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Concerted action against human trafficking and the smuggling of migrants

Report¹

Committee on Migration, Refugees and Displaced Persons

Rapporteur: Mr Vernon Coaker, United Kingdom, Socialists, Democrats and Greens Group (SOC)

Summary:

Article 4 of the European Convention on Human Rights prohibits human trafficking. Therefore, member States must protect everyone under their jurisdiction against human trafficking and victims have the right to have any violations reviewed by the European Court of Human Rights as a last resort. Nevertheless, an increasing number of persons falls victim to traffickers across Europe, in particular migrants. Their exploitation is often accompanied by physical and psychological violence and threats, mainly against women.

An irregular migration status and the fact that a child is an unaccompanied migrant are particularly vulnerable situations. Preventing trafficking and providing protection to victims must be of highest priority. It is necessary to revise culturally engrained perceptions which are conducive to human trafficking.

The Council of Europe should do more to combat human trafficking and to ensure that its legal standards are adequate and implemented by all member States. National parliamentarians should assist in the domestic implementation of the recommendations contained in the reports of the Group of Experts on Action against Trafficking in Human Beings (GRETA).

¹ Reference to committee: Doc. 14478, Reference 4365 of 16 March 2018.

A. Draft resolution²

1. The Parliamentary Assembly notes with deep concern the high numbers of victims of human trafficking in Europe, of which the largest proportion concerns the exploitation of the prostitution of others, forced labour and organ trafficking as well as trafficking for the purpose of forced marriage and illegal adoption. More than ever over the past few years, Europe has been a major destination for migrants who are prime targets for such exploitation by human traffickers and smugglers.
2. Recalling its Resolution 1922 (2013) on trafficking of migrant workers for forced labour and its Resolution 1983 (2014) on prostitution, trafficking and modern slavery in Europe, the Assembly fully supports the decision taken by the Committee of Ministers at its 129th session in Helsinki on 17 May 2019 to examine ways of strengthening action against trafficking in human beings. The Council of Europe should do more to combat human trafficking and to ensure that its legal standards are adequate and implemented by all member States.
3. Welcoming the case-law of the European Court of Human Rights, which recognises that human trafficking is prohibited under Article 4 of the European Convention on Human Rights (ETS N° 5), the Assembly emphasises that member States must protect everyone under their jurisdiction against human trafficking and victims of human trafficking have the right to have any violations reviewed by the European Court of Human Rights as a last resort.
4. The Assembly recognises that Article 5 of the Charter of Fundamental Rights of the European Union specifically provides for the prohibition of human trafficking. This provision binds all EU member States and EU organs and should be taken as a reference when interpreting Article 4 of the European Convention on Human Rights.
5. Recognising the important work of the Group of Experts on Action against Trafficking in Human Beings (GRETA) in the framework of the Convention on Action against Trafficking in Human Beings (CETS N° 197), the Assembly calls on the Parties to this convention to ensure effective and timely implementation of all country-specific recommendations. National parliamentarians should assist in the domestic implementation of the recommendations contained in respective GRETA reports. Member States should increase their efforts to collect statistical data and produce official estimates regarding victims of human trafficking and make them available to GRETA.
6. An increasing number of persons falls victim to traffickers across Europe, in particular migrants. Their exploitation is often accompanied by physical and psychological violence and threats. Preventing trafficking and providing protection to victims must be of highest priority. For this purpose, member States should in particular ensure that victims of human trafficking are not penalised, that they receive adequate health services and legal assistance, and that witness protection programmes exist for their testimony against human traffickers.
7. Referring to Article 4 (b) of the Convention on Action against Trafficking in Human Beings, the Assembly reminds member States that circumstantial indications of coercion, abuse of power or vulnerability, deception or payment for exploitation must lead to the presumption that consent to the forms of exploitation set out in the convention has not been freely given, and is thus irrelevant under this provision. National law enforcement authorities should ensure that impunity for human trafficking never prevails.
8. Referring to Article 2 of the European Union Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, the Assembly considers that the exploitation of criminal activities of others could be included in Article 4 (a) of the Convention on Action against Trafficking in Human Beings.
9. The Assembly furthermore invites the Parties to the Convention on Action against Trafficking in Human Beings to consider common policies to combat human trafficking for the purpose of forced marriage or illegal adoption and better protect victims.
10. Referring to Article 15 of the Convention on Action against Trafficking in Human Beings and the European Convention on the Compensation of Victims of Violent Crimes (ETS N° 116), the Assembly invites member States to ensure that victims of human trafficking receive compensation from their perpetrators or

² Draft resolution unanimously adopted by the committee on 2 December 2019.

public authorities as well as information on relevant judicial and administrative proceedings in a language which they can understand, legal assistance and free legal aid. Seizure by authorities of financial assets derived from human trafficking should be used for action for the benefit of victims.

11. Referring to the Protocol against the Smuggling of Migrants by Land, Sea and Air to the United Nations Convention against Transnational Organised Crime (Palermo, 2000), member States should strengthen at European level the prohibition of the smuggling of migrants and ensure the rights of migrant victims who have been smuggled to Europe.

12. The Assembly notes that the removal and trafficking of organs can fall under the Convention on Action against Trafficking in Human Beings of 2005 as well as the Convention against Trafficking in Human Organs of 2015 (CETS N° 216) and calls on member States which have not yet done so to sign and ratify both conventions. Observer States and Partners for Democracy are also encouraged to accede to these conventions, in order to join action with the Council of Europe regarding this global challenge.

13. With respect to children who are victims of trafficking, the Assembly recalls that the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 2007 (CETS N° 201) is the first instrument to establish the various forms of sexual abuse of children as criminal offences and that it contains provisions on programmes to support victims as well as to encourage reporting of suspected sexual exploitation and abuse. Irregular migration status or the fact that a child is an unaccompanied migrant, should both be considered as particularly vulnerable situations under Article 18 (1.b) of this convention, and thus sexual activities of adults with such children under the age of 18 years should be criminalised.

14. Welcoming the decision of the G7 Interior Ministers, taken at their meeting in Paris in April 2019, to increase operational cooperation and share relevant law enforcement information via INTERPOL in order to better combat human trafficking and international crime, the Assembly calls on all member States to support this decision and ensure that mutual legal assistance is carried out in accordance with the European Convention on Mutual Assistance in Criminal Matters and its two protocols (ETS N° 30, 99 and 182).

15. Recognising the work of the International Labour Organisation (ILO), the Assembly invites member States which have not yet done so to sign and ratify the Protocol of 2014 to the ILO Convention No. 29 on forced or compulsory labour of 1930 as well as the ILO Domestic Workers Convention (No. 189) of 2011.

16. Welcoming the OSCE project Combating Human Trafficking along Migration Routes (2016-2019), aimed at enhancing capacities to effectively investigate and prosecute human trafficking and to promptly identify victims of human trafficking along migration routes by promoting a multi-agency and human rights-based approach, the Assembly invites member States and Partners for Democracy to support the setting up of similar projects.

