



:COOPtoFIGHT

Booklet presenting training
guidelines for legal actors





The fight against trafficking in human beings in EU:
promoting legal cooperation and victims' protection

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CooptoFight:

Research Context

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 special attention 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.

This booklet brings together several of the mentioned objectives into guidelines to promote the training of legal actors within this field.

Objectives

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.

More specifically, the aims of this project were:

- (1) to understand the specificities of sex and labour trafficking in human being (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.

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 signposting 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 trafficking 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 assistance to 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 it 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

Smuggling (cont.)

within the same country (2006: 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**. 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 & Tveit, 2008: 14).

The critique to 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 saviors (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 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 **harm 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.

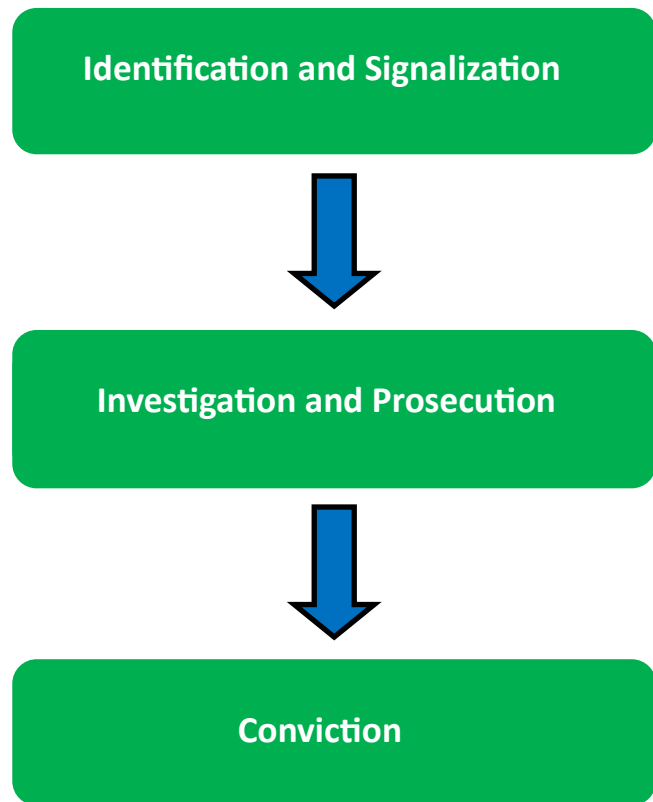
For some authors, the legal recognition of women's consensual capacity regarding prostitution or being trafficked for the purpose of sexual exploitation may ignore the **pragmatic constraints** that harsh reality unleashes upon women's consensual freedom and exercise of rational choice. Others

Consent (cont.)

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).

The Legal Key-stages of THB Fighting and Victims' Protection



The Legal Key-stages of THB Fighting and Victims' Protection

Identification and Signalization

The signalization and identification of THB cases is the first major challenge to the legal system globally considered. It is the first police contact with the phenomenon (with victims and offenders) and it is through it that the first screening of the case is made. This screening has major repercussions on the continuity and trajectory that the process will follow in what concerns the protection afforded to victims and the prosecution of the offenders. After a critical reflection on the fieldwork developed in CooptoFight research project, it is possible to summarize the following guidelines for legal actors.

1. Both sex and labour trafficking are imagined and conceived realities mediated by multiple **stereotypes** fuelled by **moral disapproval of sex work** and **social tolerance to exploitation**. The recruitment and training of legal actors shall address this specific dimension of the crime in order to prevent or to counteract the naturalization of the phenomenon, the **underestimation of risk** and seriousness of the facts, or a distorted interpretation of events.
2. The reception of denunciations (from the victims or third parties) on THB or related suspicions shall be facilitated and encouraged, by creating or enhancing the available mechanisms (telephone lines, proximity squads, institutional articulation with health areas, among others), and by providing objective and subjective conditions to an effective protection of the victims, trying to give and answer to their immediate needs.
3. The detection of THB or related crimes by police forces through outreach initiative shall be properly planned and based on accurate information. All evidence must be collected and potential victims, particularly of sexual exploitation, shall not be detained or subject to any kind of hostility or suspicion; not only because they enjoy the presumption of innocence, but also because, and on the contrary, they have the **right to be protected**. Police forces shall also seek to anticipate and understand the impact of their action in victims' lives, adjusting the investigation tactics and immediate well-being measures.
4. The possible legal irregularity of the victims or the suspicion that they had committed illegal acts in the context of the THB network shall not interfere with the guarantee of protection mechanisms that are formally recognized, and these shall not threaten the victims' autonomy. This is a complex process and, especially in the case of sexual exploitation, it requires an epistemic change of police forces and other legal actors, fighting the moral and sexual prejudice about the victims.

The Legal Key-stages of THB Fighting and Victims' Protection

Identification and Signalization (cont.)

