

## ***Trafficking in human beings in European and international law: the contribution of the partners of the LIREA project***

### **ABSTRACT**

This paper analyzes the problem of trafficking in human beings, with respect to which the international community has in the last two centuries and alternately, adopted numerous agreements and diversified instruments, aimed at curbing the expansion of this crime, with particular reference to those involving weaker and more exposed subjects. Although some of these agreements include a good number of States and affirm the prohibition of slavery and trafficking at an international level, their effectiveness and implementation is critical. This contribution analyzes the main laws of the partner countries of the LIREA project, strongly affected by the phenomenon of trafficking in human beings, mainly as areas of destination and transit, while presenting very different models and policies for managing the problem. What are the solutions for the harmonization of the practice regarding victims of trafficking in hosting societies? To answer this question, the methodology used is qualitative and involves the analysis of secondary sources including contributions on the subject provided by partner countries and the study of European and international legislation. Particular attention was paid to the study of the results of periodic monitoring on the state of implementation of the actions on trafficking in the Group of experts on the fight against trafficking in human beings. The results highlight the application, in the selected countries, of the various instruments dictated by the European Union and, in particular, of the anti-trafficking directive, of the directive on the residence permit issued to third countries victims of trafficking and of the first protocol of Palermo. The selected acts allowed to rebuild the assistance system in hosting societies and to formulate the reflections for the harmonization of regulatory systems.

Keywords: project LIREA, trafficking in human beings, harmonization law

### **1. Introduction: trafficking in human beings in European and international law**

Trafficking in human beings (THB) is a serious violation of fundamental rights and is explicitly prohibited by the Charter of Fundamental Rights of the European Union (Gebrewold *et all* 2018). It is also listed among the crimes referred to in Article 83 of the Treaty on the Functioning of the European Union (EU), known as crimes with a European dimension. It is a complex problem (Decaux 2008; Scarpa 2008; Gallagher 2010) which required a common effort involving both the states of recruitment and those of transit and final destination of the victims<sup>1</sup>. A long and ignoble history is needed, only a recent one has become an important political issue for States and the international community and the subject of detailed international standard (Gallagher 2010). The victims are women, men, minors, boys and girls in vulnerable situations. Between trafficking in migrants and THB, even if in common language, the two cases tend to merge. Trafficking in human beings (smuggling) differs from trafficking in persons (trafficking) in that it involves the use of force and the exploitation of victims and because it does not necessarily imply a physical or cross-border movement of the victims. In the trafficking of migrants, the criminal subject carries out an assimilation of that of an agency that offers a transport service without being interested in the future of the person transported. It is therefore a commercial relationship between the migrant who asks for a service, usually illegal, and the criminal who offers it to him for remuneration<sup>2</sup>. On the other hand, in the trafficking of human beings there is

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<sup>1</sup> Trafficking in human beings is prohibited by art. 5 of the Charter of Fundamental Rights of the European Union, better known as the Nice Charter.

<sup>2</sup> In the Member States, trafficking for sexual exploitation is the confirmation as the most widespread form of trafficking (67% of registered victims, 95 %) and the most difficult to counter. The second most common type of treatment is that of the purposes of labor exploitation (21% of the total victims, of which 74% of men), which tends to increase, especially in the agricultural sector, for reasons that lead to the economic crisis and to the growing need for cheap labor. The remaining 12% is made up of the victims of other forms of exploitation: forced begging, criminal activities, forced marriage, fictitious marriage, organ harvesting, trafficking of infants and young children for adoptive purposes, trafficking of pregnant women for the sale of prices, treats aimed at cannabis cultivation and drug dealing. On the rise, the exploitation of people with physical, mental and developmental disabilities; the exploitation of Roma

no agreement between the criminal and the victim and the fate of the goods is important for the criminal because his source of income is present (Chinnici 2019; Militello and Spena 2015).

The political commitment of the EU aimed at combating this phenomenon is evidenced by numerous initiatives, measures and funding programs put in place in this sector since the early 1990s. The Warsaw Convention defines each victim as a victim of trafficking and a list of mandatory provisions of assistance for victims of trafficking is also established. In particular, trafficking victims are expected to obtain material and psychological assistance as well as support for their reintegration into society (Rochelle and Sabella 2020). Medical measures, legal advice, information and accommodation in suitable accommodation are among the measures envisaged. Compensation is also expected for a period of recovery and reflection of at least 30 days. There is also the possibility of issuing residence permits to victims of trafficking either for humanitarian reasons, or within the framework of their cooperation with the judicial authorities. Directive 2011/36/EU concerns the prevention and repression of trafficking in human beings and the protection of victims in this sense a big step forward. The European legislation on the right of victims of THB to stay in the EU, relating to the sexual exploitation of minors, and the provisions against employers who employ third-country nationals whose stay is irregular, complements the directive on trafficking in human beings. The European Union's Internal Security Strategy also addresses the issue of trafficking in human beings. With the strategy for the accession of THB (2012-2016), the EU, on the other hand, indicates five priorities that should be given priority in addressing the issue of trafficking in human beings: identifying, protecting and assisting victims of trafficking; intensify the prevention of human trafficking; enhance criminal prosecution of traffickers; improve coordination and cooperation between the main stakeholders and policy coherence; increase knowledge of emerging problems relating to all forms of treatment of humans and provide an effective response (European Commission 2012).

In recent decades this planetary phenomenon (Forlati 2013; Palmisano 2008), strongly connected with the wider one of international immigration, has undergone a significant increase, becoming almost a modern form of slavery. The new conformation of the problem is also due to the close link with migratory flows fueled by the desire to migrate by the poorest and most disadvantaged population, in the hope of a better life expectancy in the States considered more advanced (Carchedi *et al* 2003). In the first half of the twentieth century, various international conventions currently in force were drawn up which oblige Member States to adopt, in collaboration with each other, the necessary measures to prevent and suppress the recruitment of women and children for the purpose of sexual exploitation (Annoni 2011). The first signs of development can be found in the 1979 Convention for the elimination of discrimination against women, whose art. 6 obliges Member States to take the necessary measures to repress any forms of trafficking in women and in the 1989 Convention on the Rights of the Child, whose art. 35 requires the provision of suitable measures to prevent «the sale of or traffic in children for any purpose or in any form». On March 18, 1994, the Inter-American Convention on the International Trafficking of Children was adopted, which contains a complete definition of the phenomenon. In addition to trafficking for the purpose of sexual exploitation, that aimed at any other purpose prohibited in the State of recruitment or in that of destination is included. The Additional Protocol to the Convention on the Rights of the Child on the Sale of Children, Prostitution and Child Pornography of May 25, 2000 which in art. 3 prohibits, even without expressly defining as trafficking, the sale of minors for the purpose of sexual exploitation, organ trafficking or forced labor.

The exploitation of prostitution and pornography are not the only expressions of the trafficking that is practiced also in view of the subjugation of victims of forced labor, forced marriage, domestic servitude and organ trafficking (Annoni 2011). The definition of trafficking has in fact been extended to include acts that

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ethnic subjects for the purpose of forced begging; the number of forced and fictitious marriages - probably as a consequence of the current migration crisis - in order to obtain a legitimate stay in the state of immigration. Child victims of trafficking, who make up at least 15% of the total and whose growing number is a source of great demand (European Commission 2016).

have male adult victims as victims (Hepburn and Simon 2013). The Protocol on trafficking in persons adopted in Palermo in December 2000 considers THB:

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

In the context of Community law, this definition was subsequently taken up in the framework decision on combating trafficking in human beings, adopted by the Council of the European Union on 19 July 2002 and the Council of Europe Convention on combating THB adopted in Warsaw on 16 May 2005. Article 36 of this agreement is characterized by the added value of the institution of the Group of experts on the fight against THB (GRETA), called to periodically monitor the state of implementation of conventional obligations by each of the States parties. In art. 5 of the Charter of Fundamental Rights of the EU, signed in Nice in 2000, the prohibition of slavery and THB was confirmed, considered serious violation of the rights and dignity of the person. The Directive of 29 April 2004 (2004/81/EC) concerns the residence permit to be issued to third-country nationals victims of THB who decide to collaborate with the competent police and judicial authorities. In 2005, the EU Plan on Best Practices, Rules and Procedures to counter and prevent THB was adopted.

Of particular note is Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on the prevention and repression of THB and the protection of victims and which replaces the Council Framework Decision 2002/629/JHA. It is a criminal law instrument that provides not only with regard to criminal repression but also with the prevention and protection of the victim with adequate information; assistance before, during and after criminal proceedings; assistance and support which must be unconditional and not dependent on the victim's willingness to cooperate in criminal investigations. With the EU strategy for the eradication of THB (2012-2016), the European Commission wanted to focus on specific and concrete measures to implement Directive 2011/36/EU. In this perspective, he highlighted several priorities ranging from protection and assistance to victims to strengthening criminal action against traffickers. The Directive of the anti-trafficking and the transposition procedure at national level have given a decisive impetus to raising awareness of the extent of the phenomenon in the EU and the need for law enforcement, making use of a range of prevention, protection and prosecution tools. Lastly, thanks to the correct and complete implementation of the EU Directive, the Member States will ensure the prevention of the crime of trafficking, prosecutions of the guilty and, more importantly, the protection of the victims. The Directive requires Member States to report to the Union anti-trafficking coordinator, which in turn works on the progress report submitted by the Commission every two years.

