

“Migrants and refugees as victims of human trafficking : can they claim asylum in EU according to the Geneva Convention of 1951 relating to the status of refugees? - The implementation of C.E.A.S (Common European Asylum System) and the EU legal approach against trafficking”

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A. Asylum claims according to the Geneva Convention of 1951 for refugee status.

I will start this article with an abstract from a recent report of GRETA², the Group of Experts on Action against Trafficking in Human Beings, which is responsible for monitoring the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties : “The year 2015 saw an unprecedented surge in asylum applications in Europe. Hundreds of thousands of people fleeing violent conflicts are taking dangerous sea and land routes to reach Europe. While most of these people are being transported by smugglers who do not seek their exploitation, many of them are at high risk of falling victim to human trafficking in the process. These migrants frequently face barriers in accessing assistance, making them an easy prey for traffickers and exploiters in the countries where they seek asylum or in transit countries. Unaccompanied and separated children are particularly vulnerable to being caught up in the web of traffickers and are less likely to be identified as victims of trafficking in screening procedures. Further, the increasing proportion of women and girls among asylum seekers and migrants heightens the risk of trafficking for the purpose of sexual exploitation³. Media coverage of the refugee and migrant crisis has used the terms “trafficking” and “smuggling” interchangeably. However, in the context of the movement of people, these terms refer to different things and countries have distinct responsibilities toward

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² GRETA, 5th General Report, covering the period 1 October 2014 to 31 December 2015, available at <https://rm.coe.int/168063093c>

³ See UNHCR, “Report warns refugee women on the move in Europe are at risk of sexual and gender-based violence”, http://data.unhcr.org/mediterranean/flash_read.php?ID=84; Aljazeera, “EU refugee crisis heightens sex trafficking concerns”, <http://america.aljazeera.com/articles/2015/10/20/eu-refugee-crisis-boosts-sex-trafficking.html>

people who have been trafficked and those who have resorted to smugglers to undertake a journey”⁴.

It is a fact that there are some links between cross-border trafficking and the mixed migration and refugee flows. Somebody may already be a victim of trafficking in the country of origin and become an asylum seeker on these grounds, but it is also true that many factors can increase a person’s vulnerability to human trafficking⁵ during the migration/asylum seeking process. Refugees fleeing persecution or other

⁴ For the differences between the two terms see Edward R. Kleemans & Monika Smit, *Human Smuggling, Human Trafficking, and Exploitation in the Sex Industry*, *The Oxford Handbook of Organized Crime*, edited by Letizia Paoli, Oxford University Press 2014, p. 381 -382 : “(...) human smuggling primarily relates to illegal immigration and the violation of immigration laws. Human smugglers move people and provide a bridge between poor or dangerous countries and richer, safer ones. (...). Usually the relationship between the smugglers and smuggled persons ends after the transport to the country of destination. In human trafficking, the situation is different. (...)After arrival, trafficked persons must produce profit for the traffickers. Their relationships with the traffickers are longer term, victim-exploiter relationships, in which the human rights of the victim are being abused. According to the trafficking definition in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, trafficking is the recruitment, transportation, transfer, harboring, or receipt of persons, using means such as threat or force, deception, coercion, abuse of power or of a position of vulnerability with the purpose of exploitation. However, in practice, these two phenomena can be difficult to distinguish and may be intertwined. Assisted illegal immigration may precede exploitation, as some smuggled illegal immigrants who travel voluntarily to other countries, end up as trafficking victims in debt bondage and bad labour conditions only later on (...)”. See also UNHCR, *GUIDELINES ON INTERNATIONAL PROTECTION: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked*, 07-04-2006 : “ In some respects, trafficking in persons resembles the smuggling of migrants, which is the subject of another Protocol to the Convention against Transnational Crime. As with trafficking, the smuggling of migrants often takes place in dangerous and/or degrading conditions involving human rights abuses. It is nevertheless essentially a voluntary act entailing the payment of a fee to the smuggler to provide a specific service. The relationship between the migrant and the smuggler normally ends either with the arrival at the migrant’s destination or with the individual being abandoned en route. Victims of trafficking are distinguished from migrants who have been smuggled by the protracted nature of the exploitation they endure, which includes serious and ongoing abuses of their human rights at the hands of their traffickers. Smuggling rings and trafficking rings are nevertheless often closely related, with both preying on the vulnerabilities of people seeking international protection or access to labour markets abroad. Irregular migrants relying on the services of smugglers whom they have willingly contracted may also end up as victims of trafficking, if the services they originally sought metamorphose into abusive and exploitative trafficking scenarios”.

