its regime of truth, its 'general politics' of truth: that is the types of discourse which it accepts and makes function as true; the mechanisms and instances which enable one to distinguish true and false statements, the means by which each is sanctioned the techniques and procedures accorded value in the acquisition of truth, the status of those who are charged with saying what counts as true." (Foucault, 1979: 10)

of control that are sometimes identified, in proper specific terms, within the context of human trafficking.

Boaventura de Sousa Santos's theory (2003: 20) about the emergence of *social fascisms* has a strong analytical potential for understanding the various facets that make up the universe of human trafficking. The idea of the emergence of social landscapes where there is a return to a Darwinian *natural state*, without contracts, takes four prototypical shapes, each enjoying a specific relationship with human trafficking. *Fascism of social apartheid* (1) is the segregation of excluded persons by means of the (paradoxically) porous and abyssal separation between civilised and savage zones, which are treated unequally by the state. The marginal world of sexual exploitation and the more or less Mafia-style and unregulated logics of labour exploitation operate within the socially and symbolically savage zones, where the rule of law is a fiction, access to justice is distant and personal integrity is threatened.

Parastate fascism (2) is the usurpation of the regulatory and coercive prerogatives of the state by private and robust social actors who, with greater or lesser collusion of the former, exert control over different spheres of life. This form of social fascism has a contractual dimension which must be emphasised: although conceived in relation to the promiscuous, parasitic or apprehended relationship between the state and the established social and economic agents, it can equally refer to the incorporation of policies and guidelines into state regulation that harm citizenship and the common good, in favour of the interests of those same agents²³, and to informal, illegal and violent systems that benefit more or less intentionally from the *structural complacency* of the state. Although repressive policies have gained ground (with deterrent objectives and intending to reduce the feeling of impunity), the decline of the social state (unemployment, poverty, reduction of social assistance, etc.) increases the degree of vulnerability of citizens (in countries of origin and in host countries alike) and so creates conditions more favourable to enticement, recruitment and exploitation. The preventive rhetoric, initiatives and campaigns, while directed

²³ Of which the changes to labour principles and regulations mentioned above are an example, in a civilising rationale which compromises the general philosophy of the (force of) balance between capital and labour.

towards informing and raising awareness in potential victims and the general public, at times neglect the structural bases that create the opportunity for the crime and thus turn it into a reality – a reality that exists because it is possible (and perhaps *necessary*) for it to exist. The business of trafficking, especially of women, is extremely profitable. Furthermore, the propagation of trafficking is also nurtured by the risk/profit relationship. The risks faced by traffickers of humans seem to be much lower than those that apply to the trafficking of weapon or drugs. Not only are trafficked persons usually transported to lands whose language and culture they do not know, but forms of coercion, violence and persuasion are also used on them to greatly diminish the risk of them making any kind of denunciation (Santos *et al.*, 2009).

Furthermore, there are at least three goals of neoliberal globalisation that, if they do not promote human trafficking, at least make its restriction more difficult: the creation of a privatised global economy with residual state control, in which local markets interconnected can develop; the liberalisation of trade, with the blurring of borders for the circulation of the people, goods and services that serve to create the global market; the dissemination of production through foreign investment in multinational companies (Farr, 2004: 140-141).

Insecurity fascism (3) consists of the discretionary manipulation of the feeling of insecurity of the most unstable and vulnerable people in order to reduce the level of institutional trust and social expectation and, under a regime of uncertainty and the threat of risk, stimulate support for difficult situations that would otherwise be unsustainable or intolerable. This device for fabricating consent is echoed in the current context of austerity that is sweeping Europe, as mentioned earlier. Today, human trafficking, while not specifically a product of this political, economic and social situation, cannot in fact be understood outside this framework. It involves techniques and rationalities of enticement and systems of management and conditioning of victims that take advantage of the (weakness of the) safety network available to citizens, either unravelling its mechanisms of (social, familial, legal) protection or riding on its fragility or non-existence. Furthermore, while trafficking practices are not central

in transnational global markets or in the global world in which we live, as slavery formerly was, they are nonetheless accommodated precisely by the inequalities and injustices in the distribution of wealth promoted and fostered by that very world system. Thus it is that, with the end of colonisation and the legitimate commoditization of people between countries, the inequalities between the North and South that promote clandestine rationales in which human trafficking is highlighted, are today abyssal (Santos *et al.*, 2009). As Richard Poulin (2005) states, neoliberal globalisation is the dominant factor in the representation of the trafficking of women and children.

In this same sense, we finally have *financial fascism* (4): to the naked eye, this seems to be the most distantly related to the phenomenon of human trafficking; it cannot, however, be discarded from that debate. It concerns the prevalence of financial interests in the political regulation of states. It is a non-elected power which exerts objective functions of sovereignty. Global neoliberalism is a landmark in capitalist governance which feeds on the structural inequality of the world economy. Proposing an approach to human trafficking for sexual exploitation based upon a *genderised* political economy, Stephanie Limoncelli (2009) notes that

understanding and analyzing trafficking and prostitution as a gendered component of economic globalization is particularly important, because it illuminates a variety of processes that make different groups of women vulnerable: economic disparities between sending and receiving countries, conflict and militarization, structural adjustment policies, the worldwide growth of informal work; and the dependence of some governments on the remittances of women migrants (Limoncelli, 2009: 266).

The transnational migratory flows associated with human trafficking to a certain extent reflect the economic and social divisions of which the (post-)colonial capitalist world is composed, as well as the dynamics of geographic mobility involved in the process of recruiting, transporting and exploiting people. On the other hand, the flows become more complex when we consider sub-regions and intra-regional flows, assuming some countries to be "interior third worlds", in the words of Boaventura de Sousa Santos (2000) or, as Maria Ioannis Baganha (2001) puts it, as Norths within the South and South within the North. Indeed, rarely does a region claim to be only a point

of origin or destination. Central and Eastern Europe is a sub-region that is primarily a point of origin, with many people being trafficked to Western Europe. Nevertheless, it is also a sub-region of destination and transit as a consequence of the intense flows between these countries. As it is possible to show, the complexities resulting from the internal flows do not invalidate the inequalities that are felt between North and South, rather they are a clear result of them. We cannot, we must not, presume because of this that trafficking results solely from economic inequalities and situations of extreme poverty. This is a naïve interpretation, because global inequalities, too, are not uniquely global (Santos *et al.*, 2009).

As we may see, these ideas of fascism rely substantially on concepts that shall unavoidably be mentioned here. One is the idea of ‘coloniality of power’, connected to colonialism, by Anibal Quijano (2000). According to the author:

“The codification of the differences between conquerors and conquered in the idea of ‘race’, a supposedly different biological structure that placed some in a natural situation of inferiority to the others. The conquistadors assumed this idea as the constitutive, founding element of the relations of domination that the conquest imposed... The other process was the constitution of a new structure of control of labor and its resources and slavery, serfdom, small independent commodity production and reciprocity, together around and upon the basis of capital and the world market (2000: 533)”.

So, new identities were created in the context of European colonization: European, white, Indian, black, and mestizo. A characteristic feature of this type of social classification is that the relation between the subjects was never horizontal but vertical in character. This is intrinsically connected, in our point of view, to the idea of immigration and Riggins (1997) concept of ‘rhetoric of the othering’, which consists in developing a discourse on the "other" marked by "suspicion" or the development of a "fear". The other idea is that in this rhetoric not only ideas of race but also of gender are very present. Trafficking emerges from patriarchal, state, capitalist, imperialist and racial power relationships (Kempadoo, 2005).

2. TRAFFICKING AS A PROCESS AND THE PLACE OF THE REPRESSIVE RESPONSE

Human trafficking should be seen as a process rather than as a single offence. Its diffuse nature is a strong impediment to the effectiveness of police investigations. Each case of trafficking in persons has individual aspects, involves different routes and different people, etc., however there are common aspects, such as the various stages of the trafficking process: recruitment, transporting of people, exploitation and control of victims and, in some cases, depending on the organisation and sophistication of the groups involved, the laundering of the money derived exploitation (Santos *et al.*, 2009). The role of the law and the repressive apparatus of the State in fighting the phenomenon of trafficking require special attention, because of their preponderance in the organised and professionalised response to the phenomenon, and for the theory legacy of critical, feminist theorist and post-colonial legal studies. These epistemological areas appeal to a *hermeneutics of suspicion* relative to the reality under study, due to the (alleged) predisposition of the normative and institutional system to reproduce or even accentuate inequality, discrimination and the dominant power relationships. However, the emancipatory potential of the law (Santos, 2003) can be stimulated based on a scientific reflection committed to understanding and in deconstructing the various layers that make up the legal and judicial response to human trafficking.

In recent years, legislative efforts in international, European and national contexts have seen a significant concentration, as expressed in the creation and ratification of conventions and protocols within the framework of the United Nations and the Council of Europe, particularly since 2000. The incorporation of these principles in the legal systems of European countries (cf. Cho and Vadlamannati, 2012), with impacts varying with the degree of acceptance and appropriateness of previous legislation, introduced certain challenges to the interpretation and application of the law and to police and judicial cooperation, given the (often) transnational nature of the phenomenon. In addition to forcing a critical reflection on classic issues of the sociology of law, notably the gulf separating *law in books* and *law in action*, this legal-political dynamic brings with it a broader set of problems and questions that instigate a

deeper understanding about the different scales and registers in which the complex relationship between law, power and victimisation operates.

As already mentioned, the rhetorical investment of states in the struggle against trafficking has been accompanied by public policies to combat it. In addition to legislative changes these involve plans for government organisations to interact with civil society, as well as the preparation and specialisation of the various operators on the ground. An example of this is the creation, within the framework of the European Network Against Trafficking in Human Beings²⁴, of a European handbook of good practice in the field of human trafficking, for use by the local police forces: *Anti-Trafficking Training for Frontline Law Enforcement Officers: Training Guide For Police, Border Guards and Customs Officials* (2006)²⁵. However, even in the year preceding the publication of this handbook, an episode which occurred in Birmingham, is reported by Klara Skrivankova (2006: 230-231) and deserves some attention, more for the suspicion of recurrence than for its possible singularity. Following a police raid on a brothel, the European women in the establishment were immediately freed and six non-European women, with strong indications of being victims of trafficking, were held in a detention centre. Then their irregular status was invoked to enable them to be deported. The repatriation of trafficking victims was in fact examined by Marie Segrave (2009).

Legal issues aside, these days, the vast majority of police forces employ an official speech that is more or less formatted, which is concerned, protective and, in some cases, even paternalistic with respect to the victims of labour or sexual trafficking: on the one hand, the public visibility of the phenomenon and familiarity with victim protection policies has forced the police into a paradigm shift regarding how the victims are contacted and how they are conceived; on the other hand, their testimony is crucial in the context of criminal investigation and the gathering of

²⁴ Cf. <http://lastradainternational.org/>

²⁵ Cf. >http://lastradainternational.org/lisidocs/364%20ICMPD%20Frontline%20Officers_Training_Guide.pdf.

evidence, so they have ended up by being awarded redoubled (ethical or instrumental) attention. Since their situation is quite often irregular, the distrust felt by (potential) victims for the police and the justice system is still a significant factor mentioned in the literature and reported by empirical studies. It is not surprising: on the one hand, the threats with which they are coerced and the fear of retaliation (against themselves or family members) are a powerful deterrent; on the other hand, the traumatic experience of subaltern social groups with police officers and with the criminal justice system (amply borne out by history), strongly influenced by the memory of the country of origin but also by the perceptions built up in the destination country, generates a feeling of hostility or at least uncertainty, which discourages the pursuit of justice and compromises the interest of the victims in cooperating.

In this regard, the key importance of witness evidence to further the judicial process, often the reason for the police putting pressure on the victims, encounters the inability or lack of preparedness of the system to respond to their aspirations, to inspire their confidence, to understand their density and subjective depth and to handle their (legitimate) contradictions and ambivalence. Simultaneously, the credit or value that is assigned to their evidence depends to a large extent on the closeness or distance manifested relative to an idealised innocent and hygienic image, built by the operators who interact with the victim, and that is part of a more widely appreciated cultural world (Zaibert, 2008). Taken together, these dimensions increasingly challenge the quality and efficacy of justice in Europe.

Despite some points of contact, the reality of sex trafficking is, in this respect, very different from the reality of labour trafficking: in the means of identifying and classifying the victims, in the degree of naturalisation, relativisation and *de-dramatisation* of the phenomenon, in the moral frame that shapes the interaction of agents with the victims and in what is truly at stake (life projects, autonomy, personal relationships, fulfilment) in each case. In this context, Vanessa Munro (2008: 243) notes a tendency on the part of the police and society towards hierarchisation of victims according to the activity for which they are trafficked and the level of consent (estimated/inferred): there are victims who deserve that status and others who do

not. Furthermore: there are victims who, in the eyes of the police and of society itself, are agents who abet the crime, so the most appropriate response should be solely repressive in nature. It is thus a violent double victimisation (Cross, 2013).

A common point to the different realities associated with trafficking concerns the legal awareness of subjects regarding their rights and (more or less empowering) influence of such legal awareness on the behaviour of victims. From a victimological perspective, Alline Jorge-Birol (2008) summarises the role of victim protection policies in the results of the judicial system and highlights three essential aspects: the plasticity shown by police in identifying the state of victim (with shadowy areas between protection and persecution, particularly in the field of sexual exploitation); the (in)effectiveness of reflection delay and the need for cooperation to obtain a residence permit; the risk of secondary victimisation.

Along with many other social-legal areas examined in detail in the national chapters and embedded in the empirical work carried out, three topics still remain that must be stressed. First, the fact that the social contexts in which human trafficking operates involve and intersect various forms of violence that do not always find due recognition and appreciation in the world of police and justice. Within the context of labour trafficking, the control and intensification of labour exploitation utilize resources that may be more explicit or more sophisticated that range from threats, physical violence to moral harassment and symbolic violence. At the level of sex trafficking, as well as grooming systems that are based on the strategic use of trust of the victims, which reinforces their weakening, the emphasis on exploitation cannot obscure a discussion as to how far the constraints experienced do not constitute covert forms of violation.

Second, another aspect to which the national chapters pay particular attention concerns the governance of justice and the importance of police and judicial cooperation, nationally and internationally. This issue may benefit from the thoughts that for several decades have been developed in the field of sociology of organisations.

They concern both the formal devices that can be triggered with the aim of responding quickly and effectively to the various fronts exhibited by the complexity of trafficking networks, and qualifying human resources for the specifics of a crime that both may result equally from industrial schemes that exploit people and from more rudimentary and altogether smaller-scale dynamics.

Finally, the last aspect to be noted concerns the importance of repairing the damage caused to the victims of this crime. Critical victimology has helped to expose the weakness of the judicial response, in view of the seriousness of the damage suffered, resulting from different types of crime. Human trafficking is often a biographical disruption and often has (physical, psychological) traumatic effects. In addition there is a moral dimension that is to be brought into the context of tort law, insofar as it is a mirror of the economic values of society. However, apart from the few convictions recorded in different European countries, the compensation issue continues to be subordinated.

FINAL CONSIDERATIONS

This chapter sets out to rehearse a series of theories about human trafficking in the political and social context of contemporary European society. It has drawn attention to the controversy about the *moral panic* which the phenomenon of trafficking allegedly entails, via a media attention and extreme sensationalism. While this excess may incur harmful effects for delimiting and combating the phenomenon, it may also serve as a social alert to forms of violence and exploitation that have enjoyed wide criminal and symbolic impunity for several decades. The concept of slavery, widespread in most of the rhetoric produced about human trafficking, although it has limitations it nonetheless has the potential to explain the reinvention of mechanisms of capitalist accumulation and sexual violence. In addition to the importance of feminist discussions about sex work, the centrality of the concept of exploitation, which should not compromise the different aspects of trafficking, has emerged in the literature as the starting point with most critical and analytical potential for the phenomenon. We have tried to broaden this discussion to the *social fascisms*, finding

social landscapes and features in this proposed theory that help us understand some social atmospheres in which trafficking operates as a new form of authoritarianism, with greater or lesser state complicity.

Finally, the relationship of law and justice with this crime is a very close one, with the institutional system being favoured in the responses triggered by public policy. The protection of victims, the production of evidence, the suppression of demand, the cooperation and distortions in the process are among the topics we have covered. They are developed in greater depth in the national chapters that follow, where empirical work is used to demonstrate the functional and structural shortcomings of the justice system when it operates in a fragmented society from which it cannot in any way be disconnected.

CHAPTER II

THE EU AND THE FIGHT AGAINST TRAFFICKING IN HUMAN BEINGS

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INTRODUCTION²⁶

After more than ten years of action at global and regional levels, trafficking in human beings (THB) remains one of the most important criminal phenomena as we saw in Chapter I. Considering the growing importance of the phenomenon, it became an area of great concern for both the global and regional actors. Combating trafficking in human beings is a widespread objective and the frequent presence of cross-border elements in THB cases renders even more necessary to develop specific actions at transnational levels. Such actions, initially focusing on the White Slave Traffic, have been subject of a renewed interest since the late 1990s / early 2000s. The adoption in 2000 of a specific United Nations instrument, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children²⁷, gave a new impetus to the transnational action in the field. The Council of Europe (CoE) has adopted in 2005 a specific Convention on Action against THB²⁸, and the European Union has adopted no less than three different legislative instruments between 1997 and 2011²⁹. Whereas the present chapter focuses on the analysis of the EU legal framework, reference will be made in the following pages to the interrelations between all these different instruments, reflected through specific provisions³⁰.

Preliminary precisions are necessary concerning the European Union's actions, and more particularly their history and legal basis. From before the adoption of the Treaty of Maastricht, trafficking in human beings had already been the subject of

²⁶ This chapter (and especially its parts 1 to 3) has been greatly inspired by Brière and Weyembergh (2013: 67 – 92).

²⁷ United Nations, Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime, signed in New York, 15.11.2000, United Nations, *Recueil des Traités*, vol. 2237, p. 319.

²⁸ Council of Europe, Convention on Action against Trafficking in Human Beings, signed in Warsaw, 16 May 2005, No ETS 197.

²⁹ See list below. A fourth instrument, the Directive 2004/81/EC of 29 April 2004 may also be mentioned, as it organises the deliverance of residence permits to third-country nationals who are victims of THB and who collaborate with law enforcement authorities.

³⁰ See in particular Article 39 CoE's Convention, or the preamble, § 9, of the 2011 Directive.

various initiatives, including European Parliament resolutions³¹ or recommendations adopted, under the Belgian presidency of the European Union, by the Justice and Home Affairs Council of 29 and 30 November 1993 concerning the trafficking of human beings for the purposes of prostitution³². But it was in particular from the moment when the Treaty of Maastricht came into force that the EU showed itself to be particularly active in combatting the trafficking of human beings.

Two elements acted as a trigger in this respect. One element was the two congresses that took place in 1996, namely the European Conference on Trafficking in Women, which was held in Vienna on 10 and 11 June 1996 on the initiative of the European Commission, and the World Congress against the Sexual Exploitation of Children, which took place in Stockholm from 27 to 31 August 1996. The discussions that took place then highlighted the international dimension of the problem, which requires an appropriate interdisciplinary approach and in particular called for concerted action at the national, regional and international levels. The other element was the tragic Dutroux affair, which rocked Belgium in the summer of 1996.

The third pillar or title VI of the Treaty on the European Union (TEU) has thus borne testimony to several achievements that specifically aim at combatting trafficking in human beings³³. At the end of the 1990s, the Treaty of Amsterdam explicitly set down the aim of preventing and combatting trafficking in human beings in the third pillar of the treaty, more specifically in Article 29 of the TEU. As part of this renewed third pillar, new instruments specifically for combatting trafficking in human beings

³¹ European Parliament, Resolution on the exploitation of prostitution and the traffic in human beings, adopted on 14 April 1989, OJ C 120, 16 May 1989, p. 352, and Resolution on trade in women, 16 Sept. 1993, OJ C 268, 4 Oct. 1993, p. 141.

³² See Press release of the Council 10550/93; the text of the five recommendations can be found in Appendix to the Commission's Communication to the Council and the European Parliament on trafficking in women for the purpose of sexual exploitation, 20 Nov. 1996, COM (1996) 567 final, p. 35.

³³ See among others the 96/700/JHA Joint Action of 29 Nov. 1996 establishing an incentive and exchange programme for persons responsible for combating trade in human beings and the sexual exploitation of children, OJ L 322, 12 Dec. 1996, p. 7; 96/748/JHA Joint Action of 16 Dec. 1996 extending the mandate given to the Europol Drugs Unit, OJ L 342, 31 Dec. 1996, p. 4. See also 97/154/JHA joint Action of 29 Nov. 1996 concerning action to combat trafficking in human beings and sexual exploitation of children, *infra*.

were to see the light of day³⁴. The importance of this fight was to be confirmed and even strengthened in the Treaty of Lisbon. The prevention and fight against trafficking in human beings now appear in Articles 79 and 83 of the Treaty on the Functioning of the European Union (TFEU). The ban on trafficking is also in Article 5 of the EU's Charter of Fundamental Rights.

Among the instruments adopted since the 1990s in this area, three aim more particularly at approximating substantive legislation in terms of trafficking of human beings. These are:

Joint Action 97/154/JHA of 24 February 1997 concerning action to combat trafficking in human beings and sexual exploitation of children³⁵ adopted as part of the third pillar of the TEU as established by the Treaty of Maastricht,

Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings³⁶ adopted as part of the third pillar of the TEU as revised by the Treaty of Amsterdam,

Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA³⁷, adopted as part of the TFEU as introduced by the Treaty of Lisbon.

These three instruments came one after the other. In various ways, they are testament to the *step-by-step* approach of the European Union. Each corresponds to a 'generation' of legislative instruments put at the disposal of the European legislator by the treaties. So they have been adopted in different institutional and decision-making

³⁴ See in particular 2002/629/JHA Council Framework Decision of 19 July 2002 on combating trafficking in human beings, *infra*.

³⁵ OJ L 63, 4 March 1997, p. 2.

³⁶ OJ L 203, 1 Aug. 2002, p. 1.

³⁷ OJ L 101, 15 April 2011, p 1.

frameworks. They are not of the same nature. As the legal scope of the available ‘tools’ has been gradually strengthened, it is the last text by date, namely the 2011 directive, which is the most binding and effective instrument (Monjal, 2001: 335; Kurcz and Lazowski, 2006).

In addition, each of the three above-mentioned instruments bears the mark of an approach that has evolved over time. Whilst trafficking in human beings initially tended to be seen as a serious criminal offence, it is also increasingly considered as constituting a violation of fundamental rights. The way of understanding it has, as a result, also evolved. While initially the approach focused on the repressive dimension of the fight against THB, it is now holistic, global, whole and integrated and aims at combatting trafficking in all its dimensions and is based on the famous three ‘Ps’, namely prevention of trafficking, prosecution of the ‘exploiters’ and protection of victims³⁸. But, as is shown by the gradual expansion of criminal offences and the raising of the level of sanctions, enforcement measures are still a key element in the EU’s policy in this area.

Beyond its interest in terms of preventing and combatting trafficking in human beings, Directive 2011/36/EU is of more general interest, in particular in terms of the tensions and interaction between the two new ‘co-legislators’, which the Council of the EU and the European Parliament have now become. It is in fact the first Directive approximating substantive criminal legislation that has been adopted following the entry into force of the Treaty of Lisbon. However, it is important to note that it had been preceded by the presentation of a second proposal for a Framework Decision by the Commission in 2009³⁹ and that the negotiations on this text had already been set in motion when the Treaty of Lisbon came into force. Given the change of legal

³⁸ See for instance the document published by the Belgian Presidency of the Council of the EU at the occasion of the European Anti-Trafficking Day on 18 – 19 Oct. 2010, p. 1, available at http://www.eutrio.be/files/bveu/media/source1854/documents/Background_Anti-Trafficking_Day.pdf

³⁹ Commission, Proposal for a Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA, 25 March 2009, COM (2009) 136 final.

framework, the Commission presented a new draft directive in 2010⁴⁰, which ended up with the adoption of Directive 2011/36/EU.

After having looked at the founding principles and objectives of the EU's action in this area (I), this chapter will aim to describe the evolution of articles relating to the incrimination of trafficking in human beings (II) and to sanctions (III). We will also briefly discuss other relevant matters, such as the provisions relating to the liability of legal persons, to the rules applicable in terms of jurisdiction, and to the victims' protection (IV). For each of these aspects, due reference will be made to the relevant provisions of the international and Council of Europe instruments.

1. THE FOUNDING PRINCIPLES AND THE OBJECTIVES PURSUED BY THE TEXTS

1.1. THE FOUNDING PRINCIPLES

It is appropriate to start by defining the founding principles of the EU's criminal action in the area, i.e. the cause, reason for and the why of this action⁴¹.

Generally speaking, the founding principles of the EU's action in the area of trafficking are related to the *gravity* of the phenomenon, to its *scope*, to its most often transnational *nature*, as well as the resulting need for interstate cooperation as EU Member States are not individually in a position to take the necessary measures.

With regard to the *gravity* of the phenomenon, trafficking in human beings is habitually presented not just as a serious offence but also as implying a serious attack on the fundamental rights of the people who are victims of it. Both the preamble of the Joint Action of 1997 and the Framework Decision of 2002 were already clear in this

⁴⁰ Commission, Proposal for a Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA, 29 March 2010, COM (2010) 95 final.

⁴¹ See in this regard, M. van de Kerchove (2013).

respect⁴². The preamble of the Directive of 2011 is even clearer on this point: its very first recital states that trafficking in human beings is a serious criminal offence, often committed as part of organised crime and a flagrant violation of fundamental rights, expressly banned by the EU's Charter of Fundamental Rights⁴³. Meanwhile, the European Court of Human Rights has itself recognised in its *Rantsev vs. Russia and Cyprus* ruling that "there can be no doubt that trafficking threatens the human dignity and fundamental freedoms of its victims and cannot be considered compatible with a democratic society and the values expounded in the Convention"⁴⁴. It is known that victims of trafficking suffer considerable damage both in psychological and physical terms⁴⁵. Beyond the personal dimension and attacks made on the dignity of these victims, trafficking is also perceived as one of the main threats to the internal security of the EU and the freedom of its citizens⁴⁶. Trafficking in human beings consists of the exploitation of vulnerable individuals by criminals – and frequently criminal networks – who treat people like merchandise, in order to gain an illegal material profit (Europol, 2011). The latter make considerable profits that are then laundered, transferred and invested in the countries of origin, transit and destination (Europol, 2013: 25). So trafficking in human beings is among the criminal phenomena that come under serious and organised crime and should be combatted via a common European approach⁴⁷.

⁴² In this regard, see the Preamble of the 3 texts analysed. In the 1997 Joint Action "Whereas trafficking in human beings and sexual exploitation of children constitute serious infringements of fundamental human rights, in particular human dignity; [...] Whereas trafficking in human beings and sexual exploitation of children may constitute an important form of international organized crime, the extent of which within the European Union is becoming increasingly worrying". In the 2002 Framework Decision "trafficking in human beings comprises serious violations of fundamental human rights and human dignity and involves ruthless practices such as the abuse and deception of vulnerable persons, as well as the use of violence, threats, debt bondage and coercion". In this regard, see also Europol (2012).

⁴³ Charter of Fundamental Rights, Article 5, Prohibition of slavery and forced labour, § 3: Trafficking in human beings is prohibited.

⁴⁴ ECHR, *Rantsev c. Chypre et Russie*, 7 Jan. 2010, Appl. No 25965/04, § 282.

⁴⁵ Europol, Serious Organised Crime Threat Assessment (SOCTA), 2013, p. 25.

⁴⁶ See Eurojust (2012: i).

⁴⁷ Commission, Communication The EU Internal Security Strategy in Action: Five steps towards a more secure Europe, 22 Nov. 2010, COM (2010) 673.

There is currently a consensus about underlining the *size* of the phenomenon. All the EU's Member States are affected by trafficking in human beings, be that as a country of origin, of transit and/or of destination⁴⁸. However it is impossible to quantify trafficking in the EU precisely. It is impossible due to several factors. Among these, we would highlight the lack of reliable and comparable statistical data, which leads to evaluations based on incomplete data and partial estimations⁴⁹. It is also worth mentioning that trafficking acts can be hidden behind other types of crime such as prostitution. Numerous cases of trafficking are therefore not subject to investigations or are not recorded as such. Nevertheless, some statistical data is available but it is variable. Eurostat's *working paper* devoted to trafficking in 2013 points to a total number of 9,528 identified and presumed victims in 2010 in 24 EU Member States. However these figures are considered as representing only the tip of the iceberg (O'Brien, 2010), with references sometimes made to hundreds of thousands of victims of trafficking in the EU per year⁵⁰.

In terms of the *nature* of trafficking, although it emerged from studies that were recently carried out that domestic or national trafficking has risen⁵¹, it nevertheless remains most often transnational in nature, implying movements across the EU's external and/or internal borders.

The trafficking flows from non-EU countries to the EU are well known (Europol, 2011: 11-12)⁵². But the flows within the EU, from *inter alia* Bulgaria and Romania, should not be underestimated. This is shown by some statistical data coming from

⁴⁸ In this regard, see among others Europol, SOCTA, 2013, p. 26. See also UNODC (2009a) and UNODC (2012a).

⁴⁹ Commission, Communication Measuring Crime in the EU: Statistics Action Plan 2011 - 2015, 18 Jan. 2012, COM (2011) 713 final; Council, Conclusions, "Targeting developing forms of trafficking in human beings in the EU Member States", (Doc. 8776/3/11), adopted on 9 – 10 June 2011, p. 6, et Eurostat, Trafficking in human beings, 2013, p. 16.

⁵⁰ In this regard, see notably the Commission's proposal of a Framework Decision in 2009, COM (2009) 136, and the accompanying Impact Assessment – Proposal for a Framework Decision (2009), SEC (2009) 358.

⁵¹ UNODC (2012a: 50): « about one in every four victims detected between 2007 and 2010 was a national of the country where he or she was exploited ».

⁵² See also UNODC (2009a: 12 – 16).

Eurostat's 2013 *working paper* on trafficking, which estimates that 61% of identified or presumed victims come from an EU Member State Eurostat (2013: 50). To explain the importance of trafficking flows within the EU, Europol for example is quick to make the link between the development of trafficking on the one hand and the elimination of controls at internal borders or the free movement of people on the other⁵³.

Therefore, due to this most frequently cross-border character, it emerges that combatting trafficking in human beings demands the coordination of effort deployed by EU Member States as well as cooperation between them. Differences in the legislation of EU Member States hamper such coordination and cooperation. Approximating legislation in this area is therefore necessary, which is something that cannot be achieved in a sufficient manner by EU Member States alone. The link with the respect for the subsidiarity requirement⁵⁴ that EU intervention must satisfy is of course clear.

1.2. THE OBJECTIVES

The objectives pursued by the three texts that concern us first need to be put in the context of the more general objectives of the EU's intervention in the criminal field. These objectives have been gradually expanded. In the context of the Treaty of Maastricht, the EU's interventions in the criminal field were mainly aimed at counterbalancing the elimination of checks at internal borders in order to avoid a situation in which that benefited criminals. Since the Treaty of Amsterdam, it has no longer been only about counterbalancing the elimination of checks at internal borders but much more broadly about creating an area of freedom, security and justice. In the terms of the treaty, this objective is being achieved thanks to the development of common action between EU Member States in the area of police and judicial

⁵³ According to UNODC, SOCTA 2013, published by Europol « Victims of THB are increasingly trafficked within the EU by OCGs exploiting the free movement of people within the Schengen zone » or « the increased observation of intra-EU trafficking confirms that all EU MS are markets for sexual exploitation. EU nationals are easily trafficked in the EU due to the freedom of movement realised by the Schengen Acquis and the combined low risk of identification and detection ».

⁵⁴ This requirement is currently provided for in Article 5 § 3 TEU.

cooperation in the criminal sector. This joint action is being undertaken through the prevention of crime, organised or other, and the fight against this phenomenon, which includes trafficking in human beings⁵⁵. These general objectives have been taken up by the Treaty of Lisbon. It is now envisaged that the EU offers its citizens an area of freedom, security and justice without internal borders, within which free movement of persons is assured, together with appropriate measures, in particular in the area of prevention of crime and combatting this phenomenon⁵⁶. The EU is working to ensure a high level of security through prevention measures and measures to combat crime⁵⁷. It is also important to highlight that the protection of fundamental rights is also among the EU's objectives, as is shown by Article 6 of the TEU but also the EU's Charter of Fundamental Rights, which has been granted the status of primary law⁵⁸.

As for the three texts that we are dealing with, all three of them aim to facilitate and strengthen the fight against trafficking in human beings by reducing the disparities between the legal approaches of EU Member States and to contribute to the development of cross-border coordination and cooperation in the sector. They also seek to approximate the legislation of EU Member States. This latter work concerns substantive criminal law in particular and more precisely the definition of criminal offences⁵⁹, the level of sanctions⁶⁰ and the liability of moral persons. It also concerns, although to a lesser extent, criminal procedure, especially rules relating to grounds of jurisdiction⁶¹. In addition to making cooperation more fluid, approximating legislation must also prevent perpetrators from exploiting the differences between national legal systems for criminal ends. Without such an approximation in legislation, "there is thus

⁵⁵ Article 29 TEU.

⁵⁶ Article 3, § 2, TEU.

⁵⁷ Article 67 TFEU.

⁵⁸ Article 6 § 1 TEU explicitly recognises its binding force, and elevated it to the rank of EU primary law.

⁵⁹ See title I, A., Joint Action, Article 1, § 1, Framework Decision and Article 2 Directive.

⁶⁰ See title II, A, b) Joint Action, Article 3 Framework Decision and Article 4 Directive.

⁶¹ See title II, A, f) Joint Action, Article 6 Framework Decision and Article 10 Directive.

an incentive and possibility for criminals to choose the Member State with the most lenient sanctioning system in certain crime areas”⁶². The approximation of national laws thereby makes it possible to avoid the existence of “safe heavens”⁶³.

Beyond these common aspects, a more detailed examination of the three texts at hand reveals an evolution in their objectives from three perspectives.

First of all, the objectives are becoming increasingly targeted at sectors. As its heading, some of its recitals and the definitions provided show, the Joint Action of 1997 mixed other issues with trafficking in human beings, namely the sexual exploitation of children on the one hand⁶⁴ and, on the other, the fight against illegal immigration or more precisely helping people enter a country and stay there illegally, i.e. the smuggling of human beings⁶⁵. Such confusion is not surprising as it is only from 2000 onwards that “specialised” texts have been adopted. In this regard, the UN Convention against Transnational Organised Crime⁶⁶ was essential as it distinguishes in two distinct Protocols⁶⁷ trafficking in and smuggling of human beings. Within the Council of Europe, the choice is also made to adopt a Convention exclusively dealing with the issue of THB. At EU level, the 2002 Framework Decision follows this move as it undoubtedly has the advantage of being more “specialised” in that it focuses on trafficking in human beings as such. From this point of view, the Directive is completely in line with the Framework Decision.

⁶² Commission, communication Towards an EU Criminal Policy ; Ensuring the effective implementation of EU policies through criminal law, 20 Sept. 2011, COM (2011) 573 final, p. 5.

⁶³ Ibid.

⁶⁴ See the title of the Joint Action as well as its Title I.

⁶⁵ See the first Recital of the Joint Action and the definitions given in its Title I, A. i).

⁶⁶ UN General Assembly, Resolution 55/25, United Nations Convention against Transnational Organised Crime, 10 November 2000, UN Doc A/RES/55/25

⁶⁷ UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000, UN Treaty Series, vol. 2237, p. 319, Doc. A/55/383. UN General Assembly, Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000, Treaty Series, vol. 2241, p. 507, Doc. A/55/383.

Secondly, if the UN Protocol and the CoE Convention both pursued a holistic approach, the EU instruments have evolved towards it. The 1997 Joint Action and the 2002 Framework Decision were focusing on the objective to combat trafficking in human beings. From this point of view, the change is fully apparent with the 2011 Directive, which highlights a holistic and global approach and pursues broader objectives than the two preceding texts. As its title indicates, it is not just about combatting trafficking of human beings but also preventing it and protecting its victims. While the ‘protection of victims’ dimension was already present in the two previous texts to different extents⁶⁸, it is now more developed in the latest text. The ‘prevention of trafficking’ dimension is dealt with for the first time by the Directive, which contains a provision exclusively dealing with this aspect⁶⁹.

Thirdly, since the adoption of the UN Palermo Protocol, the objectives pursued are increasingly ambitious. , The 2002 Framework Decision clearly aimed at adding depth to the approximation efforts undertaken by the Joint Action. It also responded to a demand for new legislative actions in the area formulated in various texts⁷⁰. The Council of Europe also contained more detailed provisions and created a specific monitoring mechanism so as to ensure their implementation. This trend to go deeper with the approximation of legislation continued with the 2011 Directive.

2. APPROXIMATION OF THE OFFENCES

From the 1990s onwards, the European legislator has obliged EU Member States to criminalise certain serious behaviour that is most often of a cross-border

⁶⁸ In the Joint Action, Member States were invited, under Title II, F, to take measures necessary to ensure appropriate protection for witnesses and appropriate assistance for victims. In the Framework Decision, Article 7 provided for measures on protection of and assistance to victims, but these measures were limited to launching investigations independently from a report or accusation made by a victim, and to provide specific measures for child victims.

⁶⁹ Directive 2011/36/EU, Article 18, Prevention.

⁷⁰ See Action Plan on how best to implement the provisions of the Treaty of Amsterdam on the creation of an area of freedom, security and justice, 3 Dec. 1998, *OJ C* 19, 23 Jan. 1999, p. 1 et s.; Conclusions of the Tampere European Council, 15 – 16 Oct. 1999, SN 200/99; Conclusions of the European Council of Santa Maria da Feira, 19 – 20 June 2000, point 22.

nature and has sought to bring the contours of the criminal offences concerned into line. This criminalisation of offences always covers the behaviour of the main responsible party but also, in a growing number of cases, attempt, participation, incitement and complicity⁷¹. This is, *inter alia*, the case in the trafficking in human beings' sector. We will look, in turn, at the evolution of the 'main' offence of trafficking (A) and the criminalisation of 'secondary' behaviours (B). We will then continue with the evolution of incrimination in the behaviour of users, still not binding for EU Member States but "to be envisaged" by them (C). And although it does not concern the criminalisation of offences as such but nonetheless presents a link with them, we will finish with the clause of non-prosecution or non-punishment introduced by the 2011 Directive (D).

2.1. THE EVOLUTION OF THE 'MAIN' OFFENCE: TOWARDS GREATER SPECIALISATION AND AN EXPANSION IN THE TRAFFICKING OF HUMAN BEINGS

First of all it is worth noticing the evolution in the drafting of the 'headings' of provisions that oblige EU Member States to criminalise the main offence of trafficking in human beings. The Joint Action called on EU Member States to re-examine their national legislation and practices to ensure that the behaviour targeted is established as criminal offence⁷². In the Framework-Decision⁷³ and the Directive⁷⁴, the formulation is more direct: it is about taking the necessary measures so that the facts mentioned are punishable. Such an evolution can of course be explained by the evolution in the powers transferred to the EU, allowing the European legislator to adopt more and more binding measures for EU Member States. The stability of formulations of the Framework Decision and the Directive seem to result from the adoption of conclusions

⁷¹ Commission, Communication Towards an EU Criminal Policy: Ensuring the effective implementation of EU policies through criminal law, 20 Sept. 2011, COM (2011) 573 final, p. 9.

⁷² Title II., A., Joint Action: "Each Member State shall review existing law and practice with a view to providing that (a) the types of behaviour set out in Title I B are classified as criminal offences".

⁷³ Article 1, para 1, Framework Decision: "Each Member State shall take the necessary measures to ensure that the following acts are punishable".

⁷⁴ Article 2, para 1, Directive: "Member States shall take the necessary measures to ensure that the following intentional acts are punishable". .

in 2009 by the Council of the EU⁷⁵ containing models of provisions and having the aim of avoiding the proliferation of incoherent and incompatible criminal provisions⁷⁶.

Next it is worth looking at the evolution of the definition of offence of trafficking in human beings.

The Joint Action required that EU Member States established the four following types of behaviour as criminal offences:

The sexual exploitation of a person other than a child to make profits when use is made of force, notably violence or threats, when trickery is used or when there is an abuse of authority or when other forms of pressure are exerted in such a way that the person has in fact no other real and acceptable choice but to yield to this pressure or this abuse of authority;

The trafficking of people other than children to make profits via sexual exploitation of them in the aforementioned conditions;

The sexual exploitation of children or the fact of inflicting sexual abuse on them

The trafficking of children in order to exploit them sexually or to inflict sexual abuse on them⁷⁷.

“For the guidance of Member States in applying this Joint Action, and without prejudice to more specific definitions in the Member States' legislation,” the Joint

⁷⁵ Council, Conclusions on model provisions, guiding the Council's criminal law deliberations, Doc. 16542/2/09, adopted during the 2979th JHA Council session, 30 Nov. and 1st Dec. 2009.

⁷⁶ For criminal offences, the model provision is: “Each Member State shall ensure that the following conduct constitutes a criminal offence, (...)”.

⁷⁷ Joint Action 97/154/JAI of 24 Feb. 1997, *supra.*, Title II A a) read together with Title I, B. a) à d).

Action also defined the notions of trafficking in human beings, the sexual exploitation of children and the sexual exploitation of adults⁷⁸.

In this Joint Action, the three core characteristics of trafficking already appear, namely the conduct of an action, the use of coercive means and the pursuit of an objective of exploitation. However, the action was defined as “any behaviour which facilitates the entry into, transit through, residence in or exit from the territory of a Member State”⁷⁹. The first criticism that arose from this was to pinpoint the confusion between the notions of smuggling of human beings on the one hand and the trafficking of human beings on the other. As for the second core element, i.e. the use of one of the coercive means listed, that must not have applied to situations where the victims were children. However, the Joint Action did not include any definition of the notion of “child”. This lack of a definition was criticised heavily at the time. As the minimum legal age of consent varies from 12 to 18 depending on each Member State, only targeting the forced sexual exploitation of people other than children left the “consensual” sexual exploitation of any person between 12 and 18 years of age outside any effective law enforcement measure. Finally, as regards the third core element, i.e. the objective of exploitation, the focus of the European legislator at the time on sexual exploitation was stressed and criticised. Everything related to labour exploitation was, for example, therefore not covered by the Joint Action⁸⁰.

The two last EU instruments (i.e. the 2002 Framework Decision and the 2011 Directive) follow the internationally agreed definition, provided for in the UN Palermo Protocol. They considerably narrowed down the definition of the offence of trafficking in human beings: it has been both clearly distinguished from trafficking in human beings, on the one hand, and sexual exploitation and child pornography, on the other, as these types of behaviour are subject to other European Union instruments⁸¹. They

⁷⁸ Title I, A, i) to iii), Joint Action.

⁷⁹ Title I, A, i), Joint Action.

⁸⁰ Regarding such criticisms, see among others Weyembergh (2000).

⁸¹ For human smuggling, see Directive of 28 Nov. 2002 defining the facilitation of unauthorised entry, transit and residence, *OJ L 328*, 5 Dec. 2002, p. 17 and Framework Decision of 28 Nov. 2002 on the strengthening of the penal

confirmed the ‘three-way definition’ of the offence of THB, constituted of three cumulative elements, which are the conduct of an action, the use of coercive means and the pursuit of an objective of exploitation.

Whereas the UN Palermo Protocol and the CoE Convention only refer to the “recruitment, transportation, transfer, harbouring or receipt of persons”, the EU texts considerably developed the definition of the first core element of trafficking. Shaped by the abovementioned effect of categorisation, the 2002 Framework Decision provided for an extended definition of the action, which, however, remains mostly unchanged in the 2011 Directive. It refers to the recruitment, transportation, transfer, harbouring and subsequent reception of persons, including the exchange or transfer of control over those persons⁸². These last elements, “the exchange or transfer of control over those persons”, are specific to the EU definition, and such extension allows extending the scope of application of the offence to modern forms of trafficking. It is interesting to note here that the carrying out of an offence does not require that all the types of behaviour mentioned are grouped together. A single one of them is sufficient. This broad definition means that it is not just recruiters, intermediaries and transporters who can be included in the scope of this definition but also owners, managers supervisors and controllers of any place of exploitation.

As for the coercive means used, the UN Palermo Protocol definition of the means is the reference. Under its influence, by comparison with the Joint Action, the Framework Decision has introduced two new means, namely the abuse of power or of a position of vulnerability or of the giving or receiving payments or benefits to achieve the consent of a person having control over another person. From then on, the use of

framework to prevent the facilitation of unauthorised entry, transit and residence, *OJ L 328*, 5 Dec. 2002, p. 17 et p. 1. Concerning sexual exploitation of children and child pornography, see firstly Framework Decision 2004/68/JHA of 22 Dec. 2003, on combating the sexual exploitation of children and child pornography, *OJ L 13*, 20 Jan. 2004, p. 44, then Directive 2011/92/EU of 13 Dec. 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, *OJ L 335*, 17 Dec. 2011, p. 1.

⁸² The definition provided for in the directive remains almost identical to the one contained in the Framework Decision, the English version of the text does not change as it includes in both texts “exchange or transfer of control over that person”.

constraint, force or threats, the use of deceit or fraud, the abuse of authority or a situation of vulnerability and the giving or receiving of payments or advantages to obtain the consent of a person having control over another are mentioned today in the Directive and in the Framework Decision⁸³, as well as in the CoE Convention. Under all these instruments⁸⁴ when the acts in question concern a child, the offence of trafficking then exists independently of the use of the coercive means targeted. But, unlike the Joint Action that did not provide any definition of “child”, the latter is defined as being “any person below 18 years of age”⁸⁵. Moreover, both the Directive and the Framework Decision provide more specific details than the other texts, as they define what should be understood by “position of vulnerability”⁸⁶. We will come back to that later.

As for the third and final core element of the offence, i.e. the objectives of exploitation, they have evolved significantly. By comparison with the Joint Action, the Framework Decision extends the definition of sexual exploitation, which includes the exploitation of the prostitution of others and other forms of sexual exploitation, including pornography. Trafficking for the purposes of exploiting the work or services of people⁸⁷, also designated with the term economic trafficking, was introduced in 2002 and reflects the insertion of this area of exploitation in the text of the Protocol of Palermo. The 2011 Directive pursues the trend towards extending the objectives of exploitation. First of all, it includes the third form of exploitation mentioned in the Protocol of the United Nations and in the CoE Convention, the removal of organs. In addition, in order to reflect evolutions of the phenomenon observed in practice and to adopt the most modern possible definition of the phenomenon, the European

⁸³ Article 1 § 1 Framework Decision 2002/629/JHA, and Article 2 § 1 Directive 2011/36/EU.

⁸⁴ *I.e.* the UN Palermo Protocol (Article 3 c)), the Framework Decision (Article 1 para 3), the CoE Convention (Article 4 c)) and the Directive (Article 2 para 5).

⁸⁵ Article 3 d) Palermo Protocol; Article 1 § 4 Framework Decision, Article 4 d) CoE Convention; and Article 2 para 6 Directive.

⁸⁶ Article 1 § 1 c) Framework Decision 2002/629/JHA and Article 2 para 2 Directive 2011/36/EU

⁸⁷ Article 1 para 1 of the Framework Decision provides that these forms of exploitation include at least forced or compulsory labour or services, slavery and practices similar to slavery or servitude.

legislator has also introduced new forms of exploitation⁸⁸. Forced begging, a phenomenon that is growing in the Member States⁸⁹, is explicitly mentioned as an example of forced services. Moreover, the exploitation of the criminal activities of others has been introduced⁹⁰, which can for example cover situations in which people are forced to steal or to practise fraud in relation to welfare benefits. The Directive can also potentially cover situations of illegal adoption or forced marriage⁹¹.

Finally, none of the instruments concerned required/requires that the perpetrator of the offence exploits the victim *in fine*. What is required for the offence of trafficking to have been carried out is that the act be set for the purposes of exploitation, in other words with the intention of exploiting. However it is not required that the exploitation actually takes place⁹².

2.2. THE EVOLUTION OF CRIMINALISATION OF SECONDARY BEHAVIOUR

Both the Joint Action and the Framework Decision and the Directive envisage the incrimination of other behaviour, in conformity with the UN and the CoE requirements. But a development is to be noted in that the types of behaviour targeted have been expanded.

The Joint Action was restricted to demanding that the fact of *taking part or trying* to commit the offence of trafficking – except for the detention of child pornography material – be subject to effective, proportionate and dissuasive

⁸⁸ Recital 11, Preamble, Directive 2011/36/EU.

⁸⁹ Eurostat, Trafficking in human beings, 2013, p. 46, Table 5. See also Project report, Report for the study on typology and policy responses to child begging in the EU, JLS/2009/ISEC/PR/008-F2, Dec. 2012, p. 31.

⁹⁰ It must be noted that these two purposes of exploitation (forced begging and exploitation of criminal activities) are not mentioned nor in the UN Palermo Protocol, *supra*, neither in the Council of Europe Convention (CETS No 197).

⁹¹ See Recital 11: “as well as, for instance, other behaviour such as illegal adoption or forced marriage in so far as they fulfil the constitutive elements of trafficking in human beings”.

⁹² For a critical comment on this point see H. Satzger, F. Zimmermann, G. Langheld (2012: 108).

sanctions⁹³. From 2001, in accordance with the UN Palermo Protocol, the Commission has been proposing extending incrimination to the instigation of, aiding, abetting or attempt to commit an offence, which has been accepted in the Framework Decision⁹⁴. The Directive does not make any change on this point⁹⁵.

2.3. WITH REGARD TO THE INCRIMINATION OF THE BEHAVIOUR OF ‘USERS’: FROM SILENCE TO BEING TAKEN INTO CONSIDERATION

If the early texts⁹⁶ had nothing to say with regard to the users of services provided by a person who is the subject of trafficking in human beings, this is no longer the case with the most recent ones, i.e. the Council of Europe’s Convention and the 2011 Directive. They both contain a provision in which States are invited to envisage/consider “taking measures to establish as a criminal offence the use of services, which are the objects of exploitation, with the knowledge that the person is a victim of (THB)”⁹⁷. Such provision aims at discouraging demand and thus increasing the effectiveness of the prevention of trafficking in human beings and combatting it.

According to the preamble of the Directive⁹⁸, such further criminalisation could cover the behaviour of employers of legally staying third-country nationals and Union citizens, as well as buyers of sexual services from any trafficked person, irrespective of their nationality⁹⁹. The first situation potentially covered by this provision only

⁹³ Title II, A, b), Joint Action.

⁹⁴ Article 3 of the Commission Proposal (COM(2001)854) and Article 2, Framework Decision 2002/629/JHA. The CoE Convention differs in so far that it does only refer to the attempt and aiding or abetting.

⁹⁵ Article 3, Directive 2011/36/EU.

⁹⁶ The UN Palermo Protocol, the 1997 Joint Action and the 2002 Framework Decision.

⁹⁷ Article 18, § 4, Directive 2011/36/EU. Article 19 of the CoE’s convention reads as follow: “ Each Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences under its internal law, the use of services which are the object of exploitation as referred to in Article 4 paragraph a of this Convention, with the knowledge that the person is a victim of trafficking in human beings ”.

⁹⁸ Recital 26, Preamble of Directive 2011/36/EU.

⁹⁹ It must be noted here that the Explanatory report of the CoE’s convention (§ 232) also refers to these two possibilities: the establishment of a criminal offence for the owner of a business to knowingly use trafficked workers made available by the trafficker and for the client of a prostitute who knew full well that the prostitute had been

constitutes the logical extension of the obligation on Member States to envisage the sentencing of employers of people from third countries in an *illegal* situation who are victims of trafficking in human beings¹⁰⁰. Extending the sentencing of employers to situations in which third-country nationals are victims of trafficking and are *legally* residing on the territory of Member States could for example punish situations in which the rules of European law are sidestepped¹⁰¹. By contrast, criminalisation of the second type of behaviour is a much more sensitive and controversial issue. Member States have adopted various different approaches. While voluntary prostitution is legal in the Netherlands and in the UK, buying sexual services is a criminal offence in other countries, such as Sweden¹⁰². A European consensus on this point is therefore far from being achieved. Not only are ideological positions, anchored in the national identity of countries, at issue¹⁰³, but, in addition, the practical implementation of this incrimination has not shown its effectiveness in reducing the demand for sexual services (Collins and Judge *apud* Obokata and Payne, 2012: 314). The compromise achieved during the negotiation of the Directive therefore invites countries to envisage the adoption of necessary measures for such a criminalisation without obliging them to do so.

trafficked. It also refers to a third possibility: the establishment of a criminal offence for someone who knowingly used a trafficker's services to obtain an organ).

¹⁰⁰ Directive 2009/52/EC of the European Parliament and of the Council, of 18 June 2009, providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, OJ L 168, 30 June 2009, p. 24. See more precisely its Article 9, d) which provides that the infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an illegally staying third-country national with the knowledge that he or she is a victim of trafficking in human beings.

¹⁰¹ See for instance the cases in Belgium in which victims of trafficking are legal residents by virtue of the Posting Directive (Directive 96/71/EC of the European Parliament and of the Council of 16 Dec. 1996 concerning the posting of workers in the framework of the provision of services, OJ L 18, 21 Jan. 1997 p. 1. See in this regard, Centre pour l'égalité des chances et la lutte contre le racisme, Une apparence de légalité, Annual Report 2009, p. 70 – 99.

¹⁰² See the examples of Sweden (1999), Norway (2008), Iceland (2009) and very recently France (2013). See also the debates in Ireland since 2010.

¹⁰³ The adoption by the States of an abolitionist or regulationist approach is a political choice, often ancient. The supporters of each approach (in particular NGOs) lobbied intensively to try to influence the negotiations of international instruments, such as the ones of the Palermo Protocol. See in this regard Gallagher (2001: 1002).

This issue of the incrimination of users is particularly interesting. Among other things it makes it possible to study the new power relations between the European Parliament and the European Council following the entry into force of the Treaty of Lisbon and the application of the ordinary legislative procedure (co-decision). The European Council and the European Parliament have “confronted” each other in this regard. The former did not want to force Member States to criminalise the behaviour of users while the European Parliament made the case – or more accurately some of its members made the case – for an expansion of incriminations covering the behaviour of users¹⁰⁴. The MEPs did not get their way. MEP and co-rapporteur Anna Hedh thus said:

we proposed that all the Member States be obliged to criminalise those who, whilst knowing what they are doing, use services provided by victims of trafficking. [...]. Unfortunately, our proposal was not accepted. Member States will therefore not be forced to criminalise these people¹⁰⁵.

Ms Malmström also commented on this point by specifying that “the issue of criminalisation must be debated separately¹⁰⁶”. The discussions on this point are likely to be re-launched in a few years after the Commission has submitted a report assessing the impact on the prevention of trafficking in human beings of national legislation in force that makes using services subject to exploitation related to the trafficking in human beings punishable¹⁰⁷. Fresh developments are therefore to be expected on this issue.

¹⁰⁴ In this regard, see among others Weyembergh (2013).

¹⁰⁵ Annah Hedh, Co-rapporteur, Debate, 14 Dec. 2010, CRE 14/12/2010 – 7. This question has been strongly debated within the Parliament (see opposition against this idea in the interventions of Mrs Sargentini, on behalf of the Verts/EFA Group, Mrs N. Hirsch (ALDE) or Mrs K. Morvai (NI)). For a recent position of the MEPs on this issue, see the Resolution of 26 February 2014 on sexual exploitation and prostitution and its impact on gender equality (2013/2103(INI)), and in particular its §§ 29 – 33.

¹⁰⁶ Ibidem.

¹⁰⁷ Article 23, § 2, Directive 2011/36/EU..

2.4. THE NON-PROSECUTION OR NON-PUNISHMENT CLAUSE WITH REGARD TO VICTIMS OF TRAFFICKING

The instruments of the European Union that aim at bringing substantive criminal law criminal legislation closer together have been criticised for contributing to the tendency towards “over-criminalisation” observed in Member States¹⁰⁸. This “contribution” is due to two mutually reinforcing elements. The first is about the limits of the EU’s power in the area: the EU can only set *minimum rules* relating to the definition of offences¹⁰⁹ and cannot for example proceed to the decriminalisation of certain behaviour¹¹⁰. The second lies in the fact that numerous Member States take the opportunity of the transposition of European instruments to be stricter and harsher than the texts of the European Union and to go beyond the incriminations required by them. Such an observation has, inter alia, been seen with regard to the 2002 Framework Decision on trafficking (Santamaria and Weyembergh, 2009).

In this context, drawing inspiration from a similar formulation in the CoE’s Convention¹¹¹, and for the first time in EU criminal law¹¹², the 2011 Directive introduces a provision according to which Member States

shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit¹¹³.

¹⁰⁸ On this topic, see among others Weyembergh (2004).

¹⁰⁹ see Article 31 e) ex-TEU and Article 83 TFEU.

¹¹⁰ Despite the audacious arguments defended by some authors, like H. G. Nilsson (2011: 67) and also A. Klip (2012: 162).

¹¹¹ Article 26, CoE Convention: “Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so”.

¹¹² Such clause has been afterwards introduced in Article 14 of the Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography see *supra*.

¹¹³ Article 8, Directive 2011/36/EU.

This provision mainly pursues the objectives of “guaranteeing victims the benefit of human rights, avoiding fresh victimisation and encouraging them to come forward as witnesses in the context of criminal procedures entered into against the perpetrators of offences”¹¹⁴. In the impact study¹¹⁵ accompanying the 2009 proposal for a Framework Decision¹¹⁶, the Commission reports that, according to the actors concerned, victims of trafficking were usually detained or prosecuted for minor offences, which are typically related to the trafficking of human beings and the process of victimisation, such as infringements of the right of immigration, the use of false documents or, in the countries where it is criminalised, prostitution. Additionally,

the increasing prevalence globally of human trafficking for enforced criminality also exposes victims (...) to committing a multitude of offences, such as, but not limited to, theft, pick-pocketing, drug trafficking, cannabis cultivation or fraud (and) it is often a deliberate strategy of the traffickers to expose victims to the risk of criminalisation and to manipulate and exploit them for criminal activities. (OSCE, 2013: 3)

The scope of application of this provision is thus intended to be as large as possible, not only to ensure full respect of the victims’ human rights, but also in order to overcome their fear of their being punished and/or expelled. The latter is regarded as a major obstacle to the spontaneous identification of victims, to their reporting trafficking offences to their cooperation as a witness in judicial proceedings. This clause is therefore presented as being an important element in the success of legislation aiming to combat the trafficking of human beings¹¹⁷. However it does not

¹¹⁴ Recital 14, Preamble, Directive 2011/36/EU.

¹¹⁵ Commission Staff Working Document, Impact Assessment accompanying the Proposal for a Council Framework Decision on preventing and combating trafficking in human beings and protecting victims, Brussels, 25 March 2009, SEC (2009) 358, p. 24 – 25.

¹¹⁶ Commission Staff Working Document, Proposal for a Council Framework Decision on preventing and combating trafficking in human beings and protecting victims, repealing Framework Decision 2002/629/JHA, Brussels, 25 March 2009, COM (2009) 136 final.

¹¹⁷ Other European actors also sought to justify this type of clause. For instance, according to the OSCE, the punishment of victims of trafficking for crimes directly related to their trafficking is a violation of their fundamental dignity. Indeed, the criminalization of trafficked victims not only fail to take into account the serious crimes committed against the victim by the traffickers, which should be investigated, but it fails to recognize trafficked persons as victims and witnesses of those serious crimes and exacerbates their victimization and/or trauma by imposing on such persons State-imposed, unjust punishment (OSCE, Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking, 2013, p. 10).

target any victim, as it does not concern those who have deliberately committed or voluntarily taken part in offences. In practice, the competent national authorities will from now on have to establish if, when the victims committed offences, they had or did not have freedom of action (or at least limited freedom) given the control exerted over them. When it emerges that they have been forced to commit offences because they are still victims of trafficking or following their previous exploitation, the authorities will then be able to decide not to prosecute them.

Its exact status is difficult to define. It does not constitute a decriminalisation clause but can undoubtedly be considered as a “substitute” for this kind of clause. However, it is only a pale substitute to the extent that the terms used show its weak binding nature¹¹⁸. Not only does it specify that it is “in accordance with the basic principles of their legal systems” but it also demands only that the states “*shall [...] take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties*”¹¹⁹. It remains to be seen how the Member States will put this clause into practice. For Member States in which the principle of opportunity of prosecutions is applied, its application will not constitute a major change. It could have a much more marked impact in countries applying the principle of legality of prosecutions¹²⁰. However, we will need to see how the phrase “in accordance with the basic principles of their legal systems” will be interpreted in that respect... The main issue is to find out if this clause will have a real impact on the protection of victims or if, on the contrary, it will only allow national competent authorities to retain their power of assessment, exercised in a discretionary manner.

¹¹⁸ For more developments about this clause see T. Obokata and B. Payne (2012: 310 and f.).

¹¹⁹ Article 8, Directive 2011/36/EU. Emphasis added.

¹²⁰ In some Member States, prosecutors are governed by the principle of legality. This means that they are required to prosecute any crime, regardless of its gravity, seriousness or consequences. In some other Member States (including the United Kingdom) prosecutors exercise discretionary powers to prosecute which leads to a more pragmatic approach to the enforcement of the criminal law. UK Home Secretary, A review of the United Kingdom's extradition arrangements, Sept. 2011, p. 162, FN 121.

3. APPROXIMATION OF SANCTIONS

In the 1990s and onwards, the European Union launched itself into approximating penalties applicable to certain sectors of serious crime that are most often cross-border in nature, such as the trafficking of human beings. Generally speaking, the approximation of sanctions proved to be a particularly sensitive issue in terms of national sovereignty. Extremely limited at the outset, it was to experience a little bit more depth from one instrument to the next and, at the same time, there has been a move towards more severity (A). In addition, where it was focussed rather on penalties that deprived people of their freedom, the approximation was to experience some movement towards diversification (B).

3.1. TOWARDS GREATER DEPTH IN THE APPROXIMATION OF PENALTIES AND GREATER SEVERITY

The Joint Action merely required that countries re-examined their legislation and their practices to ensure that the offence of trafficking and secondary behaviour can be subject to effective, proportionate and dissuasive criminal penalties¹²¹. The UN instruments did not go so far. The UN Palermo Protocol is indeed silent about such element; the relevant provision can be found in its parent Convention¹²², e.g. the TOC Convention. But Article 11 of the latter only refers to “sanctions that take into account the gravity of that offence” and does not specify any level of penalties. The CoE’s Convention, and more particularly its Article 23, merely copies the formula employed in the Joint Action, as it only provides for the obligation to ensure that the criminal offences “are punishable by effective, proportionate and dissuasive sanctions”.

The higher level of integration of the European Union allows it to be more precise and prescriptive. From the entry into force of the Treaty of Amsterdam, on the basis of Article 31 e) TEU, the European legislator started to become more ambitious. The approach taken consists of setting sentences that deprive someone of their

¹²¹ Title II, A, b), Joint Action.

¹²² On the interrelation between the Protocol and the TOC Convention, see Article 37 TOC Convention and Article 1 Protocol THB.

freedom whose minimum level of the maximum sentence cannot be lower than the number of years of fixed imprisonment¹²³. In its conclusions of 25 and 26 April 2002, the Council clearly states that the possible need to set down in domestic law, for the offences considered, a minimum level of maximum sentences will be foreseen for each proposal for a legislative instrument¹²⁴. These same conclusions contain the different levels included in this system¹²⁵. This approach, which is somewhat complex, can be partly explained by declaration number 8 in the Treaty of Amsterdam¹²⁶, by virtue of which the treaties in force do not need to oblige a Member State whose legal system does not foresee minimum penalties to adopt them. The possibility for the European legislator to set minimum penalties is *de facto* ruled out.

The system of “the minimum level of the maximum penalty” has been put in place in numerous Framework Decisions, including the 2002 Framework Decision on the trafficking of human beings.

The proposal for a Framework Decision, presented in 2001, went much further than the very limited provisions of the Joint Action as it suggested introducing the possibility of foreseeing sentences that deprived people of their freedom that could not be less than six or ten years for the commission of the offence, with or without aggravating circumstances¹²⁷. However, the provision adopted following negotiations is a lot less ambitious. Beyond the discussion on the “level” of the sentence to be

¹²³ On this topic, see Anne Weyembergh (2001: 134).

¹²⁴ Conclusions, of the JHA Council, of 25 and 26 April 2002, doc. 7991/02, p. 15.

¹²⁵ Level 1: Penalties of a maximum of at least between 1 and 3 years of imprisonment

Level 2: Penalties of a maximum of at least between 2 and 5 years of imprisonment

Level 3: Penalties of a maximum of at least between 5 and 10 years of imprisonment

Level 4: Penalties of a maximum of at least 10 years of imprisonment (cases where very serious penalties are required).

¹²⁶ Déclaration No. 8 on Article K.3, point e), of the Treaty on European Union.

¹²⁷ Commission, Proposal for a Council Framework Decision on combating trafficking in human beings, 22 Jan. 2001, COM (2000) 854 final, Article 4, Penalties and aggravating circumstances.

applied, the negotiations have led to a reduction in the number of types of behaviour for which it has been possible to set a level (Weyembergh, 2004: 134). By virtue of the Framework Decision, the Member States must only ensure that the commission of the “simple” offence of trafficking in human beings is subject to effective, proportionate and dissuasive criminal penalties, which may entail extradition¹²⁸. And it is only when aggravating circumstances are present that penalty levels are foreseen: the offence must then be punishable via sentences depriving someone of their freedom, with the maximum sentences being no less than eight years.

Such a provision has not made it possible to achieve the hoped for approximation of national legislation. The Commission itself notes in its evaluation report that “the degrees of penalties vary considerably from one Member State to another and [it] could be brought around to examining the possibility of subsequent approximation”¹²⁹.

The Commission makes this idea concrete in its proposal for a Framework Decision of 2009¹³⁰. In that proposal, it again proposes introducing minimum levels for maximum sentences. The “simple commission of an offence” would be subject to a sentence depriving the person of freedom, for which the maximum penalty level could not be less than six years¹³¹. The presence of “least serious” aggravating circumstances increases the penalty with the maximum penalty level here being no less than 10 years¹³². And in particularly serious circumstances (putting the victim’s life in danger, use of serious violence), the maximum sentence cannot be lower than 12 years¹³³. According to the Commission, this approximation would not only constitute an added value to the Protocol of the United Nations and the Convention of the Council of

¹²⁸ Article 3, Framework Decision 2002/629/JHA.

¹²⁹ Commission, Report based on Article 10 of the Council Framework Decision of 19 July 2002 on combating trafficking in human beings, 2 May 2006, COM (2006) 187 final, p. 9.

¹³⁰ Commission, Proposal for a Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA, 25 March 2009, COM (2009) 136 final.

¹³¹ Article 3, § 1, Proposal for a Council Framework Decision.

¹³² Article 3, § 2, Proposal for a Council Framework Decision.

¹³³ Article 3, § 3, Proposal for a Council Framework Decision.

Europe, which do not foresee levels of sentencing but it would also correct the shortcomings of the previous text¹³⁴.

The negotiations were interrupted with the entry into force of the Treaty of Lisbon, which led to the presentation by the Commission in 2010 of a new proposal but this time a proposal for a Directive¹³⁵. In this new proposal, the level of penalties has slightly fallen by comparison with the previous initiative. This change can possibly be explained by the Council's wish, during negotiations on the proposal for a Framework Decision, to apply the scale of sanctions set out in its conclusions of 2002¹³⁶. The commission of the offence of trafficking must be subject to a sentence depriving someone of freedom, with the maximum sentence not being lower than five years¹³⁷. And in the case of aggravating circumstances – whatever they might be – the maximum sentence cannot be lower than ten years¹³⁸. No distinction is therefore made any more among the aggravating circumstances with regard to their consequences in terms of penalties.

The final text of the Directive takes up these levels of penalties without amending them. If we compare the Directive to the Framework Decision of 2002, the system of the minimum levels of maximum penalties is kept and extended and the levels of penalties are raised. Although the Treaty of Lisbon does not include a declaration similar to the aforementioned declaration number 8 in the Treaty of

¹³⁴ Commission Staff Working Document, Impact Assessment accompanying the Proposal for a Council Framework Decision on preventing and combating trafficking in human beings and protecting victims, Brussels, 25 March 2009, SEC (2009) 358, p. 24.

¹³⁵ Commission, Proposal for a Directive of the European Parliament and of the Council, on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA, 29 March 2010, COM (2010) 95 final.

¹³⁶ Conclusions, Council JHA of 25 and 26 April 2002, doc. 7991/02.

¹³⁷ Article 4, § 1, Proposal for a Directive.

¹³⁸ Article 4, § 2, Proposal for a Directive.

Amsterdam, the European legislator has not resorted to the possibility that it now also has to set the minimum level of minimum penalties¹³⁹.

As for inciting, aiding and abetting or attempting to commit an offence, no specific level of sentence is foreseen. The countries are invited to foresee effective, proportionate and dissuasive sanctions, which may entail surrender¹⁴⁰.

The aggravating circumstances foreseen by the Framework Decision and the Directive continue to be similar on the whole and only their order changes¹⁴¹. However, two notable differences should be pointed out. The first difference concerns the existence of an aggravating circumstance when the victim is in a particularly vulnerable state. The Framework Decision specified that a victim

is considered as having been particularly vulnerable, at least when it [the victim] had not reached the age of sexual consent foreseen by national legislation and when the offence has been committed for the purposes of exploitation of the prostitution of others and other forms of sexual exploitation, including for pornography¹⁴².

The Framework Decision was criticised for restricting the scope of application of this aggravating circumstance to situations of sexual exploitation. The Directive does not take up these specifications and therefore extends its application to all the different areas of exploitation. In addition, as have already underlined above, it defines in another article the situation of vulnerability as being a situation in which the person has no other real or acceptable choice but to subject themselves to this abuse¹⁴³. The

¹³⁹ Out of the seven proposals for directives approximating substantive criminal law presented since the entry into force of the Lisbon Treaty, two contain provisions fixing the minimum level of minimal sanctions: Article 8 of the proposal for a directive on the fight against fraud to the Union's financial interests by means of criminal law, 11 July 2012, (COM (2012) 363 final, and Article 5, para 4, a) of the Proposal for a directive on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA, 5 Feb. 2013, COM (2013) 42 final.

¹⁴⁰ Article 4, § 4, Directive 2011/36/EU.

¹⁴¹ The offence was committed: against a victim who was particularly vulnerable; within the framework of a criminal organisation; the offence deliberately or by gross negligence endangered the life of the victim; or the offence was committed by use of serious violence or has caused particularly serious harm to the victim.

¹⁴² Article 3, b), Framework Decision 2002/629/JHA.

¹⁴³ Article 2, § 2, Directive 2011/36/EU: A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved. .

proposed definition has been criticised for its lack of precision, which is obvious when the final provision is compared to the Commission's initial proposal¹⁴⁴. It obliges national legislators to determine vulnerability from the victim's perspective and therefore examine individual factors that cannot be determined by applying an objective standard (Satzger *et al.*, 2013: 114). In addition, the Member States' margin for manoeuvre is strengthened, which can lead to differences in the protection granted to victims based on the country in which they are identified (Obokata and Payne, 2012: 306).

The second difference consists in the addition of a new aggravating circumstance, which happens when an agent from the civil service commits the offence while carrying out his/her duties¹⁴⁵. This addition, courtesy of MEPs¹⁴⁶, goes hand in hand with the obligation placed on Member States to ensure that civil service agents are adequately and regularly trained¹⁴⁷ in order to ensure in particular that inquiries and investigations conclude properly and better identification of victims.

It is striking to observe the increase in the level of penalties prescribed by European instruments as well as the lack of reaction from the European Parliament faced with this increase. The report on the proposal for a Directive does not propose any amendment to this part of the text¹⁴⁸. And the amendments proposed to the preamble merely refer back to the levels of penalties foreseen in the Council's conclusions and detail the factors that should be taken into account by the judges

¹⁴⁴ Article 4, § 2, b), Proposal for a Directive: a victim who was particularly vulnerable, which, in the context of this Directive, shall include at least child victims, and adults who were particularly vulnerable on grounds of pregnancy, health conditions or disability. Nevertheless, these elements, after the amendments proposed by the Parliament, are present in the final text of the Directive, but only in one recital of the Preamble (Recital 12).).

¹⁴⁵ Article 4, § 3, Directive 2011/36/EU.

¹⁴⁶ European Parliament, 24 Nov. 2010, Amendment 228, Draft Report, procedure 2010/0065(COD), p. 20

¹⁴⁷ Article 9, § 3 and Article 18, § 3, Directive 2011/36/EU.

¹⁴⁸ European Parliament, Report on the proposal for a directive, 2 Nov. 2010, doc. A7-0348/2010, Committee LIBE and Committee on Women's Rights and Gender Equality (FEMM), Rapporteurs: Edit Bauer, Anna Hedh, p. 22.

when determining the applicable penalty¹⁴⁹. During the plenary debates, the co-rapporteur, Anna Hedh, highlighted that “in order to tackle the problem of human trafficking, we need to have penalties that reflect the seriousness of the crime and that really hurt those who are making money out of trafficking in human beings. I think that we have made some progress with the proposals for penalties contained in the legislative proposal”¹⁵⁰. In addition, the analysis of parliamentary debates reveals that MEPs are more concerned with the protection of victims than the penalties that exploiters are subject to. And when they mention this issue, the increased severity of penalties is welcomed¹⁵¹. Some MEPs, more to the right on the political chessboard, even regret that the text does not go further¹⁵². Voting explanations also express the satisfaction of some MEPs in seeing the penalty levels rise¹⁵³.

However, this lifting in the level of sentences applicable is not exempt from criticism and all the more so as it has been shown that, as for incriminations, Member States tend to foresee higher sentencing levels than those required by the EU’s instruments (Santamaria and Weyembergh, 2009). The text has also been criticised for

¹⁴⁹ Factors to appreciate the vulnerability of the victims, or to appreciate the gravity of the offence, see European Parliament, Amendment 228, (PE442.887v01-00), adopted on 29 Nov. 2010, p. 7 - 8 and p. 34.

¹⁵⁰ See the debates in the plenary, 14 Dec. 2010, summary available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20101214+ITEM-007+DOC+XML+V0//EN>.

¹⁵¹ Intervention of Silvia Costa (S&D): Our group had three priorities: to hit traffickers with uniform, more severe sanctions, including confiscating assets and using them to support the victims of trafficking; to ensure a high level of protection and social rehabilitation for victims, with free legal representation and immunity from prosecution for crimes committed in connection with being trafficked; and to promote the crucial role of the non-governmental organisations, both secular and religious, that work to support the victims.

¹⁵² Interventions of Peter van Dalen (ECR): However, as I understand it, the proposed sentencing tariff for reoffenders will, unfortunately, remain low. The current proposal does not require that any particularly heavy penalties be imposed on human traffickers who have been arrested a number of times. That seems to me to be an unfortunate state of affairs. I am in favour of an approach where a trafficker who is arrested for a second or a third offence must receive a mandatory life sentence; or of Niki Tzavela (EFD): I strongly recommend, as we tend here in Parliament to set targets and to say ‘20%’ or ‘30%’, that we recommend a standard European legislation which sets a minimum prison sentence for human traffickers of 10-15 years, which cannot be reduced or replaced by a fine. You will see how effective that will be.

¹⁵³ See for instance the explanations of vote given by Vilija Blinkevičiūtė (S&D), in writing: I voted for this report because there must be a stricter response to human traffickers and the terrible crimes they commit, and harsher penalties and sanctions must be adopted so that their levels reflect the gravity of the offence committed and that they would act as an effective deterrent to such acts. ; or of Carlos Coelho (PPE), in writing: It has been possible to reach a balanced compromise, creating an instrument capable of dealing more effectively with this type of criminal activity, and creating more rigorous policies and making penalties more severe, including prison terms of five to 10 years and the seizure of the proceeds of crime.

not being compatible with the principle of proportionality, by virtue of which the legislator has to adapt the type and level of sanction to the severity of the offence perpetrated. The Directive treats acts that have different degrees of severity in the same way. While the Directive foresees different minimum maximum sentences for the perpetrators on the one hand and for the participants on the other, it makes no distinction between the main perpetrators and their subordinates¹⁵⁴. Thus a driver who transports the victim from one point to another without taking violent action against him/her would be subject to the same sentence as the person who exerts control over the victim and extracts considerable profits from exploiting him/her.

3.2. TOWARDS A LIMITED DIVERSIFICATION OF THE TYPES OF PENALTIES

The approximation carried out in terms of criminal penalties focused for a long time on sentences that deprived criminals of their freedom. The other categories of penalties were mentioned in some texts but usually by way of examples without it being a matter of requiring Member States to foresee these penalties in their law¹⁵⁵. In the last few years some progress seems, however, to be seeing the light of day¹⁵⁶, putting EU law in line with other international and European instruments¹⁵⁷. This progress is confirmed in the 2011 Directive relating to trafficking in human beings.

The Directive introduces a provision obliging countries to take the necessary measures to empower the competent authorities to seize and confiscate instruments and products of the trafficking offence and related offences, so that the trafficking of human beings loses its status as an extremely profitable criminal activity and to

¹⁵⁴ In this regard, see for instance Satzger *et al.*, 2013: 112.

¹⁵⁵ See for instance Article 1 § 2 of Council Framework Decision 2002/946/JHA of 28 Nov. 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence, *supra*. The provision enumerates measures which may, where appropriate, accompany criminal penalties (confiscation of the means of transport, deportation, prohibition on practising an activity).

¹⁵⁶ In this regard, see: Weyembergh (2011).

¹⁵⁷ See in this regard Article 12 of the UN TOC Convention, and Article 23 § 3 of the CoE's Convention.

discourage criminal organisations from engaging in this activity¹⁵⁸. It has been admitted for some time that this type of action is an excellent way of dissuading criminals, who are mainly motivated by the prospect of quick profits, to engage in a given criminal activity. It is certainly not the first time that the EU deals with such measures¹⁵⁹ but similar provisions did not previously appear either in the Joint Action or in the Framework Decision. The addition of a specific provision on the seizure and confiscation of instruments and products from trafficking by MEPs can be linked with another provision in the text, which obliges countries to plan trafficking victims' access to existing systems of compensation for victims of intentional and violent crime¹⁶⁰, allowing them to receive compensation for the damage that they have suffered. This addition seems to flow from the MEPs' wish to encourage countries to use these mechanisms to finance aid to victims and their protection or to finance cross-border actions to combat trafficking¹⁶¹. Victim compensation is still a mechanism that is in an embryonic state and numerous European actors insist on the need to develop it, notably to ensure that victims take part in investigations and prosecutions¹⁶².

4. OTHER MATTERS

4.1. LIABILITY OF LEGAL PERSONS

Considering the fact that commercial companies associations and similar legal entities can be involved in the commission of THB offences, legal instruments have

¹⁵⁸ Article 7, Directive 2011/36/EU.

¹⁵⁹ See among others Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime, OJ L 182, 5 July 2001, p. 1, and Council Framework Decision 2005/212/JHA of 24 Feb. 2005 on confiscation of crime-related proceeds, instrumentalities and property, OJ L 68, 15 March 2005, p. 49.

¹⁶⁰ Article 17, Directive 2011/36/EU.

¹⁶¹ Recital 13, Preamble, Directive 2011/36/EU. The proposals of the Commission (both for a Framework Decision and for a Directive) are silent on this point. The European Parliament justified its insertion with the argument that the confiscated or seized criminal assets, and their product, may be used to ensure that victims receive appropriate support.

¹⁶² Eurojust (2012: 11): "National authorities should also consider providing compensation to THB victims, for instance from assets confiscated from traffickers".

included provisions organising their liability and mentioning the sanctions applicable to them. It is important to stress that their liability does not exclude individuals' liability.

Whereas the Protocol is silent on this issue, the TOC Convention contains a provision¹⁶³ imposing to States parties to establish the liability of legal persons for participation in serious crime. States have the discretion to choose both the type of liability¹⁶⁴ and the sanctions¹⁶⁵ applicable to them. The latter must however be effective, proportionate and dissuasive. The adoption of such provisions does not cause any problem within the EU legal order, as the 1997 Joint Action already contained similar provisions¹⁶⁶, organising the criminal or administrative liability of legal persons, and providing tailored sanctions against them¹⁶⁷.

The CoE's Convention provides for a similar obligation¹⁶⁸, but its degree of precision is extended, as in the EU Framework Decision and Directive¹⁶⁹. Legal persons may indeed be liable "for criminal actions performed on their behalf by anyone in a leading position in them, (or) where someone in a leading position fails to supervise or check on an employee or an agent of the entity thus enabling them to commit" THB¹⁷⁰. Examples of penalties relating to them were already provided by the 2002 Framework Decision: exclusion from entitlement to public benefits or aid, temporary or permanent disqualification from the practice of commercial activities, the temporary or permanent closure of establishments which have been used for committing the

¹⁶³ Article 10 - Liability of legal persons.

¹⁶⁴ It may be criminal, civil and administrative.

¹⁶⁵ They shall be criminal or non-criminal sanctions, including monetary sanctions.

¹⁶⁶ Title II, A. c) and d) Joint Action

¹⁶⁷ Such as the temporary or permanent closure of establishments that have been used or intended for committing such offences.

¹⁶⁸ Article 23 §§ 2 – 4. The wording is identical to the one of the UN TOC Convention, the only difference being in § 4 the provision of more detailed sanctions (temporary or permanent closure, and denying the perpetrator the exercise of the activity).

¹⁶⁹ Article 4, Framework Decision 2002/629/JHA; Article 5, Directive 2011/36/EU

¹⁷⁰ CoE, Explanatory Report, § 247.

offence, accompanied by criminal or non-criminal fines or placement under judicial supervision¹⁷¹. The directive maintains the same examples of penalties and adds the possibility of judicial winding-up¹⁷².

4.2. JURISDICTION OVER THB OFFENCES: CONTINUOUS DEVELOPMENT

In order to ensure effective prosecution of THB offences and avoid negative conflicts of jurisdiction, which could lead to the criminals' impunity, international and European instruments have multiplied the jurisdiction criteria. They do not only provide for the traditional principle of territoriality¹⁷³, but also for extraterritorial jurisdiction, especially on the ground on the principles of active personality¹⁷⁴ or of passive personality¹⁷⁵.

Under EU law, the initial provision in the 1997 Joint Action was initially limited as it reserved the obligation to establish jurisdiction to two situations: on the one hand, when the offence was committed, wholly or partly, on the territory of the Member State concerned, and, on the other hand, when it was committed by a national or an habitual resident of that State¹⁷⁶. However, in the second case, there was a possibility for the Member States to subordinate the exercise of such jurisdiction to the double criminality requirement and to procedural conditions.

As the UN TOC Convention¹⁷⁷, the two next EU instruments make the difference between compulsory and optional jurisdiction.

¹⁷¹ Article 5 Framework Decision 2002/629/JHA

¹⁷² Article 6 Directive 2011/36/EU

¹⁷³ When the offence has been committed on the territory of the State.

¹⁷⁴ The offender is a national of the State

¹⁷⁵ The victim of the offence is a national of the State.

¹⁷⁶ It must stressed here the use of the notion of habitual resident, which illustrates the importance of free movement of persons and the principle of non-discrimination under EU law, as well as the fact that the citizen habitually residing in his/her host Member State is treated as a national of that state.

¹⁷⁷ Article 15 UN TOC Convention

Article 6 of the Framework Decision mention three different cases where a Member State must establish its jurisdiction, namely when the offence was committed, wholly or partly, on the territory of the Member State concerned, when it was committed by a national of that State and when offences are “committed for the benefit of a legal person established in the territory of that Member State”¹⁷⁸. With regard to the second hypothesis, and contrary to the 1997 Joint Action, there is no mention any more of the habitual resident. The 2002 Framework Decision added the third and last hypothesis, which had not been foreseen previously. It has been analysed as a potential example of the effect principle where States can exercise jurisdiction over crime that affect the State’s important interests such as economy and national security¹⁷⁹. However, the two last jurisdiction rules are not really compulsory because Member States may decide that they will not apply them or apply them only in specific cases¹⁸⁰. Consequently, the Framework Decision was simultaneously more ambitious (addition of a third hypothesis) and less ambitious (possibility to exclude the two last hypothesis and no mention of the habitual residents) than the Joint Action. However concerning offences committed by its nationals outside its territory, Article 6 § 3 obliges States that do not extradite their own nationals for criminal prosecution to establish jurisdiction over these offences¹⁸¹.

The latest instrument, the Directive 2011/36/EU, extends the obligations of the Member States regarding jurisdiction. Firstly, under its Article 10, the territoriality principle and the active personality principle are both mandatory. In comparison with the Framework Decision, there is no possibility anymore to escape from the active personality principle, i.e. to apply it only in certain cases or to subordinate its exercise

¹⁷⁸ Article 6 § 1 c) Framework Decision

¹⁷⁹ T. Obokata and B. Payne, *Implementing action against trafficking inhuman beings under the TFEU: A preliminary analysis*, op. cit, p. 304.

¹⁸⁰ Art. 6 § 2 Framework Decision

¹⁸¹ This obligation reflects the principle of *aut dedere aut judicare* (extradite or prosecute) long established under international law, see T. Obokata and B. Payne (2012: 304).

to certain conditions¹⁸². Secondly the Directive provides for three other *optional* criteria of extraterritorial jurisdiction¹⁸³, i.e. when the offender is an habitual resident of the territory of the concerned Member State, when the offence is committed against one of its nationals or against one of its habitual residents (the passive personality principle¹⁸⁴), and when the offence is “committed for the benefit of a legal person established in its territory.

While the invitation made to the Member States to extend their extraterritorial jurisdiction is welcomed, one must also be aware of its accompanying disadvantage: the risk of increasing conflicts of jurisdictions. In this regard, the role of Eurojust in the solution of these conflicts has been stressed¹⁸⁵.

4.3. PROTECTION OF VICTIMS

Last but not least, protection and assistance granted to victims of THB under the EU legal framework is worth to mention. These aspects are at the core of the human rights-based approach, under which THB is considered as a matter for human rights. For the advocates of this approach, the obligation to protect, assist and provide redress to THB victims should be the core of anti-trafficking policies, and prosecution and conviction of traffickers are mainly envisaged as supportive measures.

All the instruments we study in this paper mention the importance of the victims’ human rights in their preambles¹⁸⁶, but the CoE’s Convention remains the “first instrument implementing a true human rights-based approach” (Cullen, 2011:

¹⁸² Art. 10 § 3 Directive 2011/36/EU

¹⁸³ Article 10 § 2 – see T. Obokata and B. Payne, *supra*, p. 304.

¹⁸⁴ Article 10 § 2 a) – such change “challenges the predominant perception that all victims of THB in the EU are foreign nationals, and clearly recognises that EU nationals themselves can be victims of this practice” (T. Obokata and B. Payne, 2012: 305).

¹⁸⁵ See in particular Commission Staff Working Document, Impact Assessment accompanying the Proposal for a Council Framework Decision on preventing and combating trafficking in human beings and protecting victims, Brussels, 25 March 2009, SEC (2009) 358, p. 25, and Eurojust (2012: 43).

¹⁸⁶ UN Palermo Protocol, Preamble § 1; Joint Action, Preamble § 9; Framework Decision, Preamble, § 3 and Directive 2011/36/EU § 2.

225). The provisions of the Palermo Protocol only imposed “soft” obligations on State parties, as indicated by their optional tone. Such choice was later justified by

the high costs of these benefits and the fact that they apply equally to all States parties in which victims are found, regardless of the level of socio-economic development or availability of resources precluded these from being made obligatory. (UNODC, 2004: 288)

Similarly the provision of the EU 1997 Joint Action was not very detailed¹⁸⁷, and its implementation (or rather its lack of) has been pinpointed¹⁸⁸. The 2002 Framework Decision did not change the situation, and the EU received critics for its failure to promote victims’ rights, in answer to which vague promises were made to deal in a subsequent instrument with the question of short-term stays or residency permits for THB victims (Gallagher, 2006: 163). This specific instrument, the Directive 2004/81/EC¹⁸⁹, still in force today, does not necessarily correct this lack of victims’ protection. It focuses indeed on the introduction of residence permits for THB victims, subject to conditions designed to encourage them to cooperate with law enforcement authorities.

The Council of Europe’s Convention therefore appeared as a much-needed instrument, necessary to “bring added value to other international instruments with its clear human rights and victim protection”¹⁹⁰. The two elements figure prominently in the paramount objectives to be attained, and a specific chapter details “measures to protect and promote the rights of victims”. The provisions contained therein meet the expectations since they reduce the conditionality element, according to which victims were entitled to receive protection and assistance only if they meet certain conditions.

¹⁸⁷ Title II, F. Joint Action

¹⁸⁸ See for instance Obokata, (2006: 394 – 395).

¹⁸⁹ 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, OJ L 261/19, 6.8.2004, p. 19 - 23

¹⁹⁰ CoE Parliamentary Assembly, Recommendation on migration connected with trafficking in women and prostitution, 25June 2003, Recommendation No R 1610 (2003), § 3, (i).

In this regard, one must recall Article 12 § 6, which provides that “assistance to a victim is not made conditional on his or her willingness to act as a witness”, or Article 14 § 1 a), which invites States Parties to issue renewable residence permit to victims when “their stay is necessary owing to their personal situation”. Commentators have stressed how far the Convention pushes international standards on the protection of victims, and how it changes their perception (Gallagher, 2006: 187). However nothing in the Convention prevents States Parties to limit protection of victims to those who collaborate with the competent authorities¹⁹¹, which confirms that there is “a limit to what States will grant to victims of trafficking”¹⁹².

The reserved views of States did not prevent them to upgrade the EU standards when adopting the 2011 Directive. In comparison with the Framework Decision, it realises a significant improvement in the protection of victims. Firstly, the Directive generally incorporates in the EU legal order the standards set out in the CoE’s Convention. Article 11 for instance requires Member States to provide assistance and support to the victims “before, during and for an appropriate period of time after the conclusion of criminal proceedings”, and such support cannot be made conditional on the victim’s willingness to cooperate in the criminal proceedings¹⁹³. Secondly the Directive rely upon the protective measures that THB victims may derivate from other EU law instruments, such as the Victims’ Rights Directive¹⁹⁴ or the Directive on Compensation to Crime Victims¹⁹⁵. Finally it provides innovative provisions concerning child victims, who benefit undoubtedly from a more favourable, reflecting the specificities of their situation¹⁹⁶. However despite these innovative elements, the

¹⁹¹ See in particular Article 14 § 1 b).

¹⁹² See Gallagher (2006: 187).

¹⁹³ See the similar wording employed in Article 12 § 6 CoE’s Convention. See also as another example the invitation made to pay attention to the victims with special needs (Article 11 § 7 Directive / Article 12 § 7 CoE’s Convention).

¹⁹⁴ Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315, 14.11.2012, p. 57 – 73.

¹⁹⁵ Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, OJ L 261, 6.08.2004, p. 15 – 18.

¹⁹⁶ Articles 13 to 16 Directive.

protection afforded to the victims must be relativized, as for instance their right to protection is not yet unconditional and remains very linked to their cooperation with the competent authorities¹⁹⁷.

FINAL CONSIDERATIONS

Given the aforementioned developments, an evolution in the approximation of the incrimination of trafficking but also penalties has been clear since the 1990s. Generally speaking, approximation has deepened. Specific acts have been made crimes and areas of incrimination have been expanded. Specific penalties have been set and their levels have been raised. Although it remains limited, a certain amount of diversification of penalties has emerged.

In general, it is striking to note that, as regards incriminations and penalties, the new role of the European Parliament as co-legislator / co-decider has not helped to check the trend towards more severity. On the contrary, the European Parliament has carried on down this track and shown itself to be harsher than the Council in some respects. One can frankly question whether the European Parliament's attitude in this file is in accordance with the guiding principles that it gave itself in terms of the approximation of substantive criminal legislation in its 22 May 2012 resolution on a European Union approach in terms of criminal law¹⁹⁸. But of course this resolution was adopted after the adoption of the 5 April 2011 Directive. It is also true that, just as with the child pornography and the sexual exploitation of children sector, trafficking in human beings is a very specific area in which the Parliament has shown itself to be particularly sensitive to the interests of victims. It has also actively supported the assistance to and protection of victims, which is a key part of the Directive. So it is not

¹⁹⁷ See in this regard the caveat in Article 11 § 3, stating that provision of assistance should not be prejudicial to the Directive 2004/81/EC or similar national rules.

¹⁹⁸ European Parliament resolution of 22 May 2012 on an EU approach to criminal law (2010/2310(INI)), point 3: in conformity with Article 49(3) of the EU Charter on Fundamental Rights, the severity of the proposed sanctions is not disproportionate to the criminal offence.

certain that the European Parliament will reproduce such an enforcement-based approach in other criminal areas¹⁹⁹.

It remains to be seen how the Member States have transposed or will transpose the Directive. It is certainly an instrument whose legal scope is more powerful than that of the Framework Decision. It is likely to be more effective. Unlike framework decisions, and in accordance with the *Van Duyn* case law of the EU Court of Justice, directives can have direct effect²⁰⁰. The latter is however subject to certain conditions and considerable limits. The direct effect of a directive is subordinate to the existence of a clear and unconditional provision, which, as to the result to be achieved, leaves no substantial measure of discretion to the Member State²⁰¹. In addition it is only a vertical ascending direct effect that only individuals can invoke towards a defaulting Member State²⁰². The provisions of the directive on which we have focused are not therefore likely to benefit from such a direct effect. Either it is about minimum standards targeting objectives of repression rather than protection (the standards concerning incriminations and penalties) or it is about provisions of another nature which do not fulfil the criteria of clarity, precision and un-conditionality (the non-prosecution clause). The Directive should however have more effectiveness than the Framework Decision given that Member States coming up short will be able to be taken to the EU Court of Justice for failure to fulfil an obligation. This is one of the consequences of the communitarisation of the criminal sector by the Treaty of Lisbon. However, the transposition state of play is far from optimal. The Member States were meant to have taken the necessary measures for its implementation by 6 April 2013²⁰³. But, on 15 April, only six Member States had fully transposed it and three had

¹⁹⁹ In this regard, see among others A. Weyembergh (2013).

²⁰⁰ CJEU, 4 Dec.1974, aff. 41/74, *Van Duyn*, Rec. 1974 p. 1337.

²⁰¹ CJEU, 7 July 1981, aff. 158/80, *Rewe*, Rec. 1981, p. 1805.

²⁰² A directive may not of itself impose obligations on an individual and that a provision of a directive may not be relied upon as such against such a person (CJEU, 26 Feb. 1986, aff. 152/84, *Marshall*, Rec. 1986, p. 723 or see also CJEU, 8 Oct. 1987, aff. 80/86, *Kolpinghuis Nijmegen*, Rec. 1987, p. 3969).

²⁰³ Article 22, § 1, Directive 2011/36/EU. .

partially²⁰⁴. The future will tell us if the degree of transposition and the level of approximation carried out will be more significant than in the case of the Framework Decision. In this respect, the Commission's report evaluating to which extent the Member States are in line with the Directive – which must be submitted by 6 April 2015 at the latest²⁰⁵ - will be of great interest.

²⁰⁴ Commission, Press Release, Trafficking in human beings: more victims but Member States are slow to respond, 15 April 2013, IP/13/322, available at http://europa.eu/rapid/press-release_IP-13-322_en.htm.

²⁰⁵ Article 23, § 1, Directive 2011/36/EU.

CHAPTER III

METHODOLOGICAL CHOICES

AND CONSTRAINTS

INTRODUCTION

In the last few years, not only has legislative production at national, regional and international levels regarding the trafficking in human beings (THB) been very fruitful, as the number of news articles found in the press, as well as organisations acting in this area, have been on the rise. In view of such diversity, and keeping in mind that this is a constantly changing phenomenon, we sought to combine a set of methods that would – in the most reliable way possible, given its opaque and clandestine nature – allow capturing all of the dimensions of this social phenomenon. We will describe those methodological guidelines further ahead. First, however, it is important to clarify two aspects.

The first is that we agree with Brennan's statement that "researchers on human trafficking face multiple methodological challenges and ethical concerns. Considering the current media environment of sensationalistic stories about trafficking, carefully conducted research projects can make significant contributions to trafficking discussions" (Brennan, 2005: 47). That is, we are aware that we are also embroiled in speculative universes and that objectivity is a constant demand.

The second is that that very objectivity does not imply neutrality. Our point of departure is anchored in a public sociology, which is reflected in the choice and development of our methodologies. Research is one of the diverse ways of knowing or understanding a specific reality. In this process, our challenge is to understand the nature of the reality, the nature of knowledge, the relationship between the researcher and the knowledge to be had, and how he/she intends to obtain that desired knowledge. The answers to these questions reflect different attitudes towards science and diverse epistemological approaches. We believe that, in a certain sense, this way of being and seeing the world intersects with the concept of public sociology initially put forward by Herbert J. Gans (2002) and developed since then by Michael Burawoy:

Public sociology puts sociology in conversation with audiences understood to be people who are themselves involved in the conversation. (...) The

project of such public sociologies is to make visible the invisible, to make the private public, to validate these organic connections as part of our sociological life (Burawoy, 2005: 7-8).

As a result, there is a growing argument in favour of participatory science, in which the object and the subject are intertwined because all knowledge is self-knowledge. The researcher, then, ceases to be invisible, although he/she does not compromise a strong objectivity. On the contrary. According to this perspective, science will be more objective and rigorous the clearer and more transparent the principles that drive a given initial question or hypothesis, in detriment of others, are. Again citing Burawoy, in the wake of public sociology, there is a goal to "enrich public debate about moral and political issues by infusing them with sociological theory and research" (Burawoy, 2004: 1). This was, undoubtedly, what we sought to do in this work, committed from the beginning to the fight for human rights and freedoms, especially those of vulnerable people, as much when they fall into trafficking networks as when they are subjected to other forms of exploitation due to the non-existence of rights, their non-implementation and/or the absence of a link between different legislative, national and international frameworks.

It was with this commitment in mind that we defined a set of methods that we will now describe, listing the potentials, expectations and difficulties of each. It should be noted that, although each method was framed according to precise and guiding indications so as to obtain results that could be used as a base of comparative analysis, each research team had the range and flexibility to make their own choices given the constraints and obstacles confronted in the execution of each method and in accessing different data and actors. Effectively, the differentiated access to privileged institutions such as courts, the attorney general, police or non-governmental organizations (NGOs), facilitated some teams' access to court proceedings, but prejudiced the number of answers obtained in the survey; it made interviews with victims possible, but made meetings with judges and attorney generals more difficult. This eclecticism in the access and the degree of connection with certain institutions/organizations had an impact on apparently simple activities, such as

accessing statistical data. Next, we will take account of these constraints, guidelines and free and conditioned choices.

1. ASSESSMENT OF EXISTING STUDIES AND BIBLIOGRAPHY

This task entailed gathering and analysing bibliography on trafficking, criminal justice, sociology of law, gender studies, immigration, sociology of work, as well as studies and reports from other countries summarized in the first chapter for each national case. All bibliographical material was analysed from a critical and multidisciplinary perspective and with a view to opening up a fruitful dialogue among different theories. Studies were collected taking into account the differences found in the central, semi-peripheral and peripheral countries, as well as on the basis of relevant variables such as the dichotomy between the public and private spheres, between rural and urban areas, class differences, ethnic, sexual and racial discrimination.

The point of departure for this task was the definition of core concepts, frequent in the literature on THB, and which would be understood in the same way by all research teams involved in the project. Studies focusing on the trafficking in human beings in general are faced with an initial problem: defining their object of study. THB is a complex problem which arouses a certain amount of controversy regarding its true definition. The broader or narrower scope given to the concept may influence the policies which are used to combat this phenomenon and it is not rare for governments, international agencies or even NGOs to instrumentalise it, and define it according to the political goals of their own particular agendas. Here, we will briefly present some of the main discussions involving the concept of THB. This abstract is far from covering all the complexity that these concepts carry, rather it is merely an instrument to help organize the bibliographic research and to bear in mind when organizing the field work.

- **Human Trafficking**

The definition of trafficking in the United Nation (UN) Protocol to Punish Trafficking in Persons, Especially Women and Children, often referred to as the Palermo Protocol, from 2000, is the starting point of different countries' definition of trafficking. The Palermo Protocol on Trafficking was a response to the need to create a definition of trafficking that could be widely agreed upon and could replace the definition in the UN Convention for the Suppression of Traffic in Persons and of the Prostitution of others from 1949. Few countries had signed the 1949 Convention, partly because of controversies over its definition. The changes occurred in the conception of the victims and the awareness of the diversity of exploitation forms led to the recent normative developments in the European context. This evolution of the social, political and legal debate on THB was reflected in the concept of trafficking adopted by the Directive 2011/36/EU of the European Parliament and of the Council, of 5 April 2011, on preventing and combating trafficking in human beings and protecting its victims, which states in Article 2 that THB is defined as:

the recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

The definition first features a list of acts (such as recruitment, transportation and others), followed by the methods used to enforce those acts: threat, the use of force, or other abuses of power or of a position of vulnerability etc. Then, the definition mentions the vulnerable condition of the victim, which means that he or she has no real or acceptable alternative but to submit to the abuse involved. Although the victim's consent is also referred, it is legally irrelevant where any of the means has been used for the purpose of exploitation. The term 'exploitation' includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.

- **Smuggling**

One of the difficulties of flagging this phenomenon stems from the common confusion between trafficking and assisting illegal immigration, or smuggling. In fact, both are phenomena of irregular migration with a view to obtaining a profit, and both immigrants and trafficked individuals often leave the country voluntarily and suffer dangerous and uncomfortable conditions during their journey. However, international publications and studies on migration have endeavoured to establish a distinction between these two phenomena of irregular migration.

Smuggling refers to a situation in which a person asks another person for help to cross borders, using illegal resources and methods (Graycar, 1999; Engle, 2004). It is not rare for smugglers to obtain documents through illegal channels (forgery, bribing immigration officers, etc.) allowing illegal entry into the country (Anderson and Davidson 2002; Engel, 2004). Although trafficking in people may also imply assisting illegal immigration, there are several factors underlying it. Graycar (1999) feels that the most relevant factor that differentiates trafficking and smuggling is that the former presupposes the exploitation of a human being. Lauren Engel (2004: 55) points out that, unlike traffickers, smugglers are paid up front; therefore, they are not concerned with the immigrants' health or safety during the journey, or even with the immigrants reaching their destination, as there will be no additional profit for them. Aronowitz (2001: 165) suggests four levels for differentiating the two phenomena: (1) people resorting to smugglers do so of their own free will, whereas in the case of trafficking there may be deceit, coercion or even kidnapping; (2) people who have been trafficked tend to be exploited over a long period of time; (3) in trafficking, there is an interdependence between those trafficked and the traffickers, namely because those who use the smuggling services pay up front and those who are trafficked only pay a percentage at the beginning, indebting themselves until they arrive at their destination, and so they are still dependent on the traffickers in the country of destination; (4) those trafficked are likely to be co-opted into other criminal activities, that is, into recruiting other victims. The United Nations Office against Drugs and Crime

(2006) adds a further distinguishing factor: the transnational nature of smuggling. Whilst smuggling is always transnational, trafficking in people occurs regardless of whether the victims are taken to another country or to another location within the same country (UNODC, 2006b: 52).

It is imperative to establish a distinction between these two phenomena, since trafficking should not be viewed exclusively as a problem of illegal immigration, thus focusing all political and regulatory efforts on this aspect. Trafficking must involve specific solutions based on the acknowledgment that it constitutes a systematic violation of human rights rather than merely a problem of border control and international security.

In light of this, the Convention against Transnational Organized Crime championed by the United Nations General Assembly adopted two distinct protocols in 2000: the “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children” and the “Protocol against the Smuggling of Migrants by Land, Air and Sea”, which included two separate definitions for trafficking in people and smuggling. In this latter Protocol, smuggling of migrants is defined as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.”

- **Labour exploitation**

Slavery is the most recurrent metaphor for contemporary THB for labour purposes. The abolition of slavery did not end the movement of people into labour exploitation (Kane, 2007: 7). On the one hand, the poor economic condition of some non-European countries creates the opportunity to some criminal networks to take advantage from the vulnerable situation of non-European citizens to bring and exploit them within European space. On the other hand, despite the criminal efforts to fight against THB, recent legal and political trends are very dangerous. In the post-war Europe, the creation of the welfare state was based on an institutionalized balance

between capital and labour, expressed, for instance, in the provision of public services and in the ideal of labour rights protection and promotion.

These measures of economic redistribution were fundamental to mitigate social risk and violence. Nowadays, the prevailing neoliberal paradigm generalized some new labour morphologies (based on flexibility, informality, false autonomy, insecurity) (Antunes, 2008), in order to benefit capital accumulation and jeopardize – and de-legitimize – important labour standards. This movement increased the social and cultural tolerance to different forms of labour violence and vulnerability, whose comprehension is crucial to draw a broad conception of the world that feeds THB and in which it takes place. There is an important relationship between criminal legislation on THB for labour exploitation and other legal areas such as labour, migration, and human rights law (Voorhout, 2007).

According to this author, (i) the crime does exist and in a significant portion of the labour market; (ii) it is not necessarily part of illegal migration, including (a) entry in a country through legal channels, (b) victims may work legally, or reside legally but work illegally, and (c) victims may also be nationals; (iii) women, men and boys can be victims; and (iv) perpetrators are individuals as well as criminal groups (Voorhout, 2007: 50).

- **Sexual Exploitation**

Whilst the Protocol tends to be unanimous in terms of definition, it does not assume any stance on the relationship between trafficking and prostitution, nor does it clearly define the terms “sexual exploitation” and “prostitution.”

There are problems involved in identifying, for example, a purpose to exploit. This problem might be greater when we speak about trafficking for prostitution than for the other purposes because of some characteristics of the debates surrounding prostitution. The polarization of debates on prostitution makes the definition of trafficking harder to decipher.

Among other things, how one draws the line between trafficking and other phenomena depends on the political stance taken towards prostitution. For some, women travelling across borders for prostitution with the aid of others will always be trafficking, as prostitution is seen as something women can never enter into voluntarily and any aid would thus constitute exploitation. Conversely, someone who believes that women can migrate voluntarily into prostitution sees a need for keeping prostitution and trafficking for prostitution separate.

As said before, the Palermo Protocol was a response to the need to create a definition of trafficking that could be widely agreed upon and could replace the Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others. During the negotiations for the Protocol it was quickly agreed that enforced prostitution came under the proposed definition of trafficking, but there was intense discussion on whether prostitution in general should be included (Engle, 2004: 58). Due to this diversity of legal situations, the Protocol does not clarify this controversial issue but leaves it as a matter for individual states to decide.

This international legal void and the polarization of feminist debates on prostitution make the definition of trafficking harder to interpret. Because of the concept of vulnerability inscribed in the text of the Protocol, “for some, women travelling across borders for prostitution with the aid of others will always be trafficking, as prostitution is seen as something women can never enter into voluntarily” (Skilbrei and Tveit, 2008: 14).

The critique of this view is voiced by authors such as Kamala Kempadoo and Jo Doezema (1998), who have studied these questions from a Southern perspective. According to them, the risk is to create an image of the woman from the South as the eternal submissive, who is ignorant, bound by traditional cultural concepts and victimized, whilst Western women emerge as the civilized saviours (Duarte, 2012). Moreover, they also discuss that those arguments make female migrants vulnerable to perceptions that women lack agency, reflected by the argument that women cannot enter into prostitution voluntarily (Duarte, 2012).

This debate must be considered in all studies since this range of interpretations contributes to the persistence of difficulties in various countries with regards to identifying victims of trafficking in the day-to-day work of the police, legal actors, social workers among others.

- **Labour and sexual exploitation**

Four fundamental points can be stressed in order to critically understand the political and epistemological nature of exploitation and THB:

1) all forms of (subordinate) labour can be conceived as the result of exploitative relations, generating differentiated levels of prejudice and constraint over workers and benefiting from greater or lesser legal coverage;

2) human trafficking is an illegal, violent and coercive form of labour exploitation which deserves greater criminal censure, as well as a deeper comprehension;

3) sex work can be understood as a product of the intersection of exploitative relationships (due to third-party economic benefits), of relationships of patriarchal oppression (of women) and of colonial relationships (immigrants);

4) sex trafficking encompasses very diverse readings and realities, and can be an illegal, coercive and violent exploitation of sexual services (with emphasis on exploitation) or even a form of rape (with emphasis on oppression).

- **Consent**

Another common confusion related to the distinction between smuggling and trafficking is the issue of consent. Whilst smuggling implies voluntary acceptance by the immigrant, in a trafficking situation the victim's consent is irrelevant. Despite representing a considerable legal evolution, some issues shall be addressed.

Trafficking is a process: a person can voluntarily resort to a smuggler to get out of the country, and then involuntarily end up being exploited by a trafficker. That is, consent is given to illegal immigration but not to the exploitation resulting thereof (e.g. Chapkis, 2003). Excluding the situations of kidnapping, in most cases the person involved actively decide to immigrate, a decision based on risk assessment as well as on rational, more or less informed choices, to achieve specific aims.

In what concerns THB for labour exploitation, the idea of consent must be thought within a political paradigm that has been weakening the power and value of labour (and strengthening the power and value of capital). This trend is aggravated when we talk about illegal immigrants whose legal consciousness and material conditions turn acceptable (and, in some cases, even desirable) the scenario in which they work.

In practice, the boundaries of the trafficking concept (in particular trafficking in women) involve a social construct of what it means to be a victim. This is particular complex when we add the gender variable.

Within feminist studies, the definition of “victim” is complex and the concept is often rejected, as it presupposes the passivity of women vis-à-vis the structures that oppress them, namely patriarchy. Sex trafficking makes the concept more complex by raising questions that ultimately transcend it, namely ethical questions about society itself. For instance: a woman decides to go to another country with the help of a smuggler and consents to working in prostitution with a view to obtaining a higher income; she then finds herself involved in a situation where she cannot retain all of her money, is forced to provide sexual favours to a high number of clients every day and to pay for the return of her passport. Is this woman a victim of trafficking? This issue, raised and considered to be essential in many studies, highlights the need for special attention with regard to the means of persuasion and control that the victims are subject to.

For some authors, the legal recognition of women’s consensual capacity regarding prostitution or being trafficked for the purpose of sexual exploitation may ignore the pragmatic constraints that harsh reality unleashes upon women’s

consensual freedom and exercise of rational choice. Others see it as conferring upon women the power of agency and the status of rational actor, deconstructing women as submissive or victimized (Sullivan, 2004). For several feminist authors (e.g. Augustín, 2007) consent is a central issue here, and women's voices, migration choices and survival strategies should be taken into account.

For both THB for labour and sexual purposes, the main challenge for the European countries is to incorporate these debates into national policies and legislation, and their main problem might be, on the one hand, to distinguish a victim of trafficking from a migrant prostitute and grant the latter the same rights granted to the former (Duarte, 2012), and, on the other hand, to redefine the idea of citizenship, in order to promote an ideal of autonomy that results from the imbrication of recognition with redistribution (Fraser, 2002).

Analysis of press coverage

Trafficking in human beings has grown in visibility over the past few years, mostly due to the interest it has triggered in the media. There are innumerable studies that have shown us over the last few years the influence of the media on social reality, in transforming matters into political issues and in the formation of audiences. The greater or lesser intensity of that influence is a highly controversial topic, with some opinions highlighting its decisive character in the unfolding of various social problems (v.g. Baudrillard, 2004 and Gitlin, 2002, 2003) and others (e.g., Schudson, 2003) sustaining that the media constitute but one of the possible influences on our perception of social reality. Nevertheless, it is unanimous that if society is informed, it is informed above all by the media, the latter being a privileged conduit of information. Regarding trafficking in specific, a phenomenon whose combat requires a strong investment in prevention, it is important to know how it is portrayed by the media, contributing towards its visibility and, in doing so, what effect the media can have on the reality of which they speak. So it is important to analyse the way the media, and more specifically the press, treat this issue. Firstly, it affords an understanding of how public opinion is formed in relation to this issue, since the role of the press is very

significant both in introducing themes into the political agenda and in moderating the ensuing public debate. Secondly (and this is directly related to the previous point), it is essential to assess the type of information the press conveys about THB as well as to identify possible biases and stereotypes the press helps perpetuate. Thirdly, this is an important methodology to understand the relevance of this issue within the public debate in each country, as well as to identify the major trends and key players in this debate. This task, although it wasn't a primary one, helped us map the public debate and media coverage on the subject, an important support task for other central methodologies in our research, such as the construction of the interview and focus group script, by knowing the public discourse of judicial authorities, legal practitioners, law enforcement agents, professional associations and organised civil society. This task allowed us to contextualize the public debate, as well as to identify and define some more contentious and visible issues that should be included in the interviews and focus groups.

To carry out this task, daily and weekly newspapers were analysed (from 1 November 2011 to 1 September 2013) through a database, where the relevant news items were inserted under previously established subject categories. The categories were as follows (for each news article): Newspaper; Date; Title; Brief description of the news content; THB (sexual or for labour exploitation); Key players identified (judges, police officers, government staff, NGOs, etc.); Are victims Identified/mentioned? (number of victims, sex, age, nationality); Reason (Reason why the news appears in the newspapers: because of a police investigation? A court trial? A new piece of legislation? An important date (e.g. European day against THB); Refers to any news identified previously? (if so, indicate the new reference).

Each country selected at least two daily and one weekly newspaper with different profiles and public targets. Some countries decided, however, and for different reasons, that more newspapers should be considered in the sample.

The Belgian team selected four journals for the conduct of this press analysis: two daily newspapers: *Le Soir* and *De Standaard*, and two weekly publications: *Le Vif/L'express* and *Knack*. They added a second weekly newspaper to respect the

balance between French-speaking and Flemish-speaking publications. *Le Soir* exists since 1887, and is published in French. Traditionally the first newspaper in Brussels and Wallonia, its sales are unfortunately eroding. For some years, the newspaper faced an identity crisis, and since 2005 it has been under the ownership of a group specialised in local newspapers. *De Standaard* exists since 1918, and it is known as the “newspaper of the Flemish establishment”. It was historically linked to the Flemish movement and more specifically to the Flemish Social Christian Party. In the recent years, it has distanced itself from the Catholic world, while maintaining his faith in the linguistic fight. Thanks to the quality of its analysis and its supplements, the daily paper shows its ambition to become a “quality newspaper of European level”. *Le Vif/L’express* was founded in 1983. It merged in 1986 with its French cousin *L’express* and borrows some of its content every week. Having gradually absorbed other conventional weekly French magazines, *Le Vif/L’Express* holds a very important position among the news magazines. *Knack* was established in 1971, modelled after the Anglo-Saxon news magazines. Known as a conservative Flemish weekly business magazine, the journal is renowned for its investigations into hidden political and social events, and for its incisive editorials. To select the articles, the team used two databases, *Europresse* and *Factiva*, in which preliminary searches were made using the following keywords: trafficking in human beings, sexual exploitation and economic exploitation. For *De Standaard*, due to the low number of matches in *Factiva*, the Internet website of the journal was used, which hosts archives of the paper and online editions. The time period remained the same.

In order to collect a significant and effective number of articles, the Italian team consulted the online catalogues of some newspapers. In particular, two daily newspapers – *Corriere della Sera* and *La Repubblica* – and one weekly newspaper – *L’Espresso* – were selected. These newspapers were chosen due to different reasons: their diffusion in Italy²⁰⁶; they do not have a clear political allegiance: news are

²⁰⁶ Copies sold and printed of the newspapers selected in June 2013: *L’Espresso* - 230,724; *La Repubblica* - 358,213; *Corriere della Sera* - 379,865.

reported in a more independent, neutral and non-partisan way in comparison to other newspapers; they have looked to different profiles and public targets. In what concerns this country, the timeframe considered was from March 1997 to July 2013. The analysis started in 1997 because it is the starting year common to all the online archives.

The articles were collected considering some systematised search queries, bearing in mind the previous categories defined by CES and a few keywords: Sexual exploitation, labour exploitation, exploitation of foreign workers, exploitation of human beings, trafficking of human beings, organs trade, children trade, women trade, human beings trade, illegal adoptions, illegal labour and illegal economy.

As can be noted, words such as *prostituta/prostituzione* (Prostitute/prostitution) were not used in order to prevent the collection of supranumerary articles not fully related to the topic of the analysis. Indeed, the use of these two words would create many difficulties by increasing the number of articles not specifically dealing with THB. Among all the articles found considering the search queries just mentioned, only those that met two criteria were taken into account. The criteria were the following: (i) articles that presented elements referring to Article 3 of the UN “Protocol to prevent, suppress and punish trafficking in persons, especially women and children”; (ii) articles containing elements that beyond any doubt could be related to THB, even if they did not clearly present factors related to forms of force, coercion, fraud, deception or abduction. They could concern THB in general without being focused on specific cases.

The team from Poland selected three titles that were as different from each other as possible and aimed at various readers: *Gazeta Wyborcza* (both the main part of *Gazeta Wyborcza* and its supplements – local and thematic – were analysed), *Fakt* and *Polityka*. Articles that contained at least one of the following expressions were analysed in these publications: “human trafficking”, “live goods trafficking”, “forced

prostitution”, “slavery”, and “trafficking in women”. Another factor influencing the choice of periodical was its high circulation (all three are high-volume titles, with *Fakt* and *Gazeta Wyborcza* in the top two positions in the country). In order to meet the diversity criterion, two papers at opposite ends of the press spectrum were chosen: *Gazeta Wyborcza* – a daily newspaper associated with a relatively high quality of published articles, and *Fakt* – also a daily newspaper, but a tabloid. The third publication chosen for study was *Polityka* – an influential liberal-leftist socio-political weekly.

Amongst the 21 analysed articles, 12 concerned forced prostitution, 6 forced labour, and 3 – both forms. The first criticism that comes to mind is the very great disproportion in the number of articles in each title. By far the most – 15 – were published in *Gazeta Wyborcza*. In the remaining two publications, there were only 3 pieces in each on this subject.

In Portugal the two daily newspapers chosen were *Público* and *Jornal de Notícias*. The choice of these two periodicals was owed to the fact that the first is strongly rooted in the south of the country, highlighting the metropolitan area of Lisbon and possessing more analytical reporting; *Jornal de Notícias* has strong circulation in the north, centre and interior of the country, and presents a more popular profile, purchased by the middle to low-middle classes, and more related to crime coverage. *Jornal Expresso* was selected for being the weekly publication with the greatest national circulation. Trafficking is a recurring theme in the Portuguese press, although its coverage is, as a rule, triggered by report disclosures, seminars and conferences, police operations or court case proceedings. The news reports about trafficking are diverse, although we can still group them into five broad categories: (1) on the trafficking of human beings in general, with reference to the particular case of trafficking women for the purpose of sexual exploitation; (2) those that report raids and police operations to dismantle networks of trafficking women or pimping or that follow the development of judicial proceedings on these matters; (3) more recent news about labour exploitation of foreigners in Portugal or of Portuguese abroad; (4) news about prostitution and related subjects; (5) about seminars, conferences, and

meetings in which the trafficking of women is discussed; (6) other news that report on associated themes such as, for example, immigration, poverty, social exclusion and women's rights. The way in which the news approaches these subjects does not always reveal a product of in-depth research, seeking to reach a deeper understanding of the phenomenon; nor does there appear to be uniformity among the concepts used. So it is that, for example, in articles about the trafficking of women we frequently read about concepts like victims, prostitutes and illegal immigrants, suggesting a multiplicity of situations that do not always correspond to reality. This situation mainly occurs in news about police raids, dismantling networks, closing gentlemen's clubs, etc. On the other hand, news focusing on the conclusions of international reports or the coverage of conferences and seminars tend to be more careful, which could be due to the actors who transmit the information who are, typically, experts or people with practical and/or academic knowledge about the issue. The reading and analysis of the news found in each of these groups allows us to gather some indications about the mode of operation of the networks, routes and characterisation of victims and traffickers.

The two main national but ideologically distinct daily media papers selected by the Spanish team were: *ABC* and *El País*. Furthermore, a regional journal published in Catalonia was included in the research, considering this region exhibits a high institutional engagement concerning Trafficking in Human Beings. This information was collected every day and entered into a spreadsheet in Excel, according to the suggestions elaborated by the coordinator team. A hyperlink was included in every entry, which enabled access to the content of the news or opinions. The database containing this information was useful to elaborate the qualitative analysis that was included in the final report as well as the quantitative approach. Considering the analysis it was possible to conclude that the term “trata” is rather absent in the journalistic discourse and the Trafficking in Human Beings for labour exploitation remains invisible for media. It was also observed that the debate about prostitution is an obstacle to confront Human Trafficking. The coverage of the Day against Trafficking in Human Beings was useful to compare the different ideological discourses about this subject in *El País* and *ABC*.

The Romanian team chose two daily newspapers with different editorial views: a journal publicly considered to be "credible", *Adevarul* (*The Truth*); 2) and a tabloid *Libertatea* (*The Liberty*). A weekly publication with a social-political profile was also chosen, 22. With regard to the number of the articles on THB, the quality newspaper *Adevarul* has published a number of 112 materials, while the popular/tabloid newspaper *Libertatea*-37, and the social-political weekly 22 did not publish even one text of this kind all throughout the year 2012.

As for *the frequency of the appearance* in terms of months, the minimum and maximum limits, registered by *Adevarul*, were respectively 4 and 14. In six months of the year (March, May, June, July, September, October, November), each with at least 10 articles, accounted for three thirds of the total of texts published on THB. In *Libertatea* the variations are not so ample, the highest registered frequency being 3 appearances per month.

In what concerns the *journalist modalities* of reflecting the phenomenon, in *Adevarul*, the predominant journalistic genres were the news (38), the presentation of cases (29), reports (21), investigations (11), the interviews (8), at the opposite end there being the editorials (3), commentaries (2). The situation is more or less similar in the case of *Libertatea*, although it should be mentioned that no editorials were published here. In 2012, they published 18 news articles, 14 cases presentations, 4 reports and 1 interview.

From the perspective of *valorisation of the texts*, with regard to the degree of importance of the pages, in *Adevarul* 7 texts were run on the first page, 4 in the middle pages, 24 on the odd pages and 76 on the even pages. Thus, only one-third of the texts were present in the basic pages of the newspaper. In *Libertatea* the high valuation of these articles seems to be an advantage, since half of the texts were included in the editorially better-quoted pages.

The dominant *information sources* are in both cases the *press communiques*, press conferences and the official sources from the responsible institutions.

The destination of the victims' exploitation, the way it results from the publications and articles monitored, reveals a percentage of 62% external and 42% internal in *Adevarul*, and 58% external and 42% internal in *Libertatea*. The typologies of traffic observed in the texts published in *Adevarul* indicate 62 cases of exploitation for sexual purposes, 38 cases of exploitation for labour purposes, 10 cases of beggary, 2 other cases of exploitation through labour, while the cases illustrated in *Libertatea* reveal the following: 21 cases for sexual purposes, 11 for labour purposes, 4 for beggary, 1 other type. The problems of protection, assistance and social reinsertion of the victims is approached in only 7 out of the 112 articles from *Adevarul* and in 3 out of 37 articles on the subject in *Libertatea*.

2. ANALYSIS OF PUBLIC POLICIES AND LEGISLATION

The content analysis was not restricted to the press, but it was also applied to normative and legislative European and country-specific documents from each country involved in the study. We intended to carry out a critical analysis of national and international/European documents and legislation so as to identify common problems, best practices as well as the results of reforms in this matter. We have also consulted the National Plans against THB, the inter-institutional structures built to implement them, and other social or legislative policies considered to be relevant. The time period varied for each country, keeping in mind the date that THB began to be inserted into their legal framework. This analysis enabled the research team to carry out a critical analysis of public policies and legal frameworks applied in the fight against THB within each partner country as well as at the European level.

From early on, it was our goal to identify divergences between the law in books and the law in action as much as it was to identify legal cases and jurisprudence illustrating the treatment of human trafficking in the different countries, the trends in the interpretation of legal practices and the performance of the justice system in conducting investigations and treating victims in human trafficking lawsuits. However, some teams found it difficult to gain access to lawsuit files, even when concentrating exclusively on the case law of the higher courts, which is usually well disseminated. There were various reasons for this, particularly, the confidentiality of the cases; the especially difficult access to courthouses; several bureaucratic issues; the long wait to

gain access to legal files; the impossibility of collecting judicial documents corresponding to all the preceding phases; and, finally, the reduced number of cases. It was for these reasons that the teams from Poland and Romania were unable to analyse a single case, and the Belgian team was only able to do so through indirect sources. In this case in particular, the team based its work on the CEOOR's Annual Reports, reporting major cases since 1999, complemented by SRCs' annual reports and research on case-law databases. Nevertheless, neither an extensive study of all cases nor the selection of a few "representative" cases appeared satisfactory as it would not enable the team to illustrate the application of the law in practice. The team therefore opted for a thematic approach, selecting key legal questions and highlighting the most significant cases when appropriate.