In the following paragraphs we will illustrate the main rules for the fight against trafficking in human beings with the relative criticalities of application in the partner countries of the LIREA project: Italy, Cyprus, Malta, Austria and Greece. They are Member States of the EU and therefore bound to apply the Directives issued to overcome the problem of THB.

## **2. Anti-trafficking legislation in the Italian legal system**

Italy, the country of destination but also of transit of the routes identified by the criminal organizations dedicated to trafficking, has for many years now been a territory heavily involved in the management of this problem.

**The legal framework for victims of trafficking in human beings has several provisions at place:**

- **Legislative Decree no. 286/1998 “Consolidated Act on provisions concerning the Immigration regulations and foreign national conditions norms”;**
- **Law n. 228 of 2003 "Measures against trafficking in persons".**

**The article 18 of the Legislative Decree no. 286/1998** provides for the possibility of issuing a special residence permit to the foreigner subjected to violence or serious exploitation, when there is a danger for his safety due to the attempt to escape the conditions of a criminal association or statements made in criminal proceedings. In this case, the questore issues a special residence permit that allows the foreign citizen to escape the violence and conditioning of the criminal organization and to participate in a program of assistance and social integration. The permit in question has a duration of six months and can be renewed for a year or for the longer period necessary for reasons arranged by the judicial authority. It also allows access to essential services and study, as well as enrollment in job placement lists or subordinate work, without prejudice to minimum age requirements (Caggiano 2014).

**The Law 11 August 2003 n. 228 "Measures against trafficking in persons" considered the most important** in regulating the problem also for the increase in penalties, has modified several articles of the penal code. In particular, art. 600 Criminal Code (CC) punishes with imprisonment for eight to twenty years, anyone who reduces a person to slavery, or to a condition similar to slavery (Lattanzi 2010). In this regard, the new article refers to the exercise over a person of powers corresponding to those of the property right; the reduction or maintenance of a person in a state of continuous subjection, forcing them to work or sexual services, to begging or in any case to services that involve their exploitation. Article 601 of the Italian Criminal Code defines, punishing him with imprisonment from eight to twenty years, the crime of trafficking in persons, considering it applicable both when they are the victim of subjects already enslaved or in servitude, and when it concerns subjects who are trafficked in order to be reduced in such situations. The conduct qualifying the new crime figure has been modified by Legislative Decree n. 24 of 2014 and consists today: 1) in recruiting, introducing into the State, transferring out of the State, transferring authority, hosting people who are in conditions of slavery defined by art. 600 of the CC ; 2) or to carry out the same conduct on one or more people, through deception, violence, threat, abuse of authority, or taking advantage of a situation of vulnerability, physical, mental or inferiority of necessity, or through the promise or giving of money or other advantages to the person who has authority over them, in order to induce or force them to work, sexual services or to begging or in any case to carry out illegal activities that involve their exploitation or to undergo organ harvesting. The law in question has also changed the crime of criminal association (art.416 of the CC) stating that where the association is intended to commit any of the crimes referred to in articles 600, 601 and 602, the imprisonment from five to years in the cases referred to in paragraph 1 - promoters, founders or organizers of the association - and from four to nine years in the cases referred to in paragraph 2 - participation in the association. From the point of view of crime prevention and assistance to victims of the same, the 2003 law provided for the following measures: 1) the establishment, at the Presidency of the Council of Ministers, of the Fund for anti-trafficking measures, intended for the financing of assistance and social integration programs in favor of victims of crimes as well as other social protection purposes referred to in art. 18 of the Consolidated Law on Immigration;2) the establishment of a special assistance program for the victims of the crimes of reduction or maintenance in slavery or servitude (art. 600 of the criminal code) and trafficking of people(art. 601), in order to ensure, on a transitory basis, adequate conditions of accommodation, food and health care, without prejudice to the applicability of the humanitarian provisions of art. 18 of the Consolidated Law on Immigration, if the victim of the crime is a foreign person (art. 13); 3) the provision of special cooperation policies towards the countries affected by the crimes, to be implemented by the Ministry of Foreign Affairs, organizing international meetings and information campaigns also within the countries of prevalent origin of the victims of human trafficking. With the legislative decree n. 24 of 2014 was added to the compulsion to carry out illegal activities that involve the exploitation or to undergo the removal of organs. To further define the incriminating case in a more exhaustive way, it is specified that the reduction or maintenance in the state of subjection can

take place in the presence of a particularly connoted conduct. The conduct is required to be implemented through: violence, threat, deception; abuse of authority or taking advantage of a sanction of physical or mental inferiority or a situation of necessity; taking advantage of a vulnerable situation (introduced by the 2014 reform). In addition to criminal sanctions, Law 228/2003 also provides for administrative sanctions against legal persons, when the subjects who represent them or who hold the particular offices provided for by the law, commit any of the crimes against the individual personality provided for in articles 600-604 of CC.

The original wording of Article 600 of the Italian CC, prior to the enactment of Law 228/03, provided for an undoubtedly more generic type of crime, according to which anyone's conduct was punished in any way (regardless of the use of psychic or physical violence) had reduced a person to slavery, or to a similar condition. Moreover, this provision posed significant interpretative problems, above all because the hypothesis of the condition analogous to slavery was not always easy to identify. In fact, the concept of slavery, in the historical sense of the term, has basically disappeared and today it will be more difficult to witness (at least for the Italian reality) a traditional reduction in slavery, that is, the behavior of someone who treats and holds a person as if he were a material good, doing what he wants. We say that today normally a whole series of pressures, forms of subjugation, of submission to domination through deception, threat, violence, abuse, are normally aimed at obtaining mostly economic results. Here the reduction in a state of servitude is identified more through these behaviors (Haverkamp *et all* 2019). The jurisprudence, before the enactment of the law in question, had already dealt with defining the conduct similar to the reduction in slavery<sup>3</sup>, referring to the definition of similar conduct contained in the Supplementary Convention relating to the abolition of slavery, the slave trade and institutions and practices similar to slavery, signed in Geneva on September 7, 1956, then ratified and enforced in Italy with law no. 1304 of 20 December 1957. The Convention considered a whole series of practices falling within the definition of behaviors analogous to slavery such as, for example, the reduction in servitude for debts (art.1, letter a) or for working the land (art.1, lett . B). And yet any institution and practice according to which a woman is promised or given in marriage by payment in money or in kind without the same having the right to refuse (art.1, letter C), or according to which a minor could be transferred to others against payment or not in view of its exploitation (art. 1, lett. D). However, this list was unable to include a whole series of behaviors that were in fact identified as new forms of slavery and which, as such, could escape the application of the law, precisely because they were not expressly provided for by the law itself.

The new article 600 has the advantage of fully satisfying the "typical" needs of the incriminating case and this because the cardinal principle of criminal law is that the rule is mandatory, that is, a person can only be sentenced on the basis of facts that are expressly provided for by the penal sanctioning rule and not for similar conduct not included in the same. It should be noted that the aforementioned article maintains a distinction between the notions of slavery and servitude, but that this, from a practical point of view, is not very important because both behaviors are punished identically. While as regards the definition of slavery in the strict sense, it is expected that a person who - availing himself of any conduct - exercises powers corresponding to the right of property is punished, for the definition of reduction in easement a whole series of activities are taken into consideration - now envisaged by the law - aimed at reducing or keeping a person in a state of continuous awe by forcing them to a whole series of services that entail their exploitation (work or sexual services, begging). This subjection becomes relevant for criminal purposes only when it has been achieved through violence, threat, deception, abuse of authority, taking advantage of a situation of physical or mental inferiority or of a situation of necessity or through the promise of sums of money or other advantages to who has parental authority or parental authority over the person. Any of these behaviors allows to identify the offense of reduction in servitude and, therefore, to apply the sanctioning norm. The subjection must be continuous or must be a habitual behavior and not a single episode. It is also a crime that is necessarily "permanent" and this has very important consequences from the point of view of jurisdiction, in fact, when the consummation of the conduct - foreseen by law as a crime - began abroad and then continued in Italy , is

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<sup>3</sup> See in particular: C. Cass., Section V, 24 January 1996, n. 2390; C. Cass., Section V, 20 March 1990, no. 3909.

certainly punishable according to Italian law pursuant to art. 6 of the CC (Offenses committed in the territory of the State). It is important to specify that with the modification of art. 600 CC operated by law 228/03, an important novelty has been introduced, namely the punishment of the maintenance conduct in a state of continuous subjection. In its original formulation, art. 600 presupposed the initial freedom of the person, subsequently reduced to slavery, while the revised text now also takes into consideration the condition of the person who is already in a condition of slavery and is then treated and subjected by others with identical responsibility. Now, on the basis of these regulatory definitions, we can therefore affirm that from a substantial point of view, there are no more doubts about the more serious criminal relevance of various cases such as, for example, the hypothesis of the minor forced by parents to begging or given up (for money or other advantages) from the same to other subjects for the purpose of exploitation.