⁵ Article 3 of the Trafficking Protocol reads: “For the purposes of this Protocol:

- (a) ‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (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.”

dangers in their country are particularly vulnerable to traffickers. Similarly, migrants and refugees who have been smuggled are particularly vulnerable to being exploited because of lack of opportunity in the destination country and the costs associated with smuggling, creating a huge debt, which they are not able to pay off.

There is a clear link between the broader migration/refugee phenomenon and trafficking in persons. It is true that trafficking victims are not always migrants and, according to the legal definition, victims do not need to be physically moved to be considered as having been trafficked. There is also the internal trafficking. Trafficking in persons is driven by a range of factors, many of which are not related to migration. At the same time, as per above mentioned, some people who migrate and refugees escaping from conflict and persecution are particularly vulnerable to being trafficked. The desperation of refugees can be leveraged by traffickers to deceive and coerce them into exploitation. There are therefore overlaps between victims of trafficking in persons, refugees and smuggled migrants: Victims of trafficking may be migrants who have been smuggled and may also be refugees, amongst others.

It could be argued that, someone can be a smuggled migrant one day and a trafficked victim the next. A migrant may enlist the services of a smuggler for the purpose of illegal entry into a state, but upon arrival be forced into some kind of exploitative enterprise to which they have not consented.⁶ There is a “structural vulnerability” of migrants and refugees and thus a vulnerability to the trafficking process. Away from their state of origin they encounter difficulties because of problems with language, custom and culture. A newly arrived migrant/refugee will also lack a network of social support and it is easy to enter a circle of exploitation from which it is very difficult to extricate themselves.⁷

In order to talk about trafficking, according to the Trafficking Protocol, we must necessarily have three elements : 1) The act: recruitment, transportation, transfer, harbouring or receipt of persons; 2) The means: by threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, abuse of a position of vulnerability, or of giving or receiving of payments or benefits to achieve the consent of a person having control over the victim; 3) The purpose: exploitation of the victim, including, at a minimum, the exploitation of the prostitution of others or

⁶ John Morrison and Beth Crosland, *The trafficking and smuggling of refugees : the end game in European asylum policy?*, New issues in refugee research, working paper no 39, April 2001

⁷ John Morrison and Beth Crosland, see footnote 6

other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. Otherwise, if one of these elements is missing, it will be another criminal act, but not trafficking.

This modern form of slavery and one of the most lucrative forms of international organized crime is a global problem and as mentioned above can occur within only one country (internal trafficking) but can also occur across national borders, in an international level and in this case, we talk about the country of origin of the victim, the transit or (and) the destination country, in which the victim will finally be exploited (sexual exploitation, labour exploitation, selling organs e.t.c.). It is also very common to distinguish three main phases in the trafficking process : the recruitment of the victim in the country of origin, the transportation of the victim through the transit country and the actual exploitation of the victim in the country of the final destination. Depending on the circumstances, trafficking may constitute a crime against humanity and, in armed conflict, a war crime⁸.

It is a fact however that modern trafficking practices demand that we reconceptualise the trafficking problem in light of the human rights abuses endemic to trafficking. The absence of viable economic opportunities, the inequitable distribution of wealth between and within countries, and the continued and increasing social and economic marginalisation of women in many countries render women vulnerable to traffickers' deceptive promises of better opportunities abroad.⁹

The identification of victims of trafficking among asylum seekers or irregular migrants facing forced return/expulsion in detention facilities is a difficult issue. *The* issue in refugee law is the question if a victim of human trafficking may have a claim to asylum. Trafficked persons may qualify for international protection under the Refugee Convention 1951. It must be noted that the Trafficking in Persons Protocol (TIPP- "the Palermo Protocol")¹⁰ does not establish any mandatory duty to protect trafficked persons. However article 14 of the TIPP foresees that trafficking victims may be eligible for refugee status: "Nothing in this Protocol shall affect the rights,

⁸ See Articles 7(1)(c), 7(1)(g), 7(2)(c) and 8(2)(xxii) of the 1998 Statute of the International Criminal Court, A/CONF.183/9, which specifically refer to "enslavement", "sexual slavery" and "enforced prostitution" as crimes against humanity and war crimes.