17. Referring to the revised Code of Sports Ethics adopted by the Committee of Ministers on 16 June 2010, which defines the scope of sports ethics as including physical and verbal violence, sexual harassment and abuse of children, young people and women and trafficking in young sportspeople, the Assembly invites the Enlarged Partial Agreement on Sport (EPAS) to consider practical action for preventing trafficking of sportspeople. Recalling the European Parliament Resolution on forced prostitution in the context of world sports events of 2006, the EPAS is invited to further examine issues of human trafficking in connection with such events.

18. Aware of the multitude of excellent reports by outstanding experts having addressed human trafficking over many years, there does not seem to be a shortage of expert analyses, but instead a lack of willingness to make a change and to revise culturally engrained perceptions which are conducive to human trafficking. Parliamentarians are in a privileged position to support such changes in policies, legislation and action. Therefore, the Assembly calls on:

18.1. governments to establish anti-trafficking commissioners or ombudspersons, who can address human trafficking and migrant smuggling and serve as a contact-point for victims;

18.2. parliaments to cooperate more actively multilaterally in the fight against human trafficking and establish a collaborative anti-trafficking parliamentary network in cooperation with the Assembly;

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18.3. Partners for Democracy and Observer States as well as interested non-member States to join such initiatives and cooperation with the Council of Europe.

B. Draft recommendation³

1. Welcoming the decision by the Committee of Ministers taken in Helsinki on 17 May 2019 to make action against human trafficking a priority for the Council of Europe work programme, the Parliamentary Assembly refers to its Resolution (2020) on concerted action against human trafficking and migrant smuggling, Resolution 1983 (2014) on prostitution, trafficking and modern slavery in Europe and Resolution 1922 (2013) on trafficking of migrant workers for forced labour. The Assembly stands ready to cooperate actively in the implementation of concrete action and invites the Committee of Ministers to take account of the above resolutions when implementing its decision of 17 May 2019.
2. The Assembly recommends that the Committee of Ministers:
 - 2.1. instruct the Steering Committee for Human Rights (CDDH) to examine the means of strengthening the prohibition of human trafficking in accordance with Article 4 of the European Convention on Human Rights (ETS N° 5) as interpreted by the case-law of the European Court of Human Rights and Article 5 of the Charter of Fundamental Rights of the European Union;
 - 2.2. instruct the European Committee on Crime Problems (CDPC):
 - 2.2.1. to elaborate a new Council of Europe convention to combat the smuggling of migrants which could build upon and go further than the Protocol against the Smuggling of Migrants by Land, Sea and Air to the United Nations Convention against Transnational Organised Crime (Palermo, 2000);
 - 2.2.2. to analyse whether differences between the Convention on Action against Trafficking in Human Beings (CETS N° 197) and the European Union Directives 2004/81/EC, 2009/52/EC and 2011/36/EU, in particular regarding human trafficking for the exploitation of begging and criminal activities, require reinforcing the Convention;
 - 2.3. invite those non-member States, whose citizens are frequently victims of human trafficking to Europe, to sign and ratify the Convention on Action against Trafficking in Human Beings;
 - 2.4. invite those non-member States, whose citizens are frequently victims of organ trafficking to Europe including trafficking in human beings for organ removal, to sign and ratify the Convention on Action against Trafficking in Human Organs (CETS N° 216);
 - 2.5. invite the Secretary General and her Special Representative on migration and refugees to address human trafficking and the smuggling of migrants.

³ Draft recommendation unanimously adopted by the committee on 2 December 2019.

C. Explanatory memorandum by Mr Vernon Coaker, rapporteur

1. Introduction

1. At the 129th Session of the Committee of Ministers in Helsinki on 17 May 2019, the Ministers of Foreign Affairs of the member States of the Council of Europe instructed their Deputies “to examine ways of strengthening action against trafficking in human beings.” This clear instruction mirrors the intentions my colleagues and I had when tabling the motion for a resolution on concerted action against human trafficking (Doc. 14478) on 23 January 2018. I very much welcome this decision by the Committee of Ministers and consider my report as an inter-parliamentary contribution to action in this area.

2. As chair of the All-Party Parliamentary Group on Human Trafficking and Modern Slavery in the British Parliament,⁴ I have seen that legal standards and political guidelines are not enough. Instead, Europe needs more awareness, understanding and concerted action, which is based on national experiences and puts much greater emphasis on the victim perspective. Having heard several experts and witnesses in the preparation of this report, I often asked myself what parliamentary colleagues would demand if their own family members or children were victims of trafficking. This is the terrible fate of millions of families around the world. It is not a theoretical challenge but an enormous human tragedy. We must develop more empathy and action for victims.

3. In this report, the term “human trafficking” is used as defined under Article 3 (a) of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of 2000: “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. 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”. This wording is identical to Article 4 (a) of the Council of Europe Convention on Action against Trafficking in Human Beings of 2005 (CETS N° 197). In addition, this report also addresses forced marriage and forced child adoption as a form of human trafficking as well as the illegal smuggling of migrants.

4. Some countries, including my own – the United Kingdom, regard human trafficking as a modern form of slavery. The British non-governmental organisation Anti-Slavery International defines modern slavery as a situation where persons are: forced to work through coercion or mental or physical threat; trapped and controlled by an ‘employer’ through mental or physical abuse or the threat of abuse; dehumanised, treated as a commodity or bought and sold as ‘property’; physically constrained or have restrictions placed on their freedom of movement.⁵ Media reports about migrants in Libya auctioned like slaves for work and other purposes⁶ had vivid global reactions, in particular by the African Union⁷ and the UN Security Council.⁸ The European Parliament also looked into contemporary forms of slavery.⁹

5. Europe has for many years been plagued with the atrocity of humans being sold across several countries.¹⁰ It is a major destination for trafficked humans, as the UN Office on Drugs and Crime has shown in its reports on global human trafficking flows.¹¹ There might not be slave markets in Europe anymore, but humans are still standing in rows in European streets in order to be picked-up and exploited for crop harvesting, construction work or sexual services. Since the term “modern slavery” is not common in several countries, however, I will only use the term “human trafficking” in this report.

6. The Committee on Equality and Non-Discrimination is seized for opinion on this report and appointed Ms Isabelle Rauch from France as rapporteur for opinion. Announcing the adoption of its second national action plan against trafficking on 18 October 2019, the French Government has identified the fight against human trafficking as a priority.¹² Together with Sweden, France took a joint initiative on 8 March 2019, which

⁴ <https://publications.parliament.uk/pa/cm/cmallparty/180718/human-trafficking-and-modern-slavery.htm>.

⁵ <https://www.antislavery.org/slavery-today/modern-slavery/>.

⁶ <https://edition.cnn.com/2017/11/14/africa/libya-migrant-auctions/index.html>.

⁷ <https://au.int/en/pressreleases/20171118/statement-chairperson-african-union-commission- plight-african-migrants-libya>.