5. The police forces detection initiatives on THB (such as surveillance, raids, inspections, among others) shall, whenever possible, be composed by **multi-institutional teams**, covering a variety of dimensions (criminal, labour, health, financial, among others) of the phenomenon, in order to ensure, from the outset, the necessary conditions to protect victims, **regardless of their interest, relevance and commitment in collaboration** with the police investigation.

6. The **labour inspections** play a key role in identifying potential cases of TSH, both in the context of labour and sexual exploitation. These inspections shall be more regular and systematic, gearing up both for activities where the THB is a recurring suspicion and for emerging, sophisticated and underground areas. The content of inspections shall be extended to all components of **decent work** (according to ILO), paying much attention to contractual issues as to the multiple forms of violence that may be taking place.

7. Although they are engaged in a specific mission to protect victims and to provide them a safe and constraints free space, **NGOs are often the victim's gateway to the justice system**. It is therefore important to formalize the police relationship with NGOs, in order to promote access to law and justice, without jeopardizing victims' trust, wellbeing and agency.

The Legal Key-stages of THB Fighting and Victims' Protection

Investigation and Prosecution

After the signalization of the cases and identification of the victims, the criminal investigation is a key-stage to establish the facts and to gather evidence. In this context, THB victims deserve a double attention. Firstly, they have a special importance because of the crucial nature of their testimonial contribution. Secondly, their protection must be ensured and monitored, and they shall benefit from all the rights provided in different national jurisdictions. Here are some priority recommendations addressed to all legal actors, directly or indirectly involved stage of the process.

1. The different types of national police forces are expected to be especially articulated and cohesive, in order to avoid **disconnection or overlapping investigations**, and to share all relevant information for both dismantling the THB networks and to protect victims.
2. A **common database** for all police forces, extended to public prosecutors, must be thought and planned, in order to streamline access to information and enable informed and timely decisions to combat TSH.
3. The creation of **joint teams** shall be generalized. Joint teams bring together different skills and sensitivities on the phenomenon. These teams shall involve not only police forces, but also other professionals devoted to the protection of victims. This guideline is twofold: to make more effective investigation and ensure that the protection and empowerment of victims is enforced in its multiple dimensions.
4. Police and judicial **cooperation** shall not be limited to the national context. The usually transborder nature of TSH must mobilize police intervention from different countries, where appropriate. The formal cooperation shall take advantage from European and international tools thought to this measure (such as Europol, Interpol or Eurojust), and their failures and blockages shall be reported, so that they can get more functional. It is also important to cooperate informally with the police forces from other countries, allowing rapid responses and facilitating the inter-communication.
5. The usually seasonal and short duration nature of labour exploitation generates particular constraints to criminal investigation and to the collection of enough consistent elements that may prove THB practices. Thus, it is important to adapt the legal and operational available resources to the empirical characteristics of this phenomenon, so that the police investigation produces results considered more suited to the **nature and gravity of the offense**.

The Legal Key-stages of THB Fighting and Victims' Protection

Investigation and Prosecution (cont.)

6. There are several factors that can raise **moral ambivalence** to police and public prosecutor action in the context of fighting THB. The police intervention timings are one of them, to the extent that sometimes they require the choice between trying to gather (more) signs or proofs, and the immediate protection of victims. These situations require special reflexivity and critical analysis of the complex interests in question by the legal actors involved. A **culture of internal** (within the legal system) **and external** (with the civil society) **debate** about this – and other – moral dilemmas will certainly help to reach consistent decisions.

7. The **coordination** of criminal investigation is determinant to the legal approach to TSH. Despite the specificities of national institutional arrangements, the creation of unified devices of **reference** concerning THB shall be thought or tuned. These unified devices of reference allow a more consistent, systematic and expert response from the public prosecutor.

8. The scheduling of **multidisciplinary meetings** (with police forces, public prosecutors, judges, labour inspectors, governmental entities, NGOs, among other actors) at the local and national level, in order to monitor and share experiences and best practices on THB fighting, is a recommendation that shall be tested in all national contexts.

9. The **difficulty in gathering evidence** of THB is widely recognized, and it is one of the causes for the convictions deficit that GRETA identified in several European countries. An important mechanism that aims to (also) respond to the uncertainty regarding the future availability or willingness of victims to cooperate with judicial system is the statement for future memory. Police forces shall apply to this mechanism whenever possible and justified, taking into account the contradictory guarantees that must be offered to defendants.

10. The **centrality of victims' testimony** in criminal investigation and evidence gathering raises two specific recommendations. On the one hand, it is important to put rigor and objectivity in the testimony evaluation (in particular because of the frequent underestimation of the vulnerability in question) and countering ideological provisions that often reduce the credit given to the victims. On the other hand, especially in the sexual exploitation, it is important to sophisticate the means for obtaining proof, in order to **reduce the weight placed on the victim**.