⁹ John Morrison and Beth Crosland, *The trafficking and smuggling of refugees : the end game in European asylum policy?*, New issues in refugee research, working paper no 39, April 2001

¹⁰ Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, Supplementing the UN Convention against Transnational Organized Crime (15 November 2000), available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>

obligations and responsibilities of States and Individuals under international law, [...] the 1951 Convention and the 1967 Protocol relating to the status of refugees and the principle of non-refoulement as contained therein”.

Article 40 paragraph 4 of the Council of Europe Trafficking Convention also affirms this principle, “(...)Nothing in this Convention shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein”¹¹. The obligation of European Union Member States to consider the international protection needs of victims of trafficking is strengthened by paragraph 377 of the Explanatory Report accompanying the Council of Europe Convention against Trafficking, to which all Member States are party.

It is remarkable to see that the Palermo Protocol, as well as the Coe Convention do not provide greater protection than the domestic laws of the individual states, they live it entirely up to the states whether they want to permit trafficking victims to have any access to residency beyond what is already provided by the state’s domestic laws. The lack of protection within the trafficking –specific conventions for victims seeking to gain residency in their destination country has undoubtedly led many victims to turn to other international conventions that do not deal specifically with human trafficking¹². This is the Geneva Convention for Refugees of 1951.

Being, however, a victim of human trafficking normally does not suffice in itself to establish a valid claim for refugee status, but this does not exclude that, under specific circumstances, trafficked persons may be in need of international refugee protection¹³. This could be the case, for instance, if the trafficking victim fears upon return repercussions by the perpetrators which would amount to persecution for one of the reasons contained in the 1951 Convention definition against which no effective national protection was available. Victims of trafficking could under certain

¹¹ Available at <https://rm.coe.int/168008371d> p. 16

¹² For the analysis of this issue see Abram L. Seaman, Permanent Residency for Human Trafficking Victims in Europe : The Potential Use of Article 3 of the European Convention as a Means of Protection, Columbia Journal of Transnational Law, Vol. 48, 2010, No2, p. 301-304

¹³ See also UNHCR Guidelines, available at <http://www.refworld.org/pdfid/4ad317bc2.pdf> “Not all victims or potential victims of trafficking fall within the scope of the refugee definition. To be recognized as a refugee, all elements of the refugee definition have to be satisfied”.

circumstances therefore constitute a “particular social group” under the 1951 Convention.

A claim for international protection presented by a victim or potential victim of trafficking can arise in a number of distinct sets of circumstances. The victim may have been trafficked abroad, may have escaped her or his traffickers and may seek the protection of the State where she or he now is. The victim may have been trafficked within national territory, may have escaped from her or his traffickers and have fled abroad in search of international protection. The individual concerned may not have been trafficked but may fear becoming a victim of trafficking and may have fled abroad in search of international protection. In all these instances, the individual concerned must be found to have a “well-founded fear of persecution” linked to one or more of the Convention grounds in order to be recognized as a refugee.

Trafficked persons may therefore qualify for international protection under the Refugee Convention but they are required to satisfy a number of criteria according to article 1A (2) of the 1951 Convention, which are the following:

- a) be outside her or his country of origin or former habitual residence.

As all applicants, when victims of trafficking apply for asylum, they must be outside of their country of origin or former habitual residence. The 1951 Convention requires that the refugee demonstrates a well-founded fear of persecution with regard to her or his country of nationality or habitual residence. If no such well-founded fear is established in relation to the country of origin, then it would be appropriate for the State from which asylum has been requested to reject the claim to refugee status. The circumstances in the applicant’s country of origin or habitual residence are the main point of reference against which to determine the existence of a well founded fear of persecution. But in cases of transnational trafficking, the victim might have fear of harm in a number of locations (transit country, the country in which the asylum application is submitted and the country of origin). In such circumstances, the existence of a well-founded fear of persecution is to be evaluated in relation to the country of origin of the applicant¹⁴. It must be noted that in most cases the recruitment of the victim takes place in her/his country of origin and she/he may reasonably believe that shall she/he escape to her/his home state, then she/he may easily be