⁸ <https://www.un.org/press/en/2017/sc13105.doc.htm>.

⁹ [http://www.europarl.europa.eu/RegData/etudes/STUD/2018/603470/EXPO_STU\(2018\)603470_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/603470/EXPO_STU(2018)603470_EN.pdf).

¹⁰ <https://www.theguardian.com/law/2011/apr/19/sex-trafficking-uk-legal-reform>.

¹¹ <https://www.unodc.org/unodc/data-and-analysis/glotip.html>.

¹² <https://www.diplomatie.gouv.fr/en/french-foreign-policy/human-rights/fight-against-human-trafficking/>.

aims at combating human trafficking and sexual exploitation.¹³ I highly appreciate these initiatives and thank Ms Rauch for her contribution to the preparation of this report. The Committee on Equality and Non-Discrimination and its former rapporteur Mr José Mendes Bota produced Resolution 1983 (2014) on prostitution, trafficking and modern slavery in Europe,¹⁴ which is relevant for this report.

7. The Committee on Migration, Refugees and Displaced Persons and its former rapporteur Ms Annette Groth produced the also relevant Resolution 1922 (2013) on trafficking of migrant workers for forced labour.¹⁵ At its meeting on 28 June 2018, the Committee decided to combine this report with the motion tabled by Ms Daphné Dumery and colleagues on refugees and migrants as an easy target for trafficking and exploitation (Doc.14336). Human trafficking often has a transnational dimension, where persons are trafficked and smuggled across borders and thus are also migrants. The 2015-16 increase in arrivals of migrants in Europe obviously provoked an increase in human trafficking, which some European countries are still grappling with.¹⁶

8. The Chairperson of the Committee of the Parties of the Council of Europe Convention on Action against Trafficking in Human Beings, Ambassador Corina Călugăru, Permanent Representative of the Republic of Moldova to the Council of Europe, participated in the meeting of the Committee on Migration, Refugees and Displaced Persons on 3 October 2019 and agreed to submit my preliminary draft report to the Committee of the Parties for comments. I am very grateful for the comments received from Germany, the Netherlands and the United Kingdom as well as by the chairperson and secretariat of the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA). Such cooperation between the Committee of Ministers and the Parliamentary Assembly should be continued in the implementation of the Council of Europe's action against trafficking in human beings.

9. In view of the multitude of good expert reports on human trafficking prepared over the past years, this report shall not duplicate this valuable work. Instead, it intends raising awareness among parliamentarians and proposing concerted political and legislative action at European and national levels. The customary conciseness of Assembly reports has been kept. Colleagues, who share my compassion and believe that more needs to be done by national parliaments and governments, are invited to follow the hyperlinks in the footnotes to this report.

10. Several countries in Europe have become hot-spots or safe-havens for human trafficking due to their lower standards or inefficient law enforcement, just as other countries have become prime countries of origin of trafficked persons. For the Council of Europe to achieve measurable progress in fighting human trafficking, it is imperative to ensure concerted action within Europe and to take responsibility globally.

2. International action

11. In addition to the Council of Europe, several United Nations agencies, Interpol, the OSCE and the European Union are supporting action against human trafficking, besides regional organisations in Africa,¹⁷ Asia,¹⁸ the Middle East¹⁹, America²⁰ and Australia.²¹ In order to have a greater positive impact, it is important that member States ensure through their governments and parliaments that international action is pursued in a targeted, coordinated and synergetic manner, with output-oriented results regarding effective victim protection and the successful prevention of human trafficking.

2.1. United Nations (UN)

12. As human trafficking has frequently a global dimension, the United Nations has been leading the fight against human trafficking for many decades by creating obligations of States under public international law.

¹³ <https://www.diplomatie.gouv.fr/en/french-foreign-policy/human-rights/events/article/combating-human-trafficking-and-sexual-exploitation-joint-op-ed-by-minister>.

¹⁴ <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=20716&lang=EN>.

¹⁵ <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=19480&lang=EN>.

¹⁶ <https://www.theguardian.com/news/2018/feb/01/migrants-more-profitable-than-drugs-how-mafia-infiltrated-italy-asylum-system>.

¹⁷ <https://au.int/en/pressreleases/20190214/african-union-action-plan-towards-eradication-child-labour-and-modern-slavery>.

¹⁸ <https://asean.org/asean-convention-against-trafficking-in-persons-especially-women-and-children/>.

¹⁹ <https://www.unodc.org/unodc/en/human-trafficking/2013/arab-initiative-to-build-national-capacities-to-combat-human-trafficking-in-the-arab-countries.html>.

²⁰ <https://www.oas.org/en/mesecvi/docs/AoD31-Trafficking.ENG.doc>.

²¹ <https://www.afp.gov.au/what-we-do/crime-types/human-trafficking>.

The UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949²² is the first comprehensive United Nations treaty using the term “traffic in persons” and establishing the obligation to combat the exploitation of the prostitution of others. In addition, Article 2 of this Convention criminalises “any person who: (1) keeps or manages, or knowingly finances or takes part in the financing of a brothel; or (2) knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.” The International Day for the Abolition of Slavery commemorates its adoption by the UN General Assembly on 2 December 1949.

13. In the year 2000, the UN General Assembly adopted the United Nations Convention against Transnational Organised Crime with its two protocols which are relevant in this context: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, as well as the Protocol against the Smuggling of Migrants by Land, Sea and Air.²³ Being protocols to the UN Convention against Transnational Organised Crime, their application requires in principle some degree of transnationality or involvement of an organised criminal group. However, the Legislative Guide to the anti-trafficking protocol states that domestic legislation should also be applied where transnationality and the involvement of organised criminal groups do not exist.²⁴ The smuggling of migrants has logically a transnational dimension.²⁵ The 2000 Convention and its protocols are served by the UN Office on Drugs and Crime (UNODC) in Vienna. In accordance with Resolution A/RES/68/192 of 2013, the UN General Assembly designated 30th July as the World Day against Trafficking in Persons.

14. Under the special procedures of the UN Human Rights Council in Geneva, several independent experts have been mandated as Special Rapporteurs to report and advise on subjects directly related to the subject of this report: the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, the Special Rapporteur on trafficking in persons, especially women and children, the Special Rapporteur on violence against women, its causes and consequences, the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, and the Special Rapporteur on the human rights of migrants.

15. The International Labour Organisation (ILO) in Geneva produced international legal treaties including the Convention No. 29 on forced or compulsory labour of 1930 and its Protocol of 1947 as well as the Domestic Workers Convention (No. 189) of 2011. The ILO estimated in 2017 that 25 million people were victims of forced labour including forced sexual services and 15 million were victims of forced marriage.²⁶

16. The International Organisation for Migration (IOM) pursues long-standing projects against human trafficking with an emphasis on practical counter-trafficking efforts.²⁷ In addition, specialised UN agencies address human trafficking and coordinate their work through the Inter-Agency Coordination Group against Trafficking in Persons (ICAT), which serves as a policy forum mandated by the UN General Assembly and is open to other relevant international organisations. Since 2017, the Council of Europe has participated in ICAT’s activities as a partner organisation.