The Legal Key-stages of THB Fighting and Victims' Protection

Investigation and Prosecution (cont.)

11. Criminal investigation shall be **archaeological** and not only superficial, in the sense that it must identify the agents that are the root cause and that are benefiting from the sexual or labour exploitation in question. Given the legal framework of each country, that criminal liability investigation and prosecution shall be a priority.

12. In each European country, although in different degrees, the protection afforded to THB victims is still dependent on the recognition of such a status and on their cooperation with the investigation. The problem of defining what collaboration means and how essential a victims' contribution is, is an ongoing debate. Thus, it is important to appeal to the professionals' awareness of victims' needs and rights, independently of the engagement they show with the legal proceedings.

13. The **safe return** of victims to the country of origin, although fundamental whenever it meets the victims' aspirations and it is accompanied by measures that ensure their protection in the countries of origin, shall not be an alternative to the guarantee of **protection, inclusion, safety and wellbeing in the country of destiny**. All legal actors shall be engaged in this aim.

14. In what concerns victims' protection, standardized solutions shall be avoided, as every case is singular. Each victim has his/her **own biographical trajectory** and his/her empowerment does not always work with the pre-established means for that purpose. In any case, the right to information, safety, a reflection period and economic, social and legal support shall be made effective ab initio.

15. Given the cultural diversity of THB victims within Europe or from non-European countries, the police forces shall provide all the services for victims' protection, in particular **certified translation services** and **specialized socio-cultural mediators**. This recommendation is consistent with both the imperative to protect victims, and the interests of the criminal investigation.

16. A partnership or articulation of police forces, public prosecutor and NGOs is essential throughout the process, in order to ensure the protection, wellbeing and empowerment of victims. This shared responsibility for the victims' protection shall not, in any way, **threaten the victims' intimacy and privacy rights**.

17. Throughout the process, **witnesses** shall be given all available protection means, in order to encourage their contribution to establish the facts and to ensure that any of their rights (including security) will be violated.

Conviction

Sentencing is the culmination of the THB identification/signalizing, investigation and prosecution process. It is also a reflection of the (successful or unsuccessful) route hitherto followed, to the extent that the quality and rigor of the signalizing/identification, ideological biases of the police forces and the public prosecutor, the evidence gathered, the testimonies collected and the facts stated are subject and condition the judge's assessment. Here are just a few brief recommendations to keep in mind at this late stage.

1. It is imperative to highlight the decisive character of a **non-punitive vision of and approach to the victims** within system of justice. It is particularly relevant because of the role victims usually play within the traffic networks, sometimes recruiting and controlling other victims. While this issue is important from the beginning of the process (with the signalizing / identification, investigation and prosecution), it is crucial to alert judges to any victims' (formal or symbolic) punishment drifts.
2. The punitive dimension of justice must cover both the perpetrators punishment and the obligation to **compensate victims for economic and moral injuries** along the victimization process. For this, not only the victims' legal defence, but also the judge shall consider two aspects. On the one hand, the idea that compensation for injuries caused to the victims must be integral and **not a philanthropic or charitable measure**. On the other hand, the fact that the right to be compensated is a way of producing justice and not a form of social policy. The seizure and confiscation of assets and income of offenders as a means of ensuring the victims' compensation are pre-viewed in several (European) normative documents and all judicial decisions on THB must be aware of it.
3. The THB is often confused or overlaid with a set of related crimes (such as smuggling or pimping). On the one hand, the way suspicions are flagged, framed and investigated influences judicial perception on the facts understood as relevant. On the other hand, the difficulty in gathering evidence for TSH often leads to the prosecution for associated **crimes with less severe penalties**. It is important that the assessment of the judge on the charges in question keep in mind this reality, in order to avoid a practice mischaracterization of the spirit of the law. The special reprehensibility of THB is reflected on the autonomous punishment for that crime.

Brief Conclusions

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 and we evoke them briefly here.

25

I

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.

II

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.**

III

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).

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With specific regard to 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 that must be highlighted concerns 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.

IV

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.

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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**.

V

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

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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, specially, 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

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discourage trafficking, as they condemn more easily to clandestinity thousands of people who will not give up their migratory strategies.

VI

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, 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 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.

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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, this country was historically pioneer in the adoption legislation that goes further than international and European legal dispositions.