¹⁴ UNHCR, GUIDELINES ON INTERNATIONAL PROTECTION: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked, 07-04-2006 <http://www.refworld.org/pdfid/4ad317bc2.pdf>

found again and be punished or victimised for having fled. It is therefore possible that the applicant didn't have a fear of persecution at the time he/she left her/his country, but this fear is present at the time her/his application for asylum or her/his appeal is examined.

b) Well-founded fear of persecution

The second requirement is that the victim of trafficking has a “well-founded fear of persecution”, which includes a subjective and an objective element.¹⁵ The fear of persecution must be personalized by the trafficking victim and must also be supported by facts demonstrating it is reasonable, the fear must objectively be of “a reasonable degree”¹⁶

Persecution can be considered to involve serious human rights violations, including a threat to life or freedom, as well as other kinds of serious harm or intolerable predicament, as assessed in the light of the opinions, feelings and psychological make-up of the asylum applicant.¹⁷

Serious violations of human rights can be considered as persecution, for example forms of severe exploitation as abduction, incarceration, rape, sexual enslavement, enforced prostitution, forced labour, removal of organs, physical beatings, starvation, the deprivation of medical treatment.

But what will the case worker of the first instance or the Committees of the second instance decide if the trafficking experience of the asylum applicant is determined to be a one-off past experience, which is not likely to be repeated? It may still be appropriate to recognize the individual concerned as a refugee, if this individual is experiencing ongoing traumatic psychological effects which would render return to the country of origin intolerable. In other words, if the impact on the

¹⁵ UN High Commissioner for Refugees (UNHCR), Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, December 2011, HCR/IP/4/ENG/REV. 3, available at: <http://www.refworld.org/docid/4f33c8d92.html>

¹⁶ UN High Commissioner for Refugees (UNHCR), Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, December 2011, HCR/IP/4/ENG/REV. 3, available at: <http://www.refworld.org/docid/4f33c8d92.html>

¹⁷ UNHCR, GUIDELINES ON INTERNATIONAL PROTECTION: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked, 07-04-2006 <http://www.refworld.org/pdfid/4ad317bc2.pdf>

individual of the previous persecution continues, he/she must be recognized as a refugee.

As far as the agents of persecution are concerned, it must be noted that there can be State and non-State agents of persecution. While persecution is often perpetrated by the authorities of a country, it can also be perpetrated by individuals if the persecutory acts are “knowingly tolerated by the authorities or if the authorities refuse, or prove unable to offer effective protection”.¹⁸ Whether the authorities in the country of origin are able to protect victims or potential victims of trafficking will depend on whether legislative and administrative mechanisms have been put in place to prevent and combat trafficking, as well as to protect and assist the victims and on whether these mechanisms are effectively implemented in practice, as they are foreseen in the trafficking Protocol.

- c) persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion.

As in all asylum applications, the applicant-victim of human trafficking must demonstrate that the persecution that she/he fears is based on at least one of the five specific reasons. There must be a “causal link” between the well-founded fear of persecution to a Convention ground (“for reasons of”). The vast majority of trafficking cases before the Appeals Committees of the Pedestrian Decree (P.D.) 114/2010 were examined on the ground of membership of a particular social group. The Appeals Committees generally accept that victims of trafficking are capable of being members of a particular social group because of their shared common background or past experience of having been trafficked.¹⁹ Refugee women are trafficked principally because they are women who are vulnerable and can be commercially exploited²⁰. According to the UNHCR, a particular social group is a group who share a common characteristic other than their risk of being persecuted, or who are perceived as a

¹⁸ See, UNHCR *Handbook*, paragraph 65

¹⁹ For trafficking cases before the courts see Idil Atak and James C. Simeon, Human Trafficking-Mapping the Legal Boundaries of International Refugee Law and Criminal Justice, *Journal of International Criminal Justice*, volume 12, no 1, Oxford University Press, March 2014, p. 1019-1038

²⁰ For the summary conclusions from the meeting of UNHCR’s Global Consultations meeting in San Remo in September 2001 in relevance to what exactly constitutes a particular social group see Ryszard Piotrowicz, *Victims of People Trafficking and Entitlement to International Protection*, *Australian Year Book of International Law* 159/2005, Heinonline, p. 159- 179

group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one's human rights²¹.