2.2. International Criminal Police Organisation (INTERPOL)

17. INTERPOL has established several projects for the training of national police in the fight against human trafficking²⁸ and the smuggling of migrants.²⁹ INTERPOL cooperates with Europol, the OSCE, the International Organisation for Migration, UN Women and UNODC and organises annually the Global Conference on Human Trafficking and Migrant Smuggling.³⁰ It could be helpful, if the Council of Europe became also a partner and could possibly host a future conference.

²² It has been signed by all member States of the Council of Europe, except Andorra, Armenia, Austria, Estonia, Georgia, Germany, Greece, Iceland, Ireland, Liechtenstein, Lithuania, Malta, the Republic of Moldova, Monaco, the Netherlands, San Marino, Sweden, Switzerland, Turkey and the United Kingdom, with Denmark having signed but not yet ratified.

²³ The anti-trafficking protocol has been signed by all member States of the Council of Europe, except the Republic of Moldova, as well as by the European Union. The protocol against migrant smuggling has been signed by the European Union and by all member States of the Council of Europe, except Andorra and the Republic of Moldova, with Iceland and Ireland having signed but not yet ratified.

²⁴ https://www.unodc.org/pdf/crime/legislative_guides/03%20Legislative%20guide_Trafficking%20in%20Persons%20Protocol.pdf.

²⁵ https://www.unodc.org/documents/data-and-analysis/glosom/GLOSOM_2018_web_small.pdf.

²⁶ https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf.

²⁷ <https://www.iom.int/counter-trafficking>.

²⁸ <https://www.interpol.int/en/Crimes/Human-trafficking>.

²⁹ <https://www.interpol.int/en/Crimes/People-smuggling>.

³⁰ <https://www.interpol.int/en/Crimes/Human-trafficking/Partnerships-against-human-trafficking>.

18. In order to better combat human trafficking and international crime, the G7 Interior Ministers decided, at their meeting in Paris in April 2019, to increase operational cooperation and share relevant law enforcement information via INTERPOL.

2.3. Organisation for Security and Cooperation in Europe (OSCE)

19. In 2003, the OSCE adopted its Action Plan to Combat Trafficking in Human Beings and subsequently created the post of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings.³¹ The OSCE carries out several practical projects against human trafficking. For the subject of this report, the project Combating Human Trafficking along Migration Routes has particular relevance.³²

20. In addition, the OSCE Office of the Special Representative and Coordinator convenes biannual meetings of the Alliance against Trafficking in Persons, a broad international forum of which the Council of Europe is a member. The 19th Alliance against Trafficking in Persons (Vienna, 8 – 9 April 2019) looked at the fast-growing importance of the use and abuse of information and communications technology in the field of human trafficking.³³

2.4. European Union (EU)

21. Article 5 of the Charter of Fundamental Rights of the European Union expressly prohibits slavery, forced or compulsory labour and trafficking in human beings. For the member States of the EU, specific common legal standards are set by Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. Under Article 2 of this Directive, illegal exploitation “shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs”. The European Commission monitors the situation of human trafficking in its member States and publishes information online.³⁴ It has created the post of the EU Anti-Trafficking Coordinator and appointed Ms Myria Vassiliadou.³⁵ 18th October is the European or EU Anti-Trafficking Day.

22. Directive 2004/81/EC of 29 April 2004 regulates residence permits for third-country nationals who are victims of trafficking in human beings and who cooperate with the competent authorities. In addition, Directive 2009/52/EC of 18 June 2009 provides for sanctions for employers of illegally staying third-country nationals who, while not having been charged with or convicted of trafficking in human beings, use work or services exacted from a person with the knowledge that this person is a victim of such trafficking. Migrant smuggling is a criminal offence under Directive 2002/90/EC and Framework Decision 2002/946/JHA.

23. Europol³⁶ and Eurojust³⁷ have a prominent role in actively combating human trafficking. Europol established in 2016 its European Migrant Smuggling Centre.³⁸ The European Asylum Support Office (EASO) in Malta organised in 2017 the fourth Annual Conference on Trafficking in Human Beings and International Protection.³⁹

24. The European Commission published in December 2018 its data on trafficking in human beings in the EU for the period 2015-2016, which counted 20 532 registered victims in the EU but stated that the actual number was likely to be significantly higher as many victims remained undetected.⁴⁰ In addition, the EU has its Action Plan against migrant smuggling (2015 - 2020)⁴¹ and launched in early 2016 a public consultation on "Tackling migrant smuggling: is the EU legislation fit for purpose?"⁴²

³¹ <https://www.osce.org/secretariat/434492>.

³² <https://www.osce.org/projects/cthblix>.

³³ <https://www.osce.org/event/alliance19>.

³⁴ https://ec.europa.eu/anti-trafficking/member-states_en.

³⁵ https://ec.europa.eu/anti-trafficking/eu-anti-trafficking-coordinator_en.

³⁶ <https://www.europol.europa.eu/crime-areas-and-trends/crime-areas/trafficking-in-human-beings>.

³⁷ <http://eurojust.europa.eu/press/PressReleases/Pages/2019/2019-06-06.aspx>.

³⁸ <https://www.europol.europa.eu/about-europol/european-migrant-smuggling-centre-emsc>.

³⁹ <https://www.easo.europa.eu/4-annual-conference-thb>.

⁴⁰ https://europa.eu/rapid/press-release_IP-18-6639_en.htm.

⁴¹ https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eu_action_plan_against_migrant_smuggling_en.pdf and <http://data.consilium.europa.eu/doc/document/ST-6995-2016-INIT/en/pdf>.

⁴² https://ec.europa.eu/home-affairs/what-is-new/public-consultation/2015/consultation_0031_en.