It is not a representative sample, rather merely indicative of the cases that were consulted by the rest of the research teams. In regards to Italy, the legal cases were selected through an online newspaper search, starting with articles dealing with THB investigations. Once they were selected, each public prosecutor responsible for the cases under consideration was contacted to obtain the judicial documents corresponding to the cases identified from the press. At the end of the collection process, four law cases were available for analysis. The law cases analysed had the following features: they were all focused on sex trafficking. Indeed, the lesser visibility of labour trafficking has produced a reduced number of relevant police operations and, consequently, difficulties in identifying cases of labour exploitation; the majority of the cases concerns two ethnic groups considered the most active in THB in Italy: the Nigerian and Eastern European criminal groups; and the judicial documents used to reconstruct the cases are only judgements. After a description of the cases collected, their structure and their content, an analysis of how the Italian legislation was applied was proposed. In particular, the focus was on: articles in virtue of which defendants were accused and convicted; differences and difficulties surrounding theory and practice concerning cases of THB; penal sanctions applied, especially according to the role played by each offender.

In regards to Portugal, the identification and selection of the analysed court proceedings benefited as much from the clues obtained through fieldwork (interviews and focus groups) as from the media coverage of the cases. The prosecution case for sexual trafficking constitutes the last condemnation for THB for the purpose of sexual exploitation that occurred in the Portuguese courts, being a case of particular complexity involving a large number of defendants (and victims) and that enjoyed wide dissemination in the press. The second prosecution for sexual exploitation was not only equally newsworthy as it was presented by the law enforcers interviewed as a successful case (for both the police and the courts). In that sense, the analysis of the contents of that case emerged as an important means to access judicial practices in matters of THB. Finally, the last case analysed was on labour exploitation. The case was brought up by one of the magistrates present in the focus group, which facilitated access and consultation of the procedure.

Finally, the Spanish team was able to consult all the sentences (7) issued by Spanish courts from the entry into force of article 177 bis of the Criminal Code until December 2013, in which the new criminal figure has been applied, have been analysed. This analysis was focused on the profiles of the victim and defendant, the form of exploitation, the verdict (guilty, not guilty), if there was plea bargaining and the incriminatory proof upon which the verdict was based in every case.

3. STATISTICAL ANALYSIS

As was amply mentioned in the introduction, this study seeks to contribute towards a greater knowledge of the phenomenon of THB in Europe. Human trafficking in general is, as a rule, a very clandestine phenomenon, closed and complex, whose deeper understanding requires, in large part, a multidisciplinary approach to the various sources of information and fundamental actors. The present study encountered with precisely that difficulty, recognised in several other reports, which leads to a weakness: the non-existence of official, solid data about this type of crime, contrary to other crimes about which the courts and police keep systematic data. However, a patent problem in the analysis of these data lies in their representativeness in the face of real crime. In effect, in spite of the rise in confirmed trafficking cases, some authors (Brunovskis and Tyldum, 2005) defend that it remains

difficult to determine if the known cases represent the tip of the iceberg, or if all episodes of trafficking are generally identified. In fact, as mentioned by the 2012 UNODC report, "the absence of a standardized and widely accepted methodology hampers estimations of the real number of victims (detected and undetected)" (2012: 81). In this report, it is further added that, as an urgent measure

Making better data available in a standardized form and with regular periodic frequency would lead to better analysis, even if the data had all the familiar limitations of criminal justice statistics. Accessing those data for trafficking in persons at the global level would make it possible to test hypotheses such as the possibility of supply displacements when certain flows decrease, or similar analyses. (...) This could ultimately lead to the provision of statistically reliable predictions on trends, patterns and flows, which could, in turn, be used to develop better policies to prevent and combat trafficking in persons. (UNODC, 2012: 81)

We know that, for various reasons, not all situations that might be situations of trafficking are investigated as such. It is for that reason that, in regards to phenomena like human trafficking, the suspicion of high rates of unreported crimes makes it advantageous to study populations in which the victims of trafficking are members of a sub-population, namely in areas where trafficking is known to exist, such as in prostitution or among migrant workers. (Brunovskis and Tyldum, 2005: 26). We also cannot fail to consider here, as we affirmed in Chapter I, that, above all, in regards to the sexual trafficking of women, there are questions of morality and social ethics that are reflected in the identification, or not, of certain cases of prostitution as trafficking. Obviously, the judicial proceedings and the cases registered by police authorities are good indicators not only of the functionality/quality of the services themselves, but of the knowledge of the phenomenon. They give us the known crimes, but they may not be adequate to estimate the real number of trafficking victims. This small introductory note serves to underline that the statistics presented in each national case are those that are official, denounced, and they merely serve to give us a notion of the known reality of THB in each country involved in this study. Our critical perspective, as we will see, complements other techniques that we will describe further ahead.

Again, not all teams had access to the same data or even recent data, which led to discrepancies between national cases. However, these statistics do not serve to establish a comparative base but rather, as emphasized, a descriptive one.

Thus, we sought to analyse the official statistics on judicial files relating to the crime of THB issued by law enforcement agencies and the Ministry of Justice in each country, data from NGOs, or relevant governmental organizations concerning migrations, prostitution, labour, etc. The aim of this exercise is to characterise the reality of trafficking in the EU, to identify trends in the evolution of this type of crime, to compare the statistics of sex trafficking and labour trafficking, to identify possible discrepancies between the number of victims in police investigations and in court trials, and to compare penalties applied in different countries. It is clear that the statistics produced cannot be viewed as representative of all the human trafficking cases being investigated and/or tried in Europe. Nevertheless, they still constitute fundamental sources of knowledge.

4. INTERVIEWS AND FOCUS GROUPS INVOLVING KEY PLAYERS

The information collected through documentary and statistical analysis was enriched with the interviews and focus groups. In fact, we believe that one of the major advantages of this research was to listen to the different players that operate in the field of THB, endeavouring to ascertain what they think about the phenomenon itself, the statistics gathered, the policies and legislation applied in this field, the function of the institutions and organisations, normative obstacles that result from the legal system, its efficiency, and possible discrepancies between the law, what happens in practice and the barriers to effective law enforcement. These perceptions of the players in the field, whether they be activists, part of the judicial system, police officers or others, were fundamental since these actors also think of and reflect upon THB in distinct ways, according to their own experiences in different social worlds. So, we can successfully show how the phenomena is experienced and perceived and how the officially and legal constructed categories are incorporated in an individual experience, as in-depth interviews leave a lot of space for one's own interpretations. Accordingly, the interviews established themselves as a space of dialogue and reflection, although

they followed a semi-structured script shared by all countries (see Appendix 1). The script included questions on four large areas: general perceptions about THB; characterisation of sexual and labour trafficking in the country under analysis and their combat; international cooperation; and finally, recommendations and suggestions. Focus groups, besides adding greater depth to the objectives laid out, are a particularly useful methodology which allows us to compare different institutional players' opinions and different viewpoints.

The target population was mainly criminal police forces, foreign police force, labour inspectors, magistrates from the Public Prosecutor's office, judges and directors of NGOs and other associations of civil society that intervene in this matter such as, for example, immigrant associations and religious congregations. Some countries also managed to interview some trafficking victims, despite the difficulty of gaining access to them.

The decision of who to interview was aided by an analysis of press publications and by prior informal contacts with representatives of government and non-government organisations with recognised activity in the field.

The Belgian team conducted around 19 interviews (representing 24 persons), between 28 February 2013 and 20 February 2014. Among these 24 persons, one could find actors with various experiences and fields of expertise: NGOs, specialised reception centres, social inspectors, police forces (both local and federal), prosecutors, members of the Foreigners' Office, member of the Department of Criminal Policy (Federal Public Service of Justice), etc. The team experienced difficulties in obtaining interviews with some actors, such as the Federal Prosecutor's Office (a clear refusal attested by an email) and also trial magistrates, but the attempts did not lead to any concrete results. The attempt to interview victims of THB was also not productive since the SRCs informed the team of their strict policy, which was to avoid re-victimisation, and therefore did not refer any victim.

The focus group (which took place on 29 January 2014) was envisaged as an occasion to have in-depth exchanges with key experts on the recent development of

Belgian legislation (from June 2013 onwards), which explained why only a limited number of carefully selected participants were invited. Two persons were present, both members of the Board of the Interdepartmental Coordination Unit, respectively labour auditor and member of the Department of Criminal Policy.

The group of people interviewed in Italy was selected considering the importance they have in the field of THB at national level. All of them are experts who work in the prosecution, prevention and protection sectors as well as in the research environment. Some of them occupy key positions in relevant organizations (big NGOs able to act in different regions, police forces, and judiciary) and others are prominent researchers who have studied the phenomenon for many years and have achieved strong skills and competences in it. 23 people were interviewed from January to June 2013. Specifically, they were: 4 people from NGOs, 10 from law enforcement agencies (1 from the Arma dei Carabinieri and 9 from Polizia di Stato), 2 public prosecutors, 4 researchers, 2 representatives of trade unions and 1 victim.

The Transcrime – UCSC team did not interview other national experts since the answers given by the people contacted have been considered redundant enough. They underlined the same observations concerning the trends of the phenomenon in Italy as well as the same critical and strong points related to the prosecution, protection and prevention policies without adding additional input or added value to the research. These repetitions were interpreted as if the information collected were complete and exhaustive. The objective of interviewing victims was not fully achieved. Indeed, in Italy it is very difficult to get in contact with THB victims. When they are identified by the local protection services, the social workers carry out an intense and very delicate work with them. In some cases this work produces good results because the victims manage to escape from exploitation and start a new life. In others the victims remain victims and do not accept the help and the assistance offered because they are afraid of possible retaliations by their traffickers/exploiters. For this reason, all the social workers contacted underlined the risks connected to the involvement of victims not yet completely free from their conditions of exploitation in research. Therefore, they did not authorize the interviews.

Only one contact was established with an ex-victim of sexual exploitation from Nigeria, who actually puts a lot of effort into assisting victims exploited on the streets.

The Transcrime – UCSC team organized one focus group on 4 June 2013. The focus group took place in the meeting room of the Transcrime research centre at the Università Cattolica del Sacro Cure in Milan. There were 9 attendees at the focus group in addition to three Transcrime researchers and Professor Ernesto Savona, who was the mediator. The attendees included representatives of police forces, public prosecutors, researchers and responsible members of associations fighting THB. It was decided to include people coming from different contexts in the focus group because the THB phenomenon has many implications that should be considered from different points of view. The protection of victims, for example, is a very delicate issue that does not involve only institutions devoted to assisting victims, but also prosecutors and police forces that often enter into contact with them during investigations and trials. The choice to invite specific people was made because each of them is a key expert in THB at national level. For example, the leaders of the largest NGOs operating in Italy were contacted as well as the most relevant researchers that studied and still study this crime. The focus group faced different aspects connected to the THB phenomenon. In particular, its aims were to collect data, information and critical comments that are not already contained in the available literature as well as to discuss them, gathering the opinions of the different attendees. The main themes were the following: new trends concerning THB in Italy; the effectiveness of the existing legislation in terms of THB repression and protection of victims; the existence and effectiveness of strategies/prevention measures and international cooperation; guidelines and best practices.

Among the respondents of the Polish team were representatives of the selected public institutions, which play a leading role in counteracting THB (e.g. Ministry of the Interior, Ministry of Justice, State Labour Inspectorate and Prosecutor's Office), police, border guard, non-governmental organizations, intergovernmental organizations and academia. In total, 23 respondents were interviewed: Mazovia Voivodship Office (1 interview), academia (1 interview),

intergovernmental organizations (1 interview), NGO sector (3 interviews), State Labour Inspectorate (2 interviews), border guard (2 interviews), police (3 interviews), Prosecutor's Office (3 interviews), Ombudsman's Office (2 interviews), Ministry of the Interior (2 interviews) and Ministry of Justice (2 interviews). The interviews were conducted, during the research project, in the following Polish cities - Warsaw, Rzeszow, Zielona Góra and Krosno Odrzanskie. All of them were recorded and transcribed. Selected respondents had professional experience in the field of fighting or preventing human trafficking. In case of police forces, for example, our interviewees were members of the unit delegated to fighting human trafficking. Among the respondents from the Prosecutor's office there were persons who were or are currently involved in investigations concerning trafficking in human beings. Respondents from the non-governmental sector represent two main NGOs dealing with this issue, mainly by protecting the victims and running public campaigns. Once the main actors were interviewed along with, as we will see further ahead, many others who were present at the workshop, it was considered redundant to hold a focus group. This team was also unable to access victims of trafficking.

The interviews conducted by the Portuguese team sought to understand the experiences and discourses of the police forces with greater detail, as much in regards to THB as about strategies of police action to repress the phenomenon and protect the victims. Thus, there was a focus on the interviews of police and the NGO. The impossibility of developing direct contact with the agents forced the formalisation of contact with the national directors of each police force, in order to present the study and justify the need and pertinence of this methodological choice. Once the authorisation was granted, the appointment of a contact agent, with special involvement and knowledge of the subject in each of the cities under study, was requested from the national directors. These contact agents would, in turn, indicate the professionals who had practical contact and investigative experience in the domain of THB. These were our interviewees in each police force. In regards to the NGOs, the contact was more informal and prompt. The interviews were conducted between October 2013 and February 2014, the first having an exploratory character and being destined, above all, to gaining collaboration with the police

forces to implement the survey, and also of the NGOs, to conduct interviews with victims of trafficking. 74 people were interviewed in total: 31 agents from police forces; 30 activists and NGO professionals; 9 professionals from state entities and 4 victims of sexual trafficking.

The focus group was conducted on 7 March 2014 and counted with the presence of, in addition to the Portuguese researchers Madalena Duarte, Conceição Gomes, Ana Oliveira and Tiago Ribeiro, 5 judicial and public prosecutor magistrates and 1 lawyer. The selection of the invitees held functional/professional diversity in account, as well as their distinct association with the subject. In order to do this, the selection benefited from the indications provided by the associative and union structures of these operators, in the sense of identifying the professionals with greater knowledge and experience. The team chose not to conduct individual interviews with these actors, but rather debate as a group the difficulties of the implementation of the law in the judicial phase, to the legal framework and the performance of the courts.

In regards to Spain, eleven interviews were gathered: Médicos del Mundo, ACNUR, CEAR, ACCEM, The Spanish Red Cross, the Ombudsman (Defensor del Pueblo), the Labour Inspectorate Proyecto Esperanza, Ferrocarril Clandestino, the Judicial Police Unit of the Civil Guard and the Centre for Foreign Children. All of them were adjusted to a thematic guide that considered common subjects and some specific ones, according to the case and the area of intervention. Interviews were carried out by a sociologist and a lawyer, both members of the team. These researchers guaranteed that their professional perspectives were considered during the interviews. Regarding the focus group, the characteristics of the workshop (organization of thematic roundtables, experts' participation and discussion dynamics) inspired the team to consider this event as an alternative technique to the first one. Along with the experts invited to roundtables, all of them professionals working directly on this subject, the persons who asked the organization to attend this event were also engaged in the fight against THB. The team had elaborated some criteria for sending invitations to experts who were directly dealing with this phenomenon and ready to discuss it in roundtables. Concerning the development of roundtables, when the experts'

presentations concluded the time came for rich and long debates between participants whose dynamics were similar to discussion groups. Members of institutions had the opportunity and enough time to express their opinions and positions, not always coincident, about THB. Tense situations were also put on the table related to daily work and opposed approaches about victims' identification in different scenarios. All the workshop's presentations and debates were registered. The information that was obtained through these discussion dynamics became crucial to reformulate the sample for qualitative interviews (as it will be seen below).

The Romanian team conducted 30 interviews: 11 victims; 13 politic and legal actors; 5 leaders of NGOs; 1 with an academic.

The RCIMI's organized team, two focus groups, one (FG1) with the frontline fighters in THB and the other (FG2) with the leaders of specialized NGOs and institutional actors engaged in preventive actions and the victim's protection. Appealing to the NGOs was a decision motivated by the need of the outside perspective

Finally, the records of the interviews were transcribed for subsequent analysis. To protect the identities of the people who requested to remain anonymous, we omitted their names and categorised, in each national case, the interviews with I1, I2...I10, etc., and the same for the focus groups: FG1, FG2, FG3... Each of these categorisations refers to a person interviewed either individually or collectively.²⁰⁷

5. SURVEY

An innovative methodology for this kind of study involves the combination of qualitative and quantitative methods, in what regards perceptions and representations. On the one hand we had the interviews, but on the other, and to reach a greater number of people, we also decided to apply a survey to those who, due to legal duties, found themselves directly involved in a situation of imminent identification of a potential case of human trafficking and of conducting an

²⁰⁷ You will find the national lists of interviewees in the Appendix 2.

investigation. The objective of the survey was to access the perceptions and the representations of the police forces on the phenomenon of THB and about their own performance. In fact, more than carrying out a compartmented analysis of the gathered data, it was sought to establish a permanent dialogue between these, making a more critical and fruitful analysis possible and avoiding building "analytical yokes that reduce a reality that is always complex, overflowing and propitious to other versions" (Mendes, 2003: 20). In this way, we administered a questionnaire to police forces.

This methodology followed various steps. The first was, obviously, to discuss and elaborate a questionnaire common to all of the countries and translated into the respective languages. The second, having in mind the logistic and temporal impossibility of administering a questionnaire to all of the police agents of each country, consisted of each team selecting a sample. The construction of the questionnaire sample complied with both the general purposes of this study as well as the pragmatism needed to contact institutions. Therefore, it was decided to select two cities to administer the questionnaire to the police forces of those two cities which had a focal point, or had the potential for one, according to the national structure of criminal investigation, with situations of THB. The next step involved the streamlining of formal focal points/contacts to obtain permission to administer and collect the questionnaire. The data was processed in SPSS by CES and analysed by each team.

The number of responses obtained in each country was very different, not allowing for a comparative analysis.

The cities selected in Belgium were Brussels and Liège. Brussels is the capital; Liège is a big city in the south of the country, in which the number of THB cases is significant. The police forces to be considered were the federal and the local police services entrusted with judicial police function (criminal section). The local police is responsible for local investigations and the maintenance of public order and it is organized in police zones. Its judicial services could potentially be involved in the detection and investigation of THB cases. And they would perform searches and investigations for local cases but also on behalf of the federal police. The Federal Police

is responsible for dealing with serious cases of organized crime. The services that should be interrogated are the central services in charge of THB, but also the decentralized services located in each judicial district. Due to the lack of precise data about the composition of the police forces, the team was only able to give a very broad estimation of the police population. They opted to obtain the precise number of persons working in the services to which we distributed the surveys. However they faced the additional difficulty that some of these services have a large scope of expertise and also deal with cases such as human smuggling or detention of illegal weapons. Moreover, some services, such as the ones in Liège, have recently been restructured and it is thus difficult to know precisely how many persons now work specifically on THB. Therefore, they can only provide an estimate of the persons working on THB: Liège: Local Police – 12 persons, Federal Police – 13 persons; Brussels: Local Police – 22 persons, Federal Police – 21 persons. The questionnaires were distributed to these services (THB central unit, decentralised services in Liège and in Brussels) from July 2013 – March 2014.

To administer the questionnaires, several strategies were developed. The team established contact with the head of the THB cell in the Belgian federal police, who was referred to as the key person to contact police forces. But unfortunately the person only gave his personal answer, and did not circulate the survey among the police services. Considering the difficulties encountered in reaching police forces, there was a change of approach, and as a fall-back, an option for direct contact with the police units located in the two cities. Several reasons support this choice: it is easier to identify them, their input is likely to be more relevant and substantial, and finally, they had more chances to be interested in cooperating and answering to a survey relating to THB.

Moreover, in order to enhance the chances getting replies, the team decided to make use of the opportunity of having direct contact during the interviews to diffuse and promote the surveys. This way they had the possibility to clearly explain the objectives of the research and stress the importance of answering such surveys. This method seems to have been effective since all services have answered (except one). The team *underlined the fact that Belgian police forces are subject to numerous*

requests/surveys, conducted both by academics (such as students in their final year of study) and by public actors (such as the Ministry of Justice). Therefore there is a certain “fatigue” among them, which partially explains the limited number of answers received – only 16. In this regard, see for instance the comment made by the Head of the THB cell of the Federal Police “Sachez que la police reçoit pas mal de questionnaires. La justice vient d'envoyer un autre questionnaire. Vous risquez d'avoir peu de réponses”.

The Italian team decided to submit the survey to the national police forces dealing with THB cases and working in two Italian cities: Rome and Milan. This choice was made according to different factors related both to their socio-economic and geographical dimensions, and the number of offences related to THB reported. They are: population (2.761.477 in Rome and 1.324.110 in Milan); geographical position (north and centre); presence of districts of Court of Appeal in both cities; high number of sexual exploitation crimes reported (92 registered in Rome and 41 in Milan).

In Italy, THB investigations are carried out by two police forces: Polizia di Stato (“Questura”) and Arma dei Carabinieri. These two police forces have a central office that plays a coordinating role among the different offices distributed at local level. The latter have specific operative skills to fight against criminal offences and to ensure a supervision of the territory. “Questura” is the police headquarters at the provincial level. It is coordinated by a person who is responsible for public security, the “Questore”. This office is composed of two divisions and five executive offices. “Comando Provinciale dei Carabinieri” is the police headquarters at the provincial level. It is coordinated by a general brigadier, a colonel or a lieutenant colonel. If it is located in a big province where a district of Court of Appeal is also present, is composed of six offices.

Since the cities are the unit of analysis, the population of the police forces should have been represented by police officers of some police sections located in Rome and Milan. In particular, according to the organization of the two police forces presented, the local police sections that should have been the addressees of the questionnaire were: the First Division of “Questura” for what concerns Polizia di Stato;

the Anti-crime Section of the ROS, Investigative Group of the “Comando Provinciale dei Carabinieri”, and finally the Gruppo Tutela Lavoro in order to include in the analysis the labour exploitation in regards to the Arma dei Carabinieri.

The strategy used to submit the survey was the following: Transcrime – UCSC team sent a request to the central authorities of the Arma dei Carabinieri and Polizia di Stato. The request had two main aims: to present the European project as well as the aim of the research activity; to ask for a formal authorization to submit the questionnaire to all the police officers employed in the police sections identified. The completed questionnaire was also attached to the request in order to better explain the nature of the survey and its aim. Since in Italy the police forces are very centralized around their central authorities and do not act without having their approval, according to the authorization required, the questionnaires should have been sent to the supervisor of the different police sections identified. Afterwards, they had to submit them to the police officers dealing with THB cases and then sent them already filled in by e-mail to the Transcrime researcher responsible for this activity.

The request to the Polizia di Stato was sent by e-mail to the “Capo di Gabinetto” of the “Questura” on March 2013. The contact person suggested the name of another person to be contacted in order to collect the completed questionnaires. The Transcrime – UCSC team emailed the reference person, who answered by sending some questionnaires considered to be the feedback of the Polizia di Stato of Milan.

The request to the Arma dei Carabinieri was sent by fax to the “Comando Generale dell’Arma dei Carabinieri” at the beginning of April 2013. After a reminder sent by fax on July 2013, at the beginning of August Transcrime – UCSC team received a scanned copy of the formal authorization to proceed, with the names and the telephone numbers of the people to contact for the research. At the beginning of September, Transcrime – UCSC team emailed these referenced people in order to ask for their cooperation. The attached authorization form signed by the responsible of the “Comando Generale dell’Arma dei Carabineiri” was a fundamental input for the collaboration received. All the contact people were promptly at disposal: an appointment was scheduled with each one of them to present them and their staff

with the questionnaire and to provide them with some instructions to fill it in. Then, the questionnaires, along with the instructions, were sent by e-mail to the responsible who returned the completed copies, often after some months.

The total number of questionnaires collected was ninety, 9 collected from the “Questura” of Milan and the other 81 from different sections of the Arma dei Carabinieri located both in Milan and Rome. Specifically, the sections of the Arma dei Carabinieri were: Gruppo Tutela Lavoro; Investigative Group of the “Comando Provinciale dei Carabinieri”; Anti-crime Section of the ROS.

Since the number of questionnaires received from the Polizia di Stato was very limited and partial, they were not included among the results of this activity. Indeed, they could not be considered as being representative of the perceptions of the Polizia di Stato on the THB phenomenon. In light of this change, the effective number of questionnaires collected was 81. They were completed by 55.48% of the total number of police officers of the Arma dei Carabinieri employed in the police sections dealing with THB.

The first main problem faced in the submission procedure was obtaining the authorization to submit the survey. The complex bureaucratic procedure, the long waiting time and the delayed feedback received by the “Comando Generale dell’Arma dei Carabinieri” had considerably complicated and slowed down the implementation of this activity. This problem can partially be explained by the fact that the Italian police forces are not used to being targets of this kind of surveys and so there was a sort of scepticism about the cooperation required.

Another problem was connected to the impossibility of controlling the number of questionnaires collected. The organization of the police forces is very hierarchical and centralized. The list of names and contacts of police officers employed in different headquarters is not widely available. Therefore, in order to come in contact with them, the heads of each police headquarters must be contacted. Their support and their authorization to proceed with the submission were necessary for the success of the activity. An implication of this is that the researchers had no control over the number

of police officers to be involved in the survey, because the distribution of the questionnaire was managed only by the person responsible for each section.

In Poland, the capital and bigger cities on the western border are those locations in which the trafficking of human beings is the most frequently detected. On the basis of this assumption, respondents were chosen among officers working in units functioning in these locations. Two cities for police (Zielona Gora and Warsaw) and two cities for border guards (Szczecin and Warsaw) were selected. The cities were selected on a premise of the large scale of human trafficking – Warsaw as a capital city and the country's largest metropolis and both – Szczecin and Zielona Gora as cities close to the western border. The team estimated the number of officers who could potentially take part in our research on the basis of consultations with the police and border guards officials in mentioned cities. According to these estimations, the questionnaires were sent by post or delivered personally by the IPA researchers to selected units. In total, 1,462 surveys were sent back to the IPA's office, out of which 1,002 were valid and included in the further analysis.

In Portugal, two cities were chosen to be studied: Coimbra and Lisbon. Lisbon was selected because it is the capital of the country, a criterion agreed upon by all teams; Coimbra was selected for being a medium-sized city in the centre of the country with an urban and rural fabric where there are some important social institutions for the support of victims of THB. The questionnaire was applied to all police forces – Polícia Judiciária (PJ), Serviço de Estrangeiros e Fronteiras (SEF), Polícia de Segurança Pública (PSP) and Guarda Nacional Republicana (GNR) – as all of these have contact with the reality of THB. According to the Law of Criminal Organisation, the PJ is responsible (without prejudice to the competencies attributed to SEF in these matters) for investigating crimes of human trafficking (with the use of serious coercion, extortion or work-related fraud). Furthermore, other matters reserved (absolutely or relatively) to the PJ include a vast set of crimes, namely various crimes that could be tied to human trafficking crime, such as slavery, kidnapping or abduction, criminal organisation crime, drug trafficking and crimes against freedom and sexual self-determination. SEF also ends up investigating human trafficking, above all of foreigners in Portugal. However, the PSP and GNR, as community police, ultimately encounter

many situations of trafficking, this being fundamental to ascertain whether these know how to identify those situations as such or not. Thus, the questionnaire was administered to all 4 of these police forces in the two cities after obtaining authorisation for this inquiry. In the case of SEF and PJ (both police forces specialised in the investigation of THB) and GNR (community police) all agents identified from the top as being experienced in the topic from each of the cities were surveyed. In the case of PSP (also community police), only the agents dispatched for criminal investigation were indicated to us, independently of their contact with the topic. Accordingly, all of them were interviewed in Coimbra, and in Lisbon, only 50% of the criminal investigation units, given the (disproportional) volume of agents associated with intervening (above all signalling) in the phenomenon. Globally, the response rate of the police forces to the questionnaires was over 85%. The questionnaires were administered between June 2013 and March 2014 and 336 responses were obtained.

The team from Univerdad Carlos III had more difficulties. Despite the research team's efforts, when the team got in contact with the specialized units of the state security forces and explained to police officers the necessity of their cooperation and the common interest of the survey's results for improving the fight against human trafficking, only those officers working in the section in charge of the Trafficking of Human Beings of the Judicial Police Unit of the Civil Guard (Sección de Trata de Seres Humanos de la Unidad Técnica de la Policía Judicial de la Guardia Civil) answered the questions. These difficulties were mentioned as limits and sources of bias of the survey results in our final report. Considering that all the data were collected exclusively from this police unit, it is not possible to show different opinions from other forces, such as national (Policía Nacional) or autonomous police (Ertzaintza and Mossos d'esquadra).

The hierarchical organization of these police forces also impeded access to officers and the distribution of the questionnaire. Cooperation from competent authorities was required but it depended exclusively upon their sole discretion. There was even a misunderstanding when autonomous police in Catalonia (Mossos d'esquadra) were asked for their cooperation: The research team only gathered a completed questionnaire from the chief officer of the police unit dealing with THB.

Data contained in this questionnaire were not analysed because they do not represent the opinions of all the officers included in this unit. Moreover, if it had been considered, it could have introduced a new bias to the results of the survey applied to officers of the Guardia Civil.

Concerning data gathered by the team, 62 questionnaires were collected while 440 were distributed between all the officers of the Criminal Police Unit of the Civil Guard. Therefore, the percentage of answers was 14% of all the officers of this unit. Data was processed in Excel, as were the results; for example, the Guardia Civil officers more significant perceptions in regards to Trafficking in Human Beings were analysed.

RMCI focused in Bucharest (the capital) and Oradea (a city on the Western Border of Romania to apply the survey to the universe of the police forces directly involved in fighting THB: ANITP (National Agency Against Trafficking in Persons) and BCCO (Brigade of Combating Organised Crime). The team distributed more than a 100 of questionnaires (ANITP – 40 in Bucharest and 4 in Oradea; BCCO – 45 in Bucharest and 9 in Oradea) and got answers from 43 respondents. The distribution to some units failed because of the political changes that led to a restructuration in various institutions, so the delay was considerable and in some cases there was an official written refusal to cooperate.

6. WORKSHOPS FOR SHARING INFORMATION AND EXPERIENCES

Regular workshops were organised with the various actors involved in combating human trafficking in order to develop joint cooperation and coordination strategies. These meetings took place in each country involved in the research, and always involved representatives of the other countries' research teams so as to promote the desired cooperation. The workshops were instrumental in disseminating good practices that were identified during the course of the research. Experts from European and other international organizations were also invited to some workshops as a means to draw attention to the transnational scope of this type of crime.

Each partner organised one workshop with the presence of policy makers, judges, public prosecutors, lawyers, activists, health professionals, police forces and

experts in the field. When studying a transnational crime like human trafficking, it is essential to promote an international network involving national rapporteurs, the police, prosecutors, NGOs, and other key players. This task led to a very important dissemination of knowledge and sharing of worries and common problems. The aim of all workshops was to think about best practices adoptable at European level.

The IEE-ULB organized a workshop with the theme “Police and judicial cooperation in the field of the fight against THB in the EU: successes and shortcomings” in 15 March 2013. It was a closed workshop with experts.

The workshop organized by the Transcrime – UCSC team was entitled “Protection measures for victims of human trafficking”. The one-day workshop occurred on 5 June 2013. It took place in the Room G122 at the Università Cattolica del Sacro Curo in Milan. The workshop was a closed workshop. Protection of THB victims has acquired importance lately. Indeed, several governments adopted strategies and measures regarding the protection of victims, including in their legislation those principles already defined in the UN “Protocol to prevent, suppress and punish trafficking in human beings, especially women and children” and in the European Directives. Notwithstanding, many other things can be done in order to guarantee appropriate assistance and protection to people living in a condition of exploitation.

The Institute of Public Affairs organized, on 15 November 2013 in Warsaw, a Conference entitled “How to effectively counter trafficking in human beings? International cooperation, the role of the State and NGOs”. The conference started with the presentation of the report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings (GRETA), followed by a roundtable with governmental, judiciary, academic and NGO actors. One last session was focused on the main insights of this research project and highlighted different dimensions of the criminal investigation in Poland.

The Universidad Carlos III prepared a specialized workshop on victim’s identification and status of protection. A brief period after the research had begun the process of THB victims’ identification it was considered by the team a relevant subject

for improving institutional intervention. Victims' identification is an axial problem which is the origin of many others. Consequently, the workshop's roundtables were organized to discuss this problem as well as to gather a status of protection assuming different perspectives and scenarios proposed by organisms dealing with this phenomenon. Moreover, the workshop became a space of information-sharing of cooperation and coordination between organizations. The workshop "The identification of victims of trafficking in human beings: achievements and challenges", took place in Madrid, at the Centro de Estudios Políticos y Constitucionales, in June 24 – 25 of 2013.

The workshop organized by RCMI took place in Oradea, on 23-24 May 2013, and was titled "Fighting trafficking in human beings (THB) within the EU: promoting legal cooperation and victim protection". It focused both on the national level and on the country of origin in Europe, and on the European scale, paying particular attention to the problems of the studies done in this area.

As the coordinating organization, CES did not organize a workshop, but rather a public international conference where the final results of the project were presented with speakers from partner countries and stakeholder groups, as well as members of the political and judicial systems and national and international experts. All teams presented their case studies. In order to achieve maximum public impact, all efforts will be made to amplify the dissemination of all information related to the final conference and the final results. Policy makers, judges, public prosecutors, lawyers, activists, health professionals, NGOs, immigrant associations, police forces, labour inspectors, researchers, experts, students and journalists attended the conference and presented papers of their own studies.

NATIONAL REPORTS ON THB FIGHTING

CHAPTER IV

BELGIUM NATIONAL CASE

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INTRODUCTION

In December 2013, the Belgian Federal Police, supported by Europol, carried out an extensive anti-human trafficking operation in the centre of Brussels. The objective pursued was to detect criminal activities associated with trafficking in human beings (THB) and to identify potential victims. A focus was made on the Nigerian criminal networks that operate across the European Union, and which are currently the object of an operational project named “Etutu” involving 13 Member States.²⁰⁸ This operation constitutes a recent illustration of the position of Belgium as a destination country for international and intra-European trafficking flows, reflected by the diverse nationalities of victims identified in the country. Belgian NGOs have indeed reported that most victims of sexual exploitation come from Bulgaria, Albania, Nigeria, Vietnam and Thailand. There are also some Rom networks coming from Romania or Moldova, which exploit persons in forced prostitution or in forced begging. Concerning trafficking for labour exploitation, the construction sector is mainly run by Brazilian networks, which are also active in the horse riding schools sector. Pakistan and Indian criminal networks are involved in night shops and car wash facilities. Polish and Romanian men and women are exploited in the agricultural sector. Some North African victims are also exploited in sweatshops, night shops or bakeries. Chinese men and women are exploited in Chinese restaurants (and sometimes in the renovation of these restaurants) but foreigners of different nationalities are also exploited in the HORECA sector (hotel, restaurants, cafés). The domestic workers generally come from all over the world.²⁰⁹

International studies confirm such findings, as for instance the studies regularly conducted by the UNODC. Belgium was one of the five countries that scored very high as reported destination for trafficked victims (UNODC, 2006b: 63), and reported victims were originating in countries from all regions of the world, i.e. West and North Africa, South

²⁰⁸ “Anti-human trafficking operation hits Brussels Red Light District”, Europol, Press release, 11 December 2013. Accessed on 16.05.2014, at: <<https://www.europol.europa.eu/content/anti-human-trafficking-operation-hits-brussels%E2%80%99-red-light-district>>.

²⁰⁹ H. de Pauw and A. Jaspart, Belgium (Country Profile), E-notes, p. 117 f, accessed on 16 May 2014, at: <http://www.e-notes-observatory.org/wp-content/uploads/E-notes-report_Adobe-61.pdf>.

America, Eastern Europe and Central Asia (UNODC, 2012a: 57-60). Similarly the US Department of State has indicated that, in Belgium:

Foreign victims originate from Eastern Europe, Africa, East Asia, as well as Brazil and India. Prominent source countries for victims exploited include Bulgaria, Romania, Albania, Nigeria, China, and Turkey. Male victims are subjected to forced labour in restaurants, bars, sweatshops, horticulture sites, fruit farms, construction sites, cleaning businesses, and retail shops. The main source countries for labor trafficking victims in Belgium include China, India, Brazil, and Bulgaria. (US Department of State, 2011: 92)

“Women and girls are trafficked to Belgium for sexual exploitation primarily from Nigeria, Russia, Albania, Bulgaria, Romania, [...] China” (US Department of State, 2009: 78). New trends have also been reported. “Sex trafficking [is] increasingly disguised by businesses including massage parlours, escort services and the Internet” (ibid). In addition, the number of forced labour cases has increased and now exceeds the number of sexual exploitation cases. (UNODC, 2012b: 19).²¹⁰

Belgium is also a “high” transit country due to its geographical location (UNODC, 2006b: 117), and it has been identified, together with the Netherlands, as an important transit country for trafficking roads to the UK. Its close proximity to that country, its central position in all travel commodities, and the major sea and channel tunnel links across the Channel (UK Home Office , 2012: 17) explain why Belgium is an important country for the smuggling of migrants into the UK, one of the smugglers’ preferred destinations (European Commission, 2001: 97). This situation impacts on THB, as victims of smuggling networks are sometimes dumped into prostitution or forced labour on their way over (European Commission, 2001: 41-42)²¹¹. Moreover, Belgium and the Netherlands have recently been qualified as the North West criminal hub, managing “flows of trafficked human beings from other Member States and from outside the EU” (Europol, 2011: 12).

²¹⁰ Between 2006 and early 2010, 787 cases of forced labour have been recorded by the police. In contrast, “only” 434 cases of sexual exploitation were recorded.

²¹¹ These victims were taking the Russian-Ukrainian route to get to the UK. See also: US Department of State (2009), “women and girls are trafficked through Belgium to other European countries, such as the United Kingdom”.

Few Belgians victims have been reported, indicating that Belgium is to be considered as a limited source country. Yet “Belgian underage girls, who are recruited by local pimps, and foreign children — including ethnic Roma — are subjected to sex trafficking within the country. Some Belgian women have been subjected to sex trafficking in Luxembourg” (US Department of State, 2013: 92). However the scale of the phenomenon is with no comparison with the one of trafficking of “foreigners” in the country. Internal trafficking, i.e. trafficking of Belgian nationals within the country, is also very marginal (GRETA, 2013a: 10).²¹²

Numerous publications have discussed the factual situation, the legal framework and the public policy to fight against this type of criminal activity.

The crucial role played by journalists in raising awareness on the weaknesses of the public policies and the new forms of trafficking taking place in the country has already been mentioned. The work of Chris De Stoop, author of the book *“They are so sweet, Sir”*, continued with the publication in 2005, of another book *“The Girls From the East”*, for which he collected testimonies of women coming from Eastern Europe, demonstrating that their experience does not always correspond to the common stereotypes existing around victims of THB. Other authors also contribute to shedding light on new dimensions of trafficking, such as Frédéric Loore and Jean-Yves Tistaert. They described the routes leading migrants to work illegally in the black economy, the criminal networks benefiting from this activity, the use of legitimate business ventures as fronts and the gaps within the Belgian repressive system (Loore and Tistaert, 2007). Their work continues notably through the regular publication of long articles in newspapers and the redaction of a blog on THB issues regularly updated.²¹³

The legal framework applicable to the fight against THB in Belgium has been thoroughly analysed by academics and experts. The evolution of the laws over time and the

²¹² Only four Belgian victims were identified in 2011 and three in 2012. (GRETA, 2013a: 10).

²¹³ Accessed on 16.05.2014 at: <<http://meilleurdsmondes.be/blog/>>.

different constitutive elements of the offence of THB have for instance been discussed by Charles-Eric Clesse, who conducted an exhaustive study of the Belgian law, and compared it with the French, Luxembourg and Swiss legislation (Clesse, 2013). Other publications have followed the adoption of each new legislative development and presented the novelties introduced. Pursuant to the evolution of the law over time, such articles have been published following each amendment of the legislation (Vandemeulebroeke and Gazan, 1995; Huberts, 2006; Vermeulen and Arnou, 2006; Huberts and Minet, 2014). Lastly, publications have focused on the conformity of the Belgian legislation with international and European norms, such as the compatibility of the Belgian law with the Framework Decision 2002/629/EU on combating trafficking in human beings (De Hert and Millen, 2009).

Finally, more comprehensive publications analysing both the factual and legal situation must be highlighted. The yearly reports published by the Centre for Equal Opportunities and Opposition to Racism (CEOOR) provide updated information on the situation of THB in selected sectors and locations, comment on the national legislative developments, and present relevant cases and statistics. In 2006; a study carried out the evaluation of the Belgian policy in all its dimensions (Vermeulen, 2006), but considering the numerous developments that occurred since that date, it might be out-dated. The report published by the GRETA last September constitutes the most recent source analysing and evaluating the Belgian policy (GRETA, 2013a), yet focusing on the conformity of the Belgian policy with the Council of Europe (CoE) Convention on Action against Trafficking in Human Beings.²¹⁴ The Eurojust's Strategic Report also constitutes a valuable source of information, even though it covers horizontal issues, and does not specifically address the situation in Belgium (Eurojust, 2012).

We intend to contribute to the existing literature through a synthetic analysis of the evolution of the legal framework, from 1995 until the most recent developments, and the presentation of the role played by each relevant actor. We also aim to assess, on the basis of the fieldwork we conducted and all relevant publications, whether Belgium distinguishes

²¹⁴ Council of Europe, 16 May 2005, CETS n° 197 <<http://www.conventions.coe.int/Treaty/EN/Treaties/Html/197.htm>>.

itself as a country deeply committed to the effective and efficient implementation of its multidisciplinary and integrated approach.

1. ANALYSIS OF PUBLIC LEGISLATION AND POLICIES

This part analyses the Belgian legislation adopted and implemented in order to fight against THB (1.1). Our analysis will also include the institutional framework, i.e. a presentation of all actors whose competences are used in order to fight THB as well as the coordination structures set up to ensure their smooth and efficient cooperation (1.2.).

1.1 PUBLIC POLICY AGAINST THB

Belgium appears as one of the model students among the EU Member States because of the importance granted to the fight against this criminal phenomenon, and of the constant search for the best suited legislation to attain its eradication. It is thus important to briefly recall the historical evolution of its policy against THB.

The Belgian legislator has been indeed particularly active in adopting laws related to THB. Following the ratification of the International Convention for the Suppression of the “White Slave Traffic”,²¹⁵ the Law of 26 May 1914²¹⁶ introduced new provisions in the Criminal Code, banning trafficking in minors, even with their consent (Articles 379 and 380), constraint to debauchery in adult women (Art. 380*bis*) and forced detention of adult women in bawdy houses (Art. 380*ter*). The backbone of the criminalization of trafficking lied in Art. 380*bis*, which criminalized the act of bringing a woman of full age into prostitution without their consent through any means of constraint.²¹⁷ Similarly, the Law of 25 May 1936²¹⁸

²¹⁵ International Convention for the Suppression of “White Slave Traffic”, M.B. 20 August 1914. Its ratification by Belgium occurred on 30 July 1914, and the convention entered into force on 30 January 1915.

²¹⁶ Loi du 26 mai 1914 sur la répression de la traite des blanches, M.B. 10 June 1914. This legislation supplements previous legislation on the abolishing of slave trafficking. See for example Loi du 3 juillet 1893 portant répression des crimes et délits de la traite d’esclaves.

²¹⁷ According to this provision, bringing a woman of full age into prostitution with her consent or without constraint was not considered as an offence. Indeed, both the lack of consent and the use of any form of constraint were necessary.

implemented the International Convention for the suppression of trafficking in women of full age,²¹⁹ which concerned only trafficking in adult women, including with their consent, for immoral purposes in another country. This last condition of extra-territoriality was included in the Convention, and thus consequently also in the Belgian legislation (Art. 380*bis*), because several State Parties, including Belgium, did not criminalize the act of procuring with regards to adults in their territorial jurisdiction.²²⁰

However, after more than a century of prostitution regulation, the Belgian authorities adopted the Law of 21 August 1948 banning the official regulation of prostitution,²²¹ and opted for an abolitionist system.²²² Regulation of prostitution became prohibited, though the practice itself was not criminalized.²²³ This law amended once again Art. 380*bis*, 1°, which now criminalized the act of hiring, drag or detract “for the purpose of debauchery or prostitution, a minor or adult person, even with his/her consent”.²²⁴ It covered offences occurring in Belgium and applied to both male and female victims. Contrary to the previous legislation, the new provision was fully indifferent with regard to

²¹⁸ Loi du 25 mai 1936 approuvant la Convention Internationale, conclue à Genève le 11 octobre 1933, pour la répression de la traite des femmes majeures, et complétant l’article 380*bis* du Code pénal, de même que l’article 2 de la Loi du 26 mai 1914 sur la répression de la traite des blanches, M.B. 29-30 June 1936.

²¹⁹ International Convention of 11 October 1933 for the Suppression of the Traffic in Women of Full Age, Geneva, League of Nations, Treaty Series, vol. 150, p. 431.

²²⁰ Parl. Doc., Ordinary session, Chambre of Representatives, 1993-1994, Proposition de loi de répression de la traite des êtres humains, 28 March 1994, n° 1381/1, p. 8.

²²¹ Loi du 21 août 1948 supprimant la réglementation officielle de la prostitution, M.B. 13-14 September 1948. This law was adopted before the accession of Belgium to the New York Convention for the Suppression of the Traffic in persons and of the Exploitation of the Prostitution of Others of 2 December 1949, United Nations, Treaty Series, vol. 96, p. 271. Belgium ratified it on 22 June 1965 and it entered into force on 20 September 1965.

²²² “Indoor and outdoor prostitution in Belgium are tolerated rather than prohibited. [...] Notwithstanding this, [...] indoor prostitution, due to its invisibility, is much less tolerated than outdoor prostitution. This is because: a) there is tolerance towards ‘organisers that do not gain excessively at the expense of the prostitute’; b) police raids are much more frequent on the streets than indoors” Transcrime (2005: 79)

²²³ Parl. Doc., Ordinary session, Chambre of Representatives, 1993-1994, Proposition de loi de répression de la traite des êtres humains, 28 March 1994, n° 1381/1, p. 4.

²²⁴ Free translation. It also created new offences such as Art. 380*bis* 2°: the fact of keeping a house of debauchery or prostitution; Art. 380*bis* 3°: exercising activities of procurer and Art. 380*bis* 4°: the usual exploitation in any other way of debauchery or prostitution. It was also punished inciting a person to debauchery (Art. 380*quater*) either in a public place by gestures, words or signs or by advertising prostitution or debauchery. Preparatory works of the law of 1948, incorporated in Parl. Doc., Ordinary session, Chambre of Representatives, 1993-1994, Proposition de loi de répression de la traite des êtres humains, 28 March 1994, n° 1381/1, p. 12-13.

the consent and did not require any form of constraint. The latter element had been justified by the fact that:

Experience shows that this provision was not efficient. Evidence is very difficult to obtain as victims of traffickers, terrorized by them, do not dare talking or do not realize the fate that awaits them. They help circumventing the vigilance of the authorities because they count on a marriage proposal or a lucrative investment abroad.²²⁵

These legislative evolutions had impacts on the competences and powers exercised at local level. Indeed, up to 1948, the Municipal Councils were competent to enact local regulations on the surveillance of persons and places notoriously given over to immoral practices and to take the necessary measures to preserve public peace, health and morals.²²⁶ The ban on the regulation of prostitution in 1948 did not stop them from exercising a certain form of regulation. Indeed Art. 1 §2 of the Law of 21 August 1948 still allows them to issue complementary regulations for the purpose of preserving public moral and order. In practice, prostitution activities were indirectly regulated through local regulations on urbanism or local police adopted on this latter basis.²²⁷

The policy towards prostitution, and trafficking in general, remained unchanged until the early 1990s, when the fight against THB gained momentum, both through an increased attention of public authorities and its embedment in national legislation. Whereas in the late 1980s public action consisted in a limited financial support to NGOs providing help to prostitutes, the book *“They are so sweet, Sir”*, written by Chris De Stoop (1994), raised awareness among the general public of the scale of the phenomenon, and led to the

²²⁵ Ibid. p. 7

²²⁶ Art. 96 Loi Communale du 30 mars 1836 (not published) as amended by the law of 30 December 1887. This municipal law has been abrogated and replaced by the Nouvelle Loi Communale du 24 juin 1988, M.B. 3 September 1988.

²²⁷ See for instance the example of Liège, where a local regulation of police relative to exploitation of debauchery places provides for instance that the exploiter of such place must declare any new worker prior to his/her beginning of work (Ville de Liège, Règlement de police relatif à l’exploitation de bars à serveurs-serveuses, de clubs à hostesses et d’établissements érotiques, 26 April 2005, modified on 31 May 2010). See also the example of Schaerbeek (one of Brussels’ municipalities), where the local Council adopted two new regulations: one on urbanism focusing on places of prostitution in windows and imposing minimum standards on space and amenities (Règlement communal d’urbanisme sur les lieux de prostitution en vitrine, 27 June 2012). The other regulation on police organises notably the requirements to exploit a window, and provides for the obligation to declare all workers (Règlement de police relatif à la prostitution en vitrine, 27 February 2013).

subsequent pressure on the public authorities to act. The book indeed uncovered the practice of European sex club owners recruiting women from the Philippines and forcing them into striptease dancing and prostitution in Europe. Its publication triggered the creation of a specialized Commission of Inquiry, entrusted with the task of developing a structural policy for suppressing and abolishing THB. After 15 months of work, the Commission made various suggestions and proposals that the legislator largely followed. Several initiatives drastically amended the provisions relating to prostitution contained in the Criminal Code²²⁸ and introduced new articles, dealing with both trafficking in and smuggling of human beings, in the Aliens' Act of 1980.²²⁹ Belgium became one of the first European countries with a legislation specifically addressing THB, which was subsequently amended in 2005,²³⁰ and more recently in 2013.²³¹

While pursuing its efforts at national level, Belgium never ceased its efforts to improve the fight against THB at European and international level. In addition to its participation in the major international instruments, Belgium played a key role in developing the European legal framework. The Belgian state proposed alone the initiative that became the Joint Action 97/154/JHA concerning action to combat THB and sexual exploitation of children,²³² the first instrument attempting to establish an EU common definition of the offence. Later, the negotiations of both the Framework Decision²³³ and the Directive²³⁴ on combating THB reached a political agreement during the Belgian Presidencies of the Council

²²⁸ Loi du 13 avril 1995 contenant des dispositions en vue de la répression de la traite des êtres humains et de la pornographie enfantine, M.B. 25 April 1995. Further details in §19 – 24.

²²⁹ Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers. M.B. 31 December 1980.

²³⁰ Loi du 10 août 2005 modifiant diverses dispositions en vue de renforcer la lutte contre la traite et le trafic des êtres humains et contre les pratiques des marchands de sommeil. M.B. 2 September 2005

²³¹ Loi du 29 avril 2013 visant à modifier l'article 433quinquies du Code pénal en vue de clarifier et d'étendre la définition de la traite des êtres humains, M.B. 23 July 2013.

²³² Joint Action 97/154/JHA of 24 February 1997 concerning action to combat THB and sexual exploitation of children, OJ L 63, 04.03.1997, p. 2.

²³³ Council Framework Decision 2002/629/JHA, of 19 July 2002, on combating THB, OJ L 203, 01.08.2002, p. 1.

²³⁴ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating THB and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101, 15.04.2011, p. 1.

of the EU (Weyembergh and Brière, 2013a: 111-112). The transposition of these instruments was not only the occasion to reflect the European norms in the Belgian legal framework, but also to go beyond them so as to adapt the national law to the evolutions of trafficking.

These efforts to continuously strengthen the legislative framework are embedded in the implementation of the multidisciplinary, integral and integrated approach pursued by Belgium. Right from the beginning, Belgium decided indeed to opt for this pragmatic approach,²³⁵ also applied at international and European levels. This approach is defined as integral, as all the dimensions of the fight against THB, i.e. the prosecution of the traffickers, the protection of the victims and the prevention of trafficking, are being addressed and are the subject of a whole set of coordinated actions. The integrated and multidisciplinary qualifications stem from the fact that all the actors collaborate closely together, each of them bringing its specific expertise and experience. These cooperation and synergies between the services, institutions and organizations actively involved in the fight against THB constitute an essential part of the Belgian policy and a factor of its success.

1.2 LEGAL FRAMEWORK

1.2.1 INTERNATIONAL LEVEL

Belgium has signed, ratified and transposed all major international and regional instruments relating directly to THB. Belgium is thus part to the main United Nations instruments, in particular to the UN Convention against Transnational Organized Crime²³⁶ and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Woman and Children,²³⁷ both signed on 12 December 2000, and ratified on 11 August 2004. Belgium is also part to the Council of Europe's Convention on Action against Trafficking in Human

²³⁵ Department of Criminal Policy, The fight against trafficking and smuggling in human beings, Policy and Approach, p. 9.

²³⁶ United Nations, Treaty Series, vol. 2225, p. 209. Doc. A/55/383. Available at: <<http://www.unodc.org/unodc/en/treaties/CTOC/>>.

²³⁷ United Nations, Treaty Series, vol. 2237, p. 319; Doc. A/55/383. Available at: <<http://www.unodc.org/unodc/en/treaties/CTOC/>>.

Beings,²³⁸ which Belgium signed on 17 November 2005, ratified on 27 April 2009. This Convention entered into force in Belgium on the 1st of August 2009. Few months ago, the GRETA, in charge of monitoring the implementation of this Convention, published its final evaluation report on Belgium (GRETA, 2013a). Last but not least, as a Member State of the European Union, Belgium was and is also bound by all **EU measures** dealing directly and indirectly with the fight against THB.²³⁹ Belgium has also signed and ratified **bilateral instruments** with EU Member States, aiming at improving police cooperation and the fight against THB (De Hert and Millen, 2009: 53). Next to these instruments, Belgium participates in other international and regional instruments, focusing on the protection of fundamental rights, and thus relating indirectly with the issue of THB.²⁴⁰

1.2.2. NATIONAL LEVEL

The Belgian legislator has been particularly active in adopting laws related to trafficking in human beings. In the introduction, we briefly presented the provisions criminalizing the offence introduced by the first texts adopted between the early 1910s and the 1990s. In this section, we chose to focus on the texts adopted from 1995 onwards, especially on “hard-law” elements, i.e. provisions of legislative nature, included in national Codes or laws. Other instruments, such as Royal Decrees, Ministerial Circulars or Ministerial Directives, are also of key importance in the Belgian legal framework, but for clarity purposes we decided to not present them in this section.

a) FIRST CRIMINALIZATION OF TRAFFICKING IN HUMAN BEINGS BY THE LAW OF 13 APRIL 1995

After the 15 months of work carried out by the Commission of Inquiry on THB, the legislator followed its recommendations and adopted them in the Law of 13 April 1995,²⁴¹

²³⁸ Council of Europe, 16 May 2005, CETS n° 197, cf. supra.

²³⁹ Council Joint Action 97/154/JHA; Council Framework Decision 2002/629/JHA and Directive 2011/36/EU, cf. supra.

²⁴⁰ Such as for instance the UN International Covenant on Civil and Political Rights, or the European Convention on Human Rights.

²⁴¹ Loi du 13 avril 1995 contenant des dispositions en vue de la répression de la traite des êtres humains et de la pornographie infantile, M.B. 25 April 1995.

amending the relevant provisions contained in the Criminal Code and introducing new articles in the Aliens' Act of 1980.

The **Criminal Code** was reformed and several provisions amended. **Art. 379** became a specific provision for trafficking in minors, consisting in an offence against morals by encouraging or facilitating debauchery, corruption or prostitution of a child of either sex to gratify the passion of others. **Art. 380bis**, the main provision dealing with the exploitation of prostitution was remoulded. Art. **380bis §1** criminalized the sexual exploitation (hiring, dragging, detracting or retaining for debauchery or prostitution, to gratify the passion of others) of persons of full age even with their consent. The legislator decided to maintain various elements that already existed, such as the irrelevance of their consent, or the term “debauchery”, as it circumvented the need to prove the exploitation of prostitution and thus afforded greater protection for victims of trafficking.²⁴² In its efforts to strengthen the repressive legal framework, the legislator went further. It introduced the possibility for hotel owners and brothels' managers to be prosecuted as accomplices in prostitution [the former for exploitation of prostitution through obtaining undue profit (Art. 380bis §1, 3°), the latter for the offence of keeping a house for debauchery or prostitution (Art. 380bis §1, 2°)]. The most far-reaching element was the criminalization of the behaviour of “whoever has, in any manner, exploited someone else's debauchery or prostitution” (Art. 380bis §1, 4°), i.e. the exploitation in any way of debauchery or prostitution of someone else's. Such behaviours were punishable with imprisonment sentences ranging from one to five years, and with fines from 500 to 25,000 francs. The attempt to commit them was punishable with imprisonment sentences ranging from 6 months to 3 years, and with fines from 100 to 5,000 francs. However, the legislator chose to repeal the former Art. 380bis 3° regarding the procurer, which was interpreted very broadly by the Courts.²⁴³

²⁴² As an example, forcing a woman to perform a nude show is not considered as prostitution, but could be covered by this notion of “debauchery”. Debauchery had indeed received a very wide interpretation by the courts and tribunals (“any immoral act distinct from prostitution”). G. Vermeulen (dir), “La politique belge en matière de traite des êtres Humains, Etat des lieux, évaluation et options futures”, p. 15 <http://www.kbs-frb.be/uploadedFiles/KBS-FRB/Files/FR/PUB_1638_Traite_Etres_humains.pdf>

²⁴³ The sole fact of living with a prostitute who contributed to the household expenses could be sued for procuring.

New aggravating circumstances were also introduced in **Art. 380bis §3**, covering the direct or indirect use of fraud, violence, threats or any form of coercion (1°) or the fact of taking advantage of the particularly vulnerable situation of the person owing to his/her illegal or precarious situation, or pregnancy, illness, infirmity or physical or mental deficiency (2°).²⁴⁴ When such circumstances are present, the sanctions are increased: imprisonment sentences from ten to fifteen years, and fines from 500 to 50,000 francs. The introduction of these two elements as aggravating circumstances constituted a major change, as these elements had been removed from the constitutive elements of the offence in 1948.²⁴⁵ Moreover, the choice of criminalizing separately the abuse of the victim's vulnerable position, independently of the use of threat or constraint, followed one of the Commission's recommendations, which was to establish a distinct offence focusing exclusively on *de facto* constraint.²⁴⁶

Besides these changes in the Criminal Code, and following again a Commission's recommendation, a new provision was also introduced in the **Aliens' Act**: Art. 77bis was added to the Law of 15 December 1980 on entry, stay, settlement and removal of foreign nationals.²⁴⁷ This provision created a new offence, covering indistinctly trafficking in and smuggling of human beings, for:

Whoever contributes, in any manner, either directly or with the help of an intermediary, to facilitate the entry, the transit or the stay of a foreigner in the Kingdom, and by doing so:

1° makes use, directly or indirectly, of fraud, violence, threats or any form of coercion towards the foreigner,

²⁴⁴ Free translation. " 1° fait usage, de façon directe ou indirecte, de manoeuvres frauduleuses, de violence, de menaces ou d'une forme quelconque de contrainte; 2° ou abuse de la situation particulièrement vulnérable d'une personne en raison de sa situation administrative illégale ou précaire, d'un état de grossesse, d'une maladie, d'une infirmité ou d'une déficience physique ou mentale."

²⁴⁵ cf. supra §7.

²⁴⁶ Parl. Doc., Ordinary Session, Chambre of Representatives, 1993-1994, 28 Mars 1994, Enquête parlementaire en vue d'élaborer une politique structurelle visant la répression et l'abolition de la traite des êtres humains, Rapport fait par Mmes Merckx-Van Goey et de T. Serclaes, p.88.

²⁴⁷ Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers. M.B. 31 December 1980. Amended by Art. 1 of the Law of 13 April 1995.

2° or takes advantage of the particularly vulnerable situation of the foreigner owing to his/her illegal or precarious situation, or minority, pregnancy, illness, infirmity or physical or mental deficiency.²⁴⁸

According to this provision, the constitutive elements of THB were the following: the victim is a foreigner, there has been a contribution to his/her entry, transit or stay and there has been a use of constraint or an abuse of his/her vulnerable situation.²⁴⁹ Moreover, the consent of the foreigner was irrelevant and there was no indication on the nature of the exploitation.²⁵⁰ The provision covered both the traffic in Belgium of foreigners and their exploitation in general (without specifying any type of exploitation).²⁵¹ Whereas the question whether the foreigner entered into the country legally or illegally is irrelevant, the circumstances in which that person entered into the country, i.e. being deprived in a certain way of his/her liberty, are crucial.²⁵² The commission of the offence was punishable of imprisonment sentences from one to five years, and fines from 500 to 25,000 francs.²⁵³

Despite all these amendments, including those following the Commission's recommendations, the law adopted in 1995 soon appeared to be inadequate. Indeed, various limits appeared throughout the years.

²⁴⁸ Free translation. "Quiconque contribue, de quelque manière que ce soit, soit directement, soit par un intermédiaire, à permettre l'entrée ou le séjour d'un étranger dans le Royaume et, ce faisant: 1° fait usage à l'égard de l'étranger, de façon directe ou indirecte, de manœuvres frauduleuses, de violence, de menaces ou d'une forme quelconque de contrainte ; 2° ou abuse de la situation particulièrement vulnérable dans laquelle se trouve l'étranger en raison de sa situation administrative illégale ou précaire, d'un état de grossesse, d'une maladie, d'une infirmité ou d'une déficience physique ou mentale".

²⁴⁹ Concerning the two paragraphs of Art. 77bis, the Court of cassation ruled that they refer to two distinct offences and are not linked to each other (Cass., 22 June 1999). Both paragraphs (§1 on the use of constraint and §2 on the abuse of vulnerability) are verbatim the same as the aggravating circumstance of Art. 380bis §3. This led to some questions regarding their respective scope of application and/or potential cumulative application arose.

²⁵⁰ CEOOR, Images du phénomène de la traite des êtres humains et analyse de la jurisprudence, May 2001, p. 38.

²⁵¹ CoE, "A summary of the Belgian legal experience in combating traffic in human beings", Appendix 1, p. 49. <http://www.coe.int/t/dghl/monitoring/trafficking/Source/PDF-EG%2896%292_3E.pdf> (last access 3 March 2014).

²⁵² Parl. Doc., Ordinary session, Chambre of Representatives, 1993-1994, Proposition de loi de répression de la traite des êtres humains, 28 March 1994, n° 1381/1, p. 18.

²⁵³ Penalties were increasing when the offence constituted a regular activity (Art. 77bis §2), and when it was committed while participating to an organised criminal group (Art. 77bis, §3).

Insufficiencies in the law itself – Various lacunae in the law of 1995, such as the absence of a clear definition of THB, casted a shadow over the positive momentum of its adoption. Yet, it was especially the formulation of Art. 77*bis* of the Aliens’ Act that appeared to be problematic: this so-called “blanket provision”²⁵⁴ mixed, without distinguishing them, trafficking in and smuggling of human beings, as well as slum landlords.²⁵⁵ Furthermore, since many victims of sexual exploitation were foreigners, Art. 77*bis* was often used in conjunction with Art. 380*bis* §1, 4° of the Criminal Code,²⁵⁶ criminalizing the exploitation of prostitution of someone else’s, to prosecute and sanction cases of sexual exploitation.²⁵⁷

Problems arising from its application – Two main problems arose from the application of the law. On the one hand, the courts and tribunals experienced difficulties in the concrete application of Art. 77*bis* of the Alien’s Act. They usually focused on the moral element (1° use of constraint or 2° abuse of the particularly vulnerable situation), in order to deduct the material element of the offence (the contribution in the entry, transit or stay), which was nearly always present.²⁵⁸ Even though such interpretation was favourable to the victims, it did not fully respect the spirit of the law. On the other hand, problems arose in economic exploitation cases when the moral element of the offence was under examination. The case law quite consistently stipulated that in the absence of evidence of an abuse (low salary, restricted freedom...), the sole infringement to social laws did not suffice to reach the requirements of the moral element of Art. 77*bis* (Monville and Dister, 2002).²⁵⁹ Such interpretation has been illustrated by two judgments, issued in the early 2000s by the Court

²⁵⁴ See GRETA (2013a: 11).

²⁵⁵ See the introduction of a new §1*bis* on slum landlords. Art. 69 , Loi Programme du 2 janvier 2001. M.B. 3 January 2001.

²⁵⁶ See Corr. Brussels, 28 June 2000, 54th Ch., n° 4219; Corr. Ghent, 23 June 1999, 19th Ch., n°2061; Corr. Brussels, 11 October 2000, 54th Ch., n° 5327.

²⁵⁷ This is demonstrated by the 2001 report of the CEOOR. See for example Corr. Ghent, 23 June 1999, 19e Ch, n° 2061 – case concerning a network prostituting women from Eastern Europe: the exploitation was manifest as the victims were transported to Belgium for prostitution, forced to prostitute themselves and had to transfer an important part of their earnings to their traffickers. See also Court of Appeal of Antwerp, 21 April 2004 and 2 June 2004, 8th Ch.

²⁵⁸ CEOOR, 2000 Annual Report, p. 33.

²⁵⁹ Ibid, p. 36.

of Appeal of Liège.²⁶⁰ Both cases were highly controversial, as the charges of THB held against the employers, which were based on Art. 77*bis* of the Alien's Act, were rejected, as, according to the Court, it was not established that the alleged victims were in a vulnerable situation and were abused.²⁶¹ The judges only retained offences to the social legislation because the employers did not declare their employees and did not pay the corresponding social charges. An appeal was made before the Court of cassation in the first case. Even though the Court had previously held that the provision did not require the situation to be totally unacceptable in order to fall under the scope of Art. 77*bis* 2°, ²⁶² the judges confirmed that infringements to social legislation are not in itself sufficient to justify the application of the provision on THB.²⁶³ Such decisions served later as arguments to plead for a revision of the legislation.

Inadequacies with new international standards – Finally the national legal framework became inadequate with respect to various international²⁶⁴ and European²⁶⁵ instruments adopted from 2000 onwards. They were indeed prescribing new orientations such as a clear distinction between the offences of human trafficking and human smuggling, the obligation to criminalize domestic human trafficking and forms of exploitation other than sexual exploitation (Huberts, 2006: 7).

²⁶⁰ Judgment given by the Appeal Court of Liège, 4th chamber, 25 April 2001, reviewed by the Supreme Court (Court of cassation), 2nd chamber, 9 January 2002, and Judgment given by the Appeal Court of Liège, 4th chamber, 28 February 2001.

²⁶¹ Firstly, in the Diallo case, the Appeal judges estimated that the person launched the procedure against her potential trafficker solely to be regularised thanks to her victim' status. In the second case, involving Indian workers who were employed in the horticultural sector, the judges focused on the intermediary, deemed to have abused alone of the vulnerability of the workers, and acquitted the employer. The Court's decision was criticised for failing to take into account several facts amounting to abuses, such as the intense rhythm of work (7 days per week, 10 hours per day), in total disregard of social legislation in force.

²⁶² Cass., 22 June 1999.

²⁶³ Cass., 9 January 2002.

²⁶⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, cf. *supra*.

²⁶⁵ Council Framework Decision 2002/629/JAI, cf. *supra*; Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence OJ L 328, 05.12.2002, p. 17, and Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence, OJ L 328, 05.12.2002, p. 1.

b) CRIMINALIZATION OF THE OFFENCE GOING BEYOND INTERNATIONAL STANDARDS: THE LAW OF 10 AUGUST 2005

Following the adoption of the above-mentioned instruments, and the subsequent need to make the Belgian law compliant with these international obligations, a working group, mandated in March 2004 to prepare draft legislation, presented its final proposal in June 2004. During the debates before the Parliament, the offences of trafficking in and smuggling of human beings did not receive much attention, as the debates were rather more focused on the exploitation of begging and slum landlords. The adoption of the new law in August 2005²⁶⁶ led to the separation of the offences of trafficking in and smuggling of human beings, which were criminalized by two distinct provisions: smuggling of human beings in Art. 77*bis* of the Alien's Act, and **THB in Art. 433*quinquies* §1**, which reads as follows:

Any form of recruitment, transport, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, in order to:

1° enable the offences as mentioned in Articles 379, 380, §1 and §4, and in Art. 383*bis*, §1²⁶⁷ to be committed against that person;

2° enable the offence as mentioned in Art. 433*ter*²⁶⁸ to be committed against that person;

3° employ or enable that person to be employed in circumstances contrary to human dignity;

4° remove or enable the removal of organs or tissues on that person in violation of the Law of 13 June 1986 concerning the removal and transplant of organs;

5° or, to force the person to commit a crime or an offence against his will.

²⁶⁶ Loi du 10 août 2005 modifiant diverses dispositions en vue de renforcer la lutte contre la traite et le trafic des êtres humains et contre les pratiques des marchands de sommeil. M.B. 2 September 2005.

²⁶⁷ This purpose could be read as follows: to allow for the commission against this person of the offences provided for in Art. 379 [prostitution of a minor], Art. 380 §1 [prostitution of a major] and §4 [exploitation of prostitution], and Art. 383*bis* §1 [child pornography]. Art. 380*bis* became Art. 380 of the Criminal Code in 2001 (Art. 14 of the Loi du 28 novembre 2000 relative à la protection pénale des mineurs. M.B., 17 March 2001).

²⁶⁸ This provision criminalises forced begging and the exploitation of begging.

Except for the case as mentioned under point 5, it is irrelevant whether the person referred to in paragraph 1 gave his/her consent to the intended or actual exploitation.²⁶⁹

The offence of human trafficking was solely included in the Criminal Code. As a consequence of the new drafting, foreigners as well as Belgian nationals²⁷⁰ could be considered victims of THB (Vermeulen, 2006: 15). Indeed, the new provision covers one or more persons, regardless of their nationality and their administrative status (national, legal or illegal resident). No cross-border element was required, and thus Art. 433*quinquies* §1 also covered purely internal situations (Huberts, 2006: 8). Moreover, the establishment of the moral element required the evidence that the offence was committed *with the purpose* of exploiting the victim. This new formulation could be considered more favourable for the accused person, as the former version of Art. 77*bis* did not explicitly mention the exploitation as one of the elements of the offence. However, there was no requirement to establish that this objective has been achieved, and the sole demonstration of the intent was sufficient (Huberts, 2006: 10).

Whereas the previous elements corresponded to the Belgian international obligations, the new provisions still differed on various aspects from the international and European instruments, especially from the Framework Decision 2002/629/EU.

First, the material scope of the national provision was better framed. The previous provisions of the Criminal Code were only referring to certain forms of sexual exploitation, i.e. the exploitation of prostitution, and Art. 77*bis* of the Aliens' Act did not refer to exploitation at all. The new provision, Art. 433*quinquies*, explicitly listed the **forms of exploitation** it covered. In this regard, the list went not only beyond the text of the Framework Decision, which only concerned labour and sexual exploitation,²⁷¹ but also

²⁶⁹ Translation in DCP, "The fight against trafficking and smuggling in human beings", cf. supra, p. 5.

²⁷⁰ Before 2005, Belgian nationals could only be considered victims of forced prostitution, at the exclusion of trafficking for other forms of exploitation.

²⁷¹ Art. 1 §1, d), Council Framework Decision 2002/629, cf. supra: "for the purpose of exploitation of that person's labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for

beyond the Palermo Protocol.²⁷² Indeed, the Belgian provision included two forms of exploitation which were emerging at that time: the exploitation of forced begging and the exploitation of criminal activities, i.e. forcing a person to commit a crime.

Second, the Belgian legislator decided not to include the *modus operandi* as a constitutive element of the crime. The material element of the offence only consisted in “any form of recruitment, transport, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person”. The execution or the participation to one of these activities was sufficient to be accused of THB. On the contrary, under the EU legal framework, the *modus operandi*, such as the use of force, fraud, violence or threat, were also material elements of the offence, except when the victim was a minor. The provision of Belgian law was hence more severe. These elements were included as **aggravating circumstances** defined in Art. 433septies. Other aggravating circumstances were provided for in Articles 433sexies, 433septies and 433octies. Whereas this choice was justified among others by its intention to reduce the burden of proof for the public prosecutors,²⁷³ it raised some concerns, notably that the judiciary system would somehow abuse of this definition by stretching this absence of *modus operandi* and apply Art. 433quinquies to situations that obviously did not fall under the definition of THB. Such concerns do not seem to have materialized, as an analysis of the judgments involving THB issued in 2010 and 2011 established that in the very large majority condemnations bulletins

the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography”.

²⁷² Art. 2, UN Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, cf. *supra*, defined exploitation as “the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

²⁷³ Ministry of Justice explanation (free translation): “After intense reflexion, and considering the case law and the experience of the different actors, we realised that most of the time the debate concerns precisely the *modus operandi*, which is today a constitutive element of the offence. It is not rare to result in acquittals because there is no evidence of this element. That is why we preferred to limit the discussion on *modus operandi* in the framework of aggravating circumstances, in order to discuss the level of the penalty, but the notions of smuggling and trafficking are indisputable”. Parl. Doc., Senate, Ordinary Session, 2004-2005, 10 May 2005, N° 3-1138/4. For additional justifications of this legislative choice, see Clesse (2013: 68).

did refer to an aggravating circumstance (Huberts and Minet, 2014: 16-18).²⁷⁴ As a consequence, one can consider that:

There does not seem to be currently a discrepancy between the rationale of the legislation, the existing [judicial] practice and the wording of international instruments. It goes without saying that this issue must however remain under control. (Huberts and Minet, 2014: 19)

Thirdly, pursuant to Art. 433*quinquies* §1, the **consent of the victim is irrelevant in all situations**. On this aspect, the Belgian legislation differs once more from the EU Directive, which provides that the consent of the victim is irrelevant only “where any of the means [...] has been used” (Art. 2 §4). Such irrelevance of the victim’s consent illustrates the choice of the legislator to limit the scope of the offence to the reunion of two constitutive elements: the act of trafficking and a purpose of exploitation.

Fourthly, the Belgian legislator opted for a **very innovative definition of labour exploitation**. Whereas the Framework Decision defined it in terms very similar to those employed in the UN Palermo Protocol,²⁷⁵ the Belgian provision only refers to the employment or the fact to enable that person to be employed *in working conditions contrary to human dignity*. This concept, which was not a novelty under Belgian law, was left undefined by the legislator. Notwithstanding some indications in the explanatory statement of the law,²⁷⁶ judges had a large margin of appreciation to interpret it. After several years and many judgments rendered, a series of indicators could be identified, including, among others: an important number of working hours per day (more than ten hours per day, often

²⁷⁴ The authors reviewed 91 out of a little more than 100 THB cases. Their analysis showed that 78% of the 2010 reviewed condemnations bulletins and more than 90% of the 2011 reviewed condemnations bulletins did refer to an aggravating circumstance. Because of various methodological reasons, the authors claim that the real figure exceeds those, and that the numbers of 78% and 90% are rather to be seen as minimum rates for the years 2010 and 2011. See also GRETA (2013a:222).

²⁷⁵ The recent EU Directive, and other international and European instruments refer to “forced labour or services, servitude, slavery or practices similar to slavery”.

²⁷⁶ Judges were invited to take into account elements such as the salary, the working environment or the work conditions as indications of economic exploitation. Parl. Doc., Ordinary session, Chambre of Representatives, 2004-2005, *Projet de loi modifiant diverses dispositions en vue de renforcer la lutte contre la traite et le trafic des êtres humains*, 14 January 2005, n° 51 -1560/001, p. 19.

12 or 14 hours or more),²⁷⁷ a low salary or absence of salary,²⁷⁸ bad housing provided by the employer²⁷⁹ or the dependence of the workers towards their employers (undeclared work, lack of legal residence documents, etc.).²⁸⁰ It is important to highlight that a comparison with the work conditions in the victim's home country is of no relevance to determine the existence of working conditions contrary to human dignity as what matters is the adequacy with the standards applicable in the forum state.²⁸¹ Moreover recent developments reveal that the judges do not restrain the notion to the most extreme situations, and that the threshold seems to have been lowered compared to the legal regime applicable before 2005. The Court of cassation²⁸² considered that a situation in which the worker had not only to start working immediately after his arrival in Belgium, but also to directly transfer his salary to the trafficker did amount to working conditions contrary to human dignity. Interestingly, the Court also added:

The notion of *human dignity* refers to a standard of living protected by the respect of others and to a human existence where basic services are guaranteed [and] implies more than the concrete working conditions in which the victim must work.²⁸³

²⁷⁷ Corr. Bruges, 19 June 2007, 14e Ch.; Corr. Ghent, 22 October 2007, 19e Ch. (employment of two Romanian nationals for garden plants care).

²⁷⁸ Corr. Brussels, 23 November 2007, 58e Ch. (salary received 50 to 60 euros per week); Corr. Termonde, 13 February 2007, 19e Ch. (no income at all). It is interesting to highlight a recent judgement of the Tribunal of First instance of Ghent, which declared that "[the victim] worked uninterruptedly, 7 days a week, 13 hours a day. An uninterrupted daily employment of that many hours does not allow the worker to fully develop as a human being outside the working hours" (Corr. Ghent, 19st Chamber, 6 May 2013). In that case, the victim had to work for an estimated salary of 2,87 to 1,45 euros per hour).

²⁷⁹ Corr. Brussels, 23 November 2007, 58e Ch. (room closed, no sanitary installation, heating or water).

²⁸⁰ Corr. Brussels, 25 April 2008, 58e Ch., confirmed by Court of Appeal of Brussels, 18 February 2009, 11e Ch. (illegal employment of undocumented Lithuanian workers).

²⁸¹ Corr. Louvain, 15 January 2008, 17e Ch. – Exploitation in Chinese restaurants of Chinese nationals. The tribunal noted that the fact that life conditions of some workers were better than in China does not prejudice the fact that the accused persons had abused their vulnerable situation (CEOOR, 2008 Report, p. 52. Available at: <http://www.diversitybelgium.be/sites/default/files/legacy_files/publications/rapport_annuel/MH%20ENG/2008%20Annual%20Report%20THB.pdf>)

²⁸² Cass., 5 June 2012, P.12.0107.N/1. The Court confirmed the position adopted by the Court of Appeal of Ghent (judgment of 13 December 2011).

²⁸³ Free translation.

Nevertheless, the threshold did not reach an extremely low level either. Judges acquitted the suspects when the workers were not deprived of their freedom of movement or identity documents, that they lived in satisfactory housing conditions or that they did not endure pressure or constraint.²⁸⁴ In those cases, judges only retained violations to the social legislation.

Concerning **sanctions**, the level of penalties did not change for the main offence of THB, which remained punishable by imprisonment from 1 to 5 years, and fines from 500 to 50 000 euros. The attempt to commit the offence was however more severely punished than before: imprisonment sentences from 1 to 3 years, and fines from 100 to 10 000 euros. The presence of aggravating circumstances, listed in Art. 433*sexies*, 433*septies* and 433*octies*, also increased the level of penalties. In situations where the exploiter abused the situation of vulnerability of the victim,²⁸⁵ or used fraud, violence, threats or any form of coercion, he/she may be convicted to an imprisonment sentence from 10 to 15 years and to fines from 1000 to 100 000 euros.

Finally, the Law of 15 September 2006²⁸⁶ must be mentioned, as it amended once more the Aliens' Act of 15 December 1980 in order to insert a new provision on **residence permit for victims** of human trafficking who cooperate with law enforcement authorities, as the transposition of the Directive 2004/81/EC so required.²⁸⁷ This new provision, still valid, is applicable to foreign victims of THB, being EU or third country nationals. The rationale is to

²⁸⁴ Corr. Tongres, 21 December 2006, 9^{ème} Ch. (young women working in a bar); Corr. Liège, 12 June 2006, 14^{ème} Ch.; Corr. Arlon, 5 October 2006, 7^{ème} Ch.

²⁸⁵ A Law of 26 November 2011 (Loi modifiant et complétant le Code penal en vue d'incriminer l'abus de la situation de faiblesse des personnes et d'étendre la protection des personnes vulnérables contre la maltraitance, M.B. 23.01.2012) amended Art. 433*septies* 2° and lowered the standard of proof: must now be established the abuse of the "situation of vulnerability" (situation de vulnérabilité) and not the abuse of the "particularly vulnerable situation" (situation particulièrement vulnérable) of the person.

²⁸⁶ Loi du 15 septembre 2006 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers. M.B. 6 October 2006.

²⁸⁷ 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, OJ L 261, 06.08.2004, p. 19. See Parl. Doc., Ordinary Session 2005-2006, 4 July 2006, Chambre of Representatives, N°51-2478/008.

provide a residence permit to the persons recognised as victims of THB under the newly adopted Art. 433quinquies and who agreed to cooperate with the authorities. The procedure set up in the new Articles 61/2 to 61/5 of the Aliens' Act is identical to the one described in the Directive. Further details on the procedure are to be found in the Circular of 26 September 2008.²⁸⁸

c) MOST RECENT UPDATE: THE LAW OF 6 APRIL 2013

With the adoption in April 2011 of the EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, Belgium had to amend its law in order for it to be compliant with the Directive by 6 April 2013.²⁸⁹ However, irrespective of the EU Directive, parliamentarians had already submitted several legislative proposals on THB. Consequently, instead of being the subject of one comprehensive proposal,²⁹⁰ compliance with the EU Directive 2011/36/EU was ensured through the adoption of various amendments to these legislative proposals that predated the adoption of the Directive.²⁹¹ After discussions and votes in the two parliamentary chambers,²⁹² the new law was adopted on 29 April 2013.²⁹³

Few changes were required, as the Belgian law was one of the legislations used as a basis during the negotiation of the Directive and was already largely compliant with this EU

²⁸⁸ Circulaire relative à la mise en œuvre d'une coopération multidisciplinaire concernant les victimes de la traite des êtres humains et/ou certaines formes aggravées de trafic des êtres humains, M.B. 31 October 2008.

²⁸⁹ The Centre for Equal Opportunities and Opposition to Racism (CEOOR) conducted in its 2010 report an extensive study on the implications for Belgian law of this new Directive. The redactors identified several points for discussion. CEOOR, 2010 Annual Report, pp. 12-22. Available at: <<http://www.diversitybelgium.be/annual-report-trafficking-and-smuggling-human-beings-2010>>.

²⁹⁰ This was the path that was supposed to be taken, as shown by the establishment of a working group in the PFS Justice at the end of 2011 in order to ensure the transposition of the Directive (Huberts and Minet, 2014: 7).

²⁹¹ Proposition de loi visant à modifier l'article 433quinquies du Code pénal afin d'étendre la définition de la traite des êtres humains à l'exploitation sexuelle (déposée par MM. Dirk Claes et Jan Durnez), Parl.doc., Senate, Session 2010-2011, Doc. n° 5-711/1. This proposal was based on a previous one made on 6 January 2010. Parl. doc., Senate, Session 2009-2010, Doc. n° 4-1589/1.

²⁹² The vote in the Senate was almost unanimous, 63 votes in favour out of 64.

²⁹³ Loi du 29 avril 2013 visant à modifier l'article 433quinquies du Code pénal en vue de clarifier et d'étendre la définition de la traite des êtres humains, M.B. 23 July 2013.

instrument (Huberts and Minet, 2014: 6-7). Nevertheless, while considering the remaining measures that would be needed to ensure full transposition of the Directive, one must stress that they only concern optional provisions of the Directive, such as the criminalization of the use of services which are the objects of exploitation (Art. 8 §4, Directive), or the extension of the extraterritorial jurisdiction over THB offences committed without aggravating circumstances (Art. 10 §2 Directive). Finally, one must consider the mechanism according to which the prescription of public action starts only after the victim reaches the age of majority. It is for the moment only applicable to the commission of the offence of THB for sexual exploitation²⁹⁴ and, in order to be in conformity with the Directive (Art. 9 §2), it should be extended to the attempt of committing and the commission of the offence.²⁹⁵ Despite these remaining measures, the final text reveals that once more the Belgian legislator was willing to go beyond the international and EU requirements and to be at the forefront of legislative progress.

Concerning the definition of the offence of THB, the new national definition is not only more comprehensive than the definition included in the EU Directive, but it also amends and extends the previous national definition embedded in the Criminal Code. This innovative provision reads as follows:²⁹⁶

The offence of trafficking in human beings constitutes the recruitment, transport, harbouring, receipt of persons, taking control or transferring the control exercised over them:

1° for the purpose of exploitation of prostitution or other forms of sexual exploitation;

2° for the purposes of begging;

3° for the purposes of work or services, in conditions contrary to human dignity;

²⁹⁴ Art. 21bis Preliminary Title of the Code of Criminal Procedure.

²⁹⁵ Cf. answer from Mrs Turtelboom, Minister of Justice, to the question asked by Mr Lahssaini - Question n°17447, CRIV 53 COM 732, 30 April 2013, p. 6.

²⁹⁶ Translation in CEOOR, 2012 Annual Report, pp. 45-46. Available at: <<http://www.diversitybelgium.be/trafficking-and-smuggling-human-beings-annual-report-2012>>.

4° for the purposes of organ removal in violation of the law of 13 June 1986 on the removal and transplantation of organs, or human biological materials in violation of the law of 19 December 2008 relating to the obtaining and use of human biological material intended for human medical applications or for the purposes of scientific research;

5° or in order to make this person commit a crime or an offence against his/her will.

The legislator chose to remain consistent with most of its choices adopted in 2005. For instance, the *modus operandi* remains considered as aggravating circumstance and not as constitutive element of the offence. This choice makes it “easier to come up with the evidence required to convicting the perpetrators of trafficking” (GRETA, 2013a), but it raises concerns, notably on the repressive approach followed by the Belgian authorities, never questioned since 2005. The GRETA itself has stressed “the need for the Belgian authorities to keep under review whether this may lead to the confusion with other criminal offences, or to possible difficulties regarding mutual assistance [or] to the interpretation of [the provision of the Convention] concerning victim’s consent” (GRETA, 2013a).

Despite these similarities to the previous version of the provision, this new definition entails various drastic changes. Firstly, the offence of trafficking now includes the act of **taking control over someone** (“*prendre le contrôle de*”). This addition follows a suggestion made by the Belgian Federal Police, according to which the previous text did not cover all situations in which control over a person exists. This new addition, as part of the **material element** of the offence,²⁹⁷ was meant to provide the law enforcement authorities with the necessary tools in order to pull ahead of the innovative methods developed by the traffickers to take control over someone.²⁹⁸ This new addition also allows for the coverage of situations involving the purchase of a person, illegal adoption and the control over someone in the framework of forced marriages, all with the view to exploit him/her later.²⁹⁹ This last

²⁹⁷ Parl. Doc., Chamber, 53-2607/04, p. 7.

²⁹⁸ These methods include a wide range of distinct behaviours, such as: adopting an impressive attitude or speaking loudly, using love attachment (the lover boy technique) or marriage bondage (of convenience), using debt bondage, imposing working hours, isolating the person, imposing the presence of a person in the victim’s bedroom at night, etc.

²⁹⁹ See intervention of the representative of the Minister of Justice, report, Chambre des représentants, doc. 53 2607/004, 4 March 2013, p. 8.

possibility brings the Belgian legislation beyond the European standards, as the CoE Convention does not mention these forms of exploitation and the EU Directive only does so in its Preamble. However, such potential extension of the notion of THB, coupled with the establishment of the means as aggravating circumstances, may risk turning THB into a catch-all notion (Clesse, 2013: 223). Indeed, under the current provision, the simple fact of harbouring a person who consented to come to Belgium to work undeclared for an important amount of hours may be covered by the definition of THB and be sanctioned as such (Clesse, 2013: *ibid*). The principle of strict interpretation of criminal law according to which a criminal rule should be interpreted “rigorously”, i.e. limiting as far as possible its scope,³⁰⁰ should be used as a potential barrier to a too broad and potentially *contra legem* application of the offence of THB. Furthermore, Belgian authorities should continue to perform a regular and thorough assessment of the concrete implementation and interpretation of Art. 433*quinquies*, which would indeed be essential to evaluate whether the risk of extending too broadly the scope of THB occurred and to take the necessary measures.

Second, as part of the **moral element**, the **scope of sexual exploitation is extended**, as the new version refers to “the exploitation of prostitution and other kinds of sexual exploitation”. The previous provision used the technique of referral to other articles that criminalized several offences, such as the exploitation of prostitution. Such formulation was not satisfactory for three reasons: 1) it created confusion, 2) it limited the scope of sexual exploitation to the clearly defined offences that were referred to, and 3) it did not cover all kinds of sexual exploitation, such as recruiting to satisfy personal sexual needs (CEOOR, 2012). In contrast, the new wording is much more understandable and clear, though courts will play a key role in interpreting it and giving it substance. Moreover, it is in conformity with the definition adopted at international and European level,³⁰¹ and it could include within the scope of THB for sexual exploitation not only recruiters, brokers and transporters,

³⁰⁰ For more details, see Tulkens and van de Kerchove (2007: 284-f).

³⁰¹ The EU Directive provides, in its Art. 2 §3, that “exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation”.

but also owners, managers, supervisors, and controllers of any place of exploitation. Moreover, it allows for greater flexibility in the definition of sexual exploitation itself, and could include adult pornography, sexual slavery or pornographic performances.³⁰²

Third, also within the **moral element**, the **scope of labour exploitation is also extended**. While the previous wording included the act of making or letting a person work in conditions contrary to human dignity, the new version of the text also refers to **services** performed in conditions contrary to human dignity. This amendment pursues two objectives: complying with the definitions of the EU Directive and the CoE Convention, both mentioning “forced labour or services”, and overcoming the limits identified with the application of the previous regime.³⁰³ For instance, services provided by relatives of the exploiters could be prosecuted under this new definition. Such extension is in conformity with the Belgian legislator willingness to be at the forefront, as it grants public authorities a sufficient margin to include in the scope of application of the THB offence “modern” forms of exploitation.

Finally, the **inclusion of “for the purposes of”** different types of exploitations was considered by the legislator as a means to backtrack from the incorrect jurisprudential interpretation of the offence of THB which required the existence of a criminal network.³⁰⁴ Even though such element was not mentioned in the text, courts and tribunals have relied on the preparatory works that mentioned it in order to add this requirement.³⁰⁵ With the new wording, the legislator aimed at clarifying that the offence of THB is characterised by the final purpose of exploitation, and not by the existence of a criminal network. This latter element is indeed *not* required under Art. 433*quinquies*.

³⁰² Parl. Doc., Ch., n° 53-2607/2, p. 2.

³⁰³ Parl. Doc., Ch., n° 532607/4, 4 March 2013, p. 7 – Intervention of Mrs Carina Van Cauter.

³⁰⁴ It goes indeed against the wording of the law by adding an additional constitutive element that was not foreseen by the law itself. Parl. Doc., Ch., n° 53-2607/2, p. 2

³⁰⁵ Parl. Doc., Ch., n° 51-1560/1, pp. 18-19. CEOOR, 2012 Annual Report, cf *supra*, pp. 44-45 and Huberts and Minet (2014: 9-11).

Concerning **sanctions**, the level of penalties remained unchanged, but an additional law, adopted on 24 June 2013,³⁰⁶ introduced the **multiplication by the number of victims of the fines imposed** pursuant to the provisions criminalizing the different forms of THB.³⁰⁷ The aims of this provision are to affect financially the perpetrator, diminish the financial attractiveness of THB and also reflect the gravity and scale of the exploitation. This amendment was inspired by a practice that is familiar in criminal social law, and which had been already introduced in 2005 as a breakthrough for slum landlords in the Criminal Code.³⁰⁸ Such introduction illustrates once more how the Belgian legislator follows a repressive approach. The efficiency of this approach may be doubted. Moreover, the concrete implementation of these new provisions might be a bit nebulous, especially regarding the definition that ought to be given to the ‘victims’. During the discussions at the Senate, the Minister of Justice, Mrs Turtelboom, stated that reference should be made to the victims mentioned by the Public Prosecutor in his final submissions and recognised as such by the trial judge.³⁰⁹ Her answer, apparently clear, still maintains some ambiguity. On the one hand, she seems to confirm the parallelism between the qualification of victim in the terms of the multiplication of the fine and the qualification of victim pursuant to the procedure established in the terms of the Circular of 26 September 2008.³¹⁰ On the other hand, however, she refers to the applicable system in criminal social law, as well as to the system for slum landlords, under which “the fine shall be multiplied by the number of victims who occupy the premises”,³¹¹ which is established on factual grounds (Clesse, 2013: 547). Her answer did not appear convincing enough for some members of the Commission,³¹² and various practitioners we interviewed expressed diverging opinions and

³⁰⁶ Loi du 24 juin 2013 portant répression de l'exploitation de la mendicité et de la prostitution, de la traite et du trafic des êtres humains en fonction du nombre de victimes. M.B. 23 July 2013.

³⁰⁷ Art. 433quinquies § 4; 433sexies, al.2; 433septies and al.2 and 433octies, al.2 of the Criminal Code.

³⁰⁸ Art. 433undecies al. 2, Criminal Code.

³⁰⁹ Parl. Doc. Chambre, 5 June 2013, n° Doc 53 2818/002, p. 5.

³¹⁰ Cf. infra §90 f.

³¹¹ Parl. Doc., Chambre, 14 January 2005, n° Doc 51 1560/001.

³¹² Parl. Doc., Chambre, 5 June 2013, n° Doc. 53 2818/002, pp. 5-6.

interpretations: some presented strict interpretations³¹³ while others were more in favour of a broader and more inclusive one.³¹⁴ Consequently, a lack of uniform application by the magistrates may be feared, unless some guidance is provided in the future.

1.3. INSTITUTIONAL FRAMEWORK

In application of the multidisciplinary and integrated approach adopted and implemented by the Belgian authorities, many different actors are entrusted with tasks relating to the fight against THB. In this section we present the rich institutional framework, according to the role of each actor in the implementation of the Belgian policy.

1.3.1 ACTORS IN CHARGE OF THE PURSUIT OF TRAFFICKERS

In this section, we present the composition, competence and functioning of the main actors in charge of the detection, investigation, prosecution and judgment of THB cases.

a) ACTORS IN CHARGE OF THE DETECTION AND INVESTIGATION

Many different actors are competent to search and identify THB offences.³¹⁵ For clarity purposes, we chose to focus on law enforcement authorities and social inspection services, which are also competent to investigate further such cases.

Law enforcement authorities: Since 1998,³¹⁶ the law enforcement authorities are constituted by a two-level structured integrated police service: the Federal Police and the Local Police. Within the **Federal Police**, the General Directorate of Judicial Police (DJP) is the

³¹³ Only the victims who received the status and have been recognised as such by the trial judge (Int. 16 – prosecutor, and Int. 18 – official).

³¹⁴ All the victims identified when the offence of THB was first reported (Int. 13 & 19 – labour auditors).

³¹⁵ Art. 81 of the Aliens' Act (extract) "Par tous les officiers de la police judiciaire [...], par les fonctionnaires de la police fédérale et de la police locale, par les agents de l'Office des étrangers et de l'Administration des douanes et accises, par les Inspecteurs du Ministère de l'Emploi et du Travail, du Ministère des Classes moyennes ainsi que ceux de l'Administration de l'inspection sociale du Ministère des Affaires sociales, de la santé Publique et de l'Environnement".

³¹⁶ Loi du 7 décembre 1998 organisant un service de police intégré, structuré à deux niveaux, M.B. 5 January 1999. The reform entered effectively into force on January 1st 2001.

relevant entity for matters of THB. It works mainly at a decentralized level in the 27 Decentralized Judicial Directorates, which all possess a specialized THB team. These services conduct investigations on criminal activities requiring a high level of specialization, or of an important magnitude. In addition, the entity “Human Smuggling and Trafficking in Persons”, belonging to the Central Directorate Fight against Criminality against Persons, provides support, information, analysis and expertise on THB to both local and decentralized Federal Police units. Despite its absence of involvement in field investigations, this entity is in charge of operational actions, such as collaboration with other actors, supervision of the exchange of information between the different districts, as well as with Europol and Interpol. Concerning the **Local Police services**, which exercise both judicial and administrative functions,³¹⁷ the tasks conferred to them as agents (front line officers) and officers of judicial police are potentially linked to the fight against THB.³¹⁸ Some local zones (especially the urban ones) have established specialized THB units when this was justified by the situation in the field. Where they do not, they have at least THB experts working within other units such as morals or fraud units (Int. 9 & 17, police). The two levels of judicial police services are autonomous, and not bound by any hierarchical link.³¹⁹ Under the Ministerial Directive of 2002, it is for the competent Prosecutor or Labour Auditor to determine the attribution of the investigation to a specific service,³²⁰ taking into account mainly the complexity of the case. Whereas in principle, “serious criminality or organized criminality in the frame of THB

³¹⁷ Loi du 5 août 1992 sur la fonction de police (Police Function Act). M.B. 22 December 1992. The local police has notably the functions of providing help to the victims, local investigation and research, maintenance of public order (Arrêté royal du 17 septembre 2001 déterminant les normes d'organisation et de fonctionnement de la police locale visant à assurer un service minimum équivalent à la population. M.B. 12 October 2001).

³¹⁸ Their powers are described in Art. 15 of the Police Functions Act, and include for instance searching for crimes, collection of evidence, seizure of criminal assets, etc. The frontline officers can still perform the other investigative acts not reserved to officers, and they can also notice offences.

³¹⁹ The collaboration between these two levels and the allocation of competences between them is organized by the Ministerial Directive of 20 February 2002.

³²⁰ This can either be attributed in full to the Federal Police or to the Local Police, or jointly to the Federal Police and Local polices zones.

is [...] attributed to the Federal Police”,³²¹ in practice, the attribution will depend on the capacity of the Local Police units³²² and the scale and importance of the investigation.

Social inspection services: The main services concerned are the social inspection services, belonging to the Social Inspection Directorate General, within the Federal Public Service (FPS) Social Security.³²³ They are competent to audit the compliance with the social legislation (administrative documents required, liability to social security, working conditions) and their powers are laid down in the Social Criminal Code.³²⁴ Their competence to search and find THB cases is based on Art. 81 of the Aliens’ Act read together with the Code of Criminal Procedure. In each of the territorial division of the DG,³²⁵ there is a specific unit specifically competent for THB issues: the ECOSOC cell,³²⁶ which carries out controls in working environments where fraud and exploitation are suspected. At national level, a working group on THB, meeting once to twice a year, has been established and aims at exchanging information and good practices on THB, as well as at ensuring the proper training of social inspectors on THB.³²⁷

³²¹ Art. 4.2.1.b of the Directive du 20 février 2002 organisant la répartition des tâches, la collaboration, la coordination et l'intégration entre la police locale et la police fédérale en ce qui concerne les missions de police judiciaire, M.B. 1 March 2002.

³²² Normally in each police zone, one officer at least is supposed to participate in periodic meetings concerning THB, and should thus be able to investigate the case. However, some Local Police Unites will nearly systematically ask for a deferral to the Federal Police of THB cases as their THB unit is either absent or too small (Int. 9, police).

³²³ Their work is complemented by other services in charge of the application of certain specific legislations. Indeed the work of the service in charge of the control of social laws (Directorate General of Monitoring of Social Legislation, within FPS Employment, Labour and Social Dialogue) may also be relevant, but It will not however be analysed in detail.

³²⁴ Code pénal social of 6 June 2010. M.B. 1 July 2010. They can for example take preventive measures when workers’ health and security are endangered, access any working place or any place submitted to their control, proceed at any exam, control or audition they judge necessary and collect all the information they could need to ensure that the law is effectively applied.

³²⁵ There are actually 8 regions, Brussels being divided in two sections (Direction A for the Dutch speaking section, and Direction B for the Francophone section).

³²⁶ According to the Social Inspection Directorate General, THB consists on one hand in the exploitation of the precarious situation in which is an illegal worker, and on the other hand, in the exploitation of a worker without paying the totality of the social security contributions. DG Inspection Sociale, Annual report 2010, p. 7.

³²⁷ GRETA, Report 2013, cf. supra, §34.

b) ACTORS IN CHARGE OF THE “INFORMATION PHASE” (PRE-INVESTIGATIVE PHASE)

In general criminal law, the competent entity lies within the **Public Prosecutor’s Department**,³²⁸ composed of magistrates exercising authority over the judicial police.³²⁹ Public prosecutors take charge of the case 1) either when a police officer or other public servant refers the case to them,³³⁰ or 2) when they open a file at their own initiative.³³¹ Their tasks cover the investigation of all offences (misdemeanours, contraventions and crimes), and thus include prosecution of THB offences, save when the Labour Auditor is explicitly competent in matters of Social Criminal Law.³³² **Labour Auditors** are the Public Prosecutors competent for offences of Social Criminal Law and Labour Law.³³³ They are thus also potentially competent for prosecuting THB cases, especially those for the purposes of labour exploitation connected to other offences of Social Criminal Law and Labour Law. Whenever faced with concurrent or connected cases, the General Prosecutor decides on the allocation of such cases. Generally, the Labour Auditor will be competent if the offences to Social Law demonstrate an objective gravity justifying their emphasis, while facts covered by ordinary criminal law remain subsidiary.³³⁴ Appeals are brought in each of the five Judicial Areas before the General Prosecutors, who lead both the General Public Prosecutor’s Department and the Auditor General, and form the Board of General Prosecutors.

³²⁸ Up to 31 March 2014, the Kingdom counted 27 PPD (one per Judicial District). However, this number has dropped to 12, 1 April 2014. Art. 108 and 163 of Loi du 1 décembre 2013 portant réforme des arrondissements judiciaires et modifiant le Code judiciaire en vue de renforcer la mobilité des membres de l’ordre judiciaire. M.B. 10 December 2013.

³²⁹ Art. 9 Code of Criminal Procedure.

³³⁰ Public servants are under the obligation to inform the Public Prosecutors of the existence of an offence they have the knowledge of in the course of their function. Art. 29 Code of Criminal Procedure. In practice, whenever the police services write a report (procès-verbal), a file is automatically opened at the Public Prosecution Office.

³³¹ Upon a complaint or a denunciation directly submitted to him or whenever he notices himself directly the existence of an offence

³³² Art. 22 Code of Criminal Procedure.

³³³ Pursuant to Art. 155 Judicial Code, the Labour Auditor shall prosecute offences to laws and regulations included in the competences of labour jurisdictions.

³³⁴ In practice, this allocation works quite smoothly and the General Prosecutor intervenes only if no one or both the Public Prosecutor and the Labour Auditor want to prosecute the case.

In addition, there is also a **Federal Public Prosecutor** who is competent for the prosecution of offences of THB with aggravating circumstances. His competence *ratione loci* covers the whole Belgian national territory and his functions entail 1) at national level, the facilitation of the diffusion and exchange of information between the different actors and the designation of the prosecutor's office which ought to prosecute a case³³⁵ and, at international level, ensuring effective international cooperation. The Federal Public Prosecutor would take up a case only if "it is required by a good administration of the justice",³³⁶ which is evaluated according to certain criteria, such as the need for specific expertise or enhanced international cooperation.³³⁷ In the past, the Federal Prosecutor has very rarely used this competence,³³⁸ as it considered that local prosecutors have a larger expertise in investigating THB cases. Since 2012, however, in application of the National Action Plan, it started to research more actively national or international THB cases.³³⁹

c) ACTORS IN CHARGE OF THE INVESTIGATIVE PHASE AND OF THE TRIAL

Whenever the Public Prosecutor considers it necessary or opportune, he/she can decide to open a pre-trial investigation through an application for an investigation (*réquisitoire aux fins d'instruire*). The case file is then transferred to an **investigating judge**. A pre-trial investigation can also start whenever a victim brings a civil action directly before the investigating judge or, *proprio motu*, in case of *flagrante delicto*.³⁴⁰ The investigating judge will lead the investigation, searching both for exculpatory and incriminatory elements. His powers go beyond the ones attributed to police services and public prosecutors as he

³³⁵ DCP, "The fight against trafficking and smuggling in human beings", see *supra*, p. 22.

³³⁶ The competence of the Federal Public Prosecutor is therefore subsidiary.

³³⁷ Common Circular of 16 May 2002.

³³⁸ 5 cases of THB involving sexual exploitation between 2007 and 2009, 3 cases of THB involving labour exploitation. See in this regard, GRETA (2013a: 217).

³³⁹ Hearing of Johan Delmulle, Federal Prosecutor in Parl. Doc., Senate, sess. ord. 2009-2010, Rapport fait au nom de la Commission Intérieur et Affaires sociales, 4 mai 2010, doc. 4/1631/1, p. 22 à 24. See also Action Plan for 2012-2014. <http://www.dsb-spc.be/doc/pdf/ACTIEPLAN_C_MH_FR_2012.pdf>.

³⁴⁰ Art. 59, Code of Criminal Procedure.

can use coercive measures (preventive detention) or measures interfering with suspects' fundamental rights (freezing of assets, phone tapping, etc.).

Once the Investigating Judge considers that the investigation is completed, he/she transfers the file to the Public Prosecutor.³⁴¹ If the latter considers that further acts are not required, he/she will take an order sending the case before the **Council Chamber** (*Chambre du Conseil*). In addition to verifying the legality and proportionality of the investigative acts,³⁴² the Council Chamber can decide to 1) order a stay of the proceedings;³⁴³ 2) dismiss the proceedings³⁴⁴ or 3) order a committal for trial.³⁴⁵ The **Chamber of Indictment** (*Chambre des mises en accusation*) is competent to hear in appeal the actions intended against decisions of the both the investigating judge and the Council Chamber concerning preventive detention or the closing of the investigation.³⁴⁶

Once the Council Chamber has ordered a committal for trial, the case is brought before the trial judge. For THB cases, the court competent to judge the merits of the case is in principle the **Correctional Tribunal** (*Tribunal Correctionnel*), i.e. the criminal tribunal of first instance.³⁴⁷ No chamber within the Tribunal is specialized for hearing THB cases,

³⁴¹ Art. 127, Code of Criminal Procedure.

³⁴² E.g. whenever a person is placed under in preventive detention or when searches and seizures have to be performed in the framework of international legal assistance.

³⁴³ The case-file returns to the Public Prosecutor and ultimately to the Investigating Judge, as additional investigative acts are required.

³⁴⁴ The committed act is not or no longer punishable, or the elements collected are not sufficient to justify the committal for trial of the person concerned.

³⁴⁵ The charges are sufficient to justify a serious and relevant debate during the trial, and the legal qualification of the facts has been performed.

³⁴⁶ The Chamber of Indictment would control the legality of the procedure, the investigative acts and the good course of the investigation. There is a period of 15 days before the audience (24 hours if the accused person is in jail). It can pronounce in appeal the following decisions: decision to dismiss proceedings or committal for trial order.

³⁴⁷ A strict reading of the law seems to prescribe that human trafficking with aggravating circumstances (listed in Art. 433sexies, Art. 433septies and Art. 433octies of the Criminal Code) is an offence punishable by reclusion and the competent court would be the Cour d'Assises. However, these are not permanent jurisdictions and deferring a case before them implies, among others, the composition of a citizen's jury. In order to lessen the workload issue at the Cours d'Assises, the Belgian legislator introduced the possibility to "correctionalize the offence", i.e. if certain circumstances are met, transforming the offence into a misdemeanour and for it to be judged by the correctional tribunal (see in this regard Art. 2, 1°, of the Law of 4 October 1867, as amended by the law of 21 December 2009). Moreover, it is difficult to determine

nevertheless, when relevant, the Labour Auditor can suggest bringing the case before the Chamber specialized in criminal social law.³⁴⁸ Once the judge delivers his ruling, all the parties, including the victim if he/she has launched a civil action, may make an appeal³⁴⁹ before the Court of Appeal.

d) SPECIFICITY OF DOMESTIC SERVITUDE CASES

Domestic workers and employees working for diplomats in Belgium may also work in conditions contrary to human dignity. However, diplomatic privileges and specific rules do not allow applying normal criminal procedures. Therefore, the Directorate General of Consular Affairs, within the FPS Foreign Affairs, has established a THB section specifically aimed at ensuring respectful conditions of work. Several mechanisms have been created to prevent any form of exploitation and trafficking, and entail both preventive and continuous controls throughout the duration of the contract.³⁵⁰ Moreover, the Consular Affairs may also act in case of litigation or serious complaint during or after the execution of the contract.³⁵¹

1.3.2 ACTORS IN CHARGE OF THE PROTECTION OF VICTIMS

Public authorities entrusted **specialized reception centres (SRCs)** (*Centres d'accueil spécialisés*) with the task to provide assistance to adult victims of trafficking in and smuggling of human beings.³⁵² Whereas the Directives of 13 January 1997³⁵³ or the Law of 15

before the trial if aggravating circumstances are present in the submitted case. The Council Chamber may decide on their existence or not, but the Correctional Tribunal can also decide on the existence of mitigating circumstances, such as the lack of criminal record of the accused person. Therefore, all THB cases are in practice judged before Correctional Tribunals.

³⁴⁸ Cf. infra §89.

³⁴⁹ This action has a suspensive (no enforcement of the judgment appealed) and devolutionary (transfer to the appeal judge) effect.

³⁵⁰ For more details, cf. infra §0.

³⁵¹ Parl. Doc., Ordinary session, Senate, Doc. n° 4-1631/1, 4 May 2010.

³⁵² Currently 3 Centres are active: Pag-Asa in Brussels, Payoke in Antwerp and Sürya in Liège.

³⁵³ Directives du 13 janvier 1997 à l'Office des Etrangers, aux parquets, aux services de police, aux services de l'inspection des lois sociales et de l'inspection sociale relatives à l'assistance aux victimes de la traite des êtres humains. M.B. 21 February 1997.

September 2006³⁵⁴ mentioned them, their official recognition intervened only with the adoption of the Royal Decree of 18 April 2013.³⁵⁵ These centres have to be contacted as soon as a victim of THB is detected,³⁵⁶ or earlier when police services or the inspection services still have doubts regarding whether or not the person is victim of THB.³⁵⁷ Their tasks are to provide: accommodation in secure reception facility or in transit flats, social assistance (i.e. social benefits), linguistic guidance,³⁵⁸ psychological aid and medical assistance, as well as legal assistance.³⁵⁹ Whereas national and international bodies, including the GRETA, acknowledge their work and expertise, in particular to build a relationship of trust with the victims, these centres lack stable and permanent funding.³⁶⁰ The Royal Decree clearly states that an official recognition does not entail a right to subsidies. In practice, the subsidies from various public institutions are only granted on a yearly basis. As a consequence, the centres devote time and energy to the preparation of funding applications, instead of fully focusing on their core missions. The question of structural funding of the centres is currently under discussion, but it faces some obstacles of

³⁵⁴ While Art. 61/2 of the Law of 15 September 2006 mentions to obligation to put a potential victim of THB in contact with a “centre recognized by the competent authorities, specialized in the reception of victims”, no specific organization is being specifically mentioned. One must refer to the preparatory works in order to find an indication that these reception organizations are the three above-mentioned centres. Parl. Doc. Senate, 3-1786/3, 13 July 2006, 2005-2006. The Circulaire du 26 septembre 2008 relative à la mise en œuvre d'une coopération multi-disciplinaire concernant les victimes de la traite des êtres humains et/ou de certaines formes aggravées de trafic des êtres humains, M.B. 31 October 2008, also specifically mentions these three centres with their contact details.

³⁵⁵ Arrêté royal du 18 avril 2013 relatif à la reconnaissance des centres spécialisés dans l'accueil et l'accompagnement des victimes de traite et de certaines formes aggravées de trafic des êtres humains et à l'agrément pour ester en justice, M.B. 22 May 2013. It also specifies the conditions under which other associations may be recognised as SRCs (legal status of not-for-profit association; establishment on the Belgian territory; reception, assistance and accommodation of trafficking victims as main activity; administrative and legal follow-up of adult and minor victims).

³⁵⁶ Art. M3, III, c) 2) Circulaire du 26 septembre 2008 relative à la mise en œuvre d'une coopération multi-disciplinaire concernant les victimes de la traite des êtres humains et/ou de certaines formes aggravées de trafic des êtres humains, M.B. 31 October 2008.

³⁵⁷ Similarly, pursuant to the Royal Decree, whenever the SRC has doubts regarding whether or not the person qualifies as victim, it must inform the Public Prosecutor in order to make a determination on the status of the person.

³⁵⁸ The SRCs try to provide interpreters whenever necessary. Moreover, they try to set up language courses to favour the integration of victims in Belgium.

³⁵⁹ The recent Royal Decree opens up the possibility to launch the procedure provided for within the framework of the system of residence permits, and to be authorised to bring legal proceedings to uphold those victims' rights.

³⁶⁰ See especially Payoke, 2012 Annual Report, pp. 16-18, Pag-Asa, 2012 Annual Report, p. 12 and 39, and GRETA Report 2013, §149.

political nature.³⁶¹ In addition, other centres work in collaboration with the three SRCs when unaccompanied foreign minors, victims of THB, are entitled to accompaniment and accommodation.³⁶² Besides them, several organizations are active in awareness-raising and fight against THB, such as the Samilia Foundation, ECPAT-Belgium, the network “Plateforme-Mineurs en Exil” and the Foundation for missing and sexually exploited children (Child Focus).

The **Foreigners’ Office** (*Service des étrangers*) is part of the FPS of the Interior, and is in charge of the access of foreigners to the Belgian territory, including the issuance and withdrawal of their residence permits. The Foreigner’s office has established a unit specifically dedicated to both minors and adults victims of human trafficking (MINTEH) within the Directorate “Access and Stay”.³⁶³ This unit examines whether or not a potential victim of trafficking meets all the necessary requirements in order to deliver a residence permit. It is competent, in close collaboration with the Public Prosecutor, to decide on the delivery or withdrawal of a residence permit to persons who were granted the status of victim of human trafficking.³⁶⁴

1.3.3. ACTORS IN CHARGE OF THE ELABORATION AND FOLLOW-UP OF THE NATIONAL POLICY

The **Department of Criminal Policy** (DCP) (*Service de Politique Criminelle*) was created as a section within the FPS Justice by the Royal Decree of 14 January 1994.³⁶⁵ Its missions include assistance of the Minister of Justice and of the Board of General Prosecutors, provision of information and proposals on crime policy on THB in order to consolidate and harmonize investigation, prosecution, prevention, repression and

³⁶¹ GRETA, (2013a:149); Int. 14 & 20 (SRC), and Int. 18 (official).

³⁶² Esperanto is specialized in the accompaniment and accommodation of unaccompanied foreign minors who are victims of THB. Cf. infra. §0.

³⁶³ MINTEH stands for Mineurs et Traite des Etres Humains (minors and trafficking in human beings). Parl. Doc., Ordinary session, Senate, n° 4-875/3, 12 January 2010, session 2009-2010.

³⁶⁴ Articles 61/2 to 61/5, Law of 15 December 1980. See below §90 and following.

³⁶⁵ M.B. 3 March 1994.

sentencing policies.³⁶⁶ In addition, the Department is in charge of assessing on a yearly basis the Ministerial Directive on investigation and prosecution policy in cases of THB.³⁶⁷ and of issuing a biennial report on the state of play regarding THB in the Kingdom.³⁶⁸ It also shares the role of national rapporteur with the CEOOR³⁶⁹ and participates, alongside the CEOOR, in the meetings of the EU Network of National Rapporteurs and Equivalent Mechanisms.

The **Centre for Equal Opportunities and Opposition to Racism** (*Centre pour l'égalité des chances et de lutte contre le racisme*), established by law in 1993,³⁷⁰ was tasked in 1995 to promote the fight against trafficking in (and since 2005, also against smuggling of)³⁷¹ human beings.³⁷² Although it has never been appointed to do so, the CEOOR also endorses part of the role of national rapporteur on THB (Int. 8, CEOOR).³⁷³ This independent administrative body³⁷⁴ is indeed charged since 2004 of “the promotion, coordination and follow-up of the policies of the fight against trafficking in human beings”.³⁷⁵ The yearly

³⁶⁶ DCP, “The fight against trafficking and smuggling in human beings”, cf. *supra*, p. 24.

³⁶⁷ Not accessible to the public as it contains sensitive information on on-going investigations. GRETA, Report 2013, cf. *supra*, §74.

³⁶⁸ These reports contain an examination of the actions and initiatives undertaken by the actors involved (prevention, information, awareness-raising and coordination) and an evaluation of some established mechanisms. To date, the latest available report covers the period of 2009-2010, accessed on 22 May 2014, at: <http://www.dsb-spc.be/web/index.php?option=com_content&task=view&id=41&Itemid=65>.

³⁶⁹ This leads to the situation where both the Government (through the Department of Criminal Policy) and the CEOOR are represented in meetings intended for national rapporteurs. This situation will most likely remain status quo. Indeed, being an independent centre it is not vested with the public authority, while the Government deems it necessary to be able to give political answers and assessments, which are vested with public authority (Int. 18, official).

³⁷⁰ Loi du 15 février 1993 créant un Centre pour l'égalité des chances et la lutte contre le racisme, M.B. 19 February 1993.

³⁷¹ Art. 35 and 36 of the Loi du 10 août 2005 modifiant diverses dispositions en vue de renforcer la lutte contre la traite et le trafic des êtres humains et contre les pratiques des marchands de sommeil, M.B. 2 September 2005.

³⁷² Art. 11 § 3, Loi du 13 avril 1995 contenant des dispositions en vue de la répression de la traite et du trafic des êtres humains, M.B. 25 April 1995.

³⁷³ In addition to its joint invitation with the DCP to the EU Network of National Rapporteurs on THB, the CEOOR is also accredited to the United Nation as the NHRI for Belgium (type B).

³⁷⁴ Art. 3 of the Law of 19 February 1993.

³⁷⁵ Art. 1, Arrêté royal du 16 mai 2004 relatif à la lutte contre le trafic et la traite des êtres humains, M.B. 28 May 2004.

publication of public and independent annual reports was prescribed in 2004,³⁷⁶ even though such reports, analysing the evolution of the Belgian policy and evaluating its results, were being published since 1995. The CEOOR ensures moreover the coordination between the three SRCs³⁷⁷ and has been granted legal standing in cases related to THB.³⁷⁸ In 2014, the CEOOR has been split into the Inter-federal Centre for Equal Opportunities, on the one hand, and the Federal Centre for Migration, on the other hand, the latter being competent for THB matters.³⁷⁹

1.4 COORDINATION MECHANISMS

The **Interdepartmental Coordination Unit** for Action against Trafficking in and Smuggling of Human Beings (*Cellule Interdépartementale de coordination de la lutte contre la traite des êtres humains*), established by the Royal Decree of 16 May 2004, is mainly tasked with 1) coordination and exchange of information, 2) critical evaluation of the results in matter of fight against THB and 3) formulation of concrete proposals and recommendations.³⁸⁰ The Interdepartmental Unit has a primary role of political follow-up (Int. 18, official). The DCP chairs this Unit, and the secretariat is assured by the CEOOR.³⁸¹ While its assembly of approximately 80 persons³⁸² must meet at least twice a year,³⁸³ a more restricted board takes care of the daily work.³⁸⁴ Working Groups can also be established,

³⁷⁶ Ibidem, Art. 2.

³⁷⁷ Art. 3 of the Royal Decree of 16 May 2004. As an example, the three centres under the auspices of the CEOOR have agreed upon an accompanying agreement. To date, this agreement (binding upon the accompanied victim and the reception centre) is nearly identical to the three centres. (Int. 20, SRC).

³⁷⁸ Art. 3, 5° of the Law of 19 February 1993.

³⁷⁹ The Cooperation Agreement between all federal and federated entities of 12 June 2013 or more precisely the acts approving it have been published on 5 March 2014 (see M.B of that day).

³⁸⁰ Art. 8 of the Royal Decree of 16 May 2004. Parl. Doc., Senate, n° 4-1631/1, 4 May 2010, session 2009-2010.

³⁸¹ Art. 4 of the Royal Decree of 16 May 2004.

³⁸² Pursuant to Art. 5 §1 of the Royal Decree, the Unit is composed by representatives of many different public authorities: Ministers and specialised services of Federal Public Services, PPD, Police forces, social inspections services, etc. Only one NGO, Child Focus, is represented, but in the future the SRCs should also be represented. The deadline for this formal integration of the SRCs was December 2013. National Action Plan, proposal 16.

³⁸³ Art. 6 §1 of the Royal Decree of 16 May 2004. Effectively it meets on a biennial basis (Int. 16, prosecutor).

³⁸⁴ Detailed composition in GRETA (2013a:20).

such as the one chaired by the Foreigners' Office, assessing the use of the "order to leave the territory" (Int. 18, official).

Within the Board of General Prosecutors, the General Prosecutor of Liège carries out the specific tasks related to THB,³⁸⁵ and is assisted to that end by a **Coordination Team**,³⁸⁶ which meets three to four times a year.³⁸⁷ It is also in this context that he is in charge of the administration of the **Network of Excellence "Trafficking and Smuggling in Human Beings"**, set up in 2001 by the Board of General Prosecutors and composed of nearly 100 persons.³⁸⁸ In consultation with this network, the DCP organizes every two years a workshop for magistrates and police officers who are working on THB, aiming at exchanging information, expertise, good practices and experience.³⁸⁹

2: THB IN BELGIUM: AN EMPIRICAL ANALYSIS

Whereas the previous part examines the general frameworks, both legal and institutional, in which the fight against THB takes place in Belgium, this part focuses on the practical implementation of the Belgian anti-trafficking policy. Firstly, the *current* situation of THB in the country will be briefly presented on the basis of up-to-date information. We will then assess the adopted policies regarding each of the main objectives pursued: the prosecution of traffickers, the protection of the victims and the prevention of THB.

³⁸⁵ Art. 5,1° of the Royal Decree states that the Prosecutor General of Liège is in charge of the tasks related to "criminality against persons, in particular trafficking in human beings, paedophilia and ill-treatment of children". Arrêté royal du 6 mai 1997 relatif aux tâches spécifiques des membres du collège des procureurs généraux. M.B. 14 May 1997.

³⁸⁶ The team is composed of the five General Public Prosecutor's Departments and General Auditorates, the Federal Prosecutor's Office, a representative of the DCP, a representative of the legislation section within the FPS Justice and the presidents of the Council of Public Prosecutors and the Council of Labour Auditors.

³⁸⁷ GRETA (2013:27).

³⁸⁸ All the Reference Prosecutors, a representative of the DCP, a coordinator of statistical analysts, a representative of the legislation section within the FPS Justice, the three specialised reception centres, the Foreigners' Office, main police officers working THB, etc.

³⁸⁹ DCP, "The fight against trafficking and smuggling in human beings", cf. *supra*, p. 21.

In the introduction, we have presented the situation of THB in Belgium, on the basis of studies carried out by NGOs, international and/or national actors, etc. In contrast, in this section, we will present the situation of THB in the country on the basis of the empirical research we conducted (i.e. interviews, surveys, etc.).

As a preliminary remark, it must be stressed that there is **no centralised and synthetic collection of data on THB cases** in Belgium.³⁹⁰ The CEOOR, in its Annual Reports, only publishes data collected by various actors, *e.g.* public authorities (Federal Police, Public Prosecutor's Department, FPS, etc.) and SRCs, each of them following its own methodology. Yet, one must mention the Eldorado initiative (for *Elektronische Dossiers – Rassemblement de Données*), launched in 2012 by the three SRCs and the CEOOR, which enables to centralise anonymised data on THB cases. As a consequence, the CEOOR was able to publish comprehensive tables in its two last Annual Reports, presenting the victims per gender and type of exploitation.³⁹¹

The observation according to which Belgium is mainly a country of destination and transit, and not a country of origin has been confirmed by all the Belgian actors working on this issue who have been interviewed, as well as by the results of the survey that was carried out. The latter shows indeed that for a large majority of the persons interrogated, Belgium is a destination and a transit country, for both trafficking for the purposes of sexual exploitation and labour exploitation.

In this regard, it must be stressed that **Belgian victims of THB** constitute a marginal phenomenon. Most of the survey's answers³⁹² showed that persons disagreed or could not agree with the statement that several Belgian women are forced to prostitute themselves in Belgium and in other countries. The newspapers we analysed do not mention any case where a Belgian national was considered as a victim of THB. Moreover, during the

³⁹⁰ GRETA (2013a: 88).