Therefore, a particular social group (psg) in our case can be defined by the past trafficking experience. The issues of past and future harm are clearly separated, the past harm defines the psg and the decision makers will be able to judge if the fear of future harm is well-founded. The fear of future persecution can be founded in the form of discrimination, re-trafficking or ostracism.²² Examples of social subsets of women or children could, depending on the context, be single women, widows, divorced women, illiterate women, separated or unaccompanied children, orphans or street children. The fact of belonging to such a particular social group may be one of the factors contributing to an individual's fear of being subjected to persecution, for example, to sexual exploitation, as a result of being, or fearing being, trafficked.²³

- d) The victim must be “unwilling or unable, owing to the fear of persecution, to avail himself or herself of the protection of that country of nationality or former habitual residence”

In cases of human trafficking the persecutors will always be non-state actors and the question therefore is if violence by private actors can be considered as persecution. The answer that UNHCR gives to that matter is positive, if the state authorities refuse, or prove unable to offer effective protection.

There may also be situations where trafficking activities are *de facto* tolerated or condoned by the authorities or even actively facilitated by corrupt State officials. In these circumstances, the agent of persecution may well be the State itself, which

²¹ UNHCR, GUIDELINES ON INTERNATIONAL PROTECTION: “Membership of a particular social group” within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, available at <http://www.unhcr.org/publications/legal/3d58de2da/guidelines-international-protection-2-membership-particular-social-group.html>

²² For the opposite opinion that was held by UK's Immigration Appeal Tribunal and USA's Court, that trafficked women do not qualify as a psg, see Melanie Fiona Oliver, Can women trafficked for the purpose of sexual exploitation claim asylum? Defining the refugee Convention's Particular Social Group, European Yearbook on Human Rights 2014, p. 461- 473

²³ UNHCR, GUIDELINES ON INTERNATIONAL PROTECTION: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked, 07-04-2006 <http://www.refworld.org/pdfid/4ad317bc2.pdf>

becomes responsible, whether directly or as a result of inaction, for a failure to protect those within its jurisdiction. Whether this is so will depend on the role played by the officials concerned and on whether they are acting in their personal capacity outside the framework of governmental authority or on the basis of the position of authority they occupy within governmental structures supporting or condoning trafficking. In the latter case, the persecutory acts may be deemed to emanate from the State itself.²⁴

Despite this theory and all the arguments, that are protective for victims of trafficking and enable them to claim asylum as members of a particular group, the evaluation reports of GRETA are not so optimistic: As has been noted by GRETA, there are significant gaps in the data available on how often asylum is granted where the persecution feared is linked to human trafficking. These gaps are even more pronounced in relation to child trafficking and asylum, adding to the difficulties in monitoring whether child victims have effective access to asylum. “This lack of information limits our understanding of the effectiveness in practice of access to asylum for victims of trafficking” say the experts. In a statement made on the occasion of the World Refugee Day, GRETA expressed deep concern that victims of trafficking are often denied international protection in Europe.²⁵ Not all States Parties to the Convention allow for asylum applications to be made while potential victims of trafficking are in an identification procedure, which amounts to a violation of their international protection obligations. GRETA recalls that the human rights approach enshrined in the Council of Europe’s Anti-Trafficking Convention requires States Parties to take into account the risk of persecutions of victims of trafficking, as well as to ensure that all foreign nationals identified as victims of trafficking are informed about their right to request international protection and have access to fair and efficient asylum procedures²⁶.

²⁴ UNHCR, GUIDELINES ON INTERNATIONAL PROTECTION: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked, 07-04-2006 <http://www.refworld.org/pdfid/4ad317bc2.pdf>

²⁵ “Victims of trafficking in human beings are too often deprived of their right to international protection”, Statement made by GRETA on the occasion of the World Refugee Day (20 June 2014).

²⁶ GRETA, 5th General Report, available at http://www.coe.int/en/web/anti-human-trafficking/news/-/asset_publisher/fX6ZWufj34JY/content/lorem-ipsum-dolor?inheritRedirect=false&redirect=http%3A%2F%2Fwww.coe.int%2Fen%2Fweb%2Fanti-human-trafficking%2Fnews%3Fp_p_id%3D101_INSTANCE_fX6ZWufj34JY%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-4%26p_p_col_count%3D1%26_101_INSTANCE_fX6ZWufj34JY_advancedSearch%3Dfalse%26_101_INSTANCE_fX6ZWufj34JY_keywords%3D%26_101_INSTANCE_fX6ZWufj34JY_delta%3D20%26p_r_p_564233524_resetCur%3Dfalse%26_101_INSTANCE_fX6ZWufj34JY_cur%3D2%26_101_INSTANCE_fX6ZWufj34JY_andOperator%3Dtrue

The Geneva Convention of 1951 is the basic legal tool that can provide protection to refugees victims of trafficking in EU member states, among other states. In the European Union, as it is well known, it is implemented the Common European Asylum System. At this point we shall make a small presentation of it, as well as the EU legal approach against trafficking.