25. On the occasion of International Women's Day on 8th March 2001, the European Commission had published an overview of its many initiatives under the heading "Trafficking in women – the misery behind the fantasy: from poverty to sex slavery, a comprehensive European strategy".⁴³ Nearly two decades later, a lot has been done including in relevant EU legislation, but the problems seem to have grown nevertheless, as the European Commission still called "for an end to impunity for human traffickers" on the occasion of European Anti-Trafficking Day on 18 October 2019.⁴⁴

2.5. Council of Europe

26. Article 4 of the European Convention on Human Rights (ETS N° 5) prohibits slavery, servitude and forced or compulsory labour. The jurisprudence of the European Court of Human Rights indicates that Article 4 can be of growing importance in the context of human trafficking.⁴⁵ Unfortunately, its wording does not include human trafficking, contrary to Article 5 of the Charter of Fundamental Rights of the European Union.⁴⁶

27. The Council of Europe Convention on Action against Trafficking in Human Beings of 2005 (CETS N° 197)⁴⁷ established the Group of Experts on Action against Trafficking in Human Beings (GRETA) which monitors the implementation of this Convention by the Parties. The Convention is supervised by the Committee of the Parties. Since 2010, the GRETA has carried out two rounds of evaluation of the Convention, publishing over 80 country evaluation reports, and has recently launched the third round of evaluation of the Convention, with a thematic focus on victims' access to justice and effective remedies.⁴⁸

28. In addition, the Council of Europe's Convention on Action against Trafficking in Human Organs of 2015 (CETS N° 216) criminalises the removal and trafficking of human organs "without the free, informed and specific consent" of the donor, or "where, in exchange for the removal of organs, the living donor, or a third party, has been offered or has received a financial gain or comparable advantage" (Article 4). Therefore, the donation of an organ is more restricted under this convention than human trafficking for organ removal under the 2005 Convention on Action against Trafficking in Human Beings, because organ donations for financial gains by the donors are prohibited under the 2015 Convention. Its Committee of the Parties supervises this Convention and can request information from Parties. Being a new convention, it has been signed so far by 23 member States⁴⁹ and the non-member State Costa Rica, with many ratifications still outstanding.

29. The Assembly addressed human trafficking inter alia in its Resolution 1983 (2014) on prostitution, trafficking and modern slavery in Europe⁵⁰ as well as Resolution 1922 (2013) on trafficking of migrant workers for forced labour.⁵¹ In the latter context, the revised European Social Charter (ETS N° 163) contains a number of rights which define what lawful employment requires in contrast to labour exploitation.⁵²

3. Types of human trafficking

30. As one can see from the previously quoted various legal definitions, human trafficking can take different forms.⁵³ Depending on the different types of trafficking and exploitation, different action may be needed. I follow below the terminology of Article 3 (a) of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of 2000 as well as the identical Article 4 (a) of the Council of Europe Convention on Action against Trafficking in Human Beings of 2005.

⁴³ https://ec.europa.eu/commission/presscorner/detail/en/MEMO_01_64.

⁴⁴ https://ec.europa.eu/home-affairs/news/eu-anti-trafficking-day-commission-calls-end-impunity-human-traffickers_en.

⁴⁵ https://www.echr.coe.int/Documents/Guide_Art_4_ENG.pdf.

⁴⁶ <https://ukhumanrightsblog.com/incorporated-rights/articles-index/article-4-of-the-echr/>.

⁴⁷ All member States except the Russian Federation are Parties as well as the non-member State Belarus.

⁴⁸ <https://www.coe.int/en/web/anti-human-trafficking>.

⁴⁹ Albania, Armenia, Austria, Belgium, Croatia, the Czech Republic, Greece, Ireland, Italy, Latvia, Luxembourg, Malta, Montenegro, Norway, Poland, Portugal, the Republic of Moldova, the Russian Federation, Spain, Switzerland, Turkey, Ukraine and the United Kingdom.

⁵⁰ <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=20716&lang=EN>.

⁵¹ <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=19480&lang=EN>.

⁵² <https://www.coe.int/en/web/european-social-charter/charter-texts>.

⁵³ The UK government published its typology of human trafficking and modern slavery.
<https://www.gov.uk/government/publications/a-typology-of-modern-slavery-offences-in-the-uk>.

3.1. Exploitation of the prostitution of others and other forms of sexual exploitation

31. The exploitation of the prostitution of others or trafficking for sexual exploitation is the most commonly reported form of human trafficking in the European Union according to EU data, with 95 % of the victims registered in the EU being women or girls.⁵⁴ The figures for member States of the Council of Europe are probably similar.

32. In a few member States, prostitution is permitted by law and regulated. This is generally explained as a means of avoiding that persons engaged in prostitution be pushed into illegality. Where these practices are not punished, they seem to flourish⁵⁵ and are highly lucrative for public budgets.⁵⁶ This report is not about prostitution as such. The position of the Assembly has already been expressed in detail in Resolution 1983 (2014) on prostitution, trafficking and modern slavery in Europe.⁵⁷ However, it is politically very important to combat the exploitation of the prostitution of others, in which ever legal system such exploitation happens.

33. With the increase in the numbers of persons engaged in prostitution, more empirical research has been pursued on its physical and mental impact. Persons engaged in prostitution frequently end up with serious physical injuries, sexually transmitted diseases and severe mental disorders.⁵⁸ Those effects distinguish sexual exploitation from forced labour, where physical injuries are frequent but mental disorders and the transmission of diseases seem to be less frequent.⁵⁹ The European Centre for Disease Prevention and Control of the EU published figures of sexually transmitted diseases in 2017, which show a strong increase⁶⁰ and identify migrants as a high-risk group who need information about prevention and treatment.⁶¹

34. Regrettably, the numbers of victims of human trafficking for sexual exploitation are often unknown, although estimates of non-registered or clandestine prostitution are very high, even in countries that have legalised prostitution and introduced the notion of “sex worker” through the obligatory registration of persons engaged in prostitution.⁶² However, the lack of precise data must not become an excuse for the lack of action, when media reports about cases of human trafficking are frequent, related circumstantial data is available and human trafficking is on the rise globally.⁶³

3.1.1. Vulnerabilities of victims

35. Prostitution is typically linked to some degree of vulnerability of the persons engaged in prostitution, often poverty. For instance, migrants from Venezuela fleeing poverty are the second largest group of migrants globally after Syrians fleeing military operations, and many Venezuelans have become victims of human trafficking for sexual exploitation,⁶⁴ while approximately 10 000 Venezuelans applied for asylum in Spain in 2017.⁶⁵ Nigerian women and girls are the largest group of non-European victims of trafficking for sexual exploitation in Europe.⁶⁶

⁵⁴ https://ec.europa.eu/anti-trafficking/publications/trafficking-for-sexual-exploitation-a-gendered-crime_en.

⁵⁵ <https://www.theguardian.com/global-development/2019/may/11/prostitution-tackling-spain-sex-traffickers>.

⁵⁶ <https://www.theguardian.com/world/2011/jan/13/dutch-taxman-visit-amsterdam-sex-workers>.

The federal court of auditors of Germany (*Bundesrechnungshof*) estimated in 2014 direct income tax of approximately one billion € per year from prostitution in Germany.

https://www.bundesrechnungshof.de/de/veroeffentlichungen/produkte/beratungsberichte/langfassungen/langfassungen-2014/2014-bericht-bestuerung-der-prostitution/at_download/file.

⁵⁷ <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=20716&lang=EN>.

⁵⁸ <https://www.independent.co.uk/news/uk/crime/human-trafficking-mental-health-kings-college-london-ptsd-prostitution-modern-slavery-london-school-a6984456.html>.

⁵⁹ https://www.rcpsych.ac.uk/docs/default-source/members/divisions/london/london-prev-prizes-2013-turner-moss-labour-exploitation-and-health.docx?sfvrsn=9934a2c4_2.