³⁹¹ CEOOR, 2011 Annual Report, p. 137; and 2012, Annual Report, p. 97.

³⁹² In contrast, only 2 out of 16 answers agreed with the statement that "there are Belgian women that are forced to prostitute themselves in Belgium and other countries".

interviews, many actors confirmed that a very limited number of Belgian nationals are reported as victims of THB (Int. 4 & 6, social inspectors). Persons working in SRCs indicated that Belgian nationals identified as victim of THB were frequently in situation of extreme vulnerability or lacked discernment (Int. 3 & 14, SRC).³⁹³ Policemen working against forced prostitution also indicated that, in their experience, Belgian women prostituting themselves in the streets often suffered from drug addiction, and were therefore in a more vulnerable situation (Int. 17, police).

Belgium seems to be an **important destination country for flows coming from Eastern and South East Europe**. The survey's results reveal that for many policemen, Eastern European countries, such as Romania and Bulgaria, as well as Albania, are among the regions that have most impact on sexual and labour trafficking. Information collected during interviews also confirms this observation, as these countries were often mentioned as one of the main countries of origin (Int. 7, 12 & 17, police). The data collected from the three SRCs and aggregated by the CEOOR also supports it: the 2011 CEOOR Annual report establishes that 12 out of the 37 accompaniments of victims of sexual exploitation were nationals of Eastern or South Eastern European countries (CEOOR, 2011: 136). The proportion remained similar in 2012, as 25 out of 58 victims of sexual exploitation came from these countries (CEOOR, 2012: 96).

Belgium seems also to be a **destination country for international trafficking flows**. Asia, South America or Africa are mentioned in the survey's results as regions of major importance for sexual and labour trafficking. Concerning sexual trafficking, the data collected by the SRCs reveals that Nigerian nationals are by far the biggest group of victims of sexual exploitation accompanied by the centres, though no specific African country has been singled out in the survey by the policemen.³⁹⁴ Nigerian networks seem to be active in

³⁹³ This is confirmed by the data provided by the SRCs (Pag-Asa: 1 Belgian victim accompanied in 2007, 0 in 2008-2009 and 1 in 2010, 2011 and 2012; Payoke: 2 Belgian victims accompanied in 2008, 5 in 2009, 1 in 2010, 2 in 2011 and 0 in 2012; Sürüya: 1 Belgian victim accompanied in 2009, 2 in 2010-2011 and 0 in 2012).

³⁹⁴ Ibid. Accompaniments were launched for 8 Nigerian women (including one minor) in 2011 and for 16 Nigerian women (including one minor) in 2012.

Belgium, as they are active in other EU Member States, which is somehow confirmed by the operation conducted in Brussels last December in the framework of an EU Operational Project (CEOOR, 2012). Concerning labour exploitation, North Africa and South America are often mentioned in the survey's answers. Victims coming from North Africa are among the biggest groups of nationals for who accompaniments have been launched: 29 out of 75 victims of labour exploitation in 2012 and 32 out of 88 in 2011. Was also commented the case of Brazilian networks (Int. 4, social inspector), in which organized networks traffic Brazilian nationals through Portugal and exploit them in Belgium (men in the construction field, women as nannies or housemaids, under a false status of independent workers).

It is important to examine which form of exploitation is predominant in Belgium, and whether some fluctuations were observed throughout the past years. To that end, the statistics provided by the SRCs and covering the period 2005-2012 are particularly relevant. Despite annual variations, labour trafficking victims represent the majority of victims accompanied by the centres (683 victims of labour exploitation versus 447 victims of sexual exploitation). However, the predominance of labour exploitation cases appears to vary depending on the localisation of the centre. Whereas Payoke, located in Antwerp, a town known as an important prostitution place, has accompanied a majority of victims of sexual exploitation (233 victims out of 419 – Table IV.1), the two other centres, Pag-Asa and Surya, have accompanied a majority of victims of labour exploitation (respectively 245 victims out of 377 for Pag-Asa – Table IV.2 – and 252 victims out of 334 for Surya – Table IV.3).³⁹⁵ Only in 2012 did Pag-Asa accompany more victims of sexual trafficking than victims of labour trafficking, but this may be explained by the realization of targeted investigations in the prostitution sector.

³⁹⁵ All these tables can be found in Clesse (2013: 674). In "Other" are included other types of exploitation and smuggling of human beings.

TABLE V.1 (PAYOKE) – REPARTITION OF ACCOMPANIED VICTIMS PER FORM OF EXPLOITATION

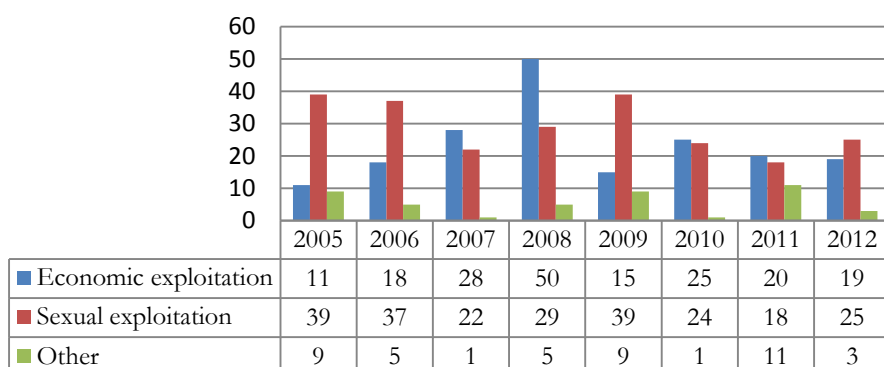


TABLE V.2- (PAG-ASA) – REPARTITION OF ACCOMPANIED VICTIMS PER FORM OF EXPLOITATION

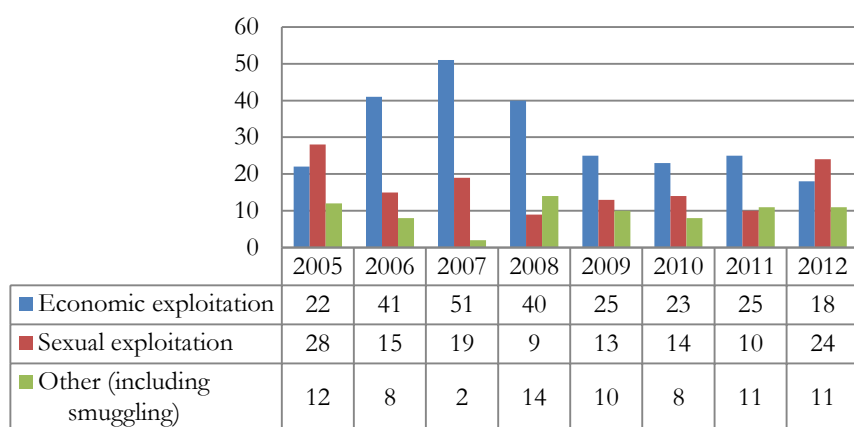
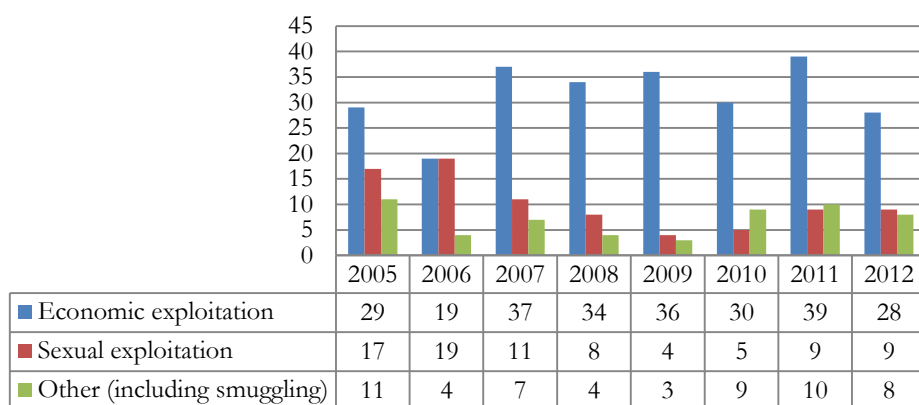


TABLE V.3 - (SURYA) – REPARTITION OF ACCOMPANIED VICTIMS PER FORM OF EXPLOITATION



This predominance of labour exploitation cases is furthermore apparent in the data collected by the MINTEH section of the Foreigners' Office. This report is very useful to get an insight of the number of demands of residence permits, based on Articles 61/2 to 61/5 of the Alien's Act of 15 December 1980, as well as of the profile of the persons who make such an application. It clearly results that the number of new applications based on economic exploitation is superior to the number of new applications based on sexual exploitation (Table IV.4). Moreover, the predominance of labour exploitation cases is still relevant today, as they represent 42 % of the demands introduced in 2012.

TABLE V.4 – NUMBER OF NEW APPLICATIONS, REPARTITION PER TYPE OF EXPLOITATION (2010-2012)

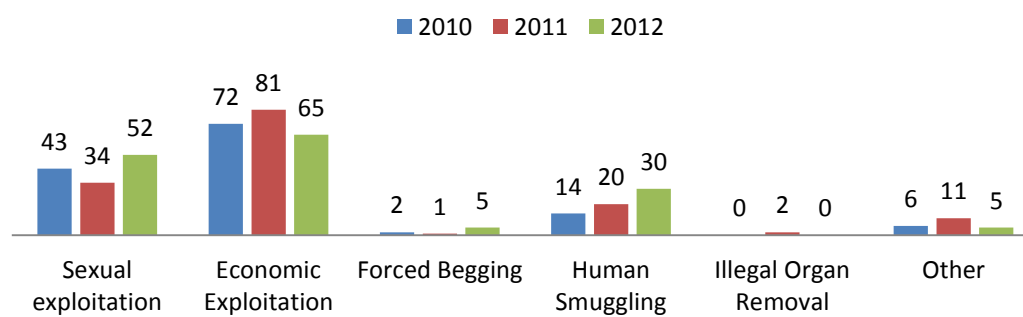
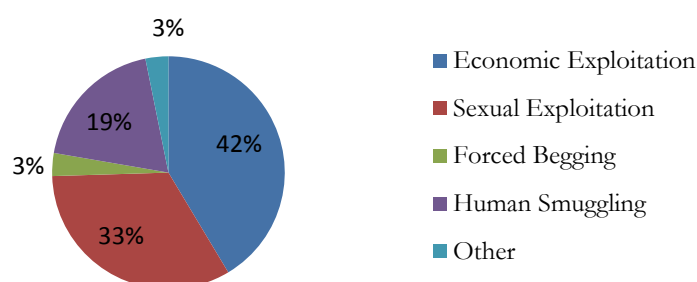


TABLE V.5 – REPARTITION PER TYPE OF EXPLOITATION OF THE 157 NEW DEMANDS IN 2012



2.1. ASSESSMENT OF THE IMPLEMENTATION OF THE NATIONAL ANTI-TRAFFICKING POLICY

The empirical research we conducted should enable us to carry out an assessment of the content and the implementation on the field of the Belgian anti-trafficking policy. To be as complete and clear as possible, we decided to proceed to the study of each of the 3 Ps: prosecution of traffickers, protection of victims and prevention of THB. We decided not to

focus on partnerships considered as the fourth P., as pursuant to the application of the integrated and integral approach, partnerships and cooperation between the different relevant actors are present in all aspects of the Belgian policy.

2.1.1. PROSECUTION OF TRAFFICKERS

In this part, we will focus on the different steps leading to the effective prosecution and conviction of traffickers. Considering the inextricable link between investigation and prosecutions, due to the fact that they are often conducted simultaneously and in a concerted way, these two aspects will be discussed together (a). We will then proceed with the analysis of the trial stage, when the case is brought before a judge, who may or may not convict the accused for THB (b).

a) INVESTIGATION AND PROSECUTION OF THB CASES

Investigations and prosecutions are nowadays organized in two texts:³⁹⁶ the Ministerial Directive of 14 December 2006 on investigation and prosecution policy in cases of THB and the Circular n° COL 1/2007 of 17 January 2007 of the Board of General Prosecutors on investigations and prosecutions of acts of trafficking. By the end of this year (2014), both should be replaced by new texts, reflecting the changes introduced in 2013. These instruments apply to all actors involved in the implementation of the Belgian criminal prosecution policy, such as police forces, social inspections services and public prosecutors, and are essential for an effective prosecution of traffickers as they standardize the conduct of the investigation services and the prosecution of THB on the field, taking into consideration specific local circumstances. However, we will not present them exhaustively and we will focus on thematic issues.

The importance of having sufficiently trained investigators

³⁹⁶ They were previously organised by the Circular n° COL 12/99, which was amended so as to reflect the legislative changes introduced by the Law of 10 August 2005. Action Plan 2012-2014, cf. supra.

Training of specialized and non-specialized actors is a key factor in the success of the fight against THB, and policemen insisted on the specific features of THB investigations, which, alongside the necessary expertise on these cases, justify the establishment of specialized investigation services (Int. 12, police). In this regard, the GRETA has inventoried the different trainings offered to police forces (specialized services as well as front line officers), prosecutors and administrative staff (GRETA, 2013:78-85). Whereas both the European experts and the practitioners concerned have welcomed the efforts of the Belgian authorities (),³⁹⁷ a clear lacuna appears: the lack of knowledge about THB and the lack of specialization among the investigating judges. Unlike police inspectors and public prosecutors, investigating judges do not specialize in actions against THB (CEOOR, 2009: 124)³⁹⁸, and they may lack of specialization and knowledge about the phenomenon and/or its legal definition. Such lack may jeopardise certain investigations, either because the necessary duties of investigation or arrest are not carried out, which has a certain impact on the feeling of security and protection for the victims, or because the investigation focuses on one single defendant, and leaves untouched the rest of the network (CEOOR, 2009: 124). The CEOOR recommended the appointment of specialized investigating judges, a recommendation which has not been followed as such, as the National Action Plan only foresees the organization of regular training for new magistrates and judicial trainees.

The importance of making use of modern investigation techniques

According to Eurojust (2012: 9, 13), “issues related to evidence are, by far, the main problems faced by prosecutions targeting THB offences and related crimes [and] investigators must learn to make use of all possible investigative techniques tailored to each case”. Belgian authorities are fully aware of these challenges, common to most of the serious and/or organized forms of crimes, and measures have been taken in order to strengthen the collection of data, the recourse to modern investigations techniques and to financial investigations.

³⁹⁷ The person was very positive about the training day THB and smuggling organised by the THB Unit of the Federal Police.

³⁹⁸ And Int. 9, police.

Collection of data: the Circular n° COL 1/2007 pays particular attention to the collection of information at both local and national level in order to map the various forms of THB and their extent, including the high-risk sectors and places. The **data concerning arrested persons**, combined with the data concerning the managers and owners of high-risk places, is used to steer new actions or more thorough investigations.³⁹⁹ However, as each institution collects data on the basis of its own remit, it is difficult to obtain centralised and uniform data, without mentioning the problems of misidentification/bad classification of THB cases. The analysis of THB data and the preparation of strategic guidelines and/or operational plans are thus complicated. The creation of the CIATTEH (*Centre d'information et d'analyse en matière de trafic et de traite des êtres humains*) was designed to fill such gap: the Royal Decree of 16 May 2004⁴⁰⁰ defined it as a computerised information network, compiling anonymous data transferred by different partners.⁴⁰¹ Unfortunately, due to a lack of human and financial resources, and to the obstacle created by the obligation to work with anonymous data,⁴⁰² the CIATTEH never became operational and its activities have now been recently terminated.⁴⁰³ The option currently opted for is to collect the data available within the different departments and services, assess its completeness and work upon it to elaborate an analysis framework.⁴⁰⁴ An additional difficulty arises because of the impossibility to collect **data relating to victims**, despite the fact that it would constitute a valuable source of information for investigation purposes and a key element to develop proactive investigations.⁴⁰⁵ In the past, i.e. before the reform of the police, it was possible to collect basic information on the women through the declaration of arrival or of departure, providing a map of intra-Belgian movement. Nowadays, it is no longer possible to insert data

³⁹⁹ DCP, "The fight against trafficking and smuggling in human beings", cf. supra, p.11.

⁴⁰⁰ Arrêté royal du 16 mai 2004 relatif à la lutte contre le trafic et la traite des êtres humains. M.B. 28 May 2004.

⁴⁰¹ All the actors participating in the Interdepartmental Coordination Unit

⁴⁰² For more details, see GRETA, Report 2013, cf. supra, §89.

⁴⁰³ Ibid.

⁴⁰⁴ Ibid. and Int. 18, official.

⁴⁰⁵ Such data would for instance enable police investigators to identify the territory in which a specific criminal group is active, if the same girls, known to be under their control, are present in distinct places.

on prostitutes or victims in the national police databases. However, each service/unit seems to have developed its own practice in the loopholes and grey zones of the law, such as, for instance, recording the street prostitutes as suspects of incitement to debauchery (Int. 12, police). Both findings reveal the incompleteness of the current legal framework and the need for a common and harmonized database system, compliant with the rules on data protection. Such system would complement the work currently conducted by the SIRS (*Service d'Information et de Recherche Sociale*)⁴⁰⁶ on labour trafficking. In addition to the elaboration of yearly strategic and operational plans for the fight against social fraud, and thus indirectly against THB, this specialized service also supports and coordinates joint actions of competent services in high-risk sectors.⁴⁰⁷

Modern investigative techniques: as traffickers continuously develop new forms and means of exploitation, investigators must adapt themselves. Proactive investigations and special investigations techniques are in this regard essential and inextricably linked. As they are not specific to THB-related investigations, general provisions of the Code of Criminal Procedure are applicable, *only* to investigate THB with aggravating circumstances.⁴⁰⁸ **Proactive investigations**, defined in Article 28*bis* §2 of the Code of Criminal Procedure (CCP), consist in the search, collection, recording and treatment of data and information on the basis of a reasonable suspicion that punishable offences yet unknown will be perpetrated or have already been perpetrated. **Special investigation techniques**,⁴⁰⁹ listed in Art. 47*ter* §1 CCP, include observation, infiltration, recourse to informers and secret surveillance.⁴¹⁰ These

⁴⁰⁶ Dependent from the FPS Labour, Social Affairs and Justice, the Ministry responsible for the independent and the Secretary of State in charge of the coordination of the fight against the fraud.

⁴⁰⁷ High-risk sectors, such as construction, HORECA services, cleaning, transport, are identified and quotas of controls are established at national level. Afterwards, the SIRS also collect statistics, in which detected THB cases are reported <<http://www.sirs.belgique.be/siodsirs/moduleHome.aspx?id=24108>>.

⁴⁰⁸ Aggravating circumstances are defined in Articles 433*sexies*, 433*septies* and 433*octies* of the Criminal Code, and are referred to in Article 90*ter* CCP on phone tapping, which contains in its § 2 to 4 the list of offences in which these measures may be used.

⁴⁰⁹ Introduced in the CCP by a law of 6 January 2003 (Loi du 6 janvier 2003 concernant les méthodes particulières de recherche et quelques autres méthodes d'enquêtes, MB 12 May 2003), and subsequently amended (for instance in 2005 by the Loi du 27 décembre 2005 portant modification diverses au CIC et au CJ en vue d'améliorer les modes d'investigation dans la lutte contre le terrorisme et la criminalité grave et organisée, MB 30 Dec. 2005)

⁴¹⁰ See Art. 47*sexies* §1 CCP; Art. 47*octies* §1 CCP and Art. 47*ter* §1 CCP. Secret surveillance allows the police forces to get into private premises without the owner knowing and without the latter's consent, see Art. 46*quinquies* or 89*ter* CCP.

modern investigative techniques are essential, as in most THB cases the arrest of the suspected exploiter constitutes the conclusive act of an investigation during which the needed evidence has been gathered (Int. 7, 12 and 17, police). Law enforcement authorities must thus collect beforehand a bundle of elements demonstrating the potential/likely existence of a THB situation (pictures obtained through discreet surveillance measures, phone tapping, etc.).⁴¹¹ Moreover, in order to ensure the safety of the victims while encouraging them to testify, investigators can offer them partial anonymity,⁴¹² or the more advanced possibility to testify anonymously.⁴¹³

Financial investigations: financial investigations are essential to detect THB concealed behind complex legal constructs and to freeze, seize and confiscate the assets and incomes of traffickers (CEOOR, 2011: 13-63). The future revised version of the Circular n° COL 1/2007 shall include a specific section on this issue.⁴¹⁴ In this regard, the cooperation with the Belgian Central Financial Intelligence Unit (CTIF) should be stressed.⁴¹⁵ This independent administrative authority, competent to analyse suspicious financial transactions linked to money laundering, can indeed identify the mechanisms used by traffickers to cover the footprints of THB⁴¹⁶ (Delepière *et al.*, 2014). Yet, whereas estimates of the Federal Police consider that products of THB in Belgium represent almost 1 billion euros per year,⁴¹⁷ the CTIF has “only” transmitted 177 files between 2010 and 2012, representing an amount of

⁴¹¹ In some cases, the investigators (police and social services) use discreet visual surveillance to obtain pictures establishing the links between the suspect and the victims (Int. 16, prosecutor).

⁴¹² Either some data relating to the witness' identity is omitted in the hearing report (Art. 155bis and 296 CCP) or his residence is replaced with an indication of the service address (Art. 155ter and 297 CCP).

⁴¹³ Art. 86bis to 86quinquies CCP. Such possibility restrains however the probative value of the testimony, which must then be corroborated by other evidence.

⁴¹⁴ National Action Plan 2012 – 2014, p. 27.

⁴¹⁵ See P. de Koster's intervention during the Workshop. CEOOR, Annual Report 2011, English version, J.C. Delepière, External contribution: the financial approach to human trafficking, p. 28 – 30.

⁴¹⁶ THB cases are detected notably on the basis of the red flag indicators of money laundering from human trafficking, elaborated by the Financial Action Task Force (FATF) – See FATF, Money laundering risks arising from Trafficking in Human Beings and Smuggling of Migrants, July 2011. See also CTIF, 2011 Annual Report, p. 87 – 92 and 2012 Annual Report, p. 85 – 88.

⁴¹⁷ Federal Police, Image Policière Nationale de Sécurité 2011, quoted in J-C. Delepière, P. de Koster and M. Penna, *op. cit.*

35.05 million euros.⁴¹⁸ Nevertheless, its work must be acknowledged as it led to the dismantling of important networks, such as the one known as the “Brazilian network”.⁴¹⁹

The importance of cooperation and coordination of actions

Considering the diversity of actors potentially involved in investigations and prosecutions of THB offences, and in order to ensure that the fight against THB is effectively multidisciplinary, several elements must be assessed: the coordination of investigations in the field, the cooperation between national police forces, and their cooperation with foreign counterparts.

Coordination of investigations: among the key elements of the Circular n° COL 1/2007 is the deployment of Reference Prosecutors,⁴²⁰ who are entrusted, among others, with a specific task of coordination: organizing and chairing the **Coordination Meetings** in their Judicial District.⁴²¹ Practitioners have unanimously highlighted the importance of these meetings, which constitute a privileged framework for the informal exchange of information (for example on the situation of THB in the sector or on pending investigations, Int. 9 & 12, police) or for the allocation of cases between different police services. They are also essential for the coordination of investigations or the organization of joint operations, which can unite not only police forces, but also social inspection services or tax services (Int. 9, police). In districts where the overlap of investigations is more likely to occur, such as Brussels, these meetings take place every month (Int. 9 & 12, police).

⁴¹⁸ CTIF, 2012 Annual Report, p. 85.

⁴¹⁹ CTIF, 2009 Annual Report, p. 71. Numerous cases were involving the employment of Brazilian nationals residing irregularly in Belgium, by Belgian companies, working as subcontractors for other companies in the construction sector. See also CEOOR, 2009 Annual Report, p. 26 and p. 58 (judgments).

⁴²⁰ Similar reference magistrates have been designated at the level of the Labour Auditors (21 magistrates), and in appeal, at the level of the General Public Prosecutor’s Department (5 magistrates) and the General Auditorate (5 magistrates). In total, 58 reference magistrates have thus been appointed throughout the Kingdom.

⁴²¹ These magistrates conduct and follow the investigations and are the contact point for all stakeholders (police services, specialised reception centres, Foreigner’s Office etc.).

Cooperation between national police forces: the cooperation between specialized police forces, active either at local or federal levels is mainly **perceived as efficient and very positive** (Int. 9, 12, 15, & 19, police). Most of the persons subject to the survey (62.5% of the answers) indicated that they experienced informal cooperation with other national police forces. They also evaluated positively the cooperation for the identification of victims and the collection of evidence, even though this latter aspect was judged more efficient. The interviews also confirm this finding, most of policemen specialized in THB we interviewed knew each other and reported regular exchanges between local services and/or between local and federal services. The introduction some years ago of liaison officers of the Federal Police in each Local Police zone in charge of transferring relevant information and demands to the centralised THB Unit of the Federal Police seems also to prove efficient (Int. 11, police). Moreover, the above-mentioned coordination meetings are privileged frameworks for the exchange of information about on-going investigations, as well as for the allocation of specific cases or investigations (Int. 7, 12 & 17, police). Thanks to the rule set in the National Action of Security,⁴²² according to which the Federal police takes over any case involving “risk nationalities”, duplication of efforts is avoided. In practice, local police services automatically transfer the case, and a federal police officer is then responsible for liaising with policemen performing the investigation acts (Int. 11, police). Finally some initiatives have been developed in order to create common databases and ensure an increased effectiveness of both proactive and reactive investigations (Int. 12 & 15, police).

Cooperation with foreign police forces: Only few of the survey’s answers do not mention experiencing cooperation with foreign police forces and with European actors, and the overall evaluation is positive, and confirmed by the interviews. All services involved in investigations (police services active at local or federal level, social inspectors) gave us examples of informal and formal cooperation with foreign counterparts. Concerning the **collection of evidence located in another country**, a gap between informal and formal cooperation has been pinpointed. Whereas direct contacts between police officers are very

⁴²² The National Plan of Security (*plan national de sécurité*) presents priorities and objectives for the next 4 years, and serves as a basis for the realisation of plans of actions. The latter describe what should be done at each level. THB had been identified as a priority criminal phenomenon, and thus specific actions are foreseen.

efficient to informally obtain information, the collection of evidence through formal procedures, based on mutual legal assistance, is more burdensome and lengthy (Int. 12 and 19, police). The Swedish initiative⁴²³ has been presented as a potential remedy (Int. 11, police), but it does not seem to convince all actors, either because of the low quality of the information received⁴²⁴ or because of the limited data transferred.⁴²⁵ Some police officers had not even heard about it. Besides the exchange of information, cross-border cooperation may also include the temporary **exchange of police officers**. Foreign police officers from Romania and Bulgaria worked in the Belgian police service for several days or weeks, even up to several months (Int. 17 & 19, police). These exchanges not only enabled the creation of personal links between the persons, but also allowed them to better understand their respective working environment, to gain knowledge on some national cultural aspects, and to combat stereotypes.⁴²⁶

b) THE NON –PROSECUTION OF THB VICTIMS

Next to the situation of exploitation whereby victims are forced to commit offences,⁴²⁷ victims are frequently brought to commit offences in the context of their exploitation, such as infringements to immigration or labour laws, the use of forged documents, etc. Despite the fact that their commission can either result of a conscious strategy on behalf of the trafficker in order to enhance the vulnerability of the victim (OSCE, 2013: 3) or be intrinsically related to the exploitation itself,⁴²⁸ victims were usually detained

⁴²³ Council Framework Decision 2006/960/JHA of 18 December 2006, on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States, *OJ L 386/89*, 29 December 2006, p. 89.

⁴²⁴ Quality decreasing through successive translations: from one of the Belgian languages into English, from English into the national language of the requested state, and vice versa.

⁴²⁵ Moreover, it must be highlighted that some police officers were very reluctant at the idea of being forced to disclose too much information on ongoing investigations, as it may compromise its effectiveness.

⁴²⁶ The precise legal framework in which these exchanges took place has not been mentioned. Nonetheless, it is relevant to present in this regard the European Police Exchange Programme, run by CEPOL. Open to all police officers from EU MSs, it could be used as a framework for similar exchanges. In 2007, two exchanges from Belgium took part in the programme visiting Bulgaria and Lithuania, similarly four exchanges (from Bulgaria, Greece and Lithuania) came to Belgium, both in the priority topic “THB”.

⁴²⁷ Embedded in Article 433*quinquies*, 5° of the criminal Code.

⁴²⁸ On the issue of non-prosecution and non-sanction of victims, see the very insightful annual report 2012 of the CEOOR, which is dedicated to this topic.

or prosecuted for these offences. To avoid such situation, infringing their rights and discouraging them to come forward as witnesses, European texts have introduced specific provisions organizing their non-prosecution (Weyembergh and Brière, 2013b: 82).

In Belgium, the key provision in that regard has to be found in the Code of Criminal Procedure. Its Article 28^{quater} provides indeed for a discretionary prosecution on behalf of the Public Prosecutor “in accordance with the set Directives of Criminal Policy”. The one on offences committed by THB victims is defined in the Circular n° COL 1/2007, which explicitly highlights the importance to consider the persons exploited “above all as victims of forms of crime that must be combated as a priority”,⁴²⁹ and advises “to avoid forms of checks that target victims or prostitutes or cause inconvenience to those persons that is disproportionate” to the aim of gathering information on acts of trafficking.⁴³⁰ However, this Circular shall soon be remoulded and it is uncertain whether the Belgian authorities will go further than a mere reference to the opportunity principle. The practical implementation of this provision is difficult to assess. The Public Prosecutors Department does provide statistics indicating the reasons for which a case of THB was closed.⁴³¹ Whereas the exercise of the prosecutors’ discretion represents the main reason to close cases of forced begging (62.97% of the cases), cases of sexual and economic exploitation, as well as cases of forced commission of offences, are mainly closed for technical reasons (author unknown, insufficient charges, absence of all material elements of the offence, etc.).

⁴²⁹ Point 6. Translation provided by CEOOR, 2012 Annual Report, p. 12.

⁴³⁰ Translation provided by GRETA, Report 2013, cf. *supra*, p. 53.

⁴³¹ Figures made by the General Public Prosecutor’s Department of Liège and concern the number of THB cases treated by Public Prosecutors between 1 January 2009 and 31 December 2013. 42.74% of the THB cases recorded at the PPD between 2009 and 2013 were closed, which means only that there is a temporary renunciation of the prosecution, without however closing the public action. The case can be reopened anytime as long as the public action is not closed.

c) SHORTCOMINGS AND IMPROVEMENTS SUGGESTED FOR THE TRIAL STAGE

An effective prosecution of traffickers also relies on cases reaching the trial stage and eventually leading to convictions, as well as the severity of the sanctions pronounced.⁴³² In this section, we chose to focus on the training and specialization of the trial judges (*magistrature assise*) and the influence it may have on the evidence required to secure a conviction.

Lack of knowledge: considering their role in the appreciation and qualification of the facts, trial judges play an equally crucial role in ensuring an effective prosecution of traffickers. However, trial judges are not specialized in THB, and no time for training focusing on THB is foreseen in the three different paths allowing lawyers to become judges.⁴³³ Training sessions on THB are organized and accessible for trial judges, but not necessarily attended (Int. 16, prosecutor),⁴³⁴ and there is thus a lack of knowledge on THB among trial judges (Int. 3 & 14, SRC; Int. 6, social inspector; Int. 12, police).

Evidence required: Trial judges may require additional evidence to rely on in order to make their opinion about the case. Whereas such requirements are *per se* laudable as they ensure the respect of the accused person's fundamental rights, they may be difficult to satisfy, especially when they concern victims' testimonies (Eurojust, 2012: 9), a type of evidence difficult to obtain.⁴³⁵ The weight of victims' testimonies is however variable in both sexual and labour exploitation cases: they may secure the conviction of the accused for

⁴³² Statistics for 2013 reveal that jail sentences and fines are the most common penalties imposed on convicted traffickers. Whereas the highest proportion of jail sentences corresponds to penalties from one year to less than 3 years of imprisonment (38.1% – 24 out of 63 jail sentences), almost the majority of the convictions impose penalties from 3 years to less than 5 years and penalties from 5 years and more (respectively 27% (17 convictions) and 20% (13 convictions)). Source: Department of Criminal Policy.

⁴³³ Depending on their years of legal experience, lawyers can become judges either after completing an entrance examination and an 18 months traineeship, after completing an exam of professional competence or after completing an oral exam of evaluation.

⁴³⁴ The person also stressed the difficulties trial judges may face to secure time to attend such training sessions.

⁴³⁵ Example has been given of exploitation taking place in Chinese restaurants. The hidden character of the exploitation renders the testimonies of the victims crucial, however specific socio-cultural factors may prevent even further the victims to testify against their exploiters (Int. 16, prosecutor and Int. 14, SRC, and cf. *infra* §101).

THB,⁴³⁶ or on the contrary lead to their acquittal.⁴³⁷ It must however be noticed that even though judges still value victims' declarations, their declarations are most of the time corroborated by other (objective) elements of the case file, such as the declaration of the suspected exploiter,⁴³⁸ phone tapping, surveillance of the suspects by the police, financial investigations, discovery of false documents,⁴³⁹ testimonies of witnesses or third parties, etc. However, the judges' lack of knowledge may lead to the rejection of the qualification of the facts in the offence of THB or to sanctions, which are not severe enough to be truly dissuasive.⁴⁴⁰

Creation of chambers specialized on THB: despite an emerging practice of allocating THB cases to specific chambers within one Court or Tribunal,⁴⁴¹ there is no rule of procedure ensuring that THB cases are compulsorily presented before trial judges with a certain experience in THB cases.⁴⁴² As a remedy, the establishment of trial judges, or more precisely of chambers specialized in THB matters, has been advocated (GRETA, 2013: 227) and the

⁴³⁶ See for instance two cases of sexual exploitation (Corr. Antwerp, 25 June 2012, 4th Ch. and Corr. Liège, 27 March 2013, 8th Ch.) in which judges convicted the accused persons partially because of the detailed and coherent declarations of the victims. See also Court of Appeal of Ghent, 31 January 2013, 3rd Ch.

⁴³⁷ Corr. Leuven, 23 October 2012, 17th Ch.: acquittal of the accused of the offence of THB, as the judges could not help getting the impression that some girls had changed their initial declaration (in which they claimed to be well-treated) to obtain a residence permit through the procedure for trafficking victims.

⁴³⁸ See, for instance, the case in which an Albanese woman was forced to prostitute herself: the Court of Appeal of Brussels gave a lot of attention to the victim's statements and disregarded that she retracted them later, in particular because the suspect's declarations confirmed her initial statement (Court of Appeal of Brussels, 30 October 2002, 11th Ch).

⁴³⁹ See, for example, the cases presented in 2003 Report (p. 65 – 66, FN 123): Court of Appeal of Brussels, 31 July 2001, Ch. Vac. 2nd section; Corr. Hasselt, 25 October 2002, 18th Ch.; Corr. Hasselt, 21 December 2001, 18th Ch.; Corr. Hasselt, 23 February 2001, 18th Ch.

⁴⁴⁰ Information collected by the Department of Criminal Policy shows that in 2010 most of the traffickers received sanctions between 1 and 5 years of imprisonment (48 out of 60 decisions – Source: DPC, *Rapport du Gouvernement relative à la lutte contre la traite des êtres humains en 2009 – 2010*, p. 40). This scale of penalties is similar to the ones applicable to the offences of theft or rape. Considering the gravity of THB and the long-standing consequences on victims, the message sent to the society is at the least ambiguous (Int.17, police).

⁴⁴¹ This practice has been mentioned as existing in the Flemish districts (Int. 12, police officer) or in the district of Liège (8th Chamber of the Correctional Tribunal). (Int. 20, SRC).

⁴⁴² During summer time, judges who do not have a particular experience in criminal law, and even less in THB, might be called upon to judge THB cases (Int. 12, police officer.)

existence of chambers specialized in social criminal law could be a precedent to follow.⁴⁴³ In the Judicial District of Bruges, a specialized Chamber in charge of all cases of human trafficking and human smuggling has been established,⁴⁴⁴ but it will most probably hear more cases of smuggling than cases of THB because of the high exposure of the region to this phenomenon (due to the proximity of the highway E40). This initiative nevertheless contributes to the discussions on how to provide an effective response to the quite unanimous demands for an enhanced expertise of trial judges.

2.2. PROTECTION OF VICTIMS OF THB

Organized by the Aliens' Act of 15 December 1980 as amended by Law of 15 September 2006, and the Royal Decree of 8 October 1981 implementing the Aliens' Act,⁴⁴⁵ completed by the "Ministerial Circular of 26 September 2008 on implementing a multidisciplinary cooperation in respect of victims of THB and/or aggravated forms of smuggling of human beings",⁴⁴⁶ the Belgian framework for providing assistance to victims of THB has often been quoted as an example of good practice. It intends to ensure their timely identification (a), and the subsequent protection they may receive through their acquisition of the status of THB victims (b).

a) IDENTIFICATION OF THE VICTIMS

The identification of victims of trafficking is a crucial step, to be carried out with care. It can lead to more criminal investigations and help to disclose other offences, but it is more

⁴⁴³ These specialised chambers have been created by the Law of 3 December 2006, modifying Article 76 of the Judicial Code. They belong to Correctional Tribunals, and have jurisdiction over offences to labour laws and regulations, which are within the jurisdiction of labour courts, and in addition in the event of multiple offences or linked offences over other types of offences. Judges composing/presiding these chambers must receive a specialised training, provided by the Institute of Judicial Training (*Institut de formation judiciaire*).

⁴⁴⁴ A Correctional Chamber is normally composed of 1 judge, but can exceptionally be composed of 3 judges (depending, among others, on the nature of the offence or the specific request of the prosecutor), one specialized judge will be affected to this chamber. He/she will thus either sit as a single judge or as the presiding judge of the bench of three judges.

⁴⁴⁵ *Arrêté royal du 8 octobre 1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers*. M.B. 27 October 1981.

⁴⁴⁶ Circulaire du 26 septembre 2008 relative à la mise en oeuvre d'une coopération multidisciplinaire concernant les victimes de la traite des êtres humains et/ou de certaines formes aggravées de trafic des êtres humains, M.B. 31 October 2008.

importantly essential to ensure an effective protection of their fundamental rights, and their non-prosecution for offences they were forced to commit.⁴⁴⁷ On the contrary, any failure to identify a victim may lead to the persons' removal from the country, and the denial of the rights they are entitled to. In Belgium, the identification of victims of THB is organized by the Circular of 26 September 2008.

Actors able to perform such identification: the identification of a presumptive victim can be done by **any actor who may be in contact with potential victims**, such as front-line collaborators of the police and social inspection services, who often detect victims while running standard checks, SRCs, but also the Foreigners' Office, or the Commissioner General for Refugees and Stateless Persons (CGRS),⁴⁴⁸ etc.⁴⁴⁹ Yet, the actors dealing more regularly with THB cases have acquired a certain expertise ensuring an efficient 'first selection', as demonstrated by the fact that the procedure of recognition as a victim continues in a higher proportion for the persons they referred to the SRCs (Int. 3, 14 & 20, SRC).⁴⁵⁰ Detection and subsequent identification can take place thanks to the statements victims make and/or by the identification of clues suggesting that their situation correspond to THB. The latter is the most frequent situation and happens when relevant signs are spotted through the **use of indicators**, as recommended by international and EU standards.⁴⁵¹ A list of indicators of THB is to be found in the Annex 2 of the Circular n° COL 1/2007 and includes, for instance, "the existence of an excessive high level of debt, falsified travel documents received from another person, insalubrious workplaces and physical working conditions, no or very little

⁴⁴⁷ GRETA formulated some concerns regarding the lack of identification of victims of THB that are not identified, and the consequence it has: their escape of the protection granted by the principle of non-prosecution of victims. See recommendation 25, "Recommendation CP(2013)8", 7 October 2013.

⁴⁴⁸ Commissariat général aux réfugiés et aux apatrides (CGRA).

⁴⁴⁹ Reports of the SRCs show that victims may also be referred by private persons, who may have identified a potential victim. For example, in 2012, 7 victims accompanied by Pag-Asa and 5 victims accompanied by Payoke were referred to them by private persons. Pag-Asa, 2012 Annual report, p. 18 and Payoke, 2012 Annual report, p.12.

⁴⁵⁰ See also Payoke, 2012 Annual report, p.12 and Pag-Asa, 2012 Annual report, p. 18.

⁴⁵¹ See, for instance, European Commission, DG Home Affairs, Guidelines for the identification of victims of trafficking in human beings, especially for Consular Services and Border Guards, 2013, 24 pages.

income, and limited freedom of movement”.⁴⁵² This list has since then been included in a leaflet, soon updated and improved, prepared by the Federal Police and put at the disposal of front-line officers and specialized units, enabling them to check immediately whether they are or not in presence of a victim (Int. 11, police). However, their effective use has been questioned on the field (Int. 12 & 15, police). The latter remark is linked to the wider debate relating to the **need to train front-line police forces** (*agents de quartier*), belonging to the Local Police for the identification of THB situations. Despite their better knowledge of the neighbourhood they are in charge of, many THB cases are left unnoticed (Int. 19, labour auditor). For that reason, in highly exposed police zones, these agents receive regular training sessions on THB, including visits on the field so as to learn how to detect the presence of THB indicators (Int. 9, police). However, some practitioners have stressed the limits of conferring too many competences in their hands. They rather suggested raising their awareness about THB, inviting them to report on a more regular basis any suspect element and to liaise directly with the specialized THB units of their zone, which could then perform more extensive checks (Int. 12 & 17, police; Int. 20, SRC). Finally, identification of victims may also be done by actors dealing less regularly with THB, such as social inspectors, persons working in the health or educational sector, etc. Initiatives emerge in order to raise awareness and spread a tailored list of identification indicators among these actors. A leaflet including such indicators has for instance been distributed to hospital staff, inviting them to contact SRCs when relevant.⁴⁵³

Self-identification by the victims: victims may also **present themselves spontaneously** to the social inspectors, police officers or SRCs, for instance when they have heard about their expertise and work (Int. 6, social inspector; Int. 14, SRC). Such cases remain however limited.⁴⁵⁴ Moreover, identified victims do not often consider themselves as such. Yet, the

⁴⁵² GRETA, Report 2013, cf. supra, p. 34. The GRETA report also mentions that the list of indicators would be updated in the second half of 2013, but according to the information we collected, this up-date should take place at the same time as the publication of the new circular on investigation and prosecution awaited for the end of the judicial year in June 2014.

⁴⁵³ See in this regard, G. Biffi, T. Pfeffer and A. Trnka-Kwiecinski, Handbook for professionals at the interface of police and health authorities, realised in the framework of an EU funded ISEC project <<http://www.joint-efforts.org/home/>>.

⁴⁵⁴ In 2012, victims who came on their own were 6 out of 63 at Pag-Asa and 7 out of 68 at Payoke. In 2011, these figures were of 10 out of 47 for Pag-Asa and 2 out of 49 for Payoke. See Payoke, 2012 Annual report, Payoke, 2011 Annual report p.11, Pag-Asa, 2012 Annual report, p. 18 and Pag-Asa, 2011 Annual report, p. 22.

Circular stresses that this element does not impair their recognition as a potential THB victim. Such lack of consideration for the victim's own perception is directly linked with the choice of the legislator to make the consent of the victim irrelevant.⁴⁵⁵

b) STATUS OF VICTIM OF THB AND THE PROTECTION IT ENTAILS

The status offered by Belgium to victims of THB is worth detailing, especially because it served as a source of inspiration for the Council Directive 2004/81/EC of 29 April 2004, which duplicates the conditionality of the protection depending on the victim's cooperation with the criminal proceedings. Introduced by the Circular of 7 July 1994 concerning the delivery of residence and work permits to foreigners victims of THB,⁴⁵⁶ the procedure by which the identified victim obtains the formal status of victim of THB under Belgian law has been modified and detailed in the 2008 Circular.

THE BEGINNING OF THE PROCEDURE

First phase – Reflection period: in order to allow the victims to rest and regain serenity, and to sever all contacts with the presumed offenders, they are firstly granted a reflection period. While receiving assistance and care of a SRC, including social benefits, victims can decide whether they want to file a complaint or make a statement, or if they prefer to return to their home countries. If they do not have a residence permit, the MINTEH Unit issues them, on request of the SRC, an **order to leave the territory within 45 days**.⁴⁵⁷ Despite the terms employed, this document in fact allows them to stay in the territory and block temporarily their expulsion. The terms used may however be misleading for the victims and restrain them even further to ask for the status of victim of trafficking and to collaborate: "It is already difficult to establish their trust with law enforcement authorities,

⁴⁵⁵ Cf. supra, §0.

⁴⁵⁶ *Circulaire du 7 juillet 1994 concernant la délivrance de titres de séjour et des autorisations d'occupation (permis de travail) à des étrangers (ères), victimes de la traite des êtres humains*, M.B. 7 July 1994.

⁴⁵⁷ Belgian system goes beyond the requirement of a 30 days reflection period, provided for in the CoE Convention (Article 13). The Council Directive 2004/81/EC (Article 6) is silent on this point.

and victims do not seem to understand why they received an expulsion order if they are to be protected and helped” (Int. 9, police). Renaming this document in order to insist on its protective and positive content should be reflected upon.⁴⁵⁸

Second phase – Securing the victim’s participation and gathering additional information: As soon as the victim decides to lodge a complaint or to make a statement,⁴⁵⁹ and thus confirms his/her intention to collaborate in the criminal investigation, a **registration certificate**, valid for 3 months and renewable once, would be issued by the local administration at the request of the MINTEH Unit. This phase aims at securing the participation in the investigation of the victim, who can at this stage receive a work permit and/or social benefits. Prior to the expiration of the three months period, the MINTEH Unit will consult the Public Prosecutor to know whether the person is still considered as a victim. If the information collected by the investigators (police and/or social inspectors), and to a certain extent by the SRCs, does not enable him/her to answer, the residence permit is prolonged a maximum of another three months.

Granting of the provisional victim status

Granting the provisional victim status is the **sole competence and responsibility of the competent Public Prosecutor** (Public Prosecutor or Labour Auditor depending of the case). In application of the multidisciplinary approach, the Public Prosecutor is invited to consult and exchange information with other partners (SRCs accompanying the victim, police and labour inspectorate services, etc.) before taking his/her decision. In practice their cooperation and exchange of information functions well (Int. 5, MINTEH). The Circular provides for a series of five cumulative conditions that the Public Prosecutor must identify, the so-called “five questions” s/he must provide an answer to:

- The investigation/judicial proceedings is still pending;

⁴⁵⁸ Int. 18, Official: giving to trafficking victims an order to leave the territory may give them a wrong sign. See also the contribution of Freddy Roosemont, Director of the Foreigners’ Office in *the Centre de l’Egalité des Chances’ 2012 Annual Report*, pp. 38-39.

⁴⁵⁹ It could happen right from the identification and/or prior to the expiration of the reflection period.

- The person concerned is still to be considered at this stage as a victim of trafficking;
- S/he manifests a clear will to cooperate within the framework of a legal action;
- S/he has ceased all contacts with the presumed perpetrators, and
- S/he is not considered as a possible threat to public order or national security.

If these conditions are met, the person concerned will receive the provisional victim status. It comes together with **a proof of registration in the Alien's Register, valid for six months**, which corresponds to a residence permit, renewable as long as the above conditions are met and until the termination of the criminal proceedings. The MINTEH Unit orders the renewal of such document, and keeps regular contacts with the Public Prosecutor to be informed about the course of the legal action. Discrepancies in this procedure have been pointed out, such as the large discretionary power left in the hands of Public Prosecutors⁴⁶⁰ or the silence about a legal remedy against a refusal to qualify a person as a victim of THB.⁴⁶¹

Conclusion of the procedure

Granting of a permanent residence permit: this possibility is probably the most advantageous for the person concerned, as it consists in a proof of registration in the Alien's Register (permanent residence permit) to **victims who have been judicially recognised as victims of THB**. Such recognition is obtained either when his/her statements or complaint led to the criminal conviction of the perpetrator of THB, or when the Public Prosecutor withheld in the final allegations the charge of THB. This limited two-fold scenario may be problematic, especially if the Public Prosecutor prefers to withhold the offence of THB in the final allegations, in favour of an offence with a lesser burden of proof (exploitation of prostitution or violation of labour criminal law), leading to a legal vacuum concerning the

⁴⁶⁰ Their exclusive competence to qualify a person as a victim of trafficking may be questioned, especially when considering that the expertise of other actors, such as the reception centres, has been expressly acknowledge by the Circular.

⁴⁶¹ The circular does not mention any possibility to launch an appeal against the decision of the Public Prosecutor to not qualify a person as a victim of trafficking. However, subsequent individual decisions, such as expulsion orders, may be appealed to the Aliens Litigation Council (CCE – *Conseil du Contentieux des Etrangers*).

status of the victim. In practice, a case-by-case analysis may determine whether the person would receive a right to residence on an alternative basis (Int. 5, MINTEH, & Int. 3, SRC).

Ending of the procedure: the Public Prosecutor has absolute authority to decide at any moment, but after consulting with his/her partners, that **a person is no longer to be considered as a victim of THB**, and loses the residence rights attached to that status. Such decision may be taken when it is for instance established that the person concerned has resumed contacts with the presumed traffickers, has ceased the cooperation with the prosecutor or has cooperated fraudulently. Once a record is made by the competent authorities, the MINTEH Unit requests the withdrawal of the residence permits delivered, and the SRC that assisted the person takes safety measures for the persons working in the centre and for the other victims they accompany.

Return of the person concerned to his/her country of origin: such return may take place at any moment, and may be voluntary as well as forced (for instance when the person ceases to meet the conditions to benefit from the status of THB victim). In case of a voluntary return, the SRC that assisted him/her contacts the IOM or a NGO in order to organise it and, if necessary, the Central THB Unit of the Federal Police organises his/her protection.

Limits of the procedure

If the perspective of obtaining a permanent residence permit may be a clear incentive to cooperate and to claim the status of victims for third country nationals, its attractiveness in that regard may be absent for Belgian nationals and limited for EU nationals.⁴⁶² In addition, several other reasons may constitute disincentives to victims' cooperation. Whereas their potential fear and reluctance to stand against the perpetrators, especially considering the weaknesses of the protection they might receive (Survey & Int. 14, SRC), constitute reasons that are valid for all THB situations, other reasons are directly linked to the conditions applicable under the Belgian system, and their inadequacy to modern

⁴⁶² They have under EU law extended possibilities to obtain residence permits.

forms of THB. The condition requiring the victim to sever all contacts with the presumed perpetrators, and with the criminal underworld, may for instance be too difficult to accept, as the profile of the victims has evolved,⁴⁶³ as well as the *modus operandi* of the traffickers.⁴⁶⁴ As a consequence, new trends seem to arise: a decrease in the number of victims who demand the status, and an increasing number of files without victims (Int. 16, prosecutor). It seems therefore desirable to launch a reflection on the possible revision of the procedure, especially concerning some of its conditions and/or its final outcome, to overcome its decreasing attractiveness.

c) SPECIFIC PROCEDURES FOR UNACCOMPANIED FOREIGN MINORS AND DOMESTIC EMPLOYEES

*Unaccompanied foreign minors (MENA):*⁴⁶⁵ considering their particular situation of vulnerability, persons formally identified as a MENA victim of THB benefit from a specific regime. They receive immediately a registration certificate (no reflection period). A legal guardian, in charge of representing the minor in all procedures, will be designated, and the minor will be accommodated in and assisted by a specific and adapted reception centre.⁴⁶⁶ However, their situation remains problematic. The lack of places in specialized reception centres, scarce resources for training and remunerating guardians have been mentioned by local NGOs.⁴⁶⁷ The GRETA stressed the weakness of the Belgian system regarding both the detection and protection of minors (GRETA, 2013: 134 137):

⁴⁶³ For example, women who could qualify as victims of sexual exploitation may prefer to continue to prostitute themselves, while the procedure does not allow them to do so. Similarly, workers identified as potential victims of labour exploitation may not want to declare themselves as such and choose to continue working in similar conditions by fear of having no work at all.

⁴⁶⁴ See, in this regard, the development of the win-win technique in which the sexually exploited person earns more than before, or the lover boy method where control is exercised through less violent techniques. Parl. Doc., Senate, 4 May 2010, N° 4 – 1631/1.

⁴⁶⁵ MENA stands for *Mineur Etranger Non Accompagné*, a person who seems or declares being under 18 years old, who is not accompanied by someone exercising parental authority, and is a national of a country outside the EEA.

⁴⁶⁶ Cf. *supra*, §62.

⁴⁶⁷ *Coordination des ONG pour les Droits de l'Enfant, Le 10^e anniversaire de la Plate-forme "Mineurs en exil". Etats des lieux des actions menées*, June 2009, Accessed on 22 May 2014, at: <http://www.lacode.be/IMG/pdf/10_ans_de_la_plateforme_Mineurs_en_Exil.pdf>.

Owing to the lack of space in dedicated structures, these children end up in inappropriate accommodation facilities or even on the streets, where they run the danger of falling into the hands of traffickers (GRETA, 2013: 134).

Domestic staff of diplomats: persons working for diplomats are required to hold a special identity card, valid only for one year, which they must personally collect with the Protocol and Security Service of the FPS Foreign Affairs.⁴⁶⁸ Mandatory private interviews with an official of this service are organised upon arrival, and are repeated each year for the renewal of their special identity card. If during these meetings, a domestic employee is identified as a victim of THB, s/he *must* renounce to his/her status of domestic staff, and the general procedure mentioned above applies. Even though criminal immunity of diplomats prevents the launch of a criminal legal action, the competent Public Prosecutor can issue a favourable opinion on the existence of THB, and take all relevant initiatives to prove it (in full respect of diplomatic immunity). Little information about such cases is available, even though newspapers' articles do report them,⁴⁶⁹ especially the one known as the case of "the Conrad's Princesses".⁴⁷⁰

2.3. PREVENTION MEASURES

According to international and European frameworks, prevention measures can take different forms. Considering the measures adopted so far by the Belgian authorities, our analysis will focus on measures aimed at raising awareness and discouraging demand. Measures to empower vulnerable groups at risk of THB and measures to enable legal migration have also been developed by Belgian authorities, however they remain modest (Vermeulen, 2006).

⁴⁶⁸ A THB section has been established within the Directorate General of Consular Affairs, and it may also act in case of litigation or serious complaint during or after the execution of the contract.

⁴⁶⁹ See, for instance, the article "Traite des êtres humains, de esclaves pour voisins!", published in *Paris Match* Belgium. Accessed on 23.05.2014 at: <<http://meilleurdsmondes.be/blog/wp-content/uploads/2011/06/ArticlePM-ExploitEcon-TEH.pdf>>.

⁴⁷⁰ The case is very specific as the facts took place in a famous hotel, and no diplomatic immunity was thus applicable. Despite the fact that the accused have left the country long ago, the case is since 2008 a judicial saga. Each new "episode" is documented by series of articles in newspapers.

a) MEASURES TO RAISE AWARENESS

The National Action Plan for 2012-2014 justifies the focus on such measures by arguing that as a country of destination and transit, Belgium shall implement its obligation to prevent THB through the adoption of measures aiming at informing and raising awareness about THB. Public actors, i.e. Federal Public Services (Criminal Policy, Development Cooperation, Defence or the Foreigners' Office), conduct **raising awareness campaigns, in collaboration with NGOs and private actors**. They are carried out in the countries of origin as well as in Belgium, and target trafficked persons and/or persons who may be able to detect/advise them in the framework of their professional activity. The Interdepartmental Coordination Unit has, for example, launched campaigns towards hospital staff,⁴⁷¹ or towards Belgian diplomatic and consular missions,⁴⁷² and should soon launch a new one focusing on the detection of minor victims.⁴⁷³ These campaigns consist mainly in the distribution of leaflets, and posters, containing some indicators of THB situations and contact details of SRCs. Such actions may suffer from a lack of feedback and assessment of their practical impact,⁴⁷⁴ which shall be corrected in future initiatives.⁴⁷⁵ Ad hoc consortiums, gathering public actors, NGOs, private companies, etc., may also conduct campaigns, focusing for instance on child prostitution⁴⁷⁶ or on the situation of domestic staff.⁴⁷⁷ The realization of short movies is also a privileged media to raise awareness. One movie, entitled

⁴⁷¹ Brochure "*Trafficking in Human Beings – what to do? Advice for hospital staff*", and accompanying posters distributed in Belgian hospitals.

⁴⁷² Department of Criminal Policy, "The fight against trafficking and smuggling in human beings", see *supra*, p. 10.

⁴⁷³ A leaflet would be elaborated for specialised services (Foreigners' Office, services in charge of asylum requests, and centres specialised in the reception of foreign unaccompanied minors) (Int. 18, official).

⁴⁷⁴ For instance, concerning the Campaign targeting diplomatic and consular missions, the only feedback received was a demand from the Belgian embassy in China for more brochures.

⁴⁷⁵ The campaign targeting hospital staff should be disseminated again, but this time persons will be invited to submit their feedback through an online evaluation survey (Int. 18, official).

⁴⁷⁶ "Stop child prostitution" campaign: participation of the NGOs Child Focus, ECPAT and Foundation Samilia, and of the FPS Defence, Belgian Railways Company (SNCB) and the Belgian Federation of transporters.

⁴⁷⁷ Campaign launched in 2005 by the King Baudouin Foundation, in collaboration with the FPS Employment, Labour and Social Dialogue, the Protocol and Security Service of the FPS Foreign Affairs, the National Labour Council (*Conseil National du Travail*) and two NGOs.

“10 Minutes”, presented the experience of a young Bulgarian woman, victim of a criminal network who forced her into prostitution,⁴⁷⁸ and another one collected testimonies from real THB victims about the medical issues they faced.⁴⁷⁹ More recently a working group⁴⁸⁰ focusing on the prevention of THB has been created in Liège and has launched a number of initiatives among professionals working in the social and health fields (hospitals, the CPAS – public social welfare centres –, schools, etc.) and the general public.⁴⁸¹ Their aim is to raise awareness not only about the issue of THB, but also about the need to report suspicious situations (GRETA, 2013: 102).⁴⁸² All these initiatives create synergies and help to ensure that awareness is concretely raised. Yet, the GRETA has pinpointed the absence of a publicly funded campaigns aiming at raising awareness among the general public (GRETA, 2013: 107). Nevertheless, the work conducted by journalists may serve that purpose⁴⁸³ and Belgian authorities seem to strive to find the correct balance, weighing carefully the uncertain impact of campaigns targeting general public with the benefits of more targeted campaigns. There might be “a risk to see THB a bit everywhere” (Int. 18, official).

b) MEASURES TO DISCOURAGE DEMAND

Other types of prevention measures are not abandoned, in particular measures to discourage demand. Concerning the adoption of measures to discourage demand of sexual services, little is done. Whereas the Minister for Equal Opportunities, Ms Milquet,

⁴⁷⁸ To watch the full movie, see <<http://www.diversite.be/court-métrage-«-10-minutes-»-18-octobre-2008>>. This movie has been produced by the CEOOR, with the cooperation of Pag-Asa, Payoke, Sürya and Fondation Samilia.

⁴⁷⁹ For more information, see the video <<http://www.payoke.be/en/the-payoke-film/>>. Training sessions for healthcare providers were organised in parallel (Int. 14, SRC).

⁴⁸⁰ It is chaired by the Reference Prosecutor of the Judicial District of Liège and brings together magistrates, Local and Federal Police, social inspection services, the SRC Sürya, etc.

⁴⁸¹ They organised the projection of the movie *Ghosts*, directed by N. Broomfield, followed by a debate between specialised actors and spectators.

⁴⁸²) Int. 16, prosecutor.

⁴⁸³ See, for instance, the recent initiative “Football against trafficking” aiming at raising awareness about the risk of THB among professional football players (Int. 2, NGO).

participated in the Declaration of Brussels,⁴⁸⁴ which reiterated the content of Article 18 of the EU Directive 2011/36/EU,⁴⁸⁵ measures criminalising clients of prostitution are not envisaged.⁴⁸⁶

On the contrary, more reflection and actions can be noticed when considering measures discouraging demand of cheap labour force. One case must be here highlighted: the Carestel case. In an innovative judgement, the Correctional Tribunal of Ghent⁴⁸⁷ convicted two legal persons, i.e. both the contractor and the sub-contractor, for economic exploitation. These two companies were Kronos (the sub-contractor), a firm specialized in cleaning toilets, and Carestel (the main contractor), a firm managing restaurants located in motorway service areas. For the judges, the workers employed by the sub-contractor were victims of THB⁴⁸⁸, and the sub-contractor was found guilty of THB, with the aggravating circumstance of abusing the vulnerability of the workers.⁴⁸⁹ The originality of this case lies in the conviction of the main contractor as an accomplice.⁴⁹⁰ The judge considered that several elements revealed that the firm had “knowingly closed its eyes on the way its sub-contractor

⁴⁸⁴ International ministerial Round Table, *Declaration of Brussels, for a gender approach and a coherent fight against the exploitation of the prostitution of others*, 30 September 2013, available at <<http://femmes.gouv.fr/wp-content/uploads/2013/10/20130930-Bruxelles-Declaration-Fight-Exploitation-Prostitution-EN.pdf>>.

⁴⁸⁵ Article 18.4 of the Directive refers to criminalizing the use of services, which are the objects of exploitation whenever the user knows that the person is a victim of THB.

⁴⁸⁶ It should be noted that the experts working on the field of THB that were interviewed in the frame of this research were unanimous on the negative impact that such a measure criminalizing clients of prostitution would have on THB.

⁴⁸⁷ Corr. Ghent, 5 November 2012.

⁴⁸⁸ Kronos had recruited the workers, organised their travel to Belgium and took care of their housing and their transport to their workplace. The firm then employed them in conditions contrary to human dignity (working 15 hours per day without breaks, often 7 days a week, and this several weeks in a row, for an insufficient remuneration). The workers were employed with a fake status of independent workers (without their knowing). The victims ignored they were hired as independent, but rather thought they were hired as employees. As none of them spoke German, they were not in state to read or understand their contract

⁴⁸⁹ Kronos was convicted for various offences (including THB and labour law infringements) and was imposed a penalty of 96 000 euros, multiplied to 528 000 euros, as the penal fines are subjected to multiplications pursuant to the Law of 5 March 1952 (*Loi relative aux décimes additionnels sur les amendes pénales*). Fines were multiplied by 5.5 (since 1 January 2012, they are multiplied by 6).

⁴⁹⁰ It was imposed a fine of 18 000 euros, multiplied by 99 000 euros.

was treating its employees".⁴⁹¹ A more precise knowledge of the other elements establishing the offence of THB or of the potential legal qualification of the facts is not required to establish participation to the offence.⁴⁹² Neither firm did make an appeal against the judgment, which is therefore definitive with respect to them. As pointed out in interviews (Int. 6, social inspector & Int. 12, labour auditor), the specificities of the case have allowed for the conviction of both the contractor and the sub-contractor,⁴⁹³ but this is however an exception in the field. Indeed, in the actual state of the legislation, collecting evidence allowing for the conviction of the main contractor remains a real challenge. The Interdepartmental Coordination Unit has prepared a draft text sanctioning main contractors who use intermediaries involved in trafficking (GRETA, 2013: 110).⁴⁹⁴ Though the Governmental agreement of December 2011 provides for the introduction of this mechanism and the National Action Plan stresses its importance, the text, highly sensitive, has not been discussed yet (Int. 16, prosecutor & Int. 18, official). Moreover, the law of 11 February 2013⁴⁹⁵ has recently transposed the EU Directive 2009/52/EC.⁴⁹⁶ Even though the text does not explicitly refer to THB (and thus does not provide for co-responsibility or extended liability for that offence), the mechanisms it contains could be applied to cases of economic exploitation (GRETA, 2013: 110).⁴⁹⁷ Notwithstanding these (shy) steps, the GRETA

⁴⁹¹ This case presented the peculiar feature of being very similar to another case, where an investigation against Kronos and Carestel had taken place in 2006 in the district of Turnout (located in another judicial region) for similar facts (trafficking in persons based on economic exploitation). The Tribunal concluded that "the attitude of Carestel demonstrates a limitless cynicism".

⁴⁹² Article 66 of the Criminal Code does not require the accomplice to share the required *mens rea* for the offence; however the accomplice must collaborate knowingly and wilfully to the crime committed by the main perpetrator.

⁴⁹³ Besides the elements related to the investigation that had taken place in Turnhout, some incriminating internal emails have been found by the investigators.

⁴⁹⁴ The report refers to the examples of a shop giving orders to a manufacturing workshop, or a building company giving orders to a temporary work agency.

⁴⁹⁵ Loi du 11 février 2013 prévoyant des sanctions et des mesures à l'encontre des employeurs de ressortissants de pays tiers en séjour illégal, M.B. 22 February 2013.

⁴⁹⁶ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, OJ L 168, 30 June 2009, p. 24–32.

⁴⁹⁷ Whereas the EU Directive 2009/52/EC explicitly refers to situations where the employer, while not having been charged with or convicted of THB, uses work or services exacted from an illegally staying third-country national with the knowledge that he or she is a victim of THB, the Belgian law does not refer to them. Indeed the national legislation is more severe than the EU Directive as its main provision consists in a general prohibition of the employment of third-country national who do not have a right to reside in Belgium. See Parl. Doc., Ordinary session, Chamber of Representatives, 2012-

experts, in their overall appreciation of the measures to discourage demand, urge the Belgian authorities to increase their efforts (GRETA, 2013: 112).

2013, Projet de Loi prévoyant des sanctions et des mesures à l'encontre des employeurs de ressortissants de pays tiers en séjour illégal, Doc 53 - 2466/001, 24 October 2012.

CHAPTER V

ITALY NATIONAL CASE

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INTRODUCTION

In the last decades, trafficking in human beings (THB) has become a crucial problem for Italy since it can be considered a destination and a transit country. Italy is a destination country due to its geographical position, the extension of its coasts, and the increase of wellbeing that produces an increase of the demand both for sexual and labour exploitation. Besides this, it is a transit country because it is located at the heart of Europe and therefore it is a key passage for victims destined to Northern European countries (Coluccello and Massey, 2007; Europol, 2011; Monzini, 2002; Motta, 2008, 2010; Oude Breuil *et al.*, 2011; Savona *et al.*, 2003; Van Moppes, 2006).

The existing literature demonstrates that THB is committed by criminals able to exploit criminal opportunities associated with the crime. These opportunities are: high benefits (i.e. high profits) and low costs (i.e. low probability of being identified, arrested and convicted for the crime) (Danailova-Trainor and Belser, 2006; Vayrynen, 2003). The main responsible for THB in Italy are criminal ethnic groups (Abbatecola, 2006; Becucci and Garosi, 2008; DIA, 2012; DNA, 2011, 2012; Europol, 2011; Picarelli, 2009; Savona *et al.*, 2003; UNODC/SADC, 2007;). They are based on strong familiar and/or ethnic bonds relying on consolidated contacts in different countries (Bosco *et al.*, 2009; Europol, 2011; Savona *et al.*, 2003). They are organized in criminal networks that can be informal or organized according to their internal structure. The former act on a small-medium scale, while the latter on a large scale due to their dimension (Bosco *et al.*, 2009; Schloenhardt, 1999; Vermeulen *et al.*, 2010).

In many cases THB is only one of the criminal businesses in which these networks are involved. The profits obtained by exploiting victims are often invested in illicit activities which affect the power of different ethnic groups. Table 1 shows the main interactions between THB and other illegal businesses, and the various investment strategies of the money distinguished per ethnic group.

TABLE V.1 - OTHER ILLICIT ACTIVITIES AND INVESTMENT STRATEGIES PER ETHNIC GROUP

Ethnic group	Other illicit activities	Money laundering
Albanian	International drug trafficking Thefts and robberies	Remittances sent to Albania to be reinvested in remunerative business activities
Romanian	Cloning of credits cards Thefts and robberies Contraband Copper theft	/
Nigerian	International drug trafficking	Proceeds invested in business activities in Italy (African markets, beauty centres, phone centres, restaurants, discos) Relevant remittances sent to Nigeria using illegal channels
North African	Drug dealing	/
Chinese	Counterfeiting Contraband International drug trafficking Gamble	Proceeds invested in business activities or money lent to someone Relevant remittances sent to China using illegal channels

SOURCE: TRANSCRIME (2010A: 14)

Finally, another important factor that characterizes THB in Italy is the involvement of third parties in commission of crimes. These are, for example, Italian taxi drivers who transport women from their home to the street, and doctors performing illegal abortions. This situation produced a double effect: the stronger embedding of THB in Italy on the one hand, and its increasing invisibility because of the camouflage under routine and regular activities on the other (Di Cortemiglia, 2005).

Available researches concerning THB in Italy have focused their attention on the characteristics of the routes used by criminal organizations to move victims from the country of origin to the country of destination, and on important changes characterizing exploitation in general. These changes are influenced by the governments' policies and

the demand for services. The main results of these studies are summarised in the next sub-paragraphs.

Routes

The routes are one of the main flexible factors of THB because they change according to the migratory pressure and the law enforcement agencies' counter activities (Monzini, 2004, 2008). Each change produces substantial transformations in the way THB is carried out, and the closure of a route affects the power of the different criminal networks (Di Cortemiglia, 2005).

According to the literature, there are four main structured flows of victims towards Italy (Transcrime, 2010a):

- women destined to sexual exploitation from Western Africa (almost totally from Nigeria);
- young women destined to prostitution, and men and women destined to labour exploitation from East Europe and the Balkans;
- men destined to labour exploitation from North Africa;
- young women destined to prostitution, and men and women destined to labour exploitation from China.

Starting from these results, three main routes can be identified:

- a. from East Europe and Balkans;
- b. from Africa;
- c. from China.

The traditional routes from East Europe and Balkans towards Italy were modified by some important changes: a) the closure of the Otranto Channel route, and b) the entry in the European Union of Bulgaria and Romania in 2007. With regard to the first aspect, the Otranto Channel was for many years and until the 1990s an important point of access to Italy for people coming from Albania and East Europe in general. The closure of this route in 2002, the increase of border controls, the joint combat strategies carried out by the Albanian and the Italian authorities, the presence of dispositions that forbade the ownership of rubber dinghies led to a reduction of the number of people trafficked from this areas (Monzini, 2004; Motta, 2009).

The second key factor concerns the inclusion in the European Union of Romania and Bulgaria in 2007, two countries traditionally known as countries of origin of THB victims. The new possibility to stay in the EU countries without a special visa increases the chances that among regular migrants there could be THB victims. The lack of mandatory controls over people entering in Italy from these countries complicates the identification of people that may live slave conditions (Polizia di Stato, 2007; Ministero dell'Interno, 2007). As direct consequence of the easy passage from Bulgaria and Romania to other EU countries, the relevance of the Bulgarian and Romanian organizations is increased gleaning the leadership role that in the nineties belonged to the Albanian criminality (Ministero dell'Interno, 2007).

Many African victims are young Nigerian women from Lagos and Benin City. They are exploited by Nigerian criminal groups able to control all the phases of the criminal process (Di Cortemiglia, 2005; Ministero dell'Interno, 2007). The intercontinental movement of victims is carried out by land after long journeys across the desert, or by air. Besides the Rome airport, in the last years also Linate airport (near Milan) has become an important landing place for Nigerian victims. As an alternative, victims are embarked on flights directed to France, Germany, the Netherlands and the United Kingdom, and then moved to Italy by train (Di Cortemiglia, 2005). Lately, traffickers resort to the overstayers practice in order to facilitate the transportation of victims. According to this practice, traffickers give victims temporary visas, in many cases tourist visas, which ensure them

the entry and the legal stay in Italy for a limited period. Once the visa expired, victims do not go back to their country, but remain becoming overstayers (Transcrime, 2010a).

The second flow of African victims is composed by North African men that emigrate for working reasons. The closure of the passage between North Africa and Spain has produced a displacement towards the Libyan route. Victims pass through Libya and arrive in Sicily and Lampedusa helped by Lyberian criminal groups (Monzini, 2008). However, the latter route seems more linked to migrants smuggling than THB (Coluccello and Massey, 2007).

Over recent years the flow of Chinese citizens entering Italy has increased. According to the United Nations Office on Drugs and Crime (UNODC), the illegal flows of trafficked Chinese victims are connected to Chinese foreign investments (UNODC, 2009a). In order to change their life, many people incur debts with local criminal groups that provide fake documents. The intercontinental network created by Chinese criminal groups has established agreements with other ethnic groups in different transit countries, assigning them the task of taking victims to Italy eluding the control procedures and preferring less risky routes. Two main changes influence the dynamics of this route (Transcrime, 2010a):

- the entry into force of the Approved Destination Status in 2004 signed by the European Union and the national administration of the tourism of the Chinese Republic. It has produced the use of real touristic visas in order to hide THB;
- the depletion of the North provinces and Fujian has created a new migration flow from these areas besides the consolidated flow from Zhejiang. It is mainly composed of young women destined to indoor prostitution.

Fields of exploitation

According to the literature, the main fields of exploitation in which THB victims are employed in Italy are: sexual exploitation and labour exploitation. However, there are also two more marginal sectors: begging and involvement in illegal economies.

Human trafficking for sexual exploitation is the most studied and the most known field of exploitation because of its visibility and diffusion (Van Liemt, 2004). According to the literature (Transcrime, 2010a), the victims identified in Italy are mainly:

- Romanian, Bulgarian, Ukrainian and Moldovan women, in many cases minors, exploited both on the street and indoors;
- Nigerian women exploited mainly on the street;
- Chinese women involved in indoor prostitution (apartments and massage centres);
- South Americans and Brazilian transgender performing indoor;
- Young men from Albania and Romania.

The recruitment of the victims is carried out using different strategies: violence, threats, deceit or, in case of Nigerian victims, establishing of a relationship between madams and victims based on a debt and voodoo rituals (Aghatise, 2004; Di Cortemiglia, 2005; Prina, 2003; Shelley, 2010; Van Dijk, 2001). An emerging issue is that in some cases women are aware of what they are going to do in Italy, namely that they will be involved in the prostitution market. However, they do not know the exploitation conditions under which they will be forced to work. Therefore, they do not provide an informed consent, and without informed consent the crime subsists (Aronowitz, 2001, 2009; Carchedi and Orfano, 2007; Oude Breuil *et al.*, 2011; Savona *et al.*, 2003; STC, 2007).

The type of control on the victims varies according to the criminal group that manages the THB process, the age of the victim and the kind of prostitution they will be involved in. Table 2 synthesizes the main characteristics of the most important criminal groups active in THB for sexual exploitation in Italy.

TABLE V.2: ETHNIC GROUPS AND PROSTITUTION SYSTEMS IN ITALY

Ethnic group	Recruitment	Control strategies	Duration of exploitation	Place of exploitation
Albanian	Deceit and marriage promises	Based on violence, social isolation, threats and retaliations against their families	Undetermined	Mainly outdoor
Nigerian	Fake job promises associated to a debt and to an oath Voodoo rituals	Based on violence and the increase of the debt amount	Depending on debt extinction	Mainly outdoor
East groups	Contracts stipulated with travel agencies	/	Defined (three or four months)	Indoor and outdoor
Latin American	Consensual and forced forms	Based on consent and the observance of the roles both from victims and traffickers	Activities concentrated in some days, mainly in the weekends	Indoor and outdoor
Chinese	Carried out inside the Chinese community	Based on the ethnic belonging	/	Mainly indoor

SOURCE: TRANSCRIME ELABORATION (CARCHEDI, 2004)

According to the available literature, the involvement of traditional Mafia-type organizations (Mafia, 'Ndrangheta, Camorra and Sacra Corona Unita) in THB seems marginal (Becucci and Garosi, 2008; UNICRI/AIC, 2000; Vermeulen *et al.*, 2010). Indeed, they have not a direct interest in this illegal activity since they culturally reject women sexual exploitation (Arlacchi, 1992; Becucci, 2008). Their role is mainly connected to an indirect control of foreign criminal networks. For example, with regard to outdoor sexual exploitation, there is evidence according to which they authorize the crime commission in exchange for favours related to drug trafficking or under the payment of a sort of rent to use some streets. Talking about indoor exploitation, some judicial cases have underlined

that Mafia-type organizations have had an economic control on nightclubs (DDA, 2002; DIA, 2011; Macri, 2004; SOS Impresa, 2012).

The main emerging trends highlighted in the literature are the following:

Reduction of Albanian women involved in outdoor prostitution and a correspondent increase of Romanian and Moldovan women. This change can be explained by four factors: a) the closure of the Otranto Channel route between Albania and the Apulia region in Italy. As a consequence, the Albanian criminal groups were forced to shift their attention towards Romania and Moldavia where the recruitment of new girls occurs; b) the effectiveness of the disposition contained in Article 18 of the Legislative Decree 286/98 that ensure protection and the possibility to obtain a residence permit if victims decide to exit from their exploitation condition (see paragraph 2.2); c) the development of an internal prostitution market, and d) the presence of Albanian criminal groups in the United Kingdom that transformed Italy in a transit country (Transcrime, 2010a).

1. Increase of indoor prostitution (in nightclubs, sexy bars, apartments and massage centres). The literature available (Bufo, 2007) shows that this practice is diffused because of the ability of the promoters to hide its criminal nature declaring socially accepted professional activities. Victims are subject to forms of economic control; however this is only one of the risks related to indoor prostitution. They also suffer a very strong control over their movements and their relationships. They have few opportunities to establish durable relationships with clients that could help them, and do not receive any healthcare support and assistance, putting their health at high risk (Bufo, 2007; Carchedi and Orfano, 2007). As the victims involved in outdoor prostitution, they experience high rates of mobility in order to offer to the clients a turnover and to run away from the supervision of the law enforcement agencies.

2. Increase of underage women because “being underage is considered as an added value particularly desirable by clients of the sexual market” (Carchedi and Frisanico, 2002: 40). In addition, minors are in general more vulnerable than adults and so recruiters and exploiters can control them more easily without using excessive violence (Carchedi and

Orfano, 2007; Sorgoni *et al.*, 2009). According to the criminal organization and the profits they are able to earn, minors are destined to streets or nightclubs and apartments (Carchedi and Frisanico, 2002). However, because of the high risks connected with their exploitation, in the majority of cases they work indoors.

3. Growing presence of young men in the sexual market. The discrimination and the refusal many homosexuals live in their countries of origin cause their migration in different countries. Here they can be exploited in the homosexual paedophilia sector due to the high demand for this kind of sexual services (Mai, 2002).

4. Proclamation of local anti-prostitution dispositions by some mayors in order to regulate and punish clients and/or prostitutes with a fine.⁴⁹⁸ A recent study carried out by the National Association of Italian Municipalities (Associazione Nazionale Comuni Italiani – ANCI) and the National Coordination of Host Communities (Coordinamento Nazionale Comunità di Accoglienza – CNCA), in collaboration with some associations dealing with the assistance of the victims, underlined critical elements derived by these local dispositions (Sorgoni *et al.*, 2009). First of all, the dispositions do not include assistance measures for victims, but contain only repressive provisions. Directly connected with this first aspect, the dispositions seem mainly to be instruments for increasing the number of controls, roundups and expulsions of irregular prostitutes.

Secondly, the proclamation of these dispositions does not produce as an expected result the reduction of the number of prostitutes operating in the areas in which the dispositions have been proclaimed. Indeed, they cause other dynamics, among which it is possible to list the following (Sorgoni *et al.*, 2009):

- the reduction depends on law enforcement controls and so, when the number of controls decreases, the number of prostitutes increases again;

⁴⁹⁸ According to Article 54 of the Legislative Decree 267/00 (“Testo unico delle leggi sull’ordinamento degli enti locali”), a law that regulates the local authorities, the mayor can promulgate dispositions with the aim of preventing events able to endanger the public inviolability and the urban security.

- the reduction of prostitutes in the areas affected by the dispositions produces a correspondent increase in adjacent areas in which such repressive measures have not been applied;
- the probability that women will be moved to apartments and nightclubs increases;
- the mobility of the victims increases in order to avoid controls.

5. Combination of violent methods with more negotiated control strategies to control victims. The aim of this approach is to reduce conflict, possible escapes, and the risk of victims reporting their exploiters to law enforcement agencies (Weitzer and Ditmore, 2010). Indeed, women do not perceive themselves as victims (Andreani and Raviv, 2004; Hunzinger and Sumner Coffrey, 2003) because they have the possibility to keep a very small percentage of the earnings to obtain more independence and to improve working and living conditions (Carchedi, 2004; Surtees, 2008). Nigerian women could also acquire the possibility to exploit other countrywomen to repay the debt more quickly (Europol, 2011; Ministero dell'Interno – Osservatorio sulla prostituzione e sui fenomeni delittuosi ad essa connessi, 2007; Oude Breuil *et al.*, 2011; Prina, 2003).

Labour exploitation

According to the literature, victims of labour trafficking in Italy can be divided in four main groups (Bettoni, 2006; DPM-UIL, 2008; Transcrime, 2009a):

- men, often unmarried, from East Europe – mainly Romania, Poland and Bulgaria – employed in the construction industry;
- women, over 30, from Romania, Ukraine, Bulgaria and Moldova employed as servants and caretakers;
- Chinese men and women employed in the textile industry, in the workmanship and in the restoration sector;
- men from Pakistan, Bangladesh, Morocco, Ghana and Nigeria employed in agriculture.

The recruitment mechanism is based on promises of remunerative labour carriers. Once they arrive in Italy, victims are isolated from the context: they live in specific apartments provided by the boss, in many cases they do not speak Italian and do not

have documents (OSCE, 2008). The possibility of integrating themselves is reduced and the exploitation conditions endure for years (DPM-UIL, 2008). Some recent trends can be listed (Transcrime, 2010a):

- presence in the labour exploitation markets of a high number of people holding legal documents;
- high level of mobility among Apulia, Campania, Calabria and Sicily regions. This testifies a consolidation of the different ethnic communities in Italy, that are able to provide accommodation to the workers-victims;
- recourse to fake cooperatives to manage the victims and their work.

THB for labour exploitation is very difficult to be detected for some important reasons. The first one is that there is an overlapping between this crime and illegal immigration flows. Indeed, the condition of illegality lived by many migrants causes a vulnerability that facilitates their involvement in irregular jobs or in black labour market (Carchedi and Orfano, 2007; Terre des Hommes, 2010).

The second one is that in many cases victims consider their bosses as “benefactors” and not as exploiters. Therefore, they hardly depict themselves as victims and only in few cases report the crime to law enforcement agencies (Carchedi and Orfano, 2007).

Begging

According to the “Servizio di Analisi Criminale”, the number of underage children involved in begging in Italy has increased and their activity seems to be managed by criminal organizations. The existing literature underlines that it is an “ethnic” kind of exploitation in which almost exclusively underage children from former Yugoslavia and Romania are involved. Recently, also North African children, mainly from Morocco, are forced to beg by some exploiters (Ferraris, 2007). The victims are often under 14 years old

and have very low levels of education. Children with physical impairments are preferred since people are moved with pity and give them a hand-out (STC, 2007).

Underage children from East Europe are recruited through their families: in exchange for money and/or constant remittances, parents approve the departure of their children. If children are orphans, the interlocutors are their legal guardians (STC, 2007). With regard to Moroccan children, they accept to be expatriated along with their families or in complete autonomy (Ferraris, 2007).

Different control strategies are applied: physical violence if children do not give to the exploiters the arranged amount of money, and psychological violence connected to the promise of remittances to their relatives (Ferraris, 2007; STC, 2007).

This field of exploitation has recently been affected by some factors (Transcrime, 2010a):

- the entry of Bulgaria and Romania in the European Union, which facilitates the ingress of underage children potentially exploited;
- the policies adopted to fight the phenomenon, namely dismantling Roma people's settlements in some cities and socio-integrative strategies;
- the recent recognition of the seriousness of this crime that has produced some legal changes: from a simple contravention now it is an essential part of the THB phenomenon (Article 671 of the Penal Code).

Countering this activity is hard because it is difficult to distinguish between voluntary begging and forced begging connected to organized rackets. Besides, many underage children are not accountable and they have not the perception of being exploited (STC, 2007).

Illegal economies

Victims of THB can be employed in illegal economies, such as theft, robbery and drug dealing. This phenomenon is little known despite it is a current and a growing reality.

In many cases, forced begging and the involvement in the illegal economies are activities committed by the same victims, mainly underage children that become victims of multiple exploitation. Different typologies of victims can be identified in Italy according to the illegal activity they are forced to commit (Transcrime, 2010a; STC, 2007):

- underage children, often under 14, from Romania or Romani involved in pickpocketing and thefts;
- teenagers from Romania or Romani involved in robberies;
- teenagers from North Africa involved in drug dealing;
- teenagers from Gabon and Senegal used as drug couriers and as drug dealers.

Victims are often given away by their families according to pacts and contracts stipulated with the traffickers. However, besides these modalities, there are cases in which victims decide to leave being aware of their future involvement in illegal activities (Ferraris, 2007).

The control strategies adopted vary according to the nationality of the victims. Children from Maghreb are not controlled using violence. They are responsible for drug transportation and they obtain a gain from this activity. Victims from Gabon and Senegal are in general involved in Mafia-type organizations. These organizations adopt violent strategies to control them by seizing documents and applying “physical depersonalization” in order to avoid their identification (e.g. lesions and burnings of fingertips) (STC, 2007).

The next section will present the main Italian policies and dispositions concerning THB. It will take into consideration the legislation referring to prosecution of the offenders, protection of the victims and prevention of the crime. For the first two points, some official data will also be discussed in order to analyse the implementation of these dispositions.

1. ANALYSIS OF PUBLIC POLICIES AND LEGISLATION

Considering the seriousness of THB in Italy, the Italian government has been very active against the crime both by punishing the offenders and ensuring an effective protection to the victims. For this reason it was indicated as one of the countries at the forefront of the fight against trafficking together with Belgium, Germany and the Netherlands (Goodey, 2004: 30). In particular, Italy was among the first states to ratify the UN “Protocol to prevent, suppress and punish trafficking in persons, especially women and children” and to set up a specific legislation (Law 228/2003) that fully complies with the minimum standards fixed in the international dispositions (Palazzi, 2006; US Department of State, 2012). The following paragraphs are focused on the main Italian dispositions associated with the so-called “three Ps” traditionally associated to this crime: prosecution, protection and prevention.

1.1 PROSECUTION OF THE CRIME

Since the approval of the national anti-trafficking legislation in 2003 – Law 228/2003, “Measures against trafficking in human beings” – THB in Italy is considered a distinct penal offence and specific penalties are provided for each form of the crime. This Law distinguished for the first time the crime of smuggling of migrants from the crime of THB, and introduced some important innovations. Among these, it reformed three articles of the Italian Penal Code related to THB. The reason why the previous articles were not applied was that they used an inadequate terminology. Indeed, it was based on the concept of slavery as envisaged in the Convention of Geneva of 1926 and did not reflect the emerging exploitation conditions. Therefore, THB was prosecuted through the application of other dispositions concerning sexual exploitation, threats, rape, kidnapping and organized crime. Hence the new dispositions created new linguistic and judicial categories as well as provided a wider and more pertinent to the reality concept of new slavery.

The first Article to be updated was Article 600, “Reducing to and keeping in slavery or servitude”. It states that:

Whoever exercises, on another person, powers equivalent to property rights or who reduces to or keeps another person in a position of persistent subjugation, forcing him/her to work or furnish sexual services or to beg, or any type of activity that implies his/her exploitation, shall be punished with imprisonment for a period between eight and twenty years.

Reduction to or maintenance in subjection occurs when the conduct is carried out with violence, threat, deceit, abuse of authority, or by profiting from a situation of physical or psychological inferiority or a situation of necessity, with the promise or payment of money or other advantages to whomever has power over the person.

The penalty shall be increased by one third to a half if the conduct referred to in the first paragraph concerns a minor or is intended to exploit prostitution or to remove body organs from the person offended against.

The “persistent subjection” requires a plurality of illicit behaviours carried out by the offenders and a correspondent plurality of services provided by the victims. Labour and sexual exploitation as well as begging are the minimum forms of exploitation recognized in the Italian context. However, in order to avoid not including other exploitation forms, the Italian legislator has intentionally introduced a general wording that should ensure a complete coverage, namely “any type of activity that implies his/her exploitation”.

With regard to the sanctions, the duration of the imprisonment has been increased from 5 to 15 years to a period of 8 to 20 years. Besides this, three aggravating circumstances entailing the increase of the penalty have been introduced: offences committed against an underage person, offences committed for the purpose of exploitation, and offences committed for the removal of body organs.⁴⁹⁹

The second amended Article was Article 601 concerning the definition of trafficking in persons. According to this Article:

⁴⁹⁹ Other circumstances in which the judge may not recognize possible mitigating circumstances are: offences committed against a person under the age of 14 (Article 600 – *Sexies*) or if there are specific relationships of kinship, dependence, custody of a minor, foster care and abuse of power by a public official (Article 600 – *Sexies*, paragraph 2).

Whoever traffics a person who is in the conditions envisaged by Article 600 or with the purpose of committing the offences outlined in the same article, induces by deceit or forces by means of violence, threats or abuse of authority or by taking advantage of a situation of psychological inferiority or a situation of necessity, or by promising money or other benefits to the person with power over the victim to enter, stay within, or exit from the national territory or to move within it, shall be punished with imprisonment for a period between eight and twenty years.

The penalty shall be increased by one third to a half if the conduct referred to in the first paragraph concerns a minor or is intended to exploit prostitution or to remove body organs from the person offended against.

Two important innovations were introduced. Firstly, trafficking of free people has to be considered a crime and not only the trafficking of people already enslaved. Secondly, unlike the prior formulation that underlined the presence of many people as an indispensable element for the crime commission (Fiandaca and Musco, 2007; Aprile, 2006), this Article states that the victim of the crime can be a single person.

The third article to be reformulated was Article 602 concerning the slave trading crime. It states that:

Whoever, apart from the cases indicated in the Article 601, acquires or sells a person who is in one of the situations envisaged by Article 600 shall be punished with imprisonment for a period between eight and twenty years.

The penalty shall be increased by one third to a half if the conduct referred to in the first paragraph concerns a minor or is intended to exploit prostitution or to remove body organs from the person offended against.

All the penalties provided for in the three Articles are the same. This demonstrates that the Italian legislator considers THB as a unique process divisible in two phases (trafficking and exploitation), respectively disciplined in Articles 601 and 602, and in Article 600.

Another important innovation introduced by the Law 228/2203 concerns THB investigations. Indeed, it specifies that they have to be centralized under the District Anti-Mafia Directorate (Direzione distrettuale anti-mafia, DDA) and that the typical investigative techniques associated with organized crime have to be used in order to better fight this crime. Consequently, the range of investigative instruments was

enlarged. It includes undercover activities, “controlled delivery”, greater power in the use of wiretappings, possibility to delay the execution of precautionary measures, arrest, seizure or police detention when this is necessary to acquire important evidences and to better identify or arrest the criminals (Transcrime, 2004).

The dispositions contained in Law 228/2003 were updated with the Legislative Decree 24/2014, “Enforcement of the 2011/36/EU Directive related to the prevention and repression of trafficking in human beings and to victims’ protection”, published on the *Gazzetta Ufficiale* on March 13 2014 and that entered into force on March 28. In particular, Article 1 extends the concept of “vulnerability” including minors, old people, women – especially pregnant –, single parents, people who suffered tortures and psychological violence, and people with disability. Article 2 reforms once again Articles 600 and 601 of the Penal Code by introducing the organs removal among the fields a victim could be exploited in (not just among the circumstances that could cause an increase of the penalty) in order to accomplish the crime definitions contained in the EU Directive.

Another crucial disposition in terms of THB prosecution is contained in Article 12 of the Legislative Decree 25 July 1998 no. 286, the consolidated text on immigration. Paragraph 1 states that any person who facilitates the illegal entry of others into the country against the dispositions of the Italian immigration law shall be punished with imprisonment for up to 3 years, and with a fine of up to 15,493.71 euros (30 million Lire) for each person illegally introduced into the country. Section 3 of the Article introduces an aggravating circumstance whether the intent of the offence is to recruit persons for sexual exploitation. In this case imprisonment shall be from 5 to 15 years and the fine shall amount to 25,822.84 euros (50 million Lire) for each person trafficked. Other aggravating circumstances are envisaged. In particular, if the crime is committed a) to obtain profit, b) by three or more people together, c) against five or more victims, d) with the use of international means of transportation or counterfeited documents, imprisonment shall be from 4 to 12 years and the fine roughly amount up to 25,822.84 euros (50 million Lire) for each person trafficked. People committing the crime are subject

to immediate arrest and to the seizure of all goods and means used. The confiscation can be extended to the transport means that are allocated according to the confiscation procedures, or destroyed. All the money confiscated or earned from the selling of the assets used in the crime commission shall be invested to improve prevention and repression of such a crime.

Other offences connected to THB are the following:

- “Criminal association” (which is the title of Article 416 of the Italian Penal Code). The constitutive elements of a criminal association are: a) a stable associative bond, b) an indeterminate criminal program, and c) the presence of an organizational structure. Law 228/2003 introduced a harsher punishment for people committing crimes outlined in Articles 600, 601 and 602: from 5 to 15 years in the cases described in section 1, and from 4 to 9 years in cases described in section 2 (Transcrime, 2010b).
- “Mafia-type associations” (title of Article 416-*bis* of the Italian Penal Code). The expression “Mafia-type organization” is referring to all criminal associations using the intimidation power and the conspiracy of silence in order to commit crimes.
- “False imprisonment” (title of Article 605 of the Italian Penal Code). According to this Article, whoever deprives a person of the personal freedom is punished with imprisonment for 6 months to 8 years.

The Italian legislation contains also specific dispositions in relation to sex trafficking:

- offences provided for in the Law 75/1958, “Abolition of the prostitution regulation and fight against other people’s prostitution exploitation”, the so-called Merlin Law from the name of the socialist senator who first signed it.⁵⁰⁰ In particular, Article 3, paragraph 1 presents crimes connected to prostitution stating that those who facilitate or induce someone into prostitution, who move a person to involve her/him

⁵⁰⁰ The aims of the Law 75/1958 were the closure of the brothels, the abolition of prostitution regulation and the introduction of specific offences connected to sexual exploitation. According to this Law, prostitution is not a crime, while exploitation of prostitution is punishable by law.

into prostitution, and who recruit people to engage them in prostitution are punishable. The penalty fixed is from 2 to 6 years.

- Article 609 *bis* of the Italian Penal Code, entitled “Sexual violence”. This article punishes who forces a person to carry out or to be subjected to sexual acts using violence, threat and abuse of authority. This disposition is often used to fight sex trafficking because the victims suffer violence both from their traffickers and, in some cases, from their clients (Transcrime, 2010b).
- Article 600 *bis* of the Italian Penal Code focused on prostitution of minors. Introduced with the Law 269/1998,⁵⁰¹ it punishes both those who induce in prostitution and exploit an underage person, and those who have sex with a minor aged between 14 and 18 in exchange of money or other material benefits.

A specific legislation on forced labour does not exist in Italy. The already mentioned Article 12 of the Legislative Decree 286/1998 has to be considered as a reference point for this kind of exploitation. Article 22 of the same Legislative Decree punishes those who employ foreigners without a regular residence permit with imprisonment for 6 months to 3 years, and with a fine amounting to 5,000 euros for each worker.

With regard to begging, a recent law, Law 94/2009, sets the introduction of Article 600 *Octies* which considers the exploitation of minors in begging a crime. In particular, it established that whoever makes use of underage persons of 14 years old or of people not criminally liable, or allows them to beg or gives others the possibility of exploiting them is punished with imprisonment for up to 3 years.

Finally, although Italy ratified the “Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine” and its “Additional Protocol on the Prohibition of Cloning Human Beings” with the Law 145/2001, it has not introduced a legislation corresponding to the Convention and to the

⁵⁰¹ Law 269/1998 is entitled “Norms against exploitation of prostitution, pornography and sexual tourism connected to minors as new forms of slavery reduction”.

Additional Protocol dispositions in its normative framework. Besides this, Italy did not ratify the “Additional Protocol concerning Transplantation of Organs and Tissues of Human Origin”. The lack of a specific attention towards this phenomenon is due to the little evidence concerning the presence of this crime in Italy (Transcrime, 2010a; STC, 2007, 2008).

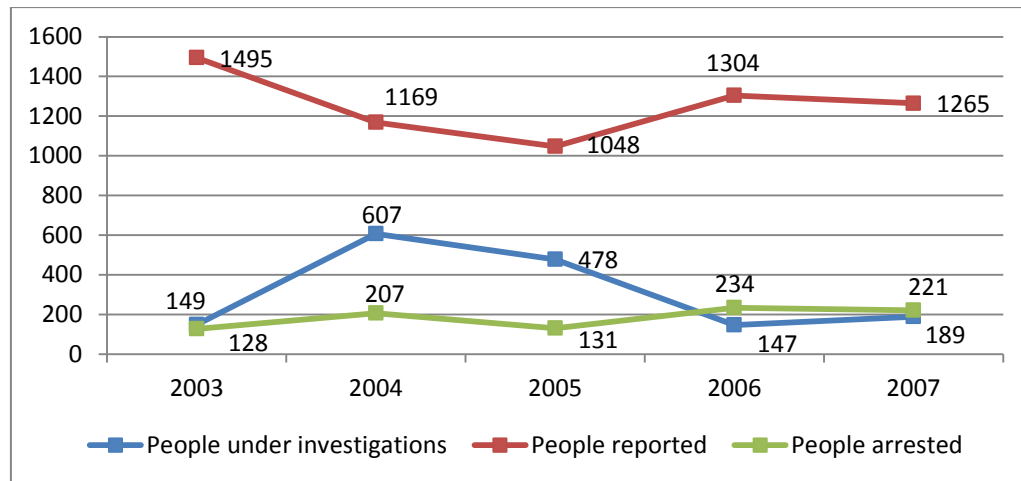
In the following two sub-paragraphs the results related to the concrete application of the dispositions concerning prosecution of the crime are discussed. They concern both some data and case studies.

1.1.1 SOME DATA ON PROSECUTION

In order to analyse the implementation of the Italian dispositions, some official data were collected and analysed. They suffer some limitations concerning the high dark figure: few victims report the crime to law enforcement agencies both for fear of retaliation and for being considered illegal migrants (Savona and Stefanizzi, 2007; IOM, 2005). Therefore, data take into consideration only the judicial cases and the offenders discovered and reported (Kleemans, 2011).

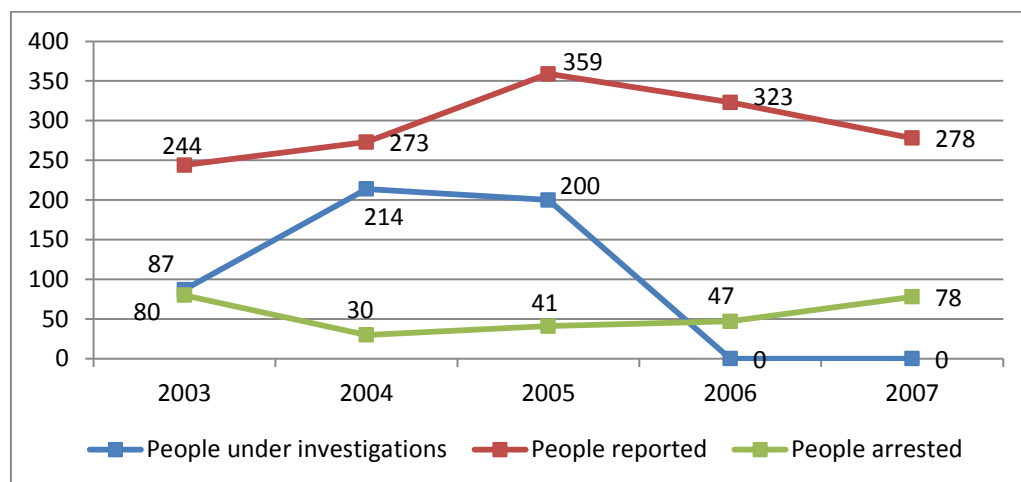
Data show the number of people under investigations, arrested and reported for Articles 600, 601 and 602 of the Italian Penal Code from 2003 to 2007.

FIGURE V.1 NUMBER OF PEOPLE UNDER INVESTIGATIONS, ARRESTED AND REPORTED. ARTICLE 600 "REDUCTION INTO SLAVERY".
YEARS: 2003-2007. ABSOLUTE VALUES



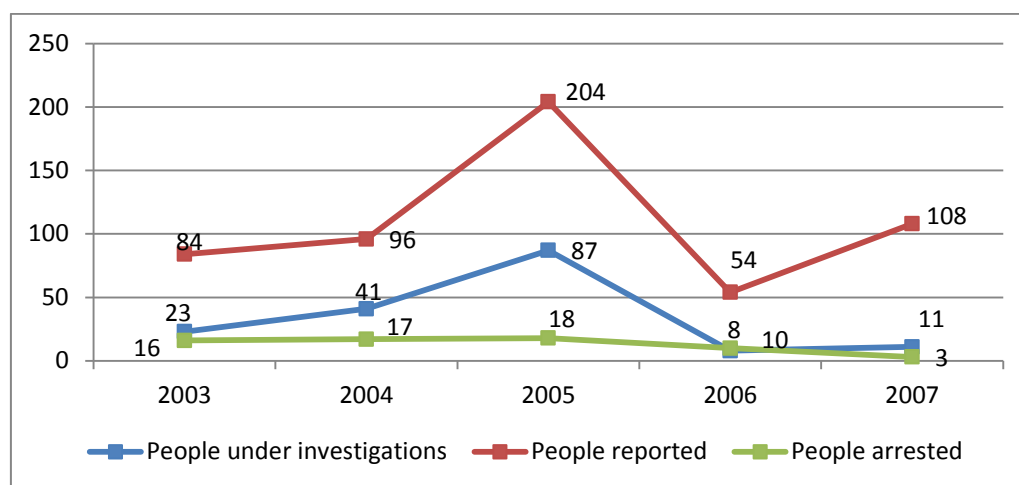
SOURCE: TRANSCRIME ELABORATION ON MINISTRY OF JUSTICE DATA (COMITATO PARLAMENTARE PER LA SICUREZZA DELLA REPUBBLICA, 2009: 30-31)

FIGURE V.2 NUMBER OF PEOPLE UNDER INVESTIGATIONS, ARRESTED AND REPORTED. ARTICLE 601 "TRAFFICKING IN PERSONS".
YEARS: 2003-2007. ABSOLUTE VALUES



SOURCE: TRANSCRIME ELABORATION ON MINISTRY OF JUSTICE DATA (COMITATO PARLAMENTARE PER LA SICUREZZA DELLA REPUBBLICA, 2009: 30-31)

FIGURE V.3 NUMBER OF PEOPLE UNDER INVESTIGATIONS, ARRESTED AND REPORTED. ARTICLE 602 "SLAVE TRADE CRIME". YEARS: 2003-2007. ABSOLUTE VALUES



SOURCE: TRANSCRIME ELABORATION ON MINISTRY OF JUSTICE DATA (COMITATO PARLAMENTARE PER LA SICUREZZA DELLA REPUBBLICA, 2009: 30-31)

As can be observed in Figures V.1, V.2 and V.3, after the entry into force of the Law 228/2003 the number of people under investigations, reported and arrested increased. This does not mean that the extent of the phenomenon in Italy has increased in the last years, but that probably a more efficient and intense investigation and repression activity was carried out by the Italian law enforcement agencies.

Another interesting result is that the number of people reported is always higher than the number of people under investigations, and the latter is always higher than the people arrested. This suggests that the investigations are very difficult and only in few cases they lead up to a concrete action against the offenders.

The most recent data refer to 2012. It concerns the number of legal actions carried out regarding Articles 600, 601 and 602 of the Italian Penal Code, the number of people investigated during that year and the number of victims (see Table V.3).

TABLE V.3. - LEGAL ACTIONS, PEOPLE INVESTIGATED AND THB VICTIMS. ARTICLES 600, 601 AND 602. YEAR 2012

	Legal actions		People investigated	Victims	
	Known	Unknown		>18	<18
Article 600	112	25	270	275	8
Article 601	44	19	192	108	1
Article 602	4	1	9	11	0

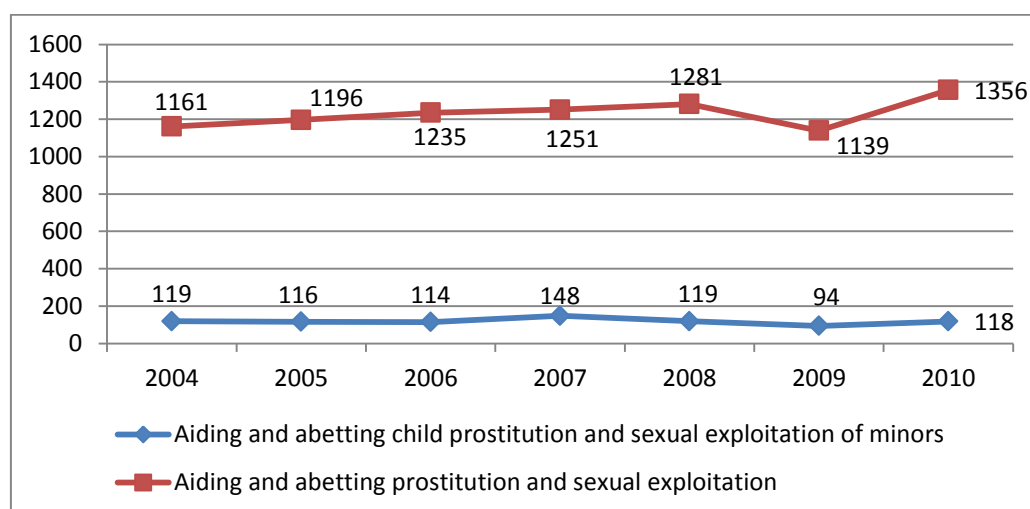
SOURCE: DOCUMENTS SENT BY A PUBLIC PROSECUTOR OF THE NATIONAL ANTI-MAFIA DIRECTORATE (DIREZIONE NAZIONALE ANTIMAFIA – DNA), 2013

According to these data, the “Reduction into slavery” crime envisaged in Article 600 registers the higher number of legal actions, people investigated and victims. On the contrary, a much reduced number of actions, offenders and victims was registered in the slave trade crime (Article 602). In all cases, most of the actions were against known defendants, and most victims were over 18.

Focusing on sex trafficking, the only field of exploitation for which some specific official data are available, Figure V.4 shows the trends of the crimes reported to law enforcement agencies from 2004 to 2010. The data source is a database called “Sistema Di Indagine” – SDI (in English: Investigative System). It contains a category of crimes entitled “Sexual exploitation and child pornography” which includes three specific crimes that can be connected with THB: sexual exploitation and child pornography, aiding and abetting child prostitution and sexual exploitation of minors, and aiding and abetting prostitution and sexual exploitation.⁵⁰²

⁵⁰² The SDI database considers thirty-four macro-categories of criminal events. It contains all crimes ascribable to these categories reported to the Italian law enforcement authorities, such as Polizia di Stato, Arma dei Carabinieri, and

FIGURE V.4 CRIMES REPORTED TO LAW ENFORCEMENT AGENCIES FROM 2004 TO 2010 IN ITALY. ABSOLUTE VALUES



SOURCE: TRANSCRIME ELABORATION ON SDI DATA

Two of the crimes considered, “Sexual exploitation and child pornography” and “Aiding and abetting prostitution and sexual exploitation”, have registered an increasing trend over recent years (they show a final value higher than the value registered in 2004). On the contrary, the crime of “Aiding and abetting child prostitution and sexual exploitation of minors” shows almost no difference between 2004 (119) and 2010 (118).

According to these official data, Lombardy, Piedmont, Emilia Romagna, and Lazio are the regions with the highest reporting rates. This result could be in part explained by a major propensity to report criminal events in these regions, their higher population size and the socio-economic centrality of some cities located in these regions (Milan, Turin, Bologna and Rome).

1.1.2. IMPLEMENTATION OF THE ITALIAN DISPOSITIONS: ANALYSIS OF SOME LEGAL CASES

In order to understand how Italian dispositions are concretely applied, two relevant legal cases are presented. The first case refers to a Nigerian criminal group, while the second one to an Eastern European group since they are the most active in Italy. Both

Guardia di Finanza. The criminal events unknown to competent authorities are excluded from the database. Therefore, the analysis and interpretation of data takes into consideration what is known without any presumption of estimating the dark figure of sexual exploitation. Among the thirty-four categories there is not one specific category called “Trafficking in human beings”.

of the cases were selected after an online newspaper research, starting from reading articles dealing with THB investigations. Each public prosecutor responsible for the case was contacted to obtain the corresponding judicial documents.

CASE STUDY 1

Main and general information

The first conviction was established by the Corte Di Assise di Appello of L'Aquila (Abruzzo region) the 2nd of August 2012 (N. 240/09 R.G.N.R. N. 2/12 R. Assise). There were 14 defendants – 10 males and 4 females – from different countries: 1 from Venezuela, 1 from Italy, 1 from Sierra Leone, and 11 from Nigeria. All the defendants played different roles:

- Defendant n°1 – Madam
- Defendant n°2 – Helper of the madam
- Defendant n°3 – Trafficker
- Defendant n°4 – Trafficker
- Defendant n°5 – Directive role
- Defendant n°6 – Directive role
- Defendant n°7 – Directive role
- Defendant n°8 – Directive role
- Defendant n°9 – Logistic support
- Defendant n°10 – Logistic support
- Defendant n°11 – Logistic support
- Defendant n°12 – Logistic support
- Defendant n°13 – Driver
- Defendant n°14 – Driver

Indictment

The defendants were under indictment for the following charges:

- Criminal association – Article 416 of the Italian Penal Code;
- Aggravating circumstances – Article 61 n° 1, 4, 5 of the Italian Penal Code;
- Aggravating circumstance (presence of a transnational criminal association composed by more than 10 people operative in many countries) – Article 4 of the Law 146/2006;
- Contributory Infringement Crime – Article 110 of the Italian Penal Code;
- Aggravating circumstances (more than five people committing the crime) – Article 112 paragraph 1 of the Italian Penal Code;
- Formal Circumstances in crime – Article 81 of the Italian Penal Code;
- Reducing to or keeping in slavery or servitude – Article 600 of the Italian Penal Code;
- Trafficking in persons – Article 601 of the Italian Penal Code;
- Inducing someone in the sex market – Articles 3 and 4 of the Law 75/58;
- Illegal immigration – Article 12 paragraphs 3, 3bis, 3ter of the Legislative Decree 286/1998.

Description of the event – evidence collected using wiretappings

The majority of the members were part of a Nigerian structured criminal organization, constituted by independent cells located in different countries. Members had different roles. Some were in charge of organizing the journey from Nigeria to Italy, others of collecting profits from exploitation, whereas others were a simple logistic help for madams, who played the main role. The organization has been operative in many countries given that the events affected Nigeria, England, Spain, Switzerland, Austria, Libya, France, Niger and Italy from 2006 onwards. The organization used to contract an agreement with the victims in the country of origin, sometimes even with the support of the family. These agreements were fixed thanks to ritual practices known as juju/voodoo rituals particularly felt from Nigerian people. They established a strong relationship between madams and victims: the first ones paid for the journey and other relevant expenses (mainly room and board but also condoms, clothing and any other type of need), and the second ones had to return them with high interest rate. Debts ranged from a minimum of 10,000 euros to a maximum of 60,000 euros plus random and forced gift (usually gold) that victims gave to their exploiters. Furthermore, victims were always subjected and exposed to violence and other forms of physical and psychological damage. Their families were often blackmailed by the organization in Nigeria. In addition, the conviction highlighted cases of forced abortion without any effective medical support and/or supervision. It was obtained through the use of peptide hormones made with oxytocin which stimulated contractions of the uterus causing hypoxia and gradually the death of the foetus.

Final decision

All the defendants were sentenced guilty. Besides the payment of court costs, the judge established that all the defendants had to pay between 50,000 euros and 10,000 euros in favour, respectively, of who brought the civil action in the criminal proceeding, and non-governmental organization (NGO) helping victims of THB. Jail sentences were applied with some differences according to the role of the participants. Defendant n°1 identified as the madam was sentenced to 12 years jail term with rito abbreviato

(abbreviated trial) for all the charges listed in the indictment apart from Article 12 paragraphs 3, 3bis, 3ter of the Legislative Decree 286/1998 (Policy against illegal immigration). She was also banned from public office.

Defendants n°13 and n°14, playing the role of drivers, were sentenced to 2 years and 2 months of jail term for the charges listed in the indictment apart from Article 416 of the Italian Penal Code (Criminal association), Article 4 146/2006 (Creation of a transnational criminal organization), Article 600 of the Italian Penal Code (Reducing to or keeping in slavery or servitude), other articles related to contributory infringement crime and aggravating circumstances.

The remaining members were sentenced between 5 and 10 years in prison. For none of them the offence of criminal association was confirmed.

CASE STUDY 2

Main and general information

The conviction analysed was established by the Corte Di Assise di Appello of Lecce (Apulia region) the 30th of January 2003 (N. 2376/02 n°1/03 Reg. Sent. n° 01/02 Reg. Gen.). The total number of defendants was 6, 5 men from Albania and 1 Italian woman.

From the document, it has been possible to identify the role played by each defendant:

Defendant n°1– Leader of the organization

Defendant n°2 – Helper of the leader

Defendant n°3 – Money collector and sexual exploiter

Defendant n°4 – Driver

Defendant n°5 – Money collector and sexual exploiter

Defendant n°6 – Driver

Indictment

The defendants were under indictment for the following charges:

- Criminal association – Article 416 of the Italian Penal Code;
- Contributory Infringement Crime – Article 110 of the Italian Penal Code;
- Aggravating circumstances (more than five people committing the crime) – Article 112 paragraph 1 of the Italian Penal Code;
- Formal Circumstances in crime – Article 81 of the Italian Penal Code;
- Slave trade crime – Article 602 of the Italian Penal Code;
- Inducing someone in the sex market – Article 3 and 4 of the Law 75/58;
- Illegal immigration – Article 12 paragraphs 1 and 3 of the Legislative Decree 286/1998.

Description of the event – evidence collected using witnesses' declarations

The defendants were organized in a criminal network whose intent was to traffic young women from Eastern Europe to Italy. All the witnesses described the same

events: they arrived in Italy through deception and then they were sold to some exploiters. All of them were enslaved, hit several times and deprived of their documents and passports. According to their story, exploiters paid for the victims' journey falling them into debt, and sexually exploited them to get the money back. All the facts happened in Apulia where the criminal organization allegedly had its headquarter.

Witness n° 1 – The first witness (L.N.) was a young woman from Moldavia who arrived in Italy by deception. She thought she would become a baby sitter, but she was forced into prostitution. According to her declarations, before getting to Italy she crossed Moldavia, Former Yugoslavia and Albania. Once she arrived in Italy, she met some members of the organization and she was informed that she had been bought by a man. Together with another young woman, she was daily taken to her “working area” by two men (Defendants n°4 and n°6). She was always under strict control and she had to give all the money to Defendant n°5. According to her declarations, she was forced to abort. Albeit she paid back her debt, her exploiters did not release her.

The victim recognized with extreme precision the people she mentioned. The organization has been presented as a chain. All the women were enslaved and subjected to the control of the leader who raped them before they arrived in Italy.

Witness n° 2 – The second witness consulted (B.V.) presented a similar story. She arrived in Italy after a long journey through Moldavia, Romania, Yugoslavia and Albania. She met the other victim previously cited and together shared the same experience and lived the same difficulties.

Both the declarations were considered reliable since highlighted the presence of a relevant number of information and details, namely:

- the defendants were able to create an independent criminal network operating in different Eastern countries and in particular in some areas of the South of Italy;
- victims came from Eastern European countries;
- victims arrived to Italy through deception;
- one of the victims was forced to abort without medical assistance;

- victims were deprived of their documents and passports;
- the members had specific roles and grades inside the criminal structure.

Final decision

The defendants were convicted for the following charges:

- Defendant n°1 was convicted to 10 years imprisonment for all the charges listed in the indictment paragraph apart from that one related to criminal association. He had also to pay the highest fine equal to 75,000 euros;
- Defendant n°2 was sentenced to 4 years jail term being a relevant member of the criminal organization who bought some of the women to sexually exploit them. In addition she had to pay a fine of 30,000 euros;
- Defendant n°3 and n°4 were sentenced to 3 and 2 years jail term, respectively, plus fines of 10,000 and 20,000 euros: the first for having purchased and enslaved a group of women, and the second for having broken the Italian regulations concerning illegal immigration;
- Defendant n°5 was sentenced to 4 years jail term for being one of the two money collectors besides the sexual exploiter of the organization. In addition, he had to pay a fine of 20,000 euros;
- Defendant n°6 was convicted to 3 years jail term and 20,000 euros fine for having introduced some victims into the sex market.

1.2 PROTECTION OF VICTIMS

One of the main aspects underlined in the international and European legislation is that a victim-centred approach has to be promoted.⁵⁰³ It should be focused on the victims and their human rights protection *per se*. This is an important innovation because in many cases victims were and are treated as criminals because of their illegal presence within the territory of a state, their involvement in illegal labour markets and the

⁵⁰³ See part II of the UN “Protocol to prevent, suppress and punish trafficking in persons, especially women and children”, Chapter 3 of the Convention on action against trafficking in human beings, and from Article 11 to Article 16 of the Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

commission of anti-social and anti-moral behaviours. In addition, in some cases law enforcement agencies only give victims the possibility to receive assistance in return of evidence against traffickers (Kim and Chang, 2007; Piotrowicz, 2002).

The Italian legislation acquiesced in the international references concerning the protection of THB victims. Many initiatives were activated without asking the victims for collaboration in the prosecution of the offenders (Palazzi, 2006). In particular, Law 228/2003 and other legislative initiatives have introduced an important amplification of the concept of victim, transforming Italy in a country on the cutting edge regarding this issue (Bonetti *et al.*, 2011). The main protection/assistance measures instituted are contained in two Articles. The first is Article 13 of the Law 228/2003, entitled “Institution of a special program for the assistance of the victims of the crimes identified in Articles 600 and 601 of the Penal Code”. It institutes a social fund to finance special assistance programs which ensure adequate accommodation, board and healthcare for a limited period of time (three months renewable for others three months) (Giammarinaro, 2004; Savona *et al.*, 2003).⁵⁰⁴ According to the Italian Presidential Decree 237/2005, which contains the implementing regulation of Article 13, the assistance programs have to be carried out by regions, local authorities or private subjects. They should present feasibility projects indicating timeframes, objectives to be reached, modalities to be used and data on the social organizations involved considering the needs and age of the victims, but also the kind of exploitation they suffered.⁵⁰⁵

The second article is Article 18 of the Immigration Law, the Legislative Decree 286/1998, entitled “Residence for social protection motives”. It contains a specific treatment aimed at protecting both the foreigners and the EU citizens victims of violence and severe exploitation. In particular, this article guarantees a temporary stay permit to

⁵⁰⁴ The annual budget fixed for applying Article 13 projects is 2.5 million euros (Paragraph 3 Article 13 Law 228/2003).

⁵⁰⁵ Regions and local authorities have to stipulate agreements with private subjects that will be the subjects responsible for the implementation of the Article. Before doing this, they have to verify the logistical requisites of these subjects (e.g. they have to be included in the register of associations, authorities and private organisms carrying out activities in favour of immigrants according to article 52 of the Presidential Decree 394/1999) and the professional skills of their operators, besides the feasibility of the projects (Paragraphs 5 and 6, Article 1, Presidential Decree 237/2005).

the foreign victims. The aim is to help them escaping from the influence of the criminal organization and participating in assistance and integration programs⁵⁰⁶ (Paragraph 1 Article 18). The residence permit lasts six months and can be renewed for one year. It can be converted into a study or work permit if the official requirements are met (Paragraph 4 Article 18 Law 286/1998). In order to obtain the residence permit, two alternatives exist: the so-called social and legal binaries. The first one refers to the victim asking for help and protection to social services or to a NGO. The second one refers to the declarations made by the victim to the law enforcement agencies or to legal authorities during a criminal proceeding in which emerges that he/she is in an exploitation condition. The legal binary is activated by the public prosecutor who confirms the danger and the relevance of the declarations of the victim in the criminal proceeding (Crowhurst, 2006). Thanks to the innovation of this article and to the provision of a social binary, victims can entry in the protection programs without necessarily denouncing their traffickers because the protection is considered a right independently from their judicial collaboration. The victims included in the protection programs are accommodated in a temporary safe shelter where they can receive immediate adequate medical and psychological assistance. Then they are transferred into another long-term accommodation and they can have access to training courses, labour market and other instruments to carry out a regular integration (Crowhurst, 2006). This process is very tricky because the victim has to learn skills and relational models. The passage from illegal to legal working conditions and the responsibilities deriving from this are very delicate. Victims have to receive help and support throughout the change process. The social programs are seen as an important tool to restore victims' strength and to get back their autonomy (Signorelli and Treppete, 2001).

In order to apply the dispositions contained in Article 18 and Article 13, the Department for Equal Opportunities (Dipartimento per le Pari Opportunità – DPO)⁵⁰⁷

⁵⁰⁶ The annual budget fixed for Article 18 programs is 4.5 million euros (Boretti *et al.*, 2011).

⁵⁰⁷ DPO, founded in 1996, is a department of the Italian government that coordinates all the initiatives concerning the implementation of policies related to equal opportunities. Among its main functions, it coordinates the prevention and contrast measures regarding THB as well as the assistance and social reintegration of the victims. In the department's structure there are three collegial organizations: the interdepartmental commission for the support to THB victims, violence and serious exploitation, the coordination committee of the governmental actions against THB victims and of the observatory institution, and finally the observatory on THB (DPO, n.d.).

finances programs to assist and protect victims since 2000 and 2006, respectively. Each funding lasts one year and corresponds to an annual call (in Italian “Avviso”). The funds are addressed to those NGOs that, after presenting proposals to the DPO, are evaluated and selected as winners of the financing⁵⁰⁸ (Transcrime, 2009b). The DPO evaluates the application of the measures contained in the proposals both during and at the end of the programs. Indeed, each NGO has to deliver a six month report and a final report with the results obtained (Transcrime, 2009c). An ex post evaluation is also envisaged: the DPO assesses *a posteriori* how the projects have been implemented focusing on some particular aspects (e.g. articulation of the interventions carried out, correspondence between prefixed objectives and reached objectives, results and eventual problems, typology of the receivers and so on)⁵⁰⁹ (Transcrime, 2009d).

Up to 2006, the information was collected in aggregate form. This method presented problems because the units of analysis were the organizations and not the victims. Therefore, it was not possible to associate information to the victims and the risk of double counting was high.

To solve these problems, the ways used by the DPO to collect data changed in 2006. Each victim taking advantage of protection/assistance programs has to be registered through special individual forms. These are “entrance forms” and “exit forms”. The former contain questions related to the past experiences of the victim (situation in the country of origin, transportation modalities in the destination country, type of exploitation suffered and so on), while the latter is related to the assistance/protection project (measures offered and outcomes obtained) (Transcrime, 2010d). To avoid the risk

⁵⁰⁸ The procedure consists in three main phases (Transcrime, 2009b): 1) the publication on the Official Journal of the call for application containing important information about objectives, economic resources of the projects, timeframes, receivers of the programs, types of associations that can carry out the programs, documentation required and evaluation criteria; 2) the presentation of a formal application by the organizations and 3) the evaluation of the proposals carried out by the DPO. It is based on different aspects: organizational competence of the organizations, impact of the program on the territorial context in which it will be carried out, impact and quality of the proposal considering the people who have to receive it, impact and quality of the collaboration between the organization and other external social structures and the last one referred to the cost/benefit analysis.

⁵⁰⁹ This system presents two main limitations: it is not connected to the *ex-ante* evaluation process and it is based exclusively on the data that the organization provides on itself, without any integration with external evaluation criteria able to measure their action using other sources of data (Transcrime, 2009d).

of the double counting, a univocal identification system of the victims was introduced (Transcrime, 2009a).

The recent Legislative Decree 24/2014 introduces important dispositions to ensure an effective protection to the victims. They are: a) implementation of a specific regulation concerning minors (Article 4) and b) introduction of the right of compensation for victims (Article 6). It is fixed at 1,500 euro per victim provided according to the annual financial resources available.