Another relevant legal act is Law No. 47 of 7 April 2017 on “Provisions concerning the protection measures of third-country unaccompanied children”, in force since 19 May 2017. Article 17 of this law, entitled “Child victims of trafficking”, provides for the setting up of a specific programme for assistance of children who have been trafficked, envisaging assistance beyond the age of 18, and an annual fund of 154 080 euros to make payments to children who apply for damages. Further, the Law reduced the maximum period of detention of children in a reception centre from 60 to 30 days and specified that unaccompanied children are to be held in separate facilities from adults. The law also includes provisions concerning the appointment of voluntary guardians and on age assessment (GRETA report 2018a).

**Italy has ratified the following international Acts:**

- The Council of Europe Convention on Action against Trafficking in Human Beings was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005;
- The Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (“Palermo Protocol”), both of which it ratified in 2006;
- The Convention on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (ratified in 1991 and 2002);
- The Convention on the Elimination of All Forms of Discrimination against Women (ratified in 1985);
- The Convention on Forced or Compulsory Labour (No.29); the Convention on the Abolition of Forced Labour (No.105), the Convention on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No.182); the Convention on Decent Work for Domestic Workers (No.189);
- The Conventions in the criminal field which are relevant to action against “Trafficking in Human Beings”;
- The Council of Europe Convention on the fight against trafficking in human beings of 2005, the so-called Warsaw Convention<sup>4</sup>.

**Italy is a member of the European Union and has ratified, among others, the following Acts:**

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<sup>4</sup> The Convention has been ratified with the law 108 of 2010 describes the criminal cases already provided for by the code to punish trafficking in human beings. Due to the legislative intervention of 2003 with law no. 228, the Italian legal system did not need major measures to adapt to the Warsaw Convention and a report of the aggravating circumstances of the already foreseen trafficking crimes proved sufficient. The law in question has also repealed the individual aggravating circumstances envisaged by articles 600, 601 and 602, introducing a new article (art.602 ter) into the CC, listed in "aggravating circumstances". The legislator also applied art. 20 of the Warsaw Convention which commits the parties to attribute criminal relevance to the following acts, insofar as they are intentionally connected in order to allow trafficking in human beings: to manufacture a travel or false identity document; procure or provide such a document; hold, subtract, alter, damage or destroy another person's travel or identity document.

- 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;
- Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, and who co-operate with the competent authorities;
- Directive 2004/80/EC relating to compensation to crime victims;
- Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime (GRETA report 2014).

A national research (Castelli 2014) highlights the absence of coordination between the policies of the competent Ministries and, at the same time, the resistance and the structural and economic difficulty in implementing and governing a political control room with coordination, monitoring and evaluation tasks of the territorial interventions of THB. One of the effects of this lack of strategy is the uncertainty, the scarcity and the repeated cuts in the funds allocated to the Fund for anti-trafficking victims (art.13) intended for assistance and social integration programs in favor of the victims of the foreseen crimes. By the same, as well as for the purposes already contemplated by art. 18 of the Legislative Decree no. 286/1998 (stay for social protection reasons). In fact, the fund established and envisaged by this article (see art. 25, Presidential Decree 394/99) - widely used for prostitution victims who collaborate with justice and fear revenge - is extended to victims of trafficking and should be established also through the proceeds of the assets confiscated following the sentencing sentence. It seems that the legislator has not prepared sufficient means to concretely face the solidarity policies envisaged by the legislation in question, this because the fund is financed through the channels provided for by art. 18 of the Legislative Decree no. 286/1998 (only 10 billion of the old lire), or, as has been said, in a "virtual" way through the confiscation of the assets for the acquisition of which the times are often very long and sometimes the assets are made out to people of convenience). Basically, while the aims we intend to pursue increase, the money remains the same. It is hoped that, if you really want to support these reintegration projects (therefore facilitate the reporting of these behaviors) and offer a valid alternative to the exploited people, more resources will be needed, which is correct to consider as a form of investment precisely to facilitate the repression of these crimes. As regards the protection of victims in the judicial sphere, we note the scarce contestation, in criminal proceedings, of art. 601 of the Italian CC also due to its complex formulation and the extremely reduced number of compensation for damages suffered by the victims also due to the absence of an effective compensation system, also possibly through the establishment of a state fund dedicated to it.

### **3. Anti-trafficking legislation in the legal system of the Republic of Cyprus**

According to the Cypriot authorities, the most frequent forms of THB in Cyprus are transnational trafficking of adults for the purpose of sexual and labor exploitation. Cyprus is mainly a destination country for THB with the majority of victims being foreign nationals (GRETA report 2015). The most common forms of THB are for sexual and labor exploitation, while there has been a recent increase in THB for sham marriages (Scherrer and Werner 2016). According to the UNHCR Office in Cyprus, most victims of trafficking who seek asylum have been subjected to sexual exploitation. Most of them are women from African countries such as Nigeria and Cameroon and they tend to disappear before the authorities have processed their cases (GRETA report 2015).

The main legislative development is the adoption, on 15 April 2014, of **Law 60(I)/2014 on Prevention and Combating of Trafficking and Exploitation of Persons and the Protection of Victims**,

which provides the legal framework regarding the prevention and combating of trafficking and exploitation of human beings, as well as concerning victim protection.

The Government of Cyprus, with the provisions of Article 36 of Law 60(I) of 2014, as well as with Article 6D(1)(a) of The Legal Aid Law of 2002 (165(I) /2002), ensures that every victim of Trafficking and Exploitation of Human Beings has effective access to legal aid. Pursuant to Article 6D(2)(a) of Law 165(I)/2002:

«Legal aid is provided free of charge to a person who is a victim of trafficking in persons, in proceedings in a District Court for the claim for damages under the Prevention, Fighting against Trafficking in and Exploitation of Human Beings and Protection of Victims Law, as is the case at hand modified or replaced» (GRETA report 2018b).

Cyprus has come under international criticism for the regime of “artiste” or “entertainment” visas a system which favoured trafficking of women into Cyprus for the purpose of sexual exploitation. (GRETA 2011) Before 2009, there was a loophole in the local legislation that allowed cabaret owners to hire and employ young women precisely as 'artists', a job for which the Immigration Department granted a special license that facilitated traffickers. The government eliminated the gimmick in 2009 with the introduction of an amendment that requires women to have a dance diploma and other professional requirements. The change naturally caused a lot of annoyance to the owners of the premises who came to the point of staging protests before the Ministry of the Interior to ask for the abolition of the amendment.

The most important law on trafficking in human beings is the Law 60(I)/2014 on the Prevention, Fighting against Trafficking in and Exploitation of Human Beings and Protection of Victims. The Law revises the legal framework governing the prevention, fighting against trafficking in and exploitation of human beings and protection of victims and it is promulgated **for the purposes of harmonizing national legislation with the following instruments:**

- Council Framework Decision 2001/220/JHA of 15 March 2001, on the standing of victims in criminal proceedings;
- Council Directive 2004/81/EC of 29 April 2004, on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities;
- European Parliament and Council Directive 2011/36/EU of 5 April 2011, on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

In Cyprus the most recent amendments (Foreigner Law), made in 2017, align the national law with the EU Directive 2014/36/EU on seasonal workers as well as the EU Directive 2014/66/EU on intra-corporate transfers. The Cypriot Refugee Law (Asylum Law) was last amended in 2016 to align with the recast Directive 2013/32/EU on asylum procedures and the Directive 2013/33/EU on reception conditions. Cyprus transposed the Directive 2011/36/EU in 2014 with Law 60(I)/2014 on the Prevention and Combating of Trafficking and Exploitation of Persons and the Protection of Victims. However, although the new legislation is comprehensive it lacks gender perspective in that it does not recognize the different needs and experiences of women and men victims of trafficking although it is child specific (Scherrer and Werner 2016).

In addition and as indicated by the Cypriot Government, the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and the case-law of the European Court of Human Rights are legally binding in Cyprus. The Constitution of Cyprus contains identical provisions as those in the European Convention on Human Rights.

**As well as for the purposes of optimal implementation of the following Acts:**

- Law N° 11(III) of 2003 ratifying the United Nations Convention against transnational organized crime and the Protocols thereto, and especially the Protocol to prevent, suppress and punish trafficking in persons especially women and children, supplementing the United Nations Convention against transnational organized crime;
- Law N° 57 of 1983 ratifying the Convention for the suppression of the traffic in persons and of the exploitation of the prostitution of others;
- Law N° 6(III) of 2006 ratifying the Optional Protocol to the Convention on the rights of the child, on the sale of children, child prostitution and child pornography;
- Law 38(III) of 2007 ratifying the Council of Europe Convention on Action against Trafficking in Human Beings (International Labour Organisation 2014).