⁶⁰ <https://www.ecdc.europa.eu/en/publications-data/presentation-annual-epidemiological-report-2017-sexually-transmitted-diseases>.

⁶¹ <https://ecdc.europa.eu/sites/portal/files/documents/HIV%20and%20migrants.pdf>.

⁶² According to the latest statistical figures, there were 32 800 registered persons engaged in prostitution in Germany in November 2019. However, the German Parliament (*Bundestag*) and an organisation of persons engaged in prostitution (*Berufsverband erotische und sexuelle Dienstleistungen e.V.*) estimated up to 400 000 non-registered persons engaged in prostitution in Germany.

<https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Soziales/Prostituiertenschutz/prostituiertenschutzgesetz.html>

<https://berufsverband-sexarbeit.de/index.php/sexarbeit/berufsbild-2/zahlen-zur-sexarbeit/>.

⁶³ <http://www.unodc.org/unodc/en/data-and-analysis/glotip.html>.

⁶⁴ <https://www.opendemocracy.net/en/democraciaabierta/la-ca%C3%ADda-de-miss-venezuela-una-tragedia-de-tr%C3%A1fico-y-esclavitud-sexual-en/>.

⁶⁵ <https://www.dw.com/en/spain-busts-sex-trafficking-ring-targeting-venezuelans/a-42762336-0>.

⁶⁶ <https://www.iom.int/news/un-migration-agency-issues-report-arrivals-sexually-exploited-migrants-chiefly-nigeria>.

36. An irregular or insecure immigration status is a frequent additional cause of vulnerability, where prices for sexual services can go very low.⁶⁷ Today, “survival sex” by migrants in Europe⁶⁸ and other continents⁶⁹ reminds us that physical and mental integrity are easily compromised when people are in extreme poverty and need. Many horrible stories were told by survivors of long and perilous journeys from their poor home countries through extremely dangerous transit countries to Europe, having been forced into sexual exploitation all along.⁷⁰

37. For the preparation of the report on “the situation of migrants and refugees on the Greek islands: more needs to be done” by Ms Petra De Sutter, the Committee on Migration, Refugees and Displaced Persons heard shocking testimonies by an NGO of Dutch health professionals volunteering in the Reception and Identification Centre for Refugees at Moria on the Greek island of Lesbos,⁷¹ who described how migrants – even with HIV and sexually transmitted diseases – had been forced into prostitution, had been branded by tattoos or other signs as belonging to certain organised crime gangs, and had requested medication including for abortions and even assisted suicide. The high numbers of migrants and refugees arriving in Europe has obviously an enormous impact on human trafficking, which our countries cannot look away from.

38. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, as well as the Protocol against the Smuggling of Migrants by Land, Sea and Air to the United Nations Convention against Transnational Organised Crime of 2000 are important instruments in this context. The latter protocol does not penalise the smuggling of migrants for purely humanitarian reasons but focuses on the exploitation of migrants who are smuggled for financial or other material benefits.⁷² Those smuggled migrants often have to pay through sexual exploitation.⁷³

39. Migrants as well as other persons accommodated temporarily in camps are particularly vulnerable. Following accusations against aid staff of OXFAM in Haiti,⁷⁴ the British Parliament launched an inquiry by its International Development Committee⁷⁵ into sexual exploitation and abuse in the aid sector and published a substantial report which is highly critical of the conduct by aid organisations.⁷⁶ Information about cases of sexual exploitation by aid workers abroad has since grown, as more victims dare speaking out.⁷⁷ Many migrants, especially women and girls, have experienced sexual exploitation by those who should help them.⁷⁸

40. The 2006 FIFA World Cup in Germany caused fears that the liberal prostitution laws in Germany would lead to an increase of irregular migration into Germany for human trafficking of persons engaged in prostitution.⁷⁹ Against this background, the European Parliament adopted in 2006 its Resolution on forced prostitution in the context of world sports events. The 2018 FIFA World Cup in Russia had a similar impact, although prostitution is in principle illegal in Russia.⁸⁰

41. Children are particularly vulnerable to falling victim to human trafficking, in particular children on the move. In addition, children are sexually exploited in the context of travel and tourism. The 2016 study Offenders

⁶⁷ <https://www.independent.co.uk/news/world/europe/dozens-of-refugee-men-sell-sex-for-as-little-as-2-to-survive-in-athens-a7068741.html>.

⁶⁸ <https://fxb.harvard.edu/2016/12/17/a-harsh-new-reality-transactional-sex-among-refugee-minors-as-a-means-of-survival-in-greece/>.

⁶⁹ <https://www.independent.co.uk/news/world/asia/rohingya-muslim-crisis-latest-prostitution-refugee-camps-sex-trade-black-market-bangladesh-burma-a8017256.html>.

⁷⁰ <https://www.reuters.com/article/us-italy-slavery-survivor-feature/italian-dream-over-trafficked-nigerian-sets-sights-on-home-idUSKCN1QI38L>.

⁷¹ <https://bellbirdadvocacy.files.wordpress.com/2019/06/advocacy-paper-situation-lesvos-bellbird-advocacy.pdf>.

⁷² <https://www.unodc.org/unodc/en/human-trafficking/Webstories2016/paper-on-financial-or-other-material-benefit-in-the-smuggling-of-migrants.html>.

⁷³ https://www.unodc.org/documents/data-and-analysis/glosom/GLOSOM_2018_web_small.pdf.

⁷⁴ <https://www.bbc.com/news/uk-politics-45013078>.

⁷⁵ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/international-development-committee/inquiries/parliament-2017/sexual-exploitation-in-aid-sector/>.

⁷⁶ <https://publications.parliament.uk/pa/cm201719/cmselect/cmintdev/840/840.pdf>.

⁷⁷ <https://www.reuters.com/article/us-global-aid-harassment/rise-in-sexual-abuse-cases-in-aid-groups-as-more-victims-speak-up-idUSKCN1Q000X>.

⁷⁸ <https://www.bbc.com/news/world-middle-east-43206297>.

⁷⁹ <https://www.spiegel.de/international/spiegel/world-cup-and-the-sex-trade-prostitution-will-increase-because-of-the-world-cup-a-411064.html>.

⁸⁰ <https://www.themoscowtimes.com/2018/06/13/world-cup-opens-the-floodgates-for-trafficked-sex-workers-a61722>.

on the Move: Global Study on Sexual Exploitation of Children in Travel and Tourism,⁸¹ produced by the Dutch Ministry of Foreign Affairs and partners, describes the magnitude of this form of sexual exploitation. The NGO End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT) in Bangkok published policy guidelines on combating child sex tourism.⁸² Sexual exploitation of children must be punished by law under the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS N° 201).