To these main protection instruments, one more can be added, namely the anti-trafficking free helpline, instituted in 2000 by the DPO. The number of the free helpline is 800 290 290 and is operative 24 hours a day. The aim of this initiative was to give support, information and indications on the assistance programs and the protection measures available. Through this number, victims of THB, slavery reduction, violence or serious exploitation can phone and come into contact with competent operators of the organizations involved in the implementation of Article 18 and Article 13. This helpline was composed by one central position and fourteen peripheral positions. The first was a collection and sorting point of the phone calls, while the others received the calls according to the dialling code of the caller. Since 2007, the service offered by this free helpline has been enlarged: the assistance is ensured not only to sexual exploitation victims, but also to those of other types of exploitation. However, on 1st August 2010 the local positions were closed in all regions for lack of funds and only the central position is still operative (Bonetti *et al.*, 2011).

In conclusion, the main principles to which the Italian legislation concerning the protection of the victims is inspired are three. The first is the promotion of the autonomy of the victims. The projects have to ensure the exit from the exploitation conditions and have to create an opportunity for the personal development of the victims (they should learn and enforce their skills and their capabilities). The second is the integration of different actors, institutional subjects and social services, and the third is the central role of the territorial dimension (Bonetti *et al.*, 2011).

The existing legislation has two main limitations (US Department of State, 2012):

- the lack of formal procedures at national level able to help front-line responders in identifying victims (the quality of this process changes from region to region because arrangements exist only at local level);
- the application of the anti-immigration security laws to the illegal migrants comport fines and their expulsion from Italy without an adequate check to identify trafficking victims among the illegal migrants.

The next sub-paragraph presents some data related to the application of the protective measures and their main final users.

1.2.1 SOME DATA ON VICTIMS PROTECTION

In order to evaluate the implementation of the protective dispositions contained in the Italian legislation, some official data are analysed. They are distinguished in data related to the application of Article 13 of the Law 228/2003 and results related to the application of Article 18 of the Legislative Decree 286/1998.

Article 13 of the Law 228/2003

From 2006/2007 to 2007/2008 there is not a substantial change in the number of people assisted (438 vs 452). Tables 4 and 5 present the gender and the nationality of the victims assisted respectively. With regard to the gender, Table 4 shows that in both “Avviso” there were more women than men. There was also a very little presence of transgenders. This situation is explainable by the involvement of women in more visible forms of exploitation and in an increasing awareness of their status of victims. Focusing on the nationality, Table 5 underlines that Nigeria and Romania were the main countries of origin of the victims in both “Avviso”. The percentage variation shows a strong increase in Nigerian and Albanian victims (72.3% and 66.7%, respectively), unlike all the other ones, which registered a decrease (from 34.1% in Romanian victims, 48% in Moldovan victims, 68.8% in Ukrainian victims, and 57.1% in victims coming from Brazil).

TABELA V.4 - GENDER OF VICTIMS THAT RECEIVED ASSISTANCE. DATA FROM ENTRANCE FORMS, ARTICLE 13 "AVVISO 1" (2006/2007) AND "AVVISO" 2 (2007/2008)*

	Avviso 1 (2006/2007) (N=438)		Avviso 2 (2007/2008) (N=452)		Variation
	N	%	N	%	%
Females	301	68.7%	329	72.8%	9.3%
Males	136	31.1%	118	26.1%	-13.2%
Transgender	1	0.2%	4	0.9%	300%
Not available	0	/	1	0.2%	0%
Total	438	100.0%	452	100.0%	3.2%

* Percentages are rounded to the first decimal place.

SOURCE: TRANSCRIME ELABORATION ON DPO DATA

TABELA V.5. - NATIONALITY OF VICTIMS THAT RECEIVED ASSISTANCE. DATA FROM ENTRANCE FORMS, ARTICLE 13 "AVVISO 1" (2006/2007) AND "AVVISO" 2 (2007/2008)*

	Avviso 1 (2006/2007) (N=438)		Avviso 2 (2007/2008) (N=452)		Variation
	N	%	N	%	%
Nigerian victims	112	25.6%	193	42.7%	72.3%
Romanian victims	91	20.8%	60	13.3%	-34.1%
Moldovan victims	25	5.7%	13	2.9%	-48.0%
Ukrainian victims	16	3.7%	5	1.1%	-68.8%
Brazilian victims	14	3.2%	6	1.3%	-57.1%
Albanian victims	6	1.4%	10	2.2%	66.7%
Other nationalities	174	39.6%	165	36.5%	-5.2%
Total	438	100.0%	452	100.0%	3.2%

* Percentages are rounded to the first decimal place.

SOURCE: TRANSCRIME ELABORATION ON DPO DATA

As already underlined, the aim of Article 13 projects is to give immediate help to victims. Consequently, the measures adopted intend first of all to ensure them a quickly physical and material improvement. Table 6 presents the assistance measures adopted. As can be noted, the more widespread measures are: assistance services, social services, meetings and health services.

TABELA 1 - ASSISTANCE MEASURES. DATA FROM EXIT FORMS, ARTICLE 13 “AVVISO” 1 (2006/2007) AND “AVVISO” 2 (2007/2008)*

	Avviso 1 (2006/2007) (N=339)		Avviso 2 (2007/2008) (N=353)		Variation
	N	%	N	%	%
Assistance services	82	24.2%	129	36.5%	57.3%
Social services	91	26.8%	55	15.6%	-39.6%
Meeting	45	13.3%	69	19.5%	53.3%
Health services	45	13.3%	52	14.7%	15.6%
Mediation	10	2.9%	9	2.5%	-10.0%
Legal advice	8	2.4%	29	8.2%	262.5%
Psychological counselling	4	1.2%	6	1.7%	50.0%
Counselling	2	0.6%	1	0.3%	-50.0%
Other	48	14.2%	1	0.3%	-97.9%
Not available	4	1.1%	2	0.7%	-50.0%
Total	339	100.0%	353	100.0%	4.1%

* Percentages are rounded to the first decimal place.

SOURCE: TRANSCRIME ELABORATION ON DPO DATA

Article 18 of the Legislative Decree 286/1998

From 2000 to 2010, 604 projects related to Article 18 were co-financed (Bonetti *et al.*, 2011). Table 7 shows the number of victims assisted from 2000 to 2008. As can be noted, from 2000/2001 to 2005/2006 the number of victims has increased (except in 2002/2003) and it started to decrease afterwards, with a significant drop in 2007/2008.

TABELA V.7. - TREND OF VICTIMS. DATA FROM "ENTRANCE" FORMS, ARTICLE 18 FROM "AVVISO 1" (2000/2001) TO "AVVISO 8" (2007/2008)*

Avviso	Year	No. of victims	Year Var. (%)
1	2000/2001	1755	
2	2001/2002	1836	+ 4.6 %
3	2002/2003	1797	-2.1 %
4	2003/2004	1971	+ 9.7 %
5	2004/2005	2039	+ 3.5 %
6	2005/2006	2143	+ 5.1 %
7	2006/2007	1974	-7.9 %
8	2007/2008	1172	-40.6 %

* Percentages are rounded to the first decimal place.

SOURCE: CANEPPELE AND MANCUSO, 2012: 267

Tables V.8 and V.9 show some inputs concerning the main demographic characteristics of the victims assisted considering the last year for which data are available.

TABELA 2 - GENDER OF VICTIMS THAT RECEIVED ASSISTANCE. DATA FROM ENTRANCE FORMS, ARTICLE 18 "AVVISO 8" (2007/2008)*

	Avviso 8 (N=1172)
Females	87.6%
Males	10.1%
Transgender	2.1%
Not available	0.2%

* Percentages are rounded to the first decimal place.

SOURCE: TRANSCRIME ELABORATION ON DPO DATA

TABELA V.9. - NATIONALITIES OF VICTIMS THAT RECEIVED ASSISTANCE. DATA FROM ENTRANCE FORMS, ARTICLE 18 "AVVISO 8" (2007/2008)*

	Avviso 8 (N=1172)
Nigerian victims	49.4%
Romanian victims	13.1%
Brazilian victims	5.4%

Albanian victims	4.8%
Moldovan victims	4.5%
Ukrainian victims	2.0%
Other nationalities	20.8%

** Percentages are rounded to the first decimal place.*

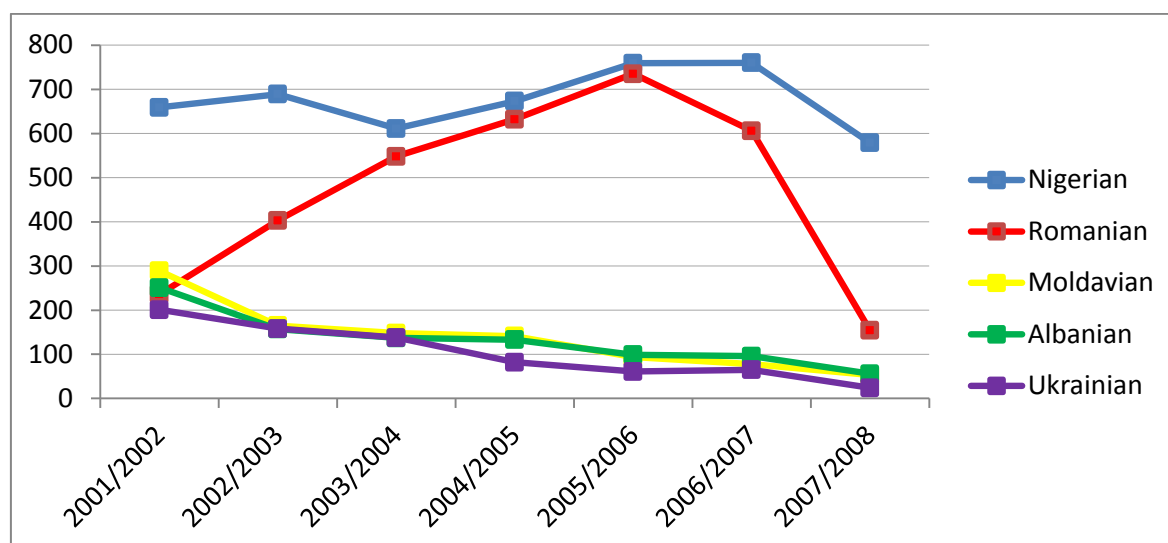
SOURCE: TRANSCRIME ELABORATION ON DPO DATA

Also in Article 18 programs funded in 2007/2008, regarding the gender, women are more than four fifths of the victims (87.6%), men are just 10.1% and transgender 2.1%. With respect to nationalities, about half of the victims are Nigerian (49.4%), followed by 13.1% from Romania.

Figure V.5 shows the trend of the victims assisted from 2001 to 2008 according to their nationality. As can be noted, there is a decrease in the number of victims from all nationalities. However, it is not to be considered as a real reduction of the phenomenon in Italy or an inability of the criminal organizations to recruit new victims. Indeed, the most relevant decrease was registered in the East European victims, especially the Romanian. The entry of Romania in the European Union in 2007, and the consequent more ease of movement of Romanian people (see paragraph 1.1.1),⁵¹⁰ made the resident permit less attractive for victims coming from EU countries as Romanian victims are. The decreasing presence of Romanian people has certainly affected the ethnic composition of the victims assisted, who are mainly from Nigeria (Caneppele and Mancuso, 2012).

⁵¹⁰ Romanian immigrants do not need any particular documents to stay legally in Italy.

FIGURE V.5 - TREND OF THE VICTIMS ASSISTED. DATA FROM ENTRANCE FORMS, ARTICLE 18 FROM "AVVISO 2" (2001/2002) TO "AVVISO 8" (2007/2008). ABSOLUTE VALUES



SOURCE: TRANSCRIME ELABORATION ON DPO DATA

With regard to the protective measures applied, Article 18 projects offer the possibility of being included in the Italian socio-economic structure by giving to the victims a residence permit. Table 10 presents the number of residence permits required and obtained from 2001 to 2008.

TABLE V.10 - NUMBER OF RESIDENCE PERMITS REQUIRED AND OBTAINED BY THE VICTIMS. ARTICLE 18 FROM "AVVISO 1" (2000/2001) TO "AVVISO 8" (2007/2008)

	2001	2002	2003	2004	2005	2006	2007	2008	Total
No. of residence permits required	1148	1386	1082	1081	1217	1235	1158	433	8740
No. of residence permits obtained	833	1062	962	927	942	927	1009	328	6990
Incidence (%)	73	77	89	86	77	75	87	76	80

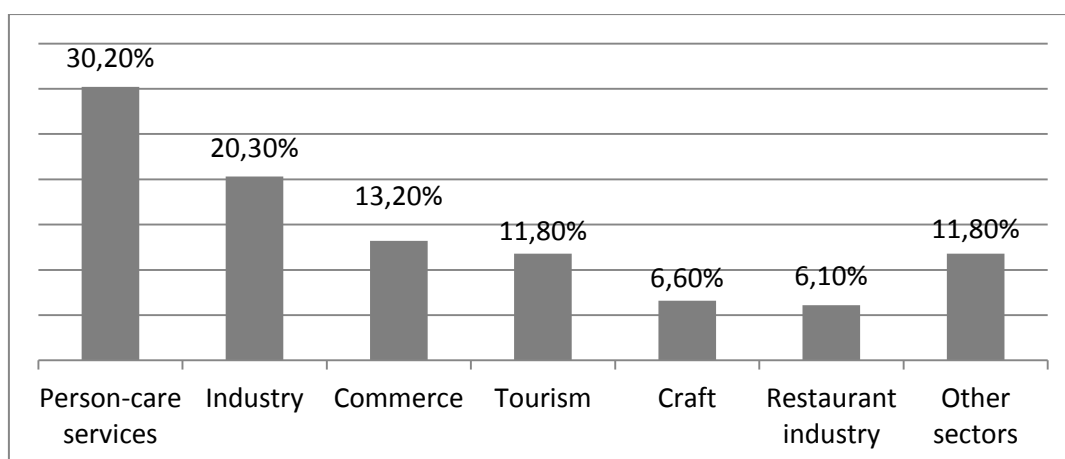
SOURCE: BONETTI ET AL, 2011: 27

As can be noted from the table, after the relevant increase registered from 2001 to 2002, the variations were limited. A relevant reduction was registered in 2008. This

was explained by the reduction of the number of victims assisted (see Table 7), especially those Romanian starting from 2007 (see Figure V.5).

With regard to the other assistance measures applied, education and professional training are the more widespread measures, followed by professional integration and scholarships. Figure 6 shows the business sectors in which the professional integration was carried out during Avviso 8. As can be noted, personal care services, industry and commerce are those in which the highest number of victims has been integrated professionally.

FIGURE V.6 - PROFESSIONAL INTEGRATION PER BUSINESS SECTOR. DATA FROM EXIT FORMS, ARTICLE 18 (2007/2008) (N=212).
DATA EXPRESSED IN PERCENTAGES



SOURCE: CANEPPELE AND MANCUSO (2012: 268)

1.3 PREVENTION OF THE CRIME

In Italy, a specific legislation concerning THB prevention does not exist and a National Rapporteur has not been yet appointed. Despite this, the Legislative Decree 24/2014 in Article 9 specifies that a national action plan against THB and serious exploitation should be applied within three months from the entry into force of this Decree, namely June 2014. It should define multi-year strategies to prevent, protect and fight against THB. Besides this, Article 7 of the Legislative Decree states that the DPO is in charge of coordinating all the prevention initiatives, monitoring the phenomenon, presenting a biennial report to the EU Anti-Trafficking Coordinator.

Another important preventive initiative is the establishment of a National Observatory on Trafficking in human beings. Instituted in 2011, it is coordinated by the DPO. It collects documents on the phenomenon and on the national and international legislation. It also provides for a reserved area on data collection in which NGOs and local authorities can insert data and information on the victims assisted.

Finally, the Italian Ministry of the Interior and the DPO together with some NGOs (such as On the Road) work at awareness campaigns on the THB phenomenon. In particular, they produce advertisements, websites and other information to inform people of this crime (Transcrime, 2010c). Among these initiatives, some are worth remembering (US Department of State, 2012):

- an important program implemented by the Ministry of the Tourism from 2010 to 2011 with the aim of reducing child sex tourism. According to this program, responsible tourism certificates had to be issued to travel agencies and tour operators which could outreach potential clients;
- a national media campaign addressed to potential clients of child sex tourism implemented by the same Ministry;
- a national awareness campaign called “Trafficking deletes people, you can delete trafficking” organized in 2009 by DPO in collaboration with the Italian Ministry of the Interior. The aim was to promote the anti-trafficking free helpline and to sensitize people on the different forms of exploitation;
- training organized by the Italian armed forces to prevent exploitation by Italian troops in mission abroad.

The next section will discuss the main results obtained analysing THB in Italy through interviews and focus group with national experts, and the submission of a survey to police officers dealing with this crime in two of the main Italian cities.

2. THB IN ITALY: AN EMPIRICAL ANALYSIS

As underlined in the first two parts of this national report, Italy is a key country in the THB routes. However, most of the non-experts in the field do not have the perception of this phenomenon. The Italian media do not give enough relevance to THB since it does not make headline news. The few articles published on the newspapers are mainly focused on sex trafficking since it is the most visible field of exploitation, and it has also a great social impact. Police operations or information about labour exploitation, begging or involvement of the victims in illicit activities do not receive a lot of attention. When they are dealt with in some articles or journalistic inquiries, they are described in a simply way. In addition, articles are mainly focused on the phase of exploitation rather than recruitment and transportation of the victims. This vagueness does not allow understanding the complexity of the phenomenon nor the analysis of criminal organizations involved in this transnational crime. Finally, articles are mainly related to police operations. This produces a high attention towards countering measures and leaves prevention and protection activities in the dark.⁵¹¹

In this section the main results obtained from the 23 interviews, the focus group and the survey submitted to law enforcement agencies of two Italian cities are presented. They are divided according to some topics they dealt with. The topics were deducted from the scripts used in the interviews, focus group and survey. They are:

- general perceptions on THB;
- perceptions on THB in Italy both related to sex and labour trafficking;
- prosecution of the crime;
- protection of the victims;
- prevention of the crime;

⁵¹¹ Articles have been collected from two daily newspapers (Corriere della Sera and La Repubblica) and one weekly newspaper (L'Espresso). They were chosen mainly because news are reported in a more independent, neutral and nonpartisan way in comparison to other newspapers. In addition, they look to different profiles and public targets. The time frame considered goes from March 1997 to July 2013. The total number of news articles collected was 832.

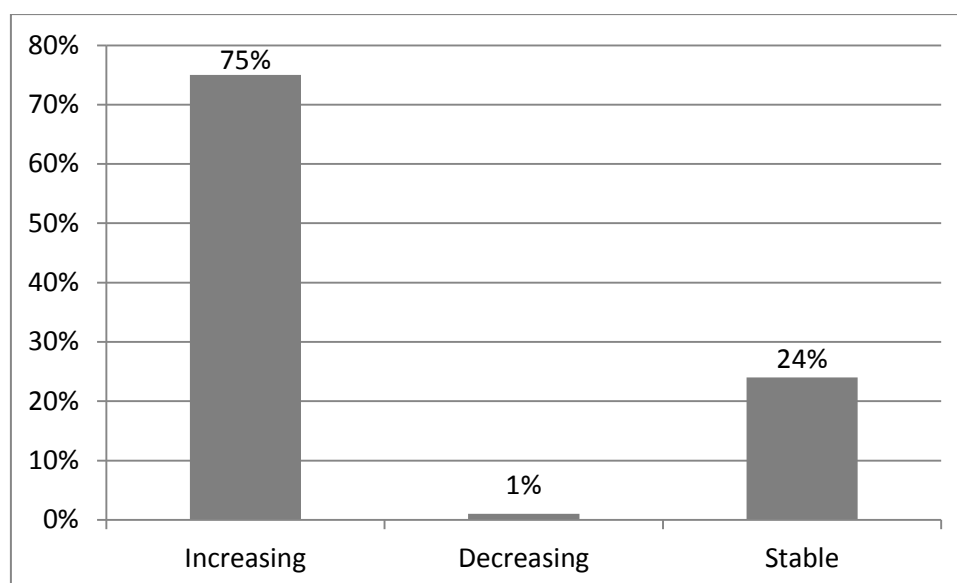
- international cooperation.

2.1 GENERAL PERCEPTIONS ON THB

The phenomenon of THB is considered the result of social alienation by the interviewees and the participants at the focus group, and it is often defined as a modern form of slavery.

Figure V.7 shows the perception of the police officers who answered to the questionnaires in relation to the trend of THB in Europe. As can be noted, the majority of them agreed on the fact that THB in Europe is increasing as confirmed by 75% of the respondents. On the contrary, only 1% believed that the phenomenon instead of increasing is actually decreasing.⁵¹²

FIGURE V.7 - ANSWERS TO THE QUESTION "ACCORDING TO YOUR KNOWLEDGE, TRAFFICKING IN HUMAN BEINGS IN EUROPE IS" (N=80). RESULTS EXPRESSED IN PERCENTAGES



SOURCE: TRANSCRIME ELABORATION ON QUESTIONNAIRES FILLED IN BY SOME POLICE OFFICERS OF THE ARMA DEI CARABINIERI OF TWO ITALIAN CITIES

The main cause of THB at international level is identified by many national experts as the lack of balance between the North and the South of the world. The growing

⁵¹² In Figure V.7, the percentages were calculated considering 80 and not 81 as the total number of respondents. The reason is that there is one missing answer that was excluded from the figure.

economic, social and political differences among the countries facilitate the commission of the crime. Indeed, these differences produce a lot of criminal opportunities taken by motivated offenders who want to earn money with a low risk of being identified, investigated and convicted. They can easily recruit victims by promising them a regular job in another country and a complete emancipation. The reality is that, once separated from their families and their background, victims are exploited in different economic sectors.

According to the police officers involved in the survey, the main causes of sexual exploitation in Europe are:

- the economic underdevelopment in the countries of origin (indicated as most relevant cause by 58% of the respondents, namely 47 out of 81);
- the high demand for sexual services in the host countries (chosen as second cause per importance by 32% of the respondents, namely 26 out of 81);
- the presence of conflicts and wars in the countries of origin (third cause, identified by 25% of the respondents, namely 20 out of 81).

With regard to labour exploitation, besides the economic underdevelopment and the presence of conflicts and wars in the countries of origin (identified respectively as first and third cause per relevance by 69% and 37% of the respondents), 35% of the police officers who filled in the questionnaire identified as second relevant cause of the phenomenon in Europe the demand for underpaid jobs in the host countries.

What emerges from the interviews done and the focus group organized in Milan is that the lack of awareness is a key issue that influences THB. In many cases, victims do not believe they have rights in the destination country and/or in the country of origin and so they prefer to not report the crime to law enforcement agencies. This can be explained by their belonging to strict cultural contexts characterized by a men-predominance and a female-subjection, and by the necessity many people have to work also in exchange of

very limited economic compensation. Indeed, according to all the people contacted, victims are very vulnerable people who suffer serious social and economic difficulties.

The perceptions of the police officers who filled in the questionnaire confirmed these affirmations. Indeed, according to 70% of the respondents (57 out of 81) the lesser the people are informed on THB the bigger is the probability to be trafficked. In addition, 41% (33 out of 81) stated that according to them people from non-Western countries are easier to fall into THB situations for cultural reasons.

The next section is focused on the Italian context. It presents the most relevant information and observations on sex and labour trafficking in Italy.

2.2 PERCEPTIONS ON THB IN ITALY BOTH RELATED TO SEX AND LABOUR TRAFFICKING

The first point emerged both in the interviews and in the focus group is the necessity to distinguish between illegal immigration and THB. These two phenomena are related to very different crimes, which most of the time are mixed causing a loss of their proper meaning. As FG 3⁵¹³ explained, these two different phenomena have received different attention by the Italian government. Indeed, many valid and successful initiatives were promoted to fight against illegal immigration, while countermeasures against THB have been more selective since some exploitation areas have been underestimated (e.g. labour exploitation and begging).

Another crucial point emerged was the strong connection between THB and the right of asylum. As underlined by FG 6 and FG 4, the use of the right of asylum is considered coercive rather than an exploitable mean. Victims are forced to ask for political asylum in order to obtain the possibility of staying legally in Italy, but then they are engaged in a form of exploitation.

All the national experts contacted made relevant observations and comments on the new trends of THB in Italy according to their experience. These observations were

⁵¹³ The participants in the focus group have been identified as FG 1, FG 2, FG 3, etc. (see Appendix 1). People interviewed have been identified as I 1, I 2, I 3, etc. (see Appendix 2).

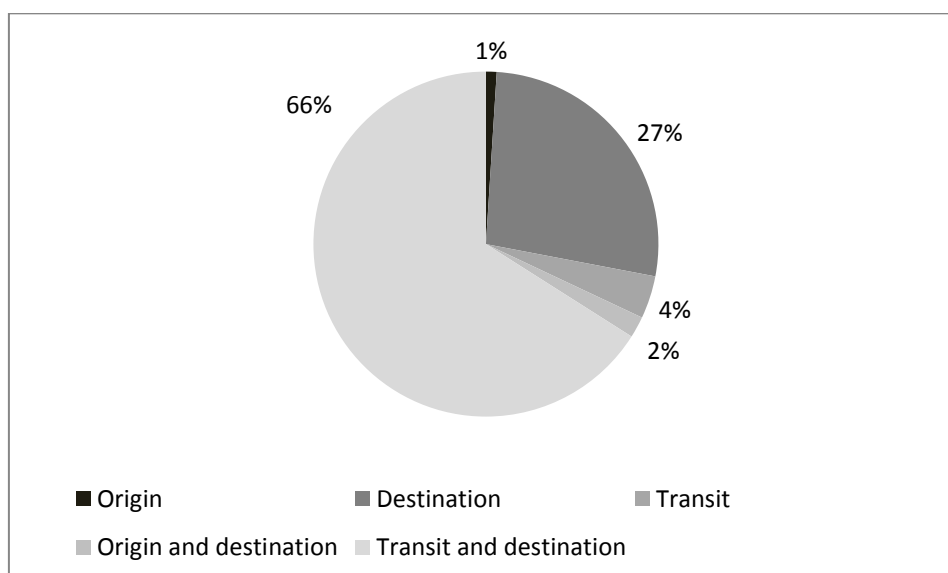
mainly related to new routes, socio-economic characteristics of victims and main areas of exploitation.

This section is made of two sub-paragraphs analysing sex and labour trafficking respectively.

2.2.1 PERCEPTIONS ON SEX TRAFFICKING

Italy has been considered by all the people interviewed and by all the attendees at the focus group as a destination and transit country for victims of sex trafficking. The police officers who answered to the questionnaire also agreed with this perception. Indeed, according to Figure 8, 66% of the respondents stated that Italy is a transit and destination country if this field of exploitation is considered.

FIGURE V. 8 - ANSWERS TO THE QUESTION “IN WHAT CONCERNS TRAFFICKING FOR SEXUAL EXPLOITATION, IN YOUR OPINION ITALY IS A COUNTRY OF” (N=81). RESULTS EXPRESSED IN PERCENTAGES

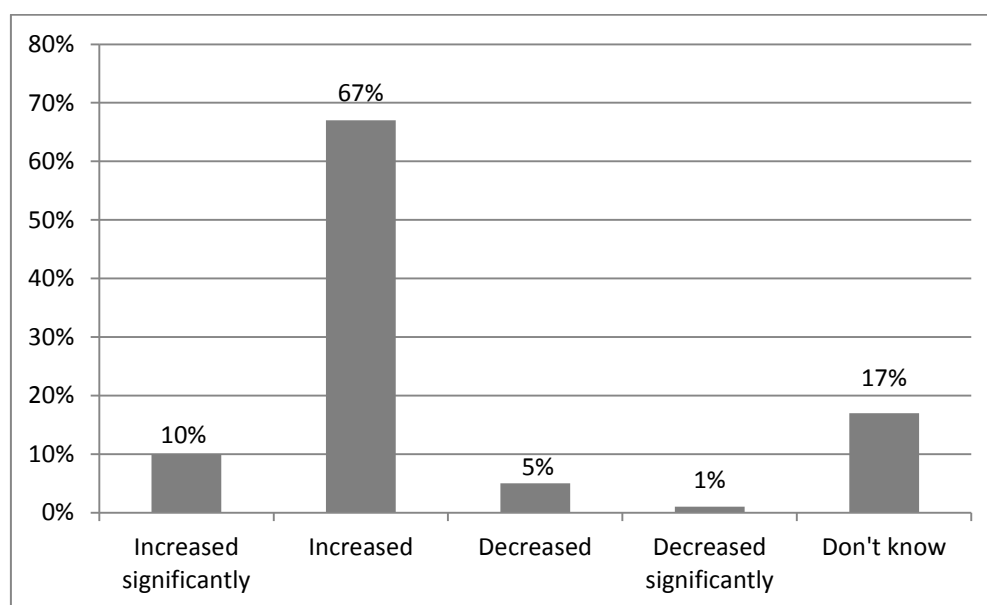


SOURCE: TRANSCRIME ELABORATION ON QUESTIONNAIRES FILLED IN BY SOME POLICE OFFICERS OF THE ARMA DEI CARABINIERI OF TWO ITALIAN CITIES

Sex trafficking in Italy is an alarming phenomenon and it has been changing year after year as stated by FG1 and FG7. Figure V.9 shows that, according to 67% of the police officers of the Arma dei Carabinieri who filled in the questionnaires (54 respondents out

of 81), sexual exploitation in Italy has increased in the last five years, and 10% of the respondents believe it has increased in a significant way. Conversely, only 6% of them considered that the phenomenon is decreasing or decreasing in a significant way.

FIGURE V. 9 - ANSWERS TO THE QUESTION "IN YOUR OPINION TRAFFICKING FOR SEXUAL EXPLOITATION IN ITALY IN THE LAST FIVE YEARS HAS" (N=81). RESULTS EXPRESSED IN PERCENTAGES



SOURCE: TRANSCRIME ELABORATION ON QUESTIONNAIRES FILLED IN BY SOME POLICE OFFICERS OF THE ARMA DEI CARABINIERI OF TWO ITALIAN CITIES

The abundant demand for sexual services and the poverty in the countries of origin are considered by the majority of the interviewees as two of the main elements contraddistinguishing the relevant presence of people exploited in the sex market in Italy. As a consequence, in the eyes of the victims of THB, Italy seems a welcoming country full of opportunities and possibilities to save money and obtain the desired emancipation.

Besides the causes of the increase of sexual exploitation in Italy already identified by the national experts,⁵¹⁴ according to the perceptions of 28% of the police officers who filled in the questionnaire also less restricted migration policies have played a fundamental role. In their opinion, the phenomenon is not sufficiently controlled and

⁵¹⁴ According to 49% of the police officers involved in the survey, the increasing of poverty in the countries of origin of the victims should be mentioned among the main three causes of the increase of sexual exploitation in Italy. In the same way, according to 44% of them, also the development of a sex industry in Italy should be considered a relevant cause.

monitored and this paves the way to criminal organizations that can take advantages from it easily.

Focusing on the geographical areas considered to be more influenced by sexual exploitation, Northern and Central regions are considered the destination of many victims exploited in the Italian sex market. According to the police officers perceptions, the three main regions in which sexual exploitation seems particularly thriving are Lombardy, Lazio and Emilia Romagna.⁵¹⁵

These regions are the hub of important business locations and areas wherein most of the wealth is concentrated. This generates an obvious, higher and consistent merry-go-round of money, which may explain why they were pointed as hot spots of sexual exploitation by many.

With regard to the nationality of the victims, the sex market in Italy is composed by an array of victims from different countries. According to the experts consulted, the main areas of origin are the following:

- **Eastern Europe:** the presence of victims from Eastern Europe appears constant and well distributed throughout the peninsula since the visa is no longer required. Their entry in Italy is currently facilitated by the inclusion of some key Eastern countries in the European Union (i.e. Bulgaria and Romania).

Nigeria: Nigerian victims are increasing year after year. They are recruited through the creation of a debt and the voodoo rituals typical of this geographical area, and then transported to Italy by plane or land through Libya. The experts have also underlined that Greece and Turkey are becoming important transit points for victims destined to the Italian sex market.

- **China:** the number of Chinese victims is increasing. Chinese victims' exploiters seem to have found breeding ground in Italy as confirmed by two participants at the focus

⁵¹⁵ The identification of the three main Italian regions was carried out by counting the number of times each regions was reported in the questionnaires filled in by the police officers.

group – FG 7 and FG8. This is due to the reduction of the travelling costs compared to average prices of 2005 (around 18-20 million Lire). In addition, the increase of Chinese victims is explained by the fact that many Chinese women that used to work in factories now work as prostitutes to plug the gap of unemployment.

- **Brazil:** most of the Brazilian victims are transsexuals. However, an estimate on this type of sex market is particularly hard since they are mainly involved in indoor prostitution, hiding considerably the real dimension of the phenomenon, as stated by FG6 and FG4.
- **Albania:** Italy experienced a decrease of Albanians in the sex market since the 1990s because of the closure of the Otranto Channel route and the bilateral agreements established between Albania and Italy over the last years. However, in the opinion of FG4 it appears that now there is a return of Albanian victims.
- **Cuba:** FG4 foresaw the remarkable presence of Cuban women due to the modification of the Cuban immigration regulation which allows Cubans to leave the island easily compared to the previous years.
- **Italy:** a remarkable number of Italian women are present in the sex market. Usually they get involved in prostitution in order to deal with the consequences of the economic straits.

The perceptions of the police officers involved in the survey confirmed the relevant presence of Eastern European victims in Italy underlined by the experts. Indeed, 55% of the respondents agreed with the sentence “Women forced to work as prostitutes are mainly from Eastern countries” against 17% who disagreed and 28% who neither agreed nor disagreed. With regard to African victims, only 29% of the respondents agreed with the sentence “Women forced to work as prostitutes are mainly from Africa”, while 35% disagreed and 36% neither agreed nor disagreed. The last world region taken into consideration in the questionnaire submitted to the police officers concerned Latin America. In this case, 14% of the respondents agree with the sentence “Women forced to

work as prostitutes are mainly from Latin America”, while 51% disagreed and 35% neither agreed nor disagreed.⁵¹⁶

On the contrary, police officers did not agree with the perceptions of the experts about the presence of Italian women exploited in the sex market. Indeed, 52% of the respondents did not believe that there are several Italian women forced to prostitute themselves in Italy and other countries. Therefore, the perception of the police officers who answered to the questionnaire is that the victims are mainly from foreign countries.

According to the participants at the focus group, the nationality seems to affect the place wherein victims are forced to perform sexual services. FG5 stated that Eastern European victims are present both on the street and indoors, while Nigerian victims are mainly concentrated outdoors. However, the opinion of the police officers regarding this aspect is quite different: most of the respondents (42%) disagreed with the sentence “The victims of sex trafficking are placed in different kinds of prostitution (in the streets, in apartments, at clubs, etc.) according to their nationality”.

As underlined by all the interviewees and participants at the focus group, all victims have different characteristics which are strictly related to their market value. These features are the colour of the skin and the age. According to the first aspect, I 1, I 7 and I 10 pointed out how the price of sexual services is significantly lower in the case of Nigerian victims than Eastern European victims. The reason they identified is connected to a form of racism the clients have towards dark skinned women. With regard to the age of victims, the younger the women are the higher the price of sexual services is. In the opinion of FG4, usually Nigerian and Romanian victims are young (< 25) and often underage, while victims from China and South America are between 25 and 35 years old. Most of the police officers involved in the survey (89%) agreed with the sentence “The

⁵¹⁶ The percentages related to the perception of the police officers with regard to the presence of African and Latin American victims working as prostitutes in Italy were calculated considering 80 and not 81 as total number of respondents. The reason is that there is one missing answer that was excluded from the analysis.

majority of women forced to work as prostitutes are aged between 18 and 30”, while none of them agreed that the majority of victims was more than 30 years old.⁵¹⁷

Apart from the age, according to the experts, victims that become pregnant are often forced to abort by recurring to unsafe and illegal abortion practices carried out by ruthless doctors. However, in some cases they are obliged to use their pregnancy to gather more clients since some of them are attracted by pregnant women.

With regard to the criminals, according to the opinion of I 12, I 14 and I 11, all the criminal groups involved in THB are organized in criminal networks. I 4 stated that Mafia-type criminal organizations are not involved in this illicit activity. Among the offenders there are some Italians, but with minor roles since the foreign criminal organizations are the real responsible for THB in Italy. However, evident differences are notable also when the features of traffickers and their organizations is considered. According to I 4 and I 11, the two main criminal groups characteristics are the following:

- Nigerians criminal networks: many of them are structured and organized criminal groups. They rely on personal contacts located almost in all countries particularly affected by THB. They are strongly ethnic-based and they are able to maintain contacts with the country of origin and create a chain of contacts strewn across different states. There is a broad use of telephone contacts in order to get in touch with persons located in different areas.
- Balkan criminal networks: they have a more transnational composition. They prefer closer contacts and do not use telephone to contact since it is often and easily controlled by police forces.

Some main emerging trends were registered by the experts contacted. FG 6 mentioned a return to violent recruitment and exploitation methods. FG6 explained how the victims suffer physical and psychological traumas during the travel and once arrived in the destination country (e.g. Nigerian victims arriving in Italy through Libya and crossing

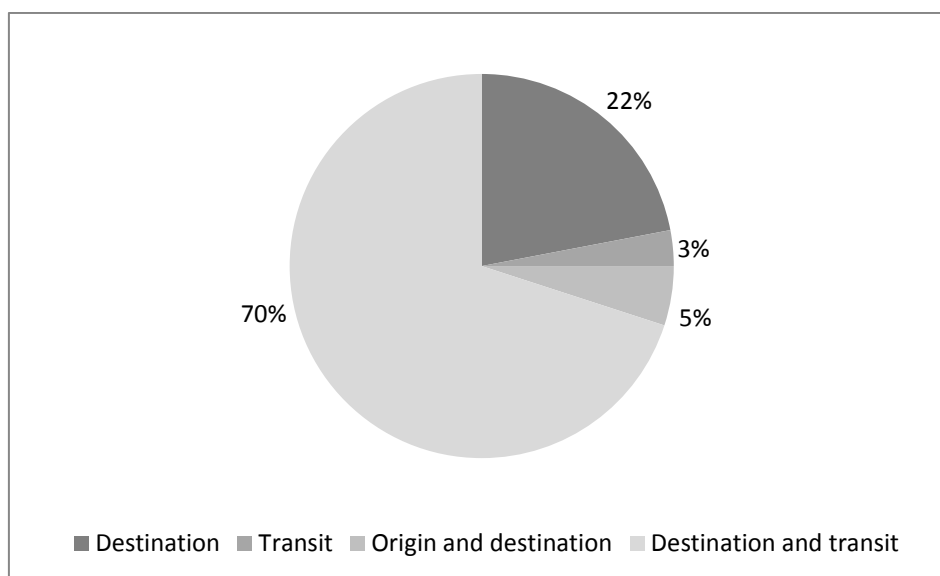
⁵¹⁷ The percentages related to the age of the victims working as prostitutes in Italy were calculated considering 80 and not 81 as total number of respondents. The reason is that there is one missing answer that was excluded from the analysis.

the desert are often violently hit by their panderers, tortured and raped by them). Besides this, FG4 underlined how the use of Internet with the purpose to exploit victims has increased. It has changed the way prostitutes get in touch with clients modifying their interaction with the sex market. Finally, FG5 and FG9 highlighted a strong interaction between sexual exploitation and drug market. Indeed, more often victims are forced to consume drugs in order to their exploiters better subjugate them.

2.2.2 PERCEPTIONS ON LABOUR TRAFFICKING

Italy has been considered by all the experts contacted as a destination and transit country also for victims of labour trafficking. As can be noted from Figure V.10, 70% of the police officers who answered to the questionnaire agreed with this perception. None of them indicated Italy as an origin country.

FIGURE V. 10 - ANSWERS TO THE QUESTION "IN WHAT CONCERNS TRAFFICKING FOR LABOUR EXPLOITATION, IN YOUR OPINION ITALY IS A COUNTRY OF" (N=81). RESULTS EXPRESSED IN PERCENTAGES



SOURCE: TRANSCRIME ELABORATION ON QUESTIONNAIRES FILLED IN BY SOME POLICE OFFICERS OF THE ARMA DEI CARABINIERI OF TWO ITALIAN CITIES

Despite the awareness of the role of Italy in this kind of trafficking, all the interviewees and the participants at the focus group underlined that it is a much underestimated phenomenon.

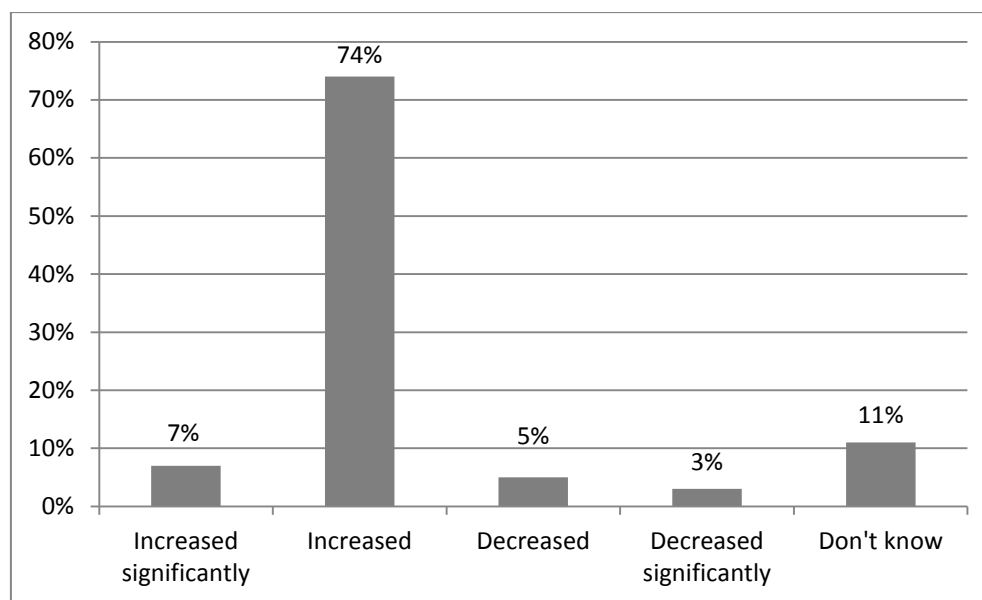
According to FG9, labour trafficking appears as the result of a threefold vision of the job market. The first one is a liberal vision and a *laissez-faire* policy which has produced a general reduction of the rights in the job market. The second one is connected to the cultural aspects and it considers the exploitation as the only way to reach emancipation. The third one is related to the current economic crisis. Both these two last visions determine the low number of offences reported, as underlined by FG1, FG2 and FG5. Indeed, several victims of labour exploitation do not identify themselves as exploited and therefore as victims. They consider their job as the only way they have to reach emancipation. The actual economic crisis strengthens this perception because victims think they are lucky workers having a job despite the clear economic issues, and consider their exploiters as a sort of benefactors.

As stated by I 9, the number of allegations is paltry also because there is public tolerance towards this form of exploitation. Indeed, there is the wrong belief that anyone should work regardless of the conditions wherein the working activity is carried out.

Figure V.11 shows the perceptions of Italian police forces concerning the trend of labour exploitation in Italy in the past 5 years.⁵¹⁸

⁵¹⁸ In Figure V.11, the percentages were calculated considering 80 and not 81 as total number of respondents. The reason is that there is one missing answer that was excluded from the figure.

FIGURE V. 11 - ANSWERS TO THE QUESTION "IN YOUR OPINION, TRAFFICKING FOR LABOUR EXPLOITATION IN ITALY IN THE LAST FIVE YEARS HAS" (N=80). RESULTS EXPRESSED IN PERCENTAGES



SOURCE: TRANSCRIME ELABORATION ON QUESTIONNAIRES FILLED IN BY SOME POLICE OFFICERS OF THE ARMA DEI CARABINIERI OF TWO ITALIAN CITIES

According to 74% of the police officers of the Arma dei Carabinieri who filled in the questionnaires (59 respondents out of 80), sexual exploitation in Italy has increased in the last five years, with 7% of them believing that it has increased in a significant way. Conversely, only 8% of them considered that the phenomenon is decreasing or decreasing in a significant way.

In Italy, labour exploitation seems to have increased mainly due to two main reasons: the bad economic conditions in the countries of origin and the high demand for underpaid and irregular job. Therefore, also in this case, Italy was perceived by the victims as an ideal country in which many opportunities are available and it is possible to obtain a job easily.

These observations are confirmed also by the perceptions of the police officers involved in the survey. Indeed, 63% of the respondents underlined how the increasing of poverty in the countries of origin should be mentioned among the main three causes of the increase of labour exploitation in Italy. Among the 40% of the respondents who have

chosen “other” as answer, the large majority (91%) indicated as cause of labour exploitation the increasing demand for underpaid job. Besides this, as well as in the case of sexual exploitation, also the lack of stringent migration policies acts as input for the commission of this crime according to the police officers who participated in the research.

With regard to the regional distribution of labour trafficking, according to the opinions of I 5, I 8 and FG5, the phenomenon of labour exploitation does not seem to affect all the Italian regions in the same way. It seems that certain regions, because of their economic structure, tend to being breeding ground for this crime. In particular, the experts identified Lombardy, Sicily, Tuscany, Apulia and Campania.

The perceptions of the police officers who filled in the questionnaire reinforce the relevance of Southern regions considered to be important destinations for victims of labour trafficking. Indeed, like in the case of sexual exploitation, in which Northern and Central regions were the most mentioned by the police officers involved in the survey, the geographical areas considered to be more affected by labour exploitation are Apulia, Campania and Calabria.⁵¹⁹ They are all concentrated in the South of Italy where a relevant exploitation in the agricultural sector is present. Indeed, agriculture was indicated by the police officers as one of the main economic sectors that register a significant incidence of trafficking for labour exploitation in Italy, followed by the construction industry and, to a lesser extent, by the domestic sector.⁵²⁰

I 9, I 5 and I 8 underlined that there are some nationalities more victimized than other. It is the case of Moroccans, Romanians, Polish and Chinese. According to I9, victims of labour exploitation are not just immigrants. On the contrary, also young Italians, pensioners and housewives who need to fill the economic gap are often exploited.

⁵¹⁹ As was done for sexual exploitation, the identification of the three main Italian regions was carried out by counting the number of times each regions was reported in the questionnaires filled in by the police officers.

⁵²⁰ The large majority (90%) of the respondents chose agriculture among the two possible answers to the question “The major incidence of trafficking for labour exploitation in Italy is in”, 60% indicated the construction industry and 19% domestic service.

The perceptions of the police officers involved in the survey are quite different. Indeed, 28% of the respondents affirmed to agree with the sentence “Victims of forced labour are mainly from Eastern Europe” against 37% who disagreed and 35% who neither agreed nor disagreed. Many of them, 57% of the respondents, agreed with the sentence “Victims of forced labour are mainly from Africa”, while 25% disagreed and 18% neither agreed nor disagreed. Regarding their perception related to Latin American victims, only 13% of the respondents agreed with the sentence “Victims of forced labour are mainly from Latin America”, while 42% disagreed and 45% neither agreed nor disagreed.⁵²¹

With regard to the presence of several Italian victims of labour trafficking, 55% of the respondents (42 out of 76 people who answered to this question) did not believe that there is a significant number of Italian people who are victims of labour trafficking. This could be explained by the fact that the question in the questionnaire referred to labour trafficking, while the opinion of the experts took into consideration labour exploitation. These two concepts are quite different. The first is a more complex phenomenon which requires recruitment, transportation and exploitation of the victims, while the second implies only exploitation.

As well as in sex trafficking, nationality of the victims of labour exploitation seems to affect the business sector they are exploited in. FG 5 stated that there are specific economic sectors linked to specific nationalities: for example in the livestock there are mainly people from Bangladesh, in the construction industries people from East Europe and in the agriculture people from Africa.

With regard to the age of victims, 75% of the police officers involved in the survey agreed with the sentence “The majority of victims are aged between 18 and 30 years

⁵²¹ The percentages related to the perception of the police officers with regard to the presence of African and Latin American victims involved in the forced labour in Italy were calculated considering 77 and not 81 as total number of respondents. The reason is that there are four missing answers that were excluded from the analysis. The percentages related to Eastern European victims were calculated considering 76 as total number of respondents due to the lack of five answers.

old”.⁵²² Only 5% of the 77 respondents agreed with the sentence “The majority of victims are minors”, while 73% disagree and 22% neither agree nor disagree. Differently from sexual exploitation, there are some police officers who pointed out the presence of victims with more than 30 years old. Indeed, 14% of the 76 respondents agreed with the sentence “The majority of victims are aged between 30 and 50 years old”, even though 41% disagree and 45% neither agree nor disagree.

According to I9, I6 and I2, it is difficult to counter the phenomenon since there is a lack of professionals able to cope with it, and of course the lack of specific skills and expertise is a disadvantage. These situations highlight the lack of specific attention, especially by the Italian government. For example, I 6 explained how on a sample of 1920 programs on social protection financed by the DPO, only 320 concern labour exploitation. It is worth mentioning how protection in terms of labour exploitation represents an important hurdle. The Italian government has been trying to solve the problem of illicit work through a procedure for transforming undeclared work into regular employment⁵²³ (the Italian term is “sanatoria”). This regulation is applied in the majority of cases in the domestic sector since it registers a high concentration of illegal workers. However, as explained by FG5 and FG2, this disposition has been perceived as a new criminal opportunity because there are people that swindled their servants asking for money to complete the legal procedure.

Also in this case some emerging trends were registered by the experts contacted. The first one is a growing connection between domestic work and prostitution, as identified by FG4. Indeed, in some cases the familiar assistants are forced by their bosses to prostitute themselves.

Another phenomenon highlighted by FG1 is the existence of organizations exploiting people faking disabilities. Indeed, it is not unusual to see people with

⁵²² The percentages related to the age of the victims working as prostitutes in Italy were calculated considering 77 and not 81 as total number of respondents. The reason is that there are four missing answers that were excluded from the analysis.

⁵²³ <[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003G1029\(01\):EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003G1029(01):EN:NOT)>.

disabilities asking for charity, but the surprising fact is that these exploited people are becoming puppets of criminal organizations.

Finally, worse security and sanitary conditions of the workplaces have been underlined by many participants, with all the implications in terms of health.

The next sections are focused on the main observations and comments related to prosecution of the crime, protection of THB victims, prevention and international cooperation.

2.3 PROSECUTION OF THB

THB is a transnational crime and its fight to be effective should be transnational as well, namely based on the cooperation among law enforcement agencies of different countries. Since the judicial cooperation is limited and in many cases problematic, the number of THB investigations is reduced, as underlined by I 4 and I 9. According to them and to I 11, it is hard to convict traffickers using the Italian THB regulations because of:

- the high costs of investigations;
- the long proceedings that require time and resources;
- the difficulties in collecting effective evidence able to ascertain the commission of crimes mentioned in Article 600 (Reducing to and keeping in slavery or servitude), Article 601 (Trafficking in persons) and Article 602 (Reducing into slavery) of the Italian Penal Code (see paragraph 2.1);
- the lack of training of the police officers, especially of the custom police. Their role could be fundamental in recognizing particular THB indicators that can be important wake-up calls, as stated by FG7.

Therefore, most of the time defendants are declared guilty according to more specific and limited crimes. They cannot be taken into trial with the charge of THB because the latter is a difficult process to identify. Many behaviours ascribable to

“reduction into slavery” are not prosecuted as such because the concession of limited freedom to the victims negates the application of the corresponding Article of the Penal Code (Article 600, see paragraph 2.1). Therefore, these behaviours are declassified into minor crimes with a reduced penalty (Transcrime, 2010a). In order to provide an example, the legislation applied when cases of sex trafficking happen refers mainly to the Law 75/1958, “Abolition of the prostitution regulation and fight against other people’s prostitution exploitation”, that punishes sexual exploitation of people. This means that often only the final phase of the THB process, exploitation, is investigated and prosecuted.

The existing judicial cases are mainly focused on sexual exploitation being a more evident and morally condemned offence. Labour exploitation remains a hidden phenomenon as most participants confirmed. This is due to the low reporting level mentioned in the previous paragraph.

Another problem connected to the prosecution of THB in Italy is related to the inclusion in the national legislation of the European dispositions. Indeed the latter should be established taking into account the juridical differences among all the EU countries, otherwise their effectiveness cannot be guaranteed. For example, the new EU Directive 36/2011 proposes a strengthening of the rights and protection of victims, but according to FG1 not all the measures identified can be put into effect in Italy. Indeed, the Directive foresees victims cannot be interviewed in front of their traffickers, but according to the Italian system this is not possible since this situation in Italy would create unconstitutionality issues. In light of this evidence, it appears clear how there are evident difficulties that must be solved to provide effective measures against THB.

According to the perception of the police officers involved in the survey, there are some measures and practices more efficient than others to prosecute THB. The top-four measures are:

- articulation between police forces and public prosecution (identified as an efficient measure by 61% of the respondents);
- criminal law concerning THB (identified by 54% of the respondents);

- training of the judges (identified by 47% of the respondents);
- coordination with other police forces in the identification of cases (identified by 44% of the respondents).⁵²⁴

Other measures mentioned were the application of the penalties by the courts to traffickers and the adequacy of the national anti-trafficking law to the nature of the crime.

The cooperation between police forces and both national and international NGOs was not indicated by the police officers contacted among the most efficient measures to prosecute THB. This perception is strengthened by the fact that 65% of the respondents pointed out that they did not cooperate with NGOs during their activity. Among the 35% of those who declared having cooperated with NGOs, the form of cooperation most used was cooperation in the protection and legal assistance of victims.

2.4 PROTECTION OF THB VICTIMS

For what concerns the debate about protection of the victims, almost all the experts contacted focused on Article 18 of the Legislative Decree 286/1998. This is considered a forward looking legislation especially from a social point of view. Indeed, thanks to this regulation THB victims can apply for a visa even without reporting their aggressors/traffickers to the law enforcement agencies. Article 18 received positive comments from the majority of the participants. In particular, FG9 described it as “Excellent”, pointing out that the only country with a similar regulation in Europe, aside from Italy, is the Netherlands. However, the Italian version is considered far better from a social point of view.

Despite these positive feedbacks, FG9 underlined how the base on which Article 18 lies on is misleading since it has been related to counter-immigration policies, creating confusion and giving for granted that victims of THB are also illegal immigrants. Besides this problem, some other limits connected to the application of this Article have emerged

⁵²⁴ These percentages were calculated considering the respondents who choose the answers “4” and “5” of the ranking.

during the focus group. They are mainly connected to the lack of an efficient national supervision agency able to control the concession of visas which produces a not uniform application of the Article in the Italian regions. According to the current situation, each Italian magistrate is free to grant visas judging case by case according to their personal point of view. Therefore, visas are often given randomly according to the awareness and the sensitivity of each magistrate. Besides this, obtaining the visa without reporting the traffickers is not as easy as it is when victims decide to report the crime. In addition, the visa was the main element linking victims to NGOs, but the recent change in the ethnic composition of the victims ensures that not all the victims need a visa anymore since some of them are from EU countries. Finally, the visa is given "for humanitarian reasons". According to FG3, this label increases the risk of stigmatisation for the people receiving the visa and complicates their social integration. Indeed, they are immediately identified by their bosses as former victims of THB and are forced to fight against the prejudices of their bosses and colleagues.

Another point that emerged in the interviews and in the focus group is that in the majority of cases the protection is ensured to victims of sex trafficking and not of labour trafficking. The reasons are connected to the invisibility of the latter phenomenon and the low number of cases reported.

Therefore, in light of the endless transformations surrounding the phenomenon and the loss of appeal of the visa for many victims, the current regulation should be reviewed and updated according to many people interviewed and participants at the focus group. According to FG4, FG5, FG6 and FG9, this update should include:

- the indication of a new reason for the issue of the visa different from "for humanitarian reasons";

- the extension of the residency permit for working reasons from 6 months to 1 year;

- the identification of new measures to attract victims (both non-European and European) to the assistance and protection programs;

some provisions related to the protection of victims' relatives and children since actually the protective dispositions are only focused on victims' protection and not on other relevant subjects they can be related with;

the extension of the victims assisted through the inclusion in the protective and assistance programs of people suffering forms of exploitation different from the sexual one;

- more funding: the protection system suffers from the lack of funding both at national and local level. In fact, FG 9 underlined that the amount of money that nowadays these associations obtain is less than what they really need to continue supporting victims. This situation highlights important economic issues that if not solved may lead to the closure of most of the NGOs dealing with THB and to the consequent reduction of the services provided to victims.

According to the perceptions of the police officers involved in the survey, the most efficient measures and practices adopted to protect victims are:

availability of shelters for the victims who want to escape from the exploitation conditions (identified as an efficient measure by 74% of the respondents);

ensuring the security of the victims during the trials (identified by 40% of the respondents);

protection of the witnesses (identified by 40% of the respondents).⁵²⁵

2.5 THB PREVENTION

According to the majority of people interviewed and the participants at the focus group, the best way to develop an effective prevention system is by discouraging the demand through education and training. These initiatives should be implemented in countries that more than others are influenced by THB. Indeed, awareness campaigns

⁵²⁵ Also in this case, these percentages were calculated considering the respondents who choose the answers "4" and "5" of the ranking. The percentages reported are only two because 40% is the value registered in relation to two measures: ensuring the security of the victims during the trials and protection of the witnesses.

should take place either in destination countries, but also in the countries of origin of victims. They should be referring both to sex and labour trafficking.

All the people contacted underlined a massive lack of funds to keep the prevention system efficient and functional. According to them with a little help it is impossible to make the prevention system effective on all fronts.

According to the perception of the police officers involved in the survey, the most efficient measures and practices to prevent the crime are:

- activities carried out by NGOs in the field (identified as an efficient measure by 28% of the respondents);
- media coverage of the phenomenon (identified by 27% of the respondents);
- prevention in general (identified by 26% of the respondents);
- promotion of public awareness campaigns for potential victims (identified by 25% of the respondents).

Differently from the opinions of the experts interviewed, a limited number of police officers considered as effective the campaigns directed at reducing demand by changing attitudes of society (only 16% of the respondents).⁵²⁶

2.6 INTERNATIONAL COOPERATION

International cooperation is the main key through which an effective solution to solve the issue of THB may be found. However, not all the countries with a high rate of labour and sexual exploitation are willing to exchange data and private information that can make counter-actions more effective. Besides this, according to FG1 and FG2 the collaboration between countries is difficult as not everyone has judicial data available and ready to share.

⁵²⁶ Also in this case, these percentages were calculated considering the respondents who choose the answers “4” and “5” of the ranking.

Some people interviewed proposed key initiatives to enforce the international cooperation. First of all, European Union should have a central role in fighting THB. In order to accomplish this disposition, greater funding should be invested to allow the sharing of information among countries. Secondly, specific instruments to ensure an effective cooperation among countries where THB is a major issue should be envisaged. They could be bilateral agreements among origin and destination countries.

Finally, cooperation between NGOs should be promoted. It could be based also on informal agreements that do not have to get through bureaucratic channels. In particular, their efforts should be focused on the repatriation of the victims. They need economic and social support during this phase, but instead they often have to cope with abandonment and low chances of social reintegration.

Despite the relevance of the international cooperation in order to prosecute offenders, protect victims and prevent the crime, only a minimum percentage of the police officers who answered to the questionnaire declared to have used transnational cooperation instruments during their investigative activity, namely 38% of the respondents against 62% of those who stated that they have never used these forms of cooperation. However, according to the answers given, the main transnational cooperation mechanisms adopted by police officers are: cooperation within EU law framework with other national police forces, cooperation with European actors (Europol, Eurojust), and informal cooperation with other national police forces.

CHAPTER VI

POLAND NATIONAL CASE

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INTRODUCTION

In Poland, human trafficking has been a criminal offence since 1932, when, for the first time appropriate legislation was included in the Polish Penal Code. This crime has also been included in subsequent penal codes – in 1969 and 1997. Despite this, the crime of human trafficking only began to be seen as a problem in Poland in the 1990s. As a result of the fall of the Iron Curtain and the opening of borders, some women migrants from Central and Eastern Europe who wanted to leave for Western European countries fell victim to forced prostitution. For about 15 years, Poland was a source of trafficked persons. Today, the situation has changed – Poland is now both a country of origin and transit (a bridge between Eastern and Western Europe) and a destination for human trafficking (mainly of victims from Eastern Europe, but recently – more and more frequently – also from Africa and from East Asia). Until not so long ago, human trafficking in Poland tended to be seen primarily in the context of trafficking in women. Nowadays, increasing attention is paid to other forms of this crime – forced labour, forced begging, and home slavery. Although these forms still make up a small percentage of all cases of human trafficking in Poland, they are occurring increasingly often. In recent years, there has been growing interest from non-governmental organizations, the government and academics in the problem of human trafficking in Poland, both as a subject of academic research and in terms of efforts to prevent and offer practical assistance to victims of this crime.

Currently, Poland is experiencing an increase in the frequency of human trafficking cases, which has undoubtedly been influenced by socio-economic changes that have taken place in the last twenty years, such as: accession to the EU and the Schengen Treaty, globalization, broad access to modern telecommunication technology and ease of travel. Possibly, a greater awareness of the phenomenon and, as a consequence, more frequent detection of this type of crime has also had an additional impact. The increase in numbers of human trafficking cases in Poland and various international obligations have forced Poland to undertake actions aimed at counteracting the phenomenon and facilitating aid for victims on a broader scale.

Although regulations on trafficking in human beings existed long before (as already mentioned, the earliest have been in force since 1932), it was not until 2004 that one could talk about the beginnings of a specific Polish policy against human trafficking. This policy did not appear spontaneously. In 2004, Poland joined the European Union, and due to EU requirements, the issue of counteracting human trafficking was raised in Poland – since that time a policy has been developed, regulations in Polish law have changed, and more attention has been paid to the training of police, border guards and prosecution staff. The evolution of laws and policies against trafficking in human beings has been aimed at adapting them to European law. In addition, the opening of Polish borders due to accession to the European Union and the Schengen area (2007) has resulted in increased cross-border activities of organized crime groups, including human trafficking.

The IPA research team would like to thank all respondents who devoted time to taking part in the research conducted by us and agreed to share their experiences, knowledge and recommendations in the field of counteracting human trafficking.

1. POLISH FRAMEWORK ON THB

1.1. ANALYSIS OF PUBLIC POLICY AND LEGISLATION CONCERNING HUMAN TRAFFICKING IN POLAND

POLISH LEGISLATION

Polish anti-trafficking legislation can be divided into two basic groups. The first group consists of regulations concerning the prosecution and investigation of this crime – mainly criminal provisions. The second group includes those regulations that are related to the protection and assistance of victims of trafficking – they are included in several acts, such as the Aliens Act and the Social Welfare Act. It is worth mentioning that Polish laws are also influenced by international organizations – the United Nations and the Council of Europe. However, the European Union is the most important influence on Polish anti-trafficking legislation.

PENAL PROVISIONS

In 2004, there were two regulations in the Polish Penal Code concerning human trafficking – Article 253 § 1 and 204 § 4. The first of these penalized explicit human trafficking: “Whoever conducts human trafficking even with their consent shall be sentenced to imprisonment for a minimum term of 3 years”. The second of these, Article 204 § 4, criminalized “luring or abducting another person to prostitution abroad”, for which the legislator introduced a sentence of imprisonment from one year to 10 years. In this case, the name of the crime was not mentioned, but it was to a certain extent a more serious type (variant) of the crime defined in Article 253 § 1, because it described a situation in which a person was subjected to human trafficking for the purpose of prostitution (which is a form of trade), and in addition in the context of border crossing.

One more regulation should be mentioned which law enforcement agencies could (and still can) apply in cases of human trafficking. It is Art. 8 of the Introductory Regulations to the Penal Code: “Anyone who puts another person in a state of slavery or practices trafficking of slaves is liable to punishment by imprisonment of not less than 3 years”.

Until recently, the relation between Art. 253 § 1 and Art. 204 § 4 of the Polish Penal Code was confusing. Both of these provisions referred to essentially the same offence – trafficking in human beings. However, while the former regulation applied to all types of human trafficking, the latter penalized only one form of the crime – forced prostitution. The problems linked with the application of these provisions by Polish courts (as well as the lack of a definition of human trafficking in Polish criminal law, which will be discussed later) resulted in amendments to the Penal Code, which have been in force since September 2010.

The amendments to the Penal Code abolished both articles. They were replaced by Art. 189a, § 1, which reads as follows: “Anyone who commits human trafficking shall be punished by imprisonment for not less than 3 years.” Paragraph 2 of this article penalizes preparation for the crime of human trafficking, for which the penalty ranges

from 3 months to 5 years of imprisonment. This should be considered as a positive change, because it is consistent with current international standards.

Until recently, a lack of a definition of trafficking in the Polish Penal Code was a major concern. The lack of a definition of human trafficking in Polish law (prior to the amendments in force since September 2010) resulted in a number of negative consequences in the context of tackling the problem and protecting victims. Poland has ratified international conventions in which the definition of human trafficking is included (Council of Europe Convention on Action against Trafficking in Human Beings and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime – the so-called Palermo Protocol), which means that Polish courts can apply these definitions directly. However, practice has shown that the sentences of Polish judges have rarely referred to the international law documents. Instead, they have often referred to Polish rulings on human trafficking, which are of poor quality and are often inconsistent with international law. Below are two examples of an incorrect understanding of human trafficking by Polish courts (before the introduction of this crime into the Polish Penal Code).

The District Court in Krosno passed a sentence in a criminal case concerning human trafficking. However, the court found that the offenders had not committed the crime of trafficking, justifying its judgment as follows:

One of the constituent elements of the crime defined in Art. 253 § 1 of the Penal Code is "... carrying out human trafficking" – and the term "trafficking" should be interpreted as – buying, selling, pledging, exchanging, using people, or carrying out any other civil-law transactions [...]. On the basis of this kind of interpretation of this provision, it transpires that on the one hand there must be goods (in this case, people), and on the other hand a specified price, since such elements are fundamental constituents of civil-law transactions.

The court believed the explanations of the defendants that they had not received any money for the victims of the procedure. Such a narrow understanding of human trafficking is clearly contrary to international law. For, according to the definition of human trafficking contained in international documents, this offence is not limited to

buying and selling people. It may also mean, for instance, delivery (supply) of victims or their recruitment.

Another example of a misunderstanding of the essence of human trafficking (which was the result of a lack of a definition in the Polish Penal Code) was the decision of the Regional Court in Legnica, in which the judge ruled that one can talk about human trafficking only when there are at least two victims of such a crime. According to the judge, only then are we dealing with “trafficking of people” and not “trafficking of a person” (the Polish Penal Code uses the noun “*ludzie*” (people) which is the plural form of “*człowiek*” (person)).

The judge stated in the justification:

In accordance with Article 253 § 1 of the Penal Code, a person who commits trafficking in people, even with the consent of the victims, shall be criminally responsible for such an act. The phrase "commits trafficking" adopted in this provision and use of the noun "people" to denote the object of the crime show clearly that it is a multiple [trade] practice and action related to people and not to one person. This statement applies to human trafficking of at least two people. In this case, the alleged act of Agnes P. concerns participating in trafficking of only one person [...]. Bearing in mind the above findings, it can be stated with absolute firmness that [...] a one-time act of sale/purchase in relation to one person does not result in criminal liability in accordance with above provision [Art. 253 § 1 of the Penal Code – MKG].

These two examples indicate the lack of understanding of the essence of the trafficking phenomenon by Polish courts, as a result, firstly, of the insufficient preparation of judges in the area of human trafficking cases, and secondly – of the lack of a definition of human trafficking in the Polish Penal Code. It seems that since the introduction of such a definition, problems linked to this issue should no longer arise, because the definition is so clear and easy to apply that judges should have no doubts about whether a particular act fulfils criteria of human trafficking or not.

The problem of the lack of a definition of human trafficking in the Polish Penal Code was solved by an amendment to the Penal Code, which came into force in

September 2010. The definition is based on the Palermo Protocol. In accordance with Article 115 § 22, human trafficking is:

recruitment, transportation, delivery, transfer, harbouring or receipt of persons, by means of force or an illegal duress, abduction, deception, inducing into error, or unfair profiting by somebody's error, or incapacity of due understanding of an undertaken action, the abuse of a critical position or the state of helplessness, the giving and receiving of a financial or personal benefit, or a promise thereof to a person exercising custody or having control over another person; for the purpose of exploitation, even with such person's consent, specifically in prostitution, pornography or other forms of sexual exploitation, at work or in service of a compulsory nature, begging, slavery or other practices of exploitation, degrading human dignity or for the purpose of obtaining cells, tissues or organs against statutory provisions. If the conduct of the perpetrator affects a minor, such conduct shall constitute trafficking in persons even if no methods or means mentioned in clauses 1-6 have been applied.⁵²⁷

Including the definition of human trafficking in the Polish Penal Code should be considered as an important and appropriate step in the effective counteracting of this crime. However, it is too early to make any assessments or evaluations of its functioning in practice due to the short period of time since its inception.

Provisions concerning protection of and assistance to victims of human trafficking

Until the 2000s, almost only non-governmental organizations were involved in assistance to victims of human trafficking. There was no strategy or plan concerning human trafficking policy – help given to victims (i.e., only those who went to non-governmental organizations) took place on an *ad hoc* basis. It is true that for a long time there had been various forms of protection for victims provided by the Code of Criminal Procedure, but they were related to all victims of crime and assured them certain rights only during the investigation and trial (for instance, a non-public [closed] trial, or hearing of a witness at a distance). Apart from this, they were not eligible for any help – legal, social or medical.

The issue of protection of victims began to be visible in Polish law only in the 2000s. So, until then policy on human trafficking – if it can even be thought of as policy –

⁵²⁷ Art. 115 par. 22 Ustawy z dnia 6 czerwca 1997 r. Kodeks karny. Dz. U. z 1997 r., nr 88, poz. 553 z późn. zm.

consisted in activities aimed at combating crime and prosecuting offenders – victims of human trafficking were not the focus of interest of Polish institutions. Since the accession of Poland to the European Union, the situation has changed substantially. The European Union has passed legally binding acts obliging Member States to adapt national legislation to EU law. In this context, Directive 2004/81/EC is worth mentioning. It obliged Member States to introduce, inter alia, a reflection period, and certain defined forms of assistance to victims of this crime. These principles have been implemented into the Polish legal system by two acts: the Aliens Act and the Social Welfare Act. The former contains provisions concerning the stay of the victim of trafficking on the territory of the Polish Republic – a reflection period and a residence permit.

The Aliens Act gives special rights to people who are suspected to be victims of human trafficking. It introduces the institution of the reflection period. This means that if there is a suspicion that a person has become a victim of human trafficking, s/he may receive permission to stay for a specified period, even if s/he is staying on Polish territory illegally. The reflection period is aimed at allowing the victims to recover their mental balance, as well as give them time to make a decision about whether they want to cooperate with law enforcement authorities or not. In Polish law, this period is up to three months long. After this period, the victim of trafficking may, in accordance with the law, stay in Poland for a specified period of time, if s/he fulfils the following three conditions: staying on Polish territory, cooperating with the appropriate law enforcement agencies (i.e. the Police, Border Guard, or prosecution services) in fighting human trafficking, and breaking off contacts with persons suspected of human trafficking. In practice, the course of action is as follows: law enforcement officers identify a person as a victim of human trafficking, and therefore s/he receives the right to reside for up to three months, even if s/he has been in Poland illegally. During this period, s/he is under the care of NGOs involved in helping victims, and is also entitled to receive certain social security benefits. If the victim of trafficking decides that s/he will cooperate with law enforcement authorities, and also breaks off contact with people involved in the crime, s/he may apply to the voivode to reside for a specified period of time, which is up to six months with a possibility of extension. Also during this time, the victim has a guaranteed

opportunity to apply for social (security) benefits. If a person chooses not to cooperate with the police or breaks the terms of cooperation, s/he will be deported to her/his country of origin.

Analysis of the Aliens Act in the context of human trafficking victim assistance raises an important issue. Namely, the provisions of this law are not the best solution from the point of view of the victim of trafficking. This is because the legislator decided to implement the provisions of the EU Directive in a way that fulfilled only the minimum requirements. Breaking contact with the perpetrators and cooperating with law enforcement authorities are obligatory requirements for the victim of trafficking to get a residence permit. This gives the impression that the legislator's priority was to detect the crime and punish the perpetrators of the crime, and not the good of the victim, who is treated rather instrumentally: s/he can stay in the country if s/he can provide help in catching the perpetrators. In some countries, such as Portugal, the stay of the victim does not depend on the condition that s/he testifies against perpetrators.

The second mentioned Act regulates the principles of receiving social assistance and its possible beneficiaries. It indicates, amongst other things, reasons for providing assistance, one of which is a "need to protect victims of human trafficking". A person who was entitled to has been given a reflection period has the right to basic services in the form of crisis intervention, shelter, food, clothing and designated benefits (i.e. benefits for a specific, essential need – such as clothing, medicines or medical treatment).

A victim who during the reflection period decides to cooperate with law enforcement agencies and breaks off contacts with perpetrators will receive permission to stay in Poland for a specified period of up to 6 months. During this period, s/he also has the right to certain social security benefits.

Amendments to the Social Welfare Act, which regulate issues concerning victims of trafficking, should be assessed positively. Without fulfilling the basic living needs of human beings, such as the need for safe shelter and food, it is not possible to achieve higher-level needs, a return to mental balance of the victim and, by the same token, realization of the victim's rights in accordance with international human rights standards.

The described Acts raise issues concerning the rights of victims of human trafficking which until recently were completely ignored in Polish law. Until 2005, human trafficking victims who were illegal immigrants in Poland were deported to their country of origin. However, despite the introduction of appropriate provisions in 2005, it is still not uncommon in Poland that such persons are deported. Nevertheless, this is the result of ignorance and lack of knowledge on the part of law enforcement and criminal justice authorities concerning the rights of the victim under the Aliens Act or incompetence in the field of trafficking victim identification, and not a result of shortcomings of the law. Up until 2005, a victim was not entitled to social assistance in any form. Until then, help to victims in Poland was provided only by a few non-governmental organizations which dealt with the protection of victims' rights. Non-governmental organizations were thus "relieving" the state of obligations, which de facto belonged to it.

To summarize, in the last few years, there have been some important changes in the context of improving the legal situation of victims of human trafficking – in particular, the introduction of the definition of human trafficking into the Penal Code and amendments of the Aliens Act and the Social Welfare Act. The Polish legislator, by modifying these laws, has begun to fulfil the requirements imposed by international law. With certain reservations, it can be concluded that Polish law now respects the rights of victims of human trafficking and enables victims to be treated in a way that takes into account their specific situation. In official documents and in the presented main aims of the new provisions, the victims' needs and rights are emphasized.

When discussing the rights of the victim in preparatory and court proceedings, it is also worth mentioning the recommendations of the National Prosecutor's Office issued for (Polish) local prosecutor's offices, which indicate that criminal cases against human trafficking victims should be dismissed if the person has committed a crime in connection with the fact of being a victim of trafficking. These guidelines are very important and if they are used by the judiciary, they can contribute to improvements regarding the respect for victims' rights. For a situation often arises where a trafficking victim commits a crime such as using illegal or forged documents or crossing the border illegally, not out of

their own free will, but as a direct result of events beyond their control. This leads to a situation in which victims of crime become the accused. However, these are only recommendations, so prosecutors are not obliged to apply them. Work on an amendment introducing compulsory waiving of punishment of victims of human trafficking is currently underway; however, it is not known exactly when these provisions will be drawn up and come into force.

NATIONAL PROGRAMS FOR COMBATING AND PREVENTING HUMAN TRAFFICKING/NATIONAL ACTION PLANS AGAINST TRAFFICKING IN HUMAN BEINGS

Since the end of 2003, every 2 years, National Programs for Combating and Preventing Human Trafficking/National Action Plans against Trafficking in Human Beings have been adopted in Poland. To date, there have been 5 editions of the Program/Action Plan (for the years 2003-2004, 2005-2006, 2007-2008, 2009-2010 and 2011-2012). The general aim of all the editions was to direct the country's policy on human trafficking towards prevention, prosecution, victims' assistance, establishment of methodology in collecting statistical data and deepening knowledge on the subject. The National Program describes the current reality in specific areas connected to human trafficking, sets out the defined aims and demands and also designates the public administration units, research facilities and NGOs that are responsible for their realization. Moreover, the Program mentions the following public administration bodies: the Ministry of Internal Affairs, the Ministry of Health, the Ministry of Justice, the Ministry of Education, National Police Headquarters, the National Public Prosecutor's Office, National Headquarters of the Border Guard, the National Training Centre for Common Courts of Law and Prosecution Services, as responsible for the implementation of its objectives. The Ministry of Internal Affairs is designated as the main coordinator of all the defined actions. Among the responsibilities set out in the National Programs/Action Plans are: strengthening international cooperation between specific institutions, studying the phenomenon, collecting statistical data, advocating amendments in the national law, undertaking preventive measures and training for individuals assisting human trafficking victims. Additionally, each of the goals is allocated a specific time frame for execution.

A review of the Programs has indicated that, in particular, implementation of “tough goals” (e.g. changes in the legislation and developing a system of gathering data on human trafficking) is being delayed. On the positive side, a change in Polish criminal legislation can be observed regarding demands that have been included for a long time in successive documents, e.g. the establishment of a definition of human trafficking in Polish criminal law (work on drawing up this definition lasted 10 years). However, other aims have not been achieved during the course of the last few years (e.g. creation of a nationwide, uniform system of collecting information regarding cases of human trafficking).

Despite considerable shortcomings in the discussed document – its relative generality, a lack of monitoring and evaluation of actions, unclear division of responsibilities (several different institutions are responsible for the same area of activities, a situation which may lead to confusion and, as a consequence, failure to fulfil the objectives), the fact that the document was drawn up at all needs to be positively assessed. Thanks to the Action Plan, the priorities of the national policy on human trafficking have become clear and the direction for action has been set. Moreover, a valuable analysis of the actual state of affairs is concentrated in one document, including the areas and mechanisms of counteracting human trafficking that are in need of improvement.

COUNTERACTING HUMAN TRAFFICKING IN PRACTICE

In 2008, in Poland, only 28 human trafficking cases were indicted.⁵²⁸ This low number strongly suggests that there is a significant number of unreported human trafficking crimes taking place in Poland, which in turn signifies that the Polish judiciary system and law enforcement bodies are not effective in their fight against human

⁵²⁸ <http://www.mswia.gov.pl/portal/pl/391/2001/Dane_statystyczne.html>, 16.08.2010.

trafficking. Moreover, in the same year, only 4⁵²⁹ out of 315⁵³⁰ identified (not to mention the unidentified) human trafficking victims sought police protection.

Since the national legislation can be evaluated as relatively appropriate and sympathetic towards the victim, and the existing policy against human trafficking is generally being carried out, the question arises as to why Poland cannot adequately deal with human trafficking crime detection and victim assistance. The main reason seems to be the lack of or insufficient or incorrect implementation of relevant law by the Police, Border Guard, Prosecutor's Office, courts, social welfare, health services and so on. It may, however, also be a result of ignorance of the law concerning the human trafficking phenomenon on the part of previously mentioned institutions, lack of or inadequate coordination of undertaken actions and/or reluctance to help victims (e.g., some may be of the opinion that "prostitutes" and illegal immigrants should not be assisted). Additionally, public officers who may come into contact with human trafficking victims in Poland are not sufficiently trained in the area of basic rights and codes of conduct in such matters.

It needs to be said that the Polish anti-human trafficking system does include practices (structures) aimed at effectively combating human trafficking at the level of prevention, prosecution and assistance for the victim. In particular, 2 units come to mind here. The first one, the Team for Combating and Preventing Human Trafficking, is a consultative and advisory body to the Prime Minister. The Team is comprised of representatives from various ministries (Ministry of Education, Ministry of Justice, Ministry of Internal Affairs, Ministry of Labour and Social Policy, Ministry of Foreign Affairs, Ministry of Health), Police and Border Guard Headquarters, Government Plenipotentiary for Equal Treatment and the Head of the Office for Foreigners. Other experts from leading NGOs involved in fighting human trafficking and helping victims of these crimes, from the National Labour Inspector's Office, the Government Ombudsman Office and the Ombudsman for Children Office are often invited to take part in the Team's works. Among the Team's responsibilities are: presenting suggestions for changes and

⁵²⁹ Ibidem.

⁵³⁰ Ibidem.

actions in the area of fighting human trafficking and evaluating the implementation of the National Action Plan Against Human Trafficking. The Team cooperates closely with NGOs and various international institutions in this area. The main initiator and coordinator of actions undertaken to fight human trafficking is the Ministry of Internal Affairs.

The second unit is a team that operates under the aegis of the Central Bureau of Investigation (which in turn is a unit of the National Police Headquarters Office). This unit was founded in 2007. Among its responsibilities are the coordination and initiation of training for police officers in the area of human trafficking, as well as participation in international operations connected to fighting this phenomenon. Furthermore, there are regional anti-human trafficking teams in the regional police offices, with the Central Team being responsible for coordination and supervision of their activities.

Experts dealing with human trafficking issues in Poland mostly point to problems arising at an early stage, at the moment when information regarding the identification of victims reaches authorities. Despite adequate training for law enforcement forces concerning human trafficking and appropriate aid for victims of this crime, identifying a victim in this area continues to be a problem. At the same time, individuals identified as human trafficking victims are often treated without due respect – they are sometimes questioned a dozen or more times during the course of a criminal investigation and judicial proceedings. Additionally, many Polish judges are not adequately prepared to handle such cases – a situation which can be observed, for example, in the 2 previously mentioned judgments demonstrating a total lack of understanding of the issues. Perhaps this state of affairs is a result of the poor quality and insufficient number of training. Most likely, certain stereotypes and prejudices present among representatives of various institutions, reflecting the internalized patriarchal social order, have an influence on it.

CONCLUSIONS

Currently, Poland is experiencing an increase in the frequency of human trafficking cases, which has undoubtedly been influenced by socio-economic changes that have

taken place in the last twenty years such as: accession to the EU and the Schengen Treaty, globalization, broad access to modern telecommunication technology and ease of travel. Possibly, a greater awareness of the phenomenon and, as a consequence, more frequent detection of this type of crime has also had an additional impact. The increase in numbers of human trafficking cases in Poland and various international obligations have forced Poland to undertake actions aimed at counteracting the phenomenon and facilitating aid for victims on a broader scale. As a result, an increase in the interest of Polish authorities can be observed. Changes in the law introduced after accession to the UE, such as the rationalization of provisions in the Penal Code, the inclusion of definitions therein, and amendments to the Aliens and Social Welfare Acts giving special rights to victims of human trafficking should be evaluated in a positive way. Furthermore, the existence of basic policies on human trafficking as included in the National Plan of Action against Human Trafficking is also satisfying. However, the most significant issue continues to be the application of laws in practice. Agents of Polish law enforcement forces and judicial institutions are not adequately educated in the matter of fighting human trafficking and providing necessary aid for its victims, even though during the course of much training, police officers and prosecutors have been widely exposed to these issues in the last few years. It seems therefore that the most urgent need in the area of human trafficking policy is to underline the issue of appropriate training, resulting in developing abilities in identifying human trafficking victims, their appropriate treatment and raising awareness for the role of women in society, associated stereotypes and their consequences. Such training should be provided not only to Police Forces, Border Guard and the Prosecutor's Office, but also to staff of other institutions (courts of justice, health and social services), who may, during the course of their work, come into contact with victims of such crimes.

1.2. ANALYSIS OF STATISTICAL DATA REGARDING HUMAN TRAFFICKING IN POLAND

INTRODUCTION

The scale of human trafficking in Poland is as yet unknown: all figures regarding the actual number of committed crimes (and not just the recorded ones) are merely estimates. Even though the literature on the subject provides figures for this phenomenon, in most cases the method of estimation is not given, which raises the

question of credibility. It is highly probable, however, that the actual extent of the problem is much more widespread than police, prosecutor's office and court statistics would imply.

Criminologists have coined the term "dark figure of crime" to describe the amount of unreported/undiscovered crime – the difference between actual and recorded crimes. This phenomenon might be more prevalent in the case of trafficking in human beings than in the case of other crimes, due to the significant degree of "complexity", the participation of organized crime groups, as well as potential problems with proving the existence of human trafficking. Another reason could be the reluctance of human trafficking victims to report the crime, and, in the case of its detection, to give testimony (out of fear of revenge by the perpetrator, shame, lack of trust towards police forces, reluctance to be reminded of the hurtful experience, secondary victimization, or simply ignorance about the committed offence arising from ignorance of the law). Moreover, the processual nature of trafficking in human beings may lead to incorrect classification of the act by the law enforcement and justice system – a given act may be wrongly categorized, e.g. as possession of false documents, rape, irregular border crossing, or profiting from prostitution.

There are no reliable (unified) statistics regarding the number of victims, perpetrators and committed offences in Poland – police forces (police, border guard), prosecutor's office, judicial authorities and nongovernmental institutions possess separate data. Adding up figures from various sources is not methodologically justified, as they may be partly overlapping.

Thus far, no one has attempted to estimate the actual number of human trafficking crimes in Poland. La Strada Foundation, the biggest organization providing help for human trafficking victims in the country, compared the high dark figure of human trafficking crimes to (the underwater portion of) an iceberg, the tip of which signifies

officially recorded offences.⁵³¹ Official statistics solely include recorded, detected and adjudicated crimes. The latter amount to a very insignificant number in Poland. Even fewer cases result in a final and legally valid judgment (sentence).

There are two types of statistics concerning trafficking in human beings in Poland. While the first, the so-called criminal statistics, originate from police forces and judicial authorities (police, border guard, prosecutor's offices and courts), the second are provided by nongovernmental institutions. "La Strada" is the only big NGO in Poland which deals with the issue of human trafficking. Other organizations do not address the problem directly, and rarely receive victims of human trafficking, the vast majority of whom sooner or later find their way to La Strada. Therefore, the report only takes into account data from that NGO.

Statistical data mentioned in this report were acquired from the websites of the Ministry of Justice, the Ministry of Internal Affairs and Police Headquarters, and also from representatives of La Strada, Police Headquarters and the Ministry of Internal Affairs.

It is worth noting that the acquired data are not cohesive (uniform) – in Poland there is no single way of gathering data regarding human trafficking. Even within one institution, the method of gathering data may vary depending on the period they originate from (this especially concerns data from courts) due to changes in data recording methods. Additional difficulties have been caused by the amendment of the Criminal Law of September 2010 under which the previous two provisions penalizing human trafficking (Art. 253 par. 1 and Art. 204 par. 4) were removed and replaced by a new one (Art. 189a). Data from the nongovernmental sector are also not complete. Furthermore, data originating from different sources encompass different periods. Listed below are the exact sets of statistics on which the report is based, together with information on the time period in which they were gathered.

I Police statistics

⁵³¹ Foundation Against Trafficking in Women "La Strada", *Handel ludźmi. Informacje o zjawisku 2004*, Wydawnictwo Noktus, Warszawa 2004, p. 10.

1. Number of recorded crimes (2004-2010)⁵³²
2. Number of detected crimes (2004-2010)⁵³³
3. Number of people suspected of trafficking in human beings (2005-2010)
4. Number of human trafficking victims (2004-2010)

II Prosecutor's Office statistics

1. Number of preparatory proceedings in relation to human trafficking launched by the prosecution (1955-2010)
2. Number and nationality of foreign victims revealed in preparatory proceedings (1955-2010)
3. Number and nationality of accused foreigners (1995-2008, 2010)

III Court statistics

1. Number of people sentenced for the offence of trafficking in human beings (2003-2008 and 2010)
2. Type of sentence imposed on human trafficking offenders (2003-2008, 2010)
3. Nationality and gender of people convicted for trafficking in human beings (2003-2008, 2010)

IV NGO statistics

1. Number, nationality, gender and form of exploitation of human trafficking victims under La Strada's Witness Support and Protection Program (2007-2012)

⁵³² Recorded crimes are offences recognized as crimes in pretrial proceedings.

⁵³³ Detected crimes are recorded crimes for which at least one person has been accused.

2. Number of human trafficking victims accessing the National Intervention and Consultation Centre (2010-2012)

3. Statistical data on the socio-demographic characteristics of human trafficking victims – La Strada organization clients (1995-2004)

General conclusions based on the analysis of data on human trafficking in Poland are presented below.

POLICE STATISTICS

The number of crimes recorded by the police between 2004 and 2010 fluctuated yearly from 21 in 2006 to 63 in 2010, while the number of detected crimes (i.e. ones in which at least one perpetrator was identified) from 19 in 2004 to 61 in 2008. Interestingly, the difference between recorded and detected crimes in the described period was slight and ranged from 0 to 3. Moreover, there was no growth or decline trend to be observed in the reporting of human trafficking cases. In terms of the number of human trafficking offenders, 10 to 31 were identified by the police on a yearly basis over the period of time in question: there is no clear trend here either, which may indicate a relative stability of the phenomenon in terms of numbers. As for the figures in regard to human trafficking victims, the lowest number was observed in 2006 (18) and the highest in 2007 (860). However, it is worth noting that the year 2007 can be considered exceptional, as at that time a widely publicized case of so-called Italian labour camps in which hundreds of Poles were exploited as forced workers in the Apulia region was uncovered. Hence, out of the 860 human trafficking victims in 2007, the majority of victims were related to one case. Excluding the year 2007, the average number of human trafficking victims between 2005 and 2010 equalled 39.

PROSECUTOR'S OFFICE STATISTICS

In the years between 1995 and 2010, the number of preliminary proceedings⁵³⁴ ranged from 17 in 1999 to 117 in 2010. It is worth noting that since the year 2009 there has been a significant increase in proceedings (109 completed proceedings), which may signify either an increase in the human trafficking phenomenon, or more efficient efforts by law enforcement agencies in detecting the crime. The sudden rise in the number of preliminary proceedings does not translate into more cases resulting in an indictment (the number of the latter equalled only 39 in 2009 and 40 in 2010). As the figures show, over half of the cases investigated during the mentioned period of time were terminated (discontinued). Between 1995 and 2010, the cases that resulted in an indictment ranged from 11 (in 2002) to 40 (in 2010). Overall, 713 cases were investigated, of which 417 resulted in an indictment. The remaining 296 proceedings were terminated.

The Prosecutor's Office in Poland is in possession of statistics regarding the number and nationality of perpetrators and victims of human trafficking in Poland. In the discussed period, the number of perpetrators against whom preliminary proceedings were brought amounted to 1026, which leads to the conclusion that in each human trafficking case there was usually more than one perpetrator. Turning now to the number of defendants from a nationality other than Polish, it amounted to 112 for the years 1995-2010 (excluding 2009, for which no data is available), compared to 869 for the overall number of defendants. Among the defendants from a nationality other than Polish, the highest number belonged to Bulgarians (56 individuals), followed by Ukrainians (33). Other foreign defendants were identified as German and Turkish (5), Vietnamese (4), Moldavian (3) Russian (2), Albanian, Spanish, Romanian and Italian (1).

Looking now at numbers of victims, in the prosecution's statistics between 1995 and 2010, there were 4104 identified victims of human trafficking. Interestingly, the highest number was recorded in 2007 (1021), when the previously mentioned case of the

⁵³⁴ Preliminary proceedings are the first part of a criminal procedure. Conducted by the prosecution or the prosecution with the police, they aim to establish whether a crime was committed and to detect the perpetrator. Preliminary proceedings finish when an indictment is brought or with a termination of proceedings.

so-called Italian work camps occurred. Leaving aside the exceptional year 2007, the number of identified victims fluctuated between 93 (2001) and 611 (2009). The total number of foreign victims was 798, most of whom came from Ukraine (350) and Belarus (311). Moreover, there was a relatively high number of Bulgarian (87) victims, followed by Romanian (24), Moldavian (21) and Russian (15). There have also been cases of victims from Bangladesh, Costa Rica, Djibouti, Dominican Republic, Germany, Kenya, Latvia, Lithuania, Mongolia, Nigeria, the Philippines, Senegal, Sri Lanka, Uganda and Vietnam.

The number of foreigners legally residing in Poland permanently in 2009 was 92,500 (Office for Foreigners data). One should also take into account a considerable number of foreigners residing in Poland illegally, estimated by researchers to be between 50 and 450 thousand. At first glance, one could assume that foreigners do not have a big share in the overall structure of perpetrators and victims of human trafficking. However, taking into account the given data, it can be said that, contrary to appearances, the number of foreign victims and perpetrators in the overall structure of human trafficking is relatively high.

COURT STATISTICS

Polish court statistics provide data on persons convicted of certain crimes – their number, type of punishment, sex and nationality. In order to get the total number of those convicted of human trafficking, the figures relating to Art. 253 par. 1 and Art. 204 par. 4 are included. Overall in the years between 2002 and 2008, 61 people were convicted for human trafficking. The number of convicted persons in particular years ranges from 4 in 2007 to 16 in 2004 and 2005. These numbers are thus much lower than those mentioned in relation to preliminary proceedings in police and prosecution statistics. Hence, it can be assumed that most perpetrators were not convicted.

In turn, the number of perpetrators convicted in 2010 based on Art. 253 amounted to 9, but there are no figures given for that year in relation to Art. 204 par. 4.

Among the 61 offenders in 2003-2008, there were 14 women and 12 foreigners (6 Bulgarians, 4 Ukrainians, 1 Vietnamese and 1 Moldavian).

Court statistics also indicate the type of sentence that was handed down to perpetrators. All the 61 charged with human trafficking in the years between 2003 and 2008 received prison sentence; however, as many as 26 perpetrators received a conditional suspension of sentence. In 2010, all 9 perpetrators were sentenced to imprisonment (of which one received a suspended sentence).

NGO STATISTICS

The data presented below are based on statistics gathered by La Strada, an organization which conducts the Support and Protection of Witness Program directed exclusively towards foreign human trafficking victims and aiming at providing protection and support to victims by meeting their basic needs.⁵³⁵

Available data refer to the period between 2007 and 2012 (the period during which the Program was conducted). During those years, 183 people were assisted within the framework of the Program. Among the nationalities, the highest number of individuals was from Romania (52), Bulgaria (51), Ukraine (21) and Vietnam (14). Moreover, there were victims from other European countries such as Belarus, Germany, Moldova, Russia and Turkey. In recent years, cases of victims from African (Cameroon, Djibouti, Kenya, Nigeria and Uganda) and Asian countries (Bangladesh, China Mongolia, Nepal and Sri Lanka) have been reported.

Statistics for the Program show that cases of trafficking for sexual exploitation (85 victims) and forced labour (74 victims) were predominant. However, exploitation for begging (22 victims) and domestic slavery (5 victims) are becoming more and more frequent. It needs to be noted that even though the structure of nationalities of victims encompassed by the Program is consistent with criminal statistics, the forms of exploitation differ both from those in the criminal statistics and from public perceptions of the problem (social awareness), according to which human trafficking is mostly about forced prostitution. As the data refer to a specific group of victims, namely foreigners

⁵³⁵ <<http://www.strada.org.pl/index.php/pl/la-strada-w-dzialaniu/realizowane-projekty>>.

identified by the police forces as victims of trafficking in human beings (in accordance with the aims of the Program), the overall proportions may differ slightly. Despite this, in comparison to the cases ending in a final judgment concerning forced labour in Poland, the given figures (4 cases up until now⁵³⁶ vis-à-vis several dozen cases concerning trafficking for prostitution) are cause for reflection. When it comes to the sex of the victims, they were mostly identified as female (138).

The second initiative undertaken by La Strada since 2010 is the National Information-Consultation Centre – NICC (Krajowe Centrum Informacyjno-Konsultacyjne – KCIK) for the victims of trafficking in human beings financed by the Ministry of Internal Affairs. NICC offers support for all victims of human trafficking (not only foreigners), ranging from legal advice to a specialized victim's shelter. Within this initiative, La Strada also provides a telephone helpline.

In an email to La Strada, a representative of the Ministry of Internal Affairs responsible for cooperation with La Strada indicated that in 2010 they worked with 200 individuals (including 63 Poles), in 2011 with 112 persons (almost half of those were Polish), and in 2012 (from 1 January until 10 September 2012) with 150, 40% of which were Poles. These can thus be viewed as the total number of victims La Strada worked with.

The data gathered by La Strada concerning clients benefitting from the organization's help before 2010 are selective. This especially relates to the beginning period of the organization. In a report concerning the help provided from 1994 to 2004, 116 victims were mentioned; however, as the authors of the report have admitted, this figure is not complete due to the gaps in the documentation.⁵³⁷ The report focused on the sociological profile of female clients of La Strada (until 2006 the organization provided help only to women), i.e. their age, marital status, number of children, education, nationality. Concerning the first indicator, the average age of the human trafficking

⁵³⁶ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_146622.pdf.

⁵³⁷ M. Zych, Socjologiczny portret ofiar handlu ludźmi. Wtórna analiza danych zastanych, Zakład Badań Naukowych Polskiego Towarzystwa Socjologicznego, Warszawa 2005 (unpublished).

victims being assisted by the organization was 23.5 (ages ranged from 13 to 48). Over half of La Strada's clients were unmarried (the others were married, divorced or widowed) and similarly over half did not have children. The highest number of La Strada clients had secondary education (24), while the next group (17) had primary education. It is worth noting that 4 of the victims had higher education. Polish women were the largest group in terms of nationality (74.1%); the others were, respectively: Moldavians (8.6%), Bulgarians (6.9%), Ukrainians (6%), Belarusians (1.7%) and Romanians (1.7%).

Once again, it is worth emphasizing that complete data concerning victims of human trafficking under the care of La Strada have been systematically gathered only since 2010, which is linked to the launching of the National Information and Consultation Centre financed by the Ministry of Internal Affairs. The comprehensive data gathering might have been initiated because of the formal requirements set by the Ministry. Unfortunately, the mentioned gaps in the statistical data gathered by La Strada make it impossible to define specific trends in relation to the phenomenon of trafficking in human beings.

DISCUSSION

Firstly, it needs to be reiterated that the statistical data concerning the trafficking of human beings in Poland are very chaotic. As has already been said, until 2010, in the Criminal Code there were two articles concerning the described crime (Art. 253 par 1. and 204 par.4), while currently it has been unified under one (Art. 189a), which in itself already causes problems regarding interpretation of the existing data. Moreover, some of the statistics from before 2010 include only crimes committed under Art. 253 par 1, while others also include Art. 204 par 4.

Another difficulty arises in interpreting and comparing police and prosecutor's statistics. These two agencies are responsible for prosecuting crime at the pre-trial (investigation) stage: the prosecution may conduct the investigation by itself or through supervision of police forces. Because of this, some of the data on the crimes, perpetrators

and victims may be included in both statistics, while other data may be only in the prosecutor's statistics. In the statistics, however, there is no information on who has been conducting the investigation, the prosecution or the prosecution in cooperation with the police. An accurate comparison of the data is hence impossible, which thus prevents an estimation of the real and hidden scale of the crime.

The data gathered by La Strada is also incomplete. It was not until 2010, when the Ministry of Internal Affairs started financing the National Information and Consultation Centre, that a reliable figure for victims supported by La Strada could be established.

Furthermore, the number of crimes, perpetrators and victims of human trafficking given in the statistics cannot be considered an indicator of the real scale of the problem in Poland, due to the dark figure of crime. The geographical location of Poland should also be taken into account in this type of estimations: it is a country of destination, transit and origin. This leads to the conclusion that the occurrences of this crime may be higher here than in other areas. However, the statistics would indicate otherwise, as the crime of trafficking in human beings is, as yet, rarely reported.

It is also worth looking at the relationship between criminal and NGO statistics. This is possible only for the year 2010, as data from La Strada are available in full only from 2010, whereas the criminal ones are only available until 2010. In the given time period, the data from the Prosecutor's Office referred to 323 victims, while La Strada' to 200 victims. It is impossible, however, to check if the victims in both statistics are duplicated (officially registered as victims and receiving support from La Strada), or whether some of the victims have "escaped the attention" of the authorities and not been registered in the criminal statistics, while the crime that has affected them has not been reported.

In regard to the statistics above, the phenomenon known in criminology as the *funnel effect* is very visible. The funnel effect refers to a situation where certain (successive) statistics (police, juridical, prosecutor's office) contain information about an increasingly small number of crimes. The highest crime figures are in the police statistics, while due to legal proceedings this number decreases in the prosecution statistics.

Judicial statistics contain even less information concerning trafficking in human beings because they refer only to offenders (and crimes) that have not only been detected (which means at least one perpetrator has been identified), but also prosecuted and sentenced. Hence, the funnel effect can be very well observed in regard to human trafficking as many cases of crimes “are dropped” at the early stages of criminal proceedings. For example, in the year 2007, 48 proceedings were concluded, while in the following year the number climbed to 53. Yet, there were only 28 cases that resulted in an indictment being issued, both in 2007 and 2008. Moreover, also in 2007 and 2008, there were, respectively, 62 and 78 perpetrators against whom an indictment was brought. In 2008 (in the year most legal proceedings against the mentioned perpetrators took place), judicial statistics indicate only 5 perpetrators sentenced. This would point to a very high disproportion (62 and 78 perpetrators at the pre-trial stage and 5 sentenced for trafficking of human beings) and may indicate inefficiency in the functioning of police forces and the justice system. It is probable that many cases are dropped (discontinued) due to insufficient preparation on the part of law enforcement and justice system officials. In the early stages of proceedings, a case may be dropped due to the inability to detect the perpetrator and later on, e.g., due to the inability of prosecutors to assign the correct legal classification to the act or inability to prepare adequate documentation or lack of relevant skills on the part of judges. Problems in gathering appropriate data in cases of human trafficking in Poland stem from difficulties caused by the legal changes, the imperfect data gathering systems, and lack of cooperation between institutions, as well as differences and changes in the way of gathering data. Experts have long indicated the need to change the way of gathering statistical data on trafficking in human beings; however, no real action has yet been taken in this matter.

1.3. ANALYSIS OF POLISH COURT CASES CONCERNING HUMAN TRAFFICKING

In Polish criminal courts, cases concerning human trafficking are rare. Since the establishment of the new Criminal Code of 1997, only a few dozen such cases have ended in convictions. Since 1997, a relatively large number of changes have been introduced into legislation on human trafficking. Both Poland’s accession to the European Union in

2004, which entailed a requirement to align Polish legislation with EU law, and the ratification of international documents (from the Council of Europe and the United Nations) in the 2000's have had an influence on this state of affairs. Another cause of change in Polish legislation is the increasing interest in this issue, at the national, European and international levels as well as its increasing "visibility" in the media and in public discourse.

However, despite the growing interest in this phenomenon, the increasing number of press publications on the subject and the series of changes to the law made in recent years, there has not been a particular increase in the number of criminal proceedings in Polish courts concerning human trafficking. What is also important is that – in spite of the ever more frequent press reports and data made available by NGOs indicating that Poland is increasingly frequently dealing with exploitation of victims of human trafficking for forced labour –, in Polish courts, cases of human trafficking for prostitution purposes constitute an absolute majority (in the years 1997-2009, there was only one criminal case concerning human trafficking for forced labour which ended in a conviction). The main problems concerning sentencing for human trafficking linked with application of the law by Polish courts together with example rulings illustrating these difficulties are presented below.

UNCLEAR RELATIONSHIP BETWEEN TWO PROVISIONS (ART. 204 PAR. 4 AND 253 PAR. 1) IN THE POLISH CRIMINAL CODE PENALIZING HUMAN TRAFFICKING

In the course of the functioning of the new Criminal Code over the last 16 years, there have been many changes in it, including ones concerning human trafficking. Up until September 2010, there were two provisions penalizing this crime (Art. 253 par. 1 concerning human trafficking and 204 par. 4 concerning luring people abroad in order to engage them in prostitution). The unclear relationship between these two provisions caused problems amongst judges concerning their appropriate interpretation. For, as can be seen, the former also encompassed those crimes which were defined in the latter. Most frequently, perpetrators of human trafficking for prostitution purposes were thus sentenced under both articles – 253 par. 1 and also 204 par. 4.

At this point, it is worth pointing out a case in which the prosecutor misinterpreted both provisions. In a case being heard before the District Court in Lublin in 2008,⁵³⁸ in the indictment, the prosecutor deemed that only one crime had been committed, as defined in Art. 204 par. 4 (abduction for prostitution abroad). Meanwhile, the formulation of the two provisions indicated that any crime under Art. 204 par. 4 was also simultaneously human trafficking (Art. 253 par. 1). The judge drew attention to this fact and finally concluded that the offender had violated both provisions.

Currently, this problem has been eliminated due to the removal by the legislator of both provisions and the establishment of one – Art. 189a par. 1, which relates directly to human trafficking.

PROBLEMS WITH DEFINING HUMAN TRAFFICKING

Another difficulty which judges faced up until 2010 was the lack of a definition of human trafficking in Polish law. In connection with this, many of them had a problem with defining whether a given crime had the hallmarks of human trafficking. Although a definition of human trafficking existed in European and international law that was binding in Poland, judges very rarely referred to this legislation. Instead, they referred to commentaries on the Criminal Code and to Polish judicial practice (rulings), which are not always consistent with international doctrine.

Judges sometimes understood the Polish term for “human trafficking” literally [translator’s note: the Polish term used – *handel ludźmi* – for “human trafficking” literally means “people trading”]. For the occurrence in this term of the word “*handel*” [trading/trade], signifying a transaction, may only be linked with situations involving the selling and buying of people, and thus with the use of money. It is worth recalling that, in accordance with international legal documents, “human trafficking” is a much broader phenomenon, significantly extending beyond the scope of buying and selling humans. For it also encompasses behaviours linked, for example, with abduction and abuse of power,

⁵³⁸ Judgment of the District Court in Lublin, 2008, Ref. IV K 414/06.

without the necessity of obtaining by the “seller” a monetary equivalent. An example of an incorrect understanding of the crime of human trafficking as a trade transaction was a case heard at the District Court in Krosno, in which the judge misinterpreted the act under consideration. The judge pointed out that:

The features of a crime under Art. 253 § 1 Criminal Code include “the practice of human trafficking [people trading]” – the term “trafficking [trading]” should be interpreted as – buying, selling, pawning, exchanging, using people, or carrying out any other civil-law transactions [...]. From this type of interpretation of this provision, it simultaneously transpires that, on the one hand, goods (in this case humans) must come into play, and, on the other hand, a defined price, since these types of elements belong to the essence of civil-law transactions.⁵³⁹

In view of the fact that, in the court’s opinion, the accused did not receive payment for the female victims of this crime, the judge deemed that it could not be considered human trafficking [people trading]. According to the testimony of the victims, there was a transaction, during which they were sold, but the court did not consider their explanations to be credible. In this case, the court treated the crime of human trafficking [people trading] as an act of commercial transaction, which is inconsistent with international law (and now national law). For human trafficking [people trading] can, but does not have to, be linked with “trade” as understood under civil law.

Another problem that judges have faced is linked with the lack of a definition of human trafficking [people trading] in Polish law to clarify whether trafficking one person can mean human trafficking (in the Polish language, the term *ludzie* [people] occurs only in the plural). Some judges reached the conclusion that since Art. 253 par. 1 refers to *ludzie* [people], trafficking just one person cannot be deemed human [people] trafficking. One such example was the decision of the District Court in Legnica. The now defunct Art. 253 par. 1 read as follows: “A person who practices human [people] trafficking, even with their consent, is subject to punishment by imprisonment for a period not shorter than 3 years”. In the discussed case about the crime of human [people] trafficking, one victim was established, so the judge found that:

⁵³⁹ Judgment of the District Court in Krosno from 1999, Ref. II K 25/97.

Taking into account the above findings, one can with absolute determination state that in the case of the behaviour of the accused, the criteria of a crime under Art. 253 § 1 Criminal Code were not fully met since a one-time act of purchase-sale in relation to one person does not cause criminal liability in accordance with the above mentioned provision.⁵⁴⁰

Another problem associated with the lack of a definition of human trafficking in Polish law stemmed from the content of Art. 253 par. 1. Thus, this provision penalized “the practice of human trafficking”. In the Polish language, the term “practice” suggests an activity which lasts for a defined period. The judge of the appeal court in Lublin was influenced by this, so he reasoned that:

A one-time transaction of sale of a person or even people (more than one person), in accordance with views prevailing in judicial practice and doctrine (...) cannot in any case be regarded as the practice of human trafficking [people trading] in the understanding of Art. 253 § 1 Criminal Code.⁵⁴¹

THE APPLICATION OF INTERNATIONAL LAW BY POLISH JUDGES

Another issue worth mentioning is the application by judges of international law concerning human trafficking. It is true that in Polish criminal law until September 2010 there was no definition of human trafficking, but judges had the possibility of applying the definitions of human trafficking contained in international law. However, it turns out that judges referred to provisions of international law very rarely. This may have stemmed from ignorance of international law concerning human trafficking or else certain concerns and reservations that Polish judges had about application of non-Polish law.

However, there were cases in which judges in their justifications of rulings referred to international provisions. In a case in 2005 in Białystok, the court referred to the definition from the Palermo Protocol, citing it directly in the ruling. Quoting the definition of human trafficking contained in the Protocol, the court sentenced the perpetrators, finding that:

⁵⁴⁰ Judgment of the District Court in Legnica, 2002 , Ref. III K 205/01.

⁵⁴¹ Judgment of the Court of Appeal, Lublin, 2001, Ref. II Ka 270/01.

In the case under consideration, the defendants exploited the weakness of the women and their difficult material situation. Most of them agreed to being sold and to practising prostitution. Although no violence was ascertained, the agreement itself may not have a significant effect on lowering of the penalty.⁵⁴²

It is true that there have been cases in which judges have mentioned international law, but they have emphasized the lack of possibility of their application due to the need for the occurrence of an “international” component in the commission of the crime. In one case, the judge mentioned several different international conventions concerning human trafficking (from 1910, 1921, 1933 and 1950), but stated that definitions contained in them referred exclusively to international transactions. The judge, however, did not mention anything about the Additional Protocol to the UN Convention on Transnational Organized Crime from 2000 in spite of the fact that, at the time that the judgment was being handed down, Poland had already ratified this document.⁵⁴³ Admittedly, this Protocol also applies to international organised crime, but the definition itself does not mention this aspect. The court also failed to apply the then binding EU framework decision from 2002, which does not contain an obligation to fulfil the cross-border criterion in its definition of the crime of human trafficking.

A positive example of a court correctly invoking provisions from the Additional Protocol to the UN Convention of 2000 was a case brought before the Court of Appeal in Białystok in 2006.⁵⁴⁴ The court quoted the definition of human trafficking contained in the protocol, adding that, in this case, human trafficking took place and indicating in what circumstances the accused bought women, and also noting that he exploited their weaknesses, i.e. difficult material and life situation.

Another noteworthy ruling in which the court referred to the definition in the Palermo Protocol was a Judgment from 2008 of the District Court in Zielona Góra.⁵⁴⁵ After

⁵⁴² Judgment of the District Court, Białystok, 2005, Ref. III K 92/05.

⁵⁴³ Judgment of the District Court, Gliwice, 2006, Ref. V K 52/07.

⁵⁴⁴ Judgment of the Court of Appeal, Białystok, 2006, Ref. II AKa 299/05.

⁵⁴⁵ Judgment of the District Court, Zielona Góra, 2008, Ref. II K 227/05.

quoting the definition, the court applied it to the existing situation, deeming that the crime bore the hallmarks of human trafficking:

In all cases the victims were misled that they were going to Poland to work as waitresses and barmaids; when they arrived they learned what the job was actually about; they were witnesses to and in some cases participants in such transactions, negotiating a lower price, which was in their interest; next, everyone had their passports taken away, which were returned at their request – in this way they were forced to work off the money paid for them. The victims, in a situation where they found themselves in a foreign country, seeing no other option, agreed to the conditions imposed on them, although the agreement expressed by them has no meaning here. All this was done with the aim of exploiting, i.e. gaining profit, from them practising fornication.

One of the few examples of judges invoking EU law was a case that was heard at the District Court in Płock in 2009.⁵⁴⁶ The judge mentioned the incorrect interpretation by some judges of the term “human trafficking” [people trading] as a civil-law transaction, and then concluded: “However, this concept is not limited to transactions of a civil nature, whose subject is a human being”.

The judge went on citing the definition from the EU Framework Decision of 2002 in the matter of combatting human trafficking:

For this concept also encompasses recruitment, transport, harbouring, and further accepting of people, including exchange or transfer of control over the person, when it is done with the use of coercion, force or intimidation, including abduction or using deception or financial exploitation or there is abuse of power or a situation of vulnerability, which is such that the person does not in reality have a real and acceptable choice other than submitting to exploitation or offering or accepting payment or benefits for gaining the consent of the person having control over the other person for the purpose of exploiting the work or services of the latter person, including in the form of at least forced or compulsory work or services or practices similar to slavery, or for the purposes of profiting from prostitution and other persons or other forms of sexual exploitation, including pornography.

⁵⁴⁶ Judgment of the District Court, Płock, 2009, Ref. II K 159/08.

THE ATTITUDE OF JUDGES TO VICTIMS OF HUMAN TRAFFICKING⁵⁴⁷

On the basis of analysis of criminal rulings concerning human trafficking, it is not possible to draw conclusions concerning the application by the Polish judiciary of laws relating to the protection of and help for victims of this crime. For criminal courts are focused on sentencing offenders: protection of victims is not their responsibility. In spite of this, on the basis of criminal rulings, one can draw certain conclusions concerning the perception of victims by judges.

Analysis of court cases concerning human trafficking allows us to state that judges have an instrumental attitude to victims. They are above all treated as a source of evidence in cases against traffickers: such issues as their protection during a criminal trial are of secondary importance. Besides, in many cases, victims are perceived stereotypically. One can even talk about discrimination on grounds of sex. Victims tend to be perceived in one of two ways: a demoralised young girl or a calculating prostitute.

In many cases, judges emphasise the voluntary nature of the practice of prostitution by the women. An example of such treatment of victims is the judgment of the District Court in Lublin. The judge pointed out that the young girls who had fallen victim to human trafficking wanted to work as prostitutes, emphasizing that *they did it voluntarily*.⁵⁴⁸ In another passage in the justification, the judge also writes about the voluntary nature of the prostitution undertaken by the victims:

There is no doubt that this type of behaviour means that the girls themselves "were seeking adventure" and made use of opportunities presenting themselves. Finally, it should be emphasized that the victim did not deny that she went to work in Germany voluntarily. Although from her testimony it transpires that she was surprised and frightened by the pace of preparations and the determination of Brothers C. in organising the trip, it also transpires from further testimony of the victim and from the testimony of other witnesses [...] that the girls wanted to work as prostitutes in Germany.

⁵⁴⁷ The main conclusions in this part of the report originate from the doctoral thesis "The social perception of female victims of human trafficking for the purposes of sexual exploitation. Sociological analysis" written by Maryla Koss-Goryszewska under the supervision of Professor Małgorzata Fuszara at the Institute of Applied Social Sciences, University of Warsaw.

⁵⁴⁸ Judgment of the District Court, Lublin, 2002, Ref. IV K 415/00.

The judge did not even seem to pay attention to the fact that the victims were minors, and that they were given drugs in order to force them to have sex and to break their resistance. The finding of the court that prostitution was practised voluntarily by the young women is also incomprehensible, since the girls had their passports taken away and they were guarded.

Judges often lowered sentences suggested by prosecutors for offenders if they considered the victims of human trafficking to be prostitutes. One such example is the judgement of the District Court in Zielona Góra,⁵⁴⁹ under which the perpetrators were sentenced to imprisonment for periods of from 1.5 years to 2.5 years (and thus below the statutory minimum) in spite of the fact that they were especially brutal towards victims (they beat them on the head with their fists, threatened to kill them, raped the victims, and strangled them). The court in this case deemed that

The motions of the prosecutor to sentence the accused for the particular crimes of rape, trafficking women, or robbery, and also for cumulative sentences are excessive; they do not reflect and do not take into account the nature of these acts and in particular the attitudes of the victims themselves, **the profession practised by them**. If the victims were persons from a **normal environment** then undoubtedly these motions would be appropriate to the committed crimes [our emphasis].

Sometimes judges issuing rulings have referred to the bad behaviour or demoralisation of victims of human trafficking, especially when they were underage. In a case heard before the District Court in Słupsk,⁵⁵⁰ in which the victims were two girls aged 15 and 16, the justification of the judgment convicting the offender begins with presenting the situation of one of them: “In 1999, Katarzyna J. was unable to communicate with her parents. There were frequent arguments, as Katarzyna did not study as she was supposed to and played truant.”

⁵⁴⁹ Judgment of the District Court, Zielona Góra, 2001, Ref. II K 150/99.

⁵⁵⁰ Judgment of the District Court, Słupsk, 2002, Ref. II K 104/01.

In a further part of the justification, the judge emphasizes that: “The degree of demoralisation [of the victim] is significant and is deepening.”

It is worth noting that regardless of the degree of demoralisation, especially in view of their young age, it should not be relevant to the case and to the sentence for the perpetrator.

Also, in the case from the District Court in Krosno, in which the perpetrator was acquitted of the charge of human trafficking (the perpetrator was sentenced by the Court of First Instance for help in illegal crossing of the border), the court had a very negative attitude to – in its opinion – the inappropriate behaviour of the victims.⁵⁵¹

When analysing the evidence that was collected and heard in the case, it should above all be emphasized that it is undisputed that both victims, i.e. Maria K. and Irena S., were undoubtedly difficult girls – in terms of upbringing and education. This was a problem involving many factors, including: environmental-educational/upbringing ones and the fact that their parents had defined difficulties with them in this area, not knowing how to or not being able to bring them up properly.

In this case one can also talk about excessive focus on character traits of the victims (two girls, 14 and 15-years-old), whom the court simply blamed for the crime that occurred.

SUMMARY

The examples of criminal cases concerning human trafficking presented in this report indicate difficulties that judges have in adjudicating cases linked with this type of crime. As has already been mentioned, some of these problems have probably been solved thanks to changes in the Criminal Code in September 2010 (unifying of provisions concerning human trafficking and introduction of a definition of this crime). However, due to the short time that they have been in force, it is still too soon to assess their results. One can, however, assume that it is highly probable that the situation has improved. Files in the only case accessed by the Institute of Public Affairs in which a

⁵⁵¹ Judgment of the District Court, Krosno, 1999, Ref. II K 25/97.

judgement was handed down after the change in regulations indicate this. In this case, heard before the District Court in Zielona Góra,⁵⁵² involving over 30 women being forced into prostitution, the prosecutor, in the indictment, cited the new definition of human trafficking in the Polish Criminal Code (based on the Palermo Protocol), deeming that:

The circumstances presented above unambiguously indicate that the behaviour of A. N. fulfilled the criteria of the definition of human trafficking, since she had, in return for payment, taken on women at the “Laguna” Bar in Gubin – women who had previously been recruited as a result of exploiting their critical situation, caused by bad financial circumstances and also as a result of misleading them as to the type of work carried out in Poland and its profitability. Next, after taking the women’s passports, she exploited them as prostitutes, gaining herself financial benefit from the prostitution practised by them.

The fact that the prosecutor referred to the definition of human trafficking in the Polish Criminal Code (and also lack of any doubts on his part that in this case precisely this crime had occurred) indicates that the introduction of this definition has led to an increase in the clarity of the regulations concerning this crime. Unfortunately, however, even in this case, representatives of prosecuting bodies and the judiciary committed certain irregularities. Apart from the fact that in this case there was a lack of reference to any European or international documents and that none of the victims received any compensation for the crime that occurred (in spite of the fact that government officers made an estimate of how much revenue was generated for the perpetrator by the work of each of the victims), what is most surprising is the sentence proposed by the prosecutor, and then handed down by the judge (2 years imprisonment, suspended, and a fine, whereas the mandatory minimum sentence for the crime is three years imprisonment). It is worth emphasizing at this point that the illegal activity in question lasted several years, there were over 30 (female) victims and the vast majority of them were misled as to the nature of the work (they were supposed to work as cleaners, waitresses or carers) and also the fact that the victims were coerced into prostitution by force. One wonders what the perpetrator would have had to do to receive at least the mandatory minimum punishment for this crime. Imposing a punishment below the

⁵⁵² Judgment of the District Court in Zielona Góra , 2012, Ref. II K 174/12.

mandatory minimum in this case may thus indicate that once again judges and prosecutors have shown that crimes linked with the sexual sphere and concerning women are not being treated by them with sufficient attention and gravity.

New regulations in the Polish Criminal Code have thus probably made it easier for prosecuting authorities and courts to prosecute/judge offenders for human trafficking, which may undoubtedly be considered significant progress in the field of fighting this crime. The attitude of prosecutors and judges to victims may, however, raise concerns – this attitude has not really changed over the last dozen or so years. For this attitude cannot be changed by amending the law, but only by a change in the awareness of judges, which is far more fixed and less susceptible to change.

1.4. PRESS ANALYSIS

“THIS IS THE ERA OF SLAVERY” – THE IMAGE OF HUMAN RIGHTS TRAFFICKING IN POLISH PRESS

ARTICLES – REPORT SUMMARY

Police, prosecution and court statistics indicate an increase in the number of cases of human trafficking in Poland since the beginning of the 1990s.⁵⁵³ Meanwhile, as transpires from a TNS OBOP survey carried out in 2010 amongst a representative sample of Poles, knowledge about the phenomenon of human trafficking in the country is, although widespread, quite shallow.⁵⁵⁴ Most respondents gained information on the subject from television (83%), and newspapers and magazines (30%).⁵⁵⁵ The mass media are thus to a large extent responsible for shaping the views of the public.

The selection of newspapers and magazines for this study was not arbitrary – three titles were chosen that were as different from each other as possible and aimed at

⁵⁵³ <<http://www.handelludzmi.eu/hl/baza-wiedzy/statystyki/6143,Dane-statystyczne.html>>, 6.03.2014.

⁵⁵⁴ „Społeczna świadomość zagrożeń związanych z handlem ludźmi i podejmowaniem pracy za granicą”(Social awareness of threats linked with human trafficking and undertaking work abroad), TNS OBOP 2010, p. 8, accessible at: <http://obop-arch.tnsglobal.pl/uploads/6470/TNS_OBOP_Spoleczna_swiadomosc_zagrozen_zwiazanych_z_handlem_ludzmi_i_podejmowaniem_pracy_z_granic.pdf>, 4.03.2014.

⁵⁵⁵ Ibidem, p. 13.

various readers: *Gazeta Wyborcza*, *Fakt* and *Polityka*. Articles which contained at least one of the following expressions were analysed in these publications: “human trafficking”, “live goods trafficking”, “forced prostitution”, “slavery”, and “trafficking in women”. Another factor influencing the choice of the periodicals was their high circulation (all three are high volume titles, with *Fakt* and *Gazeta Wyborcza* in the top two positions in the country). In order to meet the diversity criterion, two papers at opposite ends of the press spectrum were chosen: *Gazeta Wyborcza* – a daily newspaper associated with relatively high quality of published articles, and *Fakt* – also a daily newspaper, but a tabloid. The third publication chosen for study was *Polityka* – an influential liberal-leftist socio-political weekly.

CHARACTERISTICS OF DESCRIPTIONS OF HUMAN TRAFFICKING IN PARTICULAR PUBLICATIONS

Fakt

In the analysed period, only three articles appeared concerning human trafficking for prostitution or for forced labour. Due to the nature of the newspaper, the articles contained in it were largely sensational. The criminals described in them were usually citizens of German-speaking countries, whilst the victims were most frequently persons from Central and Eastern Europe seeking work and accidentally becoming victims of one of the discussed forms of exploitation.

The articles did not contain deeper reflections on the phenomenon (which, of course, is related to the nature of the paper), the data were reprinted from other media, and there was a clear, dichotomous division into good and evil, which manifests itself in saturating the text with adjectives characterised by a strong emotional charge.

Gazeta Wyborcza

Both the main part of *Gazeta Wyborcza* and its supplements (local and thematic) were analysed. Five, two and eight articles about human trafficking appeared in the main part, thematic supplements and local supplements of *Gazeta Wyborcza*, respectively. In spite of the fact that all these articles were published in one newspaper, the way of

presenting the phenomenon of human trafficking for prostitution and forced labour in different sections/supplements varied fundamentally. In *Wysokie Obcasy* (“High Heels”), a Saturday supplement with feminist leanings aimed at women and about women, two pieces appeared in the analysed period presenting profiles of female activists working to combat human trafficking (*W imię córki* [In my daughter’s name] and also *Zawód reporterka* [Occupation reporter]). The picture of human trafficking for prostitution and forced labour presented in the main part of *Gazeta Wyborcza* was, on the other hand, to a large extent based on a report on this subject drawn up by government organisations and NGOs. Although the number of detected cases of human trafficking for forced labour has been increasing for several years, most of the cases of human trafficking continue to be for the purpose of forced prostitution. In the publications analysed in the present report, a significant predominance of articles devoted to human trafficking for prostitution over other forms of this crime (discussed later) was also visible. However, if the main part of *Gazeta Wyborcza* is considered separately (i.e. without thematic and local supplements), it turns out that in the analysed period articles concerning not prostitution, but forced labour predominate, which constitutes a novelty in the media image of human trafficking. Out of five articles, as many as three concerned forced labour, whilst the remainder presented the phenomenon of human trafficking generally, without distinguishing its forms.