The definition of “victim of trafficking of human being” contained in Law 87(I)/2007 required that the person concerned had sustained damage or financial loss directly caused by the offence of THB. This requirement has been lifted in the corresponding definition in Law 60(I)2014. A new feature of Law 60(I)2014 is that it penalises persons who use services provided by victims of trafficking if they should reasonably have been able to conclude or suspect that the service was provided by a victim of trafficking. Another development is that statements made by victims of trafficking to certain professionals or otherwise qualified persons (police officers, social services officers, psychologists, doctors, psychiatrists or members of NGOs) count as evidence in court. Law 60(I)2014 includes special provisions concerning support and protection of child victims of trafficking, including in the context of criminal investigations. Another relevant new law is Law 91(I)/2014 on the Prevention and Combating of Sexual Abuse and Sexual Exploitation of Children and Child Pornography, which is a transposition of EC Directive 2011/93 on combatting the sexual abuse and sexual exploitation of Child Pornography, replacing Council Framework Decision 2004/68/JHA (GRETA report 2015).

A national strategy and action plan on gender equality (2007-2013) was prepared by the national machinery for womens’ rights, in collaboration with government agencies, local authorities, academic institution and human rights bodies, and was adopted by the Council of Ministers on 29 August 2007. The National Machinery for Women’s Rights has a central role in monitoring and co-ordinating the implementation of this Action Plan. One of the priority areas of the Action Plan is to combat all form of violence against women. Including trafficking in women. This included actions such as information and awareness-raising campaigns on the dimension and consequences of violence against women, and training of members of the police force, judges lawyers and other professionals involved in handling cases of violence against women (GRETA report 2011).

In relation to the provision of victim support and protection of the victims of trafficking, there is currently a lack of a comprehensive and holistic approach to ensure that the victims of trafficking in human beings are provided with adequate services that take into account their specific needs, and address the short and long-term impact of trafficking. Only one shelter of victims is currently in operation, which does not provide any in-house psychosocial support programmes. Furthermore, despite the number of men identified as victims of trafficking in human beings (mainly for labour exploitation), there is no state shelter open to men. In terms of prevention, despite the recent criminalization of use of services by victims of trafficking in 2014 and despite the implementation of a campaign focusing on demand reduction, this has not shown any quantitative or qualitative positive impacts, and the gender dimension of demand, particularly for sexual exploitation, is not addressed in any systematic manner. Efforts are mainly sporadic and ill-planned, with no follow-up or evaluation as to their effects (Scherrer and Werner 2016).

GRETA (report 2011) considers that the Cypriot authorities should step up their efforts to provide specialised and systematic training to all relevant professionals, such as law enforcement officers, border guards, consular officers, labour inspectors and social welfare officers, including with a view to improving the identification of victims of trafficking in human beings for labour exploitation and emerging new forms of

trafficking in human beings. GRETA encourages the Cypriot authorities in their plans to introduce a comprehensive and coherent data collection mechanism that would make it possible to share information among the main actors in the fight against trafficking in human beings, while respecting the rights of data subjects to personal data protection. Statistical data should be disaggregated (into gender, age, type of exploitation, etc.) and its collection should be designed in a way that enables the authorities to determine the scale of the problem and the most appropriate measures to be taken with regard to the different forms of trafficking in human beings and groups affected. GRETA urges the Cypriot authorities to increase their efforts to provide information and legal assistance to victims of trafficking in human beings about their legal right to file a claim for compensation against the trafficker, and to ensure that victims have effective access to legal aid in this respect. It also urges the Cypriot authorities to make the State compensation system accessible to all victims of trafficking in human beings, irrespective of their nationality and residence status.

#### 4. Anti-trafficking legislation in the Maltese legal system

Malta is a destination country for European women subjected to trafficking in persons, specifically forced prostitution. Malta is likely a destination country for men subjected to forced labor as reflected by a report in 2009 that three Pakistani males were forced to work in Pakistani restaurants in Malta. The dozens of children and 4,304 total irregular migrants currently residing in Malta from African countries may be vulnerable to human trafficking in Malta's "grey" informal labor market.

**The legal framework for victims of trafficking in human beings has several provisions at place:**

- **Immigration Act Malta Chapter 217 of the Laws of Malta;**
- **Criminal Code Chapter 9 Malta of the Laws of Malta;**
- **White Slave Traffic (Suppression) Ordinance Chapter 63 of the Laws of Malta;**
- **Victims of Crime Act Chapter 539 of the Laws of Malta;**
- **Permission to Reside for Victims of Human Trafficking or Illegal Immigration who cooperate with the Malta Authorities Subsidiary Legislation 217.07 of the Laws of Malta<sup>5</sup>.**

According to the CC (Chap. 9), all forms of trafficking are prohibited. Malta follows the United Nations Protocol to Prevent and Combat Trafficking in Persons, and due to this commitment, the Act III (entitled *Of The Trafficking of Persons*) was introduced in the Maltese Criminal Code in 2002. Besides this reform, trafficking of people in Malta for the purpose of sexual exploitation was already considered a criminal offence under the White Slaves Traffic (Suppression) Ordinance (Chapter 63). This ordinance transposed the 1904 International Agreement for the Suppression of White Slave Traffic into national law, which was afterwards amended by the Protocol approved by the General Assembly of the United Nations on the 3 of December, 1948. With the adoption of new legislative amendments in 2013, punishment for human trafficking cases in Malta range from six to twelve years of imprisonment. In the cases of trafficking for the removal of organs, the sentence of imprisonment goes for a term between four and twelve years according to the Maltese Criminal Code. These sentences can be aggravated by one degree if the victims found are minors. The prescribed penalties are commensurate with those prescribed for other serious crimes. Besides, trafficking with persons is a crime also dealt under the Title of the Maltese CC focusing on Crimes Against Humanity and War Crimes and the Title addressing Crimes Against the Peace and Honour of Families and Against Morals.

**Malta has ratified the following international Acts (GRETA report 2012):**

- The Council of Europe Convention on Action against Trafficking in Human Beings was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005;

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<sup>5</sup> See in particular: <https://ec.europa.eu/anti-trafficking/member-states/Malta>.

- The Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (both of which it ratified in 2003);
- The Convention on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (ratified in 1990 and 2010 respectively);
- The Convention on the Elimination of All Forms of Discrimination against Women (ratified in 1991), as well as conventions elaborated under the International Labour Organisation.

**As a member of the European Union, Malta has implemented the following Acts (GRETA report 2012):**

- The Directive 2011/36/UE of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, replacing Council Framework Decision 2002/629/JHA;
- The Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, and who co-operate with the competent authorities;
- The Directive 2004/80/EC relating to compensation to crime victims and Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings.

The Government of Malta demonstrated minimal progress in its efforts to prosecute trafficking in persons offenses and punish trafficking offenders. Malta's criminal code prohibits trafficking for commercial sexual exploitation and labor exploitation and prescribes punishments of two to nine years' imprisonment. These prescribed penalties are sufficiently stringent and commensurate with punishments prescribed for other serious crimes, such as rape. The government did not convict and punish any alleged trafficking offenders during the reporting period. Although, the Maltese government made some progress in advancing anti-trafficking prevention activities over the last year. The government's agency for social welfare, APPOGG continued to produce detailed brochures to raise awareness about human trafficking, including information on identifying potential victims and outlets for victim assistance, and distributed them at health clinics, community centres, churches, and in entertainment areas to target potential clients of the sex trade. In late 2009, the government and an international cosmetics company forged a partnership whereby proceeds from products sold by the business would assist the government in developing an awareness campaign on child trafficking. Malta's government Employment and Training Corporation conducted informational sessions within migrant detention centres to inform migrants about their rights and the process by which to attain work permits and proper employment, if they are granted asylum and released. The government did not formally monitor its anti-trafficking efforts and continued to lack an anti-trafficking national action plan. The government did not report any specific measures to reduce the possible participation of Maltese nationals in child sex tour.

The Government of Malta does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. Despite these efforts, the government did not demonstrate progress in convicting and punishing trafficking offenders, or in identifying and ensuring the protection of trafficking victims during the reporting period; therefore, Malta is placed on Tier 2 Watch List. Those countries who are at Tier 2 Watch List are those whose governments do not fully comply with the TVPA's (Trafficking Victims Protection Act) minimum standards, but are making significant efforts to bring themselves into compliance with those standards AND: a) the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; b) there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; c) the determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year.