Links to access to the International and European Legal Framework and some important Institutional Recommendations on THB

- ◆ EU Strategy Towards the Eradication of Trafficking in Human Beings (2012-2016) – http://ec.europa.eu/home-affairs/doc_centre/crime/docs/trafficking_in_human_beings_eradication-2012_2016_en.pdf
- ◆ Conclusions adopted by the Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation concerning the adoption of an ILO instrument to supplement the Forced Labour Convention (2013) – http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/meetingdocument/wcms_212068.pdf
- ◆ European Parliament resolution on the elimination and prevention of all forms of violence against women and girls (2013) – <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0045+0+DOC+XML+V0//EN>
- ◆ European Parliament resolution on organised crime, corruption and money laundering – recommendations on action and initiatives to be taken (2013) – <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2013-0175&language=EN>
- ◆ Motion for a European Resolution on sexual exploitation and prostitution and its impact on gender equalityReport on sexual exploitation and prostitution and its impact on gender equality (2013) – <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2014-0071+0+DOC+XML+V0//EN#title1>
- ◆ Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (2012) – <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF>
- ◆ European Parliament resolution on an EU approach to criminal law (2012) – <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0208+0+DOC+XML+V0//EN>

Links to access to the International and European Legal Framework and the most important Institutional Recommendations on THB (cont.)

- ◆ Parliamentary Assembly of the Council of Europe motion for a recommendation “Criminalizing the purchase of sex to combat the trafficking of people for sexual exploitation” (2012) – http://assembly.coe.int/ASP/Doc/XrefDocDetails_E.asp?FileID=18708
- ◆ Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (2011) – <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0036>
- ◆ European Parliament resolution on forced prostitution in the context of world sports events (2006) – <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2006-0086+0+DOC+XML+V0//EN&language=BG>
- ◆ Council of Europe Convention on Action against Trafficking in Human Beings (2005) – <http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm>
- ◆ Council Framework Decision 2005/212/JHA on Confiscation of Crime-Related Proceeds, Instrumentalities and Property (2005) – <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:068:0049:0051:en:PDF>
- ◆ Council Directive 2004/81/EC 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 (2004) – <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0081:EN:HTML>
- ◆ Council Directive 2004/80/EC relating to compensation to crime victims (2004) – <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:261:0015:0018:en:PDF>

Links to access to the International and European Legal Framework and the most important Institutional Recommendations on THB (cont.)

- ◆ OSCE Action Plan to combat trafficking in human beings (2003) – <http://www.osce.org/odihr/23866>
- ◆ Parliamentary Assembly Resolution 1337 on migration connected with trafficking in women and prostitution (2003) – <http://www.assembly.coe.int/Mainf.asp?link=http://www.assembly.coe.int/Documents/AdoptedText/ta03/ERES1337.htm>
- ◆ Council Framework Decision 2002/629/JHA on combating trafficking in human beings (2002) – <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32002F0629>
- ◆ Brussels Declaration on Preventing and Combating Trafficking in Human Beings (2002) – <http://www.refworld.org/docid/4693ac222.html>
- ◆ Council of Europe Recommendation No. 5 of the Committee of Ministers to member states on the protection of women against violence (2002) – <https://wcd.coe.int/ViewDoc.jsp?id=280915>
- ◆ Council of Europe Recommendation No. 1545 Campaign against trafficking in women (2002) – <http://www.assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta02/erec1545.htm>
- ◆ United Nations Convention against Transnational Organized Crime (2000) - <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>
- ◆ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000) – <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

Links to access to the International and European Legal Framework and the most important Institutional Recommendations on THB (cont.)

- ◆ Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (2000) – <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>
- ◆ Council of Europe Recommendation No. 11 of the Committee of Ministers to member states on action against trafficking in human beings for the purpose of sexual exploitation (2000) – <https://wcd.coe.int/ViewDoc.jsp?id=355371>
- ◆ Joint action 97/154/JHA concerning action to combat trafficking in human beings and sexual exploitation of children (1997) – http://europa.eu/legislation_summaries/other/l33072_en.htm
- ◆ European Parliament resolution on the need to establish a European Union wide campaign for zero tolerance of violence against women (1997) – http://www.eurowrc.org/13.institutions/2.ep/ep_resolution/en_ep.resolution.htm
- ◆ Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on illegal and harmful content on the Internet (1996) – <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:1996:0487:FIN:EN:PDF>
- ◆ Beijing Declaration (Fourth World Conference on Women “Action for Equality, Development and Peace”) (1995) – <http://www.un.org/womenwatch/daw/beijing/platform/declar.htm>
- ◆ Declaration on the Elimination of Violence against Women (1993) – <http://www.un.org/documents/ga/res/48/a48r104.htm>
- ◆ Convention on the Elimination of All Forms of Discrimination against Women (1979) – <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>

Links to access to the International and European Legal Framework and the most important Institutional Recommendations on THB (cont.)

- ◆ Abolition of Forced Labour Convention No. 105 (1957) – http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C105
- ◆ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949) – <http://www.ohchr.org/EN/ProfessionalInterest/Pages/TrafficInPersons.aspx>
- ◆ Universal Declaration of Human Rights (1948) – <http://www.un.org/en/documents/udhr/>
- ◆ Convention concerning Forced or Compulsory Labour (1930) - http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029

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