On the other hand, local supplements of *Gazeta Wyborcza* contained short, succinct reports concerning specific crimes taking place in the local region where the given supplement appeared. In contrast to the main edition/section of *Gazeta Wyborcza*, descriptions of human trafficking for prostitution prevailed over those relating to forced labour.

In *Gazeta Wyborcza* (just as in *Fakt*), Germany was the main country of destination for victims of human trafficking, and the main victims were young Polish girls without a permanent source of income, recruited “for work” or “for love”.

Polityka

During the discussed period, only three articles concerning human trafficking appeared in the weekly *Polityka*, of which one discussed human trafficking for prostitution, whereas the remaining two presented the phenomenon of forced labour. All three articles made references to human trafficking outside Poland. The main emphasis was on presenting the phenomenon in relation to general social and civilizational changes, its historical background, and also differences between the world of the poor and the rich.

GENERAL CONCLUSIONS

In the studied period, a total of 21 articles concerning human trafficking for prostitution or forced labour appeared on the pages of *Gazeta Wyborcza*, *Fakt* and *Polityka*. The first criticism that comes to mind is the very great disproportion in the number of articles in each title. By far, the most – fifteen – were published in *Gazeta Wyborcza*. In the remaining two publications, there were only three pieces in each on this subject.

The relatively small number of articles concerning human trafficking in *Fakt* is puzzling: one would have expected a far greater interest in the subject from this paper. However, *Fakt* is a daily newspaper, whose aim is to be “close” to the reader – it mainly presents news and events taking place “here and now”, concerning “ordinary” people. Compared to other common offences, human trafficking is a crime that occurs sporadically, and so relatively rarely affects potential readers of the newspaper. The small number of articles in *Polityka*, on the other hand, can be justified, firstly, quite simply by the fact that, unlike the other two publications, it is a weekly, which lessens the likelihood of articles on a given subject appearing. Secondly, since it is an opinion-forming weekly, articles about specific crimes (which appear relatively frequently in *Gazeta Wyborcza*) are not published in it. The three articles which appeared in *Polityka* in the studied period had a more general and abstract character.

One of the issues analysed was the relationships between particular articles. It turns out that, apart from a few exceptions, in general the articles did not refer to each other. Materials, reports and comments were independent of each other both within one paper and between different sources.

In spite of increasingly frequent cases of human trafficking for forced labour, by far the most common form of this crime in Poland continues to be exploitation for the purpose of prostitution. This tendency is also reflected in the press. Amongst the 21 analysed articles, 12 concerned forced prostitution, six forced labour, and three both forms. This significant predominance of articles describing human trafficking for prostitution can also be explained by the fact that articles with a sexual theme are very popular amongst readers. Journalists describing acts linked with forcing women into prostitution thus meet the expectations of readers.

Due to the fact that the vast majority of articles concern human trafficking for prostitution, the most frequently described victims are women (in the articles in which victims were mentioned, twelve of them exclusively described women, and eight women and men; the remainder did not mention the gender of the victims). In a few (five) articles, the exact age of the victim(s) was given, usually when they were especially young (in three articles, the described victims were 16, and in two 23-24 years old). Sometimes “young victims” were mentioned without indicating their exact age. The number of victims indicated in the articles ranged between one and several dozen, but crimes involving several to a dozen or so victims were described most frequently. Sometimes journalists pointed out the nationality of the victims. Polish nationality was indicated most often (8 out of 16 articles in which the nationality of the victim was described), which is in line with official data concerning crimes committed in Polish territory. The remaining nationalities mentioned by journalists were: Bulgarian and Vietnamese (mentioned three times each), Ukrainian (twice), and also Moldavian, Belarusian, Russian and Romanian (once each). In one article, the formulation “victims from Eastern Europe” was used without distinguishing specific nationalities. When describing cases of human trafficking occurring outside Europe, there was also mention of citizens of Argentina, Mexico, India, Philippines and Pakistan. In terms of key actors, the most frequently

mentioned in the articles were: police (five articles) and prosecutor's offices (also five articles), and also representatives of NGOs and church organisations (seven), government administration (three) and judges and investigative journalists (one each).

FINAL REMARKS

The press titles chosen for the study differ from each other above all in terms of readership and form of presented material. These fundamental differences also influence the way of presenting the phenomenon of human trafficking for the purpose of prostitution and forced labour. While the articles in *Fakt* were rather sensational, the nature of pieces in *Gazeta Wyborcza* varied depending on which section/supplement they appeared in. *Polityka*, on the other hand, concentrated on reportages and interviews concerning the analysed phenomenon. Due to the character of the magazine and the weekly frequency of publication, the articles contained in it were more comprehensive, and did not refer to specific crimes, but looked at the issue from a broader perspective.

It should be noted that (in relation to the phenomenon of human trafficking) journalists sometimes used linguistic strategies aimed at exaggerating certain information while glossing over other aspects, which may have negative consequences for the way in which victims of crime are perceived, as well as for the general state of knowledge on this phenomenon amongst the general public.

2. FIELDWORK

2.1. QUALITATIVE RESEARCH

The qualitative research was based on qualitative data consisting of semi-structured in-depth interviews. The research was conducted between May and August 2013. Among the respondents were representatives of the selected public institutions, which play a leading role in counteracting THB (e.g. Ministry of the Interior, Ministry of Justice, State Labour Inspectorate, Prosecutor's Office), police, border guards, non-governmental organizations, intergovernmental organizations and academia. In case of

perception of THB, the qualitative research can successfully show how the phenomena is experienced and perceived and how the officially and legal constructed categories are incorporated in an individual experience, as in-depth interviews leave a lot of space for one's own interpretations. Moreover, the outcome of this type of research allows to formulate conclusions referring to positive and negative consequences of law enforcement in the field of counteracting trafficking in human beings and to indicate loopholes and possible pitfalls which might appear in the process of implementing the national policy aimed at preventing this phenomenon.

In total, **23 respondents** were interviewed: Mazovia Voivodship Office (1 interview), academia (1 interview), intergovernmental organizations (2 interviews), NGO sector (3 interviews), State Labour Inspectorate (2 interviews), border guard (2 interviews), police (3 interviews), Prosecutor's Office (3 interviews), Ombudsman's Office (2 interviews), Ministry of the Interior (2 interviews) and Ministry of Justice (2 interviews). The interviews were conducted in the following Polish cities – Warsaw, Rzeszow, Zielona Góra and Krosno Odrzanskie. All of them were recorded and transcribed. Selected respondents have professional experience in the field of fighting or preventing human trafficking. In case of police forces, for example, our interviewees were members of the unit delegated to fighting human trafficking. Among the respondents from the Prosecutor's office were persons who were or are currently involved in investigations concerning THB. Respondents from the non-governmental sector represent two main NGOs dealing with this issue especially by protecting the victims and running public campaigns.⁵⁵⁶

RECENT TRENDS IN HUMAN TRAFFICKING IN POLAND

Due to lack of coherent system of data collection on TBH, the scale of human trafficking in Poland is practically unknown and all figures regarding the actual number of committed crimes (and not just the recorded ones) are merely estimated. It is, however much easier, to present general trends in the THB in Poland, which was one of the main

⁵⁵⁶ Due to the limited length of this report, only part of the results of the research are presented below. A full length report is available on the IPA website <www.isp.org.pl>.

topic of conducted research carried out with experts and practitioners. As most of the respondents stated in the interviews, until not so long ago human trafficking in Poland tended to be seen primarily in the context of trafficking in women. As stressed in the interviews, however, recently other and so-called 'new' forms of human trafficking have been occurring more and more frequently. At the same time the scale of the human trafficking in the sex business (measured by detected cases) stays on the same level. As one of the respondents stated:

Well, we see that the cases of human trafficking in prostitution and sex business are pretty much the same now and in the last 10-15 years, when we look at detected cases, it is a smaller part of all human trafficking cases, in case of prostitution detection is especially difficult since, as we know, it is an offence that is not prohibited in Poland. Also cases connected with children pornography stay pretty much on the same level. The only significant growth that we see is growth of cases connected with new forms of human trafficking (I 15).

As mentioned, recently increasing attention is paid to other forms of this crime – forced labour, illegal adoption, extortion of loans, extortion of social benefits, forced begging, and home slavery. Although these forms still make up a smaller percentage of all cases of human trafficking in Poland, the percentage share in the general number of THB cases is increasing gradually. As respondents strongly stressed, out of all new forms of human trafficking, especially the illegal adoption, extortion of loans and social benefits considering their vague character are the hardest to properly detect and persecute.

Moreover, in many cases, especially those connected with forcing the victim to extort the loan or social benefits, lack of auto-identification of the victim is a serious problem which leads to a small number of reported crimes. It is especially the case of the forced labour and new forms of human trafficking (extortions of loans and social benefits, forced begging). Due to lack of the effective system of monitoring of the THB victims in Poland (victims of forced labour in particular) there is a significant difficulty in creating a proper assistance for the victims. In this context, what was especially stressed by the respondents from the NGO sector is that is crucial to involve the non-governmental organizations in the process in the larger extent, as the victims usually come from the

groups with absolutely no trust for the public administration or police forces whatsoever. Apart of the identification of the victim, still the main difficulty in fighting human trafficking, it is the lack of social awareness. As a consequence, the society or the community play a minor role in the process of identification of the victims.

Due to the lack of awareness, human trafficking for a long time was seen merely as a phenomenon connected with prostitution, not only by society at large, but also by the prosecutors (which made detection and persecution of THB cases in Poland not as effective as they should be). The main problem in this matter, stressed both by the interviewees from Police forces and representatives from the prosecutor's office, is the lack of awareness of the phenomenon of THB among the prosecutors. Some changes in that matter, due to the program of training for prosecutors, was observed and underlined, but in general it was assessed as very disappointing. As one the respondents pointed out rightly:

There is a significant problem with the public prosecutor's office. The prosecutors in many cases do not see a case of human trafficking, therefore they do not tend to charge somebody with THB and prefer to charge somebody with a minor accusation, for example forgery. Police and Border Guards always complain about that. They collect the evidences, the documents and, at the end of the day, no charge of human trafficking is made. If there is no obvious proof of THB as a literal process of selling and buying, prosecutors generally do not tend to see a particular offence as case of human trafficking. Of course, a lot has changed, the prosecutors attend training and seminars, but still, if we see how many of them attended those meetings and compare it the with number of charges – there is still a significant problem (I 2).

As a result of the change of the political and the opening of borders, Poland was a main source of trafficked persons. Nowadays, however, the situation has changed – Poland is now both a country of origin and transit (a bridge between Eastern and Western Europe) and a destination for human trafficking (mainly of victims from Eastern Europe, but recently – more and more frequently – also from Africa and from East Asia). There is no agreement, however, between the experts whether should we classify Poland as a country of transit. For some of the respondents there is no direct proof for that, for others,

It is a matter of logic, they had to cross Poland to get to Poland, there is no other way. Well, it is true we do not have as many transit cases, but it is because Police don't look for them, and, of course a victim is identified in the last country of residence. In my opinion Poland is a country of transit for Ukrainians exploited in Germany, and for Vietnamese. That is for sure. It is not simply transit, those victim are exploited firstly in Poland. [I 20].

Experts and practitioners identified a few main factors which determine the scale and character of today's THB in Poland – changes connected with accession to the European Union and the Schengen Zone and the economic crisis. Especially the opening of the labour market for Poles, firstly in the UK, then in the Netherlands and lately in Germany, caused a growing number of human trafficking cases other than those detected in the sex business (forced labour, extortion of loans, extortion of social benefits, forced begging, and home slavery). As stated in the interviews, there is no hard evidence, however, that the economic crisis influenced the scale and pattern of the human trafficking in Poland and this assumption is made more on the basis of the experience and common sense of the respondents. As one of the respondents from the Ministry of the Interior put it

Well, we do not have evidence that it [economic crisis] strongly influenced the pattern or scale of human trafficking in Poland. But as I see it, it certainly has affected it and the scale will grow. I am telling it for the last three years and I am sure about that. If you just observe the Polish and European labour market, there is unemployment in Poland and Polish workers are more likely to look for a job abroad, and they are often abused abroad. It is hard to prove that the economic crisis had a deep impact but for a common sense... The employers will simply try to cut the expenses. (I 20).

Even though the lacking of hard evidence, generally respondents agreed that economic downturn that hit Europe had influenced the scale of human trafficking both in scale and in developing of new forms of abuse, which is seen also in the public prosecution office:

in case of Poland, after the crisis we have observed developing of new forms of human trafficking, especially the exploitation of personal data for extortion of loans and social benefits abroad. Also forcing somebody to use his or her personal data to establish an illegal business. That happens more often than it used to (I 15).

It was stressed, however, that in case of the new forms of the human trafficking pointed out above, the offences happen mostly abroad, and the Polish citizens are mostly among the victims. As the respondent from the public administration underlined,

in case of using personal data to extort the loans or social benefits, it is usually high developed countries with a good social system as the United Kingdom, the Netherlands, Germany or France. The victims are Poles, the offenders are also Poles, or foreigners – especially members of the Roma community – they specialize in extortion of social benefits. The scale is hard to measure, but for example we know that the UK lists 5 billion pounds on this, and I am referring only to Poles. It is a lot (I 15).

PERCEPTION OF THE POLISH LEGISLATION

Poland's accession to the European Union in 2004, which entailed a requirement to align Polish legislation with EU law, and the ratification of international agreements (from the Council of Europe and the United Nations) have had an undoubted influence on this state of affairs. Another difficulty that existed up until 2010 was the lack of a standard definition of "human trafficking" in the Polish legislation, which was transposed in the amendment of the Polish Penal Code (inclusion in article 115 of the penal code) on 8 September 2010. Thus, now the definition of trafficking in human beings is provided in Article 115, paragraph 22, of the Criminal Code:

Human trafficking means recruitment, transportation, transfer, harbouring or receipt of persons with the use of the following:

- 1) *violence or unlawful threat,*
- 2) *abduction,*
- 3) *deception,*
- 4) *fraud or taking advantage of inability for proper understanding of taken actions,*
- 5) *abuse of dependence in the relationship, abuse of critical situation or a state of helplessness,*

6) *provision or acceptance of material or personal benefit or promise thereof to a person taking care or having custody of another person, in order to abuse such person even if such abuse is performed upon the consent of such abused person, especially in prostitution, pornography or other forms of sexual abuse, in forced labour or services, begging, slavery or other forms of abuse of human dignity or for the purpose of acquiring cells, tissues or organs in violation of the provisions of law. If the conduct of the perpetrator is directed against a minor, it constitutes human trafficking, even if methods or measures mentioned in sections 1-6 have not been applied.*⁵⁵⁷

In 2011, the Polish Government improved its anti-trafficking law enforcement efforts. Poland defines and prohibits all forms of trafficking in persons through several articles of its criminal code and prescribed punishments under these statutes ranging from one to 15 years imprisonment. Moreover, in 2011, in order to ensure better coordination between police forces in the different regions and units, the government transferred the Central Anti-Trafficking Unit of the Polish National Police to the Central Bureau of Investigation. The prosecutor's office does not have, however, a specialized anti-trafficking unit, an anti-trafficking consultant was assigned to advise prosecutors responsible for trafficking cases, which was strongly pointed out by the respondents, especially from the Police units (US Department of State, 2012). The provision of Polish legislation considering human trafficking was evaluated by practically all respondents as comprehensive and sufficient. Moreover, it was found as perfectly coherent with the international and EU law. As one of the respondents puts it:

Now, our law is perfectly harmonized with the European law, since we had to implement the 36/2011/UE Directive this year. The Ministry of Justice approved that the law is coherent now. Well, there was just one inconsistency – considering the cross-questioning of the minors, but I believe they have already changed that. It was about ensuring that the minors will not be put into hearing more than once. Sometimes I find our law even better than European and international law. For example, when it comes to the time for the [...] victims. In international law it is 60 days, in our law it is 3 months, but soon it will be prolonged until 6 months for adults and 4 months for minors.

⁵⁵⁷ Article 115, § 22, Criminal Code.

Also in Poland, prescribed punishments under these statutes range from one to 15 years imprisonment, in international law – it is 5 years. So as you see Polish law is pretty strict (I 21).

As mentioned, surprisingly, all respondents, either from the NGO sector, public administration or academia perceive Polish legislation in this field as well-constructed and comprehensive:

I think the current law is a very good one. I've been observing the changes in the law in the last 18 years. There has been a huge change in the legislative for better. The implementation of the law, that is where the problem lies. For example, the victims are not well informed before they give a statement, or the time for consideration for a victim is not in use, it is in the law however. The law is weak in its implementation (I 5).

There are, however, some queries and contradictory opinions regarding the design of the above mentioned new definition of THB – the general point of disagreement is whether the catalogue of the crimes which can be identified as human trafficking should be open, or limited as in case of a German legislation, for instance. Most of the respondents who work closely with the prosecutor's office or juridical office agreed that introduction of the definition made their work much more efficient

I think that the definition, thanks to the open catalogue, is very useful. The new forms of TBH are defined in it, even those that cannot be found in international law. The definition includes the term "in specific", therefore the catalogue is open. This definition is needed also to take a case (to trial), to connect the methods, ways of control and forms of exploitation (I 21).

At the same time, some of them pointed out some shortcomings:

the definition could be better, it could be more precise. But, of course, it is hard to be designed in a way that everybody will be happy. The fact that it was implemented in the Criminal Code is, as such, important and I am happy about that. And I think it is good that the catalogue is open, if the new forms of human trafficking will occur, it will be easier to apply it in the law. I just think the penalties should be higher (I 5).

THE VICTIMS' PROTECTION

The only issue which was identified by the respondents both from public administration and non-governmental organizations as a weak law provision is the legal

system of protection of the victims of THB. The Polish Government has increased its anti-trafficking victim protection efforts in 2011 and made the decision of continuation of funding for the National Intervention-Consultation Centre for Victims of Trafficking run by La Strada in Poland to provide assistance to foreign and Polish victims of trafficking. However, the whole system still seems to be insufficient. As one of the representatives of a non-governmental organization stressed: "the victims' protection is the only thing that has to be strongly assessed as negative. There is no law provision for victims to get the compensation and proper protection. This law has to be changed" (R5). The NGO-run centre provided assistance to 133 victims in 2011, down from 253 in 2010 and hosted an anti-trafficking hotline, provided victims with comprehensive assistance resources, and offered a shelter for adult female victims. Government-funded NGOs provided medical and psychological care, legal assistance, protective services, food, clothing, and crisis intervention. The government designated and partially funded 19 other crisis centres as shelters for trafficking victims (US Department of State, 2012). Thus, Polish legislation, in general, provides a system of victim protection, but it is not sufficient and, as practitioners state, does not work well in practice. Not only the legal provision for the victim protection was evaluated as non-effective, but also its implementation was assessed as not sufficient, as the representative from the Ministry of the Interior summed it up:

In Poland, all means of victims [of THB] come through the public welfare system. But it is all very unclear. The legal provision is all right but at the end of the day there is a huge problem in the money transferring. The Crisis Centres and Social Welfare Centres can, of course, help the victim, but in order to do that they have to submit a request for a financial reimbursement to the Ministry of the Interior, they don't have any money for that purpose in advance. But imagine, how long does it last in Poland. [...] When the victim has Polish citizenship it is a little bit better, but if he or she is a foreigner, it is extremely time consuming (I 20).

The general assumption of the victim protection system is that the Centres of Crisis Intervention (CCI) (which are part of the Social Assistance Centres) must provide the victim of human trafficking with assistance (both financial and accommodation) and, then, get the reimbursement for this expense *ex post* from the Ministry of Finance. Both Polish citizens and foreigners (third-country nationals and EU citizens) are entitled to

receive the same social benefits (legal assistance, shelter, food, clothing and allowance). In practice this procedure is time consuming and burdensome, and it is definitely discouraging. The change in this matter demands changes in the procedure in the Act on Social Aid. Other recommendation in the field of victim protection suggested by the respondents is to provide a sufficient number of “safe houses” for the victims as there are also lacking shelters designated specifically for male trafficking victims, although the government housed male victims of trafficking together with females in crisis centres, with supervision from anti-trafficking NGOs. Moreover, the system of protection of minor victims of trafficking is not adequate. The procedure of identification of minor victims and protection (especially psychological aid) procedures should be revisited and improved.

EFFECTIVENESS OF THE INTERNATIONAL COOPERATION

Despite few examples, all respondents evaluated the international cooperation as insufficient and, most of all, extremely difficult. In the case of Poland, among the main countries with which the cooperation needs to be strengthened are Germany, Ukraine, Belarus, Italy and the United Kingdom. Obviously, the only respondents who had experience with international cooperation were the representatives of the police (I 12, I 13, I 14), border guards (I 10, I 11) and prosecutor office (I 15, I 16, I 17). Despite some examples of good practices and examples of effective international cooperation with the Ukrainian, Belarusian and German officers, especially in the area of identification of the victims and prosecution of offenders (such as Joint Investigation Teams), the need for more institutionalized and formalized ways of cooperation was stressed. As one of the respondents from police stated, considering the transnational character of the phenomenon of THB, the cooperation in the first stage of the detection of the crime demands effective – and what is crucial – quick cooperation with police forces from abroad. For now, the cooperation among different police forces is not very structured and is pretty much based on informal relations between officers:

The reality looks like that – you have a case, you call the officer from Germany or Austria, for example, and you discuss the case, ask him for documents, evidence. It is all informal. You know those people from previous cases or from trainings. (I 10).

The most important issue, which is connected with this informal ties, is continuity of the staff engaged in the process on both sides, otherwise the cooperation faces severe difficulties.

From the prosecutors point of view (I 15, I 16, I 17), the international cooperation on the stage of prosecution faces also quite serious problems. The main pitfalls which were indicated were: the time consuming procedure of the processing of the motion for legal advice and lack of Joint Investigation Teams (JIT), which is especially the case of Polish-and British cooperation. The main difficulty in the process of establishing JITs, which was defined by the respondent as a practical one, is that they need to work exactly on the same issue in both countries, which, in some cases, is very hard to arrange. On top of that, there are some difficulties mainly based on the communication problems – mainly the lack of language skills among the prosecutors and police officers. As the respondent from the prosecutor office stated, working within JITs is very demanding as it requires high skills and most of all – flexibility. The formal system of Joint Investigation Teams was established five years ago, but still, because of the reasons mentioned above, is not a popular way of international cooperation in Poland (by the time of the research there were only two Joint Investigation Teams in Poland – and none of them were connected directly with TBH).

Two main forms of international cooperation were indicated by the respondents from three prosecutors' offices. First one was defined as "centralized cooperation", and is carried out between one general prosecutor office and another, and defined as extremely time consuming and burdensome. The second one, defined as "decentralized cooperation", is based on bilateral agreements (as Poland has with Germany and Ukraine) and does not demand the mediation role of the General Prosecutor Office, and the particular Prosecutor Office can be identified and contacted directly. The latter form of cooperation is clearly seen as faster (the case can be clarified within weeks, not months, as in the first case) and much more efficient. Again, because of the lack of a mutual agreement, deep differences in the legal system and sometimes lack of will, cooperation with Great Britain is seen as the most difficult one. As one of the respondents put it:

The hardest cooperation that we are having is certainly the one with Great Britain, sometimes it looks like they don't want to help. We see that there is little interest in the prosecution of Polish citizens who commit crimes, especially crimes connected with extortion of social benefits and extortion of loans. We have serious problems here with applying for legal motions, with transferring documents... And when we got them finally, their quality is questionable. I think the offenders, to some extent, are aware of that, and they can feel completely unpunished (I 16).

The need for stronger cooperation and to strengthen the role of the EUROJUST and EUROPOL in the supervision and coordination on the communication and cooperation between European countries was stressed.

It is crucial to invent some sort of a set of rules, and I believe that it is the role of EUROJUST and EUROPOL that every country in the EU has to obey. I am talking especially about the deadlines for the response and transfer of documents, now there is no such a rule and the prosecutions last for ages because we wait for the documents. And we need rules when it comes to create Joint Investigation Teams. We have now a set of rules, but I feel that nobody obeys. As a consequence, the prosecutors are discouraged to use tools like JITs, they always appear to be problematic (I 21).

As the respondent (I 15) stressed, there was an excellent practice of international cooperation between Polish, Italian and Dutch Juridical Schools which was focused on the training for judges from those three countries (one every six months). The training was a great possibility to, first of all, discuss the particular cases, and second of all – to establish personal relations with prosecutors from other European countries which are crucial in the everyday cooperation. This particular training project (funded by the European Commission) is already closed, but it was strongly stressed that it needs to be continued and elaborated.

2.2 QUANTITATIVE RESEARCH

Quantitative research was conducted among police officers and border guards (BG), who have potentially already come across or may come across human trafficking victims and the phenomenon of trafficking in human beings (THB) in the future. The aim of the survey was to study the perception of human trafficking for the purposes of prostitution and forced labour by persons directly involved in combating this type of crime, in particular, police officers and border guards. Bearing this in mind, the study was

carried out among officers and guards working in units located in those towns in Poland in which cases of such activities are more frequent. The study encompassed police officers and border guards from Warsaw – the capital and largest city in Poland – and from two cities located in the western part of the country near the border with Germany – Zielona Góra (police) and Szczecin (BG). These locations were chosen after consultations with police and border guards headquarters. On the basis of these consultations, the number of officers and guards who could potentially take part in the research was roughly estimated and questionnaires were sent by (conventional) mail or delivered personally by researchers from the Institute of Public Affairs to indicated police and border guard units. Ultimately, data from 1002 questionnaires was analysed, including 741 questionnaires filled in by police officers and 261 questionnaires filled in by border guards in the period from May to July 2013.

The questionnaire consisted of 26 questions divided into 3 categories diagnosing knowledge and verifying opinions of respondents concerning: (I) the phenomenon of human trafficking in general; (II) human trafficking in Poland; and (III) preventing human trafficking, penalization, and protection of victims. Questionnaire content was prepared by Centro de Estudos Sociais (Portugal, Coimbra), leader of the “Fighting human trafficking in the EU: promoting legal cooperation and victims’ protection” project, co-financed by European Commission funds. This research tool was used in a survey carried out amongst officers of services responsible for combating this crime in the countries participating in the project, i.e., Belgium, Italy, Poland, Portugal and Romania. Although – and this is confirmed by, amongst other things, results of qualitative research carried out under the project – in recent years in Poland and other EU countries, the scale of so-called “new forms of human trafficking”, such as extortions of loans and social benefits or forced begging has increased, this project was mainly focused around the issue of human trafficking for prostitution and forced labour. That is why questions contained in the

questionnaire used for the present research refer to the phenomenon of human trafficking in general or to the above two mentioned variants of THB.⁵⁵⁸

PROFILE OF RESPONDENTS

The majority of respondents were men (67%), with women constituting around 30%. Officers from various age groups participated in the study. Respondents aged over 36 years made up the most numerous group (35%), followed by the ones from 20-30 years (31%) and 31-35 years (28%). Respondents were characterised by varying seniority – 25% of officers had work experience of more than 12 years, about 40% had worked in this profession for 6-12 years and about 30% for less than 6 years. Thus the great majority of participants had a relatively long period of service.

In the context of the above mentioned premises of the present study, an important point of reference during analysis of the collected data is the fact that almost 75% of respondents from the police force and almost 30% from the border guard declared that they had dealt with cases which could be classified as human trafficking for prostitution or forced labour. Due to the fact that some of the questions contained in the questionnaire allowed us to diagnose the awareness and to study the level of knowledge of respondents concerning the phenomenon of human trafficking, we also verified how many of them had participated in training (in the course of their work) relating to human trafficking. About 60% of police officers and 40% of BG officers stated that they had undergone such training.

GENERAL VIEWS ON THE SUBJECT OF TRAFFICKING IN HUMAN BEINGS

A diagnosis of general views on THB amongst respondents was carried out on the basis of questions concerning an assessment of the scale of the phenomenon of human trafficking, the main causes of THB (in the opinion of respondents) and their general views on this phenomenon. Most respondents agree as to the increase in scale of THB in Europe, which –in spite of difficulties (described earlier in the report) in estimating the

⁵⁵⁸ Due to the limited length of this publication, only part of the results of the analysed questionnaire survey are presented below. A full length report is available on the IPA website <www.isp.org.pl>.

real scale of this activity – are confirmed by available sources that we have seen. Almost 60% of police officers and somewhat over 80% of border guards stated that the scale of this phenomenon is growing, while 22% of police officers and 10% of border guards considered that it was decreasing. At the same time, in the opinion of about 20% of police officers and about 10% of border guards, the scale of THB remains small.

According to more than 1/3 of respondents, the phenomenon of THB is also growing in Poland – 35% of police officers and border guards stated that the scale of this activity has increased, and 6% stated that it has increased to a significant degree. While the great majority of respondents could unambiguously state that in their opinion there was a decrease or increase in this phenomenon when they were asked about general trends in Europe, as many as 42% of respondents stated that they did not know what the scale of this phenomenon was in Poland. Only 10-20% of respondents (total figures for police and border guards) had dealt with cases in the last 5 years that could be classified as human trafficking for forced labour or prostitution. Respondents that stated that in this period they had dealt with 1 to 5 such cases were 13%, but only 3% had dealt with 6 to 10 such cases during their service. This may attest to the validity of the points made earlier on in the report concerning the specific nature of THB, which is an extremely complex crime that is difficult to detect and the victims of which are very hard to identify – as a consequence, making prosecution of perpetrators very difficult. THB is continuously taking on new forms, and perpetrators make use of increasingly broadly available modern technologies, specializing in ever more sophisticated methods of recruiting victims, who are often not even aware of the fact that they have fallen victim to human trafficking – and what is worse even if they manage to free themselves from relations with the perpetrator, they decide not to testify or pursue their rights in court, due, for example, to shame about revealing painful experiences to third parties or due to fear for their safety or that of their loved ones as a result of intimidation by the perpetrator. That is why (amongst other reasons), the number of crimes classified as human trafficking both in police and prosecution statistics does not reflect the real scale of this phenomenon. Moreover, officers potentially having contact with victims of human trafficking may not categorise them as such, due to their relatively poor knowledge on the subject.

The most important factor conducive to growth in THB for prostitution and forced labour was deemed by police and border guard officers to be weak economic development in countries of origin of victims of human trafficking (77% for prostitution and 87% for forced labour), which motivates persons with low financial status and often complicated life situations to emigrate for work purposes. This factor significantly increases their determination in seeking work possibilities abroad and, additionally, means that in order, e.g., to provide for their family they are prepared to accept work in very difficult, often inhuman conditions. In the opinion of respondents, the second most important factor most frequently contributing to THB is – in the case of THB for prostitution – demand for sexual services in host countries, whereas in the case of THB for forced labour, the need for low-paid labour in host countries. This constitutes confirmation of respondents' awareness on the subject of the trans-border nature of this type of crime and also the "supply" occurring in the country of origin of the victims and the "demand" for a defined profile of workers and persons providing sexual services in target countries.

HUMAN TRAFFICKING IN POLAND

A further aim of the study was to diagnose the knowledge and opinions of officers of both services on various issues relating to: the specific nature of human trafficking in relation to Poland as a target country, country of origin and transit country of victims; causes of a decrease or increase in the scale of human trafficking for prostitution and forced labour; and the profile of victims identified in Poland.

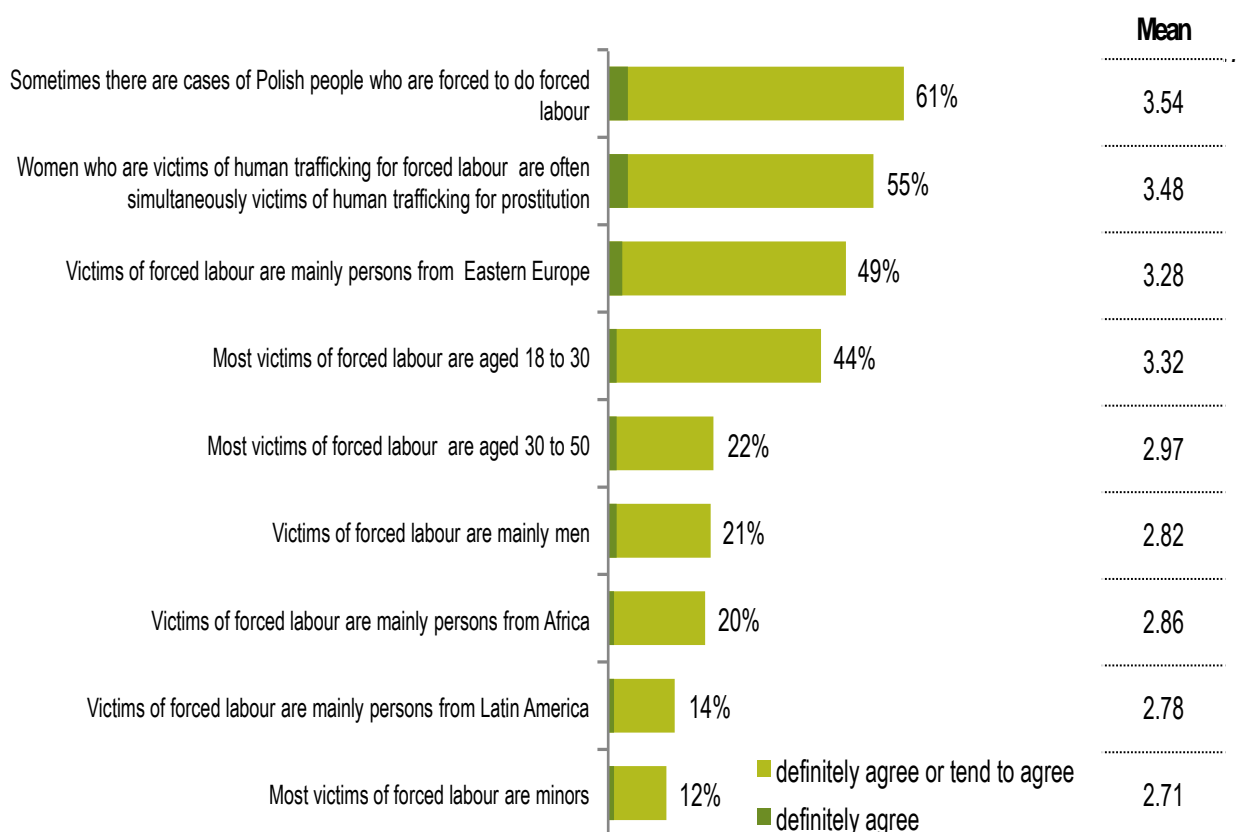
On the basis of the answers given, it can be stated that somewhat over half of respondents have basic knowledge concerning the profile of victims of forced labour in Poland, which is reflected, amongst other things, in the fact that most of them (61%) are aware that there are Poles who fall victim to human trafficking or that women who are victims of human trafficking for forced labour are also often identified as victims of human trafficking for prostitution (55%). However, only 20% of respondents agree with the statement that victims of forced labour are mainly men, whilst it is precisely men who constitute the vast majority amongst victims of this type of activity.

FIGURE VI.1 – STATEMENT ON THE SUBJECT OF HUMAN TRAFFICKING FOR FORCED LABOUR

Statements on the subject of human trafficking for forced labour

Base: Total Population, N=1002

Q18. Please indicate whether you agree with the following statements concerning victims of human trafficking for forced labour in Poland



SOURCE: INSTITUTE OF PUBLIC AFFAIRS, 2013.

Awareness and knowledge of respondents on the subject of basic issues concerning the second of the discussed forms of human trafficking – THB for prostitution – is relatively high. This is reflected in, amongst other things, the fact that 66% of respondents agreed with, e.g., the statement that situations happen in which Polish women are forced into prostitution in Poland and abroad, and somewhat over half of

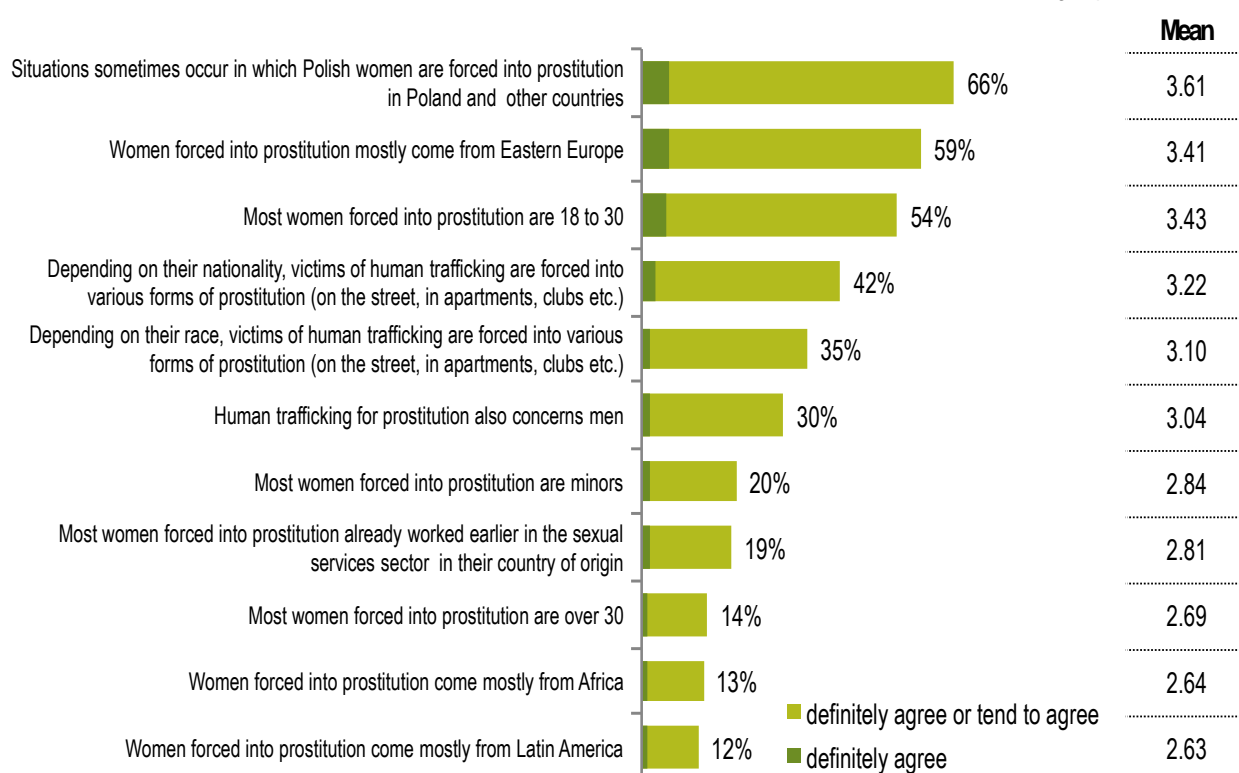
respondents were aware of the most frequent ethnic origin of victims (59% agreed with the statement that women forced into prostitution in Poland mainly originate from across the eastern border). Furthermore, although this is not a very clear trend in the case of this form of THB, 30% of respondents are aware that men are increasingly frequently exploited for this purpose.

FIGURE VI.2 – STATEMENT ON THE SUBJECT OF HUMAN TRAFFICKIN FOR PROSTITUTION

Statements on the subject of human trafficking for prostitution

Base: Total Population, N=1002

Q17. Please indicate whether you agree with the following statements concerning victims of human trafficking for prostitution in Poland



SOURCE: INSTITUTE OF PUBLIC AFFAIRS, 2013.

2.3. PREVENTING HUMAN TRAFFICKING, PENALIZATION, AND PROTECTION OF VICTIMS

Another aim of this research was to find out about the experiences and opinions of police officers and border guards in the field of combating and preventing human trafficking, prosecuting and punishing perpetrators, and protection of victims.

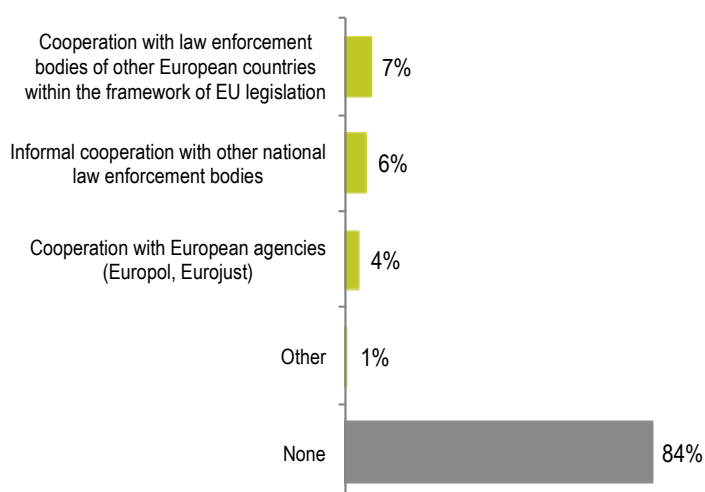
As has frequently been indicated above and in previous parts of this report, most cases of THB are cross-border, and therefore combating THB requires very close international cooperation, which – in the ideal model – should involve officers from services in target and transit countries, and in the country of origin of the victim. The results of the present study, however, indicate that making use of transnational mechanisms of cooperation in this field is a relatively rare practice. Only 7% of respondents declared that they have experience in cooperation (regulated by EU legislation) with law enforcement agencies from other EU countries. Moreover, only 4% have undertaken cooperation with key European agencies – Europol and Eurojust – in combating THB. At the same time, as many as 84% of participants in the survey declared that in their professional career so far they had not used any of the available transnational mechanisms for the fight against THB.

FIGURE VI.3 – TRANSNACIONAL COOPERATION MECHANISMS USED

Transnational cooperation mechanisms used

Base: Total Population, N=1002

Q20. Have you used transnational mechanisms of cooperation during your work linked with counteracting human trafficking?



SOURCE: INSTITUTE OF PUBLIC AFFAIRS, 2013.

Although, as indicated above, the percentage of respondents who, in their professional practice, have dealt with cases which could be categorised as THB is still small, the degree of use of international forms of cooperation for the purpose of combating this crime can, nevertheless, be deemed as definitely insufficient. However, it is worth emphasizing that 35% of respondents perceive this as a significant problem – namely, they state that one of the main obstacles to combating THB is ineffective cooperation – not only intra-national but also international cooperation. Amongst other important facts hindering successful combating of human trafficking, is – in the opinion of over half of respondents – the lack of or inadequate national policy in this sphere (69% border guards and 56% police officers), and in the opinion of almost 30% of respondents, a lack of appropriate national legislation. What seems to be a fairly sign is the fact that 40% of respondents (48% border guards and 38% police officers) indicated a lack of or insufficient amount of training in the field of combating this crime which police officers and border guards could attend for the purpose of raising their qualifications in this field.

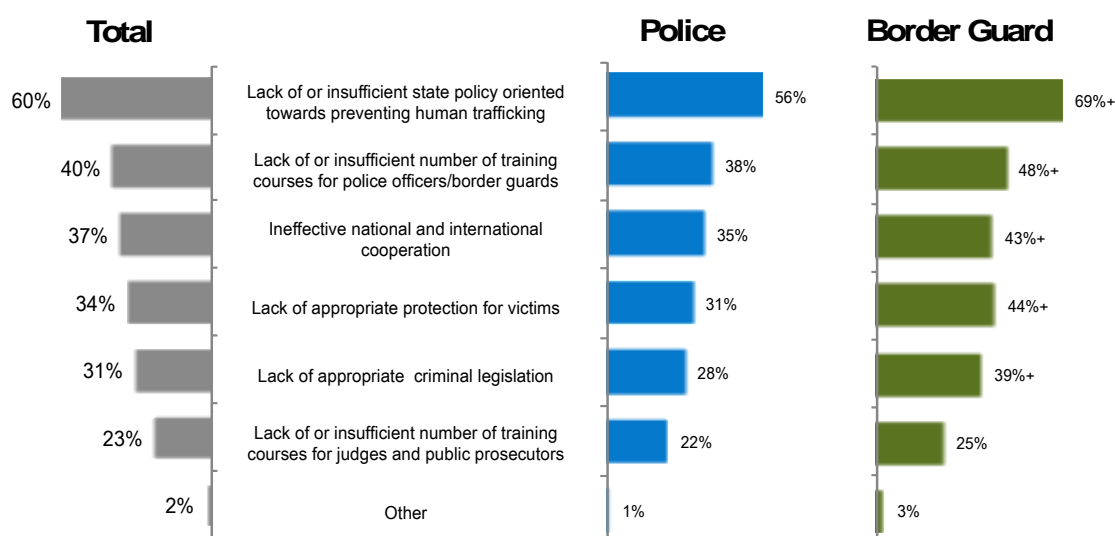
What is more, 23% of respondents (admittedly a fairly small group) stated that in order to systematically strengthen the national fight against THB, training for judges and prosecutors is also essential.

FIGURE VI.4 – MAIN OBSTACLES TO COMBATING HUMAN TRAFFICKING

Main obstacles to combating human trafficking *according to police officers and border guards*

Base: Total Population, N=1002
Sorted according to Total answers

Q25. From the statements below, please select those which you regard as being the main obstacles to combating human trafficking:



+/- indicates statistically significant differences from Total values (significance level 95%)

SOURCE: INSTITUTE OF PUBLIC AFFAIRS, 2013.

Opinions of respondents on the subject of the effectiveness of certain measures and actions that potentially serve in the fight against human trafficking are relatively similar. When asked to rate the effectiveness of the cited actions, none was assessed by a definite majority of respondents very negatively or very positively. In each case, the percentage of respondents considering the given action as effective oscillates between 29% and 36%, and as ineffective between 28% and 35%. Usually about 1/3 of respondents hesitate to express an opinion on the effectiveness of available measures or actions, which may indicate, for example, that they have not had direct contact with this sort of crime in their professional practice or that they have not dealt with it frequently, or else that their piecemeal involvement in a given case has not allowed a comprehensive

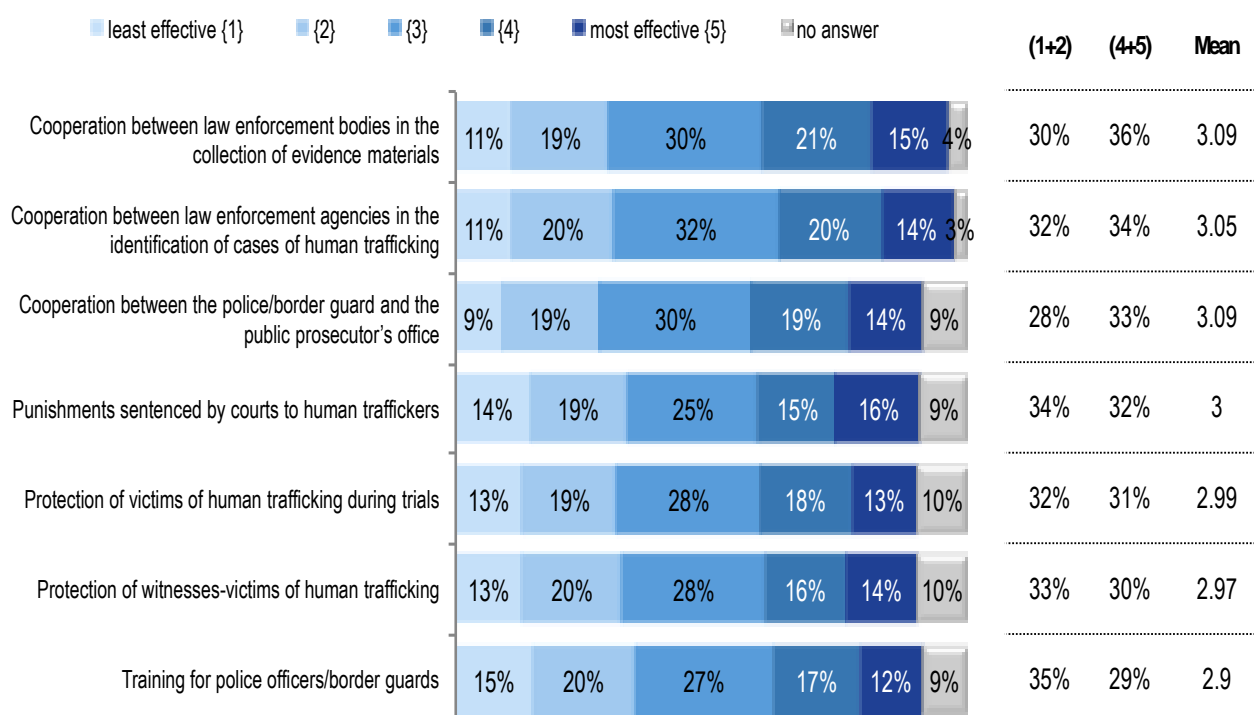
assessment of its progress and an assessment of the effectiveness of the tool or type of action in question. And so, for example, although 35% of participants in the study appreciated the importance and rated the effectiveness of cooperation between law enforcement agencies in collecting evidence materials and identifying victims fairly highly, as they did the cooperation between both services and the public prosecutor's office, at the same time about 30% were of the opposite opinion. Nevertheless, it is worth emphasizing that once again, 1/3 of respondents deemed the training programme for them in this field as rather ineffective. Furthermore, almost 40% of respondents deemed current legislation in this field as insufficiently effective, whilst only 28% assessed it positively.

FIGURE VI.5 – ASSESSMENT OF THE EFFECTIVENESS OF ACTIONS CONCERNING COMBATING HUMAN TRAFFICKING

Assessment of the effectiveness of actions concerning combating human trafficking (1/3)

Base: Total Population, N=1002

Q24. Please indicate how you would assess the following measures and actions concerning combating human trafficking.



SOURCE: INSTITUTE OF PUBLIC AFFAIRS, 2013.

Somewhat more respondents have a definite opinion on the subject of the effectiveness of preventive actions, although the percentage of opinions that is neither extremely negative nor positive remains relatively high (about 30%). About 40% of respondents rated the effectiveness of social campaigns conducted in this field relatively negatively. Although this is a type of action that is universally recognised as a fundamental and fairly effective method serving to educate on the subject of the dangers

of THB, raising the awareness of victims of human trafficking and persons around them, in Poland relatively few campaigns of this type have been conducted up until now. So it may be supposed that this fact could have had an influence on the attitude of respondents to this type of preventive action. Furthermore, somewhat over 35% of those interviewed in the survey stated that work of NGOs in this field is also insufficiently effective, with about 30% having an ambivalent attitude to the engagement of NGOs in this field, and the same percentage stating that preventive actions conducted by NGOs are ineffective. What is worth emphasising is that, at the same time, 88% of participants in the survey declared that they had never worked with NGOs. Barely 5% of respondents confirmed that they had worked with an NGO in the field of protection and legal aid for victims of human trafficking, and 4% in identification of victims. However, it should be emphasized that in Poland there are only a few organisations specializing in this field – which is not without significance for the low frequency of contacts of officers with NGOs in the field of counteracting human trafficking – and, furthermore, these NGOs have relatively limited resources, making it difficult for them to participate to a greater extent in THB investigations.

CHAPTER VII

PORTUGAL NATIONAL CASE

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INTRODUCTION

Trafficking in human beings (THB) is, on the whole, a very clandestine and complex phenomenon. In Portugal, it is the cause and/or consequence of three factors that need to be stated here. Firstly, this remains a poorly studied reality. Secondly, there is a glaring lack of solid and reliable figures on THB. Lastly, these two points, along with the complexity of trafficking, generate media interest that incurs stereotypes and prejudices that are hard to fight. A brief analysis of these points allows us to create a concise depiction of what is known on the contours of THB in Portugal.

As for the first point, in the Portuguese context there are four major background studies on human trafficking, with different frameworks and institutional links, which are worthy noting given their crucial role in the various reflections on the subject within the Portuguese political, scientific and institutional communities. The first (Peixoto *et al.*, 2005) was promoted by the Immigration Observatory of the High Commission for Immigration and Ethnic Minorities⁵⁵⁹ (ACIME) (presently called the High Commission for Immigration and Intercultural Dialogue⁵⁶⁰, ACIDI). The second (Pereira and Vasconcelos, 2007) was promoted by the International Labour Organisation (ILO) and covers human trafficking, as well as forced labour. The third (Santos *et al.*, 2008) was promoted by the Commission for Citizenship and Gender Equality⁵⁶¹ (CIG) and focuses on the trafficking of women for the purpose of sexual exploitation. The current research project is, in a sense, a continuation of that study, which broadens its focus to include labour trafficking and other European national contexts. Lastly, the fourth (Neves and Pedra, 2012) was conducted within the Institute for Strategic and International Studies⁵⁶².

⁵⁵⁹ In Portuguese: Alto-Comissariado para a Imigração e Minorias Étnicas (ACIME).

⁵⁶⁰ In Portuguese: Alto Comissariado para a Imigração e Diálogo Intercultural (ACIDI).

⁵⁶¹ In Portuguese: Comissão para a Cidadania e Igualdade de Género (CIG).

⁵⁶² In Portuguese: Instituto de Estudos Estratégicos e Internacionais.

The work of Peixoto *et al.* (2005) is pioneering in the systematisation of concepts, perspectives and data on the trafficking of migrants in Portugal. In addition to addressing the currently prevailing theoretical lines (the attractive-repulsive theories associated with the neoclassical idea of balance, the macro approaches with a structuralist and historical basis, the systemic readings geared towards understanding migratory networks, entrepreneurial visions of the phenomenon, among others), the authors gather modes of applying economic, migration and social rationales to the study of human trafficking. It is worth noting the five contradictions emphasised by the authors in their literature review: 1) between the political discourse (protection of victims) and the real motivations for fighting trafficking (border control and social *cleansing*⁵⁶³); 2) between the adopted measures and the results; 3) between the understanding of trafficking as an illegal activity and its links to legal markets; 4) between the economic and political approaches; and 5) between the attitude of migrants and the stance of the authorities dealing with the phenomenon (Peixoto *et al.*, 2005: 56-58). Regarding labour trafficking, the most prominent aspects in this study are the differentiation of the *modus operandi* of networks involving citizens of eastern origin from those who recruit Brazilian citizens. In relation to sex trafficking, the picture presented focuses primarily on the migration of Brazilian citizens to Portugal, supported by light and flexible networks of organised crime. Overall, the authors stress the ambiguity of the concept of trafficking, the multiple causes of the phenomenon, and the varied and complex nature of the social interactions that it encompasses, involving victims, intermediaries, employers, non-governmental organisations (NGOs), government officials, police forces, and others.

Looking now at the study conducted by the ILO, Sónia Pereira and João Vasconcelos (2007) produced a report on trafficking and forced labour (including sexual, albeit with less emphasis) in Portugal, which sought to better organise the information on the national outlines and specificities of this reality. After providing a panoramic view of the international, European and national legal framework, the authors develop two major thematic blocks: on the one hand, a general

⁵⁶³ Our interpretation and expression.

characterisation of the countries of origin, the activity sectors (sex industry, construction, domestic service and cleaning, hotel and catering, and agriculture), the attitudes of the migrants in relation to exploitation and the main factors that explain the phenomena in question; on the other hand, an investigation of the institutional approaches to the problem in Portugal, which develops an analysis of the role and perceptions of different actors on the phenomenon and on their respective contribution to respond to it. This work involved business associations, trade unions, NGOs, social welfare organisations, immigrant associations, public bodies and police forces. Among other aspects, one of the findings pertains to the lack of complaints, related to the lack of awareness of rights violations, the fear of deportation or job loss, which converges with the employer's interest in paying low wages and strengthening their control over the workforce. It is also worth highlighting the fact that there are (stereotypical?) suspicions of the Chinese community in Portugal, both despite and because of its social closure.

The study by Santos *et al.* (2008) is an investigation that combined multiple research methods, from statistical analysis, analysis of legal cases, to interviews and ethnographic reports from brothels. The major themes of this project are synthesised in Santos *et al.* (2009). As the starting point for this report, it is important to reiterate the key findings and issues for reflection offered by the authors. The legislation tends to focus on the prosecution of trafficking cases, without taking into account other fundamental legislation, as a reinforcement of immigrant rights and labour rights, for citizens who may or may not be nationals. This issue is a good hallmark for the political and ideological assumptions that are often integrated in the repressive agenda, but that require greater contextualisation.

The political motivations for fighting human trafficking are thus a determinant element, which help to explain how governments are in a permanent limbo between the protection and promotion of human rights and the desire to control the borders. Combating trafficking serves both agendas, despite its putting into practice involving less than peaceful choices, sometimes contradictory, and not always without adverse

effects. The authors further underline the need to undertake a thorough discussion about consent, specifically in the field of sexual exploitation. In their opinion, sexual slavery and the forms of over-exploitation that prostitutes may be subjected to constitute situations of suffering that, when combined with situations of exclusion, misery and poverty, make any notion of consent or voluntary action precarious and problematic. This debate was indeed mentioned in the theoretical chapter. In this sense, the authors restate that voluntary acts generally occur at the individual level, but they are the expression of acts of collective social injustice. Finally, this study makes clear that few governments possess programmes that enable trafficked women to make real choices about their future – deciding to return to their country of origin or, on the contrary, to remain in the destination country –, prepare them for their return, or assist them once they return to their country of origin. This question again establishes the necessary link between the role of the justice system and the political options preferred in governance.

As mentioned, the most recent study had the scientific coordination of Miguel Santos Neves and the executive coordination of Cláudia Pedra (2012). The fieldwork was based on a questionnaire survey and interviews with victims, NGOs, professional associations, trade unions, judges and criminal police bodies. Two surveys on Portuguese people's perceptions of human trafficking were also conducted. The overall results of this project point to the deflated nature of official statistics compared to reality, they map the profile of the victims, the most significant forms of exploitation, the routes and circuits, the types of trafficking, the ways of enlisting – which highlight the role of the internet and employment agencies in attracting and recruiting victims (especially of Asian origin) and the kidnapping of homeless Portuguese people, trafficked into Spanish farms – or the economics of sex trafficking, by disclosing the sales values of victims that range between 25,000 and 35,000 Euros. As for the traffickers, this study details the different structures that streamline the crime, from transnational organised crime networks to small-scale and local informal systems, as well as individual and isolated initiatives that recruit from friends and family networks. Concerning the support, protection and effectiveness of the victims' rights, the scenario presented is particularly critical of the police, judicial and state

responses that have been developed; the same happens with the coordination and cooperation among actors involved in the process. In Portugal, despite official and institutional discourses, the prevalence of the security-based paradigm, as opposed to the human rights paradigm, is one of the conclusions of this study.

In spite of being points of reference, the aforementioned studies do not exhaust the literature that has been growing in recent years, in the Portuguese context. There are, however, few scientific advances that are supported by more productive methods and that produce more innovative conclusions. Without claiming to be exhaustive, it is possible to identify the Master's dissertations of Anabela Filipe (2008), which mainly comprises a literature review, Cristina Saragoça (2010), which focuses its reflection on child trafficking, and Marta dos Santos (2012), which discusses a qualitative approach to the institutional field of combating human trafficking. In other essays, this phenomenon ultimately emerges as an unavoidable reality, exemplified in the work of Marzia Grassi (2005) on marriages for the purpose of immigration to Portugal, which are indicated as a mode of recruiting women into trafficking networks, and the work of Maria João Guia (2012), which analyses and deconstructs the stigmatised relationship between crime and immigration.

With a specific focus on the repressive State response and the dynamics of the criminal phenomenon, two studies are cited. The first, by José van der Kellen (2005), concerns the experience of the Foreigners and Borders Service⁵⁶⁴ (SEF) in investigating aiding illegal immigration and related crimes. The perspective of this author, who is also senior SEF inspector, is developed in light of the principle of internal security and the threats that phenomena such as human trafficking may, in his view, foster in the country. The second work was authored by Paula Fernandes (2012) and was conducted within the Military Academy. The main objective of this project was to understand the GNR (National Republican Guard⁵⁶⁵) soldiers' perception and knowledge of the

⁵⁶⁴ In Portuguese: Serviço de Estrangeiros e Fronteiras (SEF).

⁵⁶⁵ In Portuguese: Guarda Nacional Republicana (GNR).

phenomenon, using a questionnaire administered to a sample comprising guards of the Vila Nova de Gaia Territorial Unit. Despite the optimistic reading incorporated in this study, the results of the study indicate that 40% of respondents did not know how to properly characterise the crime of trafficking, 38% did not know how to correctly identify a victim of trafficking, 42% revealed they did not know what procedures to adopt when faced with a trafficking situation, nor to forward the respective file, 36% did not know the competences of the GNR and other police forces regarding human trafficking, and only 10% indicated having received specialised training outside the GNR.

Secondly, as mentioned, this clandestineness makes the phenomenon even more inaccessible to social researchers, so their actual figures are hard to ascertain. In 2008, a model for flagging, identifying and integrating people in trafficking situations was initiated, which seems to have made an important contribution to a more accurate knowledge of the quantitative reality of human trafficking in Portugal. According to the Annual Report of the Observatory on Trafficking of Human Beings⁵⁶⁶ (OTSH) (2013), the Ministry of Internal Affairs, and based on the indications of the criminal police bodies, NGOs and public entities, Portugal is mentioned as a destination country (241 identifications) and, to a lesser degree, as a country of transit (27 identifications) and of origin (9 identifications abroad), with Spain emerging as the most cited country of destination for trafficked Portuguese people; there were also 31 identifications of internal trafficking.

In 2013, the Portuguese monitoring system flagged 308 possible victims of THB, including 299 national and foreign citizens in Portugal (49 minors and 250 adults) and 9 national citizens (adults) abroad. Compared to 2012 (the year in which 125 possible victims were flagged), there was an increase in the total number of identifications in 2013, influenced by cases flagged in Portugal, and a decrease in instances of trafficking of Portuguese people abroad.

⁵⁶⁶ In Portuguese: Observatório do Tráfico de Seres Humanos (OTSH).

This increase is visible in the identifications from the police forces (109 in 2012; 183 in 2013), but mainly in the identifications from NGOs and other public entities (16 in 2012; 125 in 2013). According to the OTSH, this finding reinforces the importance of consolidating collaborative networks for the success of the Monitoring System and the national Referral System. The OTSH argues that the decrease in cases identified abroad is explained by the absence of major events abroad during 2013: in 2012, a single occurrence involved 35 alleged victims (of suspected labour exploitation in Germany).

The strong increase in identifications in Portugal is mirrored by the 198 flags of trafficking of adults for labour exploitation, which include 185 cases in agriculture, mainly in the Alentejo region, and in the context of olive harvesting. These incidents involved a large number of alleged victims. Of the total identifications, 45 victims were confirmed by police forces with legal competence on THB, all subject to protection, assistance and support to their return. Lisbon ranked third as the district with most flagged situations; however, these flags seem to identify Portugal as a country for the transit of adults and especially of minors for purposes of sexual exploitation.

Noting the existence of 31 national citizens trafficked in Portugal (internal trafficking), over 50% of possible victims are foreign, predominantly Romanian (185). Most victims identified in 2013 were male (175) and this group is primarily associated with identifications of trafficking for labour exploitation (149). Regarding the female victims identified, there is a relevant characteristic related to an equitable distribution between the two main types of flagged exploitation: labour exploitation (55) and sexual exploitation (55).

For Justice sector statistics, when compared with 2012, 2013 showed a slight increase in the number of criminal authority records of the crime (occurrences) of human trafficking (28 crimes of trafficking in persons in 2013, compared with 23 trafficking crimes recorded in 2012), as well as the number of agents/suspects involved. In 2013, there were 22 suspects involved, mostly male, of which 7 were arrested/identified for human trafficking.

During 2013, one residence permit, under Article 109 of Law no. 23/2007, of 4 July, was granted to a victim of human trafficking. This finding reverses a previously growing trend for granting residence permits. Note that, in 2011, 15 residence permits were granted to victims of human trafficking and, in 2012, that figure rose to 29.

Finally, under crimes related to THB, in 2013 the largest number of occurrences (170) were recorded for “other crimes of illegal immigration”, followed by the crime of “pimping and child pornography” (98) and “aiding illegal immigration” (73).

The last point refers to the media and we want to introduce it precisely with examples of news pieces collected during this research project. A news article from July 2014 of the *Público* daily newspaper, at first glance innocuous in terms of theme and content, has a title that is in equal measures terse and celebratory: “olive oil production, in 2013, reaches a 50-year high” (*Público*, 2014⁵⁶⁷). This news is regarded as positive, because it indicates a growth of the national economy in a particularly difficult context of recession, unemployment and impoverishment. But it is also troublesome because it is known that olive picking, on large farms in the Alentejo, is one of the most notorious activities for harbouring repeated practices of human trafficking for the purpose of labour exploitation. As we will see, media coverage, official data, interviews and the survey conducted are unanimous in acknowledging this reality, of which this news piece makes no mention. Analysing it from a critical perspective of the relationship between the economy, exploitation and crime may not fully explain the economic outcomes, but it compels a reflection on the (false or apparent) paradoxes experienced in the context of contemporary society, in other words, on how the success of the economy is largely supported by varied and complex forms of exploitation and violence against people. They are not contradictory worlds, but rather realities that are structurally produced, combined and, ultimately, internally coherent.

⁵⁶⁷ Cf. <http://www.publico.pt/economia/noticia/producao-de-azeite-bateu-em-2013-o-recorde-dos-ultimos-50-anos-1663869>.

Another report on intensive agricultural work in the Alentejo (*Observador*, 2014⁵⁶⁸) discloses some employer testimonies on this matter. According to them, Portuguese people make too many social and labour demands, they do not want to work and they freeload on State subsidies, so the option was to employ Thai workers who, in the employers' opinion, do not mind living in containers ("they prefer to live a little more cramped, they are used to living in community") and "are dirty by nature" (*sic*). Moreover, according to the article, the company is soon due to receive a group of 20 Nepalese and 20 more Thais, even though the director does not know how these workers will get to Portugal – and it quotes him: "perhaps they pay for their own trip, I have no idea". In the same piece, he claims to collaborate, emphatically and with considerable philanthropic spirit, with the Employment and Vocational Training Institute⁵⁶⁹ (IEFP) with the aim of contributing to employing the Portuguese population.

This introductory note serves above all to draw attention to the lack of critical reflection regarding its widespread nature and the specific contours of this phenomenon in Portugal. This weakness has prevented it from being framed in a broader political and symbolic economy, which circumvents the discursive hegemony of the legal and normative categories, the media dramatization or the generalised and unfettered human rights rhetoric. Nevertheless, and with the due care that journalistic rationale raises for sociological analysis, two aspects can be gleaned from this report: on one hand, concrete experiences and details on labour exploitation, its subjective constructions and contingencies – no one sees themselves as a victim – as well as the diluted nature of the boundaries that define what is or is not exploitation, or what is or is not human trafficking; on the other hand, the deep-rooted and institutionalised nature of the labour exploitation system. Regardless of the judgements that can be passed on the employer discourse presented in this piece, their perceptions of this activity, the value attributed to labour and to workers, or the evidence given of denial

⁵⁶⁸ Cf. <http://observador.pt/especiais/trabalhadores-agricolas-em-odemira/>.

⁵⁶⁹ In Portuguese: Instituto de Emprego e Formação Profissional (IEFP).

of rights, they reveal a logic of labour and criminal impunity, of ostensive domination over the work force and a feudal means of fabricating consent. These not only take advantage of the geo-economic inequality and the poverty and vulnerability experienced in the countries of origin, but are also met with complacency or objective indifference from the State itself.

1. ANALYSIS OF POLICIES AND LEGISLATION

1.1. THB IN THE PORTUGUESE LEGAL FRAMEWORK

Human trafficking is a social phenomenon whose legal framework is a result of the interaction between different normative sources and scales. In addition to the constitutional provisions that establish rights, liberties and personal guarantees, as well as economic, social and cultural rights (and duties), a fundamental marker of the transnational character of the efforts at political regulation of this phenomenon is, as has already been noted, the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children* (2000), established under the United Nations. This does not mean that the history of the criminal punishment of trafficking only began there. In Portugal, the Criminal Code of 1982 criminalised human trafficking for the first time. It was characterised by the concepts of enticement, seduction and deviation for the practice of prostitution or acts *contrary to decency or sexual morality* in another country, even with the consent of the victim. This legal formulation has many dimensions. First, it is directed solely at the domain of sexual exploitation and does not cover other forms of trafficking that, as we will see, only later warranted such a criminal framework. Second, it includes prostitution as well as *acts contrary to decency or sexual morality*. If prostitution itself enjoys a politically dense and controversial historical significance, the acts mentioned make the interpretation of that crime even more difficult and problematic. Third, the crime excludes internal displacement from its calculation by requiring a migratory movement; otherwise, such activity is assigned to the crime of pimping.

The 1995 reform of criminal law moved towards reinforcing the protection of the individual, shifting the sexual crimes described in the chapter about crimes against

the values and interests of social life to the chapter about crimes against people. Sexual freedom was chosen as the legal asset protected under the criminal offence of human trafficking. Despite this change in the conception of the crime and the protected legal asset, this reform made the coverage of the crime conditional on the verification of exploitation of a situation of abandonment or need.

Even before the 2007 reform of criminal law there were normative changes regarding human trafficking that should be mentioned. In 1998, the crime dispensed the requirement of "exploitation of a situation of abandonment or need". The incorporation into the national system of the anti-trafficking provisions that arose from the 2001 Palermo Convention translated into the inclusion of the abuse of authority resulting from a relationship of hierarchical, economic or labour dependency with the victim, and taking advantage of any situation of particular vulnerability of the victim. The latter concept is based on the idea that the person in question has no real or acceptable alternative to submitting to abuse.

The revision of the Criminal Code in 2007 is a fundamental milestone marking the turning point of repressive policy on human trafficking, largely resulting from the transposition of different European guidelines into Portuguese law. The crime was included in the chapter on crimes against personal freedom (losing its exclusively sexual character) and was broadened to include labour exploitation and organ harvesting. Its wording covers offering, delivering, enticement, accepting, transporting, accommodating or receiving an individual for each of those ends⁵⁷⁰. The law stipulates five typical behaviours that epitomise the practice of the crime: by means of violence, kidnapping or serious threat; through tricks or fraudulent tactics; with abuse of authority resulting from a relationship of hierarchical, economic, labour or familial dependence; taking advantage of the psychological incapacity or the particularly vulnerable situation of the victim; by obtaining the consent of the person who has control over the victim. This framework carries a prison sentence of three to ten years.

⁵⁷⁰ Article 160 of the Criminal Code.

The same sentence is applied in cases where the victim is a minor, with a more severe sentence (of three to twelve years) applied in cases where the previously mentioned means are used, or where the activity is professional or for profit. The law also punishes those who are involved in the trafficking of children for purposes of adoption. The criminalisation of the clients, whenever it is shown that they are aware of the trafficking scheme behind the service they are using, is set out in number 5: "any person who, knowing that the crime [of trafficking] has been committed, uses the services or organs of the victim is punished with a prison term of one to five years". Finally, the retention, concealment, damage or destruction of identification or travel documents belonging to the victim are also offences under the crime of human trafficking. Internal displacement becomes covered by this law and ceases to be a "result crime" (only a crime if a certain result is achieved), that is, the crime is considered to be consummated whether or not acts of sexual or labour exploitation or organ harvesting are committed. Moreover, this is a crime that can be attributed to legal persons, without prejudicing its attribution to the individuals involved.

The most recent amendment to the crime of human trafficking arose in 2013⁵⁷¹. Its objective was to extend the scope of the types of exploitation covered by this type of crime, with the addition of trafficking for the purpose of begging, slavery and exploitation of other types of criminal activity to the text of the law. In addition to widening its scope, this amendment further increased the sentences laid down for trafficking whenever the behaviour in question endangers the life of the victim, involves particular violence or causes particularly severe injury to the victim, if it is committed by an employee in the exercise of his/her duties, arises from a criminal association or results in the victim's suicide. It is further reinforced that the consent of the victim never, in any case, nullifies the unlawfulness of the conduct. Specifically regarding measures to combat organised crime⁵⁷² (to which human trafficking is

⁵⁷¹ Law 60/2013, of 23 August, transposed Council Directive 2011/36/EU, of the European Parliament and Council, of 5 April, regarding the prevention of and fight against human trafficking and the protection of victims, to the internal legal system.

⁵⁷² Article 299 of the Criminal Code (CP) outlines the criminal classification of criminal association. It establishes the following points: 1 - Any person who promotes or founds a group, organisation or association whose purpose or activity is directed toward the practice of one or more crimes is punished with a prison term of one to five years. 2 - The same sentence is applied to any person who becomes a member of such a group, organisation or association or

frequently related, in spite of its very diverse forms of operation), in 2002, legislation was passed⁵⁷³ that established a special regime for gathering evidence, suspending professional secrecy and confiscation of assets by the state. Until 2013, the scope of this law was restricted to pimping and trafficking of minors. It has since been broadened to include human trafficking. The same is true with regard to the possibility of taking covert action for the purpose of prevention and criminal investigation⁵⁷⁴. Finally, this legislative consolidation of 2013 also provided that the revenue accruing from goods related to the crime of human trafficking, which revert to the entity coordinating the National Plan Against Human Trafficking (which we will discuss later), be used to support actions, measures and programmes to prevent human trafficking and to help and protect its victims⁵⁷⁵.

Knowing that human trafficking, in addition to possibly relating to realities that are quite different from one another, is a complex phenomenon subject to often incompatible social-legal interpretations, it is important to mention in this legal framework those forms of crime that are considered to be related, including kidnapping⁵⁷⁶, slavery⁵⁷⁷, abduction⁵⁷⁸, pimping⁵⁷⁹, sexual abuse of children⁵⁸⁰, child

who supports them, including by supplying weapons, ammunition, instruments of crime, protection or premises for meetings, or by helping to recruit new members. 3 - Whoever leads or directs such above-mentioned groups, organisations or associations is subject to a prison term of two to eight years. 4 - The sentences specified may be especially mitigated or waived if the agent impedes or makes a serious effort to impede the activity of the groups, organisations or associations, or informs the authorities of their existence with a view to preventing offences from being committed. 5 - For the purposes of this Article, a group, organisation or association is held to exist when there is a group of at least three people acting together for a specific period of time.

⁵⁷³ Law 5/2002 of January 11th, amended by Law 9/2008 of 21/04, Decree-Law 317/2009, of 30/10, Decree-Law 242/2012 of 07/11 and Law 60/2013 of 23/08.

⁵⁷⁴ Law 101/2001 of 25/08, amended by Law 60/2013 of 23/08.

⁵⁷⁵ Law 45/2011 of 24/06, amended by Law 60/2013 of 23/08.

⁵⁷⁶ Article 158 of the CP.

⁵⁷⁷ Article 159 of the CP.

⁵⁷⁸ Article 161 of the CP.

⁵⁷⁹ Article 169 of the CP.

⁵⁸⁰ Article 171 of the CP.

prostitution⁵⁸¹, child pornography⁵⁸², aiding illegal immigration⁵⁸³ [on the confusion/distinction between human trafficking and aiding illegal immigration, cf. Paulo de Sousa Mendes (2005)] and even marriages of convenience⁵⁸⁴.

Another important aspect is the protection of witnesses in a criminal investigation of human trafficking. The law created for this⁵⁸⁵ can and should be implemented whenever the life, physical or psychological integrity, freedom or valuable personal property of the witnesses are endangered because of their contribution to the investigation. This can even include family members of the witnesses, the people that they live with as spouses and other people close to them. In addition, it sets out measures intended to obtain, under the best possible conditions, evidence or statements from people who are particularly vulnerable due to age, even if the above-mentioned danger is not confirmed.

As a whole, these measures can encompass the concealment of the witness, the use of teleconferencing, withholding knowledge of the witness's identity and special safety measures and programmes. These measures can include indicating a different residence in the file, transport to the court in a state vehicle, an isolated and guarded space within the legal facilities, police protection, or even special arrangements in prison and transport in a different vehicle. The law also provides a framework and specific forms of monitoring witnesses deemed to be *especially vulnerable* because of their young or advanced age, their state of health or because they have to testify or make statements against members of their own family or a closed social group that they belong to in conditions of subordination or dependency.

Directive 2004/81/EC of the European Council, of 29 April, was transposed based on Law 23/2007, of 4 July⁵⁸⁶, and created in the Portuguese legal system a residence permit for foreign persons who are victims of human trafficking or objects of

⁵⁸¹ Article 174 of the CP.

⁵⁸² Article 175 of the CP.

⁵⁸³ Article 183 of the CP.

⁵⁸⁴ Article 186 of the CP.

⁵⁸⁵ Law 93/99 of 14 July, amended by Law 29/2008 of 04/07 and Law 42/2010 of 03/09, regulated by Decree-Law 190/2003, of 22/08, amended by Decree-Law 227/2009 of 14/09.

⁵⁸⁶ Amended by Law 29/2012 of 09/08.

aiding illegal immigration and who cooperate with the competent authorities. According to this law, a residence permit is granted even if the person entered the country illegally or does not fulfil the conditions for receiving a residence permit. Nevertheless, to be considered for this permit the following conditions have to be met: a) it is necessary to prolong the person's stay in national territory, considering the interest that their presence represents for legal inquiries and proceedings; b) the person is clearly willing to cooperate with the authorities in the investigation and punishment of human trafficking or aiding illegal immigration; c) the person has broken off all relations that he/she had with the presumed perpetrators of the relevant infractions. These requirements needed for victims to benefit from a protective public policy have been designed according to the interest of the criminal investigation and the punishment of the crime, taking special care to avoid any slip that might compromise border policy. The law also provides for a period of reflection before issuing the residence permit. This period of 30 to 60 days has the purpose, according to the law, of enabling the physical recovery and distancing of the victim from the influence of the perpetrators of the infractions in question. During this time the victim is guaranteed safety and protection. If the victim has insufficient financial resources, means of subsistence (not specified) are assured for this period, as is access to urgent and adequate medical treatment. The law is comprehensive in terms of the concrete assessment of the state of the victim and in terms of the responses available whenever they are considered to be vulnerable, even offering psychological assistance when deemed necessary. Finally, translation and interpretation services, as well as legal assistance, should be provided to any victim during the reflection period. Once a residence permit is obtained, the law stresses the importance of supporting victims in terms of specific medical and social needs, particularly in the case of minors or pregnant women, disabled individuals and victims of sexual or other forms of violence. In addition, it also provides for access to official programmes with the objective of "helping victims resume a normal social life" (*sic*), including courses to improve their professional skills or to prepare for their assisted return to their home country. This residence permit can be cancelled if the victim actively and voluntarily, on their own initiative, resumes contact with the presumed perpetrators of trafficking or aiding

illegal immigration, if the competent authority believes that the cooperation is fraudulent or that the victim's complaint is unfounded or fraudulent, and if the victim stops cooperating.

This placement of victims within the framework of the criminal investigation of human trafficking means that their support and protection are entirely dependent upon their usefulness and cooperation with justice, and equally requires (the active demonstration of) detachment from the world of the incriminated agents. There is only one exception: Article 109 (number 4) of the above-mentioned Law 23/2007, of 4 July, provides for the possibility of excluding the criteria of collaboration and pertinence to criminal investigation for being granted a residence permit, and looks at the circumstances of each concrete case. According to the law, this must take the security of the victim, their family members or people close to them into account, as well as the health of each of them, the familial situation of the victim and other situations of vulnerability (not specified). This is regulated by Decree-Law 368/2007, of 5 November. It is a special regime that defines the victim as a person regarding whom "indications of the practice [of trafficking] have been identified, by a legal authority or a criminal police body, or when the coordinator of the National Plan Against Human Trafficking deems that there are sufficiently powerful reasons to believe that the person is a victim of trafficking". Nevertheless, the functional complexity of the phenomenon and the diversity of the practices and behaviours to which it can relate demand extra care in the analysis of the doctrinal assumptions, the pertinence and adequacy of the legislation, and their effect on the activity of the police forces and judicial actors, that is, in the way these actors interpret and make decisions about cases and concrete aspects based on that legal benchmark.

In the points that follow, we will see: a) how these legal purposes tie in with the public policies to combat human trafficking and protect victims – taking account, above all, of the content and the implementation of national plans against trafficking; b) the main lines and results of research into the phenomenon in Portugal, paying particular attention to the studies that intersect the social phenomenon with political and legal responses.

1.2. PUBLIC POLICIES AGAINST THB: A CRITICAL ANALYSIS

In Portugal, public policies to combat trafficking in persons have attracted particular attention since 2007, when the I National Plan against Trafficking in Human Beings was approved (Council of Ministers Resolution 81/2007). The rhetoric of the legislature focuses on the approach to "a new conceptual and policy approach: the angle of suppression/punishment is giving way to an integrated view that also embraces prevention and victim support". The legislator recognises the growing international pressure for the reconceptualisation of victims and for adjusting social and legal strategies to combat trafficking in persons by incorporating different European and international guidelines into its legal system. As stated in the legal framework, one of them (and the one we shall consider for the purposes of this study) concerns the extension of the scope of the crime of trafficking to embrace labour exploitation and the production of responses tailored to the often organised nature of the crime. The drafting and coordination of the I Plan, in force between 2007 and 2010, was the responsibility of CIG, with competences to organise and monitor the implementation of these measures. The competences of the Plan's coordinator are many and varied; one already mentioned in the legal framework concerns the exceptional granting of a residence permit to victims of human trafficking. In addition to monitoring (gathering data, information, organising scientific studies, etc.) the implementation of the Plan, the Plan's coordinator have to give an opinion on anti-trafficking legislation and develop a network of (national and international) institutional contacts with authorities and civil society committed to intervention in this area. The creation of plans to combat human trafficking is closely linked to the creation of the Human Trafficking Observatory, under the Ministry of Internal Administration. This observatory's mission is "to produce, collect, process and disseminate information and knowledge about human trafficking and other forms of

gender violence, in cooperation with the coordinator of the National Plan Against Human Trafficking"⁵⁸⁷.

The strategies listed in the I Plan stressed the importance of identifying groups regarded as particularly vulnerable, generally consisting of women and children. Moreover, it indicates a paradigm shift in the conception and pattern of responses triggered for trafficking. They tend to be couched in the language of human rights, in a holistic overarching approach to the phenomenon. In other words they are "focused on the human dimension of the problem", combining punishment with "strategies of prevention, support, empowerment and inclusion of the victims of trafficking." Much of its inspiration for this plan derives from the accumulated international guidelines, ranging from the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000)*, through the Brussels Declaration against Trafficking in Human Beings to the Warsaw Convention (2005).

The I Plan is based on four major strategic areas of intervention: 1) understand and disseminate information; 2) prevent, make aware and educate; 3) protect, support and integrate; 4) criminally investigate and punish trafficking. Each of these strategic areas is deployed through a wide range of measures, expressed in specific indicators. Although they are all interrelated, for the purpose of this report it is the last point that is of most interest. The measures involved adopting a uniform system of recording trafficking situations, as well as enhancing the inspection and oversight of those working activities most likely to harbour foci of organised crime related to human trafficking. Bars, brothels and nightlife spots, building trade, seasonal activities and domestic services were the areas the Plan regarded as priority targets for police investigation. For this research to be effective, it provided for the creation of a group that included the Economic and Food Safety Authority⁵⁸⁸ (ASAE), the Authority for Working Conditions⁵⁸⁹ (ACT) and the police forces so that an anti-trafficking plan could be drafted. Regarding cooperation, the need to strengthen the internal coordination of

⁵⁸⁷ Created by Decree Law 229/2008 of 27 November. For further information, see: <http://www.otsh.mai.gov.pt>.

⁵⁸⁸ In Portuguese: Autoridade de Segurança Alimentar e Económica (ASAE).

⁵⁸⁹ In Portuguese: Autoridade para as Condições do Trabalho (ACT).

the police, international authorities (such as Europol and Interpol), and the link between the police forces and NGOs was mentioned. The implementation of these measures included creating the Single Registration Guide⁵⁹⁰ (GUR), available from June 2008, to be used by the police forces as a data collection tool, as well as the participation of Portugal in various international forums and bodies with the aim of boosting the national and international fight against human trafficking. Assessment of the degree of effectiveness and of the constraints encountered with the full application of this plan only yielded a very brief set of conclusions and recommendations. Of these, it is worth stressing the need for specialisation⁵⁹¹, simplification⁵⁹², training⁵⁹³ and interaction⁵⁹⁴ with the police, plus encouraging the reintegration of victims in the labour force⁵⁹⁵.

The II Plan (2011 -2013) was implemented with the aim of continuing and consolidating the measures adopted in the previous one and of extending the relevant range of measures and makes them more workable. The strategic areas are basically the same as those in the previous plan, with minor changes: 1) understand, make aware and prevent; 2) educate and train; 3) protect and assist; 4) criminally investigate and cooperate. On the last point, in addition to mentioning the need to strengthen local structures and the national coordination of the police forces in combating trafficking, incorporating the recommendation of the review the I Plan, it introduces the figure of a single point of contact with the competent police force for the exchange of urgent information relevant to the issue. The focus of this II Plan is mainly on cooperation. There is thus provision for the organisation of meetings to discuss and

⁵⁹⁰ In Portuguese: Guia Único de Registo (GUR).

⁵⁹¹ "Implementation in the various local competent police forces (PJ and SEF) of teams dedicated wholly focused on the investigation of crimes of trafficking in persons"; "Creation of a national unit dedicated to improving the national coordination of the investigation of crimes of trafficking in persons."

⁵⁹² "Designation by the police forces of a single point of contact for the exchange of urgent information."

⁵⁹³ "Implementation of one-off training actions offered to all the competent POLICE FORCES' (PJ and SEF) personnel investigating human trafficking, with the support of Europol and CEPOL."

⁵⁹⁴ "The creation of joint teams from the competent POLICE FORCESs (PJ and SEF) to investigate the more complex trafficking crimes."

⁵⁹⁵ "Formalisation of a protocol with the Institute for Employment and Professional Training (IEFP) to offer specific vacancies for [trafficking victims] on vocational training courses."

exchange experiences and good practices at national and international level, the consolidation of joint investigation teams and special attention to the context of the Community of Portuguese-speaking Countries⁵⁹⁶ (CPLP).

The assessment of the implementation of the first year of the II Plan includes several pertinent aspects. First, the fact that three meetings of the Coordination of the Regional Criminal Investigation Sections of the Criminal Police⁵⁹⁷ (PJ) took place, with the aim of reflecting on the constraints faced in the investigation of trafficking in persons. There being no basis for comparison, this point is not particularly highlighted. The same is true for SEF at national level, since, according to the review of the Plan, "coordination meetings held to work out forms of action for this phenomenon". Second, there is mention of several inspection actions being undertaken by the GNR in conjunction with other bodies (SEF, ASAE and ACT), although, according to their own assessment of the Plan, "this activity does not meet the objective of the measure". There are no details about these actions. Third, the creation in each police force of a single contact point for the trafficking of contact was successful. There is no information on the specific function and performance of each body. Fourth, in terms of cooperation, the holding of a conference for continuing training of the police forces should be noted, together with the signing of institutional protocols for exchanging information, statistics and knowledge (cf. Dynamic Application), internal dissemination within the PJ, rules for the implementation of joint investigation teams (national scale or with other countries), and the participation of the Portuguese government in international cooperation projects, especially with Brazil. Attention is drawn to some general initiatives, such as the GNR's Project IAVE⁵⁹⁸ for the qualification of victim support and the PSP⁵⁹⁹'s Outreach and Victim Support Teams⁶⁰⁰ (EPAV), strictly speaking created as part of the fight against domestic violence and transposed to the problem of THB. Finally, as regards the international context (in particular CPLP) in

⁵⁹⁶ In Portuguese: Comunidade dos Países da Língua Portuguesa (CPLP).

⁵⁹⁷ In Portuguese: Polícia Judiciária (PJ).

⁵⁹⁸ Investigation and Support for Specific Victims. In Portuguese: Investigação e de Apoio a Vítimas Específicas (IAVE).

⁵⁹⁹ Public Security police force, in Portuguese: Polícia de Segurança Pública (PSP).

⁶⁰⁰ In Portuguese: Equipas de Proximidade e de Apoio à Vítima (EPAV).

combating trafficking, the only remark concerns the commitment of the Ministry of Justice to exploring multidimensional solutions between different countries.

The III Plan (2014 -2017), currently in force, and the fruit of a concentration of international norms, including the Vilnius Ministerial Declaration (2011) and the EU Strategy for the eradication of trafficking in human beings (2012 -2016), favours

strengthening the mechanisms for referencing and protecting victims, deepening the interactive cooperation between the public authorities and civil society organisations involved and adapting the national response to new challenges, specifically to new forms of trafficking and recruitment⁶⁰¹.

The rhetoric of this last plan contains five matters that should be highlighted: first, it recognises that human trafficking is a phenomenon that is caused by the economic and social disparities between different countries and regions; second, it provides a more comprehensive view of vulnerability, despite the focus on women and girls and the particular links with poverty, social exclusion and low levels of education; third, it emphasises labour trafficking, since the greater number of situations of trafficking for labour exploitation in comparison with trafficking for sexual exploitation; fourth, the flaws in the operation of the justice system, as measured, for example, by the residual nature of the number of convictions; fifth, linked to the change in the law, there is an expansion of the contexts of exploitation which the plan addresses (begging, related to petty crime, drug trafficking, etc.). Five strategic areas are defined, with cooperation featuring separately: 1) prevent, make aware, understand and investigate; 2) educate, train and qualify; 3) protect, intervene and empower; 4) criminally investigate; 5) cooperate. Regarding enforcement strategies, the top priority is to promote a better interactive cooperation between the various police forces. This would be done by enhancing coordination of national bodies and sharing information (assessable through "six-monthly meetings"), by creating a good practice manual (assessable through the number of "meetings organised to create the manual" and its publication), by encouraging cooperation between the police forces in their investigation work (assessable through the "number of situations identified for joint

⁶⁰¹ Cf. <http://dre.pt/pdf1s/2013/12/25300/0700707017.pdf>.

work by the police forces" and the "number of proposals for sharing of research made to the prosecutor"), by improving international cooperation and the contribution of the police forces in collecting judicial indicators on trafficking. The strategic area of cooperation is conceived broadly and as a rule it is detached from the police and judicial milieu because it covers measures promoting social responsibility in business and organisations and streamlining government actors in the anti-trafficking fight.

In conclusion, only two critical notes are raised on the subject of public policy to combat trafficking in persons, in particular on the plans created for this purpose. First, the generic superficial character of their shape is conspicuous, with respect both to the measures envisaged and to the relevant indicators and mechanisms for assessing them. The provision of accurate, detailed information would certainly be more useful for designing responses and measuring their actual impact. Second, we find an inability of public policy to be consistent with the official diagnosis in which it is involved, broadly consensual at national and international level. Although interpretations of human trafficking, the status of the victims and the rights in question differ and are sometimes contradictory (such interpretations being based on selected empirical data or underlying epistemic and ideological assumptions), several years ago different government actors came to recognise the structural and systemic nature of the phenomenon, its economic, social and political determinants, and its close (and reverse) connection to the idea of a social contract: redistribution, social protection, cultural inclusion, right to geographical mobility, universal public services and labour guarantees⁶⁰² constitute the mode of political organisation of societies that are better at preventing human trafficking and at enabling the justice system to respond to the needs and rights of victims. As mentioned in Chapter I, the effects of the austerity policy on the weakening of social bonds and the production of areas of uncertainty and social fascism constitute a scenario that cannot be ignored when designing and implementing public policies to prevent and combat trafficking, from the standpoint of the collective interest and human rights of the victims. Important as the campaigns to raise awareness of the phenomenon may be (and indeed are) to warn the public of the risks and to promote training and police cooperation, eradicating the

⁶⁰² For sex trafficking specifically, cf. the reflection in the theory chapter.

structure of opportunities for trafficking poses a challenge to a public policy that is truly preventative and realistic.

2. THB IN PORTUGAL: SOCIAL AND LEGAL REPRESENTATIONS ON THE PHENOMENON

One of the major advantages of this research was, as explained in Chapter III, listen to the different players that operate in the field of THB and try to ascertain what they think about the phenomenon, the policies and legislation applied in this field, the function of the institutions and organisations, normative obstacles thrown up by the legal system, its efficiency, and possible discrepancies between the law, what happens in practice and the barriers to effective law enforcement. The target population was mainly the police forces, foreign police bodies, labour inspectors, Public Prosecutors, judges, NGOs and other civil society organisations. In this section, we resort to the interviews with these key actors and to the survey applied to police forces to find out their representations and perceptions about the distinguishing aspects of THB considered by all research teams in their interview scripts and questionnaire, and which were most evident in Portugal.

As has been discussed throughout this report, the phenomenon of TSH presents complex and multidimensional features, which are not always grasped by those on the ground who are responsible for identifying, flagging, investigating, condemning or monitoring possible situations of victimisation. The empirical material collected portrays a phenomenon perceived as growing steadily and enjoying a significant heightening of visibility in recent years, either thanks to state investment in this area or to the media coverage of it. Paradoxically, the responses returned by those asked about the phenomenon reveals an episodic contact with THB situations. According to the survey applied to the police forces, 69.9% of respondents believe that the THB is on the rise, 6.7% think that is decreasing, and 23.7% think that is residual. The representations of the police officers we interviewed followed similar lines, with most stressing that not only are cases increasing, but professionals and society in general is paying greater attention to them:

I think this phenomenon has been increasing. In terms of our lack and we're noticing, and talking about, it already involves large amounts of cash and a great deal of traffic, either for labour exploitation or for sexual exploitation. What we've been seeing in recent times is that, in my view, the cops and the NGOs and civil society have been getting more aware of the phenomenon. Maybe it was not accepted before, but it was tolerated. Today the phenomenon is seen differently, fundamentally the perception and attention and the way people have been looking at the subject. (I 26)

In fact, official statistics that seek to give an account of the phenomenon at national and international level should be viewed with caution. On the occasion of the International Day Against Trafficking in Human Beings, International Organization for Migration (IOM) released some data suggesting that over 800,000 people worldwide are trafficked each year; a practice led by organised groups that make billions of dollars from the exploitation of people⁶⁰³.

In Europe and Portugal we have a problem, but maybe it's not as big as the media sometimes suggest. But neither is it something that does not exist, as some people might try to pass on that message. Therefore, the problem exists. It's hard to know what the real numbers are because by nature it is a concealed phenomenon. We tried to figure that out and we managed to find some cases and some situations, but there will be others that we never got to. (I 1)

These perceptions that the phenomenon is increasing make it clear that there is a divergence with the practical experience of the police forces on the field, who feel that the number of THB cases is declining:

If we go by the statistics and if we're realistic with regard to the PJ, we have very few cases that were started by THB. That's it. We start from offences that are underlying, or sexual exploitation, or for job-related scams, or slavery. All this just afterwards. The trouble with THB is that we very often only see the tip of the iceberg. And if we don't take care to dig deeper, things can very easily go on next to the crime of THB. And we have difficulties in actually making contact with the victims, because they themselves, for fear of reprisal, fear of ..., because they were tricked into coming here, because they are afraid because they know families back where they came from, when approached, they have built up a history, a boyfriend, this and that, and often the police approach, we are reaching this conclusion, it is perhaps not the best immediate approach. Maybe an approach by other professionals, not policemen, psychologists, people who

⁶⁰³ See the article in the Portuguese newspaper *Jornal de Notícias*, of 18.10.2013, Over 800,000 people are victims of trafficking each year, at http://www.jn.pt/PaginalInicial/Sociedade/Interior.aspx?content_id=3485190

do not have the connotation of cops on top, can, perhaps, get the victims to open up more and maybe they would start to cooperate and talk about what interests us. (I 2)

This excerpt is in line with the results of the research. In the last five years, 38.4% of respondents claimed not to have been in touch with any situation that might be regarded as sex trafficking (regardless of the start of any judicial proceedings for this type of crime); 40.5% claimed to have come across between 1 and 5 situations; 17.7% between 6 and 10 situations; and only 2.4% said they had found more than 10 situations (of these, 0.6% claimed to have come across more than 30 situations). Concerning trafficking for labour exploitation in the past five years, 52.6% claimed not to have been in contact with any situation that might be considered sex trafficking (regardless of the start of any judicial proceedings for this type of crime); 35.1% between 1 and 5 cases; 9.2% between 6 and 10 situations; and 3.1% with more than 10 situations (of these, 0.9% with more than 30 situations).

Although it is true that the survey was also applied to frontline police forces that had no legal competences to investigate this kind of crime and that, as 2 interviewees stated (mentioned above), many of these situations ended up by being classed as crimes linked to THB, this is a picture that is open to many criticisms. Indeed, the decreased social or police tolerance relative to this phenomenon, as well as its perception as a human rights issue, were often mentioned, as a police officer told us:

It is clear that this is a human rights issue, a matter of rights of persons, to improve living conditions, social rights, economic rights, cultural rights, and to manage to fight it properly and to eradicate it worldwide has a lot to do with improving people's education, improve the economic and social level of the people who end up being exploited by these networks. But, I have find it hard not to see this as a criminal problem, and as a crime that is, in terms of the number of cases, the difficulties of investigation and, therefore, my view has a lot to do with that and especially with a national view that is more connected to the question of Western Europe. (I 1)

The recognition that the phenomenon of trafficking often entails egregious human rights violations influences the discourse of the police forces about it. In addition to their punishment function, they are also responsible for producing answers

for the victims of the crime according to international pressures and the current political rhetoric. This does not mean that daily police duties systematically show any change in the standard approach to trafficking. It does mean that these actors have incorporated a rhetoric that converges with the main international concerns and the terms in which the theme is framed today. An example of this is the fact that a tendency persists to rank the seriousness of THB whenever the alleged victims come from African or Asian countries:

I realize, sometimes, talking to colleagues, seeing news programmes, documentaries, on the Internet, that there are parts of the globe where this problem is clearly more serious than what is happening in Portugal and Western Europe. If we look at Asian countries, especially in terms of sexual and labour exploitation, and there are also real abuses with entire cities versed in the issue of sexual exploitation of women who are born there and live there, in miserable conditions, and who are exploited in certain cities in Asia; in Central America there are several countries, including some villages in Brazil, where every once in a while you hear talk about these situations and globally I have some idea of what's going on. In Africa, my God, it's hard to imagine what's going on, because hardly any information gets out, just when things get really serious, with sales of children and the prostitution of minors, that's when something reaches us. So I have some idea of what's going on, and I think that here in Europe we are not free of this problem because we have here a disparity and a huge difference between first World Europe, mainly Northern Europe, and the less developed countries, in particular in Eastern Europe, and that's why it's a problem for us, too, and it has a lot to do with these imbalances that once built up and once education extends to these people, I think all this would be overcome naturally. (I 1)

The opening of borders within European and the enlargement of the Schengen area is a factor widely referred to in interviews with the police forces. It is claimed that this enlargement facilitates transnational crimes and hinders their signalling (in particular by changing the THB routes), their investigation and ending in conviction: Hence the large investment in police and judicial cooperation instruments such as Europol and Eurojust, although, as we will see later, they have neither achieved the anticipated centrality nor responded with the necessary efficiency to the difficulties of national police forces.

2.1. THB IN A CONTEXT OF AUSTERITY

The economic and social crisis has influenced the geopolitical position of Portugal on the trafficking routes, and it is no longer a solely destination country, having become a country of origin, especially for labour exploitation. The opinions of the police forces gleaned from the survey suggest that, regarding labour trafficking, Portugal is: a country of origin and a country of destination (46.4%); a country of destination and a country of transit (14.5%); a country of destination (13.3%); a country of origin (13%); a transit country (12.7%). The police forces surveyed believe that in terms of sex trafficking, Portugal is: a country of origin and a country of destination (34.2%); a country of destination and a country of transit (33.6%); a country of destination (17.3%); a country of origin (11.5%); a transit country (3.3%). These figures show the different perceptions of the police forces about Portugal's position on the THB routes, indicating: 1) Portugal as an importer and exporter of people for labour trafficking; 2) Portugal as an importer of people for trafficking for sexual exploitation. On the other hand, the context of austerity will certainly have impact on the vulnerability of the Portuguese people for labour trafficking, as remarked by several interviewees.

The crisis produces – I don't think there's any part of the country that is immune to this – two completely different conditions: in trafficking for labour exploitation it increases; in trafficking for sexual exploitation it decreases. In labour exploitation, because that's all companies, especially agricultural enterprises, for picking grapes, pears, this and that, they are all on the brink, and so try to get workers at the lowest possible price. That's the major concern. Crush prices, there are loads of people out of work, so they want to hire and pay as little as possible. And then, somewhere between what the company wants and at the end of who will pick the fruit, there's a string of entrepreneurs, intermediaries, of unscrupulous individuals, and it is here that the phenomenon of trafficking for labour exploitation often turns out to appear. Without the owner of the company noticing, often the owner of the company or the estate does not know, it may be a company with headquarters in Spain, based in France, a large company that is not the slightest bit interested in who specifically is going to do the picking, that hired that entrepreneur, paid him and it's divided up: he gets the lion's share, he hires someone else, who hires someone else and it reaches a point where there is an individual who set all those people to work in exchange for a handful of coins. This spirit of containment that we have experienced in Europe has had a lot to do with the fact that

trafficking for labour exploitation has shot way up. Because of this capitalist vision of getting the cheapest labour possible. (I 1)

However, it is important to make room for discussion about the structural impact of the economic and social crisis on the vulnerability of women to sexual exploitation and trafficking, since it enjoys less prominence in the discourse and perceptions of the police forces respondents. This absence is not disconnected from how they value and rank the status of Portuguese worker exploited abroad, compared with the victimisation of Portuguese women for trafficking and sexual exploitation abroad.

Regarding trafficking for sexual exploitation, opinions are divided. Some people claim that the crisis has reduced purchasing power and, consequently, the demand for sexual services, but others say that sexual exploitation is increasing, responding specifically to three aspects: the fall in purchasing power that has 1) forced the price of services down, and 2) driven the providers of sexual services underground and into situations that are less safe and hygienic, and 3) the increasing sophistication of the networks, as interviewee 19 stated and some news published in July 2014 on asylum-seeking as a strategy to enable girls to enter Portugal who then are forced into prostitution across Europe⁶⁰⁴. This question is particularly relevant, especially given that 36% consider that trafficking for sexual exploitation has increased in the last five years, 6% consider that it has increased significantly, 25.1% think it has fallen, 3.6% think it has fallen significantly, and 29.3% 'don't know'. Among those respondents who considered that trafficking for sexual exploitation has increased, 34.4% blame this on increased poverty in the countries of origin, 23.5% blame it on less restrictive migration policies in Europe, 22.4% blame the development of the sex industry in Portugal, 8.8% the scarcity of information, 6.1% a lack of police training, 1.4% the lack of preparation and involvement of NGOs, and 1.4% blame the rise on the emancipation of women⁶⁰⁵. As regards respondents who considered that trafficking for

⁶⁰⁴ See the article on refugee status and its use by trafficking networks, "Portugal on the trafficking routes of under-age Nigerian girls", in *Público*, at <http://www.publico.pt/sociedade/noticia/portugal-na-rota-de-trafficantes-de-menores-nigerianas-1662882>

⁶⁰⁵ Another question on the survey asked the police forces how far they agreed with this statement: "The growing inclusion of women in the labour market can be a cause of human trafficking",

sexual exploitation decreased, 36.7% said it was due to the weakening of the sex industry in Portugal; 25.6% to the improvement of economic and social conditions in the countries of origin; 15.5% to better police training; and 7% to more work on the ground by NGOs⁶⁰⁶.

The level of sexual exploitation is the opposite, because there is no demand, consumers can't afford the product and the networks that are very intelligent and can have the girls working either in Portugal or Spain, or France, or the Netherlands, or Luxembourg, what they do is simply put out their wares for profit in the places where they can earn more. And so, a good many of the sexual exploitation networks have now emigrated from Portugal, they're not here, they've gone, because people don't have money to spend on prostitutes. (I 1)

In sexual terms, I think it was the other way around. I think right now we have an increase in trafficking in women, primarily for sexual exploitation, than we had at the time of the employment boom. At least that's the example that we have a lot of in Lisbon which are the increases in asylum applications. Requests for asylum which are currently rising more and more, and appearing here in Portugal, are mainly from women and they come by air; in principle they are helped and supported by the trafficking networks that 3, 4 years ago you didn't get in the number that you see right now. Some of them are also under-age or at least at the end of adolescence and these are situations which, if we go back 3 or 4 years or even 10 years ago, we never saw, at least here in Portugal, directly as a border. (I 19)

This view of the crisis as a form of governance makes more sense, according to interviewee 7, because of the vulnerability of unemployed people:

Statistically THB cases did not rise because of the crisis. There are neither more nor fewer, the number is the same. In abstract, if you tell me that the growth of unemployment means that the unemployed are more exposed to risk or readier to venture a bit more in this type of recruitment and then

and while 12.3% agreed or totally agreed, 57.3% disagreed or totally disagreed. 30.3% neither agreed nor disagreed.

⁶⁰⁶ By way of comparison, 37.7% thought that trafficking for labour exploitation in Portugal had risen in the past 5 years, 8.7% believed it had risen considerably, 16.5% thought that it had fallen, and 3.9% that it had fallen significantly. 33.2% did not know. Of those who said that trafficking for labour exploitation had increased: 41.3% thought it was due to greater poverty in the countries of origin; 30.4% blamed less restrictive migration policies in Europe; 13.8% blamed scarcity of information; 6.5% blamed lack of police training, and 4.3% the lack of preparation and involvement of NGOs. The respondents who felt that trafficking for labour exploitation had fallen said it was because of improved economic and social conditions in the countries of origin (43.2%), and the same percentage ascribed it to restrictive migratory policies in Europe, better police training and more work on the ground by NGOs (12.2% for each response).

they're going to be duped, that is, they're recruited and transported to one of these destinations. Yes, the rise in unemployment that we've seen in recent years enhances this situation. But, we must realise that, as regards labour trafficking, victims usually have a particular profile which, perhaps, the usual kind of unemployed person even if they are recruited and leave for this adventure that puts them in a situation of victimisation, has other intrinsic capacities to react and try to get out of this deceit. (I 7)

The vulnerability to which thousands of people are driven by the financial crisis across Europe, with particular severity in Portugal and Spain, has distinct effects. On the one hand, it forces people to travel and therefore to put themselves in a situation of weakness (due to the fragility of the networks, etc.), and on the other, given the widespread lack of supply and the avalanche of demand, as we saw in Chapter I, it increases the degree of tolerance of various forms of exploitation.

I fear that these national and international crises might lead to a danger that the level of sensitivity falls, that is, whereas there is less work, whereas a more people today are working in the grimmest conditions and with lower pay compared with a few years ago, and maybe the condemnation of these situations of slavery will decline. I think this is a danger that we must be on the lookout for, because it can, in fact, occur. (I 9)

This suspicion might already fall on the survey of the police forces, which shows that 7.2% agree or totally agree that "If a person earns a certain amount of money in their job, they are not a victim of trafficking in human beings".

2.2. THE MAIN CAUSES OF THB

The impact of the economic and financial crisis and the emergence of an austerity policy are closely interlinked with what the police forces respondents indicate as the main cause of human trafficking: profitability. In the survey applied to police forces, the first cause indicated for THB (labour and sexual) is the economic underdevelopment in the countries of origin. As has been pointed out in Chapter I, there is a structure of opportunities that allows a profitable business at the expense of labour exploitation and human rights violations. Though squeezed by anti-trafficking measures, this opportunity structure persists and takes new forms in a context of a shrinking welfare state. The profitability of the traffic is therefore indicated as its most objective justification and with extensive historical continuity.

The goals of trafficking are the goals of a company, it's profit. Profit. Profit. [...] And it's also related to the countries' economic cycles. When Portugal was enjoying better economic conditions it was more attractive, in fact, there was trail of immigrants who came here and with them there also came a series of people who were hired or deceived, both for sexual exploitation and for agricultural work, particularly in the Alentejo region with influence of the Spanish who were already doing that in Spain, related to winemaking. When they began to buy farms for this purpose, they exported what was going on in Spain to Portugal, too. The situation that was going on in Spain was replicated. [...] (I 11)

The capitalist mode of production is engaged with colonialism more directly or indirectly and according to the scale on which we think of it. From the outset, the mistrust and subordination of otherness, represented by the figure of the foreigner, influences how the perception, the culpability of and approach to human trafficking actually works out on the ground. Furthermore: the abyssal lines that make up the modern world, between chaos and order, between the human and the sub-human, mean that there are *good foreigners* and *bad foreigners*. Reflection is needed about the latter, who are simultaneously a victim of crime and a symbolic civilising threat:

And when you asked a little while ago what are the causes, causes, according to my humanist side, let's say, my social sciences side, I think it's human misery and the way we have to look at the other, the other who is a foreigner, who is weird and with whom it is possible to do everything, I mean, they're disposable. (I 15)

If these two systems of exploitation and oppression are themselves truncated, if we add the system of patriarchy, the harder it seems to be disentangling the prejudices that mediate the relationship between the agents and judicial practice. Accordingly, the same survey shows that in the case of THB for sexual exploitation the second most indicated cause is the dearth of social values. The following statement talks about the distinctive profile of victims of sex trafficking, from which the preconceptions about their motivations and behaviours that result from separate assessments about the *true* or the *false* victimisation are not very different.

The causes are economic, but they are not just economic. There are many situations. The idea that we have here in Portugal is that in the case of prostitution, women who are trafficked for prostitution, it also depends on the nationality, if we're talking about Brazilian or South American citizens,

essentially there are monetary issues, people come here, they can be targets of exploitation, but their idea is to come here, many have already been prostitutes back home and come here to earn more money. If we're talking about people from Eastern Europe, then things are different, they are often coerced, forced; Africans, Nigerians, for example, or Asian, Chinese and Thai citizens, that's a different thing. There's pure coercion, there's violence, there is removal of documents, there are often threats to the family remaining in the country of origin, so these situations are completely different from the usual one with the Brazilians when, apart from some exceptions, this doesn't happen. In our case there is a variety of situations here, too. (I 18)

Gender issues interwoven with issues of poverty – and the expectation of better living conditions – in the speeches of the judiciary disguise many preconceptions about prostitution, especially of Brazilian women. The excerpt that follows is slightly longer but illustrates this point:

I think this is fundamentally a social problem. This is not so much a legal issue, especially when in this type of crime we have a door open to those facts that the person is forced, etc. etc., but most of the trafficked, and I'm not here to define the type of crime, of course, it has to do with that situation of the victim's special vulnerability, and this is a very subjective thing. Because if we go to Brazil, for example, any female hotel worker says: "Gee, don't want to take me to Portugal?" The perspective is this. Why? People yearn for better working conditions. But what do they find here? They get here, come to a sex club come do this profession... We know, if the SEF finds them they are sent back to their country of origin. The employer, so to speak, is fined because they had workers without a work permit. And that's where it ends. And the ladies are upset because "Gee, I've got to go to my country and I'm much better here." Regardless of whether we know that sometimes, in fact there passports are withheld... Let's see, but would this be human trafficking? One of the things that often happens, that situation of aiding illegal immigration, it is aiding illegal immigration if they're men, if they're women then it is trafficking in persons. Or pimping. This was the trend a while ago. Because there are also many cases, still talking about Brazil, of working men who come from Brazil to Portugal, to work because they earn more than in Brazil! Then, they work longer hours. Now, how can society react to this? Yet the social conscience that this shouldn't happen, but there it is, it is a social issue, they don't have living conditions in the countries of origin, are afflicted, so they go looking for something better. They promise them something better. And sometimes they get something better. It may not be much better, but it is a bit. And then that's it, things are organised in such a way that if we see most of the human trafficking cases when they arrive at the airport they bring a big wad of notes in the pocket, x amount in cash, some five hundred euros or so because that's what is required. Then they come for holidays, ok, cool, and comply with all requirements. Of course as soon as their feet hit the ground they clear the border they are already waiting for them:

"give me the money again"! But all this is organised. I think it's extremely difficult when the victims themselves are uncooperative, that that's what this is about, when the victims don't cooperate, because they feel they're better than they were, than they would be where they were, it's really hard to combat this phenomenon! And if they do cooperate, they don't get any support of course! (FG 6)

This lawyer introduces a very important issue to THB: the gender bias in the perception of criminal typology. Effectively, the differences between trafficking for purposes of labour exploitation and for sexual exploitation do (or should) cut across all the areas of analysis: the legal framework and public policies, measures of prevention, protection and punishment of the phenomenon.

2.3. SEXUAL TRAFFICKING AND LABOUR TRAFFICKING: DIFFERENCES AND SIMILARITIES

One of the most interesting characteristics of trafficking in persons as a crime is that it can relate to a wide variety of situations, all meeting the requirements legally established for that purpose. It turns out that public policy aimed at fighting it is covered under the umbrella of criminal offence, with joint strategies of response being developed, while paying heed to its particularities. As mentioned in Chapter I, although under different forms of violence, coercion and control, labour and sexual trafficking share an essential characteristic: both concern the abusive exploitation of labour. But media representations of them reflect different conceptions about the seriousness, about the legal values called into question and about the risk posed to society by each of these phenomena. Press analysis reveals two trends: first, media portray labour

exploitation as human trafficking⁶⁰⁷ and, second, sexual exploitation as prostitution networks⁶⁰⁸. How do the police forces separate these forms of trafficking?

The survey data (already mentioned) concerning the perception of a greater increase in THB for labour exploitation than for sexual exploitation express some of the differences perceived in the two types of trafficking, from the outset, in the reports made by the police forces that focus mainly on crimes of THB for labour exploitation. The biggest differences noted between THB for labour exploitation and for sexual exploitation include: the *modus operandi*; the organization of networks (more complex for sexual exploitation); the turnover (higher numbers for labour exploitation); the condemnation and tolerance of the phenomena; kinds of victim; the traumas inflicted on victims (deepest in sexual exploitation).

It is like day and night. Therefore, there's no relation between the two. At all levels. From the level of people who do it, the networks that make it, where they do it, the people who are recruited, the way they are treated, and how they are conditioned to it. They are two completely different worlds, which are only in the same article as a matter of justice policy, because if we look at the reality in criminology terms, they are two completely different realities. Sometimes, in a context of high pressure labour exploitation, there may be some sex offence or other, in the case of a woman, usually, but these things are minimal. Sexual exploitation is basically recruiting victims who have to be of a certain age, they have to have a certain physical appearance, they've usually been deceived, they come with an individual who ends up by gaining their trust, getting close to them, creating a kind of a flirtation, who brings them and then, little by little, he accustoms them to engaging in prostitution. When the psychological part fails, he moves on to the physical part. And when psychological and physical fail she is sold to another network and that bond

⁶⁰⁷ Cf. "Sixteen year prison sentence for trafficking in persons" (*Tráfico de pessoas leva a dezasseis anos de prisão*) (TVI24, 07.11.2013); "Police detain three people suspected of human trafficking in Alentejo" (*PJ deteve três suspeitos de tráfico de seres humanos no Alentejo*) (*Jornal de Notícias*, 12.11.2013); "Foreigners suspected of human trafficking held on remand" (*Estrangeiros suspeitos de tráfico humano em prisão preventiva*) (*Expresso*, 16.11.2013); "Beja: defendants in human trafficking case brought to court" (*Beja: arguidos por tráfico de seres humanos julgados em tribunal*) (*Rádio Pax*, 19.03.2014); "Human trafficking suspects more than triple in Portugal" (*Suspeitas de tráfico de seres humanos em Portugal mais do que triplicam*) (*Público*, 13.05.2014).

⁶⁰⁸ Cf. "Network that forced Brazilian women into prostitution in Spain dismantled" (*Desmantelada rede que obrigava brasileiras a prostituir-se em Espanha*) (*Jornal de Notícias*, 10.07.2014); "Increasing numbers of prostitutes in Portugal" (*Há cada vez mais prostitutas em Portugal*) (*Jornal de Notícias*, 14.05.2014); "Prostitution network in Azores dismantled" (*Desmantelada rede de prostituição nos Açores*) (*Jornal de Notícias*, 10.02.2014); "Network pockets 80,000 a month from prostitutes placed on the roads in northern Portugal" (*Rede ganhava 80 mil por mês com prostitutas que colocava nas estradas do norte do país*) (*Público*, 22.11.2013).

is broken and everything breaks down. Because that's the usual approach. Labour exploitation is nothing like that. They can be men and women, pretty or ugly, they can be skinny or fat, there is no particular standard, what matters is that they've got arms for working and health for working and that they're not too bright and will fall for the trick bit by bit, "hand over your passport and now you also have to pay for lodging and lunch and dinner and transport and your wage is not 500 after all, it's only 50, and afterward there's some difficulties and you have to work longer hours, and you have scramble, and if you want to go to the second part of the company, which is in some country in northern Europe, where you'll get loads of money, first you have to be here in Portugal, and here you don't get paid that much". They are completely different things. As a rule the nationalities, sometimes they can even be the same, the victims and the aggressors, but these things don't often get mixed up. One is a nocturnal business, the other is a day-time business; one is a business of individuals who need to have contacts in the world of the night, with brothels, and another is the business of picking fruit, this and that, so they are completely different things. (I 1)

Among the respondents, 29.4% say that the pattern closest to the organisation and recruitment in the case of labour trafficking are small-scale perpetrators who recruit a victim or a small number of victims through social networks and pre-existing family members. With regard to duress in the case of labour trafficking: 54.1% think that the commonest form is wage manipulation (translated into payments below the minimum salary, paying late and irregularly, illegal deductions, withholding wages, or no payment); 32.4% think that it is violence or threats of violence against victims or their families, physical control, isolation or reprisals against the victims' families; 25.2% considers that the debt bondage (whereby individuals promise to provide their labour or services to pay off a loan or other debt) applies more often. Very different from what happens in THB for sexual exploitation:

Sexual exploitation gangs are more sophisticated, and there's more money. I believe a person who go work picking olives or something else will earn the national minimum wage, maybe, the pay may be good for those who have poor living conditions, for 3 or 4 months they get some money for sustenance, or they think they will, but actually sexual exploitation is more attractive to organisations. They have different components. I think that an organisation that is dedicated to one thing, and does not dedicate itself to another. It may have the same base at first in the countries of origin, but then in the destination country it is totally different. In terms of organisation, a lot of the time, the organisation of origin in crimes of sexual exploitation is the same as in the destination country, maintaining contacts

with businessmen here, but maintaining pressure and supply, while in labour it's a transfer of goods, in quotes: here are 20, 30 people, I want X, now they are yours. (I 2)

But when it comes to THB for labour exploitation in agriculture, in particular (note that 43% of respondents believe that the highest incidence of trafficking occurs in agriculture; 33.3% in construction/building industry; 10.1% in restaurants, bars, cafés; 8% domestic service; 4.1% in industries), being located at some distance from the land where they are subject to exploitation makes it harder for the police forces to detect the problem and for victims themselves to blow the whistle:

Those of us who have been in some places quite recently and have seen and been in touch with these situations, sometimes we only see the places where we specifically go to deal with this situation from the edge of the road, but colleagues tell us that they carry out inspections, they go to places where after the jeeps won't, just a quad bike, lost properties, and the detail of people forgetting a ballpoint pen is enough for all the work to go down the drain, because you might need to write something down in the middle of a property where there's no chance to get anything. And imagine how easy it is for a recruiter to bring people, ten, or fifteen or twenty people to a place like that to work, maybe in some places they might have electric lights, but it could be that there's electricity and there probably isn't a plug, if mobile phones run out of the battery, if people want to complain they are out there isolated for ten or fifteen days, anyway it's easy to keep them in those circumstances. It's easy for me, the recruiter, to actually receive what I agreed with the owner of the property and to abandon those people, and leave them there. I don't think it's so very complicated, people don't know, do they? Is the same as if they grab us and take us to the middle of Romania or to the middle of an olive grove, at night where would we go to complain, would I know there where I was? We haven't any idea. (I 13)

When a victim is introduced into a labour exploitation gang they're offered, in fact, and what they provide is work, employment, legal, normal. That is, let's say, they go to work for a vineyard, like all the other workers go to work, it's just that victims will not receive the same rights, unpaid, they aren't paid, their freedom is curtailed, they're trapped or kept in the place where they work. While in sexual exploitation the provision of labour is an activity that attracts social condemnation, it's not a practice that is regulated, it's not working with deductions, there aren't people doing sex work with deductions, where there is legislation, no. I think this is a basic difference. [...] In this regard, the labour exploitation has an interesting peculiarity. Within these cases there are several victims who do not report, ever, the situations of which they were victims. That is, it's us who get to the victims. [...] Even people who are close to the victims view this with a less condemnation and that has to do with the victim's profile. (I 9)

The consequences of trafficking are seen in different ways. For some respondents, trafficking for sexual exploitation is more serious because of the effect it has on the victims:

The sex trade is more violent and has more effect, a girl who tells me "I was raped and beaten, because I was a virgin and I didn't know what would happen to me, when I refused my first client, and at the end they put me in a room and I wanted to die". This affects anyone. (I 41)

However, other respondents regard labour exploitation as more serious than sexual exploitation:

both are extremely serious, both are extremely distressing for the victim, but now I'm going to give you two comparisons: both are serious and consent is relevant and the objective is relevant, but for example a victim who comes from a country like Brazil, for example, whose destination is Portugal, knows that she's coming for prostitution, she knows that she's coming to engage in prostitution. The assumptions are changed in the trip. It's very serious and must be punished. While in labour exploitation when victims are Portuguese citizens they are truly enslaved, thinking that they're going to have decent work, hard work but worthy, paid, registered, with a contract of employment and at their place of destination they are subject to real slavery in the 21st century. (I 9)

This is not, of course, to compare contexts and situations that cannot be compared. This is primarily to understand how the police forces conceive and perceive the phenomena, as well as the ideological and symbolic mediations through which they delimit, rank and act on them. Despite the marked reprehensibility of trafficking and sexual exploitation, the labour counterpoint that is offered makes the moral subtext starting point clear: *Portuguese citizens* (appealing to a certain common sense of belonging and an added responsibility relative to nationals and not foreigners who are victims of labour trafficking in Portugal), who are looking for a *decent job* (unlike the Brazilian prostitute, who knowingly comes in the expectation of exercising an activity unworthy), *tough* (unlike her, whose work will be less demanding) and *legal* (as if the respect of Portuguese citizens for legality makes the prostitute more flexible, willing and tolerant to situations of abuse, and thus less abused by the process). So,

with the sex trafficking this may possibly happen, but labour trafficking is what corresponds to "real slavery in the 21st century".

A long discussion on the recognition of prostitution as work gets a new lease of life with the differentiated classification of sexual exploitation from labour exploitation. While this debate does not lie within the discursive repertoire of the police forces interviewees, marked mainly by the legal and organisational boundaries within which they operate, the civil society bodies nonetheless indicate this issue as important to combating trafficking in persons. The following statement by an NGO official is an example:

I do not think there is much difference between sex trafficking and labour trafficking. That's to say, both are labour exploitation. When we think of labour exploitation in a more general way, we think: if I work 20 hours in a factory and they don't pay me, a person works on a farm and works more hours and then gets fined because he didn't do this or that, if I'm working in a hotel, if I am indeed working in prostitution all this is labour exploitation. We have the idea of associating labour exploitation work that is not prostitution, because there has been a lot of talk about exploitation for sexual purposes and therefore this distinction has appeared, now it doesn't seem to make much sense to me. What are some people arguing? That in fact in countries where prostitution is not allowed and is not lawful, prostitution is not a job, and as such cannot be deemed labour exploitation. And voilà, eventually we have a theory that has to be accepted. But in fact I think what matters is the issue of the exploitation of labour in a particular area by force, it is the modern-day slavery. Now slavery can be very diverse. (I 61)

For the police forces the dilemma tends to lie sometimes in the tension between pimping and sex trafficking. This dilemma has two central aspects. First, it focuses on moralising aspects relating to agency versus the subjection of the women involved in the provision of sexual services. The second aspect is a procedural strategy, in that pimping is a crime that is easier to prove than trafficking (we will return on this issue). The following account from a police officer concerns the fact that sometimes even when all the elements typical of trafficking for sexual exploitation are in place, the apparent difficulty of producing evidence ultimately affects conviction for this crime.