## 5. Anti-trafficking legislation in the Austrian legal system

In Austria there are some important laws, not only one most important law that contrast the problem because these laws are interwoven with one another. THB for prostitution purposes is specifically punished by article 217 of the CC. The first paragraph of article 217 sanctions the recruitment or kidnapping of a person for prostitution purposes in a foreign country regardless of whether or not the person had previously prostituted himself. Trafficking for prostitution is punished with imprisonment from six months to five years. The use of fraud, threats or force to obtain economic profits are aggravating circumstances, punished with imprisonment for ten years. No article specifically condemns THB for purposes other than prostitution (domestic slavery, economic exploitation, or even strip tease and disco entertainment). The Austrian CC, however, represses slavery. Article 104 states' «Anyone who trades in slaves is punished with imprisonment from ten to twenty years» and «Anyone who incites the servitude of a person or reduces them to a condition analogous to slavery (...)» from article 217, article 104 is applicable to all cases of THB. In July 2000, article 105 was introduced in the Aliens Act to suppress the economic exploitation of a foreigner and abuse of his vulnerable situation (GRETA report 2015). **In Austrian criminal law (Strafgesetzbuch, also StGB) THB is punishable under the offense of human trafficking (§. 104a of the StGB), cross-border prostitution (§ 217 StGB) and exploitation of a foreigner (§ 116 FPG also alien's police law). The Austrian Task Force is in charge of developing National Action Plans against human trafficking and have the responsibility to monitor the implementation of these plans.** The Criminal Intelligence Service unit against Human Trafficking and Smuggling operates a hotline and is responsible for the identification process of trafficked persons. Police are obliged to inform victims of human trafficking about their rights to psychosocial and legal assistance (art. 66a Code of Criminal Procedure or StPO) before conducting an interrogation. Victims of Trafficking are entitled to a reflection and recovery period of 30 days. Psycho-social assistance services cover comprehensive preparation of emotionally distressed victims for court procedures, accompaniment for investigation and trial. Legal assistance services include legal counselling and representation by a lawyer. Victims who have been injured in their sexual integrity and self-determination, and minors, belonging to particularly vulnerable groups have a right to remain silent and to be interrogated in a sensitive way during the main trial. Victims may assert in the criminal proceedings as a private party without financial burden for their claims, such as outstanding wages, loss of income, medical expenses and physical damage compensation. Victims have a right to psychological court assistance in civil proceedings. Legal aid is available instead of legal process support. According to the Victims of Crime Act (Verbrechensopfergesetzes – VOG), victims of crime have a right to state compensation.

**The stay of third country nationals in Austria is regulated by three different legislations:**

- **The Settlement and Residence Act 2005 (Niederlassungs- und Aufenthaltsgesetz or NAG);**
- **The Asylum Act (Asylgesetz) and the Aliens Police Act 2005 (Fremdenpolizeigesetz 2005, in short FPG).**

Depending on the type of residence permit, a specific document based on either the asylum law, the Aliens Police Act or the Settlement and Resettlement Act is issued and legitimizes the stay in the federal territory. The residence title for trafficked persons who cooperate with authorities is laid down in the Asylum Act under § 57 (1)2. This so called “Special Protection” title was created specifically for victims and witnesses of crime, in particular witnesses or victims of THB, cross-border prostitution or family violence. This permit has been instituted with the purpose of facilitating a criminal proceeding against traffickers hence focusing on the aspect of criminal justice as constituted by the UN Protocol against Trafficking in Persons. Therefore this title is only valid for one year and to renew it depends entirely on whether a proceeding (criminal or civil) is still in progress. Only people who are able to take it upon themselves (and the risks it may entail) to testify against their perpetrators benefit from these title. The fact that the special protection title is tied to a testimony

against exploiters is limiting protection to a few. Upon the first interrogation (Erstbefragung and registration of the application for asylum one receives a Procedure Card (§ 50 Asyl). Once admitted to the asylum procedure, the asylum seeker obtains a Preliminary Residence Permit (§ 51 Asyl) for the duration of the procedure. At the end of the procedure they may be granted asylum or subsidiary protection. This depends on the credibility of the asylum seeker. If asylum authorities do not believe the story of the asylum seekers, do not believe how he/she entered Austria and do not believe in the reasons for seeking asylum then a negative decision is passed against which the asylum seekers can appeal and if the appeal is accepted they can be granted a title to stay. If the appeal is not accepted a second negative decision is issued by the authorities and then the asylum seekers can file a complaint against this but are already in danger to be soon deported to his/her home-country. If victims of trafficking do not mention their story of exploitation/trafficking and even if they do, their chances are minimal because the credibility of the asylum seeker is of main importance and most asylum seekers are not believed by the asylum authorities. In Austria it is the residence title that establishes whether a third country national has access to the labour market and if so, defines under which conditions and limitations access is possible. In some cases additional work permits need to be issued. This is the case for the special protection permit. The holder is entitled to full access to the labour market under the condition that employment for a particular job and position can only start once the Public Employment Service approves an additional work permit for that specific job. The work permit must be renewed each year and a new work permit is required for each new job.

**Austria is a signatory to all relevant international legal instruments to combat human trafficking (Gebrewold *et all* 2018):**

- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. Supplementing the United Nations Convention Against Transnational Organized Crime (2000);
- The Council of Europe Convention on Action against trafficking in Human Beings (2005);
- The UN Convention on the Rights of the Child (1989) and the Optional Protocol of the Sale of Children, Child Prostitution and Child Pornography (2000) as well as the UN Convention on the Elimination of all forms of Discrimination against Women.

**European Union Legislation relevant in the context of trafficking of human beings and binding for Austria includes:**

- The EU Council Framework Decision of 15 March 2011 on the standing of victims in criminal proceedings (2001/220/JHA);
- The Directive 2011/36/EU on preventing and combating trafficking in human beings and preventing its victims which has been transposed by Austria. Furthermore the EU has implemented its own Strategy towards the Eradication of Trafficking in Human Beings (2012 – 2016) which was evaluated in 2017<sup>6</sup>;
- The Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (Gebrewold *et all* 2018).

In Austria the Special Protection Title (§ 57 (1) 2, created especially for victims and witnesses of crime, especially witnesses or victims of THB , cross-border prostitution or family violence has been instituted with

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<sup>6</sup> In order to coordinate and intensify anti-trafficking measures in Austria, the Austrian government decided to set up the Task Force on Combating Human Trafficking in 2004. The Task Force is in charge of elaborating National Action Plans on Combating Human Trafficking and of monitoring their implementation. Austria was one of the first states to have its anti-trafficking measures evaluated twice by the Council of Europe's expert group GRETA.

the purpose of facilitating a criminal proceeding against traffickers and exploiters. The fact that the special protection title is tied to a testimony against exploiters is limiting protection to a few. If victims are not able to (psychologically or because there is simply no possibility to) testify against the perpetrators they will not receive this title. If they wish to remain in the country their options are very much limited and may put victims of trafficking into precarious situations that further enhance their vulnerabilities. If they fail to obtain an alternative residence permit and stay in the country illegally, they are in danger to be deported to their country of origin. The switching to a Red-White-Red Card plus after one year is very difficult, because many victims of trafficking do not earn enough per month (the required € 933,06/month) and many have not yet obtained the A2 certificate in the German language. Furthermore some legal proceedings may not be active up to one year, at times they are discontinued/suspended by the court because of some reasons (e.g. the perpetrator can not be traced, the credibility of the victim or its story is questioned etc.). Lack of work experience or lack of reference letters to certify work experience present a huge obstacle for trafficked victims looking for a job. A trafficked victim may have well worked prior to the trafficking but can not prove or utilize it because the victims worked e.g. in the informal sector. CVs are often a prerequisite for a job application in Austria, many victims of trafficking are unexperienced in writing CVs. Employers hesitate to employ someone who does not have or cannot demonstrate a (relevant) job experience. Many employers do not want to invest in employees and provide on the job training. The majority of the available jobs are therefore being low wage and precarious such as cleaning, house keeping, kitchen or hotel services. Sectors that enhance, reproduce and thrive upon vulnerabilities.

Another relevant difficulty in its application is the fact that victims of trafficking depend in their asylum case on credibility. If the asylum authorities do not believe them they do not get the protection title, so only few victims get it. If they stay in the asylum case, they are not allowed to work, and receive often negative decisions and either then go back on their own or are deported to the countries of origin. Another difficulty is also that the judges in court cases against perpetrators do not believe in the credibility of the trafficked victim. This leads to closure/suspension of the court case and the victim will not get the protection title.