B. The C.E.A.S. and the EU legal approach against trafficking.

In the EU, an area of open borders and freedom of movement, countries share the same fundamental values and States need to have a joint approach to guarantee high standards of protection for refugees. Procedures must at the same time be fair and effective throughout the EU and impervious to abuse. With this in mind, the EU States have committed to establishing a Common European Asylum System. Asylum must not be a lottery. EU Member States have a shared responsibility to welcome asylum seekers in a dignified manner, ensuring they are treated fairly and that their case is examined to uniform standards so that, no matter where an applicant applies, the outcome will be similar. In short :

- 1) **The revised Asylum Procedures Directive** aims at fairer, quicker and better quality asylum decisions. Asylum seekers with special needs will receive the necessary support to explain their claim and in particular there will be greater protection of unaccompanied minors and victims of torture.
- 2) **The revised Reception Conditions Directive** ensures that there are humane material reception conditions (such as housing) for asylum seekers across the EU and that the fundamental rights of the concerned persons are fully respected. It also ensures that detention is only applied as a measure of last resort.
- 3) **The revised Qualification Directive** clarifies the grounds for granting international protection and therefore will make asylum decisions more robust. It will also improve the access to rights and integration measures for beneficiaries of international protection.
- 4) **The revised Dublin Regulation** enhances the protection of asylum seekers during the process of establishing the State responsible for examining the

application, and clarifies the rules governing the relations between states. It creates a system to detect early problems in national asylum or reception systems, and address their root causes before they develop into fully fledged crises.

- 5) **The revised EURODAC Regulation** will allow law enforcement access to the EU database of the fingerprints of asylum seekers under strictly limited circumstances in order to prevent, detect or investigate the most serious crimes, such as murder, and terrorism.

The Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)²⁷ (revised qualification directive) describes among others the refugee status determination (rsd) procedure in general. However, it will be also implemented if we have a refugee- victim of trafficking in the EU territory.

It must be noted that the increasing number of victims of human trafficking in Europe over the last years has demonstrated the need for better policies in the fight against this serious crime. At this point we will shortly present the EU legislation against human trafficking²⁸:

- Article 83 of the Treaty on the Functioning of the EU²⁹ (ex Article 31 TEU), foresees the following in paragraph 1:
“1. The European Parliament and the Council may, by means of directives

²⁷ Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:en:PDF>

²⁸ See also European Commission, COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS- The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016, Brussels, 19.6.2012, COM(2012) 286 final, as well as Mgr. Sarah Moog & Michaela Koch, M.A., Do the EU Directives to Combat Human Trafficking Ensure the Observance of Victims' Rights? A Case Study on Germany , UACES 42nd Annual Conference , Passau, 3-5 September 2012.

²⁹ Crimes listed in Article 83 are known as “Euro-Crimes”. These are particularly serious crimes with a cross-border dimension.

adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime. On the basis of developments in crime, the Council may adopt a decision identifying other areas of crime that meet the criteria specified in this paragraph. It shall act unanimously after obtaining the consent of the European Parliament (...)"

- Charter of Fundamental Rights of the European Union

Trafficking in human beings is specifically prohibited by Article 5 (Prohibition of slavery and forced labour) of the Charter of Fundamental Rights of the European Union where it is stated that "1. No one shall be held in slavery or servitude. 2. No one shall be required to perform forced or compulsory labour. 3. Trafficking in human beings is prohibited."³⁰

- European Convention on Human Rights

Article 4 of the European Convention on Human Rights explicitly prohibits any kind of slavery, servitude or forced labour³¹. In Article 4 "Prohibition of slavery and forced labour" it is stated that "1. No one shall be held in slavery or servitude. 2. No one shall be required to perform forced or compulsory labour. 3. For the purpose of this Article the term "forced or compulsory labour" shall not include: (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such