Many of them know they came to Portugal for sexual exploitation. Exploitation, I means, for prostitution. Afterwards meaning exploitation. [...] There can be sexual exploitation, but in Portugal we have a crime for this, and it is pimping. There we could even... the girl from the moment you have to give even 5 euros for each relation it's crime, all right. Now, going on to trafficking. Because what she wants... this is one of those cases that she wants the ID card and to go to Spain. [...] When the SEF... The SEF had series of these, the case of the couple who were the exploiters, the women on the day they were to be present in court, they were not working, in quotation marks, and went to the courthouse door waiting for them to leave. So we realise they are exploited, we have the sensitivity to realize... [...] But, not only in Romania, even Portuguese; I know some girls who don't give up because they have a completely different lifestyle from that if they worked at a supermarket checkout. That is the reality of the street. Now, the houses that we know exist, brothels, although they may be discos, things are substantially different and are no longer... Although these girls were very cute and nifty, Romanian and such, but in the houses there is already a little concern... Because there are several groups here, which can be divided by groups, it's the street, there are the apartments and then the houses afterwards. [...] Those in the newspapers are the apartments where they are 2 or 3, or 4 or 5. There yes, in sexual exploitation, it's much more difficult, I think, than... It's easy to get there, but... We always go for the same thing, at best it's pimping, we never make it to trafficking. (I 12)

2.3.1. PROFILE OF THB NETWORKS: SOME CONSIDERATIONS

According to interviewee 7, from the criminal point of view of *modus operandi*, trafficking for sexual exploitation and for labour exploitation are completely different. In turn, according to the results of the survey on the police forces, 64.1% disagree or totally disagree with the following statement: "Criminal gangs are more organised in the case of trafficking for labour exploitation purposes than for sex trafficking"; while 25.6% neither agree nor disagree, and 10.2% agree or totally agree with the statement. In this respect, the testimony of a labour protection inspector paints the following picture:

Sex trafficking involves let's see half a dozen people, and the purely labour one hundreds, in terms of turnover, is much more profitable. (I 71)

Paradoxically, as stated in the previous point regarding the comparison of labour trafficking and the sex trade, the social worlds to which each phenomenon

refers – between the world and the underworld – influences how they are perceived by the police forces:

We are looking at the phenomenon of trafficking for purposes of sexual exploitation as a criminal phenomenon, that's to say, the people who are linked to trafficking for sexual exploitation are, as a rule, actually criminals. While labour exploitation, from the experiences we've had here, we don't call them real criminals, because they aren't people connected to the criminal world, let's call it that. They're more or less normal people who engage in this kind of activity. Those in sexual exploitation, no; they're linked essentially to night and the world of crime and of all sorts that night entails. [...] From the outset, its intended purpose, that makes all the difference. (I 8)

The degree of sophistication, the ways victims are coerced and the nature of the activity concerned together generate distinct ideas and representations on the content of each phenomenon, in particular about how to respond to them. Two aspects of the networks established in Portugal should be noted: the difference in the nationalities and the roles that men and women play in the gangs. Concerning nationalities, the opinion is pretty much consensual. According to the interviewees, and in simplified form, the profile of labour trafficking operators is related to Portuguese citizens, Portuguese Roma citizens and/or Romanian Roma citizens.

Throughout the process, the interlocutors talked about a much bigger organisation than either those who come from African countries or those who come from Latin America. People from the east were extremely well organised, had cells with established functions and the victims were completely ensnared by them, convinced that they were coming here and everything would be ok, it was so real... that, the scenario presented to them in the countries of origin and then, when they arrived in Portugal and were faced with being sent to a brothel or some other place where they were controlled and kept under surveillance and coerced into engaging in these acts. There, these individuals showed a professionalism, but very, very complicated and within what is considered the mafia. With the particularity that the crimes were very much associated with threats to physical, and sexual integrity, rape, everything. Very common and very serious. (I 5)

In terms of exploiters, they say they find a mixture of men and women. Usually a slightly higher percentage of men and the women are usually former victims who, with advancing years, they themselves end up as exploiters and are associated with the men – who are still calling the shots in the trade. With regard to victims of labour

exploitation, there are usually more men than women. Regarding the exploiters, around 90% are men.

2.3.2. THB VICTIM PROFILE AND THE NOTION OF VULNERABILITY

Whether we are looking at the nationality, age or sex of trafficking victims for the various types of exploitation, the police forces are in agreement as to their profiles. In sexual exploitation the victims are overwhelmingly very young women, sometimes minors. Although the results of the survey reveal a balanced understanding about the likelihood of men and women being victims of labour trafficking, the interviews suggest the prevalence of the following profile: men, adults with low levels of education and sometimes with some cognitive limitation.

In labour exploitation, they are particularly vulnerable people, in particular at the mental level, yes. [...] In sexual exploitation, there was a time when it was mainly from the east - Ukrainians, Moldovans, Romanians, and Russians - also worked there and were exploited at the sexual level. And afterwards from South America especially Brazilians, we had a wave of lots of Brazilian girls, man, that were clearly victims of exploitation. Usually between twenty and thirty years old. Over thirty was not so common. In labour exploitation, between twenty and thirty, though some older people were involved, too. But most people are young there, too, between eighteen and thirty. Then there's another, an old man was there, too, lost near a village, vulnerable, alcoholic, and actually we've now detained a number of these cases, widowers, alcoholics and the like and there appeared a few well-spoken individuals "Hey mate, you don't want to come to work with us? And such, people... "Ok then, look come on home." He wouldn't talk to anyone, fair enough. [...] He was up in the van and on the same day they finally went by a village they persuaded one, then they went by a neighbouring village and persuaded another, you know, people who wouldn't have contact with anyone. Then there we went to disillusion them there in those sheds, a lot of these missing persons were there, poor sods, working round the clock, they were making a bit of food and stuff there, so sometimes there was the collaboration of women in this as well, it was also one of the tasks to make a bit of food, but very poor. [...] And in respect of foreign victims of trafficking in Portugal, they are from the east. (I 2)

As we have seen, economic and social vulnerability is portrayed as a facilitating condition and instigator for the recruitment of victims of trafficking. The answers of respondents show that 84.7% agree that "the less a person knows, the greater the

probability of being trafficked". Such vulnerability is also associated with the formal or informal mobilisation capacity of the police bodies, civil society or other institutions, on the part of the victims. In other words, if vulnerability is an inducement to capture victims, the greater the structural vulnerability, the harder will be formal mobilisation of the law. In the wake of the concept of legal consciousness devised by Patricia Ewick and Susan Silbey (1998), vulnerability is a component of the lack of ability to trigger formal and informal mobilisation of the law and by not registering the consciousness of what are subjects of everyday rights, the outcome is the perpetuation of the situation of victimisation. Such vulnerability is not automatically associated with non-Western cultures, traditionally represented as violent and underdeveloped. On the contrary: the survey shows that people from non-Western cultures have roughly the same vulnerability to fall into human trafficking situations. We believe this is an effect of the qualification and training of the police forces in this matter, so that trafficking is not seen as distant phenomenon or unique to peripheral societies.

Another issue concerns the idea that, consciously or unconsciously, society and the justice system create victimisation hierarchies, something already identified in previous studies by Santos *et al.* (2008, 2009, 2010), expressed in the differentiation between the victims that deserve a lot of help, the ones that deserve a helping hand and the ones that do not deserve any kind of help:

There is one thing that confuses me on trafficking for sexual exploitation and that is condemnation and what is taken, or not, as trafficking for purposes of sexual exploitation. That is, the legal part of it and... the view of ordinary people, the gravity that is attributed to how it is done, these are completely different things. [...] The labour issue is, perhaps, for anyone who deals with this, as we do, more serious because the victims are actually much more fragile people than those in sexual exploitation. Because trafficking for purposes of sexual exploitation culminates in the prostitution of women who are there, available, which is something that we all know it exists and maybe we don't do much for her, or maybe it doesn't shock us as much. [...] I think because there's more social tolerance to trafficking for purposes of sexual exploitation than trafficking for labour exploitation. [...] I think there might be a difference in perception; we individually, as men, people, because we are ordinary citizens too and we look at prostitution as something more or less ... I mean, we've been deal with it forever, right? And the labour part, now that's something that scandalises us more. Which is not to say that we, from the police point of view, don't work exactly the

same way. We, individually ... I personally, I look at things differently, there it is. (I 7)

The fact that the victims engage in prostitution in the country of origin may influence the way the police forces see a possible trafficking suspect and how they define the needs of victims. The survey applied to the police forces asked about their attitude to the following statement: "Women forced to work in the sex industry who were already prostitutes in their home countries are less affected psychologically than those who have never had previous contact with the sex industry". This statement is, of course, capable of more than one reading and it is difficult to interpret the meaning of the results with certainty. Even so, note that 56.3% of respondents agreed or totally agreed with the statement; 14.4% neither agreed nor disagreed; 29.4% disagreed or totally disagreed. As for the statement "Trafficking for labour exploitation causes more psychological damage to the victims than sexual trafficking", 72.1% of respondents disagreed or totally disagreed (55.6% disagree; 16.5% totally disagree); 8.7% agreed; 19.2% neither agreed nor disagreed. Let us see how the agents differentiated the situations in which victims of sexual trafficking are found on the basis of what is considered their degree of autonomy, awareness, dependency or vulnerability within the framework of the networks in which they are involved:

We realise two things: the woman who is a prostitute knows what's coming but doesn't fall into clutches of the network, and manages herself and her personal life; then there's the one who is a prostitute but is already within the network and typically she does badly, is mistreated and manifestly exploited, and is subject to all the usual rules of these practices. But there are also those girls who came in search of El Dorado, and that when they do they are placed in the network, they did nothing for it except to believe, and often they stay around because they have no choice, they're in an unknown world, "at least here I have my livelihood." (I 71)

Despite the descriptive nature of this evidence, it is important to understand that it often results in specific guidelines regarding the response deemed necessary for and/or appropriate to victims. More directly or indirectly, the attitudes of the police forces vis-à-vis labour and sexual exploitation, as well as the moral framework in which they are located, influence the way they conceive and classify different kinds of victim. Although generally speaking and in the abstract, that idea may make sense, its

practical application involves a number of angles of significant social and legal relevance. In addition to its impact on the protection granted to the victims, these conceptions, structurally anchored in different modes of domination (patriarchal, capitalist, colonial, for example), also influence the forms of interaction of the justice system generally regarded as correct, displaying disapproval, disbelief or paternalism. The following excerpt gives an account of this, in particular because it concerns a Brazilian woman:

I met one time a Brazilian girl, and told her "you're such a beautiful girl, you don't need something like this." She replied "I left a child with my parents, I now have money for a bit of land, we are building a house in Brazil" [...] About Brazilian women, some are deceived, others know very well. Their concept of morality is different. (I 71)

Apart from paternalism ("you're such a beautiful girl"), the disapproval of sex work ("You don't need something like this") demonstrates a critical and punitive judgment, more evident as the respondent concludes that "their moral concept is different". The same is found in the next excerpt, where nymphomania is used as an argumentative expedient that owes very little to sexism in the appreciation of sex work and its potential relationship with victimisation:

Not everything is sexual exploitation, there are people who work in this area and are aware, and are able to sublimate the moral issue. Why pick on everything, from the woman who is a nymphomaniac to a woman who has suffered. There are people who say "there's nothing that a good scrubbing with laundry soap cannot clean", and people who say they are fully aware of what they're doing, because it's easy money, from which they get astronomical income. (I 71)

Stereotypes in relation to Brazilian women are also a constant feature in the evidence of the different professionals, and these are now the target of considerable academic research. They themselves recognise the risks and seriousness of this moral drift:

Stereotypes may be an influence, imagine for example the situation of someone who is already prostitute in Brazil, which clearly assumes that she's already a working girl there and comes here, and even knows that was coming under certain conditions to a brothel and gets here she's forced to do other things. The fact of being a prostitute doesn't mean she's not a

victim here. We try to ignore in such stereotypes here and general concepts of classifying people according to the geographical area or of what they do. Here we don't do that, but I accept that effectively sometimes just being Brazilian, of a certain age, having a certain profile, a way of dressing and a certain behaviour makes us say "well, essentially it's all your fault" or "You knew perfectly what you were coming to", but here we here we try not to take that into account.[...] (I 13)

To sum up, the concept of vulnerability, found in the law and hard to define, together with the degree of consent and the racial stereotyping, ethnicity and nationality, is informed by moral values that can translate into legal barriers and/or practices for the victims that deserve more help, the ones that deserve medium help and those who do not deserve any kind of help. This vulnerable state of the victims, who tend to be the crucial elements for ascertaining the facts, can shape their self-perception about what happened, when compared with where they started from, and can somehow make them tolerate and relativize the degree of exploitation they suffer; it can generate different police and judicial interpretations; and it can detract from their image of a standard type of victim of trafficking that can be harmful.

Some of the cases consulted show this. In one of them, the argument of the prosecution gains from the fact that the victim "in a state of despair and humiliation, [had lit up] a lighter that was in her possession and [set] fire to her own clothes, which resulted in extensive burns in the abdominal area" (Department for Criminal Investigation and Action – DIAP, Porto). In addition to serving to demonstrate the seriousness of the effects of crime on the victim, this allegation sought to make her special mental fragility obvious, that the offender, objectively, benefited. In another lawsuit, whose contents we accessed via the SEF and which is deemed by them a successful police and judicial case, the production of evidence about the vulnerability of the victims involved details about their economic conditions, their family structure and their degree of schooling:

They only sought and recruited women of Romanian nationality, who they knew to be in dysfunctional families, with serious economic difficulties, with scant knowledge, and with a high school drop-out rate, because they knew that their economic, social and family environment would make their recruitment for prostitution in Portugal easier and more likely. That's what

they did with [name of the victims], knowing that their social and family conditions in Romania would make them vulnerable to the proposals that the defendants made for them to be prostitutes in Portugal. (SEF, 2010: 49)

Finally, in the case on sex trafficking from Vila Nova de Famalicão that we consulted, the grounds of special vulnerability of the victims is based on the very fact that they were providing sexual services. Thus the judgment reveals a moral (the body is not for sale) and vigilant conception of sexuality, yet also tries to understand a situation that can often be taken lightly. Thus, it is argued that

The exploitation or commodification of the human body (because the person does not have a body, he/she is a body) particularly touches on the dignity of a person. Human sexuality is an eminently personal dimension. This is reflected in the analysis of some issues, such as those that follow. On the one hand, it can be said that all the situations which lead to prostitution are connected to circumstances of special vulnerability or extreme poverty. There are studies that point to very low percentages of genuinely voluntary engagement in prostitution. (lawsuit of the Court of Vila Nova de Famalicão, 26.03.2014)

These examples are useful for understanding both the strategies of prosecuting defendants and how the judge then defines them under the rules of the experience:

It has been easier, because on this path we are not all alone, we have the judicial authorities, but often the prosecutors and judges have never seen and never looked at people's faces. So it's hard for us to take on a role, conveying the vulnerability and what those people are feeling, because they read the papers, they read the information that we put down. If they looked into the eyes of those people they would probably know better. If we write and if proven we tell them "people are looking for food in rubbish bins, they were found looking for food in a rubbish bin, they don't have any money", that is, the vulnerability is much more obvious and it is easier to be recognised by them in a labour situation than in a sexual situation. Because we, here at least, we haven't had major contacts with situations of houses where, as happens for example in Spain where there is physical violence, here there may be, there are, all houses have rules, all the clubs, all the brothels have rules, have schedules, have fines, have policies but there is no sexual violence against these people, and it's hard to demonstrate it afterwards. It's easier for us to tell the public prosecutor's office if we have a victim with a photograph with a broken arm who was assaulted in some incident, than to say that a woman is forced to prostitute herself and receive who knows how many customers a day, who has a mobile phone, apparently not by any means a situation controlling her power to escape. It is harder for us to demonstrate this in the sexual issue than the labour issue. (I 13)

The discourse of respondents shows the dubious and inexact nature of the concept of vulnerability, often touted as different leading to police and judicial interpretations. The demonstration that this concept lacks consistency is borne out by the evidence of a lawyer who was interviewed, with experience in defending people charged with THB and related crimes. In his opinion, this concept allows considerable room for manoeuvre in taking it apart in court, to the detriment of the victims:

Concerning trafficking for sexual activities, people come here, the girls, the ladies come here because they want to have a better life, they come to make money. And get all upset when they're sent home. Unless they are in those extreme situations and limits of being imprisoned, they have no money for this and that. Now when they make their daily routine, even though they are being exploited, we have no doubt about it, but they're all happy. They're all happy! If you ask them afterwards: "what were you doing before you came here?"; "I was a hairdresser"; "Ok, so you were a hairdresser, why did you come here?"; "To earn a bit more". They're not coming, there is no-one, but there are always exceptions that prove the rule, but usually they never say they were poverty stricken in their country, or anything like that. They had a life there. In Brazil they were important people, they used to be dancers, they were this and that and the other, but we know they weren't. Therefore research has to be done, this is evidence that has to be obtained, let's see, an official letter to the social security offices in those countries "Look does this lady have any deductions, any professional activity?" doing something. We can't get to court and the trial judge: "This person was in a situation of special vulnerability", when she says: "Oh no, I came because I wanted to". It's tricky. Those elements that can lead the judge to form his belief must have some basis, some fuel. I understand that the public prosecutor's office has no resources for these transnational crimes. They simply don't! The police meant to deal with other kinds of crimes that are not exactly this. If it were slavery, maybe. I don't think so for these lesser situations. (FG 6)

Validation of the statements assembles several arguments that have been expounded throughout this national case. Their validation is largely based on their credibility, and to this credibility is not indifferent the kind of exploitation individuals have been subjected to, their nationality, gender, age, ethnicity and religion. These interpretations are permeable to moral and ideological assumptions, justified by the above-mentioned rules of experience.

This discussion on the recognition, relevance and credibility granted to victims of trafficking is particularly important in cases when victims are suspected of trying to

benefit from the mechanisms that secure their protection and we have enshrined in the legal framework. The so-called "false victims", to use the language of the interviewees are mainly considered in trafficking for sexual exploitation and contain or intersect with all the prejudices related to prostitution and nationality (particularly Brazilian and Romanian) and further denote a strong social condemnation of this activity. The following statement organises an entire narrative around a Romanian citizen that gives prominence to the idea that without giving an appearance of fragility, harmlessness ("but I liked, enjoyed, played about with customers"), naiveté and bewilderment, no woman can see her statement validated and be regarded as a victim of trafficking:

We now had the case of a Romanian citizen who says she was being exploited, we still have to check it, because at first, it seems to us, because she even liked what she was doing for sexual purposes... [...] Under conditions, but she liked and enjoyed it, she played about the customers. One thing is to hear a victim and she has a face... the face says it all; Another thing is to hear a victim and she's really happy and elated talking about who were the best customers, how lucky she was to have attracted customers 40 years old because customers were typically 70... Therefore, a victim... when she is a victim it affects the person to the point of... [...] That is why the crimes have minimum and maximum penalty bands. I understand that logically this in no way affects the victim, even if she is under this influence, then it is also difficult to argue for an indictment. [...] They kept her ID card. She asked for help in a shelter, etc., APF609 sent her to Spain, fine, that was what she wanted. Of course we could not hear her for statement for future memory, because sometimes a statement for future memory takes a month. There are procedural difficulties like this. [...] No-one wanted. Even alone with translators who asked them: "If you want, you can go to a shelter..." No. They all want to carry on. [...] They themselves said they were making 200 euros per day, where did they do that in Romania? (I 10)

This idea of "false victims" who are instrumental and opportunistic, is also noticeable as a strategy to find quick cheap solutions to send them back to their countries of origin, on the part of victims of both sex and labour trafficking:

Certainly once we started to realise that there was also some opportunism by victims, at some point, realising that by intervening the authorities solved their personal problems or relationship with the owners of the establishments or even with the problem of not having money to get back

⁶⁰⁹ A Portuguese NGO.

home, for instance. They took advantage, made false allegations to the police saying that we had to investigate and once the complaints were covered, they tried to see if they would be repatriated free or by judicial order, with the Portuguese intervening. (I 5)

And when they are countries outside the European Union, outside the Schengen area, it's even worse, because being illegal, they don't go the police, for sure. Romanians are now going to the police more often, but we also know that it is not what people think. We know that many of them simply want to get back to their country of origin and want the Portuguese state to pay for the trip. (I 12)

In short, although it is an important exercise, designing the profile of victims of THB must not ignore the relationship between categories that stand out and the systems of domination that are the source of victimisation. On the other hand, thinking of the relationship of that profile with the notion of vulnerability is a challenge that is particularly relevant to the social-legal study of THB, given the centrality of the concept in the police and judicial approach to the phenomenon.

2.3.2.1. STORIES OF VICTIMISATION

The specific stories of victims of trafficking are not just a pertinent source of sociological information; they challenge the philosophy and realism of the preventive, protective and repressive measures, too. These are discussed later. The following tables provide an overview of victimisation experiences. They show, first, how different facets of oppression determine how the phenomenon of THB takes shape, and also how they influence how the state, the justice system and civil society view, model and intervene in this phenomenon.

TABLE VII.1 VICTIM A

Victim A

Maria, aged 35, Portuguese.

Maria was approached in her home town in Portugal to do agricultural work in Spain. She did not know the person who approached her. She was working in agriculture and saw at this proposal as an opportunity to improve her life, so decided to accept it. At first everything went well, but she soon realized she would have to be confined between the fields and the house where she came to live, and began to suffer assaults. She says they hit her for any reason, e.g. "for breaking a glass." The trafficking situation lasted for many years, though she does not say how many, and was run by a family.

Her place of work was being remodelled and a long way from any villages. Although they provided food and accommodation, they never paid her. As well as housework she worked in the fields, particularly harvesting grapes, picking fruit and pruning.

The perpetrators were intermediaries who dealt with farm owners who needed labour in the fields. Regarding other workers she got to know while working on the farm, Maria says she never communicated much with the Spaniards, because she had not mastered the language; and never discussed a strategy of escape or getting free of the situation.

When a police car passed by the house where she was, the people who were there in a situation similar to hers were instructed to get indoors, so as to remain hidden. The perpetrators told them: "don't show yourselves"; Maria wondered: "I did nothing wrong, why am I hiding?" One day a complaint was made, the criminal police intervened and rescued her. At first she was suspicious, she was afraid they might take her somewhere else and exploit her again. However, she was brought to Portugal, having been offered her accommodation in a shelter. With regard to her testimony to the Police about the crime she suffered, she did so willingly and spontaneously, believing it was important to settle her case; to repay for having been taken away from the trafficking situation. She believed it would be important for other people.

She was also afraid that the aggressors might find where she was and harm her, even though they were arrested at the time of the police action. She does not know if they are still being imprisoned. The legal proceedings in Maria's case are still ongoing, though she does not know anything about the procedural process.

TABLE VII.2 – VICTIM B

Victim B

Afonso, aged 64, Angolan.

Afonso was born in Angola in 1950. He grew up on a farm and worked on it from an early age. In 1975 he came to Portugal. He started doing farm work until the owner's sister and her husband took Afonso to a property they owned in Évora. Afonso, who had hitherto received a salary, saw his request to be paid constantly delayed, first because the farm was not productive, afterwards because his status was not legal. Afonso worked for this family for 26 years, without receiving a single pay cheque. He was only given food and he slept in a small, unhygienic store room. When he was 63 and having no support network or safeguard for retirement, Afonso decided to tell a friend who worked in a warehouse what was happening. This friend advised him to carry on as if nothing had happened and meanwhile informed the police. The next day the GNR went to the farm, and the son of the woman who hired him shut him up in the garden. Faced with a lame excuse, the officers left, but on one of their patrols they found Afonso and took him to the police station. When confronted with the question: "What took you so long to report the situation," he replied: "And what could I do?"

From the police station he was sent temporarily to the Red Cross and then to a shelter for male victims of human trafficking.

At the time of the interview he had been there for 2 months. The investigation of the case is ongoing, but Afonso has no idea as to the progress, placing all his trust in the workers looking after him in the shelter.

He was learning to read in the shelter. He has late stage lung cancer and is now being seen at a specialist cancer unit.

TABLE VII.3 – VICTIM C

Victim C

João, aged 48, Romanian.

João was working in telecommunications sector in Romania. The poor conditions led him to accept a job offer in Portugal. The offer, made by a friend of a friend, promised proper work and housing conditions. Like many others, this friend had seen an advertisement on the internet to pick olives in Alentejo. From there the word spread. Two buses came from Romania. João came with 54 other people. It took 3 days and 3 nights. When they arrived in Portugal, they were asked for their documents to draw up the employment contracts then taken to a farm in Alentejo. 18 people were accommodated in a house with only one bathroom, sleeping on the floor - 3 women with husbands and the other men. The work was the same for men and women, it was the olive harvest. They never contacted the boss, only the touts who were Roma Romanians. It was the touts who gave them 10 euros per day for food, when they had been promised 30 euros / day. Of these 10 euros / day had to pay the rent (120 euros / month), water and electricity. In the first three months he could not afford the cost of the documents that he was asked to pay. He very soon realized that they had been duped and the group decided to run away, with nowhere to go. They were convinced that they could not go to the police because the boss had money and power and in a small place like the one where they were, everyone knew everyone else. So they called the Romanian embassy. They said that they would contact the police and they could go there, and that nothing bad would happen to them. They were received by the Red Cross and Cáritas (a charitable organisation run by the Catholic Church) gave them meals. All the people in the group, around 25 to 30, returned to Romania, except João. João said he did not have anything waiting in Romania and preferred to continue looking for work in Portugal. Then they took him to a shelter for male victims of human trafficking. He had been in the shelter for two and a half months at the time of the interview. The case is going through the court, but João does not have any information about the case. He is learning Portuguese. His life project is to find a job in Portugal.

TABLE VII.4. – VICTIM D

Victim D

Isabel, aged 34, Brazilian.

Isabel is 34, a Brazilian, and her story is hard to summarise. The extreme poverty in which she grew up was certainly crucial to the catalogue of violence and abandonment that she has. At 26, Isabel is on her own with 2 small daughters and no job. She met a woman who took women from Brazil to Portugal and told her that she wanted to go to Portugal, too, because she saw her friends going and "doing well in life." She discussed the plan with her former partner and asked him to take care of their daughter; the older daughter stayed with an aunt. She flew to Portugal in 2005.

When she arrived she realised that she had been sold. The idea that she would work in a bar was a sham and she was kept for three years in a mansion in Braga. While there, for the whole time, she was forced into prostitution under the threat of violence. One night there was a raid; Isabel was illegal and was arrested. The next day she was in Court and was told to present herself to SEF every fortnight. She did not comply. She asked for help from a customer who had approached during her stay at the mansion in Braga to go to Brazil to find her older daughter who was giving a lot of problems. She managed to arrange the trip and flew back to Brazil, pregnant by that man who had become her partner. On her return, her partner reminded her that she was subject to deportation proceedings, but Isabel insisted on entering through the airport.

Isabel came back to Portugal with her older daughter. When she got to Lisbon she was stopped and questioned for more than 4 hours, and explained about the first time she had entered Portugal and what had happened. The inspector ended up by helping them and accompanied them to her partner. The two were living with the latter, when a third daughter was born. There was a host of incidents of domestic violence, suicide attempts and institutional pressure to remove the daughters. At the time of

interview, Isabel had lost custody of all her daughters, had stitches in her wrists and was working for a cleaning firm, without an employment contract.

3. THE THREE PS IN ANTI-TRAFFICKING ACTION: PREVENTION, PROTECTION AND PUNISHMENT

In 2007, as mentioned, Portugal's Criminal Code and Code of Criminal Procedure have undergone significant changes. These changes were prompted largely by EU and international obligations. Under this project, we should stress that, thanks to the Palermo Protocol, the characterisation of a crime of Trafficking in Persons has entailed three major gains: the protection of victims; the expansion of the protected legal asset⁶¹⁰; and by reviewing the code of criminal procedure, the strengthening the instruments and mechanisms of criminal investigation, to classify human trafficking as highly organised crime. In the view of several interviewees, this was a significant improvement in the law:

legislatively speaking, things have improved a lot, Trafficking in persons was a bit restricted. With Law 160 of 2013 we've got some much more interesting working tools, in particular it amends Law 5 of January 11 2002, where we also managed to list pimping and trafficking in persons and at the same time we managed to get authorisation for surveillance and image gathering, recording and all that, apart from undercover work. It's just that this is such a thing, how long does an investigation like this take? Do people have time for it? This is the conundrum we're faced with. This is a human concern, it has nothing to do with results. To do an investigation well, it would take a few months, a victim has these months? We have the right to sacrifice X more time in order to arrest 4 or 5 more people? It's complicated, isn't it? From the human point of view it's complicated. From the operational point of view it's easy. We remove the victims, but the evil is still there. We clean up the problem of them, but we are arranging problems for others. (I 2)

However, as we can see from the above police force transcript, the same interviewee, and several others, points out a discrepancy between the good intention of the legislator and the law in action, which is influenced by several things, including the resources available and the organisation of a criminal investigation. This tension

⁶¹⁰ Note that pimping of women, which had been the only crime envisaged and which was enshrined in the chapter on crimes against sexual self-determination, is now in the chapter on crimes against freedom and encompasses crimes of trafficking for sexual exploitation, for labour exploitation and a number of others.

between a repressive ethic/rationale *versus* a protective ethic/rationale is repeatedly mentioned by those entrusted with the criminal investigation of the matter. Indeed, the system dangles between the immediate rescue of victims and the planning of the intervention with a view to gathering evidence that can be validated in court. Regarding the law, the general opinion is positive but time is needed to assess the impact and scope of the changes, as well as the efficiency of the mechanisms provided. There are, however, aspects that have been alluded to in most interviews, often spontaneously. These tend to be obstacles to be removed or aspects to be improved, largely by enforcing the law and not by amending it. This need is linked to the low number of convictions (and identifications, so to be consistent with the statistics cited earlier in this chapter) for THB in Portugal.

3.1. PREVENTING THE PHENOMENON

In the area of prevention, actions for dissemination were highlighted in the media through research reports and government and civil society campaigns to alert the public to this situation, the formation of frontline police forces that are in the first line of detecting the phenomenon and inspecting the trade. However, as the police forces see it, the profile of those who are considered potential victims of trafficking is particularly hard in terms of design, instruments and the effectiveness of awareness campaigns:

However much has been done regarding prevention, given the profile of the victim, I think the role of prevention is almost impossible. Beyond the information channels, I don't see what else could be done. [...] On this issue of labour exploitation, perhaps the campaigns do not have much effect, given the nature of the victims, the victims' profiles. Maybe there should be an attempt, under labour exploitation, at small awareness campaigns through parish councils. Why not make them aware of this kind of matter? Sensitize the people around that chairman in areas where recruitment happens, and these recruitments happen in rural areas, in housing estates, maybe they are the first people to take notice and prevent them from being recruited or perhaps to report the case. Small awareness campaigns have a different effect. (I 8)

The cases of the victims interviewed match the concern shown by this statement by the police forces. Despite the importance of awareness campaigns, both from the point of view of social warning about the phenomenon, and from the angle of information and awareness generated in potential victims, the need to get a job means that, in practice, the burden of the structure social outweighs any individual risks.

This particular vulnerability, while it is important that it is addressed in prevention, becomes especially delicate and demanding when the phenomenon occurs. This specific condition dialogues first with protection mechanisms and policies, particularly because it requires: 1) ensuring basic survival conditions; 2) promoting measures to make the victim less vulnerable in the future (thus demonstrating a preventive component of revictimisation); 3) protecting the victim enough so they can cooperate with the judicial process and assist the punishment system. The idea of empowering the victim has particularly involved their return to the country of origin, thus exporting *problem* over the border. In the period of exploitation, as we have already mentioned, it is not always easy to strike a balance between protection and punishment, posing complex dilemmas for the police forces:

We must take into consideration that there is a balance between a successful investigation and the state in which the victim may or may not be, and sometimes it ignores future results or assumes them as a loss, that is, if the situation is ended there and the victims are rescued we might not get any evidence. If we were to sit down and look at the farm, at the workplace, watching people work fifteen or more hours a day and going hungry for a week that would be better for the investigation than going there and rescuing them, but... (I 14)

Moreover, the preventive role of punishment in order to eliminate the sense of impunity and to deter the crime (general and specific prevention), is a strong argument, highlighted by respondents:

The most effective is punishment. Punishment works great as a preventive measure. That is, when they see that ... I'll give you a very good example, at the beginning of immigration, at least here, we had a lot of cases of extortion and all it took was for a network to have an exemplary sentence, with imprisonment terms of 19 years, and it finished. I ended. Or fell drastically. And we have countries where extortion still goes on, because the penalties are not exemplary. Here they were exemplary and it was

enough, because it's known in the criminal community: "you know, mate, there they are terrible." (I 10)

Another question is about how prevention and punishment are designed and who is responsible for it. Some police forces interviewees associate the duty of prevention to countries of origin, as indicated below:

I think initially it's prevention. Communication and the widespread knowledge held by most people can make a difference to the victims themselves. Especially in the countries of origin of the victims, raising awareness of and informing about this phenomenon would be essential. Prevention is more in countries of origin, without any doubt. Punishment is in the destination countries. One does not preclude the other. [...] There it is, we function as punishment, but as protection at the same time. (I 11)

Two ideas in this regard. First, it is important to reflect on the meaning and scope of the concept of prevention. Strictly speaking, if the destination countries provide conditions and opportunities for crime to occur, they should also devise preventive policies to get rid of it. As we saw in the analysis of the National Plans against trafficking, this requires diagnosis and social, political and economic structural intervention. Second, in the particular case of Portugal, we must pay attention to the fact that Portugal is both a country of origin (particularly labour trafficking) and of destination (sexual and labour trafficking), so the combination of prevention and punishment is of particular importance.

According to the respondents, the most effective measures in preventing THB are, in order of importance: public policies for prevention (25.2%); NGOs work on the ground (23.9%); public awareness campaigns aimed at potential victims (19.1%); media coverage (19%). Campaigns designed to prevent THB often clash with the systemic nature of the problems that trigger the phenomenon and message conveyed often becomes incomprehensible and decontextualised. The following example presented by a government organization, is anecdotal but alarming:

The goal of the campaign was to alert people, i.e., if they offer you a job with a big salary, be careful. But, people only read there one part of the poster. And then they phone us to find out where these offers were, what

they had to do, how to apply, where to send the CVs. And people were very angry when we told them "no, no, no, this is completely the opposite." And we explained what that poster meant. People did not find it very funny. When we explained to them, they said "but are you kidding me or what?" I mean, given the national situation, people are looking for jobs. I do not think they looked at the picture which was of a shrunken victim. We also have to do this reading "Employment, was the key word." Incidentally this phase is to facilitate, I would say theoretically, that people in despair, and now we are feeling this from the Portuguese abroad, the amount of people who merely have expectations and are getting entrapped in networks. There are always people who take advantage of this kind of situation. (I 63)

In the context of labour exploitation, understanding and intervening in the economic policy of THB is a key aspect which to a great extent tests the political will and ability of the legislator, and indirectly the anti-hegemonic potential of the law (Santos, 2003). The police forces stress the idea that a truly preventive measure against illegal and violent recruitment and exploitation for labour would require criminal liability of the owners of large farms, that is, the top of the chain that takes advantage of the human rights violation in question.

In line with the recommendations issued by GRETA (2013b) on the THB phenomenon in Portugal, some NGOs interviewed have opinion that public policy and the institutional framework have focused too much on fighting THB for sexual exploitation, to the detriment of other aspects of trafficking and other victim profiles.

Indeed, in recent years, with a possible preventive effect, the media coverage of THB has focused particularly on labour trafficking, particularly the Portuguese trafficked abroad (Spain, especially). The proliferation of news items and reports on the subject is notable, anticipating and sometimes triggering the criminal investigations. Recognizing the impact and effectiveness of the media in alerting society and preventing the phenomenon, increasing efforts have been made by the police forces in strengthening the channels of communication with the media.

There is however one aspect that deserves attention. In Chapter I, we mentioned the idea of *moral panic* which, despite awakening people to the incidence and severity of THB, can nourish or be placed at the service of conservative, xenophobic, racist and sexist political agendas. Strictly speaking, some international

critical literature has featured in the argument that anti-trafficking policies are (more or less deliberate) a device to legitimise immigration controls and prevent (and punish) cultural differences (cf. Soirila, 2011). Some police forces, aware of the media risks involved (stereotyping, prejudice, etc.), mention drafting their communication policy to take these aspects into account:

At the SEF, contacts with the media have always been a major concern and there was specific training for this. All the notes for the media I previously submit it to my superiors, and when it comes to nationalities everything is cleaned up. That situation is definitely cleaned up, because in fact the orders, or the decisions we get from the hierarchy is to do not identify the nationalities. If you check the last 5 years, from SEF there are no references to nationalities, there are no references to groups. You don't find a news report in recent times that states they were Roma people. We only found it in *Correio da Manhã*, in many cases. (I 15, SEF)

The case of Brazilian women, as discussed in this chapter and reported in some national literature (cf. Pais, 2011), is the most obvious example of this perversity.

3.2. VICTIM PROTECTION

According to the OTSH (2013), in 2013, 45 confirmed victims received support in Portugal. In the two identifications with the largest number of victims, the support involved the coordinated action of government bodies (GNR, SEF, PJ and Social Insurance Institute) and non-government bodies (APF/Alentejo Multidisciplinary Team, Portuguese Red Cross, *Cáritas de Beja* and Shelter and Protection Centre for male victims of trafficking⁶¹¹ (CAP) da Saúde em Português who operated in accordance with their specific missions and competences regarding reception, monitoring and psychological counselling and, in some cases, assistance in returning to their country of origin. Thirty-four of the victims were received/assisted by various organisations; nine received support from the Institute of Child Support, including education and followed up by the health service; in other cases the victims did not receive any support/assistance. According to data released by the IOM in 2013 there were no

⁶¹¹ In Portuguese: Centro de Acolhimento e Proteção para Vítimas de Tráfico de Seres Humanos (CAP).

cases in Portugal of return to their country of origin under the Support Programme for the Voluntary Return of Third Country Nationals. Similarly, IOM's international databases have no cases of potential victims of THB that have been flagged as such upon repatriation. In 2013, a residence permit was granted to a victim of trafficking, under Law 29/2012 of 9 August, according to which a residence permit is granted to a foreign citizen who is or has been a victim of criminal offences related human trafficking or aiding illegal immigration, even if they have entered the country illegally or do not meet the conditions for obtaining a residence permit.

The contacts of the THB victims interviewed were provided precisely within protection measures that were being or had been applied to them. As we can see in the tables above, three of the four victims were referred by a police force after the networks had been dismantled and the victims rescued. Two of these were sent to a shelter with specific intervention on THB, the third victim was sent to a shelter intervening in multiple problematic. Victim A had benefited from assisted return after being rescued from a trafficking situation in Spain. Victims B and C refused this measure: victim B had been living in Portugal for 39 years, although still illegally; and victim C said he did not have anything waiting for him in Romania. They did not seem to have any alternative other than cooperating with the judicial process. Victim D, the least typical, though this might be the rule, never received any aid related to victimisation. Their accounts are an empirical point of reference to better understand the role of the justice system in the protection of victims, in particular the police forces.

The measures the police officers considered the most effective are as follows, in order of importance: the safe (guaranteed) repatriation of victims; protection of witnesses; the safety of victims during trials; shelters for victims. Employment and social benefits for victims are the measures least mentioned as the most effective. This ranking of measures allows us to understand the centrality assigned by the police forces to the punishment response to the phenomenon (see the importance given to witness protection as a crucial element of getting evidence), with no particular emphasis on the economic and social decisions that may underlie the vulnerability

experienced by the victims. Protection is thus considered, with their potential punishment in mind.

As we have mentioned, the protection of victims depends as much on their relevance and cooperation in the judicial process, apart from exceptional cases provided for by law, as on the credibility the justice system lends them by recognising them as victims of THB. Some cases reported in the press suggest that the form this assessment can take is quite complex and is subject to ideological, symbolic and moral influences. For example, a recent article⁶¹² reported the breaking up of a gang which, according to the item, was involved in exploiting prostitution and aiding illegal immigration. Despite all the details being typical of human trafficking⁶¹³, the possibility of this crime is not mentioned. According to the report, "one citizen was arrested and placed in a detention facility, by court order, pending a coercive process to leave the country, while the others received an order to within 20 days leave the country". This indicates three fundamental points: first, possible distortions in the interpretation that it is (not) a crime of trafficking; second, the systemic deficiencies in the protection of crime victims, particularly foreign victims; third, the extreme case that unlawful conduct by them has been detected, in a clear violation of the principle of non-punishment of victims of trafficking if they are involved in criminal activities arising from the exploitation to which they were subjected: we cannot avoid to see this expulsion as a sort of punishment.

Another issue related to the measures of protection guaranteed by the state and the justice system, taken as a whole, regards the protection of witnesses. The police forces respondents acknowledge that, despite the legal provisions, these measures are very rarely triggered and often only to a limited extent, which may not only mean that the seriousness of the situation is disregarded or underestimated but it can negatively influence the criminal investigation itself.

⁶¹² Cf. "SEF breaks up a gang exploiting prostitution in Viseu and Lamego" (*SEF desmantela grupo de exploração da prostituição em Viseu e Lamego*), *Jornal de Notícias*, 24.07.2014.

⁶¹³ We are based solely on the newspaper report since we have no access to the legal case.

One of the measures provided is hosting in a shelter. In Portugal, there are two shelters for victims of THB run by two NGOs: one is for female victims and the other for men. The shelter for men can accommodate six (plus one emergency bed) and the one for women, seven (plus children). This seems to fall short of what is needed. However, when we contacted the shelters, neither was full, suggesting that this may be an external perception and the protection of victims is less concerned with sheltering them and more with their repatriation, as we shall see. The following statement by an NGO tells us about the process of receiving victims of THB:

Regarding the Shelter, from the moment that a victim is identified the idea is that the team can work together, whether is the NGO flagging it, or a public body, of the police forces itself, we all work together to identify potential situations. The victim may be flagged and we come to the conclusion that it is not a human trafficking situation, that it's a situation of domestic violence or labour exploitation or pure sexual exploitation and needs support, but not the specific support of the shelter and therefore if it isn't, we try referral the victim to support organisations that make more sense. In the shelter, we only take victims of human trafficking. And so, as soon as the person is identified and we see that they are a victim, there are certain indicators that assume a situation of victimisation through trafficking in human beings, we receive the victim, but not before we talk to her, explain the rules of the house, the implications of being sheltered, which care she must have, what support she is entitled to, and the victim agrees to be sheltered. We don't take anyone unless they know exactly what is going to happen. Because sometimes victims reach the shelter and we feel that this isn't really what they want, it's not really what they need. So we try to do our best for each person, so that each individual can decide for him or herself. (I 44)

In terms of the conditions and features of such cases, the same interviewee gave us the description transcribed below. But it should be noted that although only a few victims are sheltered, we urgently need to understand how their institutionalisation operates, what constraints are experienced and how it contributes or fails to contribute to the empowerment of the victims.

In the shelter, we manage the issues of medical support, physical subsistence, food, and hygiene, everything that is presupposed when hosting a victim. The issue of protection, hence the secrecy and confidentiality regarding the location of the facility, the team, etc. The issue of psychological support in a crisis when needed, it can be at night, any time. Social support, legal support, and after all this stabilisation helping to create her life project with her. Here we have a reflection period of 30-60

days for the person to decide whether or not to cooperate with the PCB, in what ways, if they want to return to their country of origin, whether it is safe or not to do so, how we can do it, if there is a better solution, if we can wait or not, and then the needs that this person has, the interests, the potential, and adapt this to our country, too. (I 44)

It is important to note that NGOs are not all alike, they have distinctive association and ideological identities which will, to a great extent, affect the mode of intervention with victims or cooperation with the justice system. We can divide NGOs into three basic types: religious ones that support people, particularly women, in various situations of vulnerability and that end up dealing with victims of trafficking – albeit not directly or in a targeted manner; international NGOs that are established in Portugal that follow international guidelines; NGOs of national origin, which to some extent tailor their activity to the demands of public policy to combat trafficking and adjust their aptitudes to intervene in this area. Let us see, directly, what a religious organisation has to say about victims of trafficking:

When they get to the institution, they're completely frustrated, "I trusted that person, who's my boyfriend", or "I trusted my family", "I thought that...". That is deep in their personality, which is why they afterwards have those depressions, and make up themselves in such an ostensive way, but it's really to disguise depression. They think: "after all I've been fooled by the people I trusted most, family, lovers, friends". Then, thoughts about the actual recruiters, "I thought I was going to earn a lot and by the end of the day I didn't", "I thought it would be one thing and it was another". I see in them the frustration that penetrates to the marrow. They live in a kind of survival environment. In psychotherapeutic terms, they have to overcome this black spot in the past, and set out for the future. We have a motto that says "freedom is possible," but it has to be worked out through the psychologist, the social worker, at legal level. And we, the Sisters, are not expected to do such technical work, we are more on the lines of kindness because we are into couch therapy, and spend night after night talking. First, there is enormous disbelief, and it degenerates into a deep disbelief. But then it is said "those people don't want to leave", this is not the case, some of them have so internalised these issues, they say "I was born in the shit, and I'm still in the shit." Until a person internalises that they have been the victim of a crime, it's complicated. For instance, Brazilians often say "it's my fate to be a hooker", it's very difficult to deconstruct these beliefs, "no, you were born to be a happy, a fulfilled woman", and they say "no, I was abused by my grandfather". Then we can include training for work, you'll take a course, "but what for? I was born to be a hooker". Then we make plans, and we suggest activities to the victims, but the problem is way behind. It takes one, two, three years work to give the tools to enable the

victim to rise up, and this is a time consuming job. And then, the issue of gender, the male figure for them whether it is grandfather, father, boyfriend, friends, relatives, pimp, trafficker, is utterly ruined, and they have to work hard on this aspect. "I'm a bitch because they all abused me". Always the question of the masculine, and this aspect must be worked on carefully. [...] The ones from the East Europe know they have skills, and they have plenty, they have more awareness and it hurts more. They know what it is to be a person, what dignity is, and so when they have an opportunity they can also turn around more easily. As philosophers have said "from awareness, one can easily move to freedom", and responsibility, and everything else. Doing a technical and serious job, it's also possible. There's an opening to doing other things. In fact, some women from the East who have been here are doing very well in life today, well integrated and they are fine women. For me there are three basic questions: frustration, gender and origin of the victim. As I said, our experience has always been positive with the ones from the East. (I 58)

Because they do not have the hostile, symbolic repressive burden associated with law enforcement and judicial institutions (often indicated by the police forces as stemming from their experience in their home countries), the NGOs are a major gateway for victims to enter the justice system:

Maybe this greater concern in this type of offence has to do with some commitment by the NGOs. Because this is a crime that is often not visible, and for the average citizen it literally passes them by. We see it on a daily basis, if there's someone begging on the street, people looks aside, if a child is begging next to a traffic light with a bucket of water and dirtying the windscreen, no-one takes any notice either, therefore, we've got an array of conditions, whether social or institutional that things are not easy to detect. I think NGOs are actually... Maybe a NGO can get much more information than the police, the police uniform is very heavy. Even in terms of institutions, people think: "should I give this information, or shouldn't I? (I 2)

NGOs are recognised for the merit and importance of the work they do in this area, however, there are some criticisms which should be mentioned: according to some respondents, notably the police forces, some NGOs are guided by an instrumental attitude to public funding, responding to the social market niches that ensure their survival, their promotion or their success:

I'm very critical here. I'll be very objective. I see that many NGOs exist to claw money from European subsidies, with some excuses, and although they achieve certain goals, from the knowledge I have about many NGOs, some of the money is poorly spent and to justify certain things that do not have anything to do with the main purpose of its creation. It is taking

advantage that it says there are problems of human trafficking and getting subsidies here and there, because it's fashionable. It's my opinion. And then the Romanians are here for 4 days and it's "good heavens, we don't have any cash". (I 10)

An example of this is the multiplication of areas of intervention (it is no accident they benefit from public support) by organisations originally created for and targeting other purposes, without an epistemic link to support this process. This decoupling between the *critical mass* and areas of activity is particularly evident in the proposal of an NGO interviewee, who indicated, in the context of combating THB, the need to offer intervention programmes for perpetrators. This may show two things: either a strangely therapeutic conception of justice, or complete ignorance of the phenomenon and the recycling of the repertoire – also problematic and debatable – of domestic violence for use in THB:

After social support, which I think is still very scanty, still lacking, we still have a long way ahead. Not only in support, but in prevention, too. In identification, we still have a long way to go. And after what is not nearly done yet, at least I am not aware that any work is being done at that level, is the therapy with offenders by NGOs. (I 44)

The lack of legal protection of victims is a point emphasised by the police forces. In their view, not having their own lawyer during the legal proceedings is a very significant threat to establishing their rights and guarantees, particularly in a context where the risk of revictimisation (caused by contact with the system) is too high. This gap has a number of implications, as advanced by the following statement:

The law provides that victims should have access to protection of all types and in practice we see how many victims received compensation at the end of a case. It is settled in the law that victims have legal assistance, etc., and you go and ask how many of them have had the right to be advised by a lawyer. How many actually even knew about that right? And knowing about the right, where do they go and what is the organisation, who in the Bar Association is ready or interested in ensuring this access to justice and ensuring a lawyer? Nobody. The law was created, a rule in the law on foreigners, saying that victims have access to healthcare, etc., I wonder if in practice such victims go to a hospital for help, who will pay the bill? Sure it'll be her who has to pay because she does not have a card on her chest saying she is the victim of THB and that according to article such-and-such she is entitled of... And even if she had that card, I'm sure that the hospital

would be completely in doubt, because in fact there is a big difference, more in this part, in that rights are granted and a number of things guaranteed, and then in practice how does this proceed? (I 1)

The importance of legal protection of victims is thus all the more important the clearer it becomes that many of the measures designed to protect victims of THB are ultimately not claimed by them, because, in addition they do not know about it, there is a lack of social and institutional capital to enable them to do so. It is particularly in this context that the police forces can play a crucial role.

Despite a tendency to refer to the protection of victims to NGOs or state agencies geared to this purpose, the protection (empathy, care) provided to victims by the police forces is also underlined by the NGOs themselves:

The criminal police in my view, apart from the fight, which is the first idea that we have, fighting crime, do much more than that. They're there at all times. For prevention, flagging, identifying, because it's often them who spot the indicators, who see that there's a situation of victimisation, and what the victim needs. If that victim needs medical support, if that victim needs other assistance, if she's ready or not to give evidence, they're the one who have to do this first diagnosis, because in fact the NGOs are not there. And when we talk here about the police forces, I'm also partly including the labour inspectors, the maritime police and ASAE, too. These are people that are on the ground, doing inspections, and they see situations that are fundamental to unmask and detect these situations. (I 44)

As noted above, the repatriation of victims is not only the measure considered most effective, it is also the mechanism that is most used in the case of victims of THB. According to one NGO interviewee,

The law says that the victim can be assisted to return to their country of origin, accompanied at all levels, social protection, etc., but then which agencies are accountable for these measures? Are the bodies actually held accountable for them in practice? No one is responsible for it. [...] What I think is that if this work were better coordinated, it would be possible for embassies of the different countries, letting the countries act in a similar way, in terms of support, more comprehensive, so that the NGOs in each country would know what they can count on, and what victims can count on, what support the victims can make use of. Because then it's up to each embassy, consulate, to interpret the law and its structure, its own dynamic in the way that they see it. And it is difficult; we almost depend on this kind of response. (I 44)

This return of victims to their country of origin is a solution that often compels the victim's will to coincide with the will of the state, releasing it from a *problem*. Assisted return, while it is a protective measure for victims, it also ends by relieving the state of its social obligations towards them, which converges with the assumptions and reservations regarding the risks associated with the immigrant population.

This will depend on the cases, at any rate, the safety we can give is safety up to delivery to their respective countries, after that it's a problem of the local authorities. The most we can do is put a person on the plane for their destination, and from there it is a problem of the local authorities. (I 1)

A strong indication that assisted return may be more an anti-immigration measure rather than a mechanism to protect victims is the weakness of the safety guarantees given to victims when they are repatriated.

3.3. PUNISHMENT OF THE CRIME: FROM THE ENTRY TO THE EXIT OF THE LEGAL SYSTEM

3.3.1. THE SIGNALIZATION/IDENTIFICATION

Often, situations do not arise as human trafficking. In terms of sexual exploitation, cases that are not simply ignored are framed as pimping or aiding illegal immigration. This, indeed, is the case of victim D, as can be seen in Table VII.4. As the situation is not identified as THB, victim D not only has not been identified as a victim of trafficking but because of her illegal status she was arrested and was forced to present herself at the SEF every fortnight. This example also demonstrates how the non-detection of THB fosters the ambiguity between being a beneficiary of protection and a target for punishment. In terms of labour exploitation, the perception of illegalities arises even later and these are perhaps the most ignored. In this aspect, one of the first reported cases referred to the successive occurrence of men reported as missing persons with the legal case being dismissed. Several situations were reported, with rich information, but for reasons of space management they are not included in this report. Even so, we should mention the first investigations and the total lack of awareness that situations of slavery were occurring. If the abstract discourses on the

phenomenon of THB do not result in ethnic identifications, when they start to report specific cases that they have identified or investigated, the prevalence of Roma people, Portuguese and Romanian, is clear.

In terms of criminal investigation, the first question concerns the fact that the shared view about THB does not always coincide with practices that meet its requirements. One example is the case of the victim B, whose situation involves components of labour exploitation and domestic servitude. In the absence of an organised THB network, its history, as we can see in Table VII.2, fits into the extension of colonialism to the democratic period: this victim, an Angolan, lived with the same family for 26 years, working without payment and under a control system that ranged from threats to paternalism. The degree of concealment of this situation and its ambiguity challenge the conventional terms by which THB is known to society and the police forces.

Another reported difficulty is therefore that of identifying THB situations. The police forces that often have the first contact with these situations do not have jurisdiction to undertake a criminal investigation of THB. At first, many of the situations are not even being indicted as trafficking and classified under related crimes. The fact that these police forces do not have jurisdiction or specific training in this area, combined with the ambiguity of the phenomenon, means that the conditions for obtaining the evidence that is needed for a trial are often not secured.

I think Portugal has specialised units to combat trafficking, especially in the criminal police (PJ), the SEF, but what happens is that there are people of high rank who've been trained, know all about the trafficking, everything you need to know to support and for referral, but the front-line officers do not have this training knowledge. (I 37)

In the opinion of some of the officers interviewed, the manner in which situations are often identified may mask the true extent of the offence:

In this field it does. Other fields maybe not so easily, but in this field it is something that is objective. Ok, we have A who suffered Y and right now needs to be placed under protection. Who has the duty to decide, decide, and the person is delivered to a body which actually only handles witness

protection; it assesses the degree of risk, if you have to move a witness from where they are, then you have a bunch of situations that you can use, instruments that can be used, but this will not interfere with the investigation itself. Investigation, very often, where can it interfere? For example begging, classification underlying the crime itself is not within our jurisdiction, of course if there is a criminal network behind it, then it is. But maybe it started in another police force that made the inquiries that it had to make, did the investigations it had to do and then it will depend on the criminal inquiry, the public prosecutor (MP) decides accordingly: "right, this has reached the point where it has to go there". Sometimes this separation is not as linear as this. But the problem is always the same, things rarely appear just as human trafficking, they appear as someone who was kidnapped, abducted, came here to work in a restaurant and was then put into prostitution, came here for the grape harvest and then ends up by not being paid and being wretchedly treated, like slavery... only later is it seen to be THB. It's like the tip of the iceberg, if you don't dig away at it, it dies prematurely. (I 2)

Many of the identifications are posted by agencies with enforcement powers, such as the Authority for Working Conditions (ACT), the Economic and Food Safety Authority (ASAE) and the Tax Authority (AT), which are not geared to this type of crime. Of these, the ACT was mentioned as the most proactive in terms of flagging, especially in the Alentejo area:

The ACT is aware of this, because in the case of labour exploitation they are the first to detect these situations. Because they often get there and there are N people who have no documents, there are always one or two officials who say that it's the boss and this and that and I don't know what, but there is immediate action or ... [...] If there are no documents SEF is automatically contacted. [...] (I 2)

From the courts' point of view, the police forces also exhibit a significant lack of proactivity in their criminal investigation duties, although their coordination is the responsibility of the Public Prosecutor's office. As explained by a judge interviewed:

It seems to me that everything works very much based on the complaint, there is no proactivity in the investigations; that is a problem. I've been in the criminal police [...] I did get a bit impressed with how, these people are generally very well trained and well prepared so I was very concerned about how things are done. They wait for the news, they wait for the complaint, that's how it works. I don't know if that's how it works in other countries. But if we want to tackle this phenomenon we have to go much further than that. (FG 4)

3.3.2. CRIMINAL INVESTIGATION

3.3.2.1. COOPERATION IN THE SCOPE OF THB

After the signalization and identification of THB situations, a second difficulty arises in the criminal investigation of THB: the criminal investigation. After taking into account some of the legal instruments that the police forces have at their disposal, we must now understand how the police forces interact in order to investigate suspicious situations. First, we should look at cooperation between national police forces. The coordinated action between different police forces has been stimulated by various national and international guidelines. According to the respondents, joint actions are a common and frequent practice among national police forces:

In terms of relationship and coordination, it is not coordination, the relationship we have with others, and especially with the Tax Authority, the Working Conditions Authority, the more times we work together the better we cooperate. And here is the question: for some time there was more cooperation, I think we are now at a stage where there has been less, because the labour market conditions changed, engineering, construction, etc., but there was a time a few years ago where joint actions were constantly being undertaken. And the more joint actions we had, often even at night, checking on nightclubs and brothels with the AT and ACT we checked on the owners of establishments and the employees, the goal was that the place would be fined and a series of actions were carried out at various levels. It brought us closer to each other, later the briefing would be in more formal meetings where we discussed what it was and was not and we got to these things, each looking for the specific situation, nothing would escape. (I 15)

Although the PJ is the most critical police force regarding cooperation between police forces, even recognising the streamlining of this cooperation, the main criticism of police cooperation comes from the courts. In the own words of a public prosecutor and a judge:

It is not easy; these crimes are very difficult to investigate. The PJ and SEF have overlapping functions. Something I also think is not justified, because sometimes they are investigating the same thing. I think. It's like the PJ and Fiscal Brigade (*Brigada Fiscal*). And it already happened they to be scouting each other. (FG 2)

This is very simple. Since 2000, the criminal police lost competences of investigation of petty crime, which was handled by the frontline police, the GNR and PSP. The PJ invented an Integrated System of Criminal Information, an information system that was supposed to work seamlessly with all the police forces. But it didn't! The PSP got their own information system. So there are some few wars between them. The informants it is who talk about serious crime. This is where they will get the source. If the police who investigate petty crime do not investigate major crime, who wants to know about the small informant who talks about the others! Don't talk, do not communicate! And what happens? We see situations where there is a kidnapping or a robbery, for example, which is the sole competence of the criminal police, and the first to arrive there for sure are the PSP, as a frontline police. They put up a security tape, the safety zone, they call their negotiators there and hand the defendants to the PJ once they've been arrested! And the PJ team is standing there with their arms folded, saying: "Well, they do not respect us..." in other words, this is an example of how things work between policemen. (FG 4).

As noted by public prosecutor (FG 2), one of the difficulties in criminal investigation stems from the lack of a shared police forces database. This is an old discussion and all the laws that converge in it do not find a translation into practical action. In turn, the judge (FG 4) mentions the non-compliance with the Law of Criminal Organisation⁶¹⁴ (LOIC) and the ambiguity, conscious and unconscious, that infuses the boundaries of jurisdiction in criminal investigation. Indeed, all police forces stress the importance of creating and implementing a single database for all police forces. However, it is yet to be achieved.

The allocation of investigation by the public prosecution to the SEF and PJ seems to lock some institutional discomforts, but the distress is focused mainly on the interference of frontline polices in crimes that are not their responsibility. The distribution of competences in criminal investigation is described in LOIC, although it has attracted quite a few criticisms.

In this type of crime cooperation between national police forces and international structures and/or police forces of other countries is also fundamental. The Schengen area and the abolition of borders as a compensatory measure has

⁶¹⁴ In Portuguese: Lei de Organização da Investigação Criminal.

redefined the geopolitics of old Europe, compelling changes in the preventive, protective and punitive machinery that are slow in getting established.

I believe that there should be standardisation, harmonisation of procedures, just as there are in medical procedures, harmonisation of procedures so that countries forsake some of that fear of losing their sovereignty, particularly in the area of crime and the law of criminal procedure, and they might accomplish the European Arrest Warrant which is the perfect example where international cooperation works! Why isn't it working in other areas? We carried on for more than five years or six or seven years, even more, discussing the same issues at international level. [...] The borders are open, migratory flows appear out there, completely uncoordinated, a few days ago I heard a guy, most likely lives in France and has a residence permit for Portugal, married, marriage of convenience with a person who is Portuguese who has already been Italian. So you see how one can deal with phenomena that have such huge changeability. So we, through international cooperation, Eurojust has played an absolutely extraordinary part and can still do a lot more, and I believe that in cases such as trafficking in human beings it's the only possible way! And through financial investigation. (FG 4)

The implications of this for judicial cooperation will gradually be included in institutional mechanisms. It is, however, in the translation and implementation of these translations that the results are not yet satisfactory, in the view of the Portuguese police forces.

Because, you see, free circulation is what makes their life easier and makes our life harder, if it is not done through strong international cooperation and through the mechanisms available to us, that is, the courts, and if often [such mechanisms] are not implemented or clarified this becomes more difficult, because of their mobility and the exchange of information that goes on in the networks and which we end up not having. Across borders we do not have mechanisms to help us, or rather, the mechanisms are there but are not made available because of some obstacle, which makes it much harder, because it is the exchange of international information which often leads to a successful conclusion. [...] When international cooperation is made possible it is great. (I 19)

Nowadays cooperation is much easier and amazing things are done and joint operations are undertaken and employees are put on the borders of Hungary and Greece, so there is considerable capacity for cooperation, to create rapid intervention teams. There are aircrafts flying over the Mediterranean, there are a lot of fantastic things, the practical matters like being able of triggering, that is, of having automatic devices. [...] Channels are often not established because of difficulties, not with the legal instruments that have been created at the EU level and are very developed

and or cooperation – and every day there are meetings in Brussels and elsewhere, where further progress is made on this – but because sometimes, internally, the states have no ability to implement the legal texts and the profusion of legal texts and legal instruments that are created, to make them operational at the lower levels and make them a reality. (I 15)

The non-implementation of legal texts and instruments, as mentioned by interviewee 15, that is, the mismatch between international mechanisms and the national capacity to activate them, is borne out when most of the police forces surveyed said they had not had a single contact with an international police force. It is also clear from the survey that 66.7% of respondents never contacted international cooperation mechanisms in work experiences related to THB. Of the 33.3% of respondents who had contacted international cooperation mechanisms, the contact mostly took was the form of informal cooperation with other national police force. This was followed by cooperation within the legal framework of the European Union along with other national police force, and then by the cooperation with European actors (Europol, Eurojust). Informality seems to rule much of this cooperation:

Joint actions always have an informal start, because you need to see what there is, see what we can get, so that later we can ask for everything according to the law. (I 1)

This disagreement with the law mentioned by interviewee 1 refers to rogatory letters, judicial instruments that require the intervention of the judicial structures, as this police officer told us:

If that's needed yes, there is cooperation with their criminal police to get the statement of that victim in his/her country of origin, but it now follows international rogatory letters... It must be by judicial means. [...] I have a rogatory letters for Spain that took a year and a half. It's a long time. [...] It is more difficult to get information from England than from Ukraine, Moldova, Romania, Liechtenstein, wherever [...]. The bureaucracy is zero. There are 2 types of contacts: rogatory letters, which we propose to the Public Prosecutor and he forwards it, and police cooperation contact. Police cooperation may be either through Interpol, like I might send an email to a colleague I know. Interpol and Europol are easy, we send the request by email, he sends it right away and 5 minutes later it's there. It is not a bureaucratic issue. [...] It depends. Let's get back to the two types. If you

want to know if a citizen has bank accounts in Romania you must go through the judicial authorities, I can't ask Interpol or Europol. (I 10)

One way to streamline and formalize this police cooperation is through Europol's Joint Investigation Team (JIT):

These are groups of officers from 2 or 3 countries, it depends, there is money from the EU, then it's established which country handles the coordination, then the officers go to the other country, but in JIT a Portuguese police officer can do a police swoop in Romania. And here we are talking about working together, of course we work closely with the Spanish police. In fact, we did a police swoop in Spain just a few days ago, but there it's the Spaniards who do the police swoop, it's a matter of sovereignty. But in JIT, you need to estimate costs, and see what there is and what there isn't, a budget is assigned and the EU supports it. (I 1)

These JITs cooperate mainly for the purposes explained by the police officer interviewee:

Basically for international police cooperation. Hearing witnesses, looking at police and criminal records, confirming mobile phones to see who the people are, confirming names to see if an identity is real, to find a photograph of an individual for whom we only have a name, it's all this. If we talk of judicial cooperation, it's placing a telephone tap on people in those countries, people who are out of Portugal, it's doing a police swoop and fulfil an arrest warrant in those countries, or freezing a certain type of asset and sent it here. (I 1)

As is manifest from the report of interviewee 10 above, the most serious flaw in international cooperation mentioned by the police forces is largely related to judicial cooperation. The delay in the orders of rogatory letters and the lack of preparation of the judiciary for this type of cooperation are some of the aspects raised most often.

Since all this has to be done through judicial mechanisms, if the judge is not really, let's say, suited, all this ... Maybe the exchange of information at police level is more streamlined than at the court. While we, policemen, cooperate with police officers in any country easily on a daily basis, formally and informally – we the Foreigners and Borders Service - [...] therefore, in terms of the police network we use this capability a lot and we do it on a daily basis. Accompanying it with the judicial part is often not easy. And so because afterwards the evidence has to be perfectly accepted in order to be accepted in the investigation process to be recorded, things sometimes are problematic and thus there is not as fluid as we would like. (I 19)

Therefore the European Investigation Order, recently approved by the European Parliament, is to be welcomed:

Fortunately the European Investigation Order was approved by the European Parliament a few days ago. A new mechanism that will eventually be legislated through a directive and therefore will enable the various countries of the European Union to take best advantage of, use or request, the evidence collected in other countries. This was a major hindrance. For such reports, for example, what the defence of the accused does: "Ah the report came from that country then? Oh it isn't good at all, but who found this report? It was the Public Prosecutor? The Social Security Institute? But how valid is it?" We are not even discussing it here. We believe in a report coming from a laboratory of scientific expertise, we know they're reliable people, it's a reputable entity, we believe the report that comes from the Tax Authority, they're reputable. But from other countries, nobody has the faintest idea if they are good. Through the principle of mutual trust we should do, just as we should do with the European Arrest Warrant. [...] But in court a smart lawyer or a knowledgeable lawyer begins to exploit all the flaws. (FG 4)

Europe-wide cooperation is also a challenge of the utmost importance, to match the punitive mechanisms according to the scale at which the phenomenon of THB operates:

This is evolving, and the States have a lot to answer for. It is already beyond the National Plans and has now to do with the Community Plan, in a much more sophisticated way. Two years ago, I was called and I was working in Huelva. I realised that the liaisons are temporary agencies, based in whatever country in the Community, which have nothing in Portugal or Spain and they make an agreement with a farmer to find job positions. The workers are placed here as a temporary agency that is in another country like Poland. And the difference in the law of these countries is substantial, and it is starting to be a tremendous problem, which is unfair competition. This company has nothing in Portugal; in Spain it hires a Romanian company that relocated Romanians to a Spanish farm, where there was no representative, and in light of Spanish law, any action that we might take will focus on the employer. But I have no way of acting against the employer because he is not in Spain, nor does he has representation there, the competences of Spanish labour inspectors do not extend to Romania. (I 71)

As we see, the transnational nature of this crime raises the question of cooperation with foreign police forces, and even at this level it faces several problems. The judicial officers mentioned the need for greater and better cooperation with

Europol, Interpol and organisations/institutions in the victims' countries of origin. As the crime of THB is not confined to the borders of a single country, combating it effectively relies on cooperation between the law enforcement authorities of the various countries involved, particularly between those where the most intense flows are seen. An investigation in the country of origin can be crucial. Liaison with the police forces of countries of origin is essential too for the proper protection of victims, hence the relationship between police forces and NGOs is critical.

With regard to cooperation between NGOs and police forces, 84.5% of the police forces agents surveyed indicated they have never cooperated with any NGO. Of the 15.6% who did cooperate, 6.4% did so for the protection and legal assistance of victims, 5% for the purpose of repatriating victims, and 3.8% for the detection of victims. The apparent residual nature of cooperation between NGOs and police forces ultimately means that the joint response that is offered to victims is almost certainly shaky and informal:

The support network is: we ask for favours. We're the ones who have to ask the Director to speak to the Director of Social Security Institute: "hold on a bit longer, another 72 hours"; it's asking ... it's informal. It's we asking for kindness; the Romanian embassy does not repatriate anyone and it is made because one of us to know someone there and ask: "but, come on, please help these people". And it's up to the Embassy to repatriate people. And generally the Embassy doesn't bother. [In this case] they didn't even pay for the transport. It's true, because I know one person at the Embassy and it was: "look here, you see, we're waiting for authorisation from the Minister of Foreign Affairs, see..." because if it were through formal channels, we'd have had no chance. And we must realise that they weren't immigrant citizens staying in shelters, here they were in B&Bs and it was the Social Security Institute that was supporting them, I mean, they're European citizens, but it's the Portuguese State that's bearing the cost. [...] The support networks are created, if a situation occurs, I pick up the phone at 3 am and call 144, and at 4 am the Red Cross van is here. After 3 days the Red Cross is calling every day: "we've not got money for Social Security Institute, you're the ones who have to sort this out". It's enough to say there weren't any shelters for men, isn't it? The first shelter was created this year, because there a lot of male victims. (I 10)

There is still some lingering friction between the police forces and NGOs, both at the level of NGOs' trust in relation to the police operations and in terms of victims'

trust in relation to NGOs, which can be broken if there is a close relationship with the police forces:

NGOs are not the primary partner of the police, and vice versa, so we are not the NGOs' favoured partners. Each has its concerns. What we try to do is to be always on hand to help and to search the information required; we have always received the support of NGOs in everything to do with supporting or monitoring victims, this is a task that we have delivered absolutely to the NGOs, but it's not our priority partner, because the investigations are, by nature, secret. [...] We provide training whenever it is needed, we help them in terms of safety, if that question arises, we search all the criminal information coming to us from them, which unfortunately is very few, very few. We'd like to get a lot more information from who is on the field because, supposedly, whoever has access to victims should have access to lots of information which unfortunately doesn't get to us. In the 13 years I've been here, I can count the information that came from NGOs on the fingers of one hand. It's an aspect that I would like to change, but I have no power to change it, it has to be the NGOs themselves to decide to trust the police or not, to share certain types of information. (I 1)

The NGOs in turn acknowledge greater involvement of the police forces and a greater recognition of the importance of the intervention of the NGOs:

And at the end of the day, after such a lot of training, we began to feel, for example, that the criminal police are asking us for support to take part in police operations. This is a novelty for us, but it is also extremely gratifying for us. Why? Because it is completely different if we know that the criminal police are going to conduct an operation on such-and-such day for so many hours, knowing that this operation will probably yield X victims, could be one, or thirty, or forty, and they know that they won't be able to give an initial response and stabilisation to those people. So they contact us to see if we can be there with the victims, to talk to them, explain what rights they have, the reason for the police operation, to stabilise them at the psychological and emotional level, so that afterwards they can give more reliable evidence. We ended up having two aspects, one of flagging and identifying a potential victim, and also the stabilisation of a person and the evidence is so important to the criminal police force. Because deep down, we are all complementary in everything. You can't take evidence from a victim who is completely in crisis, and who first needs stabilisation, whether medical, emotional or psychological. And I think it is this perception that we've been trying to get from the police forces and it has been working fine, and these little steps help us to improve. (I 44)

3.3.2.2. THE EVIDENCE-GATHERING

Within the criminal investigation, a key step in THB processes is the evidence-gathering, which is marked by cumulative difficulties. The most commonly mentioned evidence is witness evidence which, as we shall see, has many weaknesses; documentary evidence; and telephone interception. The legal means available for investigating highly organised crime are notable for:

[...] evidence, collection of sound and image, interception of communications, plea bargaining, that is figure of the repentant, say that in a case of this nature, we talk to some trafficker who has meanwhile repented and reported what happened and does not want to have anything more to do with this type of activity, he could have his sentence reduced or may even escape punishment, this is known as plea bargaining. There's a chance of recourse to witness protection, individuals who report things, the victims themselves can cooperate with the authorities and can then be protected, which does not happen in other types of crime. We can turn to covert operations, to undercover agents; we can use the cellular localisation of mobile phones in the possession of the victims or traffickers and this can only be done as the law provides; it's when it concerns the life or physical integrity of someone, so if they're at serious risk, and when this is the situation, it is often what happens. We know that people are in danger, so we can use this resource which sometimes gives us an important aid. We can seek international cooperation with the establishment of joint teams like this, and this has been done, sometimes with police from two countries. (I 3)

The recent change in the law provides for the use of undercover agents. But some police forces interviewees say this is a legal rarity, because of the degree of exposure and risk to which it subjects the agent and so, in their opinion, it would be compulsory a revision of the Code of Penal Procedure, especially because of the complexity of organised crime.

There are several narrations that affirm that changes are needed in criminal procedural law, to allow, in particular, more incisive evidence, a single, shared system of information for all police forces, and the loss of seized assets. Regarding telephone taps, as the interviewee 13 (a police officer) told us, the time span of the crime does not fit with the necessary steps in the inquiry:

That's to say, the type of evidence that we try to show not only with the testimonies, but with the places where people live, if it's a tiny room like this, and there are thirty people here and in the room next to it, belonging to the person exploiting them where just two are living, the fridge is full, it has drinks, bottles, the others have nothing, there is a clear difference. Therefore, we also tried some kind of documentary evidence apart from witnesses, but wiretaps in an employment situation is hard, there's not enough time and perhaps doesn't even justify using them. Because wiretaps have been used to help back up the evidence and convictions that have been achieved, but in situations with this seasonality telephone taps are very difficult, we don't even suggest them, we must act quickly and try to put an end to the situation. (I 13)

The divergence of judicial periods with the, usually short, time that the victims are in the country (particularly in labour trafficking), after the crime is flagged, is another major problem reported.

We have good legal instruments, I am convinced that we have the operational resources, if they are activated they can play their part, but the problem is that we are dealing with a phenomenon where the production of evidence is very tricky, largely because of the victimisation, sorry for the pleonasm, the victimisation of the victim. That is why we resort to statements for future memory and then later there's the risk of acquittals because the statements were either not taken properly or could not be taken. That's to say, there's an entire back-office effort, or rather an effort upstream, work that has to be done, it has to be proactive work, there must be a stronger link in my view to NGOs working in the field, working on the field, they are doing the flagging, they are saying "look out, we could have possible situations here." The Labour Conditions Authority, for instance, is an authority that can give essential information to the criminal police and above all to the Public Prosecutor's Office; prosecutors work very well, depending on the criminal police, thanks to the way they're trained. But in the case of Portugal, I think it's a mistake, for example, there is no centralisation at Central Criminal Investigation and Prosecution Department level, which is based in Lisbon, in this matter. Otherwise, cases emerge and they are just that, one-off cases. (FG 4)

This judge interviewee (FG 4) also notes the need to centralise competences of investigation in a single department of the Public Prosecutor's Office, to more easily capture the dynamics of highly organised crime networks and organise procedures for a more consistent charge. But let's return to evidence. The gathering of evidence is reported throughout the interviews as the key barrier in THB cases. While some agents

underscore the need for alternative types of evidence, witness evidence still seems to be the most important to convince the judge:

The issue is that I can prove through the bank accounts and Social Security that the guys have earnings, but if we cannot relate them to trafficking, they are not going to be convicted for trafficking. It is essentially witness based. In these cases, what has an impact for the judge is someone talking in the first person: "I suffered this, I suffered that", because whether we like it or not, you can get a thousand and one bits of evidence of tax evasion, by companies hiring, and all that stuff. Our intervention in court may also be important, because we will say that: yes, sir, in there were 50 people sleeping in a room of 20 sq. m in sub-human conditions. Talking in person in a trial is the best evidence in such proceedings, which really makes the judge believe that this actually was trafficking. (I 11)

As seen, one of the central aspects in the evidence is the victim. The law is very clear about the position of the victim of THB: the victim of THB deserves as much protection as the value they have as evidence. The residence permit, accommodation in a shelter, livelihood, and other things, depend, apart from the exception already mentioned in the legal framework, on their relevance and cooperation with the police forces. This rigidity demonstrates that victims are a key in the judicial process. Victims, we should not forget and according to the interviewees, who carry a lack of confidence in the authorities of their countries of origin which is brought to the Portuguese context. They therefore also exhibit distrust of the Portuguese authorities and they fear reprisals from the trafficking gangs because of their cooperation against them.

This paradigm is thus doubly problematic because it makes the production of evidence rely on the victims: first, it weakens the process by being so dependent on external cooperation; second, it is a mechanism of pressure on the victims that may, in fact, revictimise them. Or they cooperate with the punitive apparatus and may even put their family and friends at risk of persecution or they do not get protection from the State or from the police, and they may even be asked to leave the country voluntarily. This perception is expressed mainly by the NGOs and police forces who have more training in this area:

Another thing I do not agree with is that a person has to cooperate with the authorities to have the statutes of victim. The first time I read the THB law, I thought it could not be possible; thought there had to include a nuance

once the issue of vulnerability was present. And we can consider vulnerability in various ways, but then in practice it is not considered. And therefore, it must meet a series of requirements that are contained in that concept, and therefore I think it's a simplistic concept. I'll give you an example: African girls who are the subject of voodoo and fully believe that if they do not obey their owner, as they say, they will die, or someone in the family will die. This is so ingrained that they do not need to be watched or controlled because there is the voodoo control. This should be included because it is a deeply rooted cultural issue, especially in African countries. We should be sensitive to the fact that this is a very strong psychological imprisonment, and that means that many young women have a harder time escaping because fully believe in it. It is a very strong impediment, you can't imagine, because in front of us is a girl who believes in it utterly and we are powerless to be able to understand; how can we help a girl if she fully believes something dreadful will happen, that she must obey the fixed rules, and her owner as they say? (I 41)

Thus, the centrality of the victims testimony for the evidence gathering, recognised by all actors interviewed, is cumulatively problematized by the migration and seasonal nature of THB, the vulnerability that usually characterize a THB victim and the validity given to her/him. In this matter, it is important to acknowledge, firstly, the way vulnerability, i.e. the structural or circumstantial constraints that characterise the victim (described earlier under point 2.3.2.), needs to fit the mould of the legal rule of experience, namely by the question of consent – a figure that is not required anymore, but it is still foundational to a judge conviction –; and, secondly, how the validity of the victims' statements, which stems largely from the way it is assigned credibility according to the expectation of an ideal victim – which is closely related to the way the debate on consent is framed – will to some extent determine the success or failure of an investigation, as this police officer told us:

The success or failure of an investigation does not purely and simply relate to the greater or lesser capacity for criminal investigation, principally of the criminal police because success or failure is not dependent only on the application by the judges involved. There are other factors in the crime that also have to be taken into account and maybe neither the investigation nor the judges are responsible for solving them. These relate to how the production of law is structured in Portugal, especially that the production of evidence must be done at the trial. This does not work well when we are talking about and often complex investigations that take a long time, when we are talking about foreign victims, or, if they are Portuguese, who, due to their own characteristics or profile, have many problems with localisation after the events, to appear at the trial; victims who do not have free will or

are not rationally capable enough to be good witnesses in the trial about what happened to them... In fact, sometimes unwittingly, they become obstacles to the investigation, because they are people with learning disabilities. And this THB for labour exploitation. THB for sexual exploitation, we are talking about victims who are afraid of reprisals, are afraid of what might happen to their families back home, where they were recruited, the threat is also there, and in the case of victims from Africa, it doesn't happen to us much here, but it happens in the south of Portugal, there it is the coercion through voodoo. They say that they have voodoo and they will die if they cooperate with the police, and will have awful diseases, and so on. With all this, it is extremely hard to produce evidence in court. (I 7)

Public and criminal policies have been trying to answer to the vulnerable nature of THB victims, namely through the Act of the non-punishment of the victims and the provision of a reflection period. Notwithstanding, the 60-day reflection period has been combining several criticisms. As stated previously, in point 1.1., this is one of the measures enshrined in specific legislation on the status of victims of THB.

With regard to the 30 to 60 days of reflection, I think it's too short. A young girl who's been trafficked, she has a hard time trusting someone, great difficulty in knowing who this other person she does not know is, who may even say to be ready to help her out the situation. But who is this person? Are they deceiving me? Are they able to help me? How can they help me? (I 41)

One other mechanism used to safeguard a victim needs and to contour the mismatch between the time of the courts and the time of the victims is the statements for future memory. These statements for future memory have huge limitations though. First, the urgency with which they need to be carried out may not be compatible with the availability of judges. Such a postponement not only creates a heightened sense of anxiety, it also makes room for pressure from the trafficking network, costs for the State with hosting the victims feeding them and possibly protecting them by the police or a private security firm. This standstill in many cases results in losing track of the victims. On the other hand, one of the difficulties of a statement for future memory is the guarantees of the adversarial principle and defence, as pointed out by some interviewees:

All this case-law information helps us to take some care so that afterwards, in relation to the fundamental problem of statements for future memory,

we are careful not to breach the guarantees of defence. [...] There are situations of statements for future use in cases where no one knows who the defendants are, that is, no lawyer, which is even more serious, are heard for future use, and afterward they go back to their countries. So with all this, for me it is much more important for us to take care, especially from the angle of the criminal police, then the judicial authority in the inquiry stage and possibly during the inquiry stage, when there is one, to pay great attention as to how this happens. This is because the statements for future use are absolutely crucial elements in the production of evidence and for knowing what happened, and possibly for a conviction if there are indicators for this. Because if it fails then it's very hard to get convictions. (FG 4)

If the adversarial principle is not secured, that is, if the defendants are not present at the time of the statements for future memory, the proceedings can be annulled, as has happened:

In statements for future memory, there have often been problems with the judges themselves. They make some kind of procedural proceedings that ultimately weaken the statements, that is, they often fail to notify the defendants in due time that he/she must be present at a particular time, because a statements for future memory turns out to be before the actual trial, when all parties have to be present. And there have often been situations where the lawyers of the accused were not duly involved and that weakened the evidence gathering so much that it led to invalidity. When invalidity happens, there is no form of evidence and as they say in the legal world: "what is not in the legal proceedings is not in the world". If it's not in the world, it cannot be judged and so it leads to acquittal. And this is a major difficulty. (I 21)

The use of videoconferences, however, is still quite rare, although it may help to alleviate some of the fears of victims and therefore help to determine the facts.

Despite the legal and social provisions to face the specific conditions of a THB victim, trying both to protect him/her and to use his/hers testimony in order to help the prosecution, what does this global process means to the victims? In our perspective, it is doubtless that THB victims shall have a voice in this process. Nevertheless the victims interviewed did not have the slightest understanding of how their legal cases were proceeding, nor did they show any particular anxiety about it. The victims accommodated in a shelter (Victim B and Victim C) transferred all the intervention in the legal matters to the shelter' professionals; and the victim who was

independent (Victim A) did show some anxiety about the end of the case, but could not give any information about it. Therefore, the structural vulnerability that affects formal or informal mobilisation further entails complete powerlessness in relation to the legal procedures and utter subjection to the regime of truth that rules over the administration of justice.

3.3.3. THE CONVICTION

The percentage of convictions in Portugal is one of the criticisms raised by the GRETA report. GRETA (2013b) has warned that the authorities must identify the police and judicial obstacles that hinder detection, investigation and conviction for THB in Portugal:

GRETA is concerned by the low number of convictions for human trafficking and urges the Portuguese authorities to take steps to identify gaps in the investigation procedure and the presentation of cases in courts, with a view to ensuring that human trafficking offences are effectively investigated and prosecuted, leading to proportionate and dissuasive sanctions (GRETA, 2013b: 8).

The same concern is also highlighted by the police forces interviewees:

The percentage of convictions for trafficking is low, maybe because of the slow pace until the trial itself, some are still awaiting decisions, but I can't say that we have succeeded in all cases, or even in most of them. [...] Basically, sometimes there are situations that we have no other way to prove except with the statements, if we safeguard them with the statements for future memory, fine, in some cases it works and in others it doesn't, and so things under trial end up dying. (I 13)

The low conviction rates contribute both to feelings of frustration in the Police forces, who strive to secure the evidence in the trial stage, and to the continued lack of belief of the organisations supporting victims of THB in the judiciary.

I don't have a very positive opinion, unfortunately, regarding justice. Because of the facts. If we look at the numbers, no one has, there are so few convictions for trafficking in human beings, and this also discourages any complaints or criminal proceedings that we want to undertake. It makes us think, what would make more sense, because in practice there are actually very few cases. Now this is extremely important. We feel that

following criminal proceedings is, for most victims, finishing the whole process. At first, the victim even tells us "no, I don't want to make any complaint", "I just want this to end, I want to forget it", but they aren't going to forget it. It isn't going to end, all this is extremely time consuming, and it gets to a point where the victim says "I want justice"; "To end it, I need to finalise this process". Maybe it means seeing someone convicted, and unless there's this sense of justice, it is extremely painful. A case takes a year or two, when the victim is in a process of empowerment, rebuilding her life, suddenly she has to go back, has to talk again, to relive. Although there is the possibility of a statements for future memory, this is what usually happens and in most cases they prefer it, though there are others that say "no, no, I want to be there in court," but what has happened to us most often is that they prefer statements for future memory and not to think about it anymore. But that does not mean that when the case is being finalised it does not bring everything back, and harking back to a case after two, three or four years is extremely violent. (I 44)

Furthermore, this short number of convictions ultimately provokes mistrust in the judicial system with respect to the number of victims of THB that the NGOs allege or suspect there are:

Saying everything, the NGOs, hundreds, thousands, Portugal was such a trafficking country, as for me, well, I've realised that there are other interests behind it. In terms of statistics, the Public Prosecution Office in Oporto, from 2007 until now, has seen eight cases of THB, and there was a huge slavery case that was for trial I don't know how many years ago, it's still going on, but it is like slavery. [...] Three charges, the rest were shelved. This is what happened: I've got a lot of pimps here. And it's always seemed to me when I started to think about it, you'll never get to the issue. This issue of special vulnerability that is practically where this reality falls, fragile people with no family to support them, or drug addicts, the wretches, in fact, the marginalised, and plenty of women with children... and there you are, they fall into this and it's usually for sexual exploitation, we fit it perfectly into pimping. Proving pimping turns out to be relatively easy because they are foreign, there are lots of them, sometimes we need statements for future memory, sometimes we don't get to hear them and they will go off and afterwards, at the trials that's a mockery, right. But to get to the conclusion, there was an element here, sort of, in Article 160 which was not in accordance with the basis, which is the Palermo Convention; which is the issue of consent of the victim. Consent of the victim for the purpose of the Palermo Convention is irrelevant, the victim may have consented but that doesn't matter at all! The fact remains, and now with the new amendment, the recent change, consent is explicitly stated in number eight, that consent shall not preclude the unlawfulness of the facts. (FG 4)

In this context, a paradox emerges. In order to avoid impunity of trafficking there must be a judicial conviction. On the other hand, the difficulties of gathering enough evidences for THB incrimination encourage the incrimination for related crimes, often with less severe sentences. In other words, for there to be a conviction, the prosecution chooses to typify situations of THB as related crimes, including pimping, exploitation of immigrant labour, bodily harm, and kidnapping, due to, as we have seen, the difficulty of indicting for THB and the restrictive nature of the criteria for classification as a highly organised criminal network. As a consequence, it is realistic to suspect that many trafficking situations are framed by the judicial system as other type of crimes, which also may explain the reduced number of convictions for THB. Let's two points of the same equation: firstly, the concurrence of crimes, and secondly, the highly organized nature of criminal networks of THB.

A case that is commonly described as a success story by the Portuguese legal enforcers is the "Passerelle" case, a famous case of dismantling nightclubs in the downtown area of Coimbra. According to the contours of the case, this could perfectly be an example of THB. Nevertheless the convictions were for pimping. According to the officers involved this is a minor detail that does not jeopardize the successful evaluation of the investigation:

The "Passerelle" case had some very interesting features, I think it should be a case study, not only because there were arrests, but we made a dent in what hurts them most: money. And so, at this time, we effectively have the Office of Asset Recovery which, taking into account the type of crime, a study can be made of what those persons have and effectively it can revert to the State, or the victims. Everything is on track. This is a new office, under the authority of the PJ. It is not yet straightforward, because the burden of proof is still a bit confused, while in some developed countries investigation is extended not only to the target, but to those around him, both family and others, and after the goods have been collected, he has to explain: how he bought the house, the yacht, the beach house, and what he can't explain is retained. Not here. But, effectively here, and they have worked more in cases of economic crime, they can determine that A quite clearly cannot have what he has got. They propose recovery and the prosecutor's office takes the necessary steps. (1 2)

The concurrence of crimes may be linked to the sophistication degree of criminal THB networks. The recognition of highly organized nature of some THB cases

allows the activation of different and more pervasive methods of investigation. This question of classifying the case as highly organized was a feature in two cases we consulted. In one case, indictment for THB was not aggravated because the panel of judges were not convinced by the elements gathered to prove the organised character of the crime. In this regard, the reasoning given in the trial (transcribed below) indicates some explanatory inconsistency in determining what is – or is not – an organised criminal act:

In the case, although it was found that all defendants liable for this type of activity were involved, to a greater or lesser degree, in committing unlawful acts established, the existence of an organised group whose purpose was to commit them remains to be demonstrated. The evidence produced at the hearing revealed only the existence of unlawful acts essentially directed by the defendant [name of defendant], in which some of the accused participated, with the complicity of others [...] (lawsuit of the Court of Vila Nova de Famalicão, 26.03.2014)

Both the type of crime and its hypothetical highly organized nature are important for broader reasons than the specific solution of each single case. On the one hand, according to the results of the survey of the national police forces, these professionals think it is better to secure a conviction for a related crime than an acquittal for trafficking. The same opinion is shared by some NGO professionals in charge of victims protection, which argue that a conviction itself (regardless of which and its severity) is the most important:

I'm not a great advocate of stiffer sentences. I think the effectiveness of the sentence, is not so much about the number of years in prison, but the effectiveness of such penalty. Being sure that case will go to court, that person will be convicted. For the victim, better to be sure that the person will spend two years in prison for instance, than have a remote possibility of spending 10 years in prison. (I 37)

On the other hand, it must be underlined that the interest of the victims shall not be confined to the right of protection. Beyond the deterrence effect, the judicial system plays an important symbolic role towards the victim and the whole community (Santos *et al.*, 1996), showing how different legal interests are protected and how different behaviours are censored. The spirit of the law shall be accomplished through

not only the respect for the individuals' legal guarantees, but also through the recognition of the accurate occurred crime, avoiding distractive manoeuvres that weaken both public policy and awareness raising around THB and social legitimacy of justice. In this sense, the opinions of the survey respondents suggest the need to adjust the rules that underpin the criminal investigation and let it meet the spirit of the general law.

In short, the value of convictions for the crime of THB are simultaneously equal to and different from the convictions for any other crime: it is equal because they fulfill a function of general and specific prevention, deterring similar behaviors by society at large and its recurrence by those who were convicted; but it is different because of the particular characteristics of THB victimization, once it is a crime that often combines the structural or circumstantial vulnerability of the victims with their rootlessness from their origin community, which accentuates their exclusion from the social contract. The victims' (active or passive) alienation from the legal process renders visible the constitutive risk of the legal system, as a repressive (and ideological) state apparatus (Althusser, 1974: 44), to reproduce the domination logics inscribed in society, even when it is acting precisely against it. In both cases – crime in general and THB crime – the empowering function of the legal system is a challenge to rethink and to rescue an emancipatory vision and a transformative project for law and justice.

CHAPTER VIII

ROMANIA NATIONAL CASE

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INTRODUCTION

According to several scientific reports, political evaluations, and from national and international media coverage, Romania is both a country of origin and transit country of THB victims.

The literature on THB in Romania is reflecting the amplitude of the THB problem, as well as, the Romanian society's efforts to counter the phenomenon. Analysing the THB in a country with such a serious problem is a social duty for the academics, other analysts and front line fighters. Literature on this theme was published in Romania together with the translations from other languages (Toader 2011, Mateut et al 2006, Gavris 2013). This includes repertoires of norms (national laws, EU Directives, international treaties and protocols), academic analyses and synthesis, general reports and case studies and guides for professionals.

In terms of contents, the normative literature in Romanian language is reproducing the international and the EU ones.

It is the Law 681/2001, repeatedly amended, and the Romanian Criminal Code⁶¹⁵, which legally define the notion of THB. The law, the additional protocols and good practices establish the Romanian framework of institutional and informal cooperation in fighting THB.

⁶¹⁵ The Romanian Criminal Code is a new Code replacing the Communist Criminal Code (1968). The code got the final parliamentary approval, in 2009. It came into force on 1 February 2014 (according to the Law 286/2009, on Criminal Code, published in the Romanian Official Gazette [Monitorul Oficial] no. 510 of 24 July 2009, repeatedly amended, by Law no. 27/2012; Law no. 63/2012, etc).

The New Romanian Criminal Code (RCC) sanctions the THB's crimes in Chapter VII: Trafficking and Exploitation of Vulnerable Persons (arts. 209 -217). Arts. 210 and 211 specifically target the crime. The RCC broadens the scope of offences relating to THB, criminalizing new facts, such as "exploitation of begging" (art. 214), "using a minor for purposes of begging" (art. 215) or "using the services of an exploited person" (art. 216). The RCC also puts similar crimes such as slavery, pimping, forced labour in the same chapter

The main characteristics of THB's sanctioning in the New Criminal Code are: des-criminalization of victims, reduction of the penalties, and introduction of new offences.

The concepts of trafficking and victim, defined in the Romanian legislation (Law 678/2001), have the similar meanings to those recommended in *the Palermo Protocol*.

The definition of THB established in the Art. 3 of the mentioned document is:

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, abduction, fraud, deception, of abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) "Child" shall mean any person under eighteen years of age [UN, 2000: 2].

The concepts of victims is taken as in the successive European Norms – the most recent being the EU Directive 2012/29. [EP and CEU, 2012]

Art.2 of the Directive establishes the minimum standards on warranting victims' entire protection of their human rights, the support and the protection in order to facilitate their social reinsertion.

(a) "victim" means:

- (i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;

- (ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death. [EP and CEU, 2012: 65]

Among the recent academic works, in Romanian language, there are some recently published books, having THB as the main topic. They are specifically orientated to describe the concrete situation; to cover the practical needs; to help prepare public policies; and to support the professionals' work in combating the trafficking.

In the Legislative field, among the first Romanian books regarding THB, the work of Tudorel Toader (2011), must be underlined. Toader's work is meant to be an addendum to the Romanian Criminal Law's Text Book. The author exploits the vast jurisprudence, having as object the offences punishable by special legislation, such as Law no. 678/2001, concerning prevention and countering human trafficking (Toader, 2011: 217-232). Toader's book contains references to legislative precedents, examples from jurisprudence, appeals in the interest of law, some of the Constitutional Court's decisions, as well as, selective bibliography. This contributes to a better knowledge of the penalties provided by the special laws.

The section dedicated to Law no. 678/2001 presents the modifications and amendments brought to this regulatory document up to March 2011. It makes the necessary connections to the regulatory documents as the *Romanian Constitution* (art. 22); the *European Convention on Human Rights* (art. 4); the *Charter of Fundamental Rights of the European Union* arts. 1, 3(1) and 5(3) and others. Toader, referring to the Constitutional Court's decisions, points out exceptions of non-constitutionality of the art. 12 and art. 19 in the Law 678/2001.

Within Romanian state of art, *Traficul de ființe umane: Infractor –Victimă – Infracțiune* (Trafficking of Human Beings: Offender – Victims – Crime) edited by Mateuș et al. (2005) and *Traficul de personae, Exploatarea sexuala, Crima organizata, Jurisprudenta* (Trafficking in Persons, Sexual Exploitation, Organized Crime, Jurisprudence) by Cristus (2006) shall also be highlighted. These two books intend to disseminate – among the Romanian students and professionals – the UNDOC and the EU understandings on the THB.

They provide the EU standards and norms regulating the institutional approaches and expose the Romanian jurisprudence in the field. Cristus (Cristus, 2006) presents the first regulatory document in Romanian legislation focused on the trafficking in persons – Law no. 678/2001. It is a law concerning the prevention and the fight against human trafficking. It contains provisions referring to prevention in human trafficking, indicating the responsible institutions in the field. It covers the regulations for punishing some infringements set in connection with trafficking in persons. It also encompasses the special dispositions in the field of confiscation, impunity, reducing punishments and the special provisions regarding the judicial procedure. The law also stipulates the dispositions concerning the protection and assistance of the THB victims and the framework for the international cooperation. All these characteristics define the document as the main instrument of criminal policy in the field of THB. The book presents the solutions of the Courts, following the Courts' ultimate and indefeasible pronounced decisions starting in 2001 and ending in 2006. Critically, the author considers that the law does not define all the expressions and terms necessary to a unitary way of applying the provisions. The main results and the recommendations of the book are: the need to improve the legal framework in the prevention and fighting against THB, the need to adapt the Romanian Criminal Code in order to firmly discourage human trafficking, to develop education concerning the prevention and information of people, to improve the measures and services of prevention and assistance of the victims and persons vulnerable to THB, to improve the human resources and the infrastructural capacity of the institutions charged to fight THB and to protect the victims, the increasing need for more information and research.

There are new books emerging in Romania, representing the Doctoral Thesis's publications or books connected with the EU projects (Gavris 2013, Garbulet 2010, Zaharia 2012). One of the most recent ones appeared in 2013, authored by an Oradea University scholar. This book, *Aspecte Psihosociale si Juridice privind Traficul de Fiinte Umane* by A.E. Gavris (2013), concludes that there is an increase of the identified victims and of the de-structured networks of traffickers, in contemporary Romania.

Outside Romania, I. Matei's books (Matei, 2010; Ravan-Pyne and Matei, 2013), on victims of THB with Romanian origins, are extremely popular. It unveils cases with dramatic stories, which impress the public at large. Aside from scientific papers and books, there are

films⁶¹⁶ having THB as the main topic. These movies have documental value as they produce as much as they reproduce the social and cultural imaginary related to THB. They are highly effective alerts against trafficking as they reach the largest strata of the vulnerable population.

Reports on THB in Romania and with Romanian citizens reunite collective works accomplished by NATP, the Romanian Agency working in the field, by GRETA for the Council of Europe and by many others. One of the better known in Romania is GRETA's Report – 2013[GRETA, 2013c].

GRETA's report [GRETA, 2013c] is structured as a main corpus, with two Appendix, one with the Recommendations and the other with the Sources of the Report. The main corpus follows the Warsaw Convention's [CoE, 2005] structure. GRETA's experts take, item by item, the Convention's provisions – the articles' substance – and assess if the theme is or not transposed into Romanian Legislation. They also scrutinize if the articles in their content are compatible or not with the Convention's provisions and to what degree. Furthermore, they check if an article or another is used in the Romanian judicial practice, if it is known by the victims and, finally, they make recommendations. GRETA's recommendations cover the following areas: - legal and institutional framework's harmonization with the Warsaw Convention; - accommodation of the domestic policies in fighting THB's with the Warsaw Convention's recommendations and with the policies of the CoE member states; - strengthening of the international, transnational and regional cooperation;

GRETA on Romania's Legal and institutional framework's harmonization with the Warsaw Convention.

In paragraphs 46 and 47, it mentions that Romania's main law in Trafficking, the Law 678/2001, is using the definition of THB similar in its core with the definition in the Warsaw Convention (paragraph 50 of the Report). The actions covered by the definition law are also similar with the Palermo Protocol (2000). The same Report considers that the removal of

⁶¹⁶ According to our researches, the films to be considered are: 2012 - "Roman e il suo cucciolo"; 2011 – "Loverboy"; 2010 - "The Whistle Blower"; 2010 – "Morgen"; 2008 – "Call + Response"; 2008 - "Taken"; 2007 - "The Sugar Babies"; 2007 – "Trade"; 2005 – "Human Trafficking"; 2005 – "Inhuman Traffic".

organs and tissues with the purpose of selling (incriminated in the Romanian law)⁶¹⁷ introduced in the paragraph 51, after the last revision, is supplementary to the current definition.

The Recommendations, concerning the amendments of the legal framework and the international cooperation, have to be accepted.

Romanian authorities should adapt the relevant secondary legislation, including the provisions of the National Identification and Referral Mechanism, in order to ensure that the legal definition of victim of THB, and its application in practice, are fully in line with the definition set out in the Anti-Trafficking Convention [GRETA, 2013c: 44]

GRETA recommended the Romanian authorities to improve policies in the field:

- *to ensure a perspective defined by a comprehensive approach and a strategic coordination;*

[...] to ensure that the NATP is allocated sufficient human and financial resources, enabling it to accomplish its different tasks in the most efficient way.

[...] to allocate and secure appropriate funds in the central budget and the budget of the local authorities dedicated to action against THB [...].

[...] to introduce, in addition to the governmental reports on the implementation of the national anti-trafficking strategies, a periodic independent evaluation, as a tool for assessing the impact of these activities and for planning future policies and measures to combat THB [GRETA, 2013c: 44].

- *“to design future multidisciplinary training programs with a view to improving the knowledge and skills of relevant professionals” with a particular emphasis in “overcoming entrenched negative attitudes and prejudices vis-à-vis victims of trafficking, including those of Roma origins” [GRETA, 2013c: 44];*
- *“to conduct proactive investigations concerning THB for the purpose of labour exploitation” [GRETA, 2013c: 48];*

⁶¹⁷ There are - often weekly - the cases of Romanians who are offering their own organs for sale in the inserted ads in classified sections of newspapers.

- *“to pursue their efforts in improving the collection of statistical data on compensation granted to victims of THB”, and “to analyse the data collected on investigations, prosecutions and convictions” [GRETA, 2013c: 45].*

Besides, GRETA’s Report invites the Romanian authorities:

- to take measures to raise awareness, and to improve the social, economic conditions for groups vulnerable to THB;
- *“to detect cases of THB in the context of border control measures as well as to reinforce the security of identity, visa and travel documents to prevent and detect trafficking” [GRETA, 2013c: 45];*
- to *“provide the Border Police with all necessary human and financial resources to ensure that it can duly play its role in the identification and referral of victims of THB. In particular, they should envisage the appointment of specially trained border police officers whose task would be to deal with THB cases and to identify victims and refer them to the adequate institutions” [GRETA, 2013c: 46];*
- to pay a special attention to the alien victim in Romania, to their identification, protection and assistance;
- to accord the Residence Permits; and to ensure the conditions to return.

GRETA’s Report also urges Romanian authorities:

- to improve the assistance measures through:
 - *reviewing the system of shelters for victims of trafficking, with a view to assessing, in co-operation with relevant members of civil society, victims’ needs in relation to the services currently provided, and taking all necessary measures to ensure that these needs are met throughout Romania, and in particular in Bucharest, for all categories of victims of THB;*
 - *ensuring the quality of the services delivered in all state-run shelters;*

- *ensuring that all assistance measures provided for by law, including access to health care, are guaranteed in practice; when assistance is delegated to NGOs as service providers, the state has an obligation to provide adequate financing and to ensure the quality of the services delivered;*
 - *ensuring that assistance measures provided for by law are not made, in practice, dependent on the victims' willingness to co-operate with law enforcement agencies ;*
 - *facilitating the reintegration of victims of trafficking into society and avoiding re-trafficking by providing them with access to education and vocational training, as well as access to the labour market. [GRETA, 2013: 46].*
- to grant a recovery and reflection period to the presumed victims of THB.

GRETA Report insists on the strengthening of the international, transnational and regional cooperation. It appreciates the efforts on cooperating effectively in the already ensured forms of multilateral cooperation under the umbrella of the UN, the OSCE, the CoE, the UE or others. However, it stresses the need of developing the bilateral, effective, and multilevel cooperation, by acting: “to reinforce co-operation with trafficking destination countries in the areas of prevention, protection of victims and prosecution of perpetrators of trafficking, on the basis of existing mechanisms and by introducing further procedures wherever this proves necessary” [GRETA, 2013c: 45].

In sum, the literature on THB in Romania is an un-homogenous collection, reuniting institutional literature, academic literature, and literature with media’s perspectives. Most of it, does not target the general public. The academic literature, the normative repertoire (conventions, regulations, procedures, guides) and the official institutions’ reports are influencing the decisions’ takers. In some extent, the NGOs reports (IOM; ILO; domestic NGOs) contain data also addressed to them. On the other side, the literature from journalistic perspective (e.g. Matei 2010; Ravan-Pyne and Matei, 2013), based on the drama cases, aims to reach the general public and, specifically, the presumable victims.

Opposite to this negative image created for THB, there are the oral narratives and the consumerist “propaganda” which encourage it. Indeed, there is “folklore” describing THB perpetrators as very successful people, making easy money and having a luxury life. There is a corpus of rumours on the perpetrators’ social power. There are also multiple stories with real girls who escaped from the poverty by being involved in THB.

Investigating this THB “folklore” will lead to deeper layers of the causes of THB.

1. ANALYSIS POLICIES AND LEGISLATION IN FIGHTING THB: ROMANIA

1.1. ROMANIA’S STRATEGIES IN FIGHTING THB

The Romanian society was, for a while, reluctant to work with strategies and plans. This was due to its traumatized experience in the recent past when everything, even the person’s way of life, was listed in the Cincinal⁶¹⁸.

Romanian professionals were reluctant to the plans and reports, because of the long and frequently required reports, during the Communist era. The Communist reports – done in an exhausting extra-work, meant to compile the data and, after it, to falsify them – binned, as Zinoviev, in “Homo Sovieticus”, sarcastically remarked [Zinoviev, 1982]. That is why it took a while to give some credit to the report as a managerial tool and to distinguish its effectiveness from the unnecessary bureaucratic aspects. The reluctance and clumsiness put their marks on the Romanian process in designing THB strategies. The first Romanian plan to fight THB comes in 2004 and it addressed only the trafficking of children, not the entire phenomenon in its complexity. As it could be seen in the table below (Figure VIII.1.), there are areas and periods uncovered (2010-2012), by any strategic framework. Not all the plans’ accomplishments or failures are publicly reported.

When the Romanian authorities (and the public, too) had to release a strategy, they used the imitation of the strategies done abroad, and tried to adapt it, relying on the expertise of foreign special advisers. Points of view from the Parliamentary opposition, from

⁶¹⁸ The Cincinal was the general five years plan designed by the Communist Party.

trade unions, the entrepreneurial part of society and from civil society; from the civil society do not come into the final document. As far as the victims' points of view, they are totally disregarded. That is why, the strategies are not national acts, intensively debated at national level and as such fail to be generally assumed. The history of THB strategies in Romania could be understood following the next chart.

FIGURE VIII.1. - ROMANIA COMBATING THB. STRATEGIES AND PLANS



Some political documents are aiming to become strategies. The most complex are RNS 2006 -2010 and RNS 2012 -2016. The first one was approved by the Romanian Government, with the Governmental Decision (GD) 1654/2006 (Romanian Government 2006) and the second one, with the GD 1142/2012 (Romanian Government 2012).

TABLE VIII.1. - A COMPARATIVE ANALYSIS AMONG THE OBJECTIVES IN THE ROMANIAN STRATEGIES IN FIGHTING THB

2006-2010 Romanian National Strategy (RNS), fighting THB			2012-2016 Romanian National Strategy, fighting THB		
No of the Objective in the RNS against THB	The content of the Objective	Congruent with the Objective in the next RNS against THB no.	No of the Objective in the RNS against THB	The content of the Objective	Congruent with the Objective (Obj.) no. in the previous RNS, RNS 2006-2010
A.	To improve the knowledge on THB in Romania (data, characteristics, and tendencies)	Obj. 4. In the RNS 2012-2016	1.	To increase the activities in preventions and civil society participation in their implementation;	Obj. C in RNS 2006-2010
B.	To reply more efficiently to THB by ensuring a better inter-institutional coordination		2.	To Improve the quality of protection and the assistance for trafficking's victims and their social reintegration	Obj. D in RNS 2006-2010
C.	To prevent THB	Obj. 1. In the RNS 2012-2016	3	To improve the institutional capacity to investigate crimes of human trafficking, especially child trafficking cases and the pursuit of profit by criminal prosecution	Obj. B in RNS 2006-2010
D.	To protect and to assist the victims and to contribute to their social reinsertion	Obj. 2. In the RNS 2012-2016	4.	To increase the institutional capacity to collect and to analyse data on trafficking	Obj. A in RNS 2006-2010.
E	To combat trafficking in persons through the investigation and criminal pursuit of the Traffickers	Obj. 3. In the RNS 2012-2016	5.	To optimize and to and to expand the institutional and international cooperation in order to support implementation of the national strategy against trafficking	Obj. F in RNS 2006-2010
F.	To develop the International cooperation	Obj. 5. In the RNS 2012-2016			Obj. F

SOURCE. RNS 2006-2010 [ROMANIA, 2006] AND RNS 2012-2016 [ROMANIA, 2012]

The Table makes it obviously the large congruency among the objectives assumed by Romania in fighting THB. The objectives are generally similar. A unique exception is the fact, that the Objective B in RNS 2006-2010 is not specifically mentioned, as an independent Objective in the RNS 2012-2016.

The objectives slightly differ reflecting on the priorities assumed. In the new stage of the work in combating the phenomenon, the internal coordination, stipulated in RNS 2006-2010, does not appear specifically. An explanation of this fact is that a new institution, the Thematic Working Group in coordinating the fight against THB, reuniting representatives from 13 Ministries, was established in 2007.

The RNS 2012-2016 also comply with the current EU strategy (in the field), The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016, abbreviated as EU SETHB 2012-2016. [EC –2012] identifies five priorities on which the EU should focus on in order to address the issue of trafficking in human beings. It also outlines a number of actions which the European Commission proposes to implement over the next five years in concert with other actors, mainly the EU MSs and the EUs specific units as European External Action Service, EU institutions, EU agencies. The civil society and the private sector are charged with the mission of fighting the phenomenon too.

The compatibility between the two documents is proved in the below table, at the level of priorities (objectives).

TABLE VIII.2 - A COMPARATIVE ANALYSIS AMONG THE OBJECTIVES IN THE RNS 2012-2016 AND THE EU -THE EU STRATEGY TOWARDS THE ERADICATION OF TRAFFICKING IN HUMAN BEINGS 2012–2016 (EU SETHB)

2012-2016 Romanian National Strategy, fighting THB		2012-2016 EU Strategy towards the Eradication of Trafficking in Human Beings (EU SETHB) 2012-2016	
No and the content of the objectives in the RNS against THB	Congruent with the EU SETHB 2012-2016 Priority no.	No of the objective in the	Congruent with the the RNS 2012-2016, Objective no.
1.To increase the activities in prevention and civil society participation in their implementation;	Obj. B	A. Identifying, protecting and assisting victims of trafficking	2
2.To Improve the quality of protection and the assistance for trafficking's victims and their social reintegration	Obj. A	B. Stepping up the prevention of trafficking in human beings	1

3. To improve the institutional capacity to investigate crimes of human trafficking, especially child trafficking cases and the pursuit of profit by criminal prosecution	Obj. C	C. Increased prosecution of traffickers	3
4. To increase the institutional capacity to collect and to analyse data on trafficking	Obj. E	D. Enhanced coordination and cooperation among key actors and policy coherence	5
5. To optimize and to expand the institutional and international cooperation in order to support the implementation of the national strategy against trafficking	Obj.D	E. Increased knowledge of and effective response to emerging concerns related to all forms of trafficking in human beings	4

SOURCE: RNS 2012-2016 [ROMANIA, 2012] AND THE EU STRATEGY TOWARDS THE ERADICATION OF TRAFFICKING IN HUMAN BEINGS 2012–2016 [EC, 2012]

The Table proved that there are no European objectives missed in the NRS 2012-2016. Compared with the lack of legal protection against the THB, in Romania of the 90's, the two strategies, issued in the last 10 years, could be considered as real achievements. They succeeded in preventing THB, protecting victims and pursuing the traffickers. The campaigns, the press alerts against the phenomenon seems to reduce significantly the possible number of presumable victims. The shelters for the victims, the program in witness protection helped the victims, as the NGOs in the field and the victims themselves evidenced in their discussions and Interviews with the RCIMI team members. The number of traffickers convicted systematically increased in the last years as the preamble to RNS 2012-2016 indicates.

TABLE VIII.3 - INCREASING NUMBER OF TRAFFICKERS CONVICTED IN ROMANIA AFTER THE ISSUING OF RNS (2006)

TRAFFICKERS IN PERSONS CONVICTED IN ROMANIA AFTER the LAUNCKING THE FIRST NATIONAL STRATEGY IN FIGHTING THB (2006)							
Year of conviction	2006	2007	2008	2009	2010	2011	2012
No of the traffickers convicted	107	108	191	183	203	276	427

SOURCE. –RNS 2012 (ROMANIA, 2012)

After THB became a political preoccupation, an institutional system emerged that was meant to deal with fighting THB. Recently, in 2012, Romania implemented the National Centralized System of Evidence of Victims Data - SIMEV.

With time, the system has evolved, but from an academic point of view, the field is not congruent enough; it does not yet possess the necessary tools to be efficient. Analysed from a political standoff, the RNS 2012-2016 is itself vulnerable to criticism. Despite its name, the RNS, is not actually a strategy, but just a four year plan, which does not obligate the future Government to continue the begun process. It is a plan linked to the governing program. It is highly unlikely that a future Government will set the exact same goals. It is equally less probable that it will keep the previous qualified staff responsible for implementing the strategy and finance the projects in the exact same way.

The RNS 2012-2016 does not address the specific Romanian context with its own vulnerabilities to the THB. It does not mention the abrupt population decline and its consequence: the arriving of the large groups of immigrants – from non-EU countries – extremely vulnerable to THB and in a predictable and specific need of protection. It does not consider the obvious deficit in the culture of human dignity in some part of the Romanian young generations, captive in the pro-consumerist culture.

Our strategy was adopted belatedly. By comparison, Hungary and Bulgaria which are also in the process of preparing the harmonization of their legislative frameworks with the requirements of the Directive 36/2011/EU (EP/CEU, 2011) approved the National Strategies in the field, in time. In Moldova, Ukraine, and Serbia - other neighbouring states of Romania, but non- EU members - it was not the case to adopt an EU strategy and to comply with it, but they still prepared similar documents.

In conclusion, there is an increase in the effectiveness in Romania, regarding the three P⁶¹⁹-s. However, there are still vulnerable persons unaware of the THB danger. There are strata of population left out of the campaigns against THB, there are victims out of

619 The three Ps in fighting THB are the Ps from the main field of combating, Prevention, Protection of the victims and Prosecuting the traffickers.

protection [Int. 8 and 9] and traffickers not afraid to post their recruitments' advertisings in the newspapers or on the websites.

1.2. ROMANIA ASSUMING THE INTERNATIONAL AND TRANSNATIONAL LEGISLATIVE FRAMEWORKS IN PROTECTING HUMAN RIGHTS AND THE PERSONS' DIGNITY AND LIBERTIES

The Romanian state has signed international documents to protect the individual dignity and liberty, as the UN, the OSCE, the Council of Europe (CoE) and the EU acts, as well as specific declarations in combating THB.

The Romanian state, member of the UN since 1955,⁶²⁰ signed and ratified all the important international treaties and conventions, in combating THB, issued under the UN's umbrella. Namely: the UN General Assembly, the Universal Declaration of Human Rights, 1948⁶²¹; the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others⁶²²; 2000, November 5 – the UN Convention against Transnational Organized Crime, was signed⁶²³. Concomitantly, Romania signed the additional Protocols to the convention. a) 2000 – the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and b) 2000 – the UN's Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing the United Nations Convention against Transnational Organized Crime.

⁶²⁰ The Romanian State expressed its adhesion to 1945 UN Charter (Treaty of London), the precursor of the Declaration of Human Rights, back in 1946. Although the country's accession was blocked, until 1955, because of the post wars negotiations and the undecided (until 1947, Treaty of Paris) status of the country. On 14 December 1995, the General Assembly decided, in the Resolution No. 995(X) to accept Romania to the UN, alongside with the other 15 states. Romania was a member of the Security Council in 1962, 1976-1977, 1990-1991 and 2004-2005, while membership of ECOSOC was held in the following periods 1965-1967, 1974-1976, 1978-1980, 1982-1987, 1990-1998 and 2001-2003. The most recent mandate of Romania in the Security Council was in 2007-2009. <http://www.mae.ro/en/node/2059>

⁶²¹ Declaration of Human Rights was adopted on December the 10, 1948, at the beginning of the cold war. It calls for the states' commitment to warrant some basic rights for the human being, irrespective of its citizenship, religion, "race", gender, political colour ...

⁶²² The Act was approved by General Assembly Resolution 317 (IV) of 2 December 1949, entered into force: 25 July 1951. Romania signed it, on December 10, 1954 and ratified it through the Decree 482/1954, published in the "Buletinul Oficial al României"/ "Romania's Official Journal", Part.1 no.46/ December, 10, 1954.

⁶²³ It, with the two additional Protocols, was signed by Romania, in December, 14, 2000⁶²³ and ratified by the Romanian Parliament, in December, 2002, through the Law, no. 565/2002, published in "Monitorul Oficial al României"/"Romania's Official Monitor", no. 813 / 8 November, 2002, entered into force in January 2004.

In the area of cooperation to fighting THB, Romania is bound, also, by other international engagements assumed under the impulse of ILO⁶²⁴ and IOM.

The Romanian State signed the Regional Documents in Protecting the Individual Dignity and Liberty, the trans-national (regional) organizations relevant for the cooperation in fighting THB are the OSCE and the Council of Europe (CoE). The OSCE – engaged to implement the UN norms - also adopted standards and protocols at the ministerial level. It hosts summits where important political Declarations, with practical engagements assumed. The main chart of rights is the Helsinki Final Act (1975)⁶²⁵. After it, within the signatory states, important progress in Human Rights respect occurred. The way to respect human dignity and, implicitly, the policy of “Zero tolerance” to trafficking, is open in the entire Europe⁶²⁶. Very important, for Romania, are the decisions of OSCE after the year 1995⁶²⁷ until 2007⁶²⁸. Among them, the Action Plan to Combat Trafficking in Human Beings, adopted by the OSCE participating States in July, 2003⁶²⁹, is particularly relevant, because it impulsed, in Romania, the first actions against THB. To comply with such a plan, Romania adopted in 2004 the Law no. 211 / May, 27, [Romania, 2011].

The Romanian state signed the Council of Europe conventions in fighting THB and assumed the recommendations derived from them. Romania is a full member of the Council of Europe since 1993⁶³⁰ and signed and ratified around 100 conventions adopted at this trans-national level of regional governance. (Beside the Charters, Declarations, Conventions, the CoE adopted acts called Recommendations– optional for member states.)

624 The ILOs 1957 Abolition of Forced Labor Convention –ILO Convention No. 105 (320 UNTS 291), (opened to be signed in 1957, entered into force in 17.01. 1959) was signed by Romania and ratified in 3 of August, 1998.

625 Conference in Security and Cooperation. Final Act, Helsinki, 1975, <http://www.osce.org/mc/39501?download=true>

626 In 1975, Romania signs the document.

627 In 1995, Romania adopted the Strategy of Snagov, a National Strategy to direct all the political and social efforts of the state to enter into NATO and EU.

628 Romania entered into the EU since the January 1, 2007.

629 It produced effects concomitantly with the Palermo Protocol entrance into force.

630 Romania became a member of the Council of Europe on October, 7, 1993, www.coe.int/web/portal/romania

In fighting THB and in promoting transnational cooperation, the CoE adopted recommendations as such: CoE (2000)⁶³¹ Recommendation No. R (2000)11 of the Committee of Ministers to member states on action against trafficking in human beings for the purpose of sexual exploitation, CoE 2005 Convention on Action against Trafficking in Human Beings⁶³².

With the common regional acts, the member states instituted the political framework for a more intense cooperation. The regional commitments open the national doors to common norms and standards, to common methods and procedures in preventing THB in prosecuting the criminals and in protecting the victims. They also create the context for the national policies to converge to a common goal.

Concluding, Romania has been trying to comply with the regional standards in fighting THB, by adopting laws and establishing institutions. It is a progress in itself, but it is yet to produce significant results in reducing cases and towards eradicating the THB.

1.3. EU LEGISLATIVE AND POLITICAL FRAMEWORK IN FIGHTING THB AND IN VICTIMS PROTECTION TRANSPPOSED IN ROMANIA

The EU “legislation”⁶³³ in combating THB consists, until the Lisbon Treaty, in the Council’s Decisions. After the entering into force of the Lisbon Treaty, the EP and the Council regulate together the area of combating THB and it became regulated by Directives.

⁶³¹ Romania adopted the Warsaw Convention as a translation through the Law 300/ 06.11.2006, a law published in “Monitorul Oficial al Romaniei”/ “Romania’s Official Monitor”, no. 505 / June, 4, 2004.

⁶³² It was adopted, in May, 3, 2005 as CETS No 197 and open to be signed in Warsaw on 16, May, 2005 on the occasion of the 3rd Summit of Heads of State and Government of the Council of Europe (the Warsaw Convention or European Treaty in Fighting THB). On October, 24, 2007, the Convention received its tenth ratification thereby triggering the process whereby it entered into force on 1 February 2008.

⁶³³ The main pieces of legislation within the EU are Treaties, Regulations, Directives, Decisions and Recommendations. They differ - as binding force - within the national territories, following a decreasing order. The treaties and the regulations are directly obligatory for MSs... The Directives became compulsory after their transposing into national laws. The Recommendations could be postponed.

At the same time, the EU Political Programs became a generous framework in harmonizing the national objectives and approaches in combating THB.

The EU recommended procedures, Guides of the Best Practices and Manuals also constitute a valuable tool in correlating methods and protocols in dealing with the concrete cases at a national level. They also represent a condition of the transnational cooperation. In the category of the EU norms fits EC 2012 – Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 - establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA [EP and CEU, 2012]), 2011 - Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing the Council Framework Decision 2002/629/JHA [EP and CEU, 2011], 2009 -Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals; [EP and CEU, 2009]. The normative work is only the most known face of the EU's political struggle to eradicate the THB inside its borders. The EU evolving project comprises values⁶³⁴, strategies, adopted policies, together with efforts that impulse MSs to transpose them into domestic legislation.

The current national efforts are to comply with the objectives of the EU Strategy towards the Eradication of THB (2012-2016) [EC, 2012] and to assume the mission of projecting a national strategy with similar objectives. The Romanian NAPT proposed and got approval for such a strategy RNS 2012-2016 [Romanian Government, 2012]. In order to implement the actions assumed in the strategy, the current managerial strive is to ensure the resources, human and material are found and met.

⁶³⁴ According with the Treaty of Lisbon – amended – “The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values, which are set out in Article I-2, are common to the Member States. Moreover, the societies of the Member States are characterized by pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men.”