In Austria the legislation is only effective to a certain extend. If the authorities believe in the credibility of the victims of trafficking he/she has a chance to get asylum or subsidiary protection, and with these titles the victim has free access to the labour market. If the victim is brave enough and/or able to mention/provide the trafficker/exploiter it still depends on the authorities to believe in the victims credibility. The victim may receive the protection title but is also not sure if a job will be achieved through the protection title. A victim that is afraid or unable to mention the perpetrator can only stay in the asylum case and if the credibility of the victim is not believed by the authorities, the asylum case will end negative and the victim has to leave the country. The protection title does not give free access to the labour market. Employers have to fill out forms and pay for the application to the Public Employment Service and they have to wait eight weeks for the answer if they employment is allowed or not. These are barriers for employers. If the victims are then still employed they can not easily change the job, when there are irregularities, the employers know that and may take advantage of the victims vulnerability. The protection title shall give victims of trafficking free access to the Labour Market. The protection title shall be renewable even if the court case does not continue after the first year. There should be another title to stay in Austria for victims of trafficking besides the special protection title and this could be a Residence Permit out of Personal Grounds. This should make it possible for victims of trafficking to stay even if they cannot/do not want (because they are afraid or threatened by their exploiters/traffickers) to mention the names of the perpetrators, There should be a liability for the prime contractor to secure that the victim of trafficking that is working with a subcontracting company of the prime contractor is not exploited by the subcontracting company, to secure that the victim of trafficking has health insurance, is paid fairly and is treated according to the Austrian labour law. The victims of trafficking should be given a longer time to show up with a A2 German certificate. The monthly salary of € 933,06 is for some victims, especially in the beginning too high, they do not earn so much, In this case an alternative look at the

case of the victim should be applied to see other factors of integration etc. to still give the victim a residence permit.

## 6. Anti-trafficking legislation in the Greek legal system

Greece is predominantly a country of destination and transit of victims of trafficking in human beings, but to a certain degree also a country of origin, primarily sexual and labour exploitation but also for forced begging (Scherrer and Werner 2016). Greece has remained a prime spot for criminals transporting and exploiting human cargo over at least two decades. The geographical location of the country, its EU membership, the frailties in its asylum and migration system as well as the difficulties in monitoring the admittedly high numbers of new arrivals have rendered the country particularly attractive not only to people smugglers, but also human traffickers (Angeli 2016).

Up until 2002, Greece had no legislation in place against THB. Perpetrators of human trafficking, when brought to justice, were being charged only for profiting from illegal operations (Lymouris 2007), whereas the victims were not recognised as such. **The offence of trafficking in human beings was first introduced into the Greek CC in 2002 through Law 3064/2002 on “Combating trafficking in human beings, crimes against sexual freedom, child pornography and the financial exploitation of sexual life in general and the assistance to the victims of these acts”** (Council of Europe 2018). The protection and rights of victims of trafficking are being recognised through the legislative updates and ministerial decisions of many laws that include the rights of everyone that resides in Greece.

In addition to Article 323A (trafficking in human beings) and Article 351 (trafficking in human beings for sexual exploitation) of the CC, there are a number of other CC provisions which are relevant to action against THB (see paragraph 57). Important amendments were introduced in 2010 through Law 3875/2010 on the Ratification and Implementation of the UN Convention against Transnational Organised Crime and its three Additional Protocols and Other Provisions, which broadened the definition of THB by including new forms of exploitation, such as forced begging, and introduced further procedural guarantees for the protection of the rights of victims, including an increase of the recovery and reflection period to three months for adults and five months for children. Article 12 of Law 3064/2002 sets out the principles of the provision of assistance to victims of human trafficking and related crimes, the operational details of which are provided for in Presidential Decree 233/2003, which entered into force on 28 August 2003. This decree determines the responsible bodies, procedures and means of providing protection and assistance to victims of trafficking and related offences (GRETA report 2017).

**The legal framework around victims of human trafficking in Greece is a relatively complex one and in order to defend the rights of all the victims of trafficking we need all of the different provisions at place:**

- Presidential Decree 233/2003: Applies to all victims of trafficking of human beings, nationals or foreigners, and it secures that their protection does not depend on the cooperation with State authorities. Some provisions of PD 233/2003 are cross-referred in Law 4251/2014 that deals exclusively with third-country nationals.
- Law 2928/2001: Amendment of provisions of the Criminal Code and of the Code of Criminal Procedure and other provisions on citizens’ protection from offences of criminal organizations;
- Law 3274/2004 (GG 195/A/19-8-04): on residence permit for victims of trafficking;
- Law 3386/2005 (GG 212/A/23-8-2005): on Entry, stay and social integration of third country nationals on Greek territory;
- Law 3536/2007 (GG 42/A/23-2-2007): on residence permit for victims of trafficking;
- Law 3625/2007 (GG 290/A/24-12-2007): ratification of the Convention on the Rights of the Child;

- Law 3811/2009: Gives the right to victims of crimes of violence that have been committed intentionally to claim compensation;
- Law 3875/2010: extended law 3226/2004, which establishes mainly the provision of legal aid to citizens of low income, to victims of trafficking in human beings or migrant smuggling;
- Law 4198/2013: aims at transposing Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA to which it makes explicit reference. The adoption of the above Law brought changes to the Criminal Code and the Criminal Procedure Code in view of harmonizing crimes of trafficking in human beings and ensuring the protection of victims in criminal proceedings. Amendments through the Law 3811/2009 defines the compensation granted to victims;
- Law 4216/2013: ratifies the 2005 Council of Europe Convention on action against THB;
- Law 4251/2014: represents the first code concentrating and classifying provisions on immigration and social inclusion issues. More specifically, the second Part, Section B of Law, transposes Directive 2004/81/EU in Greek legal order and it has been used in this assessment in an auxiliary manner as regards the assistance and support granted to victims of trafficking in human beings who are third-country nationals;
- Law 4267/2014 (which transposed the EU Directive 2011/93/EE): In the case of victims of trafficking in human beings is provided that the defendant prepays the costs and fees of the plaintiff at the judge's discretion up to the amount of six hundred euros. In addition, with the Law 4276/2014, if a person prosecuted for infringement of the Immigration Law, for illegal prostitution, or for participating in criminal activities denounces that she/he is a victim of trafficking and the activities for which is prosecuted are direct result of her/him being a victim of trafficking human beings, then her/his prosecution may temporarily stop. If the complaint proves to be valid, then the abstaining from prosecution becomes definitive;
- Law 4332/2015: which amended law 4251/2014, provides for granting of residence permits for, among others, victims of trafficking who do not cooperate. As foreseen, if victims of trafficking in human beings who do not cooperate with the competent authorities, are granted, free of charge, a residence permit for humanitarian reasons according to a decision of the Minister of Migration Policy. The residence permit is of one-year duration, grants the right to dependent employment or provision of services or provision of work and can be renewed for two years each time only under the precondition that the relevant criminal proceedings continue. If criminal proceedings are not pending, the residence permit is renewable for one year. The holders of this permit have free of charge access to medical services and health care (art. 33 of law 4368/2016);
- Law 4478/17 (Government Gazette A '91/23-06-2017): transposed into the national legal order the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. According to the above mentioned Directive “victim is the person who has suffered damage (physical, health, honour, moral or economic or deprivation of freedom) caused by a criminal offense”. Indicatively, the law includes victims of racist violence, victims of terrorism, victims of human trafficking, electronic and financial crime; special mention is made of minors.

**As a member of the European Union, Greece has ratified the fundamental legal instruments against of THB:**

- The UN Convention against Transnational Organized Crime and its Protocols - the “Palermo Protocol”, (Law 3875/2010);

- Directive 2011/36/EU of the European Parliament and of the Council of the EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims;
- Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who co-operate with the competent authorities;
- Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims;
- Directive 2012/29/EU of the European Parliament and the Council of the EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Framework Decision 2001/220/GAI of 15 March 2001 of the Council of the EU on the standing of victims in criminal proceedings.

Greece transposed the 2011/36/EU Directive with the Law 4198/2013 (215/A'/2013) setting a new legal framework for the prevention and protection of victims of THB. Data available shows a significant decrease in the number of identified victims in Greece in recent years. The low number of identified victims in Greece demonstrates the challenges the authorities are facing in taking proactive action. It is not clear whether the Police are investigating trafficking cases on a systematic basis and taking a proactive approach to the identification of victims. There is no evidence to suggest that the Police incorporate a gender perspective in their work, or if their identification indicators take into account the gender specificities of THB (Scherrer and Werner 2016).

Based on all of the above, we understand that legal framework around victims of human trafficking in Greece is a relatively complex. The Law 3064/2002 that recognised the victims of human trafficking as such, although important, is not enough by itself to guarantee the rights of foreigners that have been victims of human trafficking. The addition of the Presidential Decree 2333/2003 as well as the law 4267/2014 help a lot people that are foreigner victims of trafficking and reside in Greece illegally, since they both ensure protection the victim from further prosecution during the examination of the trafficking claim and in case the claim is validated. Also, during the period 2015-2018 we had quite a few legislative updates (as seen above) in favor of social policies that also ensured better rights and access to refugees and migrants (and consequently to foreign victims of trafficking) to legal representation and public services especially through the collaboration with NGOs, but since the elections of 2019 we have seen new laws passing that change the processes and limit basic rights of people from third countries that enter the country illegally. **Errore. Il segnalibro non è definito.** Which greatly affects also victims of trafficking, as well as an anti-NGO rhetoric that could potentially harm important services that are being offered to victims of trafficking (and refugees/migrants in general).