³⁰ Available at http://www.europarl.europa.eu/charter/pdf/text_en.pdf

³¹ Available at

detention; (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service; (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community; (d) any work or service which forms part of normal civic obligations.”³²

- Convention on Action against Trafficking in Human Beings

When the Council of Europe implemented its Convention on Action against Trafficking in Human Beings on 16 May 2005 it recognized that human trafficking is a human rights violation and that any strategy or policy designed to combat this offence must not be discriminatory and shall ensure gender equality and the protection of children’s rights. In order to restore their integrity and dignity, a number of measures to protect and promote the rights of victims have been introduced. Among these are the issuance of (temporary) residence permits, the prohibition of deportation of presumed victims and the assistance to victims in form of psychological and physical therapy³³.

- Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims³⁴

One of the core features of this Directive is that it expands the definition of human trafficking provided in the UN Convention to also include forced begging, particularly in cases involving children, as well as other forms of ‘exploitation of criminal activities’ such as pick-pocketing, shop-lifting and drug trafficking. Additionally, forced marriage, illegal adoptions and trafficking for the purpose of organ removal are now regarded as activities which violate human integrity and dignity and hence constitute human trafficking. The Directive acknowledges the diversity of human trafficking and suggests a gender specific approach to assisting and supporting victims of human trafficking, since men and women come into contact with perpetrators for different reasons and are trafficked for different purposes into an

³² Available at http://www.echr.coe.int/Documents/Convention_ENG.pdf

³³ Available at <https://rm.coe.int/168008371d>

³⁴ Available at https://ec.europa.eu/anti-trafficking/legislation-and-case-law-eu-legislation-criminal-law/directive-201136eu_en

array of employment sectors⁷. Article 12 of the Directive further ensures the protection of victims by providing them with free legal counselling and representation, access to victim protection programs and further support to prevent secondary victimization. In accordance with the victim-centered approach of this Directive, Article 17 recognizes that victims of trafficking shall be eligible to have access to the same compensation schemes as other victims of violent crimes of intent.³⁵

Something else that must be taken into consideration are the special needs of women at the refugee status determination procedure (rsd). In order to take into account the particular needs of refugee women, all those who make decisions on refugee status should have access to information on human rights conditions and social roles as they affect women in the countries of origin. In other words, the social, cultural, traditional, and religious norms and the laws affecting women in the country of origin should be assessed against the human rights instruments that provide a framework of international standards for recognizing the protection needs of women. States Parties to human rights conventions must undertake all necessary measures to eliminate gender-related cultural barriers. This may entail, for example, providing qualified female interviewers and interpreters, since women may feel ashamed or dishonoured when discussing the details of their claims with male authorities, and ensuring that female asylum-seekers and refugees can obtain personal identity documentation independently from their male relatives and in their own names³⁶.

Up to this point, we have seen the international protection of refugees- victims of trafficking according to the Geneva Convention of 1951, the rsd procedure and the European legal framework against trafficking in human beings. It is also necessary however to mention the results of the anti-trafficking Directive and the progress that we have achieved until now. According to the Article 20 of the Directive the

³⁵ Mgr. Sarah Moog & Michaela Koch, M.A., Do the EU Directives to Combat Human Trafficking Ensure the Observance of Victims' Rights? A Case Study on Germany , UACES 42nd Annual Conference , Passau, 3-5 September 2012.

³⁶ UN High Commissioner for Refugees (UNHCR), *Self-Study Module 5: Human Rights and Refugee Protection (Vol. II)*, 15 December 2006, Vol. II, available at: <http://www.refworld.org/docid/4669434c2.html>

Commission must make a report every two years on the progress made in the fight against trafficking in human beings³⁷.

On the 19th May 2016 was published the “Report from the Commission to the European Parliament and the Council - Report on the progress made in the fight against trafficking in human beings (2016) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims”³⁸ This is the first Commission report on trafficking in human beings since the adoption of the anti-trafficking Directive. This report focuses on issues that highlight the comprehensive approach of the anti-trafficking Directive and the EU Strategy. In particular, it examines the progress made on the implementation of ‘the three Ps’, prosecution (with a focus on financial investigations), protection (with a focus on setting up national referral mechanisms) and prevention (with a focus on action taken by Member States to prevent the crime as provided by Article 18 of the Anti-Trafficking Directive).