3.1.2. Coercion of victims as opposed to their consent

42. The “exploitation of the prostitution of others” or forced prostitution as a form of human trafficking must be penalised under three above-mentioned conventions: the 1949 UN Convention, the 2000 UN Convention with its anti-trafficking protocol, and the 2005 Council of Europe Convention. The 1949 UN Convention is considered by some experts as outdated, as it does not distinguish between voluntary and forced prostitution; however, although the concept of “sex work” did not exist in 1949, a modern and narrower definition of the term “prostitution” under this Convention might distinguish between sexual exploitation – as indicated in the title of the Convention – and different national approaches to consensual sexual relations for financial or other gains.

43. Under Article 3 (b) of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of 2000, “(t)he consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used”. Article 4 (b) of the 2005 Convention of the Council of Europe uses the same language. The means referred to in subparagraph (a) of both treaties are “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”. When transposing these exceptions into domestic law, Parties to those treaties should focus on protecting victims better, giving more weight to typical and often decisive vulnerabilities, which make consent irrelevant under the 2000 UN Protocol and the 2005 Council of Europe Convention.

44. Consent to sexual conduct requires the legal capacity of a person to consent. Under the UN Convention on the Rights of the Child, everybody below 18 years is to be considered a child and to be protected. The anti-trafficking protocol to the 2000 UN Convention and the 2005 Council of Europe Convention against human trafficking follow this definition. However, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 2007 (CETS N° 201) as well as the EU Directive 2011/93 on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography leave member States a margin to define, in accordance with national law, the age below which it is prohibited to engage in sexual activities with a child. In the EU, for instance, there is hence a range from 14 to 18 years.⁸³ This divergence might reduce the protection of children trafficked for sexual exploitation, because it might be difficult in practice for law enforcement authorities to legally prove and distinguish voluntary sexual conduct by a child migrant above 14 or 16 years as opposed to “survival sex” or human trafficking for sexual exploitation of a person below 18 years in violation of Article 19 (Offences concerning child prostitution) of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. Europol published in 2018 a comprehensive Situation Report on Criminal networks involved in the Trafficking and Exploitation of Underage Victims in the European Union, which underlined the growing dimension of such trafficking, especially for sexual exploitation.⁸⁴

45. Violence is a typical means of coercion for the exploitation of the prostitution of others.⁸⁵ With the majority of persons engaged in prostitution being women, feminist scientists have long questioned the perception that women would freely consent to serve their clients’ sexual desires, but pointed to systemic and severe cases of humiliation, violence, physical harm and exploitation.⁸⁶ Psychological violence and coercion is frequent and can take various forms, including though family clans⁸⁷ and peer groups.⁸⁸

⁸¹ <http://cf.cdn.unwto.org/sites/all/files/docpdf/global-report-offenders-move-final.pdf>.

⁸² https://www.ecpat.org/wp-content/uploads/2016/04/cst_faq_eng.pdf.

⁸³ <https://fra.europa.eu/en/publication/2017/mapping-minimum-age-requirements/sexual-consent>.

⁸⁴ <https://www.europol.europa.eu/newsroom/news/child-trafficking-who-are-victims-and-criminal-networks-trafficking-them-in-and-eu>.

⁸⁵ <https://media.ifrc.org/ifrc/document/alone-unsafe-children-migration-sexual-gender-based-violence/>.

⁸⁶ <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1243&context=yjlf>.

⁸⁷ http://www.errc.org/uploads/upload_en/file/breaking-the-silence-19-march-2011.pdf.

⁸⁸ https://ecpat-france.fr/www.ecpat-france/wp-content/uploads/2019/04/WEB_rapport_nigeria_ENG.pdf.

46. Ms Sabine Constabel from the NGO Sisters in Stuttgart informed the Committee on Migration, Refugees and Displaced Persons on 6 September 2019 about the fact that persons engaged in prostitution had frequently bruises and injuries, which were a sign of violence by pimps and customers, but also the fact that the female body would not sustain being penetrated ten times and more per day without injuries. From her experience as a social worker, persons engaged in prostitution often suffered from post-traumatic stress disorders and depression. Alcohol and drugs being frequently used in order to cope with the typical work pressure on sex workers, drug dependencies were quite common and an aggravating factor for mental disorders. In all such circumstances, Ms Constabel said, one could not speak of consent by persons engaged in prostitution.

47. Public movements such as No Means No,⁸⁹ Me Too⁹⁰ and the Parliamentary Assembly's own Not in My Parliament⁹¹ campaign have moved the issue of consent to sexual conduct into the public debate. Countries in Europe have passed laws against sexual harassment.⁹² However, this public concern about consent to sexual conduct has not yet arrived in politics and legislation regarding the exploitation of the prostitution of others. In order to better protect persons engaged in prostitution from sexual exploitation, their consent should be beyond any doubt in accordance with Article 3 (b) of the anti-trafficking Protocol to the 2000 UN Convention and Article 4 (b) of the 2005 Council of Europe Convention. Circumstantial indications of coercion or vulnerability should lead to the presumption that words of consent were not free and thus irrelevant.

48. Some courts have excluded the possibility to consent when human dignity was violated, such as the Federal Constitutional Court of Germany in its judgments of 1986 and 1990 concerning so called "peep-shows", which upheld that peep-shows violated the protection of human dignity under Article 1 of the German Constitution by dehumanising a woman as a pure object of sexual desire of the viewer.⁹³ A similar link between the violation of human dignity and sexual exploitation was found by the Constitutional Court of Turkey in 2018.⁹⁴ Such legal notions about human dignity are logically rather abstract, but they come close to what is otherwise called modern slavery.⁹⁵

49. Through the geographic expansion of mobile phones with cameras and Internet connection, peep-shows have been replaced by webcam prostitution and other online content.⁹⁶ This worrying phenomenon has already been addressed in the context of child abuse.⁹⁷ The online trafficking of child abuse images is a growing global phenomenon.⁹⁸ Terre des hommes started an online petition against webcam child sex tourism.⁹⁹ Under Article 9 of the Cybercrime Convention of the Council of Europe (CETS N° 185), online child pornography must be a criminal offence.

50. France¹⁰⁰ and Germany¹⁰¹ have recently revised national laws on prostitution and sexual offences in order to better protect against sexual exploitation. Spain has been considering new legislation.¹⁰² More countries should review their legislation, in order to respond more effectively to increased numbers of migrants being trafficked and exploited.

3.2. Trafficking for forced labour

51. Forced labour is prohibited under Article 4 of the European Convention on Human Rights, Article 5 of the Charter of Fundamental Rights of the European Union, and the International Labour Organisation (ILO) Convention No. 29 on forced or compulsory labour of 1930. The ILO Forced Labour Convention No 29 of 1930 was updated through a Protocol of 2014, in order to combat forced labour and trafficking in persons and to

⁸⁹ <https://www.nomeansnoworldwide.org/>.

⁹⁰ <https://metoomvmt.org/>.

⁹¹ <http://www.assembly.coe.int/nw/Page-EN.asp?LID=NotInMyParliament>.

⁹² <https://www.bbc.com/news/world-europe-48104247>.