1.4. ROMANIAN LAWS IN FIGHTING THB, VICTIMS PROTECTION AND THE COUNTRY READINESS TO COOPERATE IN THE EUROPEAN BATTLE AGAINST THE MOST ABHORRING CRIME OF OUR TIME

In Romania, the fighting in THB and the protection of its victims is organized, mainly, under the anti-Trafficking Law No. 678/2001. The provisions of the law, aside from the definition of the THB, the penalties, the legal procedures, include chapters regarding Victims' Protection and Assistance (Chapter V), as well as a chapter regulating the International Cooperation (Chapter VI). Art 20 (Chapter V) explicitly forbids the victim's punishment, regardless of what he/she was forced to do (e.g. prostitution, begging, trespassing borders illegally or organ selling). Chapter VI is important for the nomination of the personnel charged with cooperative mission – the liaison officer and the liaison magistrate – and for the explicit duties to cooperate for governmental and non-governmental social actors. The amendments to the anti-trafficking law, continuously operated, are reflecting the progress in fighting the phenomenon at EU and international's level and the Romanian authorities' efforts to comply with them. Apart from the principal law, the anti-trafficking law, there are other internal norms that aim to combat the THB and protect the victims. The most important are 2002 -Law No. 682 /2002, Law on the Protection of Witnesses.⁶³⁵ 2004 -Law No. 211/2004⁶³⁶, Law on Measures to Ensure the Protection of Victims of Crime, which specifies victims' rights (e.g. information on rights, legal redress, psychological counselling, free legal assistance). In the Focus Group 1, the participant mention that there is extremely rare the case with victims' appeal to the law; 2004 - Law No. 508/2004 Law on the Organization and Functioning of the Department for the Investigation of Organized Crime

⁶³⁵ Other regulations were added, mainly establishing new institutions in fighting THB or cooperative forms of fighting: 2007 - Joint Order No. 335/2007 of 29 October 2007 approving the National Identification and Referral Mechanism for Victims of Trafficking; 2007 – Joint Order No. 286/2007 of 31 August 2007 on the setting up, organization and operation of the Thematic Working Group to co-ordinate national activities for the protection of and assistance to victims of trafficking; 2007 - Government Decision No. 1238/2007 approving the national standards for specialized assistance services provided to victims of trafficking; 2005 - Government Decision No. 1584/2005 on the establishment, functioning and organization of the National Agency against Trafficking in Persons; 2004 - Government Decision No.1443/2004 on the repatriation procedure of unaccompanied Romanian children and measures to act in their best Interest; 2003 - Government Decision No. 299/2003 regulating the application of the 2001 Anti-Trafficking Law.

⁶³⁶ The Romanian Law no. 211/2004 is transposing into domestic legislation: the Council Decision / 2001/220/JHA on victims' role in the Criminal trial, allowing crime victims to seek financial damages from the offender in criminal trial; the Council Directive 2004/80/EC of 20 April 2004 relating to compensation of the victims of crime; the European Convention on the Compensation of Victims of Violent Crimes, Strasbourg, November 24, 1983; the Council Recommendation no. R (85) 11 on the position of the victim in the criminal law and criminal procedure; the European Commission Green Paper on damages actions for victims offences, September 28, 2001.

and Terrorism Offences within the Prosecutor's Office attached to the High Court of Cassation and Justice.

In order to implement the mentioned laws, the institutional component of an effective system in fighting THB was established, one by one. In the area of Prevention of the phenomenon, the most important is the National Agency against Trafficking in Persons (NATP), established in 2005. For the pursuing of the traffickers in human beings, the main institutions are the Directorate for Investigating Organized Crime and Terrorism within the Prosecutor's Office (DICOT) and the Direction of Combating the Organized Crime within the General Inspectorate of Romanian Police (DCCO). For the coordination and domestic cooperation in victims' protection there is the NATP and for the cooperative work; there is the Thematic Working Group organized in 2007. For the cooperation at international level there are specific officers in each structure with specific THB missions.

The establishing of an autonomous institution charged to assess the results in fighting THB, as the National Rapporteur or similar, is in delay, in Romania.

As a conclusion, the Romanian laws in fighting the human trafficking are consistent – in their contents – with the International and European, Norms, Strategies and Policies. The previously mentioned legislation with its demanding consequences is aimed to safeguard human rights, to confer a high protection for citizens, to guarantee their human freedom and personal security.

1.5 THE ROMANIAN NEW CRIMINAL CODE AS AN INSTRUMENT IN FIGHTING THB

What it is striking in the recent Romanian legislation in fighting THB is the message sent to the public – traffickers, victims and public at large - by the New Criminal Code, with its reduced penalties for THB crimes.

TABLE VIII.4 - THE DECREASING OF THE PENALTIES FOR THB IN THE NEW ROMANIAN CRIMINAL CODE, ENTERED INTO FORCE IN 2014

NO.	THB offence type defined in the legislation	LEGAL PENALTIES Previewed for some types of crime	Legal framework	
			Law 628/2001 Art. & paragraph	RCC Art. & paragraph
1.	A mature person commits preparation, tentative to commit THB crime	Imprisonment (Imp.) 5-15 years & Interdiction of Some Civil Rights (Intd. C.R) Imp.3-10 years & Intd. C.R ⁶³⁷	Art. 12.	Art. 210, 1 & 3.
2.	Aggravated form of THB (with more than 2 offenders, causing extreme damages physical or mental damages to victim, causing victim's death)	Imp. 15-24 years & Intd. C.R -	Art.12.	-
3.	The exceptionally aggravated form of THB (offence committed by an official person acting in its legal capacity)	Imp. 15 -24 Intd. C.R Imp. 5-12 years	Art. 12	Art. 210,2.
4.	The enslaving The exploitation intentionally committed The obliging of a person to force labour The using of a person to force labour	Imp. 3-10 years Imp. 5-15 years & Intd. C.R Imp. 1-3 years Imp. 6-9 months or a fine	Art.12	Art. 209 - Art. 212 Art. 216
5.	THB with children	Imp. 7-18 years & Intd. C.R Imp. 3-10 years & Intd.C.R.	Art. 13	Art. 211,1.
6.	Children trafficking in aggravating forms (having family members as offenders; the victim dies)	Imp. 15-25 years & Intd. C.R Imp. 5-12 years & Intd.C.R.	Art. 13	Art. 211,1.

SOURCE. LAW 768/ 2001 AND RCC, 2009

The concrete penalties seem to be not enough congruent as a system. To add the interdiction of some rights at the art. 210, 1 and to not add it, in the aggravating forms, in the art. 210, 2 has a disputable logic. (Ex.1.) To sanction the usage of trafficked labour in the same way as the forcing into trafficked one, is also questionable. (Ex.2.)The cyber-crimes related with the THB: recruiting victims, exploiting them or threatening them, especially

⁶³⁷ The red points symbolize the provisions in the New Romanian Criminal Code (RCC) and black points represent the provisions in the Anti-trafficking law, the Law 628/2001.

children.... via internet, are not incriminated. The THB crimes against a person with special needs⁶³⁸ – the handicapped (physically or mentally) person – are not specifically codified as THB crime in an aggravated form, except the forcing of a person into beggary.

With such an abrupt view the RCC encounter large criticism, many times targeting the judges. A regional journal published an article⁶³⁹ related to a case from 2007, which unveils the complexity of THB crime. [Neagu, 2014]. The publication does not agree with the amount of punishment given, asking an even more severe one, while the reader's comments on the article concur.

The message send by the RCC (Figure VIII.5) - by reducing the penalties when the phenomenon of THB is increasing, is not a constructive one. It does not discourage the crime.

To answer to the issues, identified in the analysis on Policies and Legislation, is to correct the technical incongruences and to project an innovative approach. According to RCIMI it is to design a National Cultural Strategy⁶⁴⁰, meant to promote the EU values as dignity, liberty, equality, human rights and to ensure the institutional system to implement them in the new generations' understandings.

⁶³⁸ It is right, that in the Art. 210 of RCC – 2014, there is a norm related to the vulnerable persons.

⁶³⁹ The criminal: a young girl! She – now a major person - sentenced to 2 years in prison for the crime of THB. Elena M. found guilty by the courts for having sent abroad several young girls under the promise that they would work in Italy, but in the end, they ended up in prostitution. Originally, the Suceava Court sentenced Elena M. to 10 (ten years) imprisonment, but on appeal, the sentence was reduced to only 2 (two) years in prison and it was firstly suspended. Only the complications that occurred have sent her effectively into prison. A prior condemnation in another case of human trafficking, determined the judges to pronounce Elena M.'s condemnation without the suspension. In the same case, her sister Tamara M., aged 45 years old, got a conviction, but never got to jail because she received two years and six months suspended. The solutions have become final and irrevocable Wednesday, January 15, the High Court of Cassation and Justice. ... They forced Adriana P. into prostitution. The victim escaped with the help of customers. In the week, in which she was pushed into prostitution, the young girl from Fălticeni, turned to some of her customers and, through them, managed to call home in Romania and tell her drama. The relatives of the girl alerted the police, and the case was solved by the officers of the BCCO. Soon, Adriana was identified, by the Italian Carabinieri, and sent back home, at Fălticeni. According to investigators, several other similar cases have had the spotlight on the two sisters, and the reason why they came to be referred to Court. – available at <http://www.monitorulsv.ro/Local/2014-01-18/Tanara-din-Falticeni-condamnata-la-inchisoare-pentru-trafic-de-persoane#ixzz2t1Jmpt9>>.

⁶⁴⁰ It is made necessary by the introduction into the current European Treaty, TFUE, amended in 2012, of the Values of the EU.

Romania designed and structured the institutional system to fight THB. It has been a progress within the work of social forces directly involved in investigating and prosecuting the crime. The legal framework for prosecuting the traffickers, and non-prosecuting the victims is established in Romania. However, Romania has to reconsider, in an innovative way, the approaching on THB eradication. The reconsidering of the penalties for this crime is a technical need to be solved, as an emergency action. The System of Justice strives for the unitary views on the gravity of crimes; in some cases, for the proportionality of the verdicts is to be a priority. Much more attention to the communication and to transparency is to be ensured. The most important objective is –according with us – to design a Strategy addressed to the mentality.

2. STATISTICS ON ROMANIA FIGHTING THB

In the Romanian context, all the available statistics regarding THB issued officially are based on governmental sources. There aren't yet any available statistics done by an independent body – as the National Observatory or National Rapporteur. Consequently, the Statistical Data on THB are from the NATP and from the public statistics available, EUROSTAT. The available statistics do not provide all the needed disaggregation. However, the discrimination on age, sex and trafficking purpose are available. There are not available statistics on the cooperative works fighting THB.

NATP provides the most recent statistics on THB in Romania. Indeed, the RNS 2012-2016 provides data relative to the last years, presented below.

FIGURE VIII.2 - THE VICTIMS IDENTIFIED IN ROMANIA

YEAR OF VICTIMS IDENTIFICATION	Number of Victims	Tendency
2012	1041	-1%
2011	1048	-9%
2010	1154	+32,5%
2009	780	-37%
2008	1240	-30%
2007	1780	-22%
2006	2285	-10%
2005	2551	+30%
2004	1960	

SOURCE. (RNS 2012-2016)

The statistics is too limited to expose a kind of pattern in the dynamic of the identified victims. The victims, in their majority, according to RNS 2012-2016 have a Romanian origin. There are not discriminations on the ethnic bases or on the criterion citizenship recently received or born in Romania, with a citizenship got by birth⁶⁴¹. In 2012, only four victims were identified out of total 1041, were foreigners. [(RNS 2012-2016, 9); I 17; FG 1.].

According to the same source, the average share of women in the total trafficked persons is around 60%. The proportion is similar to the global scenario. In 2012, among the

⁶⁴¹ There are speculations in Der Spiegel, according to which the Romanian women in mobility to Germany are in large numbers Moldavian. (see above)

total number of victims reported, there were 65% female persons and 35% male persons. The average age of the victims was around 24 years old.

According to the same source, the most vulnerable age for THB is 17 years old; it recorded the highest frequency among the victims.

The share of underage among the victims identified in 2012 was 35.5%. Out of the total underage people, the overwhelming proportions were girls (88%). Regarding the age, most of the underage victims were teenagers, having 14-17 years old.

Briefly, the Statistics on Romania, by describing the THB phenomenon, has the potential to press the decision makers feel to design more effective policies in fighting THB; to invest more funds; and to allocate more resources.

2.1. EU STATISTICS ON THB VICTIMS, INCLUDING THE VICTIMS WITH THE ROMANIAN ORIGIN

FIGURE VIII.3 - THE VICTIMS WITH ROMANIAN ORIGIN REPORTED IN THE EUROSTAT

Country	Victims of THB in 2008		Victims of THB in 2009		Victims of THB in 2010	
	Absolute number	Percentage	Absolute number	Percentage	Absolute number	Percentage
EU	6 309 total	1,3	6955	1,6	7418	2,0
BELGIUM	196	1,8	158	1,5	130	1,2
BULGARIA	250	3,3	346	4,5	432	5,7
CZECH R.	143	1,4	55	0,5	83	0,8
DENMARK	28	0,5	47	0,9	53	1,0
GERMANY	692	0,8	733	0,9	651	0,8
ESTONIA	58	4,1	78	5,8	57	4,3
IRELAND	???	???	66	1,5	78	1,7
ITALIA	1 624	2,7	2 421	4,0 2	2.381	3,9
GREECE	76	0,7	121	1,1	92	0,8
PORTUGAL	25	0,2	24	0,2	8	0,1
ROMANIA	1 240	5,8	780	3,6	1 154	5,4
SPAIN	???	???	443	1	1605	3,5%

SOURCE: EUROSTAT, 2013: 31.

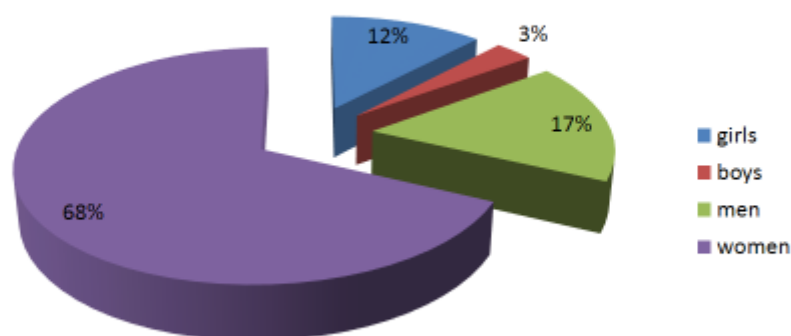
In the EUROSTAT – the table below shows it, too - aside the total number of the victims, the rate (the number of victims per 100 000 inhabitants) is calculated and it became the term of comparison.

The countries reporting the highest number of identified and presumed victims per 100 000 inhabitants, over the three reference years, are Cyprus, Romania, Netherlands, Bulgaria and Estonia. Countries reporting less than 0.2 victims per 100 000 inhabitants over the three years of reference are Hungary, Malta and Portugal.

The larger number of identified victims – in Romania and in EU – is women.

FIGURE VIII.4. THE VICTIMS (IDENTIFIED AND PRESUMED) WITH ROMANIAN ORIGIN REPORTED IN EUROSTAT
DISAGGREGATED BY GENDER

THB Victims in EU 2008, 2009, 2010 (based on gender)



15.02.2014

Lia Pop – Oradea University 2012 - for
CE Program HOME/2010/ISEC/AG/054

67

SOURCE: EUROSTAT, 2013: 31.

The statistics provide valuable information, but it has limitations. What it is missing in the *Statistics Report* is an indicator for victims outside the EU. The indicator Victims with Romanian / EU origin identified and referred outside of Romania/ the EU seems to be necessary.

A disaggregation among the victims exploited in the “sex industry” and the victims of labour exploitation is also necessary. Within the victims of labour exploitation, significant information could come from further categorising. They could be divided in victims a) of a discriminative payment, b) with fair payments, but out of the social security registration, c) with no payments, d) with personal documents confiscated, e) within condition of temporary physical sequestration, f) in conditions of slavery – forced labour, sequestration plus the physical injuries.

Concluding, the current statistics provides insights, impels anti-trafficking policies and, narrowly offers a scenario of national THB. Adding these new indicators and providing data for new correlations would help to ensure a more rigorous analysis and, in that sense, a more efficient protection to victims and to vulnerable people, contributing also to reduce corruption in Romanian society.

3. THB IN ROMANIA: AN EMPIRICAL ANALYSIS

The data and the analysis provided bellow are grounded in the field-researches, completed by the RCIMI's team, in 2012 – and 2013, in Oradea and Bucharest (city A and city B). The results come from the usage of various instruments such as: Interviews (I1 through I30), Questionnaires (Q1 through Q43), Focus Groups (FG 1, FG 2), activities with experts and responsibilities in the field (A 1 through A5) and seminars.

The total number of interviews was 30. The A forms of the Type II Interviews were designed by CES. Our team translated and applied them to significant subjects. The type I and the not-mentioned forms of Type II, were entirely the result of the interactions of RCIMI's team with the effective actors in THB, as fighters or victims. All interviews are presented and filed in categories.

The questionnaire is a uniform tool prepared by CES and translated into Romanian by our team. We distributed more than a 100 of questionnaires and we got answers from 43 respondents. The distribution to some units failed because of the political changes that led to restructuring in various institutions.

The RCIMI's organized team, two focus groups, one (FG1) with the frontline fighters in THB and the other (FG2) with the leaders of specialized NGOs and institutional actors engaged in preventive actions and the victim's protection. Appealing to the NGOs was a decision motivated by the need of the outside perspective.

Discussing with frontline fighters, namely prosecutors, high ranking police officers, lawyers, academics and officials represented one of the activity that RCMI was very involved in. We add these activities as an important source of collecting data.

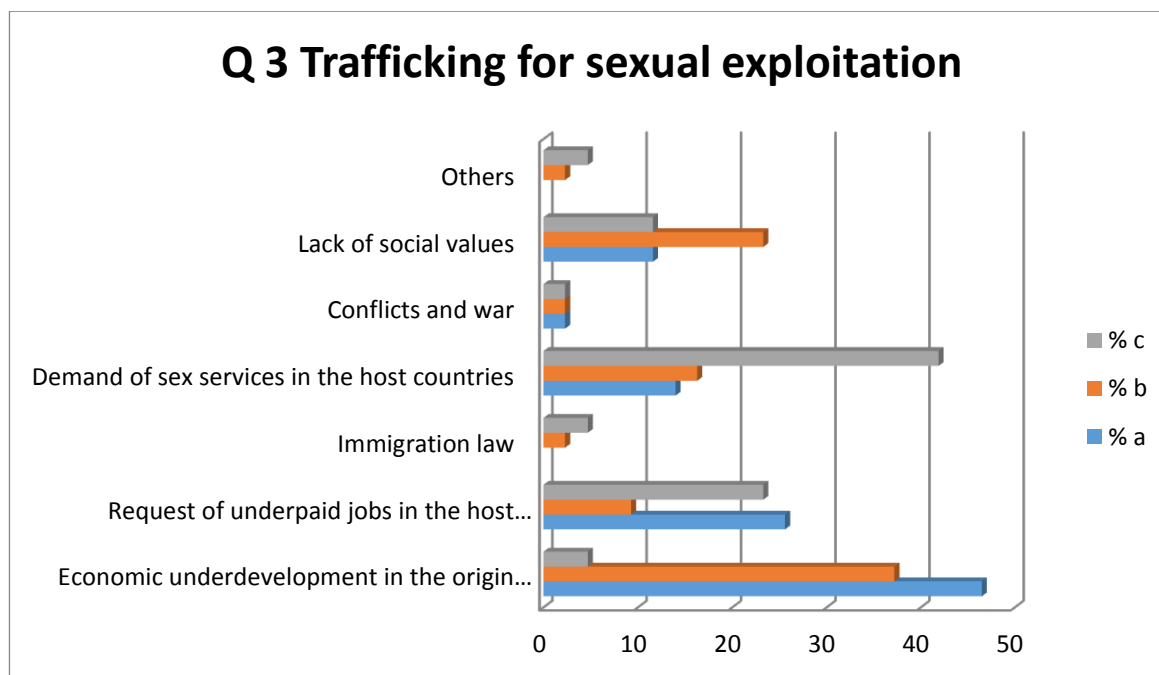
3.1. GENERAL PERCEPTIONS ON THE RECENT DYNAMIC OF THE THB IN EUROPE

The sources used by RCIMI confirm the idea that there is an increase in the visibility of THB in Romania, and it is seen as part of a large European context. The Question 1 (Q 1) within the CES standardized instrument got a predictable result – the vast majority of the respondents say THB is dramatically increasing in Europe, in the last years (2011-2012). Only 7% considered that the phenomenon is decreasing.

In the discussions in the Oradea seminar, organized in May 2013, by RCIMI, the professionals indicated that new forms of THB emerged in Europe. The most striking growth occurred, according to their perceptions, in the new areas of THB. These are the cases of trafficking for begging, trafficking of human tissues and cells and trafficking by recruitment on the internet.

The main cause of THB increase for labour purposes is considered to be complex, with an economic nature: the economic underdevelopment in the origin countries (74,4%) and the request for underpaid jobs in the host countries (58,1%), followed by conflicts and wars (37,2%). THB for sexual purposes presents similar causes - economic and catastrophic - in almost comparable proportions, as the answers to the Q 3, synthesized in the figure below, show.

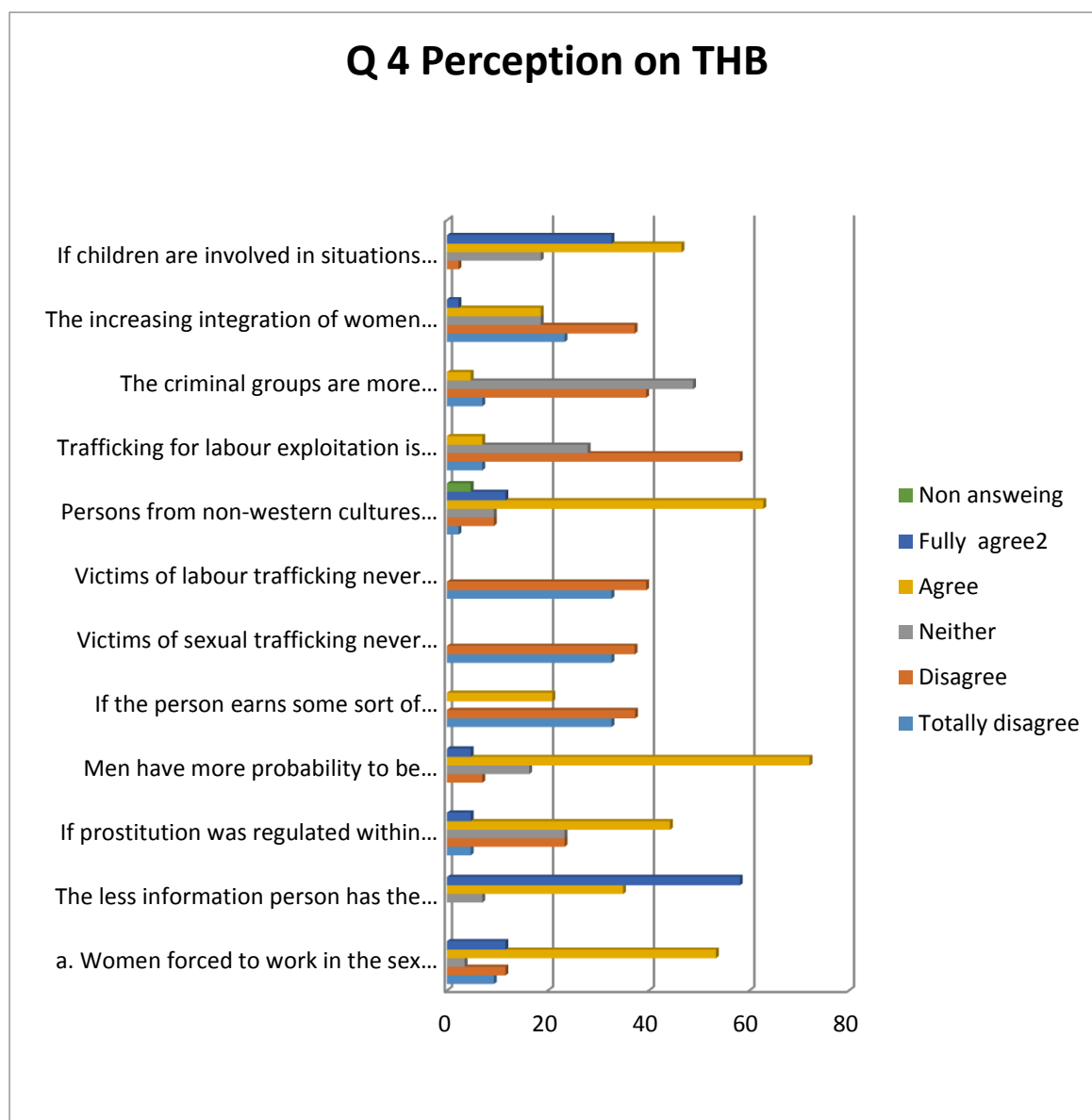
FIGURE VIII.5 - ROMANIA. THE FRONTLINE FIGHTERS' PERCEPTIONS ON THE CAUSES OF TRAFFICKING FOR SEXUAL EXPLOITATION IN EUROPE



SOURCE. 2013 - A CHART MADE FOR THE PURPOSE OF THE 2012 - REPORT ON THB, BY IRINA POP RCIMI – UNIVERSITY OF ORADEA FOR CES – UNIVERSITY OF COIMBRA AND RCIMI – UNIVERSITY OF ORADEA WITHIN THE PROJECT COOPtoFIGHT- (HOME/2010/ISEC/AG/054) EC - DG HOME AFFAIRS, USING THE SSPS GENERATED STATISTICS ON THE RCIMI QUESTIONNAIRES ON THB

It is surprising that lack of social values (among the victims) comes only on fourth place, with a percentage of 11, 9 %. That means that the police officers do not blame the victims of sexual exploitation, but the life conditions, that pushed them into a situation like this. That is the positive side. The negative one is that the actions directed towards a new culture and mentality are lacking off, as structural parts related in the RNS 2012-2016. In the Interviews, the professionals mentioned that the increase in THB is also a result of the Global Economic Crisis. According to RCIMI's analysis, the tendency will not decrease with the economic recovery, because it's related to the culture of non-tabooing THB and the exploitation and because it is possible and more profitable to work with the underpaid labourers.

FIGURE VIII.6- ROMANIA. THE FRONTLINE FIGHTERS' RATING PERCEPTION ON THE THB SITUATION IN EUROPE



SOURCE. 2013 - A CHART MADE BY RCIMI TEAM WITHIN THE PROJECT COOPtoFIGHT- (HOME/2010/ISEC/AG/054) EC - DG HOME AFFAIRS, USING THE SSPS GENERATED STATISTICS ON THE RCIMI QUESTIONNAIRES ON THB

Commenting the data, one has to underline some considerations resulted from the answers. The assertion : "Women forced to work in the sex industry that were already prostitutes in their origin countries are less psychologically damaged than those that never had any previous contact with the sex industry." got more than 90% agreements (fully agree and agree options cumulated). Reading the results, one might conclude that there is still

prejudice against THB victims in the group. They agree that the lack of information opens the door for trafficking, according to the idea that less information one has, the more vulnerable one is to trafficking. The Romanian Police officers, who responded to the Questionnaires, do not have a definite opinion about the prostitution regulation. They agree and disagree with turning prostitution into a legal activity, in quite similar proportion. The respondents credit the affirmation that “Men have more probability to be trafficked for labour exploitation than women” in a large proportion. They disagreed, in large percentage, with the following affirmation in the list from Q. 4, “If the person earns some sort of money with the work she is doing, it is not a victim of human trafficking”. According to the context, the disagreement could be seen as an opposition to the idea that an insufficient (to survive) amount of money could diminish the vulnerability to THB. The respondents, in an overwhelming proportion, 9 out of 10, considered the affirmation “Victims of sexual trafficking never have the opportunity to escape” as false. According to their experience, there are possibilities to escape. The victims of labour trafficking shared the similar views, as the interviews revealed. They credited the sentence “Persons from non-western cultures are easier to fall into human trafficking situations”, expressing the idea that non-western populations are more vulnerable to THB, than Western ones. The Romanian respondents consider the assertion “Trafficking for labour exploitation is more damaging psychologically to the victims than sexual trafficking” as not true. The affirmation “The criminal groups are more organized in Trafficking for labour exploitation than in Sexual Trafficking” is also out of large credit. The increasing integration of women in the labour market may be a cause of human trafficking” is not extremely clear. The respondents credited the assertion “If children are involved in situations of sexual or labour trafficking, courts tend to apply more severe sentence”. The answers lead to the idea that a European common approach is needed.

3.2. GENERAL PERCEPTIONS ON THE RECENT DYNAMIC OF THE THB IN ROMANIA

Recent external political reports (OSCE, 2011; GRETA, 2012; UNODC, 2013; US – Embassy, 2012; US – Embassy, 2013) as well as the internal reports released by the National Agency against the Trafficking in Persons [NATP, 2011 a and b; NATP 2012; and NATP, 2013] concluded “Romania was and is a source of victims. Recent media’s reports also unveils that Romania became also a country of exploiting the victims of THB”.

The empirical data collected by RCIMI present a complex picture of the phenomenon.

The questionnaire meant to grasp the dynamics of the phenomenon of THB in Romania and the way in which this phenomenon is perceived by the representatives of the authorities having competence in this field. To the question related to the exploitation for labour purposes, almost half of the persons interviewed (47%) share the opinion that Romania is a country of origin with regard to the exploitation for labour purposes, 32% consider Romania as being a country of transit, and 21% assert that it is both a country of origin and one of transit.

In what concerns the exploitation for sexual purposes, 54% of the respondents are of opinion that Romania is a country of origin for this type of trafficking. Whereas, 21% consider that it is a country of transit. The 23% accept that it is both a country of origin and one of transit, and only 2% say that it is a country of destination and of transit.

The same conclusion resulted from the Focus Group 1 and the interviews with officials did not contradict the label.

On the dynamics of THB in Romania, the recent Reports mentioned above, accept that the new system of fighting THB – integrated at the EU level and coordinated by new institutions – produced effects. The new tendency, after 2012 (reported in 2013) is decreasing. In Romania, it is congruent with the spreading idea - through media efforts too - that crime is under the special attention of DCCO and BCOC, and multiple cases end with the conviction of traffickers. The frontline fighter's respondents to the questionnaires, partly disagree with the optimistic view. The majority of the subjects consider that trafficking for labour purposes increased in the last five years (76.7%), 14% appreciate that it has decreased, and 4.7% do not know/do not respond. The causes that are at the grounds of this figure are – in the opinion of the majority of the respondents –: increased poverty in the countries of origin (51.2%); lack of information and of proper policies in the field of migration (each with 14% of the options) and lack of training and involvement from NGOs. The first three regions of Romania, confronted with an increased frequency of cases of THB,

for labour exploitation purposes, are, in order of frequency, Moldova (North-East- Romania), followed by Oltenia and Muntenia (the South Romania).

The perceptions referring to the dynamics of the phenomenon of trafficking for sexual exploitation are that it has increased in the previous 5 years. The 75% of the subjects are of opinion that it has increased, and 9.3% of these say that it is about a significant increase, 20% appreciate that it has decreased, while 4.7% do not know/do not respond. The causes of this increase are the development of the sex industry among Romanian citizens (32, 6% of the options), followed by the lack of information (20.9%). For those who consider that this phenomenon has decreased, the causes of this decrease are placed on the grounds of better information (14%), decrease in the sex industry (12%), improvement of social-economic conditions in the countries of origin (11. 6%), better training of police force staff (7%) and better involvement of NGOs in the field work (5%).

In what concerns the regional incidence, confronted with an increased frequency of cases of trafficking for sexual purposes, the previously mentioned hierarchy is the similar: Moldova, followed by Oltenia and Muntenia.

In what concerns the representations about the victims of THB for sexual exploitation in Romania, 83.7% of the respondents agree that these victims come particularly from Eastern countries, 11.5% agree with the assertion that women obliged to work as prostitutes come especially from Africa and a higher percentage, 20.9%, agree that the prostitutes come particularly from Latin America. Concerning the age of women forced to work as prostitutes, 25.6% of the subjects agree that the majority are under age, while an overwhelming percentage, of 81.4%, say that these women are aged between 18 and 30 years old. 44.2% of the persons interviewed agree that there are also men victims of the trafficking for sexual purposes exploitation, 25% do not agree with this, and a high percentage, of 30.2%, have no opinion in this respect. At the same time, 28% of those questioned agree that the majority of women forced to prostitute themselves have worked in the sex industry in their countries of origin, while the great majority, 51.2%, have no opinion related to this subject.

The nationality and/or race of the victims of the THB for sexual purposes exploitation is not regarded as defining for practicing various types of prostitution (in the street, in apartments, in clubs, etc.). Almost half of the persons questioned, more specifically 48%, neither disagree, nor are in favour of the assertion that nationality and/or race matter. Nevertheless, 27% in the case of nationality and 14% in the case of race agree that they count in placing the prostitutes; 76.3% of the subjects agree (of which 16% completely agree) with the assertion that there are numerous Romanian women forced into prostitution in Romania and in other countries, too.

Another question is testing the opinion of the respondents concerning the victims of trafficking of human beings exploited for labour purposes in Romania. Almost half of the respondents (47%) agree that these victims come especially from Eastern Europe, while a high percentage (42%) do neither agree, nor disagree. Only 23% agree that the victims of trafficking for labour purposes come from Africa and only 7% agree with the assertion that the victims come from Latin America. An important majority of the questioned persons (79%) agrees that the victims trafficked for labour purposes are predominantly men and only 2.3% agree that the victims are under age, while almost half are of no opinion (49% do neither agree, nor are against it).

The majority of the subjects (56%) agree that the victims of trafficking for labour purposes comprise the ages of 18-30 years, and 28% assert that the majority of the victims are aged between 30 and 50 years old.

67% of the respondents agree (and 7% of these completely agree) that the victims of exploitation for labour purposes are numerous, and 50% agree (of which 9.3% fully agree) with the assertion that women victims of exploitation for labour purposes are, often times as well, victims of trafficking for sexual exploitation.

The last question of this section provide a hierarchy of the fields in which trafficking of human beings for labour purposes exploitation is most widespread. The j respondents choose among two of the fields with the highest frequency of cases of trafficking. Thus, the

results show agriculture, being mentioned by 68.2% of the respondents, and on the second place the constructions industry, mentioned by 46.5% of the persons questioned. The home-based (domestic/cleaning) services have gathered 16.3% of the options, and other branches of the industry 9.3%.

The media also featured the increase of THB. The number of press reports on THB in Romania is increasing, mainly because they consist of *press releases* issued by authorities, DCCO. They are spectacular enough to capture the attention of the public. Their core message is on the increasing character of the phenomenon.

Concerning the traffickers, it is to say that *persons with Romanian citizenship are present in the international networks* of traffickers. The Interpol and the Europol, apart from the Romanian Directorate for Combating the Organized Crime (DCOC), identified and de-structured such international networks, sending to trial at least one case every six months. They are publicly visible, via media reports. Arrest and trial cases are also, frequently reported, in the media. As for convictions, there are – in the last years – more and more cases, publicly known.

As for the dynamic of THB in Romania, the media sources report that the amplitude of the mentioned crimes was decreasing in 2012, compared to 2011 [Gradinaru, 2013] and with other EU countries such as Poland, Lithuania or the case of a non-EU country, Albania with a 300% increase.

NATP [NATP (2013)] reports the records of a 0.1% decrease of THB in 2012, in Romania, compared to 2011. (See the Figure with the number of victims above.)

3.3. PREVENTING THB IN ROMANIA AND PROTECTING THE VICTIMS

With the establishing of NATP in Romania (2007), the preventions of THB get a special attention. According to the *Romanian Strategies and Plans*, the professionals working in the central and the local units of the NATP are constantly involved in the preventive work. They permanently meet groups of vulnerable categories - young students, mainly; they display materials, flyers, brochures, in crowded areas, they organize public campaigns (with

media support) they organize the Anti-Trafficking Day, they mobilize other social active persons. In the interviews with officials, they proudly mention the progress in organizing such works, but discussing with the victims, they did not remember that somebody was preventing them about the dangers of being trafficked.

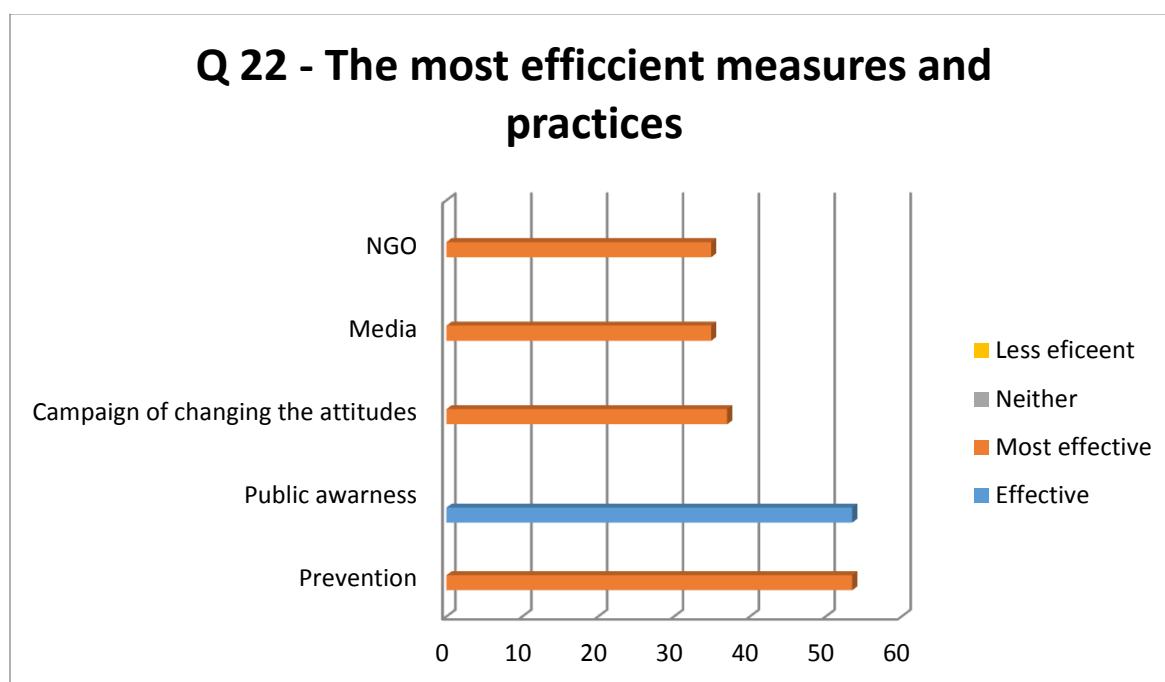
The Interviews [Int. 13, 14, 15.] proved that the year 2012 has stood out through the campaigns: “Choose to work safely, far from the traffickers in human beings!”, “It can’t happen to me!”, “Enjoy summer safely... far from the THB!”, “The trafficking in minors on the language of children”, and so on.

That means that the prevention campaigns got the attention of the officials. (In one single case, in an Interview [Int. 24] of a senior officer, he acknowledged that he directed the funds – ensured in the Institution Budget - to the field of traffickers’ prosecution, considered as the more effective and demanding area of police work)

As a general perception among the police officers, as it results from the Questionnaires answered, prevention has taken a significant part in the fight against THB.

Question number 22 investigates the perceptions on the measures and practices in the prevention of trafficking in human beings according to effectiveness of different measures and practices. 53.5% of the respondents have rated prevention (option A) as the most effective measure. The same percentage applied, to the effectiveness of the public awareness’ campaigns directed at potential victims. A percentage of 37% of the total responses consider the campaigns of changing the attitudes of the society as effective. The most effective measures and practices that one can take to fight THB are the Media coverages of the subject as the 34.9% of the respondents considered. The NGO’s activity is the most effective in the opinion of 34.9% of the respondents.

FIGURE VIII.7. ROMANIAN POLICE FORCES' PERCEPTIONS ON THE MOST EFFICIENT MEASURES IN PREVENTION THB



SOURCE. 2013 - A CHART MADE BY RCIMI TEAM WITHIN THE PROJECT COOPtoFIGHT- (HOME/2010/ISEC/AG/054) EC - DG HOME AFFAIRS, USING THE SSPS GENERATED STATISTICS ON THE RCIMI QUESTIONNAIRES ON THB

Other frontline fighters – like prosecutors – also consider their institutional duty to work for prevention. In her conference for the students of Journalism and Political Science' Programs (University of Oradea), M. Dumitrescu engaged a long discussion revealing the consequences of the involvement in THB on the individual life. She was using concrete cases prosecuted in Romania. The Police Officer V. Sipos – BCOC – city A, in consultative activities with the RCIMI team, favours the same method.

NGOs focused more on prevention, among all the main actors in fighting THB. The structured interviews (face-to-face), taken in July 2013, with NGO representatives, having a rich experience in the field: The Association for Development of Alternative Practices of Reintegration and Education (ADPARE)⁶⁴², Caritas Association⁶⁴³, The Centre Partnership for

⁶⁴² <www.adpare.eu> website of the Association for Development of Alternative Practices of Reintegration and Education (ADPARE) located in Bucharest

⁶⁴³ <www.caritasbucuresti.org> web site of the Caritas Association located in Bucharest

Equality⁶⁴⁴, Foundation Ușa Deschisă [Open Door]⁶⁴⁵, all based in Bucharest, (city B), insisted on the segment of prevention [I 26; I 27; I 28; I 29]. The Caritas Association Bucharest, has carried out several projects, focused on the prevention of trafficking of human beings, having as directions of action informing young people and raising their awareness in regard to the complex phenomenon of THB. The school has been in the centre of attention [FG 2], given the fact that the statistical data indicates a decrease in the average age of victims of trafficking from one year to another. The officers presented at school, real cases of THB's victims and stimulated debates and a pro-active intervention of the pupils in all the stages of the campaign. One of the victims accepted to take part in campaign for an entire year [FG 1]. The action started from the pre-requisite that educating the school community (pupils, professors and parents) shall increase the role of the school in fighting trafficking of human beings, and, also, in the ability to spread the information to the neighbouring school communities.

The idea of preventing the trafficking phenomenon in minds targeted the same area, education, with the Centre Partnership for Equality. It has carried out several campaigns at national level, both in the urban areas, and the rural ones. They meet with children, parents, local authorities, project films with testimonials of victims and their families' drama. The same NGOs were launching messages in the media, organizing meetings with people working in the field of human trafficking and in related fields. This interactive model of work, used to reach rural communities, in which such interventions never occurred before, was a successful one. The number of direct beneficiaries of the campaigns increased. [I 26; I 27; I 28; I 29].

As for the victims understanding, there are contradictory views on the issue. It is astonishing that victims with a lower level of education considered THB as an alternative to a life in physical misery. One of them coined the idea: "I would like to be trafficked again!" [I 4],

⁶⁴⁴ <www.cpe.ro> site of the Centre Partnership for Equality

⁶⁴⁵ <www.usadeschisa.ro> site of the Foundation "Ușa Deschisă" (Open Door)

while others weren't complaining about the violence, the rape, or the trafficking, but of the underpayment [I 3; I 5; I 6].

The opposite type of victims, publicly take attitude against the crime. One of the victims campaigned in Oradea colleges; another studied filmmaking and directed the movie *Dora*, about her own experience as a trafficked person. (She is not blaming the trafficker, but the clients.)

The interlocutors [I 13; I 17; I 20] stressed two major aspects, with regard to the difficulties encountered in the activities of fighting trafficking of human beings. The first one refers to the lack of financial resources provided by the state in order to ensure the victims services of proper residence, as well as social and educational, assistance. The second one is related to mentality, namely in the fact that often, in the collective mentality, the border between trafficking of human beings for sexual purposes and prostitution is fluid. The public is assimilating THB sexual purposes with the prostitution.

To fight THB, there is a need for joint efforts of the state's institutions, NGO's, schools, civil society, media, but also of the state institution's capacity to offer alternatives and a decent living option to its citizens.

The empirical data – collected in Romania – related to the segment of THB *Prevention*, lead to the conclusions:

- a) There are intense and progressive efforts to work in *Prevention*, according with the Strategies and Plans (set up in the Central Units), the efforts made by the Governmental and the Non-Governmental Organizations and media;
- b) The main point and general linker in *THB Prevention* is the NATP (They initiate, cooperate and sometimes coordinate such work.)

However, from an academic point of view, one needs to take into account that:

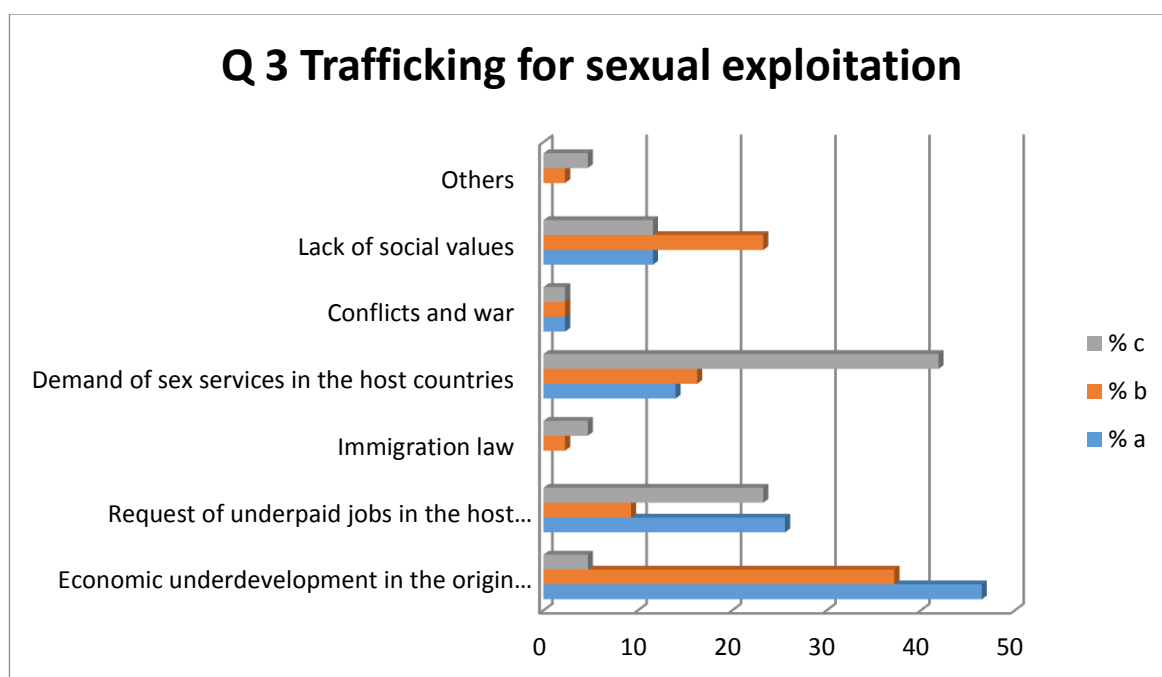
- c) The very concept of the *Prevention* as a comprehensive concept is still missing.

According to RCIMI, a comprehensive concept of prevention A): is strategically addressing the causes of THB identified in Romania, b) it is a concept comprising (listing) the structural components and the peripheral components.

A prevention's concept effective in Romania, based on the causes of THB, (as it could be understood using the results of the Questionnaires applied by RCIMI or using other studies conducted in the field) is listing 7 items, at least. They are: economic underdevelopment in the origin countries; request of underpaid jobs in the host countries; immigration/ free movement laws; demand of sex services in the host countries; conflicts and war; lack of social values.

Looking to the empirical data collected, a quite consistent concept results, coined on the grounds of causes.

FIGURE VIII.8 ROMANIA. THE FRONTLINE FIGHTERS' PERCEPTIONS ON THE CAUSES OF TRAFFICKING FOR SEXUAL EXPLOITATION IN EUROPE



SOURCE. 2013 - A CHART MADE BY RCIMI TEAM WITHIN THE PROJECT COOPtoFIGHT- (HOME/2010/ISEC/AG/054) EC - DG HOME AFFAIRS, USING THE SSPS GENERATED STATISTICS ON THE RCIMI QUESTIONNAIRES ON THB

Prevention means – accordingly – more and better jobs at home – through the specific policies, addressing the young generation. It means education for the respect of the human dignity as a strategic priority, cooperatively assumed by all the social actors. To address specifically the lack of perspective for a better future, to develop the entrepreneurial culture and the common responsibility for each concrete home area come close.

There are structural and peripheral components in an effective prevention.

Structural components in the prevention of THB could be, at least: identifying the vulnerabilities on the victims and reducing them, as much as possible; and knowing the traffickers' impulses and abolishing them.

The victim's vulnerabilities come from the individual poverty, from the person limited culture of the undeniable respect for Human Dignity, and the expanding – in some niches of the Romanian society - of the cynical culture of earning easy money by selling Human Beings. The Prevention work must address them as the first structural component. That is to provide working places, education, and to counter firmly and systematically the selling of Human beings.

The offenders' temptation arises from the enormous and immediate profits accessible. The penalties risked fail to discourage them. They bet on the possibilities to corrupt the authorities. Some of them, even, accept to spend a while in prison and to enjoy a luxury life after. Shortly, the huge profits and limited risks impulse the criminal activities. Aside it is the society toleration to the traffickers. To counter the possibilities of such a crime (to cut the profits and to develop the police specialised structures) and to increase the penalties (the New Romanian Criminal Code dramatically breaks the request to increase the penalties) are the main part of structural prevention, already in action. The society toleration is to address too. The discouraging of "the gangs"; using the community to report suspicions of such activities; and tabooing relations with persons susceptible to work in such an industry or in related ones, could work at the origins of THB. The discouraging of the consumers is the other part.

Regarding the peripheral components of THB, prevention is easier to report and organize. It is about displaying information; considering the campaigns; providing a free number for self-report as a victim; teaching the vulnerable groups how to self-protect. The well-known forms of self-protection are to avoid the entrance in the suspected entourages; to avoid to frequent suspicious meeting places (bars, mainly), where the recruitments occur. There are also parts of the advice: not to cut the connections with families and old friends; not to trust the websites, which are openly promoting THB; to distrust from the begging the offer of a very well paid job, only for young persons, and so on.

Regarding stopping traffickers, the Preventive actions must take into consideration the publicity of the criminal acts and the feeding of the public opinion against them.

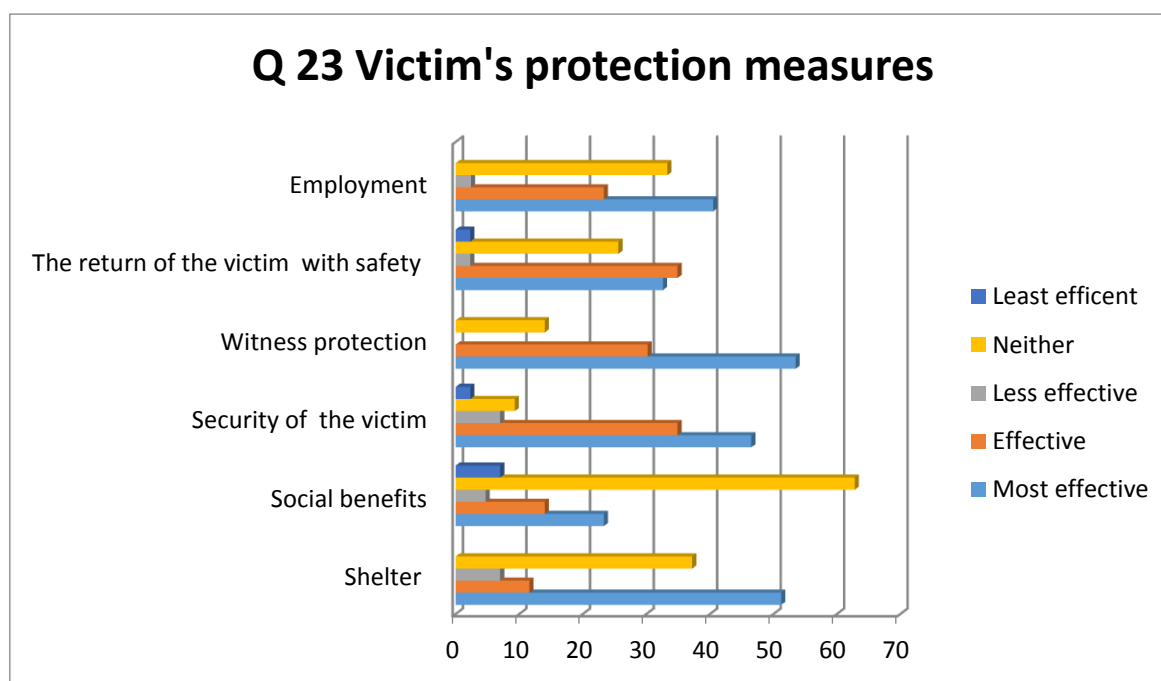
The two types of preventive actions are the parts of the same process. The structural are deep but unhurried and limitedly visible. They fail to create the satisfaction of the community about a firm action of countering THB. But they transform the community at large and cut the roots for trafficking. The campaigns only reach a few vulnerable people, not the entire group. Instead they are visible, praised and reported. The campaigns are more demonstrative, than effective. The number of victims does not decrease proportionally with the increasing number of preventive actions (campaigns) reported as the statistics prove.

Some consider that a much larger front must fight in THB prevention [Gianmarinaro, 2014]. In the ideal form, the active forces of a society must mobilize. Not only the police, prosecutors, or judges should be charged with the reversing of such a negative dynamics, in the contemporary society. The society's war on Trafficking must sustain until the eradication of the phenomenon, by all its active forces.

3.4. PROTECTING VICTIMS AND PROSECUTING TRAFFICKERS. NOT-PROSECUTING THE VICTIMS OF THE THB IN ROMANIA

Related to the victims protection, according to the Questionnaires, the professionals saw as efficient the measures shown in the figure bellow.

FIGURE VIII.9 THE ROMANIAN POLICE FORCES' PERCEPTIONS ON THE MEASURES AND PRACTICES IN VICTIMS' PROTECTION



SOURCE. 2013 - A CHART MADE BY RCIMI TEAM WITHIN THE PROJECT COOPtoFIGHT- (HOME/2010/ISEC/AG/054) EC - DG HOME AFFAIRS, USING THE SSPS GENERATED STATISTICS ON THE RCIMI QUESTIONNAIRES ON THB

The answers to the question referring the success in providing shelters to victims show that in what concerns social benefits, witness protection is considered as the most effective. The respondents rated the security of the victims during the trials as the most effective, in the proportion of 46.5%.

Interpreting the data, one can conclude that the official protectors of the victims' rate quite well their work. The safe return of the victims to their country of origin is rated as effective by 34.9%, only, possibly, because there are rare cases when the victims of trafficking in Romania are returned.

In the Interviews, 8 and 9, the presumptive victims – a 54 years old mother and 28 years old daughter - reported the limited support provided by the Romanian authorities. It seems to be an institutional limitation. They arrived in Germany for jobs and immediately found themselves pressed into prostitution in the house of their son, respectively, brother,

by their own close relative. They escaped. The German Red Cross, where they turned for help, on the advice of another victim, contributed to their salvation in Germany, by sending them back to Romania (at the Romania Western Border – Arad). After 22 hours spent in the train station, a Romanian police officer, who paid attention to their case, tried to help them. He could not provide them money to buy train tickets to get back home, in the Romania Eastern part. (Iasi). They were not “qualified” as victims, because they succeeded to escape.

The effectiveness of protection is out of being satisfactory. The active intervention against traffickers comprises the victims’ identification as early as possible, the Traffickers Pursuing; the Trial; and the Conviction. The early identification of a victim in Romania is using three directions of fight: a) adopting the Referral Mechanism; b) continuous updating in professionals training and; c) information of vulnerable persons of their rights. This is meant to help them to find a way to self-report as a victim.

The Romania National Mechanism for the Identification and Referral of THB victims-instituted in 2007⁶⁴⁶ is a procedure on the victims’ protection – gathering the identification, the referral, the assistance and the social reinsertion procedures. The principles proclaimed in the document call for: 1) respecting the victims’ rights to recovery (physically, psychically and socially); 2) the equality and non-discrimination principle; 3) the participation (of the victims) principle; and 4) the continuity in the action principle. They guide to concrete actions listed for each of the presumable identification units.

The Indicators for the Border Guards – as the RCIMI selected them from a list of 70 – are (according with the original numeration):

8. The Passport of the presumable victim held by another person, and it is used to control the presumable victim.

17. The presumable victim is not allowed to have contact with those around her or is restricting in his/her movements.

⁶⁴⁶ <<http://www.mmuncii.ro/pub/imagemanager/images/file/Legislatie/ORDINE/O335-2881-1990-2007.pdf>>.

28. The presumable victim has a limited capacity to act: for example, presents a physical or mental disability.

29. The presumable victim was not the one who arranged the trip, visa / work permit or residence.

30. The presumable victim is afraid of violent action or the threat of the others companions.

31. The presumable victim is subject / obedient to the presumable employer / pimp.

53. The person was smuggled into the country.

54. The presumable victim is carrying a forged document.

55. A combination of factors such as: the presumable victim is not a country citizen, married or living with someone that is a citizen, or she/he is ready to offer immediately sexual services.

56. Someone monitored closely the presumable victim.

57. The presumable victim is in contact with people or areas associated with human trafficking.

58. The citizenship of a person - a presumable victim - is one of the countries that are known commonly as a country of origin for the trafficking victims.

59. The presumable victim shows tattoos or other signs that show the dependence of a third person / group.

60. The presumable victim is showing signs of sexual abuse or wounds.

64. The passport of a presumable victim is showing that she/he made several trips to and from countries with poor economic situation.

68. The presumable victim is avoiding the contact with the police or the local authorities.

70. The other offenses are committed: drugs, weapons, economic crimes, fraud.⁶⁴⁷

⁶⁴⁷ The Executive Order of the Ministry of Interior, 335/ 2007, available at <http://www.mmuncii.ro/pub/imagemanager/images/file/Legislatie/ORDINE/O335-2881-1990-2007.pdf>

According to the results of the focus group 1, the first identifiers of a suspected victim with Romanian citizenship are the non-institutional ones: the victims' family, the NGO's (IOM) and the victims themselves. It is correct to say that the certification comes with the professionals work. For the aliens, the identifiers are the Border Guards.

They refer the victims to the NATP to evaluate their first needs and to provide the necessary assistance.

In their majority, the victims report the identification and the referral's moment (to the NATP) as a feeling of salvation.

A victim narrated [I, 2] how she stole from a store in order to be arrested. She looks for the opportunity to explain to the police forces that she was a victim of trafficking. They refused to take her into custody, because she did not commit a serious crime and released her. The trafficker took her from the police office, beat her up and re-victimised her.

In focus group 1, the participants reported that, in 2012, the Romanian Justice *solved* 676 THB cases. Of these, 178 causes concluded with indictments of 536 offenders. (The number of victims trafficked for exploitation was 976, of which 311 minors.) A new challenge for the fighters will represent the introduction of the New Romanian Criminal Code (on 1st February 2014), which is changing the penalties and is not discouraging the criminals to enter the "trafficking business", since a criminal has coined it.

According to the interviews made with senior officials it results that to eradicate the phenomenon, the police forces (and the prosecutors too) need more resources and a larger social support. The professionals underlined that it is a general determination to respect the freedom of each victim to decide on her/his involvement and its liberty to get out any time in the trials. The victims in their interviews (I 1; I 2; I 3,) confirm that.

3.5. COOPERATIVE WORK IN FIGHTING THB IN ROMANIA

In the seminar in THB organised in Oradea, the interventions of the officials from the Romanian Parliamentary sub-committee for combating THB; from the Local Council (Vice-president Ioan Mang), Prefecture (Prefect Claudiu Pop) and from the NATP stressed there is a large interest to cooperate in fighting THB at a political and administrative level. There are also technical facilities for structuring the cooperative work among the General Inspectorate of the Romanian Police; the General Inspectorate of the Border Police; the Directorate for the Investigation of the Organized Crime Offences and the DCOC and the Ministry of Justice units. In the last years, the regional institutions⁶⁴⁸ charged by the law to combat trafficking proved concrete cooperation among them and with the NGOs, active in the field.

The results have enabled the identification of the mechanisms, procedures, instruments and forms of cooperation, of the concerns with and the directions of action for the diversification and consolidation of this cooperation.

From a typology perspective, one should mention an institutionalized cooperation, carried out on the basis of the procedural rigors, as well as based on inter-personal relationships consolidated in time. The both forms encountered in the cooperation process on a domestic level, as well as on an international one. The answers of the interviewed interlocutors, from the central institutions, outline the fact that the body, gathering at national level the efforts concerning the working out of the Strategy against trafficking of human beings, is the Inter-ministerial Work Group.

At another level, one should mention that in 2009, the Parliamentary sub-Committee for the fight against trafficking of human beings was established. The Parliament of Romania was the first among the Legislative forum of the EU member states that has launched a procedure meant to shape the partnership and the informational exchange among the relevant actors within all sectors of public administration and the civil society, in order to

⁶⁴⁸ Prefect Institution; the Oradea Regional Centre of NATP; the BCOC -Oradea-; the Territorial Inspectorate of the Border Police – Oradea; DIOCT – the territorial Department of Oradea, Bihor Tribunal; the Labour Territorial Inspectorate Oradea; the General Directorate for Social Assistance and Child Protection Bihor; the Bihor District Inspectorate for Education; the Public Health Service – Bihor.

prevent and efficiently fight THB⁶⁴⁹ - as one of the initiators reveals. The sub-Committee also charged itself to harmonize the legislation in the field with the community and international one.

At local level, in each district there are operational anti-traffic inter-institutional centres that include experts from the institutions with responsibilities in the field.

The international cooperation attests to the active and consistent presence of Romania's representatives in the work groups constituted at the level of the Council of Europe, at the Council and Commission on issues of trafficking of human beings. The Reunion of the Committee of the Parties in CoE Convention, for the action against trafficking of human beings (June 11 2012, Strasbourg) is an example of such kind. At the same time, the Reunions of the National Rapporteurs or of the Equivalent Mechanisms organized by the European Commission or the EMPACT reunions – Operation Action Plan– THB, coordinated by the EUROPOL offer a favourable framework for the deepening and widening of international cooperation. In its turn, the Parliamentary Group for the fight against trafficking of human beings has joined the ECPAT Project - Parliamentarians against Human Trafficking – that aims to develop – by means of a network of MPs – the cooperation among the institutions involved in the issue and to harmonize the legislative framework with the evolutions of the phenomenon.

The national mechanism for the identification and referral of THB victims instituted in 2007 stipulates express tasks for inter-institutional cooperation, according to the competences of the actors involved, thus determining the improvement of the intervention capacity, of adopting a unitary and coordinated answer in identifying the victims, ensuring their protection and assistance. In this context, the external component of these activities is also significant to be found as well in the Trans-national Mechanism for the referral of trafficked persons, between the countries of origin and the countries of destination. At the same time, the Program for the coordination of victims testifying against the traffickers includes, alike all other forms of cooperation, protocols and action plans.

⁶⁴⁹ One of the initiators reveals the fact in the Seminar.

Illustrative for the contents of the inter-institutional cooperation are the following areas: prevention of victimization, investigation of causes; criminal pursuit and investigation of the traffickers; victims' protection and assistance; and the professional formation and specialization of the human resource involved in the fight against trafficking of human beings.

In *prevention* (THB), the inter-institutional cooperation is achieved under the form of a partnership between the public institutions and these and the NGOs. In 2012, NATP concluded 27 cooperation protocols: 5 at central level, and 22 at regional level. 15, out of the total 27, deal with both THB prevention activities and victims' assistance; 13 are focused exclusively on the prevention of this phenomenon, whereas 1 protocol is centred on granting support/services, psychological assistance, career orientation and professional formation of THB victims entrusted by the authorities to the social services providers. [Int. 17]

At local level, 7 action plans were worked out and assumed with the direct involvement of the traditional inter-institutional partners. There are the district police inspectorates, gendarmeries, districts' inspectorates for education, territorial labour inspectorates, public health services, etc. The actions aimed a more efficient coordination of the preventive activities, the sessions of training for specialists that get in touch with THB victims [Int.20].

In order to answer the needs of anti-trafficking inter-institutional teams, at a district level, and to acquire and enhance the operative capacity of the units, 72 meeting were organized in 2012. [Int. 20] They have a diverse agenda: local/regional priorities of action in the fight against THB; evolution features of the phenomenon in the respective area; the inter-institutional circuit of victims' assistance, ways of supporting the NGO's in the activity of THB prevention at a local/regional level; financing the activities of the victims' assistance.

In 2012, according to reports issued by NATP, 6 national and regional campaigns for prevention were carried out; while 36 local companies were targeting both the causes of the phenomenon and the main forms of exploitation. The number of direct beneficiaries was at

almost 100,000, according to internal estimations. The message of the national campaigns directed towards the risks of trafficking of human beings for sexual exploitation, exploitation for labour purposes and forced beggary. In the local campaigns, these objectives were adapted to the particularities of the phenomenon in the respective area. The year 2012 has stood out by means of the campaigns: “Choose to work safely, far from the traffickers in human beings!”, “It can’t happen to me!”, “Enjoy summer safely... far from the THB!”, “The trafficking in minors on the language of children”.

In the field of *fight* against THB, the cooperation reflected itself in the intensity and efficiency of the information exchanges, in the permanent contacts with the liaison officers, in the meetings with international partners on punctual cases, in perfecting new cooperation agreements. A synthesis offered by NATP reveals the fact that in 2012, at the level of the structures of the fight against THB, 68 rogatory commissions registered were required by foreign authorities and 85 addressed them, respectively. An intense exchange of operative information and checking were made with the help of the foreign liaison officers in the office in Romania, or by contacting foreign authorities from the Czech Republic, France, Germany, Austria, the Netherlands, Great Britain, USA, Italy, Spain, Sweden, with responsibilities in the field.

The cases instrumented by the Romanian DCOC’s prosecutors are, to an overwhelming extent, cross-border cases. They require an applied cooperation, in joint action with the judicial authorities from other states, in order to obtain means of proof and to ensure the exchange of information with an operative character.

In the judicial cooperation, at the level of DCCO, the causes regarding the trafficking in human beings take the second place, after those of informatics offences and credit card frauds. DCCO received, in 2012, 175 requests for international cooperation, as compared to 139 in 2011. In what concerns the judicial cooperation with the authorities from other states, 59 registered requests were received, 42 of which were solved. 116 requests were sent by the Romanian authorities, 52 of which were solved.

In 2012, DCOC extended the sphere of external contacts, concluding an Agreement of bilateral cooperation with the National Directorate Anti-Mafia from Italy. With regard to the specific EU instruments, the Romanian authorities use the European apprehension mandate – a judicial procedure per se, that works much faster than extradition. According to the Ministry of Justice, in 2012, the Romanian authorities did not receive any extradition request in the field of trafficking of human beings, while Romania has addressed 10 such requests for other states.

The cases built by the DCOC prosecutors are cross-border related and require an efficient cooperation with the judicial authorities from other states in order to obtain probation means and to ensure the exchange of information with an operative character.

Within the judicial cooperation, at the level of DCOC, THB causes that involve minors and migrants take the second place, after causes of criminal offences, informatics and credit card frauds.

In terms of statistics, in 2012, 175 causes concerning THB were registered, involving minors and migrants, as compared to 139 in 2011.

Out of the total requests for judicial cooperation with authorities from other states, 59 requests were received for “rogatory commission” and 116 were sent. Another work instrument used is the European Mandate for Detention, which is much more efficient than the traditional extradition procedures. The professional training of specialists represents a subfield in which the inter-institutional cooperation is present. The regional authorities - according to NATP’s reports – have organized and sustained, in 2012, 194 sessions of instruction for specialists, who work with THB victims or potential victims. The accredited central institutions supervised the topics and the drawn out material. The document provided by NATP, as a result of the addressed questions, mentions that in 2012, 3674 specialists, community policemen, proximity policemen, the ones from the public order sector, as well as, those from the judiciary, border policemen, gendarmes, professors and school inspectors, psychologists, workers in the placement centres, educational councillors, priests and representatives of town-halls, benefited from specialised trainings.

The partnership between the Public Prosecutor's Office attached to the High Court of Cassation and Justice, the Ministry of Internal Affairs, the National Magistrates Institute, the French Ministry of Justice, The French Ministry of Interior and *L'Ecole Nationale de la Magistrature*, has facilitated the organization of professional training seminars at the National Institute of *Magistrature*. An EU-funded project allows the specialists - from NATP, prosecutors, judges, police officers specialized in fighting trafficking of human beings, both from Romania and from France, as well as representatives on NGOs - to benefit from a complex training program.

In 2012, the intensive course on Schengen regarding the fight against trafficking in human beings, illegal migration, and cross-border offences, took place within the Schengen Multifunctional Training Centre from Buzau (Romania). The NATP and the Romanian Border Police met, in several series, officers within the departments of fight against organized crime, as well as from other Police central structures and from territorial ones. At the same time, prosecutors and judicial police officers within the fight against trafficking of human beings, specialists from NATP and representatives of the Labour Inspection took part in a series of seminars and conferences in the field of fighting trafficking of persons for labour purposes exploitation.

The interviews [I 13; I 17] reveal that Romania, in 2012, was involved in 46 activities of international cooperation. (It is increasing in approximately 16%, compared to 2011.) One must note the active participation of the governmental organizations in the European Union work groups and in the debates on the community legislation that regulates the field of fight against trafficking of human beings, thus consolidating Romania's statute of trustful partner at the external border of the EU in the anti-trafficking fight.

In the interventions in the focus group, one of the NATP representatives has emphasized the proposals of the Romanian authorities within the meetings of the National Rapporteurs or the Equivalent Mechanisms, organized by the European Commission. They stressed: the opportunity of setting common indicators of reporting at European level, in order to have an integrated, unitary and coherent image on THB; the need to create joint

teams of investigation [JIT]; the importance of promoting a European mechanism of identification and referral of THB victims, aspect supported subsequently in the European Commission Strategy for eradicating THB.

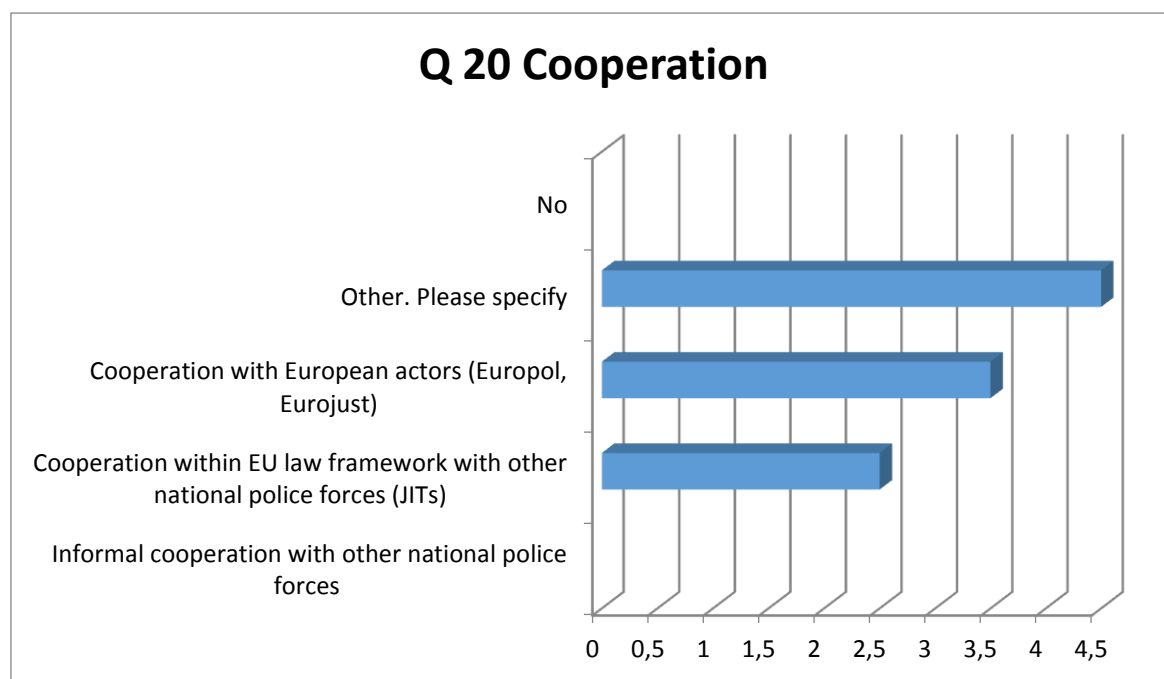
The same sources from NATP have noticed the fact that in 2012, through the structures with attributions in the prevention and monitoring of THB, Romania has actively participated in the work groups, seminars and meetings organized at the European Council and the Commission level, on issues of trafficking of human beings. At the reunions such as COSI, GENVAL, CATS, HLWG, COREPER, EMPACT, on issues from the area of THB, Romania presented elements of mandate and official positions that have subsequently reflected into European public policies on the line of prevention. The NATP's expertise in the field of identification and referral of the victims in order to grant them assistance was determinant in including Romania, besides Bulgaria, as a leader of strategic objective no. 5 "improving the early identification and victims' assistance" from the Operational Action Plan for 2013. Nevertheless, that transfer of expertise has represented a defining element of the international cooperation. According to the European Development Policy, by strategic partnerships with third states, Romania has furnished expertise for Bosnia-Herzegovina, Macedonia, Albania, Moldova, Croatia, Montenegro, Serbia and Turkey.

Romania contributed to the working out of common Declaration on the consolidation of the trans-national cooperation in cases of trafficking of human beings, reasserting the strategic priority of the fight against trafficking of human beings and the wish to consolidate the communication and cooperation in this field.

The dialogues carried out have also revealed some critical points in the inter-institutional cooperation, situated particularly in the areas of the assistance and social-professional reintegration. The lack of funding of assistance activities affects the capacity of the providers of assistance services to victims, carrying out investments (e.g. shelters) in this area.

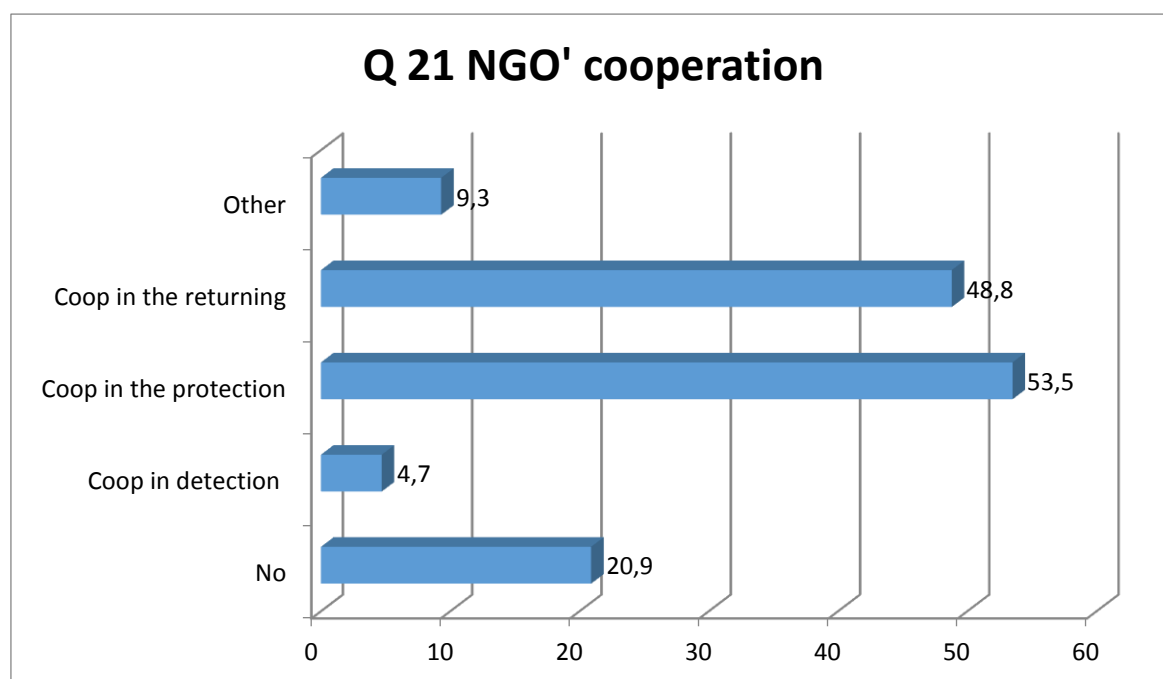
The perceptions of the cooperative work, as they result from the Questionnaire, (Q 20), prove the general effort in the field. The chart below illustrates them.

FIGURE VIII.10 THE ROMANIAN POLICE FORCES PERCEPTIONS ON THE COOPERATIVE WORK WITH THE EUROPEAN POLICE FORCES



The evaluations on working together are quite high. The results are congruent with those of the interviews and focus group I. The respondent officers appreciated the efficiency of the direct work, instead of the bureaucratic one. In the focus group 1, the interlocutors explained that the good European cooperation is due, mainly, to the personal ties. The chart below illustrates the domestic cooperation, with NGOs (**Q 21**).

FIGURE VIII.11 THE ROMANIAN POLICE FORCES PERCEPTIONS ON THE COOPERATIVE WORK WITH THE NGOS



The number of respondents that cooperated with an NGO, in order to detect the victims was extremely low: 4.7%. The Romanian authorities are cooperating with NGOs when it comes to the protection and legal assistance of victims (a percentage of 53.5%). Frontline fighters should encourage NGOs to extend their activities on field of identifying victims of THB and to develop such a cooperation.

In order to assist THB victims to return to their countries of origin, the cooperation between the two entities is very important according to 48.8% of our respondents.

The RCIMI team considers that Romanian authorities established the legal and the institutional framework for fighting THB, with the exception of the institution of *the National Rapporteur*. It has completed the legal framework for preventing the phenomenon, for protecting victims, as the anti-trafficking law makes proof with Chapter IV. We conclude that the system of pursuing traffickers and not condemning the victims (art. 20) is accomplished. A system was therefore created for international and European field cooperation.

There is a large compliance between the European and the Romanian strategy in the field and also continuity between the first and the second strategy in fighting THB. There

are major accomplishments for a country unfamiliar with the THB phenomenon, with the management of the inter-dependencies and with the public transparencies in working with criminals.

That is why it should be underlined that there is progress in Romania in institutionalising the fight on THB, in international cooperation against THB crime. There are serious improvements in preventing, in protecting victims and in prosecuting criminals.

Still, there is room for more progress and needs to an immediate development. There are un-identified and re-victimised victims. They must be found, protected and registered in SIMEV. More appropriate institutional solutions have to be found to ease the identification of the victims and their registration in SIMEV. The reduction of the penalty for THB crimes – as the RCC unfortunately did - is to be immediately taken under consideration. In administering justice, we should continue to strive for unitary views on the gravity of crimes, for the proportionality of the verdicts and to increase the public's trust that the criminals were indicted. Much more funds need to be attracted, much more shelters organised and material compensations made available in protecting the victims.

The literature on THB in Romania is an un-homogenous collection, involving institutional literature, academic literature and literature with media perspectives. The academic literature and the normative repertoire (conventions, regulations, procedures, guides, and so on) are not innovative, but they are consistent with the European trends and it is "accountable". It is influencing the decisions' takers. The literature with media perspectives is influencing the public and its expectations and trust in the justice. The new topics revealed in the social media need a trustful consideration in the literature. They firstly could be addressed in the journals' articles.

The Romanian statistics comply with the EUROSTAT's indicators, in large extent, and provide comparable data. They exhibit systematically valuable data. The Romanian decision-makers take benefits from them. Nonetheless, the reality presses to introduce a new indicator in the statistics: an estimation of the presumable victims of the non-EU countries.

As such, the number of victims with Romanian origins is the highest of the EU countries, 5.4 / 100000 inhabitants, and two times higher compared with the EU average, 2.0 / 100000. It imposes direct political measures.

The work in preventing THB is increasing significantly, though it is not enough to determinate the systematic decreasing in the number of victims. The prevention is not enough supported to create a significant culture, firmly and actively opposed to the trafficking. According to our understanding, it does not focus on the structural causes of THB, yet. The activities of early victims' identification are at their beginnings. The SIMEV is the most recent creation of the authorities.

The prosecuting of the traffickers is under the provisions of the New Criminal Code, which, paradoxically, reduces the penalties, comparing with the special law of anti-trafficking. The new provisions, combined with the results of the trials (the reduced convictions) fail to discourage the criminals. The victims are far from getting the public's support. They remain under the public blame of being prostitutes. The public's role in combating THB is extremely limited.

Romania has everything it needs to engage in the European cooperation in fighting THB by the institutional and legislative compliances, by the trained professionals, by the similar statistics indicators and by the professionals' concept in justice. However, the culture of the tabooing, the uses and abuses of other human beings is limiting its capacity to eradicate the phenomenon. The protection of the victims and vulnerable persons is at the beginning. There are organised systematic actions in prevention, there are press campaigns and there are NGOs devoted to alert the presumptive victims. The technical provisions to protect are provided by the anti-trafficking law, but the unsatisfactory financing is reducing the possibilities of an effective protection. The poverty and the limited education (of the majority of vulnerable persons to THB) do not help.

The perception of THB among the victims is: "THB is not the worst thing that could happen to us!" The victims' mentality is that the non-payment for their work as trafficked persons is more intolerable than the trafficking itself. It contrasted dramatically with the

concept of the direct fighters and other opponents on the mentioned crime and it raises the question about the education system results.

The individual vulnerability of the presumable victims together with the limited social capacity in financing the prevention, produced by the economic condition of the country, explain the THB's large incidence in Romania. They also unveil the concrete obstacles in its eradication.

The mentality of accepting THB, which characterises some parts of the society, is explaining the limited effect of the combating process, the high and increasing number of victims. The mentality is responsible also for some inhuman practices, in exploiting people. It is a pre-modern culture of disrespect for Human Dignity and Human Rights.

To counter such causes there is a need to set domestic policies, to rely on internal efforts. To prosecute traffickers and to cut their political pretended connections are two measures needing immediate implementation. However, to reduce the demand for trafficked persons in the destination countries is also crucial. This type of two-face action is the obvious way to stop the increase of the THB phenomenon or even to significantly decrease it.

To significantly reduce people's vulnerability to THB we need to design a cultural strategy to counter the mentality, which should completely forbid the abuse of the individual, the disrespect for his/her individual dignity and rights. It must include a large media role and others non-formal bodies determined to change the attitudes toward THB and to raise the interest for the human dignity.

CHAPTER IX

SPAIN NATIONAL CASE

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INTRODUCTION

Spain is unanimously considered a transit and destination country of human trafficking. Although some cases of internal trafficking and trafficking from Spain to other countries have been recently reported, the common pattern is that foreign victims are trafficked to Spain. As in many other countries, available data on traffic of human beings (THB) is incomplete and have important methodological problems that hinder the concrete characterization of this phenomenon and any attempt to quantify it from a scientific perspective. THB's invisibility, its mainly transnational character and its connections to other illegal and clandestine activities easily raise distrust towards data referred to THB victims like in most of the so-called "hard to reach populations". However, it is also important to take into account that Spanish policies have been mainly focused on THB for sexual exploitation and that there is an important deficit regarding other forms of THB and especially for labour exploitation. This has had also an impact on statistics, which basically regard to THB for sexual exploitation.

Available data in Spain is characterized by low levels of reliability and validity, as well as by an insufficient level of detail and disaggregation. Due to temporary gaps in 2008, 2010 and 2012 originated by legal amendments and changes in the data collection system, it is also very difficult to obtain complete longitudinal time series data. For instance, until the end of 2010, THB was not punished as a specific crime in Spain. Previous available data was therefore related to other criminal offences that could be considered similar to THB, such as sexual and labour exploitation or child abuse. Additional biases emerge from obstacles concerning victims' identification and the fact that access to data is limited to police and judicial agents.

Prior to 2010, existing data on THB (considering "similar offences" records) was provided by the state security forces, namely the National Police [Policía Nacional] and the Civil Guard [Guardia Civil]. Both institutions are affiliated to the Ministry of Interior and collected data on THB. Since the mid-2000s, available data has been collected by the Centre for Intelligence against the Organized Crime [Centro de Inteligencia contra el Crimen

Organizado (CICO)], a new agency of the Ministry of Interior. THB data provided by CICO supplied useful information in order to elaborate a first diagnosis of the problem. Although from a methodological perspective this data is doubtful, in mid-2000s the annual number of THB victims reached 3000 people approximately. This number is similar to data published by the Civic Independent Observatory [Observatorio cívico Independiente] in its 2009 *Report*.

Prior and after 2010 it is also very important to stress that official THB data usually refers to different situations: identified victims, people that are in risk of being trafficked, people that have been arrested or prosecuted cases. The criteria of having been identified as a victim or of being in risk of becoming a victim are not always specified and may therefore raise additional methodological problems. Having said this, the existing official data on THB in Spain is the following.

Table IX.1 shows the distribution of victims by sex and age, between 2003 and 2007. This table points out the highly feminized profile of the victims. Most of THB victims are women.

TABELA IX.1 - PERCENTAGE OF IDENTIFIED VICTIMS BY SEX AND AGE IN SPAIN (2003-2007)

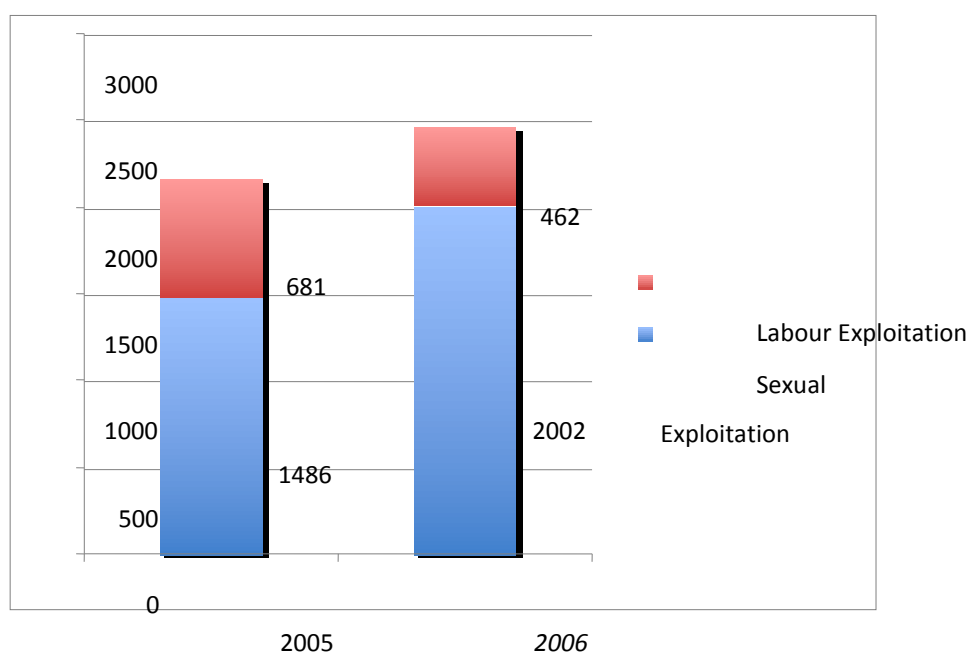
(%)	2003	2004	2005	2006	2007
Women	67,3	70,4	67,9	80,55	49,9
Men	32,4	28,8	31,6	18,75	49,9
Girls	0,3	0,8	0,5	0,65	0,2
Boys	0,0	0,0	0,0	0,05	0,0
TOTAL	100,0	100,0	100,0	100,0	100,0
(N)	2549	2768	2174	2464	2521

SOURCE: CENTRO DE INTELIGENCIA CONTRA EL CRIMEN ORGANIZADO (CICO), PUBLISHED BY UNDOC (2009).

More data with a higher level of disaggregation is available for 2005 and 2006 (Figure 1). Considering victims' identification data – obviously it is just the tip of the iceberg phenomenon –, it is possible to establish that 69% of THB cases in 2005 belonged to sexual

exploitation, while 31% were related to different forms of labour exploitation. In 2006, the percentage of identified victims who were trafficked for sexual exploitation reached 81%, while victims forced to labour exploitation fell to 19%. Despite methodological problems, it is clear that THB for sexual exploitation is the most common type of THB.

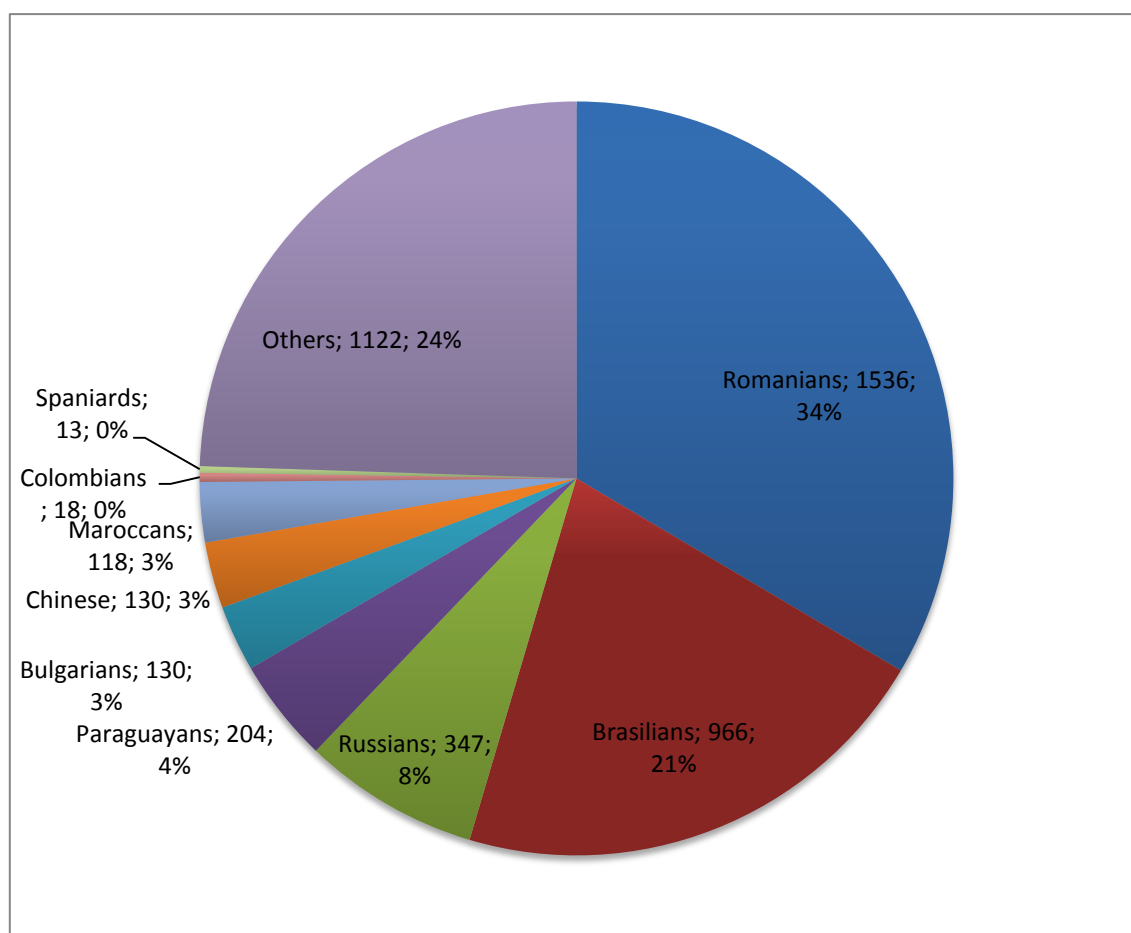
FIGURE IX.1 - IDENTIFIED VICTIMS ACCORDING TO FORMS OF EXPLOITATION (2005 -2006)



SOURCE: CENTRO DE INTELIGENCIA CONTRA EL CRIMEN ORGANIZADO (CICO) PUBLISHED BY UNDOC (2009)

Taking a look into the countries of origin of THB victims in this period (2005-2006), as shown in Figure IX.2, Romania appeared to be the most important country of origin, followed by Brazil. However, lack of information on almost 25% of the victims' origins results in, basically, indicative data. The weight of women victims coming from Paraguay and its increasing volume since the mid-2000s is also disclosed.

FIGURE IX.2 - IDENTIFIED VICTIMS BY ORIGIN (2005-2006)



SOURCE: CENTRO DE INTELIGENCIA CONTRA EL CRIMEN ORGANIZADO (CICO), PUBLISHED BY UNDOC (2009).

In conclusion, data on victims identified by Spanish state security forces reveal a high incidence of victims of traffic for sexual exploitation compared with those for labour exploitation. Moreover, data disclose the greatest extent of adult women as victims, as well as the importance of Romania as country of origin. However, these conclusions have just a tentative character, bearing in mind the biases that have been mentioned before.

More recently, in 2012, the Spanish Ombudsperson [Defensor del Pueblo] published a report on THB in Spain that contains more updated official data obtained from CICO and the Prosecutor General's Office [Fiscalía General del Estado] for the period 2009-2011. CICO data has been collected in two ways: a) preventive inspections carried out by police forces in places where prostitution is exercised, with the main aim of detecting illegal activities linked to the sex industry, and b) police reports related to the investigation of concrete offences

related to THB. These two sources of information lead to the use of two categories that appear in official data and that are very often misused in the public debate regarding THB in Spain: people that are at risk of being trafficked (which are normally detected during preventive police inspections described in a) and victims that are identified by police officers in the official reports mentioned in b). From a methodological perspective, the above mentioned problems not only persist, but even increased, especially in the case of people being at risk of being trafficked for sexual exploitation.

In any case, the Ombudsperson's Report main conclusions are the following:

Firstly, and as shown in Table IX.2, the number of people at risk of being trafficked has increased from 6157 to 14 370. This increase seems to be related to the number of police inspections, but has to be taken into account.

Secondly, the number of identified victims has not changed in such a way: 1301 victims were identified in 2010, 1641 in 2011 and 1082 in 2012. These figures have changed considerably if compared with the ones mentioned in Table IX.1 for the period 2005-2006, but it has to be taken into account that the Palermo Protocol definition of THB was implemented in Spain in 2009 and not before. In any case, the figures mentioned in the report of the Group of Experts on Action against Trafficking in Human Beings (GRETA) of 2013 concerning Spain are not exactly the same. "According to the Spanish authorities", GRETA report mentions that identified victims of trafficking were 443 in 2009, 1605 in 2010 and 234 in 2011 (GRETA, 2013d: 11). The disparity between the number of identified THB victims according to the Report of the Ombudsperson, quoting CICO as the source, and figures provided to GRETA by Spanish authorities show in a clear way the need of developing and maintaining a comprehensive and coherent statistical system on THB.

TABELA IX.2 - PEOPLE AT RISK AND IDENTIFIED THB VICTIMS (2010-2012)

	2009	2010	2011	2012
People at risk of trafficking	6 157	15 075	14 370	12 305
Identified victims	1 301	1 641	1 082	976
Identified victims (GRETA Report)	443	1 605	234	--

SOURCE: SPANISH OMBUDSPERSON REPORT (2012); DELEGACIÓN DEL GOBIERNO DE VIOLENCIA DE GÉNERO (2010, 2011, 2012, 2013) (FOLLOW-UP REPORTS ON THE COMPREHENSIVE PLAN TO COMBAT THB FOR SEXUAL EXPLOITATION); AND GRETA (2013D) REPORT CONCERNING THE IMPLEMENTATION OF THE WARSAW CONVENTION IN SPAIN.

Thirdly, according to Spanish Ombudsperson's Report (2012) the great majority of identified victims, during the period 2009-2011, were women. In 2011, 47% of them came from America, 45% from Europe and 7% from Africa. Considering nationalities, women coming from Brazil and Paraguay, in Latin America, are prevailing, as well as Romanian in Europe and Nigerians coming from Africa. At the same time, during the years 2009, 2010 and 2011, the percentage of minors has increased related to the total number of victims. It has grown from 1% in 2009 and 0.8% in 2010 to 3% in 2011. Once again, however, these data have to be interpreted rather as an estimate due to methodological reasons.

The situation of data concerning THB for labour exploitation is even worse. As it will be described later on, Spanish Action Plan and Protocols to combat THB have been focused on THB for sexual exploitation and there is no systematic data collection of other forms of THB. In the case of THB for labour exploitation, the Ombudsperson Report contains few available data that have been collected from the Prosecutor General's Office Annual Reports. However, the Ombudsperson Report also includes some information provided by the Spanish Labour Inspectorate along with the results of 11 police operations carried out to dismantle gangs linked to labour exploitation released by the press in 2011. With respect to data provided by the Prosecutor General's Office in 2010, it must be acknowledged that many cases collected in official records do not correspond to labour trafficking criteria established in article 177 *bis* of the Criminal Code, but some behaviours typified in article 312 can be considered offences against workers' rights. Eighty-eight victims were included in

case records in 2010. They were irregular foreign nationals subjected to harsh and illegal labour conditions.

All these situations were detected in productive sectors such as construction (20,93%), agriculture (13,95%), hotel and catering industry (11,62%) and domestic labour or dependent care assistance (9,30%). In relation to the victims' nationalities, data from the Prosecutor General's Office refers to victims coming from Romania, Morocco, Guatemala and Bangladesh; moreover, 62,8% of THB defendants correspond to Spanish citizens.

In any case, the Ombudsperson's Report highlights how difficult it is to measure labour trafficking due to the scarcity of official record systems. This conclusion is coincident with the Report on Labour Exploitation published by the NGO Asociación Comisión Católica Española de Migraciones (ACCEM) in 2008. Along with the obstacles to gather information on this phenomenon, this Report observes the lack of complaints as a fact related to coercion and threats suffered by the victims. According to this Report, some of the most frequent forms of exploitation and coercion are excessive working hours, confinement in houses, intimidations and threats, seizure of passports by traffickers and income below the current legal monthly minimum wage.

Along with data on victims, the United Nation Office on Drugs and Crime (UNODC) offers general information on suspects and people arrested for THB in Spain. From 2003 to 2007, this agency differentiates between suspects and arrested people by police forces (Table IX.3). According to these figures, the situation did not change in a substantial way during these years. Moreover, the Ombudsperson Report, which includes 2010 and 2011 data from the Prosecutor General's Office, reveals that the most part of defendants in human trafficking cases are Romanian and Spanish citizens who are involved in sexual and labour trafficking.

TABELA IX.3. - THB CASES PROSECUTED BY POLICE (2003-2007)

				2003	2004	2005	2006	2007
Suspects	involved	in	human	1816	1445	1881	1618	1870
trafficking	cases							
People	arrested	for	human	1286	1240	1172	1224	1204
trafficking	cases							

SOURCE: PREPARED BY THE AUTHORS ON THE BASIS OF UNODC (2009A: 282).

The analysis of THB available data leads to the conclusion that official record systems of THB for sexual and labour exploitation must be improved along with increasing inter-institutional cooperation and agreements concerning record procedures to gather complete information for comparative and longitudinal studies. In the same way, GRETA has urged Spanish authorities to develop and maintain comprehensive and coherent statistical systems on THB by compiling reliable statistical information from all main actors and allowing disaggregation concerning sex, age, type of exploitation, country of origin/or destination. A greater effort must especially be made to record labour trafficking cases. All this should be accompanied by all the necessary measures to respect data protection legislation. Until these measures are undertaken, it is preferable to talk about estimates rather than statistics.

Although little research has been carried out regarding victims and traffickers, police and judicial prosecution of THB cases show some aspects that will be developed later, but that have to be taken into consideration when talking about the state of the art of THB in Spain. The first one is the clear link between organized crime gangs and the way in which victims are trafficked. Although most of the cases that have been sentenced are not connected to organized crime organizations, police investigations have shown that the means that are used to traffic victims depend to a great extent on the origin of the criminal organizations. Nigerian, Eastern European, Chinese or Latin American gangs have not only different structures and modus operandi, but use different ways to control THB victims.

1. SPANISH PUBLIC THB POLICIES AND MAIN LEGISLATIVE INITIATIVES

The public policies developed and the legislation recently approved in Spain regarding different forms of THB are strongly influenced by the international obligations assumed by the state in this field.⁶⁵⁰ Of special relevance was the entry into force in December 2003 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol), ratified by Spain on 21 February 2002.⁶⁵¹ Also, the international instruments adopted in the framework of the Council of Europe⁶⁵² and the European Union have had a positive effect in this matter.

Thus, although Spanish public THB policies have positively evolved and have been intensified in the last decade, some problems remain still present. Among others, the difficulties for identifying THB victims; the difficulties of distinguishing THB and migrant smuggling, which are aggravated because of the predominant focus put on migratory control; and the poor statistic data collection made by the Spanish authorities.

1.1 EVOLUTION OF THE PUBLIC POLICIES

In a first stage, between 1999 and 2005, public policies designed in Spain to fight against THB moved from focusing exclusively on crime prosecution – as highlighted in the reports of the Guardia Civil [Civil Guard] or the European Police Office (Europol) from 1998, 1999 and 2000 –, to progressively paying attention to effective victim protection and assistance. Moreover, it has to be taken into account that in this period, public THB policies were exclusively aimed to face the problem of THB for sexual exploitation of women and minors.

⁶⁵⁰ A good analysis of this influence can be found in Carolina Villacampa (2011).

⁶⁵¹ BOE núm. 296, 11 December 2003.

⁶⁵² The 2005 European Convention on Action against Trafficking in Human Beings was ratified by Spain on 23 February 2009 (BOE núm. 219, 10 September 2009).

From a legislative point of view, normative instruments adopted during this period were influenced by the conception that matched prostitution to THB. Although the Código Penal [Criminal Code] (hereinafter CC) of 1995⁶⁵³ decriminalized third party renting (rent rooms, exploitation of prostitution sites) and non-coercive procuring, the text considered that the networks behind prostitution were *per se* THB networks.⁶⁵⁴

The change of this conceptual approach was due to the growth of trafficking in women for sexual exploitation following the CC reform, and coincided with the intensification of the fight against THB in other European countries (France, United Kingdom, Netherlands, etc.). By decriminalizing the conducts of those who benefited from the prostitution of others, the CC of 1995 helped to create a new legal scenario around the sexual commerce by triggering the expansion of the sex industry in Spain. The reform created a pull effect over the international networks of organized crime dedicated to THB. Thus, between 2000 and 2007 Spain went from being a transit country for THB victims to a destination country for women to be sexually exploited.

Alongside this, the Spanish migratory model suffered a major change since the year 2000. Due to the good economic situation, the country experimented a notably increase of immigration flows. At the same time, smuggling and trafficking networks intensified their activities in our country and Spain became a destination country for THB networks for labour exploitation.

The normative framework at that moment was complex and prioritized the criminal prosecution of the phenomenon of THB. The focus was put on measures of criminal nature. Thus, the prosecution of THB was made under different criminal offences:

⁶⁵³ Ley Orgánica [Organic Law] 10/1995, of 23 November.

⁶⁵⁴ This conception was present since the signing of the United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 2 December 1949. This Convention was incorporated in the Decreto-Ley [Law Act] of 3 March 1956 and in the CC reform of 1963, consolidated in the revised Text of the CC established by the Decreto [Act] 3096/1973, of 14 September, which punished the conduct of third parties that might had any benefit from the prostitution of women and children, including procurers -the so called third party rent- and, in general, any sort of exploitation of the prostitution of others.

- The offence included in former article 318-bis CC referred in general to people smuggling and to people smuggling with the purpose for sexual exploitation.
- The offences related to the prostitution and corruption of minors. Forced prostitution (article 188 CC), sexual exploitation of minors (article 187 and 189 CC) and child pornography (article 189 CC) were all punished.
- Illegal adoptions (article 221 CC) and trafficking in minors for begging or forced begging (article 232 CC) were also punished.
- A group of offences against workers' rights (Chapter XV CC) and against the rights of foreign citizens (Chapter XV-bis CC) aimed to punish labour exploitation (article 311 CC), the instigation to clandestine labour emigration (articles 313 and 313 CC), labour discrimination (article 314 CC), the limitation of the right to unionize (article 315 CC), the infraction of the health and hygiene standards (article 316 and 317 CC) and trafficking in immigrants (article 318-bis CC). All of them could be used to punish THB with the purpose of labour exploitation.⁶⁵⁵

The first amendment aiming to clarify this normative scenario and to stop the growth of THB that had been perceived came along with the incorporation of the Council Framework Decision of 19 July 2002 on combating trafficking in human beings (2002/629/JAI). The Decision established a deadline for its implementation: 1 August 2004. The implementation in Spain resulted in a reform of the CC made by Organic Law 11/2003, *de medidas concretas en materia de seguridad ciudadana, violencia doméstica e integración social de los extranjeros* [of concrete measures on citizenship security matters, domestic violence and social integration of foreigners] of September 2003, joined by other measures of assistance and protection scope and the ratification of the Palermo Protocol.

In a second stage, between 2005 and 2010, public actions aimed to improve the fight against THB increased, both from a qualitative and quantitative point of view. Diverse measures were implemented and the public resources assigned to this implementation were

⁶⁵⁵ A critical analysis of this fragmented treatment of the phenomenon of THB can be found in the Informe Nacional España (Spain National Report) of the project Safer Path, System Action for Empowerment of Refugees and Protection against Trafficking in Human Beings (HOME/2009/ERFX/CA1044), held with the support of the European Refugee Fund of the European Commission (Directorate General for Home Affairs). For a doctrinal analysis see: Daunis, Alberto (2010).

also crucially increased. The growing engagement of the Autonomous Communities in the development and implementation of supplementary plans and programs in this field, and the creation of specialized public organisms dealing with this crime, as the Immigration Attorney,⁶⁵⁶ and the specialized units of the Centro de Inteligencia contra el Crimen Organizado (CICO) and the Unidad Central de Redes de Inmigración Ilegal y Falsedades Documentales (UCRIF) [Unit against Immigration Networks and Forgery of Documents],⁶⁵⁷ have also to be underlined.

The evolutionary process culminated with the approval of two fundamental norms:

- The Organic Law 2/2009, of 11 December, amending the Organic Law 4/2000, of 11 January, *sobre derechos y libertades de los extranjeros en España y su integración social* [on rights and freedoms of foreigner in Spain and their social integration] (LOEx), established a specific statute for foreign persons in irregular situation who are victims of THB (article 59 *bis* LOEx).
- The Organic Law 5/2010, of 22 June, amending the Organic Law 10/1995, of 23 November, introduced the new Title VII *bis* on “Trafficking in Human Beings”. New article 177 *bis* defines the offence of THB including all forms of THB, national or international, related or not with organized crime.⁶⁵⁸ Nevertheless, it has been highlighted that current typification of human trafficking with the purpose of labour exploitation should be revised.

Other national legal instruments approved at that time were:

⁶⁵⁶ According to provisions of the Prosecutor General’s Office (Fiscalía General del Estado) (specially the Circular 2/2006 and Proceeding [Instrucción] 5/2007) the Immigration Delegate Prosecutors (Fiscales Delegados de Extranjería) are designated to pursue and/or coordinate the pursuit of the related offences defined in article 318 *bis* CC (Title XV *Bis* from the Second Book CC, of the crimes against the rights of foreign citizens [de los delitos contra los derechos de los ciudadanos extranjeros]), its related offences defined in article 312.2 CC (imposition of illegal conditions to foreign workers [imposición de condiciones ilegales a los trabajadores extranjeros]) and in article 313 CC (offenses of aiding illegal immigration of workers [delitos de favorecimiento de la inmigración clandestina de trabajadores]). However, after one year of operation, the Fiscalía de Sala [Attorney Chamber] found that it is necessary to extend the internal competencies to the offences of prostitution (both, of minors – article 187 CC – and adults – article 188 CC) not only by its direct relation with the aggravated subtype of the second ordinal [section] of article 318 *Bis* CC, but also found that in the majority of cases the actual sexual offence victims were foreign citizens (from EU or not).

⁶⁵⁷ The CICO was set up under the Ministry of the Interior by the Real Decreto [Royal Act, hereinafter RA] 991/2006, of 8 September. The UCRIF was set up under the Comisaria General de extranjería y fronteras [General Commissioner on borders and foreigners] by RA 991/2006, of 8 September; and RA 1571/2007, of 30 November; and the RA 1181/2008, of 11 July).

⁶⁵⁸ For a doctrinal analysis of article 177, see: Martos, Juan Antonio (2012).

- The “Plan integral de lucha contra la Trata de seres humanos con fines de explotación sexual” [Comprehensive action plan to combat THB for sexual exploitation] (2009).⁶⁵⁹ This plan included different measures aiming to provide specialized training to relevant professionals. An Inter-ministerial Coordination Group is in charge of the follow-up and evaluation of the Plan. The Group has, among other functions, the task of promoting the dialogue with the Spanish network against THB and other NGOs; the representation before the Commission for the Follow-up of the Human Rights Plan and the approval of an Annual Report. Although the approval of this Action Plan can be considered a good practice, a new framework protocol for combating THB, including THB for the purpose of labour exploitation, should be adopted. This new Protocol shall include a comprehensive set of measures aiming both at preventing and prosecuting THB, and to protect, assist and effectively compensate THB victims. An important effort has to be made in order to provide maximum dissemination of this future Protocol.

- The *Protocolo Marco de protección de las víctimas de trata de seres humanos* [Framework Protocol for the protection of THB victims] (2011).⁶⁶⁰ It includes specific measures for detecting, identifying and referring THB victims with the due guarantees, for facilitating their assistance and protection. Furthermore, it establishes coordination mechanisms between state security forces and the Inspección de Trabajo [Labour Inspection] or equivalent regional body, the judicial organs, the Attorney and the specialized entities in charge of the assistance of the victims. Also, it takes into account the role of social organizations and the NGOs, both at the detection stage as well as in the referral and assistance to the victims. Nevertheless, effective coordination among stakeholders remains a challenge. In general, internal and international cooperation should be strengthened. This should be done by overcoming mutual distrust and strengthening cooperative work.

Besides that, most of the Autonomous Communities have developed effective protocols regarding identification and protection of THB victims. In general, Autonomous

⁶⁵⁹ Available at: http://www.msssi.gob.es/ssi/violenciaGenero/tratadeMujeres/planIntegral/DOC/PlanIntegralTSHconFES_Cst.pdf

⁶⁶⁰ An English version is available at: <http://www.msssi.gob.es/ssi/violenciaGenero/tratadeMujeres/ProtocoloMarco/homel.htm>

Communities have developed at regional level the national instruments, mostly focusing on the fight against gender violence or in the broader context of the promotion of equality between men and women. Since only a few Autonomous Communities (principally, Catalonia and The Basque Country) have competences in police prosecution of the crime (both Autonomous Communities have their own police forces), most of them have adopted measures regarding victims' assistance. These measures have been adopted according to their competences in women protection, family protection or social assistance.

It can be concluded that, by answering to the international demands, Spain has recently adopted a more decisive victim centric approach to trafficking in human beings. But some challenges remain. In general, it can be said that more attention should be paid to the adoption of measures for effective protection, recovery and rehabilitation of the victims. Also, Directive 2011/36/EU, of 5 April, on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA should be fully incorporated in Spain.⁶⁶¹ Lately, Spain has established the Spanish national rapporteur on THB. The tasks of the national rapporteurs are foreseen in article 19 of Directive 2011/36/EU. Only on 3 April 2014 the Secretary of State for Security has appointed its own Chief of Cabinet as national rapporteur on THB.

1.2. THE SPECIFICITIES OF THE FIGHT AGAINST TRAFFICKING IN CHILDREN FOR SEXUAL EXPLOITATION

In Spain, the oldest recognizable public action related to the fight against THB aimed to protect minors against sexual exploitation. The *I Plan de Acción contra la explotación sexual de la Infancia y la Adolescencia* (2002-2003) [I Plan of Action against the sexual exploitation of childhood and adolescence] was promoted by the Observatorio da Infancia [Childhood Observatory] (Ministerio de Sanidad, Servicios Sociales e Igualdad [Ministry of Health, Social Policy and Equality]), and may be defined inside the category of measures of criminal or punishing nature, classified among the criminal policy actions.

The II Plan (2004-2008) made significant advance on the definition of the distinct forms of children sexual exploitation, differentiating pornography and child prostitution, as

⁶⁶¹ See, Carolina Villacampa (2014)

well as the different means used to it (trafficking in boys and girls for sexual ends, commercial sexual exploitation tourism, early marriage, etc.). But it still remains in the domain of criminal and punishing nature policies.

Other national legal initiatives taken in this regard are:

- The Transposition of the Framework Decision 2004/68/JAI from the Council, of 22 December 2003, on combating the sexual exploitation of children and child pornography. The transposition was made through the incorporation in the CC of Title VIII, titled “De los abusos y agresiones sexuales a menores de trece años” [on the sexual assault and abuse of children under the age of thirteen] (articles 183 and 183 *bis*). Besides, it regulated the so-called “child grooming” (article 183 *bis* CC), referred to the conducts of an adult person who uses Internet or any other new technologies with the purpose of making appointments to receive sexual favours. Likewise, child grooming for participation in pornographic shows is defined (article 189.1 CC). Articles 187 to 190 punish the prostitution and corruption of minors. Finally, the penalty of removal of parental rights was included in the penalties catalogue for removal of rights.

- The application in Spain of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography,⁶⁶² adopted in New York on 25 May 2000, ratified by Spain in December 2001, was positively evaluated in 2010 by UN Committee on the Rights of the Child.

At present, it is into force the III Plan of Action against the sexual exploitation of childhood and adolescence (2011-2015), which enlarges the traditional public intervention related only to the prosecution and punishment of the offences and proposes, for the first time, the implementation of public measures related to prevention and protection of victims.⁶⁶³

⁶⁶² Available at: <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>>.

⁶⁶³ Among them, it is worth mentioning the following: a) the elaboration of a protocol of detection and notification in cases of child abuse and approval of a basic protocol on intervention against abuse; b) carrying out awareness campaigns to prevent the sexual exploitation, in cooperation with NGOs, and different programmes aiming to prevent child sexual

1.3. CRIMINAL ASPECTS

1.3.1 SUBSTANTIVE ISSUES

The offence of trafficking is defined in article 177 *bis* (Title VII *bis* CC, "De la trata de seres humanos" [THB]). Its systematic definition (among the offences of torture, against freedom and sexual identities) is very significant regarding the protection of the legal asset intended and the will of the legislator to contemplate the phenomenon of THB in the corresponding scope, namely, as an offence against essential personal legal assets, essentially serving the protection of the fundamental rights of the victims and not other interests.

a) Basic penalty (article 177 bis.1):

Whoever, using violence, intimidation or deceit, or abusing a situation of superiority or need, or the vulnerability of a national or alien victim, or by giving or receiving payments or benefits to achieve the consent of a person having control over the victim, were to induce, transport, transfer, receive or house, including the exchange or transfer of control over such a victim for any of the purposes described below, within Spain, from Spain, in transit or with destination therein, shall be convicted of human trafficking and punished with the penalty of five to eight years imprisonment:

a) Imposing on the victim forced work or services, slavery or practices similar to slavery or servitude or begging;

b) Sexual exploitation, including pornography;

c) Exploitation of criminal activities;

tourism, as capacity-building programmes from tourist hotel networks and the signing of Codes of Conduct of the Tourism Sector; c) the inclusion as public intervention scope of the international networks dedicated to child pornography on the internet; d) development of public promotion programmes of intervention from associations and NGOs, with child victims, and potential ones; e) development of the Directive Plan of Spanish Cooperation that establishes priority to the work with childhood and early adolescence as most vulnerable sectors; f) Implementation of intervention lines driven by different NGOs to eradicate the trafficking in boys and girls in other countries.

d) Extraction of their bodily organs.

The regulation of the basic penalty is completed with two legal provisions. On the one hand, and in relation with minors, the paragraph 2 establishes: "Even when not applying any means set forth in the preceding paragraph, will be considered THB any of the actions listed in preceding paragraph when performed on minors for exploiting ends".

On the other hand, the third paragraph defines that "the consent of the THB victim is irrelevant when applied any of the means listed in the first paragraph of this article".

b) Defined penalties: There are three defined offences (aggravated penalties).

First, paragraph 4 defines a heavier punishment when THB endangers the life of the victim, when against minors or especially vulnerable people due to illness, disability or other situation. If more than one circumstance incurs, the punishment shall be increased by half.

Second, paragraph 5 qualifies the active agent:

An increased punishment shall be imposed in relation to paragraph 1 of this article and absolute disqualification from six to twelve years to those who take advantage of their condition as an authority, agent or public servant. If, in addition to that, any of the circumstances listed in paragraph 4 of this article occur, the imposed punishment shall be in the upper half of the range.

And, third, paragraph 6 defines a new qualification for organized crime conducts:

An increased punishment shall be imposed in relation to paragraph 1 of this article and special disqualification to exercise profession, when the culprit belongs to or is associated with more than two people, including in a transitory way, dedicated to these activities. If any of the circumstances listed in paragraph 4 occur, the imposed punishment shall be in the upper half of the range. If the circumstance listed in paragraph 5 occurs, the imposed punishment indicated in said paragraph shall be in the upper half of the range.

In the case of chiefs, administrators or people in charge of the mentioned organizations or associations, the punishment shall be in the upper half of the range, and may be elevated to the immediately superior grade. In any case the punishment shall be elevated to the immediately superior grade if any of the defined circumstances in paragraph 4 or 5 of this article occur.

c) General issues: Paragraph 7 defines the criminal responsibility of the legal entity and the confiscation of its profits

When, in accordance with article 31 bis, a legal entity is responsible for the offences included in this article, a fine from the triple to the quintuple of the profits obtained shall be imposed. Once met the rules established in article 66 *bis*, the judges and tribunals may also impose the penalties found in items b) and g) of paragraph 7 of article 33.

Paragraph 8 punishes the incitement, plot and proposition to commit the offence with a punishment of one or two grades inferior to the corresponding offence. And in paragraph 9 a procedural rule is defined as which the punishments defined in this article should be applied without prejudice of the ones that correspond to the offence of article 318 *bis* CC and further offences effectively committed, including de ones of the corresponding exploitation. Rule that, no doubt, contributes to individualize the problem of THB and the legislative will of giving it an autonomous treatment. Although no doubt problems emerge from its practical application.

The international recurrence is also defined on no. 10 of article 177 *bis*, by which "the conviction of foreign judges or tribunals for offences of the same nature defined in this article produce the recurrence effects, unless the criminal record has been cancelled or may be by equivalence to the Spanish Law," and, in the last paragraph (11), an exemption of criminal liability is defined for the victims of THB for offences that might have been committed during the exploitation situation, "provided that their participation has been a direct consequence of the violence situation, intimidation, mistake or abuse suffered and having an adequate proportionality between the situation and the criminal fact committed".

1.3.2. PROCEDURAL ASPECTS

Regarding procedural aspects, two different elements have to be taken into account. On the one hand, future legislative modifications could lead from the implementation of EU law in Spain. On the other hand, Spain has not legislated on prosecution and investigation on THB based on a comprehensive legal instrument unifying all the aspects that could affect this delinquency phenomenon. With these in mind, we analyse the following aspects:⁶⁶⁴

a) Jurisdiction: The Spanish jurisdiction regulation for the investigation, prosecution and indictment of the THB offences established in article 177 *bis* CC is found in the Organic Law 6/1985, of 1 July, regulating the Judicial Power (hereinafter, LOPJ). Regarding this regulation, Spain has jurisdiction to hear these offence cases when they are committed in Spanish territory or on board of Spanish ships or aircraft (article 23.1 LOPJ, principle of territoriality). Even when knowing that the offences were committed outside the national territory, if the criminals responsible are Spanish or foreigners that acquired Spanish citizenship after committing the fact, provided that the requirements of the fact being punishable at the place of execution, unless, under an investment international treaty or of a regulation act of an international organization with Spain being a State party, such requirement is not necessary; that the aggrieved or the Public Prosecutor files a complaint before the Spanish tribunals; and that the offender has not being absolved, pardoned, or convicted abroad, or, in the last case, has not served the sentence (article 23.2 LOPJ, personality principle).

Questions are posed about the inclusion of this offence under the universal jurisdiction principle. Clearly, it stays out of article 23.3 LOPJ, which regulates unconditional universal jurisdiction exercise by Spanish tribunals. And it neither qualifies directly on the assumptions of conditioned universal justice of article 23.4 LOPJ.⁶⁶⁵ Paragraph f) of this provision establishes the competence of the Spanish jurisdiction to hear the facts committed

⁶⁶⁴ In particular, the Directive 2011/36/UE, of 5 April, on preventing and combating trafficking in human beings and protecting its victims, to be transposed and the Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (Chapter 4 regulates the recognition of vulnerability and protection of the victims, including THB victims and aiming to establish an enhanced protection regulation in articles 22 and 23).

⁶⁶⁵ A proposal of amendment of this article will be discuss at Spanish Parliament in the next months. This proposal includes a direct reference to THB offence.

by Spanish citizens or foreigners outside the national territory eligible to be defined, according to the Spanish law, as "illegal trafficking or smuggling of persons, workers or not". At first this drafting refers to the offences of articles 312.1 – illegal workforce trafficking – and 318 *bis* – illegal trafficking and smuggling –, each time when this conducts are defined, precisely, among the illegal trafficking and clandestine immigration acts. Nonetheless, in article 177 *bis*, as long as what is defined is the recruitment, transportation, transferring, accommodation, reception or sheltering with the purpose of THB, and besides that, only when there is certain connection with the Spanish territory, not undoubted its inclusion in article 23.4.f) LOPJ, being possible only by a certain arguing effort. In this sense, this regulation might raise some doubts in regard its complete adaptation to the international commitments under the article 31 of the Warsaw Convention and the article 10 of the THB Directive, which should be analysed.

b) Procedure: the Spanish legislation allows the *ex officio* prosecution of this offences (article 259 and following LECrim) and the fact that an eventual complaint criminal prosecution is lifted by the victim or a third part has no effectiveness (articles 106 and 107 LECrim), whenever the Public Prosecutor may exercise the criminal case *ex officio* (article 105 LECrim), allowing an appeal, even exercising collective redress [*actio popularis*] (articles 101 and 270 LECrim). On the other hand, neither would be effective any dismissal from the offended pardon (article 130.5 CC).

As to the possibility of deferring the beginning of the calculation of statute limitation of this criminal infringement when committed against minors at the moment they reach age majority defined in article 132.1, II CC, it may result doubtfully as to its applicability, whenever this precept does not expressly refers to the THB offence (addressed by a specific title in the CC), by which, again, its inclusion may only come through a certain interpretation effort to comply with the EU commitments (article 9.2 THB Directive).

c) The victim's role in the procedure. The Spanish legislation traditionally recognizes the right to exercise the criminal case by the victim or the affected by the offence (101 LECrim), so that it is defined a proceeding known as *ofrecimiento de acciones* [case offering] binding the *Secretario Judicial* [Judicial Secretary] to do when receiving the judicial

declaration from the victim during the proceedings (article 109 LECrim), allowing to be a part until the summary indictment (article 110 LECrim). The possibility of being a part in the criminal case also allows the victim to exercise all the hall of rights that this condition permits (articles 24.1 and 2 CC), as the right to be aware and access all the proceedings, to take active part through allegations and request for measures of enquiry, to appeal resolutions against their interests etc.

There are two specific circumstances to consider in this kind of offence: first, frequently the THB victim may be in an irregular migratory situation. Anyway, one should notice that the migration legislation, by allowing the possibility of extraordinary regularization of the migratory situation, analysing it regarding not only humanitarian conditions and the lawful migration, but also from the perspective that it could be useful to ensure the victims active participation in the criminal procedure, as it normally requires the presence in country, available to the judicial authorities hearing the facts.

Second, there is Law 1/1996, of 10 January, of free judicial assistance, which also allows foreigners to accede the service, independently of the regularity of the migration situation, considering the same criteria for the other citizens, the lack of financial means to afford the cases' costs (article 2.a). In the same way, regarding the previous on allowing the victims and offended to take part in the criminal case, the right to free judicial assistance to the victims of these offences is not limited to the fact that there is a will of filing a criminal case. Although, aiming more effectiveness of this right, the THB victims could see established the application of the proceedings defined by the Royal Act 996/2003, of 25 July, by which it was approved the *Reglamento de asistencia justicia gratuita* [Rules of Procedure of the free judicial assistance] to those cases and administrative proceedings that have a direct or indirect cause on gender violence (articles 25 *bis* to 25 *quinquies*).

d) Protection of victims and other parts involved in the case. The measures that direct or indirectly may aim the victim's protection or other parts involved in the criminal case, that in the international and EU legislation and are considered applicable on THB cases are equally disperse, and not oriented only to this kinds of offences. Nonetheless, one

should note the closed-doors trials (i), concealed victim's identity (ii) and the adoption of precautionary measures (iii).

i) The article 680 LECrim establishes the possibility of an agreed *ex officio* or party petition in reasoned order in closed-doors oral sessions when required for moral or public order reasons or due respect to the offended or their family. This definition may be applied to THB cases in attention to the special vulnerability of the victim.

ii) to this cases may be applied the definitions of the Organic Law 19/1994, of 23 December, of witnesses and experts protection in criminal cases, allowing the adoption of the necessary measures to conceal the identities of the involved parts, establishing also that during the case, as well as after it, police protection is offered to the witnesses, and in exceptional cases providing new identity documents and economic means to change residence or work places (article 3.2).⁶⁶⁶

iii) At last, the article 544 *bis* LECrim allows that in cases investigating one of the mentioned offences in article 57 CC, the application, by reasoned measure, and when strictly necessary to protect the victim, that refrains the accused of living or visit a certain place, neighbourhood, city, province or other location, or Autonomous Community or to get close or communicate, with the graduation precision, to certain persons. The problem is that article 57 CC does not expressly mention the new offence of THB, for what its application to THB offences have to be done through an interpretation effort of this legislative measure. The possibility that this precautionary measures are imposed to the cases investigating THB offences would allow that the victims of these offences stayed inside the scope of the Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order, and therefore those precautionary measures could be maintained on the territory of another State party.

e) Compensation for victims

The article 100 LECrim establishes that every offence born by a civil action to, among other means, compensate the financial losses by the offence action and that this action

⁶⁶⁶ For instance, the withholding of data diligence that may serve to identification or the use in any diligence procedure that may preclude normal visual identification (article 2); or avoiding that the involved parts are taken photographs or have their image registered by any other way (article 3.1).

could be filed by the victim in the framework of the criminal procedure (article 110 LECrim) or reserved the filing for a later procedure (article 112 LECrim). It is also established that resulting the filing of the civil action by the victim, and always when not expressly abdicating, it would be filed by Public Prosecutor in favour of the victim (article 108 LECrim).