According to the statistical data there were in total 15.846 “registered victims” (both identified and presumed) of trafficking in the EU. Trafficking for the purpose of sexual exploitation is still the most widespread form (67 % of registered victims), followed by labour exploitation (21 % of registered victims). The other 12 % were registered as victims of trafficking for other forms of exploitation. Over three quarters of the registered victims were women (76 %). At least 15 % of the registered victims were children. 65 % of registered victims were EU citizens. The top five EU countries of citizenship for registered victims in 2013-2014 were Romania, Bulgaria, the Netherlands, Hungary, and Poland. These are the same countries as for the years 2010-2012. The top five non-EU countries of citizenship were Nigeria, China, Albania, Vietnam and Morocco. In total, 4.079 prosecutions and 3.129 convictions for trafficking in human beings were reported in the EU.

³⁷ Article 20, “Coordination of the Union strategy against trafficking in human beings” : In order to contribute to a coordinated and consolidated Union strategy against trafficking in human beings, Member States shall facilitate the tasks of an anti-trafficking coordinator (ATC). In particular, Member States shall transmit to the ATC the information referred to in Article 19, on the basis of which the ATC shall contribute to reporting carried out by the Commission every two years on the progress made in the fight against trafficking in human beings.

³⁸ Brussels, 19.5.2016 COM(2016) 267 final, available at http://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/organized-crime-and-human-trafficking/trafficking-in-human-beings/docs/commission_report_on_the_progress_made_in_the_fight_against_trafficking_in_human_beings_2016_en.pdf

In relevance with the trafficking trends in the context of migration and asylum, the report informs about the following: According to the recent Commission Communication on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration³⁹, there is strong evidence that the migration crisis has been exploited by criminal networks involved in trafficking in human beings to target the most vulnerable, in particular women and children. Traffickers increasingly abuse asylum systems, which are not always linked to national referral mechanisms. A worryingly sharp increase in Nigerian women and girls leaving Libya has been identified (4. 371 in January-September 2015 compared to 1. 008 in the previous year, 80 % of whom estimated by IOM Italy to be victims of trafficking)⁴⁰, and there are general concerns of an increasing risk of trafficking for sexual exploitation. As one of the tools to address the migration crisis during 2015, the EU has substantially reinforced cooperation with third countries, and trafficking in human beings is one of the main areas of cooperation with African, Western Balkan countries and Turkey. Coordination should be ensured on the ground in the framework of the ‘hotspots approach’ between all different actors involved in the screening, fingerprinting, identification and registration of third country nationals and in other first line reception facilities in order to swiftly identify and refer victims of trafficking and provide appropriate levels of care and protection. This should include providing frontline staff with appropriate training⁴¹.

Since the outbreak of the migrant and refugee crisis in Europe, the Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings has been raising awareness on the nexus between large flows of people on the move and the risks of trafficking. On the 5th of May 2017 the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Madina Jarbussynova, concluded a visit to Athens, Lesbos and Thessaloniki (Greece) to discuss how best to support first responders in identifying potential victims of trafficking among large flows of migrants and refugees. “Stepping up inter-agency co-

³⁹ http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposalimplementation-package/docs/managing_the_refugee_crisis_state_of_play_20160210_en.pdf

⁴⁰ IOM Italy, http://www.italy.iom.int/index.php?option=com_content&task=view&id=341&Itemid=46

⁴¹ See Guidelines for the identification of victims of trafficking in human beings, Especially for Consular Services and Border Guards, European Commission, 2013, available at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/docs/thb-victims-identification/thb_identification_en.pdf

ordination and data sharing is essential to prevent cases of human trafficking among mixed flows of migrants. Many found themselves smuggled and trafficked during their perilous journey and are in need of support. Others await their asylum requests to be processed. We need a pro-active approach to impede criminal syndicates that prey on their precarious situation” she said.⁴² But above all, we would add, we must take initiatives to reduce demand on the services provided involuntarily by victims of trafficking, because trafficking in human beings is a crime driven by demand, and the cynical phrase of a trafficker is unfortunately true: “ When they will stop buying, I will stop selling”..

42 Migration and trafficking in human beings: OSCE Special Representative visits identification and temporary reception facilities in Greece, May 5, 2017, available at <http://www.osce.org/secretariat/315581>