A 2017 article also highlights the lack of supportive structures in place for boy victims of child sexual abuse. As of 2019 this sentiment can still be applied, with much of the work conducted by NGOs and EKKA<sup>7</sup> focused on women and girls. In terms of practical applications of the above provisions, criticism has been directed at the Greek courts' lack of ability to deploy audiovisual means, with some Judges even disallowing their use. In some cases judges have demonstrated unsophisticated understanding of re-traumatization and the impact of psychological trauma on victims of trafficking. GRETA notes that in some trafficking cases, experts reported a lack of victim-centered approaches, including cases of law enforcement conducting interviews described by victims as interrogations.

The law also provides for non-disclosure of witness' personal information. Anyone who discloses information which could lead to the disclosure of the identity of child victim of sexual exploitation can risk two years of imprisonment. Reportedly no child victims of trafficking have received full witness protection as of 2019. In order to tackle some of the above issues, civil society has engaged in a number of preventative and

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<sup>7</sup> National Center for social Solidarity. The objective of the E.K.K.A. is the coordination of the network that provides social support services, care and solidarity to individuals, families, groups and populations experiencing crisis situations or are in need of emergency social aid. See in particular: <http://www.ekka.org.gr/>.

training measures. Since the National referral mechanism has been established, victims of trafficking are provided with free legal assistance in criminal proceedings and no fee is required to file a claim. However, key challenges exist for SEC victims in the refugee community. Lack of translation services and a lack of awareness of the legal system make it particularly difficult for children and unaccompanied minors to access legal services. Fortunately, some bar associations in Greece have undertaken steps towards the legal support of child refugees and migrants. In relation to child victims of trafficking and unaccompanied migrant children, Greek law provides that unaccompanied minors shall be referred to accommodation centres where these are suitably adapted for this purpose, for as long as they stay in the country, or until they are placed with a foster family or in supervised lodgings. However, in reality these laws have not been fully implemented. Greece has faced criticism from the Commissioner of Europe for this failure and for the common practice of registering unaccompanied children as adults. The government reports that child victims of trafficking in Greece receive psycho-social support, psychotherapy, medical care, vocational guidance and legal representation of assistance for voluntary repatriation until they are socially reintegrated. NGOs have reported that despite improved cooperation and increased referrals from law enforcement, some police officers have remained reluctant to refer victims to NGO support services. In 2018, the International Commission of Jurists and the European Council for Refugees and Exiles filed a legal challenge for the violations of migrant children's social rights on mainland Greece and Greece's failure to meet its child care and protection obligations. The complaint highlighted reports of sexual abuse and exploitation occurring within camp facilities. In May 2019, this complaint was deemed admissible by the European Committee of Social Rights. Victims can claim compensation through the penal prosecution of the accused person. The Code of Penal Procedure further ensures victims of trafficking can make a claim for compensation by their offender. The victim, in joining the criminal proceedings as a civil party, can seek compensation for financial damages. Up to 2019, no victims of trafficking have received compensation from their offender. Victims of sexual abuse and exploitation can seek redress from the perpetrator according to Article 932 of the CC for moral damages. In cases where compensation will be paid by the offender, but the offender has no financial resources, the State will advance payment of the compensation. Whilst legislation states child victims should receive compensation, in reality this does not occur due to bureaucratic mechanisms and significant resource gaps.

## 8. Comparing legislative systems: a summary framework

The previous description of the regulatory and operational systems relating to trafficking in human beings implemented by the partners of the LIREA project was intended to provide a first contribution to the understanding of a problem variously known by the professionals themselves. Some of the salient aspects are summarized below, in a comparative key. Trafficking in human beings, from its earliest manifestations to today's connotations, has undergone constant transformations in Europe, becoming a reality that diversifies on different levels. In the context of the sexual exploitation of prostitution, perhaps more prevalent, exchanges of women and minors of different nationalities have alternated since the 1990s with a gradual increase in the number of countries of origin involved, with a succession of variegated tendencies, by involvement of some victims in the control of exploited people, to exploitation in other criminal activities (Castelli 2014). With regard to this aspect of THB, the regulatory systems of the countries taken into consideration are attributable to different models regarding prostitution. **The four policy models governing the sector in the European Union are: abolitionism, neo-abolitionism, prohibitionism, regulationism** (Brussa 2000; Outshoorn 2004). The most widespread model is the neo-abolitionist one, applied in Cyprus and in Italy which, despite tolerating the trade in outdoor and indoor sex, with reference to the indoor market, the existence in houses of tolerance is not prohibited. Malta applies the prohibitionist model and prohibits both indoor and outdoor prostitution. Greece and Austria control the regulatory model whereby both indoor and outdoor prostitution are regulated at the state level (Di Nicola 2006).

The following table shows, for each partner, the most important law on trafficking in human beings:

Partners of the LIREA project	The most important law on trafficking in human beings
<b>ITALY</b>	Article 18 of the National Law on Migration (Legislative Decree No 286 of 1998) Law n. 228 of 2003 "Measures against trafficking in persons"; The Italian CC also provides for prosecution for trafficking in children under other offences such as 'child prostitution' (article 600-bis), 'child pornography' (article 600-ter) and 'possession of pornographic material' (article 600-quater)
<b>CYPRUS</b>	Law 60(I)/2014 on the Prevention, Fighting against Trafficking in and Exploitation of Human Beings and Protection of Victims (it was first established under Law 87(I)/2007)
<b>MALTA</b>	Criminal Code Chapter 9 Malta of the Laws of Malta. Following Malta's commitment to the United Nations Protocol to Prevent and Combat Trafficking in Persons, Act III (entitled Of The Traffic of Persons) was introduced in the CC in 2002
<b>GREECE</b>	Law 3064/2002 and Presidential Decree 233/2003 prohibit both sex trafficking (351 P.C.) and forced labor (323A P.C.) and prescribe punishments of up to 10 years' imprisonment, or over 10 years imprisonment in case of aggravating circumstances
<b>AUSTRIA</b>	104a CC "Trafficking in human beings". In July 2000, article 105 was applied in the Aliens Act to represent the economic exploitation of a foreigner and the abuse of his vulnerable situation

Since 1998, Italy has been at the forefront of the fight against THB and the protection of victims, both children and adults. The Italian model, which is still considered as a best practice in this field, was built on the principle that an effective anti-trafficking strategy should be based on a victim rights-centered approach (European Commission). In the legal discipline of the problem, Italy is then followed by Austria, Malta, Greece and Cyprus. Greece is the state with the most complex regulatory framework. Forth mentioning, in this State, is the crucial role that the NGOs and the civil society play (Lymouris 2007).

The regulatory systems considered have ratified the Convention against transnational organized crime and the additional protocols<sup>8</sup>. The first protocol of Palermo is also signaled for a particular victimological attention with respect to people offended by trafficking: protective measures are in fact contemplated in article 6 which provides for the assistance and protection of victims of trafficking (Lannes 2016). Each member State protects the confidentiality and identity of victims of trafficking in persons, including by excluding advertising for legal proceedings concerning trafficking. Each member State provided by its legal or administrative system provides for the necessary measures to protect, in appropriate cases, to provide victims of trafficking in persons: a) information on the relevant judicial and administrative proceedings; b) assistance to ensure that their opinions and concerns are presented and examined at the appropriate stages of the criminal proceedings against the perpetrators of the crime, so as not to prejudice the rights of the defense. Each member State shall consider changes to measures relating to the physical, psychological and social recovery of victims of trafficking in persons and, in appropriate cases, in collaboration with non-governmental organizations, other reports and other civil society entities to provide: adequate accommodation; b) advice and information, in particular in relation to their rights registered by law, in a language understood by the victims of trafficking; c) medical, psychological and material assistance; and d) employment opportunities, educational and training opportunities. Each member State shall take into account, in applying the provisions of this article, in particular, the gender and special needs of victims of trafficking in persons, in particular the specific needs of children, including adequate accommodation, education and care . Each member State seeks to ensure the physical safety of victims of trafficking in persons while they are on their territory. Each member State provides its own internal legal system containing the measures that offer victims of trafficking in persons the possibility of obtaining compensation for the damage suffered.

<sup>8</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, GA Res. 55/25, done November 15, 2000, entered into force December 25, 2003 (Trafficking Protocol).