On the other hand, the beneficiary of this public compensation defined to the victims of intentional and violent crimes referred by the Law 35/1995, of 11 December, raises certain problems almost unsolvable to result applicable to THB victims.

The first one derives of its subjective scope, since it can only rely on this system: a) the Spanish citizens; b) nationals of an EU State party; c) non-EU citizens living in Spain and d) non-EU citizens which the state recognizes compensations similar to Spanish citizens on their territory (article 2.1), remaining excluded the irregular immigrants whose countries do not recognize reciprocity in this way.

The second problem derives from the territorial scope, once the only objects of this norm are the offences committed in Spain (article 1), for what it would not reach those cases in which the indictment are against Spanish citizens by THB conducts committed abroad or those that could be heard by Spanish tribunals under the universal justice principle. The third and last problem derives from the own aim of these offences that allow to access the compensation and are "the intentional or violent offences, committed in Spain, resulting in death, or serious injuries, or serious damages to the physical or mental health" (article 1), circumstances that may not always occur in THB offences.

f) Specialization on investigating and indicting. The existence of the CICO and UCRIF allows a specialized attention to the investigation of these offences, as well as does the Attorney General specialized in immigration, responsible, among other duties, under the terms established by the Proceeding 5/07 of the State Attorney General, developing and detailing the criteria introduced regarding the Circular 2/2006, of 27 July, on many aspects regarding the immigration regime in Spain, the coordination work on the prosecution of THB offences and coercive prostitution and the offence of smuggling. Regarding the

specialization and indicting of this kind of offence, there is no specific legislation in particular, once it is not included on the listing of offences within the competence of the Court of Violence against Women (article 14.5 LECrim) and is neither within the competence of the Audiencia Nacional [Spanish Supreme Court] (article 65 LOPJ). The only corresponding specializations from the judicial point of view would be relating the gauging of some perpetrators, as well as by the fact of being perpetrated by a foreigner.

g) Means of investigation. While investigating the THB offences, there is the possibility of adopting the same investigation measures that are into force regarding the organized crime. Allowing, for instance, the interception of phone calls, house searches or controlled deliveries familiar to the investigation of money-laundering offences of goods and profits from THB (article 263 *bis*.2 LECrim). It is also possible to use undercover agents to investigate these offences (article 282 *bis* LECrim drafted after the LO 5/2010, of 22 June).

Excursus: Comments on the proposal of amendments to the Criminal Code concerning trafficking in human beings. Amendment proposal text (BOCG 4/10/2013) (changes are underlined). Article 115: The sections 1 and 4 of the Article 177 *bis* are modified; the new wording is as follows:

1. Whoever, using violence, intimidation or deceit, or abusing a situation of superiority or need, or the vulnerability of a national or alien victim, or by giving or receiving payments or benefits to achieve the consent of a person having control over the victim, were to induce, transport, transfer, receive or house, including the exchange or transfer of control over such a victim for any of the purposes described below, within Spain, from Spain, in transit or with destination therein, shall be convicted of human trafficking and punished with the penalty of five to eight years imprisonment:

a) Imposing on the victim forced work or services, slavery or practices similar to slavery or servitude or begging;

b) Sexual exploitation, including pornography;

c) Exploitation of criminal activities;

d) Extraction of their bodily organs.

A position of need or vulnerability exists when the person concerned has no real or acceptable alternative but to submit to the abuse involved.

4. A higher degree punishment than that foreseen in Section 1 of this Article shall be applied when:

a) The trafficking puts the life or the physical and psychological integrity of victims in serious danger;

b) The victim is especially vulnerable due to illness, state of pregnancy, disability or his situation, or a minor;

Should more than one circumstance concur, the punishment shall be imposed in its upper half.

Article 116: A new section 12 is introduced in the Article 177 bis; the new wording is as follows:

12. In all cases, the measure of probation may also be imposed.

Our comments are the following. The first remark refers to the absence of explanation concerning some of the modifications introduced in the criminal definition of Trafficking in Human Beings. In fact, these changes are rather technical ones, but they are linked to the Directive 2011/36/UE. The paragraph XXVI of the Amendments Proposal's Explanatory Memorandum states:

The amendments of Criminal Code through Organic Law 5/2010, of 22 June, introduced the offence of Trafficking in Human Beings in Article 177 *bis*. This offence has been defined prior to the Directive 2011/36/UE, of 5 April 2011, on preventing and combating trafficking in human beings and protecting its victims, and replacing

Council Framework Decision 2002/629/JAI. Although the amendments of 2010 took into account the proposal whose content was finally introduced in the Directive before mentioned, there are many questions do not considered in the present wording which it is necessary to include for ensuring a complete transposition of the European directive.

In particular, the giving or receiving of payments to achieve the consent of a person having control over the victims is included as a form to perpetrate the offence. It is also defined as an offence the exploitation for criminal activities. Besides, the concept of “vulnerability” is adjusted to the text of the European directive and a higher degree punishment is considered when the physical and psychological integrity of victims is put in serious danger.

The first issue to be mentioned is that the proposal of amendments omits any reference to another binding international instrument such as the Convention of the Council of Europa. Therefore, it has not included two recommendations drafted in the GRETA Report elaborated by the Council of Europe in the event of non-compliance with the Warsaw Convention clauses: the explicit criminalization of the use of services provided by a person who is known to be a victim of trafficking. Paragraph 130 of the GRETA Report invites the Spanish authorities to consider adopting legislative and other measures to criminalize the use of services provided by victims of trafficking, with the knowledge that the person is such a victim, in accordance with Article 19 of the Warsaw Convention. Likewise, the report recommends the adoption of measures to prosecute conducts included in Article 20 of the Convention related to travel or identity documents (forging, providing and removing, or destroying them). While the first conduct is generally prosecuted and the providing could be considered a conduct of aiding to commit the offence; the conducts of removing, concealing or destroying documents carried out by traffickers must be prosecuted as intimidation.

Regarding the European directive, some differences appear between the definitions of the offence contained in Article 2 and the one contained in Article 177 *bis* of the Spanish Criminal Code. However, this situation is not explained in the proposal of amendments: the reference of force labour exploitation is eliminated (services are exclusive and alternatively

maintained), concerning the conduct of harbouring, it is supposedly included in the conduct of reception. The conducts of abduction, use of force or threat as forms to commit THB are still absent due to the current wording (violence, intimidation or deceive) which results omni-comprehensive embracing all these forms of recruitment of victims.

On the contrary, these conducts have been included specifically:

- The giving or receiving payments or benefits to achieve the consent of a person having control over the victim (which is a wise decision);
- The exchange or transfer of control over such victims;
- Exploitation of criminal activities;
- The definition of position of need or vulnerability;
- The specification of the especial vulnerability due to state of pregnancy or the victim's situation;
- The specification of a higher degree of punishment when the physical and psychological integrity of victims is put in serious danger.

The punishment for the sale of children with the purpose of adoption and forced marriage, which are two conducts recognized by the directive as presumably illegal aims of THB; however, paragraph 11 leaves the Member States free to rule on these matters (New article 172 *bis* of the Criminal Code). The first conduct was contained in Article 221 and the second one has been included as an offence in the proposal of amendments:

Article 110. The Article 172 *bis* is added. It states:

1. Whoever, using serious intimidation or violence were to coerce another person to contract marriage shall be punished with the penalty of six months to three years imprisonment, or a fine of twelve to twenty-four months, according to the seriousness of coercion and the means employed.

2. The same punishment will be imposed to whoever, with the aim of executing the same conducts referred in the previous paragraph, using violence,

serious intimidation or deceive were to coerce another person to leave the Spanish territory or to return in it.

3. The punishment shall be imposed in its upper half when the victim is minor.

Finally, with the inclusion of the probation as a new security measure related to the most serious crimes, it has been pondered its usefulness for the offence of THB.

1.3.3. JUDICIAL PROTECTION OF THB VICTIMS (IMMIGRATION LEGISLATION)

In Spain, the judicial regulation of the THB protection of victims is basically founded in the Law (Organic Law 4/2000, LOEx) and the Reglamento de extranjería [Rules of Procedure of Immigration] (Royal Act 557/2011, of 20 April), due to the fact that the majority of victims are foreigners. Thus, the article 59 *bis* LOEx answers most of the international commitments under the Vienna Convention ratification. Nonetheless, this approach to the victims results in a frequently confusion on the reality of dealing with THB and immigration, so that the provisions aiming to protect the victims are applied in just some occasions, due to the logic of the immigration control.

In any case, there should be no doubt about the recipients of this legislation, who are not only EU as well as non-EU citizens. In the case of article 59 *bis* LOEx, in the absence of another legislation, it is applied the most favourable, which is this one, and therefore, is also applied to EU citizens (article 1.3 LOEx). And in the case of the provisions on identification and protection of the THB victims under the Rules of Procedure of Immigration, because of the unique Additional Provision defines its application to the victims that benefit from the EU regime.

Now, in this section we will discuss only the measures trying to answer the problems deriving from the irregular administrative situation where victims could be found, leaving aside other questions, because it results evident to us that one of the aspects that hinders the most the victims protection is the situation of administrative irregularity where they are typically found.

The menace of expulsion imposes common problems to the identification of the victims and further proceedings of re-establishment. Hence the international treaties (specially the Warsaw Convention) and the EU legislation (specially the Directive of 2004) define a series of measures aiming at protecting the victims by avoiding their expulsion, allowing their regularization and supporting the voluntary return to their country of origin. Some of the provisions of article 59 *bis* of the LOEx and the articles 140 and following of the Rules of Procedure have complemented the international provisions mentioned. The aim is to set the condition of victim before the irregular immigrant one, making exception or qualifying some of the provisions that would be applicable assuming the victim was only in an irregular administrative situation. In this same spirit article 59 *bis* LOEx:

1. Sets that during the identification of the victim and the eventual period of re-establishment and reflection the sanction procedures be suspended, as well as the execution of expulsion orders or agreed devolutions. This guarantee has been clarified and extended by the legal reform of 2011 when specifying that it is not allowed to file new sanctions records once it is detected a possible THB victim, which was a common practice before, when the police interpreted that there was an obligation of filing sanction records to all the people that was found in this situation. Anyway, it is important to mention that the international commitments undertaken by Spain are limited to not executing expulsions during the period of re-establishment and reflection.

2. Defines the concession of a stay permit during the period of re-establishment and reflection granted to the victim. It is logic, for the purpose of this period, the re-establishment of the victim and the reflection on the will to collaborate with the investigation of the offence or the criminal case. To clarify the situation and protect the victim in a more efficient way, the Rules of Procedure of Immigration established a short notice to the concession of the said period (5 days in general or 24 hours in the case the victim is held in a Centro de Internamiento de Extranjeros (CIE) [Aliens' Internment Centres], and its concession expressly referring to the said permit of stay, as well as the suspension of any sanctioning procedure. There remains, however, the role of the police units competent in the scope of immigration, that are the only ones that can propose to the Subdelegado o

Delegado del Gobierno [Assistant Representative or the Government Representative] the concession of the said re-establishment and reflection period.

3. Allows the administrative disclaimer by the victim for being in an irregular situation, and opens the possibility for requesting a residence and work permit for exceptional circumstances, or the assisted voluntary return to their country of origin. Either the disclaimer as the option between the residence and work permit or the voluntary return are conditioned by the victims will to cooperate with the police and judicial authorities for investigation purposes or the criminal case, or what best suits the personal interests of the victim. The Spanish legislation is broader when compared to other states that limit this possibility to the case of cooperation. The decision on the disclaiming is determined if the suspension of the procedure or sanctioning measure is lifted or definitely converted.

The cooperation on the fight against THB or what the personal situation of the victim is allows, thus, the individual regularization of the victims, that may request a residence and work permit by exceptional circumstances before the Secretaría de Estado de Seguridad [State Security Secretariat] on the first case or before the Secretaría General de Inmigración [General Secretariat of Immigration] on the second. The Rules of Procedure of Immigration have developed in a broader sense this definition in four ways: on the one hand, defining that the request itself automatically entails a provisional permit if approved by the Assistant Representative or Government Representative; on the other hand, establishing that both the provisional permit, as well as the definitive do not have territorial limits by activity sector – something that is not usual on the first authorizations – and intended to facilitate the employment of the victims; third, granting a five year period to the mentioned authorization, a larger term than the usual to other extraordinary permits, exempting the need to renew and allowing the access to the long stay permit; at last, extending this regime to the children of the victim, that in the case of being older than 16 years are also permitted to work at any sector or territory.

The legislation in force also allows that any possible THB victims may request the assisted return to their country of origin, since there are reasonable motives to be considered as a victim. Said request, extended to their children, is presented before the maximum competent body on immigration and is conditioned to the risks posed to the

victims in their possible stay in Spain for the purpose of their cooperation with the police and judicial authorities. That aims to comply with the definition in article 16 of the Warsaw Convention.

In general, the Spanish legislation has interpreted broadly the international commitments assumed in this scope and is more favourable than most of our neighbours. Apparently, the reforms approved in the last years have strengthen the victims protection prioritizing this condition instead of the irregular immigrant situation, although problems do persist in the practical application of all these provisions and in the articulation of a comprehensive response to the situation, that goes further than the immigrant condition. So, what are these problems?

1. The first is the absence of data. The recent approval of the reference norms impedes an evaluation of them, among other things because there is not a systematic follow-up of its application. It has not been possible to access information, including the number of identifications completed, the number of re-establishment and reflection periods requested and granted, and even the number of declared disclaims. It has only been possible to gather some data of the residence and work permits by exceptional circumstances⁶⁶⁷ and the voluntary returns requested by the THB victims,⁶⁶⁸ which highlight a limited practical application of the provisions into force, to a large degree due to the victims' identification problem, in the information of their rights and the support to them. The Framework Protocol on THB victims' protection approved at the end of 2011 may contribute to improve this situation, but, without a larger execution of its provisions and, overall, without the approval of the provincial and autonomic protocols, it can hardly achieve this goal.

2. The second comes from the pretended breaches of the legislative provisions. The reports of the Ombudsman and some NGOs (see footnotes 1 and 2) denounce some intended expulsions of THB victims or the denial of the re-establishment and reflection

⁶⁶⁷ Regarding the first ones, during the year 2011, 30 were requested (24 provisional and 6 definitive), only 2 have been denied (19 were granted and 9 were pending). The territorial distribution of the said requests is rather uniform, there being no information on the motives of the requests (cooperation or the victims personal situation), neither on the profile of the applicants.

⁶⁶⁸ Regarding the voluntary returns, it was only possible to access information on the ones handled by the International Organization for Migration (IOM): 30 in the year 2009, 22 in 2010, and 12 until June 2011. Almost all returns are of women victims of sexual exploitation, being an important part of them Romanian women.

period. Furthermore, some of these cases occurred while the mentioned norms were still not into force, the main problem again is on the identification of the victims, reason for the existing discrepancies in many of them, but which are also controversial inside the NGOs.

To summarise, the normative and political framework described until now leaves us, from the awareness of the theoretical situation, in a privileged position to propose a work on the problematic issues on the handling of the THB phenomenon in Spain. Thus, it is desirable to:

1. *Analyse the degree of effective compliance of the international requirements.* In particular, analyse if the minimum standards set by the victim centred approach are achieved, as advocated by the Warsaw Convention.

2. *Evaluate the public policies developed until now, taking as reference the parameters used in the Report of the Department of State of the United States of America on Trafficking in Persons 2011⁶⁶⁹.* This Report places the countries into different tiers depending on the level of protection offered to THB victims. According to this Report, Spain is in tier 1 (States whose governments fully comply with the Trafficking Victim Protection Act's Minimum Standards).

3. Execute a compared analysis of the Spanish model with other criminal sanction models, in special with the countries participating in the project.

4. Execute an internal analysis of the criminal provisions and the problems they might raise, studying the application of the precept of real cases.

5. Draft a proposal regarding the access of reliable data on the offence existence and its real criminal prosecution, namely, both the police level prosecution, as well as the effective application of the criminal provision.

6. *Focus particularly on the identification of victims' problem and the concession of protection statutes (minors THB victims requesting international protection).* Once individualized the "routes" of THB, and the times when the conditions allow the identification of victims, it is possible to propose action measures that improve the identification, as this is one of the main problems hindering the adequate execution of the legislation and public policy of victims' protection.

⁶⁶⁹ US Department of State (2011).

2. CASE LAW REPORT. JUDICIAL APPLICATION OF ARTICLE 177 *BIS* SPANISH CRIMINAL CODE

The Object of study: All judgements/sentences published until 31 December 2013 applying article 177 *bis* of the Criminal Code: 7 sentences.

SENTENCE OF THE PROVINCIAL COURT (OF APPEAL) OF BARCELONA (SECTION 9), DATED 26 NOVEMBER 2012

First sentence issued under article 177 *bis* of the Spanish Criminal Code (new criminal offence)

Defendants: Three persons having Bulgarian nationality (two men and a woman, she comes from the victim's area of residence).

- *Victim:* An adult woman having Bulgarian nationality.

Protected witness: Yes

Protected by NGO: Yes

- *Proven facts:* In Bulgaria, the victim was persuaded to move to Barcelona by one of the male defendants (A1). She was told she would get a hostel job, but was introduced into street prostitution. On 18 February 2012, the defendant travelled with her to Barcelona by bus. He put her up in his house, seized her passport and coerced her to prostitution. She was forced to hand over her earnings, when she refused to do it he threatened to break the victim's legs and hit her with a club on her back and hands.

The female defendant (A2), who worked as a prostitute in El Raval, kept the victim under surveillance; she occasionally took the victim's money.

The victim (TP1), who did not speak nor understand Spanish, was submitted to their control until 20 March 2012, when an urban police patrol in civilian clothes met her choked by sobs on the street. A Bulgarian woman who was also a prostitute and her friend acted as an interpreter to report the crime.

The last defendant (A3), who was the second defendant's (A2) partner, forced the prostitute who had assisted the victim to hand over her earnings. She gave him 500 euros. He also asked this woman to change her police statement about the second defendant (A2) by threatening her.

- *Convicted criminal's sentence*: Yes (THB for sexual exploitation and others; 6 years and seven months A1, the only one convicted for THB).
- Sentence of compensation: Yes. Amount: 4000 euros.

SENTENCE OF THE PROVINCIAL COURT (OF APPEAL) OF MADRID (SECTION 3), DATED 26 DECEMBER 2012

- *Defendants*: Two persons having Paraguayan nationality (a couple of a man and a woman).
- *Victims*: Two adult Paraguayan women.

Protected witness: Yes.

Protected by NGO: Yes (APRAMP) [Association for the Prevention, Reintegration and Attention of Prostituted Women].

- *Proven facts*: The defendant contacted a woman who was his mother's neighbour in Paraguay (TP32). He asked her to come to Spain where she could work as a prostitute in his house. He told the victim that she would make enough money to get by and support her four children. For this purpose, he sent her money for buying plane tickets, getting a passport, booking a hotel room along with 835 euros in cash for she has to appear to be a tourist. On 10 December 2010 the victim arrived in Madrid by plane. At the airport she was picked up by the defendants. Two weeks later, the male defendant asked her to work as a prostitute at Polígono Marconi. He set the price of sex, saying that he would be watching her the whole time, so she had to give him all the money. Under such conditions, the victim expressed her will for returning to Paraguay. The defendants, arguing about a debt the victim owed to them, impeded her return by threats. During five months, the scared victim (TP 32) had to work as a prostitute and hand over most of her earnings (7200 euros); she kept around 70 euros per month for herself. Finally, she could leave the place she shared with the defendants. A few months later, the female defendant recruited the second victim (TP 31)

with the help from her brother. A woman living in Paraguay was told to come to Spain where she could work as children's nurse; she would be earning 1300 euros a month. With this sum she could reimburse the travel expenses. On 26 March 2011, the victim arrived in Madrid. The next day, the female defendant brought her to her place where the male defendant took the money from her while telling her the real purpose of the travel. She had to work as a prostitute at Poligono Marconi to reimburse 4500 euros. She and her family in Paraguay were under serious threat. During three months she worked as a prostitute under intensive surveillance; therefore, she was forced to hand over her earnings to the defendant, but she kept 10 to 20 euros per month for herself. The first time the male defendant drove the victim (TP 31) to Poligono Marconi to visit this industrial park she was submitted to anal rape in his car backseat. He said he was testing her to see if she was fit for work.

- *Convicted criminal's sentence*: Yes, all defendants were sentenced (THB for sexual exploitation and others). 22 years in prison (male); 15 years in prison (female).
- Sentence of compensation: Yes. Amount: 15 000 euros per victim.

SENTENCE OF THE PROVINCIAL COURT (OF APPEAL) OF BARCELONA (SECTION 9), DATED 6 FEBRUARY 2013

- *Defendants*: A Romanian woman (A1) and an Albanian man (A2). They are a couple,
- *Victim*: A minor Romanian girl (female defendant's cousin).

Victim protected by experts: Yes, in the Generalitat de Catalonia's safe shelter.

- *Proven facts*: In Italy, during 2010, the victim, who used to work as a street prostitute along with her cousin, stayed in an emergency youth centre. Her adult cousin, a woman who was her only near relative, provided housing for the victim while she gave her all her money. The female defendant, in connivance with her partner, persuaded the victim to leave the centre and join her to go to Barcelona. She promised her cousin a better life but they wanted her to continue working as a prostitute. Both cousins went to Barcelona by bus and the victim used another cousin's passport for getting to Spain. The male defendant, who had previously arrived in Barcelona, chose "el Paralelo" as the working location and established a working schedule. The victim was under the defendant's total control, so he also controlled her money. Sometimes she was beaten up and submitted to humiliating treatment. On 5

August 2011, the minor, who had received a letter from the Italian Public Prosecutor for Juveniles under an Order of Protection on behalf of minors, went to the police station and after she was sent to a safe shelter. The victim remained there until the court notified the opening of oral proceedings and set the date of trial. At that moment, she travelled to Romania with the excuse of getting valid identity documents, and then she did not return to Spain despite the Generalitat had purchased a return ticket for her.

- *Convicted criminal's sentence*: Yes, all defendants were sentenced. (THB for Sexual Exploitation of children (art. 177 *bis* 1 b), 4 and 9 CC); 8 years, 6 months and 1 day in prison).
- Sentence of compensation: Yes. Amount: 10 000 euros.

SENTENCE OF THE PROVINCIAL COURT (OF APPEAL) OF MADRID (SECTION 6), DATED 8 MARCH 2013

- *Defendants*: Two. A Romanian woman (A1) and a Moroccan man (A2). There are other persons who are involved living in Romania. They were not considered in the proceedings. It is a family network.

- *Victim*: A Romanian woman who was sold by the defendants for 3000 euros.

Protected by NGO: Yes (APRAMP) [Association for the Prevention, reintegration and Attention of Prostituted Women].

- *Proven facts*: In July 2011, a man and a woman addressed the victim, who worked as a waitress in a cafeteria in Bucharest. She was beaten up and forced to get into a cab in which they went to a house in Constanza (Romania). Once there, they seized her identification and cellular phone besides threatening to hurt her son and her family. Later, they called up their contacts in Spain asking them some money to buy a plane ticket. The next day, she was forced to take a flight to Madrid in company with a woman who controlled her and her documents. The victim and the female defendant were picked up at Barajas airport by two persons: the woman's sister and her partner, both convicted criminal, who paid the travel expenses. They brought her to their place where she was informed that an acquaintance of her family had sold her for 3000 euros, so she had to pay that sum working as a prostitute and give all her earnings to them. Afterwards, she was accompanied to Montera Street in Madrid; they showed her a flat and a room where she had to attend the clients' requests. She was under total control and they were along with her all the time, in streets or in the flat. They looked for clients and accompanied them to a hotel. She had no

papers, nor cellular phone. Continuously, she was beaten up by the defendants who said she did not work enough. She had to sit on a plastic bottle as a punishment. The victim remained in this situation until she fled on 24 July 2013; with the help from a client, she denounced the facts to the authorities.

- *Convicted criminal's sentence*: Yes, both defendants were sentenced (THB for sexual exploitation and others; 9 years in prison).

- Sentence of compensation: No, the victim renounced her right to compensation.

SENTENCE OF THE PROVINCIAL COURT (OF APPEAL) OF MADRID (SECTION 15), DATED 22 APRIL 2013

- *Defendants*: A Romanian man.
- *Victim*: A Romanian girl who was recruited by her sentimental partner.

Protected by NGO: Yes

- *Proven facts*: The defendant met the victim, who was a minor coming from a broken home (she had never known her father and her mother abandoned her) in Romania. He took advantage of these circumstances when he started a relationship with her. Once the trust of the victim was earned he asked her to go with him to Spain. He had the intention of forcing the girl into prostitution and getting money from her. Hence, he planned to travel to Spain on vacations with her and he gave the victim false documents: her mother's permission with a notarial deed, her identification card as an adult woman. She did not realize the deception that he had in mind. They left to Spain on 11 August 2011; when they arrived to Madrid, on 16 August, he said the victim to settle in "his absent friends' house". Next day, the defendant asked the victim to call her family. When she was isolated, he revealed the purpose of the travel. The girl refused to obey the defendants' orders and was beaten up again and again. At first, he used punches and kicks to punish her; later he used a broomstick. Besides, she was forced to drink water with salt and he threatened to hurt her physically: cuts on her body putting salt on them. The next three days, as the girl continued to refuse to obey, the defendant seized all her money, the cellular phone and the documents. She was not allowed to leave the house. On 20 August, when the defendant went outdoors, the victim asked the neighbours for help to open the gate. In the street, she

requested a couple to accompany her to the police station. There, she denounced the man and her wounds (numerous ecchymosis, bruises and post-traumatic stress disorder) were treated.

- *Convicted criminal's sentence*: Yes (THB for Sexual Exploitation of Children and others). 12 years in prison. Bargaining sentence.

- Sentence of compensation: Yes. Amount: 60 000 euros.

SENTENCE OF THE PROVINCIAL COURT (OF APPEAL) OF CÁDIZ (SECTION 4), DATED 28 JUNE 2013

- *Defendants*: Two Romanian persons, a male and a female, married.
- *Victim*: A male and a female, also Romanian and married.

Protected by NGO: No

- *Proven facts*: In December 2011, the male defendant contacted the victims in Romania by phone, offering them a job in Spain at street vending. They moved to Spain, travelling for three days by bus. Once they arrived, they were forced to street begging every day from 9:00 to 15:00 and from, 16:00 to 21:00. They were brought to different places by the defendants, separated and kept under constant surveillance. Money collected by the victims had to be handed to the defendants. Victims were given clothes from a rubbish bin. The defendants provided victims only one meal per day and were found severely undernourished when police released them. At the beginning, they lived at the defendants' home but then were forced to live outside, because they did not collect enough money. They were threatened and hit, deprived of their passports, not allowed talking with their neighbours. The woman was even forced to make fellatio to the defendant.

- *Convicted criminal's sentence*: Yes (THB for forced begging: 7 years).
- Sentence of compensation: Not for THB crime.

SENTENCE OF THE PROVINCIAL COURT (OF APPEAL) OF MADRID (SECTION 15), DATED 30 DECEMBER 2013

- *Defendants*: A male and a female, Nigerian, with family links.
- *Victim*: A Nigerian woman.

Protected by NGO: Yes

- *Proven facts:* The victim was recruited in Nigeria by the female defendant's husband, who – knowing her dramatic economic situation – offered her a job in Spain, in a hostel or in domestic service. She accepted not knowing that, actually, they intended to force her into prostitution in Spain. The victim travelled by plane from Lagos (Nigeria) to Lisbon with a falsified passport (the female defendant passport with the victim's photo) accompanied by another person. The falsification was detected at passport control. Then she asked for international protection and moved to Spain, following the recruiter's instructions. On arrival, she was transferred to the defendants' house. There, she was told that she had a debt of 60 000 euros, to be paid working as a prostitute. As she refused, she was threatened and hit, deprived of her mobile phone and not allowed to leave the house alone. After two weeks, she was sent to Denmark via Amsterdam, accompanied by another woman, in order to be forced into prostitution there. Nevertheless, she did not travel because she had a panic attack when getting into the plane and police contacted her and sent her to a hospital.

- *Convicted criminal's sentence:* Yes (THB for Sexual Exploitation and others: 12 years in prison, only female defendant).

Sentence of compensation: Yes. Amount: 60 000 euros.

3. SPAIN: A NATIONAL EMPIRICAL CASE

3.1. GENERAL PERCEPTIONS

This analysis considers all relevant information collected by the research team, including data gathered from surveys, press reviews and, largely, the analysis of contents coming from in-depth interviews and discussion groups. It must be highlighted that these techniques have been useful for obtaining information from all Spanish public and private actors who are involved in the fight against human trafficking during the different stages in which they must intervene (detection, prosecution and protection, etc.), The map of actors includes all state security forces (National Police, Civil Guard and autonomous police forces), public bodies (Labour Inspectorate, Ombudsperson, Office of Asylum; two Secretaries of State: for Immigration and against Gender Violence), along with social organizations specialized in intervention, promotion and political incidence, Justice system bodies (Prosecution Service involving foreigners, etc.) and international organizations

present in Spain. All these actors have been interviewed because of their vast experience dealing with THB cases; therefore their contribution to this research summarizes the last two decades of work.

The general perception of Trafficking in Human Beings among the actors who were interviewed and the experts who participated in discussion groups reveals that it is a global, complex and dynamic phenomenon which is changing constantly. Its characteristics pose enormous difficulties to the state, administrations and Spanish social organizations because it demands international solutions through several forms of international cooperation involving international organizations and countries of origin, transit and destination. This special cooperation is still incipient, although there are significant advances to concretize it. At the same time, the efforts of coordination are not an easy task; that is why in most cases the institutional responses of police, tribunals and assistance services are limited to the restrained perspective of national states.

When the causes of this phenomenon are analysed it appears that its explicative discourses is shaped in two axes of reasons. The first one is centred on potential victims' living conditions and necessities in their countries of origin, as well as on the comparative advantages imagined by them when they decide to live and work in countries of destination. It emerges an explanatory model similar to that one maintained by some of the most influential theories analysing international causes of migratory movement. The second one, which is the dominant axis among the actors who are involved directly with police and judicial intervention against human trafficking, reveals that Trafficking in Human Beings is a phenomenon propelled by criminal organizations' huge economic benefits so that it becomes similar to other forms of trafficking, such as drugs and guns trafficking. These economic benefits have not been threatened by effective measures of criminal prosecution. Moreover, general population and some state organizations of the countries of origin and destination are inattentive to this problem. The lack of social awareness about this phenomenon nourishes its invisibility and increases the victims' vulnerability and the impunity of crimes related to THB.

According to actors who cooperated with the research team in the fieldwork, the demand in the market of prostitution has important effects on Trafficking in Human Beings for sexual exploitation. They affirm that purchasing “sexual services” has become a present-day activity linked to leisure. The effects of “this normalization” of services of prostitution, which implies the orientation of a “market destined to satisfy this demand”, have not only affected the diversification of the victims’ profiles, but favoured a social tolerance that makes more invisible the implicit forms of exploitation in THB.

The comparative references to different forms of human trafficking (for sexual or labour exploitation) are not only unusual but scarce concerning the last one. In Spain, as it will be observed in the next paragraph, labour exploitation has been considered a secondary phenomenon regarding the whole political and social treatment of THB. In this sense, the actors who mention this phenomenon are involved to a certain degree with this specific form of trafficking through their daily work and intervention; for example: ACCEM, the only NGO which has conducted a study concerning human trafficking in Spain, and the Labour Inspectorate, a state body which has included the fight against trafficking for labour exploitation in its objectives. Both organizations highlighted the characteristics and dynamics of the labour market as explicative causes of this phenomenon, specially the effects of the deregulation of this market, as well as the growth of the informal economy. However, there are some aspects which differentiate the perspective of these actors. The first one links the effects of the characteristics of the labour market in destination countries and the tolerance of this phenomenon. The second one is focused on labour conditions in countries of origin and the acceptability of precarious conditions by immigrants coming from countries in which the levels of recognition of labour rights are low. This second aspect is relevant according to actors’ opinions expressed in interviews. It has been noticed that one of the problems to take into account when actors deal with Trafficking in Human Beings for labour exploitation is workers’ subjective perception of conditions of exploitation. Also, there is a terminological confusion in European institutions concerning this problem which obstructs legal responses.

I understand, some countries such as Spain or Italy where illegal work – “en negro” – is notorious... Of course, it is more difficult to detect situations of labour exploitation, isn’t it? Because, finally, in some degree the labour market and the

economy can support it, that is to say, it is accepted in some degree, maybe I cannot explain it well, but they admit in some degree the existence of forms of exploitation (I 1).

I mean, if you call a Pakistani worker and you give him... a ridiculous payment for a Spanish worker, Pakistanis are happy. If he is working in such hygienic conditions that are unbearable for Spanish workers, the Pakistani worker is not going to consider it really bad. That is to say, his subjectivity has an influence... sexual exploitation is more universal. At least, the victim is aware that she is suffering a situation that it is not normal. It is possible that a worker or a group of workers who are victims of exploitation do not understand that they are being exploited [...]. They come, sometimes, from countries where generally the population is reticent to authorities. However, the problem is that these people could have access to any institutional mechanism to denounce the situation they are suffering, but they have to be aware that they are victims of exploitation (I 9).

In the next section, the Spanish case, it will appear that according to interviewed actors there are different profiles of victims of human trafficking for sexual and labour exploitation. In general, it is supposed that in cases of sexual exploitation the victims are women and the traffickers are men. However, some opinions nuance this perception when they review the complex experience of this phenomenon, as well as the necessity of taking care of general conclusions whose reductionist effects are introduced during the design and implementation of public policies to fight against trafficking. In fact, it is established that it exists an increasing number of male and transsexual victims of Trafficking in Human Beings for sexual exploitation. In Spain, the explanation of this increasing number of victims is due to the demand of the market and the differences between masculine and feminine prostitution. Its characteristics are related to different rates of return which are considered by criminal organizations when they execute their operations.

We have 90% of women, 3% of men and 7% of transsexual persons working as prostitutes. Men and transsexual are victims of trafficking because their benefits are higher than those coming from women. Men and transsexual prostitution is more lucrative. A sexual service provided by women costs 20 or 30 euros and when it is provided by men it costs not less than 60 euros [...]. Masculine prostitution is completely different from feminine. The latter is a form of institutionalized violence of gender, gender inequality in which if I pay the girl I am authorized to do whatever I want. Masculine prostitution is completely different (I 10).

It is interesting to analyse the information concerning women cooperation with criminal organizations provided by the actor during the interviews. In particular, there are

some important details about the process of evolution from victims to traffickers. This process is linked to some strategies as a means for achieving the organizations' objectives. Therefore, some processes of huge complexity have been detected. They contribute to restructure the images of men and women's roles inside these organizations. First of all, related to certain countries, it is relevant to focus on criminal organizations' use of women for recruiting new victims. These women had been recruited by the organization previously (co-optation) or they are trying to cancel their debts and recover their "freedom". The use of victims in criminal networks, not for the purpose of recruiting, but controlling other victims when exploitation is taking place in the countries of destination has also been detected. This new role of victims as recruiters or watchwomen is always connected to the logics of exploitation of criminal organizations.

According to the collected discourses, it appears that the economic crisis has had an immediate effect on the phenomenon and the different forms of human trafficking. Considering the dynamics of social process, in southern Europe countries touched by the crisis, the deepening precarious labour markets and the worsening conditions of labour in several economic sectors have not implied necessarily an increasing incidence of THB for sexual and labour exploitation; however, it has become more complex the detection of this situations, especially victims' auto-identification and denunciation. Actors suggest that the crisis has produced an increasing vulnerability of victims because of the "deterioration" of exploitation conditions, but the phenomenon has not increased. All the actors coincide with the idea that the economic crisis and the policy reforms affecting welfare system have reduced the available resources for fighting against human trafficking, as well as victims' protection. This concern is mentioned by social organizations warning that the institutional, political and legal achievements on this matter in Spain could be cut off due to the lack of resources destined to protection.

3.2. EXPERIENCE IN THB

All the organizations that have contributed in discussion groups and in-depth interviews have a long experience in the fight against human trafficking in Spain because of their specialized work. They have become key actors for the detection, identification,

victims' protection and prosecution of this crime. Despite the different spheres in which they face this problem, there are important agreements and high levels of consensus between them as well as a consistent common opinion. This situation could be explained as a result of Spanish government's efforts since the mid-2000s for designing policies of consensus with different social organizations. One of the most relevant aspects expressed in the actors' discourse is that effective measures against human trafficking in Spain are only possible through cooperation between different organizations, thus informal channels of communication had started to be institutionalized. Hence, all along the interviewed actors claim for improving a "culture of cooperation" whose successes were evident in the fight against trafficking through particular experiences, not so abundant, but all of them have been considered "good practices".

In general, actors indicate, in accordance with international reports, that Spain is a country of destination of victims in which criminal organizations involved with trafficking are established in a certain degree in its territory. They also consider that the increasing results in victims' detection are not necessarily a sign of an increasing phenomenon, but the result of social awareness and state policies efforts for fighting against human trafficking through systematic methods of detection and data collection. However, if THB for sexual exploitation is a phenomenon which has visibility in media as well as public opinion – state bodies and social organizations are aware of this problem –, the fight against THB for labour exploitation remains an unknown subject claiming for policies from Spanish institutions. The consequence of this situation is evident when THB for sexual exploitation is always present not only in the interviewed actors' discourses, but in the agendas of organizations and trafficking cases detected. That is why one of the actors' proposals is to promote specific researches concerning this form of trafficking as well as to reinforce the fighting against human trafficking for labour exploitation as an objective of public bodies and social organizations.

Although according to interviewed actors the THB cases detected are only a sample related to the entire phenomenon, it is possible to detect some relevant profiles from the actors' opinions. Also it is important to highlight the existence of a coincidence between the interviewed actors' perspectives and the results of the statistical analysis of data collected in

the Spanish case. The explanation for this coincidence is probably due to the interviewed actors' knowledge is based on direct assistance to victims.

Concerning the origin of victims of THB for sexual exploitation, in the past years it appears that victims from Latin American countries, those coming from Colombia and Dominican Republic, were predominant. Brazilian victims increased during the last decade, but they are decreasing in recent years in opposition to women coming from Paraguay. There are also men who were victims of human trafficking, but only those coming from Brazil and Colombia were detected. Concerning the phenomenon in Europe, Romania is considered the principal country of origin of THB women victims in Spain, actors have also assisted women coming from Russia, Bulgaria, Ukraine and Moldavia. In fact, in the general perception of interviewed actors, Romanian and Nigerian women are the “prototype” of THB victims in Spain, in both cases they are very young girls. Actors also indicate that the origins of Romanian victims are located in rural areas of their country having a low level of education and meagre earnings. According to interviewed specialists the average age of Latin American women is usually higher than Europeans and they are more vulnerable because of the family burdens left in their countries of origin next to the threats and violence they suffer for cancelling their debts.

Concerning Nigerian women, according to actors, their profile shows women who want to migrate from their country or demand international protection; nonetheless, during the voyage are recruited by trafficking networks. They also indicate that, contrary to the victims coming from other countries, Nigerian women do not aim Spain as their main destination, but it is a country of transit to other European places. This aspect is highlighted by social organization when they report the high mobility of victims inside the Spanish territory and through different European countries. However, this mobility is the product of criminal organizations' decisions designed to satisfy the agile and capricious demands of the markets of prostitution. Therefore, social organizations affirm that immigration laws are not an obstacle for the entrance of these women in European countries, they get into Spain using legal documentation and their resources are “provided” by criminal organizations which try to elude their detection in entry points.

There are also some variations detected by actors in the victims' profiles in Spain with the increasing number of Chinese women. Minor victims have also been detected as well as victims suffering from psychic disabilities, but these cases are less important considering their number related to those previously mentioned. However, it is necessary to provide specialized assistance and resources for extremely vulnerable victims.

The profiles of victims of Trafficking in Human Beings for labour exploitation are different because of the male predominance and the age diversity. Moreover, the main sectors of exploitation mentioned by the actors are agriculture, construction and textile industry. There are also some less numerous cases detected in the domestic service sector. Considering the victims' countries of origin, most of the exploited men come from Romania, Morocco, China and Pakistan.

Concerning the profiles of traffickers, the information provided by interviewed actors and discussion groups is not definitive. Spanish perpetrators are detected as well as persons who share the victims' nationality.

The information of the routes of human trafficking is scarce. During the interviews, specialists highlighted the capacity of adaptation of criminal organizations in order to find new routes and strategies to get the victims into Spanish territory before police intervention. This ability confirms the perception of these organizations controlling a prodigious capacity of adaptation to obstruct detection and capture of traffickers. That is why their itineraries and routes are ever-changing and unpredictable.

Although according to actors it is a national phenomenon considering the widespread market of prostitution, its incidence is higher in big cities, in all provinces of the Mediterranean Coast and the archipelagos of Canary Islands and Baleares. It is also relevant that the incidence of the phenomenon is higher in touristic areas, even in little towns; the reason is the connection between the demands of touristic services and the market of prostitution.

Finally, state security forces have identified new scenarios for sexual exploitation in recent years. Prostitution in private floors has increased according to interviewed actors.

Chinese women are usually the victims. These changes make more difficult the victims' identification and detection because criminal organizations have strategically abandoned streets and nightclubs.

3.3. OPINIONS ABOUT THE LAW AND SOCIAL POLICIES

There is a unanimous consensus on the important legislative advances in Spain concerning the fight against THB. Not only European Directive 36/2011 has been partially transposed to the Spanish legal system, and Criminal Code has been modified (article 201 describes the crime of Trafficking in Human Beings), but the legal frame, according to some institutional actors, such as Prosecution Service, is one of the most developed in EU.

Opinions collected during the fieldwork show that the Spanish procedural norms for THB victims' protection and identification have included the obligations contained in the Council of Europe's Convention on Action against Trafficking in Human Beings and the amendments of Organic Law 4/2000, of 11 January, concerning rights and liberties of foreign people in Spain and their social integration.

The interpretation of Trafficking in Human Beings as a matter of human rights has advanced, but some problematic police and criminal aspects remain. THB is considered a problem of immigration policies and – although most of the victims are foreign people according to prosecutors dealing with this subject – this perspective is an obstacle for victims' protection. This situation makes state protection difficult because 1) not all the victims have to be included under the extent of Immigration Laws,⁶⁷⁰ some victims come to Spain from European countries, and 2) Immigration policies are more prioritized than THB legal treatment, consequently “it is more important the punitive law than the human rights” (I 6). This approach implies a legal framework whose principal aim is controlling immigration instead of protecting THB victims: “They are considered irregular immigrants who must be deported” (I 7).

⁶⁷⁰ The protection of victims of Trafficking in Human Beings is also a problem concerning international protection when the Law of Asylum does not include the asylum demands for European citizens. This is a restriction noticed by the Asylum and Refuge Office [Oficina de Asilo y Reugio - OAR] and UNHCR.

Many social organizations disapprove, even in the realm of international norms, the inclusion of THB under immigration laws. They claim for a specific law in which this problem could be tackled through coordination and harmonization under the perspective of human rights.

It is necessary to challenge the current approach restricted to border controls taking into account the perspective of victim's protection. As Ombudsperson [Defensor del Pueblo] and most of NGOs representatives claim it is essential to elaborate accurate procedural norms concerning victims' effective identification and protection.

Besides, concerning the access to protection mechanisms there is a harsh debate in Spain. NGOs do not share the opinion about article 59 bis of the Law of foreigners as the only mechanism for protecting victims. It means that international protection is exclusive instead of complementary. Social organizations affirm that Law 12/2009, concerning right of asylum and subsidiary protection, is applicable extensively. However, this opinion is not shared by the Asylum and Refuge Office [Oficina de Asilo y Refugio – OAR]. They esteem that human trafficking does not appear in articles 3 and 4 as a category to grant victims asylum or refugee status.

According to NGOs, victims of Trafficking in Human Beings are also victims of violations of human rights who can demand international protection; in consequence, states have an obligation concerning these persons. The statistics of asylum and refuge in 2013 were conclusive. Five applications asking international protection were submitted in frontiers and Aliens' Internment Centres [Centros de Internamiento de Extranjeros – CIEs], all of them were refused. In 2012, fifteen applications were submitted, only three of them were granted.

Despite different interpretations, the actors who analysed this debate indicate that the main obstacles are not located in legal terms, although it is possible to improve some aspects of them such as "those resulting from witness protection in Criminal Code" (*I 10*) or "the bad legislation on procurers" (*G4.2*), but in its implementation. Nowadays, there are many problems which impede an effective state intervention to face THB: "detection and

identification in entry points” (I 3), “the refusal of international protection when article 3 of the European Convention on Human Rights is threatened” (I 3), “when an administrative infringement is interpreted as a crime” or “the duration of internment exceeds the maximum admitted” (I 7), etc.

In this respect, it is convenient to indicate that roundtables, as research discussion groups in which state representatives and social organizations fighting against human trafficking deliberate from different perspectives and positions, have favoured the controversy and debate about some aspects that could be avoided using other techniques. Beyond methodological observations, the results of this research have been permitted to affirm undoubtedly that, despite Spanish legal framework considers a procedure for identifying and protecting victims of human trafficking, in factual terms this procedure has been ineffective.

The application of the legislation in entry points (airports and CIEs) and non-authorized entry points, especially after the irregular arrival by sea have been criticized continuously by actors. The conditions for victims’ identification in entry points are inadequate and the time for this task restricted. Even police officers working at Barajas airport admit these insufficiencies. Nevertheless, NGOs condemn bad practices when the Protocol to detect victims of trafficking is applied. According to this Protocol, if police officers detect some evidences of THB, presumed victims must be assisted during a reflection and recovery period. However, they affirm that this law has been interpreted erroneously due to the purpose of this period as well as the inappropriate places and moments in which it is offered. This period is offered at entry points, in inadequate spaces and limited time. Besides, NGOs indicate that recovery must be prior to reflection. “They offer the victim a reflection period, but there is not enough time for a previous recovery”. And “what happens when police tell the victims that according to the law under such conditions they have a period of thirty days for recovery and reflection? In 2010, there were 134 cases and the victims did not accept” (I 6).

Another critique to police intervention by interviewed actors is referred to the excessive importance given to information coming from the victims who need protection. Police officers hope victims could bring evidence and useful details for investigation, thus identification and protection process depends on victims' cooperation. Detection and identification cannot be linked to cooperation when the victim is rather terrified. If potential victims do not cooperate, the process of deportation is imminent because they are considered undocumented immigrants. If victims are deported to their countries, it is possible that they will be recruited again by traffickers. Therefore, avoiding deportation depends on victims' cooperation along with the state's protection duty.

There are substantial doubts of interpretation about victims' protection depending on cooperation. The transposition of the European Directive on this matter has been accomplished and the decree which develops the Law of foreigners indicates two ways for obtaining Spanish resident status: cooperation with authorities and personal situation. In the first way, the European Directive establishes that the immigrant could be exempted from administrative sanctions avoiding deportation if s/he denounces the authors or associates in human trafficking, also if s/he cooperates with authorities providing essential information or deposing as witness in trial against those defendants. A doubt appears here: "What does it mean essential information?" (I 1), and how is it possible for a victim to cooperate when s/he is troubled and terrified?

The victim could not cooperate, a common situation, when s/he is afraid, threatened and unfaithful with police officers or the trafficker is at the same room, etc. It is the moment when her/his personal situation could be claimed for avoiding the deportation and starting a careful investigation. International instruments, such as the Warsaw Convention and the Palermo Protocol, include a safeguard clause in which it is mentioned that these victims may require international protection. In consequence, the personal situation could be applied: "In this case, the recommendation of the Council of Europe indicates that when the Convention is transposed, it is clear that, even if the victims do not cooperate, the state must investigate taking into account their personal situation" (I 6).

The process of detection, protection and assistance has serious gaps. It is also the conclusion of NGOs, thus police must not charge all this responsibility. When the first signs of human trafficking are detected, victims must be directed to NGOs and specialized services.

There are also difficult cases in the Aliens' Internment Centres (CIEs) – according to Spanish Ministerial Order of 22 February 1999, regulating their functioning and internal regime –, government establishments of a non-penitentiary character depending on the Ministry of Interior. Before deportation, foreigners could be detained or taken into custody under judicial control in these centres. Current legislation has considered placing and holding foreign people in detention a preventive or a precautionary measure destined to guarantee the immigrants' deportation. However, many complaints have been submitted by detainees in immigration detention and social organizations denouncing that those centres are rather administrative prisons. CIEs are ruled by Real Decree 557/2011, of 20 April 1999, which approves the "Reglamento" of Organic Law 4/2000, of 11 January, concerning rights and liberties of foreign people in Spain and their social integration. The situation of CIEs is complex and diverse. There are numerous problems with the circumstances of unaccompanied foreign minors who are hosted and protected by autonomous communities. Moreover, there are other concerns related to "the absence of coordination and homogenization of protecting measures in different autonomous communities" (I 4). Trained personal is scarce and specific instructions on minors' assistance are insufficient. The channels of effective communication and coordination between state institutions are feeble.

The problem of age determination of minors has opened a debate between Prosecution Service and Ombudsperson concerning the most adequate intervention. According to Ombudsperson the current procedure (visual, wrist scans) could be improved. The facts is that accompanied or unaccompanied minors must receive a prioritized assistance because "the article 10.3 of the Council of Europe's Convention says that when the age of the potential victim of human trafficking is uncertain, the state shall presume s/he is a child thus there are some aspects to be improved" (I 6). When minors are identified as

victims, it is necessary to give children protection first priority and consider the principle of the best interests of the child.

Concerning the harmonization of legal norms to face THB, it is relevant to take into account those destined to fight sexual and labour exploitation. The reason for this differentiation is, according to what has been detailed before, the invisibility of labour trafficking. It is scarcely controlled, often unknown and the inefficiency of institutions which are in charge of this problem is less denounced. As social organizations dealing with this form of exploitation claim, it is necessary to give attention to this phenomenon.

A limited intervention is carried out when the approach on trafficking is reduced only to sexual and labour exploitation. “The Directive 2011 considers the phenomenon of Trafficking in Human Beings for the purpose of exploitation of criminal activities” (1 1). Trafficking for the purpose of begging or for criminal activities are new forms of this crime which have been studied during the fieldwork.

The harmonization of criminal, labour and immigrants legislations is imperfect, particularly when there are scarce labour laws ruling on this matter. Regarding human trafficking for sexual exploitation, there is a certain connection between the Criminal Code and the Law of foreigners, because they prioritize punitive measures instead of assistance; nevertheless, when legislation is focused on immigration, as it has been mentioned before, the institutional intervention is questionable according to social organizations. If institutional intervention focuses on border control, it is difficult to protect potential victims as well as prosecuting traffickers. The biggest gap is detected when state bodies have to identify victims of trafficking and control irregular immigration, in consequence police interventions could affect human rights standards on this matter.

Regarding entry points, it is possible that police officers consider their work is effective when they detect irregular immigrants, but at the same time their results are ineffective if they have not identified a person who is a victim of THB.

It is important to notice that we need to wear the eye-glasses, we can use them for reading or for distance; even we can use progressive glasses. We need

progressive lenses when we interact with contradictory realities, i.e. the control of migratory fluxes and irregular immigration or the protection of human rights and the victims of THB (I 11).

Moreover, the victims' identification in Spanish territory is even more complex. The legal framework is provided by the Law of foreigners and the control of irregular immigration; however, women working as prostitutes in nightclubs are not undocumented immigrants, they have regular papers; while street prostitutes are "paradoxically more invisible" (I 6) because they think that prostitution is their choice.

The approach of immigration control causes another problem: the absence of harmonization between victims' protection and social assistance. Protocols do not establish how the social assistance is provided to victims; they only indicate the duty of police forces to inform about the organizations in charge with victims' assistance, but "there is not a police duty to call a specific organization whose work is to help victims and inform them about those institutions in charge of assistance" (G4.11). Besides, "assistance and protection are not police responsibilities. Victims need to be assisted by NGOs and specialized services which are able to detect the first evidences" (I 6). Civil Guard officers coincide with this conclusion, they affirm that "victims' protection and social assistance is guaranteed through NGOs intervention" (I 8). These organizations are not only able to undertake this task but they have requested this burden because it is an opportunity to prioritize the human rights perspective dealing with THB:

NGOs have maintained a coordinated fight claiming that national intervention in trafficking considers fundamental human rights perspective instead of foreign affairs policies or as an exclusive criminal subject. Human rights perspective in intervention is a state's responsibility (I 11).

3.4 IMPLEMENTATION OF THE LAW – LAW IN ACTION

It must be highlighted the total implication of all the organizations which have cooperated during the fieldwork through their know-how shared with the research team and their hopes to improve the situation of victims of human trafficking. The abundant information about limitations and gaps in the institutional system must not only be seen as

failures, but also as the result of a compromise and the accuracy from all the actors involved with this phenomenon trying to improve in those aspects in which victims are more vulnerable or their rights could be restricted. The implication of the actors in this research is highly relevant because all of them have reported every detail concerning its activities and vast experiences as well as their professional opinions in humanitarian, sociological and legal matters. Their serious work is the signal of an advance for fighting against THB.

Advances in legal areas are recognized considering some recent positive achievements concerning victims' protection such as sentences punishing traffickers (although due to recent Criminal Code amendments guilty verdicts are rather few), however, when actors are asked to describe the implementation of legal norms, their opinions are not so unanimous.

Trafficking in Human Beings is a crime, in consequence some comments claim strengthening victims' identification before protection, although preventive actions are exceptional. To ensure preventive measures, actors indicate some possible interventions destined to avoid the repetition of the crime ("re-trata") when a victim who has not been identified is deported or s/he has not obtained the international subsidiary protection. It is a problem explained before.

In some circumstances, we are witnessing that the return of victims of human trafficking or persons who are at risk of becoming could be protected under Geneva Convention categories. We are not saying that all the victims of human trafficking need international protection, but some of them, if we consider their lives, experiences and personal circumstances, when they have to go back to their countries of origin they will be in danger. Then, if we could connect this situation to the categories recognized in the Convention, most of them linked to determined social groups, even it could be also connected other categories, that is to say the victim could be considered a refugee (I 2).

Prevention through awareness campaigns in "embassies of countries of origin or in buildings in which immigration proceedings or visas are requested" (I 1); even "information campaigns targeting general population and consumers of sexual services" (G4.2) were carried out in recent times.

Victims can be protected if they are identified, so that, considering all the hints before mentioned, “it has been organized a police team in charge of victims’ identification, a telephone for reporting crime is available 24 hours a day” (I 11). Police authorities have given publicity to this service and they have shared all the information with social organizations; they have also produced some documentary films hosted in the police website with the aim of intensifying the awareness of the problem and report crime by phone.

When the population is aware of the phenomenon, the next problem is the lack of trained personnel to detect and identify situations of human trafficking. Institutions have set up training programs in all the organisms dealing with THB, not only for sexual exploitation but also labour: “police officers are unconscious and they are not trained, so we are setting up a pyramidal process of personnel training.” (I 9)

Finally, concerning protection, “the main difficulty is the excessive weight given to the victims’ statement in criminal trials” (I 6), as it has been mentioned before. Besides, the absence of legal harmonization between organisms and professionals belonging to different institutions is seen as a limitation for protection in Spanish territory.

A protocol linking prevention, protection and assistance establishing then demarcated competences and nodes of interconnection between different organisms is necessary to harmonize the proceedings.

Interviewed actors and persons whose opinions were shared in roundtables have permitted to know the entire process of crime prosecution of traffickers as well as the victims’ identification, protection and assistance. Prosecution and sanctions are in charge of judicial police and tribunal. Prosecution Service has been a relevant actor in criminal procedures during the last years when prosecutors apply legal norms and make proposal of amendments to improve the legal protection of victims (legislation on foreign matters and framework protocol for intervention in different institutions dealing with human trafficking). Concerning the harmonization between judicial system and police forces, it is peculiar that in

the discussion group the public prosecutor in charge with THB had mentioned the cooperation with autonomous police forces but not national police. However, there is not enough information to determine the extent of coordination between judicial power and police authorities.

During fieldwork, it has been observed that security forces intervention is essential considering all the institutions dealing with THB crime. The role of police forces is crucial according to all interviewed actors. Police officers also coincide on the importance of their work, particularly when the fight against human trafficking and criminal organizations has become an institutional priority, in this sense, they estimate that there are encouraging advances in their fighting against this crime.

Three police units are in charge of prosecuting THB: (1) National Police, through the UCRIF, (2) autonomous polices such as Mossos d'Esquadra in Catalonia and the Ertzaintza in the Basque Country, and (3) the Civil Guard through the Section for Trafficking in Human Beings, Homicides and Kidnappings of the Technical Unit of Judicial Police [Sección de Trata de Seres Humanos, Homicidios y Secuestros de la Unidad Técnica de la Policía Judicial].

THB was one of the subjects included in the Strategic Plan of the Police's General Direction in 2013; therefore, all the interviewed officers recognize the importance of their work in victims' identification. The UCRIF has a central role at the moment of coordinating with other European police forces in charge with organized crime. During investigation and control, it is relevant the effort of international and national cooperation directed to identification, as well as in investigation procedures, although interviewed actors indicate a necessity to improve cooperation between national and autonomous police forces, even police officers state the need of increasing cooperation with other organisms.

Autonomous police in Catalonia – Mossos d'Esquadra – has also an Operational Plan for fighting human trafficking. It includes, among other subjects, the development of a series of agreements with other organisms such as local boards.

The Section for Trafficking in Human Beings, Homicides and Kidnappings of the Technical Unit of Judicial Police is also in charge with the investigation of criminal networks

and the control of places related to sexual or labour exploitation. It is also in charge with the identification of persons who arrive irregularly by sea. In these circumstances, if one person is identified as a victim of human trafficking, s/he is directed to specialized NGOs.

In Spain, the role of NGOs is relevant because they deal with all forms of humanitarian assistance to victims, such as attention during the period of reflection and recovery, information, legal support, shelter, social and labour integration, sanitary assistance and care in internment centres. Many NGOs provide specialized assistance; i.e. Doctors of the World, the United Nations High Commissioner for Refugees (UNHCR) and the Red Cross, but many others intend to give an integral response to the necessities of victims of THB for sexual exploitation, i.e. Project HOPE (Health Opportunities for People Everywhere), or victims of THB for labour exploitation, i.e. Spanish Catholic Association for Migrations (ACCEM). Along with their supporting role, these organizations are political actors well organized to intervene during legal amendments process as well as at the moment of their implementation.

NGOs efforts are crucial for protecting victims. Their work was a response to existing demands not satisfied by the state, thus they are profoundly involved with the phenomenon. When victims are identified, NGOs are in charge of their assistance. Some organizations, i.e. Project HOPE, have organized in-day care centres destined to former victims of THB for sexual exploitation who have recuperated their autonomy, but need NGO's support. ACCEM assists victims of THB for labour exploitation and provide support for their social and labour integration.

The state coordination with social organizations is decisive regarding the effectiveness of the entire process. This coordination has been recognized by all the actors belonging to state organisms.

Coordination between police and NGOs is fundamental for victims' assistance (G4.1).

Civil Guard posts have no spaces to assist victims, then NGOs cooperate with us... we can do our police work with the victim connected to investigation after you

can call a NGO and they give the protection required by the victim. First of all, shelter, then psychological attention... It is wonderful! (I 8)

NGOs also recognize the importance of coordination:

There is a lot of coordination between NGOs and immigration police units (I 11).

Coordination between police and NGOs is fundamental for victims' assistance (G4.1).

Since the creation, in 2005, of the National Network against Human Trafficking, NGOs intervention has improved remarkably, not only because it has favoured a better and wide coordination between organizations but it has facilitated an extensive coordination with state organizations in order to propose policy changes. "Thanks to this network, it was an achievement, in 2008, that Spain had ratified the Council of Europe Convention, which implied a greater legal framework for facing this subject and amending the Criminal Code differentiating smuggling of migrants and human trafficking" (I 11).

Coordination between state and NGOs is a challenge but, at the same time, it is a possible way forward if they coincide in the common interest of satisfying persons' needs and make certain the respect of human rights. The point is

to unify efforts cooperating with other organization dealing with the same problem, with Red Cross, complementing initiatives, with Hetaira, CEAR and the police forces, as well as Mossos through the SICAR (I 11).

Another challenge is to promote actors' training and awareness for achieving a vast international coordination between the international system of protection and the specific protection of victims of THB, as well as between all the state organisms.

Concerning the role of media and THB, the press analysis carried out by the research team shows the lack of interest of media on this phenomenon, as well as the absence of the term "human trafficking (trata)" in two ideologically opposed newspapers: *El País* and *ABC*. The invisibility of THB for labour exploitation is significant. The focus on Trafficking in Human Beings for sexual exploitation is moral or morbid linked to prostitution when something

“striking” happens and the information is located near to “News items”. Prostitution phenomenon is prioritized by media instead of trafficking.

The media’s lack of interest on this crime is also perceived by interviewed actors. They did not mention the role of media because actually it is not playing any significant role. However, the actors’ opinions on media in discussion groups and interviews have shown the necessity of these instruments to inform, denounce and create public awareness.

In ACCEM, specialists recalled when a dinghy containing immigrants arrived to Canary Islands in January 2011. They came from Agdaym Izik (Morocco). Media’s work was important at that moment although there was not a positive solution to this problem:

Everybody knew the dinghy was coming, mass media recorded the experience, newspapers published it and all the immigrants get into the CIE and claimed asylum. Considering the circumstances in El Aiun, all those incidents occurred in camps and the media’s support, we recommend these people’s applications to be admitted, but most of them were refused by OAR. (I 1)

Media play a role that is likely unknown. Some institutions’ first intervention is often based on published information; according to UCRIF’s representative: *“Sometimes they have become police’s way to access to information”* (G4.2). Ombudsperson’s investigations are also based in media’s information:

We have a press office which selects news concerning human trafficking; then we cast those related to sexual exploitation away because they were abundant, but those concerning labour exploitation were treated as a priority. Labour exploitation is a discouraging subject (I 6).

Finally, from an optimistic perspective, there are some good practices which are acknowledged by interviewed actors such as the professional work of Mossos d’Esquadra during identification. The good reputation of these autonomous police officers in identification is perhaps due to the elaboration of a Plan of Action against Trafficking in Human Beings in Catalonia, whose first action is to create officers awareness and training. Actors appreciate training directed to all police officers no only to those belonging to

concrete units dealing with trafficking. Training provided by NGOs in which are involved different organisms (Prosecution Service, Police, NGOs, etc.) has been well received.

In a country of destination as Spain, campaigns whose targets are potential prostitution consumers carried out by UCRIF and the existence of a hotline number to report suspicious human trafficking activity are also some examples of good practices along with NGOs and police forces shared actions using protocols of communication and detection of victims of THB as well as intervention teamwork for identification involving police units and social organizations during procedures, i.e. Mossos d'Esquadra and SICAR in Catalonia or APRAMP, Project HOPE and the Brigade of Alien Affairs in Madrid.

The Prosecution Service's effort to meet with NGOs once a month could become a common practice of all institutions.

3.5. INTERNATIONAL COOPERATION

As it has been mentioned before, interviewed actors point out that cooperation advances have been destined to strengthen the relationship between national institutions and social organizations. Although some initiatives of international cooperation have been developed, it is necessary to improve this action in the next years.

In general, initiatives and international declarations on this matter carried out by European Commission and the Council of Europe are welcomed. Efforts put in practice by the Organization for Security and Co-operation in Europe (OSCE) have also been very well received. Actors believe that International and European Law have contributed to create an adequate context for advancing in an effective work in the fight against THB in Spain. Nevertheless, they estimate that EU initiatives must be strengthened considering the actions and resources destined to other forms of trafficking, such as drugs trafficking, or the actions against international terrorism. Human Rights organizations think that trafficking is a subject of wide international impact so it is necessary more initiatives against this pervasive and invisible crime which touches especially European citizens such as Romanians and Bulgarians. Besides, they believe this intervention must not be connected to the initiatives destined to fight against irregular immigration.

Spanish security forces appreciate the cooperation with foreign police; the efforts made by Europol, Interpol and GRETA are emphasized. They also consider the European Police College CEPOL an adequate institution for improving officers' training. Several elements of this cooperation are highlighted: a) conjoint investigations, b) international training, and c) learning from the experience of other police forces in identification techniques and interviews with victims.

In comparison with other European countries, in recent years Spain has shown important advances on this subject. There are some countries that can be considered benchmarks for Spain and, at the same time, some other countries could learn from the Spanish experience. It is welcomed that Spain has largely transposed into Spanish law the European Directive 36/2011.

The achievements since 2011, when the Criminal Code was amended, were huge. It is an avant-garde legal framework since the European perspective (Directive 36/2011). Spain has transposed the directive (it is only missing the content of small crimes). We have the legal framework and it is even better developed than in other European countries (G 4).

It is highlighted as an example of good practices inside the EU the systems of victims' identification developed by Belgium, Italy and Austria, where NGOs have a crucial role coordinating with police and judicial organisms. In opposition, actors are reticent to develop shared methodologies in different countries considering the specific characteristics of national contexts. Despite international cooperation is still inefficient, social organizations dealing with this matter are very active in European and international spaces. They participate in a great number of European projects and are in contact, through formal ways in some cases, with international NGOs as well as international organizations' offices abroad. The transnational character of trafficking and the international experience of networking have favoured more than a decade of cooperation. It is considered highly positive because actors believe that others organizations and countries' experiences, even if they cannot be applied to the Spanish context according to its specific national circumstances, can be useful to boost a more effective intervention.

It has also been verified that the process of return of victims is accomplished with the support and vigilance provided by Spanish institutions who cooperate with countries of origin authorities. Despite this intervention, many situation of “re-victimisation”, or even “re-trafficking”, have been detected. These situations are produced by multiple factors such as criminal networks threads after the return linked to outstanding debts and the victims’ own communities reject. According to actors, these contingencies cause frustration inside their organizations and show the difficulties they face during the return of victims to their countries of origin.

Expulsions and deportations of presumed victims of Trafficking in Human Beings who were not granted with international protection, but were deported according to Spanish immigration laws are seen as worrying situations.

CHAPTER X

CONCLUDING REMARKS AND GENERAL RECOMMENDATIONS

CONCLUDING REMARKS

The reality of trafficking in human beings (THB) in Europe is not new, but in the last decade got a large media coverage and, consequently, a greater awareness on the part of society in general. This meant that, on the one hand, serious phenomena of exploitation that resemble slavery, a social practice that gave property rights to a human being over another human being, were regarded with the criminal and legal seriousness they deserved; but, on the other hand, it also meant some confusion around a phenomenon that, despite the attempts of legal clarification, remains conceptually complex and socially polysemic. Studies which focus on the THB in general are faced with an initial problem: defining their object of study. In fact, THB is a complex concept which arouses a certain amount of controversy regarding its true definition. Hence, the broader or narrower scope given to the concept may influence the policies that are used to fight this phenomenon and it is not uncommon for governments, international agencies or even non-governmental organisations (NGOs) to instrumentalise it, and define it according to the political goals of their own particular agendas. Governments have largely focused their attention on illegal immigration and transnational organised crime. As was shown throughout this report, there are several reasons for this which we evoke them briefly here.

The first concerns the underground nature of this type of crime and the new dynamics that it is always undergoing to adapt itself to social change, as can be seen in the accounts from the various countries portrayed in this project. THB is a very serious crime that violates the dignity of the victims. Indeed, they are recruited taking advantage of their vulnerabilities, in many cases illegally transported to a country they do not know, and then exploited in different markets. The aim of the crime is to obtain high profits with a reduced risk of being identified by law enforcement agencies. In order to reduce this probability, offenders constantly develop new strategies to commit the crime. They have the ability to adapt their criminal action to the changes that occur in the European and national legislations, but also in the economic and social contexts of the countries of origin and destination. This ability complicates their prosecution and allows the continuous perpetration of the crime. The absence of sound statistics does not allow us to assert whether THB has increased or decreased because, in fact, we never knew the true numbers

of THB. The perceptions of the actors do not match with the recorded and revealed criminality, which is negligible in some countries when compared with other types of serious and violent crime. But what is certain is that the media have been increasingly reporting rescue operations of people in situations of labour exploitation akin to slavery. Regarding sex trafficking, we will see that it is even more complex.

The second difficulty of signposting this phenomenon stems from the common confusion between trafficking and aiding illegal immigration, or smuggling. In fact, both are phenomena of irregular migration with a view to obtain a profit, and both migrants and trafficked individuals often leave the country voluntarily and suffer dangerous and uncomfortable conditions during their journey. However, international publications and studies on migration have endeavoured to establish a distinction between these two phenomena of irregular migration, since trafficking should not be viewed, either at the legal level or at the level of practical solutions, wholly or partly as a problem of illegal immigration. Rather than a problem of border control, it shall be perceived as a systematic violation of human rights.

The third one is that it implies social issues that outweigh it. Let us start with sex trafficking. From some interviews and surveys, it resulted that the practical understanding of sex trafficking, regardless of its definition in the law, is linked to a moral and ethical censorship related to prostitution and its non-regulation, which has implications on several levels. The fact that sex trafficking raises issues that ultimately transcend it – ethical issues about society itself, issues that are embedded in the consciousness and ethical paradigms by which we regulate ourselves, and some of those issues are taboo in society –, sometimes creates a kind of hierarchy in which labour trafficking appears to be more serious. This has practical implications in what concerns the identification of situations of victimization. The representations of the police forces regarding the victims in several countries, and among different law enforcement agencies in the same country, showed a relative heterogeneity of discourses. Nevertheless, stereotypical conceptions about sex trafficking victims still persist, which may lead to a devaluation of the nature and severity of exploitation they might be subject to. This is particularly true for women who were already in the sex trade. Countries like Portugal and Poland highlighted these and other stereotypes around women (and we emphasize here women because the sex trade is still mainly connected to them).

Specifically regarding trafficking for labour exploitation (but also for sexual and begging exploitation), the economic crisis that is felt in Europe and in most countries included in this research was inevitably addressed. One of the points highlighted in Chapter I concerned how the naturalization of the phenomenon is inscribed in a social and economic regime that, combining the formal and the informal, completely overlooks what are the fundamental principles of the social contract and labour law and progresses to what António Casimiro Ferreira (2012) termed *labour law of exception*. Several actors spoke of economic, social and political changes experienced in recent years to justify the increase or decrease in sex and labour trafficking. We can assert, somehow, that the diversity of their discourses, and its paradoxality, are reflected in *the risk society* analysed in the light of the European economic and political crisis by Ulrich Beck (1992): tomorrow is not guaranteed and the catastrophe is imminent, so we live in times of adaptation. In Portugal, for example, if, on the one hand, the austerity policies and the economic crisis make the country less attractive in terms of expectation and work opportunities, on the other hand, some police forces interviewees claim that there is a larger social predisposition to support and tolerate the degradation of working conditions, a matter closely related to the complex phenomenon of THB. These police forces refer not only to foreigners, but also to Portuguese. Regarding Italy, most of the victims are people that are going through economic issues and most of the time they are from countries affected by economic underdevelopment and financial crisis, such as Eastern European and North African countries. They are exploited mainly in the agriculture, livestock and construction sectors. However, the growing presence of Chinese, exploited by fellow countrymen, employed in the textiles and clothing sector remains crucial in the Italian context. Usually they live and work in the same place in exchange of a miserable salary.

Hence the fourth reason, the deconstruction of a paradigmatic type of victim created in and by the cinematographic imagery and often ruthlessly deconstructed by the media. It should be noted that (in relation to the phenomenon of human trafficking) journalists sometimes used linguistic strategies aimed at exaggerating certain information while glossing over other aspects, which may have negative consequences for the way in which victims of crime are perceived, as well as for the general state of knowledge on this phenomenon amongst the general public.

Apart from the paradigmatic “type” of sex trafficking victim – the situation of a woman deceived and forced to prostitute herself for the first time, through coercion and force upon her arrival in some foreign country – and labour trafficking victim – women/men working 20 hours a day in a farm where they are forced to live and also deprived of food – there is a whole spectrum of situations which, though not included in this typical image of violence in trafficking, represent dramatic forms of abuse and damage. The danger of this reality being diluted is related to various aspects: 1) because there are many women who used to be prostitutes in their countries of origin and, therefore, will find it difficult to see themselves as victims and exploited according to preconceived views; 2) because there are women who knew that they were going to work as prostitutes, want to be prostitutes but did not want to be exploited; 3) because there are people that, in spite of having some kind of freedom and receiving some money, are completely enslaved in a system that does not guarantee any labour or human right, but do not run away because they need to survive. In Italy, as confirmed by many scholars and experts, it is really hard to prosecute the offence of labour exploitation since most of the victims do not consider themselves victims of an offence and unfairness. On the contrary, they portray their exploiters as benefactors that have been able to give them the chance to modify and improve their life style, and depict themselves as lucky workers since they have been able to contribute to their family expenses abroad. As a result, they do not report the crime and the number of people denounced and then prosecuted is low. In Romania, the perception of THB among the victims is: “THB is not the worst thing that could happen to us!” The victims’ mentality is that the non-payment for their work as trafficked persons is more intolerable than the trafficking itself. So, this fact per se, since it may actually be the more visible side (and even the more common one, according to some actors) of this phenomenon, could lead to a form of “sociological camouflage” of situations in which women and men are victims of a dramatic reversal of that idea of self-determination.

The fifth reason for the existence of a conceptual difficulty surrounding this crime is related to the internal diversity of this phenomenon. Indeed, in spite of several common points, as some routes and forms of organization, THB presents considerable differences whether it regards trafficking for sexual exploitation or for labour exploitation, the two types addressed in this investigation. Adding to this diversity is the country from where one looks

at it. As has been seen, it is different if one analyses trafficking from the point of view of Romania, which is primarily a country of origin within Europe; or Italy, a transit and destination country; or Belgium, primarily a destination country. And these differences related to the country can still change depending on the type of traffic. As has been seen, that is the case of Portugal. With regard to sex trafficking, Portugal is considered essentially as a country of destination; but regarding labour exploitation, it is a hub, a feature that has always characterized Portugal in its migratory movements, especially from the 1960s, emerging both as a country of destination and of origin, with a strong connection to Spain. Also different are the routes, the victims (which generally follow the migration flows) and the forms of organization. Thus, if in Portugal the networks of sex trafficking are small and almost informal, and usually with Portuguese involved in it, in Italy, sex trafficking appears ruled by a few criminal organisations. In particular, it has been noticed the presence of Nigerian and Balkan criminal networks which have different *modus operandi*. What seems interesting is also the non-involvement of Italian Mafia-type organizations, which do not seem to have an active role in the sexual exploitation crime. Moreover, these countries are cultural, social and economically diverse and this is reflected in their laws and in their implementation.

Therefore, we consider that THB has intersections with other phenomena, such as gender, coloniality, immigration, labour policies, sex work, etc. To some, the attention of governments to the phenomenon of trafficking, namely in Western Europe and North America, has been more focused on issues of migration and controlling migration flows than on human rights, being paradigmatic more restrictive immigration laws. Ratna Kapur (2006: 109) even argues that the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, which constitutes an unprecedented level of cooperation between states and NGOs, focuses mainly on migration and control of borders, and that, although it contains important provisions, they are not binding. There is a great deal of literature that shows the existence of a hidden agenda in the anti-trafficking rhetoric and policies. What is presented as a struggle for human rights is often an excuse or a way to legitimize restrictive measures regarding mobility and citizenship that increase the North-South and centre-periphery inequalities. Some NGOs and scholars believe that these

measures turn out to be much more part of the problem than the solution to it: not only they do not discourage trafficking, as they condemn more easily to clandestinity thousands of people who will not give up their migratory strategies.

Finally, the protection that is available to women victims of trafficking for sexual exploitation is mediated by surveilling their sexuality. This means that the protection of women victims of trafficking, both within its implementation or the normative prediction, is often constrained by moralist conceptions, especially because women prostitutes carry a strong social stigma, and having their civil and human rights often violated (Anderson and Davidson, 2002: 40). There are few countries where women prostitutes are effectively protected by law and, as we have seen, stereotypes and prejudices concerning prostitution and immigrant women of certain nationalities may result in the law not being applied.

In Chapter II and in the various chapters on the selected countries, we saw that in the past few years, governments have tried to develop strategies for combating THB. The main strategy has been based on the adoption and strengthening of specific legislation, mainly criminal.

The adoption of this legislation has been top-down, i.e., under the strong influence of European and international directives binding European states to directives and to sign and ratify conventions committing themselves to fight THB. We have seen that the countries surveyed had different timings for this and that attention was initially given mainly to sex trafficking. However, if the top-down influence is undeniable, it cannot also be disregarded the work and claims of NGOs, some of them of religious and not politicized nature, working in the field supporting women prostitutes and that began to warn for situations that they thought that were outside the parameters of consensual prostitution (and not because those NGOs had an abolitionist position, although this could also be the case). This was the case of Portugal, Spain and Italy.

However, despite its constant efforts, there are some limits that hold back the effectiveness of the regulations. In particular, it is possible to list some limits highlighted in the fieldwork, besides the ones mentioned above.

First, the high cost and long duration of investigations, as well as the difficulties in gathering evidence for a THB conviction, are related to both the complex nature of the THB crime (and its often confusion with connected crimes) and to the way it is framed by the criminal law and criminal procedure law. These problems were underlined in the Italian context, but they are shared by all partners' countries. By the way, the general deficit of convictions for THB is a recurrent concern of the European institutions engaged in THB fighting, namely GRETA.

Apart from the lack of police forces training, identified in all countries, the difficulties in the coordination of national police forces; the difficulties in the cooperation with foreign police forces and the need for greater and better cooperation with Europol, Interpol and bodies/institutions in the countries of origin of the victims; and the articulation with police forces in the countries of origin is also critical for the actual protection of the victims and criminal prosecution. In this matter, Belgium is considered a model student among the EU Members States in THB fighting. Despite the many problems and limitations identified and analysed in its national chapter, this country was historically pioneer in the adoption legislation that goes further than international and European legal dispositions. In what concerns institutional and police cooperation for the investigation of THB crime financial dimensions, the experience of this country in dismantling criminal networks can also be considered a good practice that should be taken into account in other national public policies elaboration. Finally, this country is benchmark for European police cooperation, namely because of the practice of police officers exchange in the frame of CEPOL. For instance, Belgian police officers worked with others from Bulgaria and Romania in THB questions.

Most of these obstacles/problems are here recovered and mentioned in the form of general recommendations, involving not only a description, but also an orientation to be developed by anti-trafficking actors and the public policy.

OVERALL RECOMMENDATIONS

The recommendations here presented are a condensation of the key points established in Chapter I and identified throughout the national reports. Such recommendations do not reproduce or summarize those ideas; instead they translate and combine a brief diagnosis of the socio-legal scenario around THB indicating paths that, in our view, allow a systematic and intelligent response to the phenomenon. It is a double challenge. On the one hand, we try to point normative, institutional and social solutions that meet the concerns rose by the actors, inquired and interviewed, along the fieldwork (police forces, legal enforcers, victims, political entities, NGOs), concerns that do not always show to be convergent or compatible . On the other hand, more than systematize and give voice to these concerns, the aim is to take advantage of a critical approach to THB; an approach which thinks and deconstructs the way the justice system, with its merits and imperfections, has been approaching the theme and (re)producing different hierarchies, constraints and invisibilities.

Another issue to keep in mind is related to the national specificities, namely the incidence and interpretation of the phenomenon, the accommodation of European and international legal guidelines, and the institutional frame that might determine the best way to address the phenomenon. The recommendations presented are, somehow, a common denominator of the partner countries involved in this research project, and shall not be received as a prescription indifferent to the realities, the conjunctures and the national actors. Nevertheless, the European space shares a broad set of economic, social and criminal problems, and a significant part of the responses to be designed requires an integrated approach, not only due to the transnational nature of THB, but also for the identity and regulatory ambition of the European project.

In this sense, one of the first major recommendations has to do with the combined requisite (national and European) to develop public policies that halt the austerity turn in the European peripheries. The shrinking of the welfare state and the erosion of the social contract have exacerbated the vulnerability of citizens and have fuelled grey areas, propitious and attractive for THB business. A common point among the peripheral European countries is related to the liberal vision and the laissez-faire policy which has produced an

informalization of the economy and labour relations, as well as a general reduction of the rights in the job market, promoting the social tolerance to what concerns different forms of exploitation, as it is pointed out in the Portuguese, Spanish and Italian chapters.

Thus, the social and economic crisis influences different forms of trafficking (for sexual purposes, for labour purposes, etc.), and structurally delimits the phenomenon. The rhetoric of human rights, often associated with fighting THB, shall be constitutive of governance and cannot favour the promotion of individual freedoms neglecting the assurance of economic and social rights: these two aspects cannot be thought selectively or separately. This is, in our view, the biggest challenge placed on the prevention of THB. Trafficking is not just a product of poverty, unemployment and social exclusion. However, without understanding its structural rootedness, any measure will always be superficial and ineffective.

One third question concerns the scarcity and reliability of official data (national, European and international) on THB. The hidden numbers (resulting from the suppressed demand), the different calculation methodology and the prevalence of the legal categories have influenced the overall perception of this crime weight in European societies. It is not about finding a mathematical mid-term between the astronomical numbers (and suspicions) circulating via media and NGOs, and the residual feature that this phenomenon appears to have whenever analysed from the judicial statistics, including convictions. The purpose is mainly to find political and sociologically consistent and relevant terms that serve the public policy and the national or comparative analysis. The need for a centralized system for collecting and processing data, already conducted in some countries, shall be seen as a priority (to create or to refine). Though we still recognize further limitations of statistics: this recognition is reflected, moreover, in the indispensability of including different methods of research in this project (survey, interviews, documental analysis), without which we could not have understood the socio-legal dynamics and controversies that are on the basis of the state and civil society intervention fighting THB.

The centrality of the victims' protection was an important paradigmatic turn in legal and institutional response models for THB. Despite the progress registered during the last

decade, the rhetoric and the international normativity not always correspond to police and judicial reality. First, we would highlight the need for a funding reinforcement in order to implement the required measures for the protection and welfare of victims. Second, it is important to rethink the ways of victims' signalization and identification – which works both for law repressive purposes and for victims' protection. The phenomenon of THB is, as we have seen, complex and nebulous, and involves practices that are not always automatically indicted as corresponding to that crime. Thus, from the standpoint of protection, it is important to expand the rights guaranteed to victims from related crimes, mobilizing resources and tools that emphasize the response to citizens identified as at risk and in vulnerable situation. Simple measures like the creation of an anti-trafficking free-phone, like in Italy, must be seen as a good practice that contributes to the promotion of the victims' access to justice (giving support, information and indications on the assistance programs and the protection measures available) and to the THB cases signalization.

The institutional cooperation is also, as we will see, a key factor in this matter. Furthermore, standardized solutions shall be avoided for cases that are singular. Each victim has his/hers own biographical trajectory and his/hers empowerment does not always meet the pre-established means for that purpose.

Third, the role of victims in the case law also challenges the protection policies. The victims' assistance and residence permits relying on the relevance and on the cooperation with the authorities is a form of moral and instrumental pressure that shall be questioned. The same applies to the obligation to cut any kind of contact with the offenders, even if it means an increasing risk of retaliation or if the agents of the crime are their family or close – and significant – friends. The need and the importance of the victims' collaboration in the prosecution process so that they can get formal protection is a topic particularly stressed in different national chapters of this project. However, it shall be mentioned that, unlike what happens in Poland, the Italian legal framework for victims' protection early established the exemption of their active participation in punitive purposes and that may be considered a good practice. In the Spanish context, that question arises with, among others, the problem of defining what collaboration means and what is essential or not in the victims' contribution. By the way, the legal frame and the concrete practices of witnesses' protection in TBH cases is an additional topic that should not be forgotten, both because of the financial

and logistic efforts they require, and the professionals' awareness of their needs, rights and importance for the TBH prosecution.

Fourth, some countries emphasize the need for increasing the public scrutiny on the functioning of "detention centres and border control procedures" in order to understand the extent to which they respect human rights and incorporate appropriate measures for the identification and protection of THB victims. The proposal to establish a national authority/institution – or to re-evaluate it where it already exists – that oversees the residence permits is a recommendation not only aiming at ensuring some equity criteria, but also to avoid automatisms that neglect fundamental dimensions of the victims' rights and needs. In the Italian context, for example, the invocation of "humanitarian reasons" to justify the residence permit is viewed with discomfort from the perspective of victims' rights and interests.

Not disconnected with this issue, the victims' (assisted) return is also a troublesome point. There is extensive literature linking the explosion of anti-trafficking policies to immigration control and to the distrust concerning populations from economically debilitated and culturally *different* countries. On the one hand, shared security anti-immigration policies in the partners' countries preview the expulsion of illegal citizens without understanding in what extend they are THB victims. In Spain, it was a recurrent practice until 2011 and in Poland it is still the privileged response. Not only in Spain, but also in Italy and in Portugal, some cases of fraudulently asking asylum appeared recently. Victims are forced to ask for political asylum in order to obtain the possibility of staying legally, but then they are engaged in a form of exploitation. On the other hand, the assisted return, although fundamental whenever it meets the victims' aspirations and it is accompanied by measures that ensure their protection in the countries of origin, cannot be an alternative to the development of national responses that promote inclusion, safety and well-being.

Fifth, it is imperative to highlight the decisive character of a non-punitive vision of the victims by the system of justice, poured both in law and in practice, in speeches and judicial culture. It is particularly relevant because of the role victims play within the traffic networks, recruiting and controlling other victims, which was underlined in the Spanish chapter. In the

European context, this matter deserved a special spotlight by the coordination of the fight against THB, namely by Maria Grazia Giammarinaro, who coordinated the 2013 edition with specific guidelines for this purpose (Organization for Security and Co-operation in Europe, 2013). It makes no sense to repeat those guidelines in this report, but it is important to insist on the idea that only a scrupulous respect for this conception of the phenomenon and of the victims will allow to reinforce the confidence on the state and on justice, and boost the police reports, avoiding the postponement (and aggravation) of harmful situations and the prevalence of (the feeling of) impunity. Sixth, the fieldwork of some countries, mainly the Spanish, showed the need to ensure the confidentiality of victims' testimonies, the quality of interpretation, the guarantee of legal assistance and (the adoption of) an effective separation between the recovery period and the period of reflection, in order to not take a shortcut on the process and commit the proper – and legitimate – time of the victims.

Seventh, the role of NGOs in the victims' assistance and protection shall be underlined. On the one hand, they usually play a role that corresponds to the state obligations related to the citizens' fundamental rights. Their presence in the field shall not be an excuse for the state demission of its political and legal responsibilities, as it is pointed out in the Polish chapter. On the other hand, despite the diversity that characterizes their activities and agenda and far from being exempt of criticism, these structures assume themselves as a major institutional pillar in the response to THB. On the one hand, NGOs fulfil an important mission when they provide shelters for victims. On the other hand, NGOs are, sometimes, entry points to the legal system, mediating the victims' relationship with the police forces, the judiciary and with other public entities. Two recommendations in this regard: to increase the support and funding, from the state, to the activities of NGOs; and to increase the social control over their work, both on the way they institutionalize the victims, and with regard to how they conceive, think, interact and interpret the needs and aspirations of the victims (taking into account the particularities of labour and sexual exploitation).

The articulation between NGOs and other actors that directly or indirectly intervene in the field of THB is also an area to deepen. The cooperation with the criminal police bodies constituted an axis of particular importance in this research project. Thus, the main recommendation is to densify the ties between actors, formalizing it whenever justified – in

order to streamline, standardize and facilitate the process. Admittedly, there are also conflicts between NGOs and police forces, particularly due to the way they frame the victim. Overcoming these tensions must take into account the mission that each of the actors has, but it cannot be done at the expenses of the victims' objective and subjective interests – whose interpretation depends on the epistemic and ideological dispositions of the actors.

The cooperation between police forces was also privileged in this project. The organization of the competences and of criminal investigation varies across countries. In spite of that, it is possible to come up with some general recommendations that meet shared issues. In some contexts, there is disconnection and/or overlap of police forces in the investigation of THB, which forces us to rethink the distribution of competences, the competition between the forces involved and the best way to make the criminal investigation efficient. The creation of a common database for the different national police forces is being thought for some time now. Despite the specific protocols that each police force is bound to obey, the need for streamlining the process from the beginning (with the signalization) requires that formal and informal articulations are densified, and such a joint database might help. Moreover, it is important to extend to more cases the intervention of joint teams composed by various criminal police bodies and other entities (such as labour inspection), so police action can take advantage of the different skills and sensitivities and may be more consistent and effective. Financial investigation around THB might benefit this enlarged and *interdisciplinary* composition of research teams in order to be able to give an account of the connections between the findings and the mechanisms of financial accumulation that are in their origin, in order to truly make responsible the agents who profit the most from this crime.

From the point of view of the criminal investigation coordination (public prosecution), the creation (or strengthening) of unified devices of reference concerning THB – as exemplified by the "Reference Prosecutors" in Belgium – allows a more consistent, knowledgeable and expert response to suspicion and signalization of this crime. In addition, the scheduling of multidisciplinary meetings, at local and national level, to monitor and share experiences and best practices on combating THB constitutes a recommendation that can be generalized to different national contexts. At the level of European cooperation,

despite the formal instruments created for police (such as Europol) and judicial cooperation (such as Eurojust), the fieldwork analysis of the large majority of the countries studied in this project points to a very limited use of these potentials in the prosecution of THB in particular, due to various factors such as the delay or inadequacy. To reflect on these instruments and to attest more efficiency on them is a recommendation that stands in this regard.

The criminal prosecution, in itself, also instigated the research work in this project. The literature review and the fieldwork results enabled us to identify a few more trouble spots in this area, such as: the difficulty to gather evidence of THB and the trend to prosecute for other related crimes that deserve lesser criminal reprehensibility; the centrality of testimonies and the constraints it creates to the victims; or the stereotypes that influence the perception and prosecution of trafficking for sexual exploitation, as well as the degree of protection given to the victims, among many other issues enumerated in the Chapters on the national cases. The recommendations may involve several components. The sophistication of evidence gathering is a priority and the effectiveness of victims' compensation rights deserves more attention. In Italy, for example, it was fixed a compensation amount of 1500 euro for each TBH victim, providing accordingly to the annual financial resources available. It can be seen as a good practice for the countries where victims' compensation, despite legally previewed, does not exist in practice, like in Portugal or in Spain, where the activation of the public fund aimed to the compensation of violent crimes victims depends on too restrictive criteria. Other recommendations are related to the need of encouraging the use of statements for future memory, seeking to strengthen their potential (given the testimony specificities related to the crime of THB), and assuring defendants the adversarial principle they are entitled to. The improvement of the interaction and communication between police forces, public prosecutor and judges, as well as their specialized training, is a key-recommendation. We can find a training dimension in each of the empirical and conceptual clues described on the national cases Chapters: about signaling, intervention, care and protection of victims, gathering of evidence, *modus operandi* of trafficking networks, and so on. The international literature has been addressing and developing a lot of work in the production of training guidelines and recommendations for police, judges and others involved in the fight against THB. Among others, we can

underline the recent report *Identification of victims of trafficking in human beings in international protection and forced return procedures* from the European Migration Network Study (2014); the *Anti-human trafficking manual for criminal justice practitioners* from the United Nations Office on Drugs and Crime (2009b); the *Anti-Trafficking Training for Frontline Law Enforcement Officers – Training Guide* from the International Centre for Migration Policy Development (2006), or the GRETA national reports.

In order to avoid redundancy, we will briefly underline the fieldwork results that emphasize the need to strengthen training on THB mainly for non-specialized or frontline police forces, in particular because these are often the first contact of the phenomenon with the legal system. The deficit of nationwide procedures to assist frontline police forces in identifying possible victims and suspicious practices is a shared conclusion of all national chapters. The same happens with the deficit of specialization of public prosecutors, judges, lawyers and public institutions in order to clarify the signaling methods, avoiding a criminal understatement of the phenomenon (getting lost in minor labour offenses, in related crimes, etc.) and to reinforce the rights of victims not to be unduly punished, neglected or unprotected. It is also crucial to extend the warning and training to other professionals (particularly in the area of social work and health services), raising global awareness concerning the risk of THB, and a more systematic formative dialogue with media. This is specially recommended due to the risk of terminological imprecision, distortion of the facts or dramatization of events, but also to the importance of investigative journalism on this matter.

These recommendations, as we have seen, perform at prevention, protection and prosecution levels, but always from a transnational point of view. Only a great commitment from European and national institutions and their cooperation can produce a significant response to THB. The national governments shall become aware of the negative consequences this crime produces and reduce the criminal opportunities associated with THB. In particular, they should identify efficient measures to better prosecute offenders, protect the victims and prevent the crime. All these aspects are strongly connected to one another. Prevention could help potential victims to not be recruited and victims to recognise their status of victims and keeping in mind they have the right of being protected. On the

other hand, people receiving protection could be more disposed to report the crime to law enforcement agencies providing a crucial support to investigations. Finally, the prosecution activity could act as a deterrent by increasing the risks associated with the crime commission and reducing the benefits.

For this to be possible, a broader scenario has to be brought up to discussion. When we consider human trafficking and the way in which this phenomenon has gained importance, we also find transnational flows which follow the logic of economic gain without any respect for the self-determination of individuals. Although it is true that this illegal, informal phenomenon run by criminal organisations has a completely different role from that of slavery, which was central to the formation of the world system, it is still inextricably related to it. The point is that, whilst the practices of trafficking are not central to the global transnational markets or the global world in which we live, as slavery once was, they are nevertheless embedded in the inequalities and injustices of the distribution of wealth promoted and encouraged by the world system. Thus, although classical colonialist trading of individuals between countries have ended, the profound inequalities between North and South are nowadays the driving force behind a clandestine logic that leads to sub-humanity (Santos, 2007). When we talk about North and South, we talk about the South within the North, because it is also present in Europe. Thus, if colonialism no longer feeds this exploitation, colonality does it (Quijano, 2000). The role of the justice system, although complex and incapable of a complete or radical solution to the problem, is all the more challenged as, on the one hand, more permeable it proves to be to the normalization of what is now a felony and, on the other hand, less critical it proves to be regarding the hegemonic epistemic categories that penetrate institutions (police forces, legal institutions, social institutions), including on the ways to address this crime. The problem is, thus, that legislation, and training for its implementation, has been specifically directed towards the criminal pursuit of trafficking without taking into account other fundamental Legislation, such as the reinforcement of immigrant, women or labour rights, whether for national or other citizens. As David Nelken (2013) refers in a broader way,

the difficulty of distinguishing smuggling from trafficking at a time of increasing economic migration, or giving anything like a universal content to terms like 'consent' or 'exploitation' against a background of global differences in possibilities and conditions of work and economic survival. (Indeed, the point of

such ‘global prescriptions’ is to try and produce more similarity.) Finally, efforts to deal with human trafficking are certainly frustrated by the ‘contradictions of globalization’ (or better perhaps, globalizing capitalism), a system that increases the circulation of goods but tries to discourage the circulation of economic migrants (even in the face of demands for their services). (Nelken, 2013: 150)

In this scenario, the risk of focusing on criminalising traffickers and neglecting the ideological determinants, the interests protected by the legal and institutional *status quo*, the political economy and the human rights of the victims caught up in trafficking is high.

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APPENDIX

APPENDIX 1 – INTERVIEWS SCRIPT

I. General perceptions

- 1) How do you see THB in the world in general?
- 2) Which are, in your opinion, the main causes of THB?
- 3) What affects the demand?
- 4) Do you see differences between sex trafficking (ST) and trafficking for labor purposes (LT)?
(How do you explain those differences?)
- 5) In your view, are there variances between the involvement of men and women in THB networks (as traffickers and as victims)?
- 6) In your opinion, the social and economic crisis context now prevailing in the western societies, will promote changes in the THB?

II. National Case

A) Experience in THB

- 7) Can you please describe me your perception about ST in ... (e.g. Portugal)?
 - a. What about LT?
- 8) In what facts are your opinion grounded? (e.g. experience, media, books...)
- 9) Which are the main nationalities /age/ gender of victims and traffickers?
- 10) Are there identified routes?
- 11) Which are the cities of major incidence?

B) Opinions about the law and social policies

- 12) What is your opinion concerning the national legislation of THB?
 - a. Do you think that it has been following the international recommendations in this field?
 - b. Is there a good application of the law in practice?
 - c. How do perspective the articulation of criminal law, immigration law and labour law in this arena?
- 13) And what about social benefits and protection to the victims?
- 14) In your opinion have the international recommendations/documents/conventions (eg. Palermo and Warsaw Convention) have been adequate to the nowadays reality of THB?
 - a. Are they in dialogue with the human rights law?
- 15) Are they equally suitable or unsuitable to LT and ST?

C) Implementation of the law – law in action

- 16) Which field of action would you indicate as more effective: prevention, protection or criminal repression?
- a. Is there anything missing in these arenas? What?
- 17) What has been the role of your organization in the fight against THB?
- 18) How do you see the articulation between:
- a. Police and courts
 - b. Different polices
 - c. NGO
 - d. NGO and the state
- 19) How do you analyze the role of the media in this matter?
- 20) May you give some good practices examples?

III. International cooperation

- 21) Which aspects in the international cooperation can be considered as good practices?
- 22) Where do we find the main flaws?
- 23) Do the police in (eg Portugal) manage to work with the police in other countries in a THB investigation?
- a. Which cooperation is more frequent?
 - b. Are we talking about an official articulation or an informal one?
- 24) Do the national NGO work in an international ground?
- 25) Is the return of the victims to their origin country guaranteed with safety?
- 26) Which international institution do you think has been more proactive in the fight against THB?

IV. Recommendations/ Suggestions

APPENDIX 2 – LIST OF INTERVIEWS

Belgium –List of interviews

Mention in the report	Function
I 1, NGO	ECPAT Belgium (ONG)
I 2, NGO	Fondation Samilia (ONG)
I 3, SRC	Directeur, PAG-ASA (specialised reception centre), Brussels.
I 4, Social Inspector	Contrôleur social, région de Bruxelles, Inspection sociale.
I 4, Social Inspector	Inspecteur social, Directeur, Région Namur-Luxembourg et Brabant Wallon, Inspection sociale.
I 5, MINTEH	MINTEH, Office des étrangers, Brussels.
I 6, Social Inspector	Inspecteur social, Gent.
I 7, Police	Section mœurs, Police Locale, Liège
I 8, CEOOR	Centre de l'égalité des chances, participant à l'élaboration du rapport national sur la TEH, Bruxelles.
I 9, Police	Section lois spéciales, Police locale, Zone de Bruxelles-midi
I 10, Police	Section TEH (mariage blancs), Police locale, Zone

	Bruxelles-Ouest
I 11, Police	Section TEH, Police fédérale, direction centrale.
I 12, Police	Section TEH, Police locale, zone Bruxelles-Nord.
I 13, Labour auditor	Auditeur du travail, Gent.
I 14, SRC	Payoke (specialised reception centre), Antwerp.
I 15, Police	Police fédérale, Bruxelles
I 16, Prosecutor	avocat général près de la Cour d'appel, Liège
I 17, Police	Police locale, Zone Ixelles
I 18, Police	Police Fédérale, Decentralised unit, Liège
I 19, SRC	Sürya (specialised reception centre), Liège.

Italy – List of interviews

People interviewed	Affiliation
I 1	Segnavia - Padri Somaschi
I 2	Consorzio Parsec
I 3	International Centre for Migration Policy Development, EU Fundamental Rights Agency, International Labour Organization, Ministry for Equal Opportunity
I 4	Direzione Nazionale Antimafia
I 5	Confederazione Italiana Sindacati Lavoratori – Italian Confederation of Trade Unions
I 6	On the Road
I 7	Gruppo Abele
I 8	Confederazione Generale Italiana del Lavoro – Italian General Confederation of Labour
I 9	Arma dei Carabinieri
I 10	“Roxanne” Service
I 11	Direzione Nazionale Antimafia
I 12	University of Florence
I 13	University of Turin
I 14	Victim
I 15	Polizia di Stato
I 16	Polizia di Stato
I 17	Polizia di Stato
I 18	Polizia di Stato
I 19	Polizia di Stato
I 20	Polizia di Stato
I 21	Polizia di Stato
I 22	Polizia di Stato
I 23	Polizia di Stato

Poland: List of interviews:

Nr	Institution
I 1	Mazovia Voivodship Office
I 2	Academia
I 3	Intergovernmental organization
I 4	Intergovernmental organization
I 5	NGO (I)
I 6	NGO (II)
I 7	NGO (III)
I 8	State Labour Inspectorate (I)
I 9	State Labour Inspectorate (II)
I 10	Border Guards (I)
I 11	Border Guards (II)
I 12	Police (I)
I 13	Police (II)
I 14	Police (III)
I 15	Public prosecutor's Office (I)
I 16	Public prosecutor's office (II)
I 17	Public prosecutor's office (III)
I 18	The Ombudsman's Office (I)
I 19	The Ombudsman's Office (II)
I 20	Ministry of the Interior (I)
I 21	Ministry of the Interior (II)
I 22	Ministry of Justice (I)
I 23	Ministry of Justice (II)

Portugal: List of interviews

Interview 1	Police force – Polícia Judiciária (PJ)
Interview 2	Police force – Polícia Judiciária (PJ)
Interview 3	Police force – Polícia Judiciária (PJ)
Interview 4	Police force – Polícia Judiciária (PJ)
Interview 5	Police force – Polícia Judiciária (PJ)
Interview 6	Police force – Polícia Judiciária (PJ)
Interview 7	Police force – Polícia Judiciária (PJ)
Interview 8	Police force – Polícia Judiciária (PJ)
Interview 9	Police force – Polícia Judiciária (PJ)
Interview 10	Police force – Polícia Judiciária (PJ)
Interview 11	Police force – Polícia Judiciária (PJ)
Interview 12	Police force – Polícia Judiciária (PJ)
Interview 13	Police force – Serviço de Estrangeiros e Fronteiras (SEF))
Interview 14	Police force – Serviço de Estrangeiros e Fronteiras (SEF)
Interview 15	Police force – Serviço de Estrangeiros e Fronteiras (SEF)
Interview 16	Police force – Serviço de Estrangeiros e Fronteiras (SEF)
Interview 17	Police force – Serviço de Estrangeiros e Fronteiras (SEF)
Interview 18	Police force – Serviço de Estrangeiros e Fronteiras (SEF)
Interview 19	Police force – Serviço de Estrangeiros e Fronteiras (SEF)
Interview 20	Police force – Serviço de Estrangeiros e Fronteiras (SEF)

Interview 21	Police force – Serviço de Estrangeiros e Fronteiras (SEF)
Interview 22	Police force – Polícia de Segurança Pública (PSP)
Interview 23	Police force – Polícia de Segurança Pública (PSP)
Interview 24	Police force – Polícia de Segurança Pública (PSP)
Interview 25	Police force – Polícia de Segurança Pública (PSP)
Interview 26	Police force – Polícia de Segurança Pública (PSP)
Interview 27	Police force – Polícia de Segurança Pública (PSP)
Interview 28	Police force – Guarda Nacional Republicana (GNR)
Interview 29	Police force – Guarda Nacional Republicana (GNR)
Interview 30	Police force – Guarda Nacional Republicana (GNR)
Interview 31	Police force – Guarda Nacional Republicana (GNR)
Interview 32	Non-Governmental Organization (NGO)
Interview 33	Non-Governmental Organization (NGO)
Interview 34	Non-Governmental Organization (NGO)
Interview 35	Non-Governmental Organization (NGO)
Interview 36	Non-Governmental Organization (NGO)
Interview 37	Non-Governmental Organization (NGO)
Interview 38	Non-Governmental Organization (NGO)
Interview 39	Non-Governmental Organization (NGO)
Interview 40	Non-Governmental Organization (NGO)
Interview 41	Non-Governmental Organization (NGO)
Interview 42	Non-Governmental Organization (NGO)
Interview 43	Non-Governmental Organization (NGO)
Interview 44	Non-Governmental Organization (NGO)

Interview 45	Non-Governmental Organization (NGO)
Interview 46	Non-Governmental Organization (NGO)
Interview 47	Union of Workers
Interview 48	Non-Governmental Organization (NGO)
Interview 49	Non-Governmental Organization (NGO)
Interview 50	Non-Governmental Organization (NGO)
Interview 51	Non-Governmental Organization (NGO)
Interview 52	Non-Governmental Organization (NGO)
Interview 53	Non-Governmental Organization (NGO)
Interview 54	Non-Governmental Organization (NGO)
Interview 55	Non-Governmental Organization (NGO)
Interview 56	Non-Governmental Organization (NGO)
Interview 57	Non-Governmental Organization (NGO)
Interview 58	Non-Governmental Organization (NGO)
Interview 59	Non-Governmental Organization (NGO)
Interview 60	Non-Governmental Organization (NGO)
Interview 61	Non-Governmental Organization (NGO)
Interview 62	Non-Governmental Organization (NGO)
Interview 63	International Organization for Migration (IOM)
Interview 64	Governmental organization for gender equality
Interview 65	Governmental organization for immigrants support
Interview 66	International Labour Organization (ILO)
Interview 67	Governmental entity for immigrants support
Interview 68	Governmental entity for immigrants support
Interview 69	Governmental entity – Alto Comissariado para a Imigração e Diálogo Intercultural (ACIDI)

Interview 70	Labour Conditions Authority
Interview 71	Labour Conditions Authority

Focus Group 1	Public prosecutor
Focus Group 2	Public prosecutor
Focus Group 3	Public prosecutor
Focus Group 4	Judge
Focus Group 5	Judge
Focus Group 6	Lawyer

Romania: List of interviews

Interview 1 - unstructured – with a victim of THB for sexual exploitation - protected by the NATP, 27 years old, **female**, extremely poor; Illiterate ...trafficked in **Romania**

Interview 2 - unstructured – with a victim of THB for sexual exploitation - protected by the NATP (city A – 21 years old **female**, coming from a large family with low standards of living; minimal education Trafficked in **the EU (France)**.

Interview 3 - unstructured – with a victim of THB for sexual exploitation - protected by the NATP (city A) – 22 years old.

Interview 4 - unstructured – with a victim of THB for labour exploitation - unprotected (city A) – 58, years old male. The criminal network gathers workers from 3 Romanian cities. The traffickers were using digital fingerprints to serve as signature. Trafficked in EU (Spain).

Interview 5 - unstructured – with a victim of THB for sexual exploitation - protected by the NATP (city – A) 17, years old female, a **minor**. She got some financial benefits. She is afraid to report her abusers. Trafficked in EU (in the Czech Republic along with her older brother of 21 years old)

Interview 6 - unstructured – with a victim of THB for labour exploitation – protected by the NATP (city - A) – 22 years old **male**, trafficked by a large criminal organization; he was “sold” 2 times; he has a large family, 10 brothers and sisters...

Interview 7 - unstructured – with a victim of THB for labour exploitation - unprotected – 56 years **old, male**. (The trafficker recruited the victim - our interviewed person - through a local newspaper announcement). After 5 months of work he came back home with 50 Euros.

Interview 8 - unstructured – with a victim of THB for sexual exploitation – unprotected, almost trafficked, 53 years old, **female**, extremely poor; escaped from Germany, where her own son wants her to prostitute.

Interview 9 - unstructured – with a victim of THB for sexual exploitation - unprotected), almost trafficked, – 28 years old, female, escaped from the exploitation in prostitution with the support of the *German Red Cross (together with her mother)*; she is expecting to be protected, inside the country of origin, by the Romanian authorities. Her brother pushed her into prostitution.

Interview 10 – unstructured - with a victim of 48 years old, **female**, trafficked in France for prostitution (initially), but effectively used as a shoplifter and a maid in the hostel of the prostitutes;

Interview 11 - unstructured – with a victim of THB for labour exploitation – begging -unprotected, 50 years old, **female (Rroma)** repeatedly trafficked by her family as ... a kind of material support for living.

Interview 12 - structured – with a national senior official – the coordinator of SIIMEV, in the Central NATP (City B.) – G.A.P.

Interview 13 - structured – with a national official in the Central NATP – the coordinator of the unit Centre for Research and Public Information (City B.) - A.M.T.

Interview 14 - structured – with a national official in the Central NATP – the coordinator of the unit, Service for Monitoring, Assessing, and Coordination - (City B.) - I.E.L.

Interview 15- structured) – with a high official from NATP – the vice-director of NAPTP, (City B), Bucharest, - C.B.

Interview 16 - structured – with the PR officer in the central DCOC, (City B), Bucharest

Interview 17 - structured – with a member of Romanian Parliamentary Member, Chamber of Deputies – active in the Parliamentary sub-Committee in Combating THB , (City B), Bucharest

Interview 18 - structured – with an official – NATP, (City B), Bucharest, - G.I.

Interview 19 - structured – with the Highest Administrative Authority at the County Level's representative- City (A)

Interview 20 - structured – with the highest regional official from NATP Oradea – City A -G.U.

Interview 21 - structured – *with the highest regional official from BCOC - Oradea, the Office for Combating Trafficking in Persons– City A, V.S.*

Interview 22 -structured– *with a high Regional official from DIICOT Oradea, City A, Oradea, M.A.D.*

Interview 23 - *structured – with an official – from the Border Guards Territorial Inspectorate - Oradea City A, Oradea – M.C.*

Interview 24 - unstructured – with a high authority – the ex-Inspector-Chief of the Romanian Police – dr. L.P, (City B), Bucharest

Interview 25 - structured – with an advocate dr. L.E.C., 42 years old, trained in THB

Interview 26- structured – with the leader of the NGO ADPARE, (City B),Bucharest

Interview 27 - structured – with the leader of the NGO Caritas (City B), Bucharest

Interview 28 - structured – with the leader of the NGO, Centre Partnership for Equality, (City B) Bucharest

Interview 29 - structured – with the leader of NGO, Usa deschisa (Open Door), (city B), Bucharest

Interview 30- structured – with an academic dr. L.E.C., 32 years old, -with a ph.d. in Trafficking

Interviews realized by RCIMI 2012-2013 in the framework of theField Research
*"The fight against THB in EU: promoting legal cooperation and victim's
 protection"(HOME/2010/ISEC/AG/054)EC - DG Home Affairs*

TYPES of INTERVIEWS	FORMS of INTERVIEWS					
	A	B	C	D	E	
TYPE I - UNSTRUCTURED INTERVIEWS	INTERV. With Authoriti es	INTERV. With Victims	INTERV. With Frontline Fighters	INTERV. With NGOs	INTERV. With Scholars	
	1	11				12
TYPE II - PRE-STRUCTURED INTERVIEWS	INTERV. With Authoriti es	INTERV. With Victims	INTERV. With Fighters	INTERV. With NGOs	INTERV. With Scholars	
	9		4	4	1	18
TOTAL						30

dr. Lia Pop - RCIMI <http://e-migration.ro> or
<http://www.jims.e-migration.ro>

Focus Group 1

FG 1 – G.U. Police Officer

FG 2 – AMD Prosecutor

FG 3 – C.M. Judge

FG 4 – A. P. Prosecutor

FG 5 – V. S. Police Officer

FG 6 – S.B. Police Officer

FG 7 – C. C. Border Guard Officer

Focus Group 2

Coordinator: RCIMI team

Secretary: Ioana Albu

FG 1 – G.U. Police Officer

FG 2 – I.I. Police Officer

FG 3 – M.T. teacher

FG 4 – R. O., senior social worker

FG 5 – O. V. psychologist, NGO *Lampas* Foundation

FG 6 – A.P. social worker, NGO *People to People* Foundation

Spain – List of Interviews

LIST OF ACTORS PARTICIPATING IN INTERVIEWS AND DISCUSSION GROUPS

Police forces

Unit against Immigration Networks and Forgery of Documents (Unidad Central de Redes de Inmigración Ilegal y Falsedades Documentales – UCRIF). Ministry of Interior

National Police (Policía Nacional). Ministry of Interior

Technical Unit of Police force - Policía Judiciária (PJ) (Unidad Técnica de la Policia Judicial) Civil Guard. Ministry of Interior.

Autonomous Police of Catalonia (Mossos d'Esquadra). Generalitat of Catalonia

State Administration and Ministry of Justice

Prosecution Service (Fiscalía de Extranjería) Ministry of Justice

Ombudsperson (Defensor del Pueblo). High Commissioner of the Spanish Parliament

Constitutional Court

Labour Inspectorate – Ministry of Labour

Secretary of State for Immigration – Ministry of Labour

Secretary of State against Gender Violence – Ministry of Labour

Asylum and Refuge Office (Oficina de Asilo y Refugio – OAR) - Ministry of Interior

Minors' Centre Ángel Ganivet – Junta of Andalusia

Social organizations

Spanish Commission for Refugees (Comisión Española de Ayuda al Refugiado – CEAR)

Project HOPE. Congregation of the Sisters Adorers

Spanish Red Cross

Doctors of the World (Médicos del Mundo) Spain

Spanish Catholic Association for Migrations (Asociación Comisión Católica Española de Migraciones – ACCEM)

Association for Prevention, Reinsertion, and Attention to Women Prostitutes (Asociación para la prevención, reinserción y atención a la mujer prostituida – APRAMP)

Ferrocarril Clandestino

Workers' Commissions (Comisiones Obreras – CCOO)

Fundación Cruz Blanca

Colectivo Hetaria

Latin America and Africa Political Studies Institute (Instituto de Estudios Políticos para América Latina – IEPALA)

SavetheChildren Spain

Fundación Amaranta

International organizations

United Nations High Commissioner for Refugees – UNHCR (Alto Comisionado de Naciones Unidas para los Refugiados – ACNUR) Spain

UNICEF Spain

International Organization for Migrations (IOM) Spain

APPENDIX 3 – SURVEY

SURVEY

This survey aims to perceive the reality of human trafficking in each country by those who deal with this phenomenon in the field: the police forces. This survey is conducted under the research project *THB:COOPtoFIGHT – The fight against trafficking in human beings in EU: promoting legal cooperation and victims' protection* - funded by the European Commission - and it's being implemented simultaneously in Portugal, Spain, Poland, Brussels, Romania and Italy.

This questionnaire is completely anonymous

Thank you for your cooperation!



With the financial support from the Prevention of and Fight against Crime Programme of the European Union
European Commission - Directorate-General Home Affairs

SECTION I

General Representations

1. **According to your knowledge, Trafficking in Human Beings in Europe is: (please choose only one option)**
 - a. Increasing
 - b. Decreasing
 - c. Residual

2. **The main causes for Trafficking for labour exploitation are: (please choose three options indicating since the most important -1- to the least important -3)**
 - a. Economic underdevelopment in the origin countries
 - b. Request of underpaid jobs in the host countries
 - c. Immigration law
 - d. Conflicts and war
 - e. Other. Please specify _____

3. **The main causes for Trafficking for sexual exploitation are: (please choose three options indicating since the most important -1- to the least important -3)**
 - a. Economic underdevelopment in the origin countries
 - b. Request of underpaid jobs in the host countries
 - c. Immigration law
 - d. Demand of sex services in the host countries.
 - e. Conflicts and war
 - f. Lack of social values
 - g. Other. Please specify _____

4. Please say if you agree or disagree with the following sentences

	T otally D isagree	Di sagree	Neithe r agree nor disagree	A gree	T otally A gree
Women forced to work in the sex industry that were already prostitutes in their origin countries are less psychologically hurt than those that never had any previous contact with the sex industry.					
The less information person has the bigger is the probability to be trafficked					
If prostitution was regulated within the labour law, sex trafficking would diminish					
Men have more probability to be trafficked for labour exploitation than women					
If the person earns some sort of money with the work she's doing, it is not a victim of human trafficking					
Victims of sexual trafficking never have the opportunity to escape.					
Victims of labour trafficking never have the opportunity to escape.					
Persons from non-western cultures are easier to fall into human trafficking situations					
Trafficking for labour exploitation is more damage psychologically to the victims than sexual trafficking.					
The criminal groups are more organized in Trafficking for labour exploitation than in Sexual Trafficking					
The increasing integration of women in the labour market may be a cause of human trafficking					
If children are involved in situations of sexual or labour trafficking courts tend to apply more severe sentences					

SECTION II

The Portuguese Case

5. In what concerns Trafficking for labour exploitation, in your opinion Portugal is a
- Country of origin
 - Country of destination
 - Country of transit
 - A and B
 - B and C
6. In what concerns Trafficking for sexual exploitation, in your opinion Portugal is a
- Country of origin
 - Country of destination
 - Country of transit
 - A and B
 - B and C
7. According to your working experience Trafficking for labour exploitation in Portugal, in the past five years has: (please choose only one option)
- Increased (go to question 8)
 - Increased significantly (go to question 8)
 - Decreased (go to question 9)
 - Decreased significantly (go to question 9)
 - Don't now
8. Your answer to question 7 is due to: (please choose at most three options)
- Less information
 - Less restrict Migration policies in Europe
 - Lack of police training
 - Lack of preparation and involvement of NGO
 - The increasing of poverty in the origin countries
 - Other. Please specify _____
9. Your answer to question 7 is due to: (please choose at most three options)
- More information
 - Restrict migration policies in Europe
 - More police training
 - More NGO fieldwork
 - Improvement of economic and social conditions in the origin countries
 - Other. Please specify _____

10. Please state the three major regions in Portugal that in your opinion have a more incidence of cases of Trafficking for labour exploitation

- a. _____
- b. _____
- c. _____

11. In your opinion Trafficking for sexual exploitation in Portugal, in the past five years has: (please choose only one option)

- a. Increased (go to question 12)
- b. Increased significantly (go to question 12)
- c. Decreased (go to question 13)
- d. Decreased significantly (go to question 13)
- e. Don't now

12. Your answer to question 11 is due to: (please choose only three options)

- a. Less information
- b. Less restrict Migration policies in Europe
- c. Lack of police training
- d. Lack of preparation and involvement of NGO
- e. The development of sex industry in Portugal
- f. The increasing of poverty in the origin countries
- g. The women's emancipation
- h. Other. Which? _____

13. Your answer to question 11 is due to: (please choose only three options)

- a. More information
- b. Restrict migration policies in Europe
- c. More police training
- d. The down-grade of sex industry in Portugal
- e. More NGO fieldwork
- f. Improvement of economic and social conditions in the origin countries
- g. Other. Which? _____

14. Please state the three major regions in Portugal, that in your opinion have a more incidence of cases of Trafficking for sexual exploitation

- a. _____
- b. _____
- c. _____

15. Over the past five years how many situations that could constitute sexual trafficking have you encountered during the exercise of your job (approximately):

- a. None
- b. 1 < 5
- c. 6 > 10
- d. > 10. Please specify_____
- e. > 30 Please specify_____

16. Over the past five years how many situations that could constitute trafficking for labour exploitation have you encountered during the exercise of your job (approximately):

- a. None
- b. 1 < 5
- c. 6 > 10
- d. > 10. Please specify_____
- e. > 30 Please specify_____

17. Please say if you agree or disagree with the following sentences about the victims of sexual trafficking in Portugal

	T otally Di sagree	D isagree	Neithe r agree nor disagree	A gree	T otally A gree
Women forced to work as prostitutes are mainly from Eastern countries					
Women forced to work as prostitutes are mainly from Africa					
Women forced to work as prostitutes are mainly from Latin America					
The majority of women forced to work as prostitutes are minors					
The majority of women forced to work as prostitutes have ages between 18 and 30					
The majority of women forced to work as prostitutes have more than 30 years old					
There are men who are also victims of sexual trafficking					
The majority of women forced to work as prostitutes had worked in the sex industry in their origin countries					
The victims of sex trafficking are placed in different kinds of prostitution (in the streets, in apartments, at clubs, etc) according to their nationality.					
The victims of sex trafficking are placed in different kinds of prostitution (in the streets, in apartments, at clubs, etc) according to their race					
There are several Portuguese women that are forced to prostitute themselves in Portugal and other countries					

18. Please say if you agree or disagree with the following sentences about the victims of labour trafficking in Portugal

	T otally Di sagree	D isagree	Neithe r agree nor disagree	A gree	T otally A gree
Victims of forced labour are mainly from eastern Europe					
Victims of forced labour are mainly from Africa					
Victims of forced labour are mainly from Latin America					
Victims of forced labour are mostly men					
The majority of victims are minors					
The majority of victims have ages between 18 and 30 years old					
The majority victims have between 30 and 50 years old					
There are several Portuguese victims of labour trafficking					
Women who are victims of labour trafficking frequently also are victims of sexual trafficking					

19. The major incidence of trafficking for labour exploitation in Portugal is in: (please choose at most two options):

- a. Agriculture
- b. Domestic service
- c. Construction Industry
- d. Restaurants, bars and cafes
- e. Industries
- f. Others _____

SECTION III

Prevention, Criminalization and Protection

20. During your work experience with trafficking in human beings did you made use of transnational cooperation mechanisms?

- a. Informal cooperation with other national police forces
- b. Cooperation within EU law framework with other national police forces (JITs)
- c. Cooperation with European actors (Europol, Eurojust)
- d. Other. Please specify_____
- e. No

21. Did you cooperate with NGOs?

- a. No
- b. Cooperation in the detection of victims
- c. Cooperation in the protection and legal assistance of victims
- d. Cooperation in the returning of the victims to their origin countries
- e. Other kind of cooperation. Please specify_____

22. From 1 (less efficient) to 5 (most efficient) say, please, how would you rate the following measures and practices in the prevention of trafficking in human beings according to effectiveness.

	1	2	3	4	5
Prevention					
Public awareness campaigns directed at potential victims					
Campaigns directed at reducing demand by changing attitude of society					
Media Coverage					

NGO work in the field					
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23. From 1 (less efficient) to 5 (most efficient) say, please, how would you rate the following measures and practices in the protection of the victims according to effectiveness.

Shelters to victims					
Social benefits given to the victims					
Security of the victims during the trials					
Witness protection					
The return of the victims to their origin country guaranteed with safety					
Employment to the victims					

24. From 1 (less efficient) to 5 (most efficient) say, please, how would you rate the following measures and practices in the repression of Trafficking in human beings

Criminal law of THB					
Migrant's Law					
Coordination with other police forces in the identification of cases					
Coordination with other police forces in the collecting evidence					
International cooperation with police in other countries					
Incorporation in the national law of international recommendations/documents/conventions (eg. Palermo and Warsaw Convention)					

Cooperation between national police forces and national NGO					
Cooperation between national police forces and international NGO					
Human Rights Law					
Penalties applied by the courts to traffickers					
Social benefits given to the victims					
Articulation between police forces and public prosecution					
Shelters to victims					
Security of the victims during the trials					
Witness protection					
The return of the victims to their origin country guaranteed with safety					
Police training					
Judges training					
The anti-trafficking laws in Portugal are adequate to the nature of the crime					
The Government is vigorous in pursuing those who are involved in forced labour trafficking					
The Government is vigorous in pursuing those who are involved in sex trafficking					

- [illegible]

SECTION IV

Additional Information

Please answer the following personal questions just for us to have a better understanding of the answers given during this questionnaire. We underline that the questionnaire is totally anonymous.

27. Your Gender _____

28. Your Age _____

29. How many years have you been working in this police force? _____

30. How many hours of specific training about trafficking in human beings have you received during your working experience?

- a. None
- b. Between 1 and 5
- c. Between 6 and 10
- d. > 10 (please specify)

Thank you so much for your cooperation!

If you want to know more about this research project please look at:
<http://www.ces.uc.pt/projectos/thb/pages/pt/what-is-thb-cooptofight-about.php>