The Italian legal system provides protection similar to that indicated in the first protocol of Palermo. Article 18 of the Legislative Decree no. 286/1998 through the release convertible into work or study reasons) in favor of foreign people (adults or minors) who during the minor age committed a crime punished with a prison sentence and for which they were convicted (possibly even with suspension) an imprisonment, an alternative or substitute sentence or a probationary declaration by an accredited association (Di Muro and Di Muro 2017). For Greece, on the other hand, GRETA is underlined, efforts to identify the victims of work are unequaled, especially in the agricultural sector, in cleaning services, and in the tourism industry. Concrete actions to identify unaccompanied and most vulnerable children, often forced to forced begging and delinquency, are also insufficient. For Cyprus and Greece there is a need to strengthen prevention measures, especially those in the countries of origin of the victims and long-term ones. There is also a need to improve the training of all staff involved. Data on the protection of victims by the police and on the possibility of the same to obtain compensation are also considered to be rather unsatisfactory. Italy is mentioned with regard to the first aspect as a positive exception, noting that all the victims who participated in social integration programs also benefited from adequate protection.

**The following table summarizes the main assistance measures to victims of trafficking in the five regulatory systems:**

<b>Partners of the LIREA project</b>	<b>Assistance and support provided to victims</b>
<b>ITALY</b>	A complex structure for the assistance to trafficked persons was then developed on the basis of the abovementioned laws and is now in place at the national level, working through three main tools: programmes for temporary assistance (implemented in compliance with art. 13 of Law No 228/2003); programmes for long-term assistance and social inclusion (implemented in compliance with art. 18 of Legislative Decree No 286/1998); national Anti-Trafficking Toll-Free Helpline (a “system action” laid down in art. 2 of Ministerial Decree of 23 November 1999 regulating the implementation of art. 18 of Legislative Decree No 286/1998)
<b>CYPRUS</b>	According to the Law 60(I)/2014, victims of trafficking are protected from penalties in cases where the offence is directly related to their status as victims, including illegal entry and residence. Victims are granted, a reflection period of at least one month, with the possibility of renewal. No fees are required for the issue of the relevant temporary residence permit. During this period the victims have the following rights: protection from deportation; the right to medical care; the right to information concerning their rights and possibilities provided for by the Law; public allowance; the right to psychological support; protection by the police; free translation and interpretation services; protection of personal data; access to programmes provided by the State or by NGOs in cooperation with the State (if available) for rehabilitation of the social life of the victims (e.g. vocational training); the right to change sector of employment
<b>MALTA</b>	The government has standard operating procedures for victim identification that allowed a range of entities to refer victims to the government’s social welfare agency. The government also provides legal protection and temporary residence permits to support victims who cooperate with the law enforcement authorities. The national welfare agency offered referral to medical care, employment services, counseling, psycho-social support, and additional emergency shelters and staff. In one large case, the police and national welfare agency joined coordination efforts during a forced labour investigation in order to prepare for a large number of victim referrals. The agency leased additional apartments on a three-year basis to temporarily shelter these victims and to build shelter capacity for future victims
<b>GREECE</b>	Victims of trafficking have access to all medical and psychosocial services available to every citizen, in addition to specialized services provided to victims of violence (e.g. secure shelters, specialized psychosocial support, compensation, free legal aid, etc.). Thus, when a presumed victim of trafficking is identified by a professional (either of public or private sector), the latter will refer the victim to the Hellenic Police and/or to social protection services (depending on the presumed victim’s will) in order for the presumed victim to receive all necessary protection and support. Protection, medical and psychosocial support are offered by State agencies (e.g. National Centre of Social Solidarity, General hospitals, General Secretariat for Gender Equality), NGOs and International Organizations carrying out activities in Greece

AUSTRIA	Victims are provided with a range of support services, including safe accommodation, psycho-social support, medical aid and other services. During judicial proceedings, they receive legal counselling as well as psycho-social assistance
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**Among the most important European directives on trafficking in human beings ratified by partners in this article, the following have been analyzed:**

- **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;**
- **Directive 2004/81/EC of the Council of the 29 April 2004 on the residence permit by third-country nationals who are victims of trafficking in human beings or involved in assisting illegal immigration who cooperate with the competent authority.**

All the countries analyzed according to the transposition, more or less promptly, of the Directive 2011/36/EU, reporting the largest categories of exploitation in their national regulations in accordance with the recent developments of the phenomenon. The Directive establishes common minimum standards for determining the crime related to trafficking in human beings and fixing the related penalty. It also provides measures aimed at strengthening the prevention of the phenomenon and the protection of the victims. In this perspective, the EU has established a strategic framework with this Directive and the EU strategy for the accession of human trafficking 2012-2016. The partners who ratified the act is engaged in the fight against trafficking with different actions:

- Prosecute their citizens for crimes committed in another country of the EU and resort to investigative tools such as eavesdropping (for example, telephone conversations or e-mails);
- Discourage the question that encourages care;
- Conduct information campaigns and train officials to try to identify and have a tariff with victims and victims of trafficking.

The notions of treatment and exploitation included in Directive 2011/36/EU are more complete and broader than in the past. This seems essential to ensure adequate repression and prevention of a type of crime characterized by a certain versatility with respect to law enforcement tools, but also to achieve a more intense collaboration between States and national structures and relations. In addition, the aforementioned functions are useful for better outlining the distinction between treatment on the one hand and illegal immigration and its satellite crimes, such as smuggling of migrants (Carella 2012). However, research conducted by the European Parliament (Scherrer e Werner 2016) critically examines whether Cyprus and Greece are implementing the directive using a gender sensitive approach and whether gender is a basic principle of national legislation, policies and practices in relation to trafficking in human beings. Based in thus analysis, it is evident that although both Cyprus and Greece are making significant efforts to combat THB in recent years, the gender perspective is completely lacking from all their actions.

The countries analyzed have transposed Directive 2004/81/EC on the issue of residence permits to third-country nationals who are victims of THB. Italy came back cited as a detail, given that it has set up a system that directly receives a residence permit both on the basis of their personal situation and when they cooperate with the authorities (GRETA report 2018a). Austria, on the other hand, subordinates the issue of the special protection title to the testimony of the victim of trafficking against the exploiters, in order to facilitate a criminal proceeding against traffickers. The Austrian procedure, focusing on the criminal justice aspect, limiting the protection of some victims and the possibility of protection and assistance. In Greece, victims of THB who cooperate with the competent authorities can obtain a residence permit for humanitarian reasons and obtain healthcare. In Cyprus, according to Article 55(1) of Law 60(I)/2014, at the latest upon the expiry of the temporary residence permit or the temporary registration certificate (i.e. at the end of the reflection period),

the prosecuting authorities have to inform the Minister of the Interior whether the victim has expressed a clear intention to co-operate. In the affirmative case, and if the victim has ceased all contacts with the suspected traffickers, the certificate of identification is replaced by a residence permit valid for six months, granted by the Civil Registry and Migration Department upon the approval of the Minister of the Interior. The residence permit may be renewed. In the case of child victims of trafficking, a temporary residence permit is issued as rapidly as possible (GRETA report 2015). In Malta pursuant to Article 5(1) of the above-mentioned S.L. 217.07, victims of trafficking may be granted a renewable residence permit for six months, which is usually accompanied by a work permit, on condition of their co-operation with the investigation or criminal proceedings (GRETA report 2017).

One of the most important challenges in the fight against THB, identified by the partners of the LIREA project, is represented by the limited resources available for anti-treatment measures, for victims and for prevention measures at national level. The global economic crisis has also had a negative impact on the allocation of these funds. In Member States' practice, the practical application of victims is not guaranteed by state or local authorities, but to be declared non-governmental. It is therefore essential to ensure the financing of these guarantees, so that victims of trafficking are provided with effective and sustainable assistance, in the short and long term. The budgetary allocations need to be such as to ensure contrast with the effectiveness of trafficking in human beings with the cooperation of civil society. Effective use by Member States of all EU funds to combat THB and to implement economically effective national measures can bring concrete results and have a long-term impact.

**The contributions provided by the partners and the analysis of secondary sources highlight a series of challenges to be met in order to move towards harmonization of the regulatory systems:**

- **increase the number and manage investigations and prosecutions;**
- **work to improve data collection in the field of human trafficking, focus on the rapid identification of all victims, also systematically preparing a good story, guaranteed to all victims the possibility of receiving protection and assistance, measures that integrate the specificity of gender and a child-centered approach in all actions;**
- **pay particular attention to the most vulnerable victims, including minors at risk, provide assistance to minor victims;**
- **prevent the treatment of human beings by contrasting the demand that supports all forms of exploitation;**
- **systematically evaluate the strategies and plans observed;**
- **allocate appropriate resources to combat human and active human t ratadi in close cooperation with civil society;**
- **improve the training of all operators involved in the management of human treatments (as highlighted by Greece and Cyprus).**

It is important that Member States encourage the associated social bodies to participate in the work of the European network of national speakers or equivalent mechanisms, in so that they are managed at an operational, strategic and monitoring level with knowledge of the facts and in a coordinated way. Ratification of all relevant international and regional instruments by States can promote coherence of common actions. In this context, the strengthening of international cooperation for the exchange of information, data collection, research, monitoring and evaluation should be promoted in order to improve the operations undertaken and avoid overlapping activities.

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