⁹³ BVerfG, 09.07.1986 - 1 BvR 413/86; BVerfG, 16.05.1990 - 1 BvR 450/90.

⁹⁴ <http://www.hurriyetdailynews.com/prostitution-is-against-human-dignity-turkeys-top-court-137026>.

⁹⁵ <https://www.antislavery.org/slavery-today/modern-slavery/>.

⁹⁶ <https://www.bbc.com/news/magazine-40829230>.

⁹⁷ <https://www.coe.int/en/web/portal/-/online-child-sexual-exploitation-and-abuse-addressed-at-a-regional-conference-at-the-council-of-europe> and <https://www.europol.europa.eu/crime-areas-and-trends/crime-areas/child-sexual-exploitation>.

⁹⁸ <https://www.nationalcrimeagency.gov.uk/news/337-arrested-after-takedown-of-horrific-dark-web-child-abuse-site-welcome-to-video>.

⁹⁹ <https://www.terredeshommes.nl/stop-webcam-child-sex-tourism-sign-petition>.

¹⁰⁰ <https://www.france24.com/en/20160406-france-prostitution-law-sex-workers-divided>.

¹⁰¹ <https://www.dw.com/en/germany-prostitute-protection-laws-proving-impotent/a-47560411>.

¹⁰² https://elpais.com/sociedad/2018/12/06/actualidad/1544094442_305207.html.

protect victims.¹⁰³ Ratification of this Protocol by member States of the Council of Europe is still widely outstanding.¹⁰⁴ The ILO published in 2012 its Indicators of Forced Labour, which are intended to help law enforcement officials, labour inspectors and trade union officers in identifying forced labour.¹⁰⁵

52. Within the European Union, Directive 2009/52/EC of 18 June 2009 provides for sanctions for employers of illegally staying third-country nationals who are victims of human trafficking. Therefore, the EU has been active in combating forced labour for many years. Nevertheless, the figures produced by the ILO in 2012 were very alarming: 880 000 people were in forced labour in the European Union (58% of forced labour victims were women and 30% were estimated to be victims of sexual exploitation).¹⁰⁶ The EU-funded research project CLANDESTINO (2007-2009)¹⁰⁷ had estimated between 1.9 and 3.8 million irregular migrants in the EU.¹⁰⁸ It is unlikely that irregular migrants are in regular employment. Therefore, the ILO estimates of 2012 were probably too low. The exceptional increase in arrivals of migrants in Europe in 2015-16 surely increased these numbers.

53. For the second round of evaluation of the Council of Europe Convention on Action against Trafficking in Human Beings of 2005, GRETA decided to pay particular attention to measures taken by States Parties to prevent and combat trafficking for the purpose of labour exploitation and dedicated a thematic chapter of its 7th General Report (published in 2018) to this issue. GRETA's country-by-country reports show that in many States Parties, trafficking for the purpose of sexual exploitation is the predominant form of trafficking as far as identified victims are concerned.

54. At the same time, trafficking for the purpose of labour exploitation has been on the rise and was the predominant form of exploitation in some countries (e.g. Belgium, Cyprus, Georgia, Portugal, Serbia, United Kingdom).¹⁰⁹ While there are considerable variations in the number and proportion of labour trafficking victims amongst the evaluated countries, all countries indicated an upward trend of labour exploitation over the years. As noted by GRETA, vulnerability to exploitation and trafficking is determined by a combination of factors, many of which are structural and are linked to economic, labour and immigration policies.

55. Typical vulnerabilities of victims of forced labour are poverty and an irregular immigration status. Trafficking of persons for the purpose of forced labour occurs typically in labour-intensive sectors, such as in agriculture,¹¹⁰ construction,¹¹¹ the clothing industry,¹¹² restaurants and the hospitality industry¹¹³ and domestic aid.¹¹⁴ In the latter category, the ILO Domestic Workers Convention (No. 189) of 2011 provides for legal protection.

56. The distinction between poor working conditions and forced labour might be difficult, especially in countries and work sectors where low income is typical.¹¹⁵ The Food and Agriculture Organisation (FAO) of the UN produced some legislative guidance in its Legislative Study on "Regulating labour and safety standards in the agriculture, forestry and fisheries sectors".¹¹⁶ National parliaments should become familiar with such legislative steps to combat forced labour.

¹⁰³ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::NO:12100:P12100_ILO_CODE:P029:NO.

¹⁰⁴ https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/WCMS_710960/lang--en/index.htm.

¹⁰⁵ https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf.

¹⁰⁶ https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-brussels/documents/genericdocument/wcms_184976.pdf.

¹⁰⁷ https://ec.europa.eu/knowledge4policy/dataset/ds00039_en.

¹⁰⁸ <http://irregular-migration.net/index.php?id=217>.

¹⁰⁹ GRETA 2nd round report on Belgium, paragraph 13; GRETA 2nd round report on Cyprus, paragraph 12; GRETA 2nd round report on Georgia, paragraph 13; GRETA 2nd round report on Portugal, paragraph 14; GRETA 2nd round report on Serbia, paragraph 12; GRETA 2nd round report on the UK, paragraph 17.

¹¹⁰ https://www.boell.de/sites/default/files/e-paper_migrant-crop-pickers-in-italy-and-spain.pdf.

¹¹¹ <https://uk.reuters.com/article/britain-trafficking-construction/migrant-workers-prey-to-modern-slavery-in-uk-construction-industry-charities-idUKL8N1RM1QW> or https://www.ilo.org/global/topics/forced-labour/publications/WCM_041904/lang--en/index.htm.

¹¹² <https://www.newyorker.com/magazine/2018/04/16/the-chinese-workers-who-assemble-designer-bags-in-tuscany>.

¹¹³ <https://www.bighospitality.co.uk/Article/2014/10/27/Modern-Slavery-Campaign-hospitality-industry>.

¹¹⁴ <https://fra.europa.eu/en/publication/2018/exploited-domestic-workers>.

¹¹⁵ See for instance the Guide for Investor Engagement on Labour Practices in Agricultural Supply Chains, prepared in partnership with the UNEP Finance Initiative and the UN Global Compact: <https://www.unpri.org/download?ac=1652>.

¹¹⁶ <http://www.fao.org/3/CA0018EN/ca0018en.pdf>.

57. The United Kingdom adopted in 2015 its Modern Slavery Act.¹¹⁷ This legislation initiated a public debate about strategies to actively combat forced labour in the United Kingdom.¹¹⁸ The transparency in supply chains provisions of the Modern Slavery Act 2015 require businesses with an annual turnover of £ 36 million or more to prepare a “slavery and human trafficking statement” for each financial year, indicating the steps taken to ensure that slavery and human trafficking is not present in any of the supply chains and any other part of the business. In addition, the United Kingdom has established the position of the Independent Anti-Slavery Commissioner.¹¹⁹ Following the tragic death of 39 persons from Vietnam in a refrigerated lorry in Essex recently,¹²⁰ the Commissioner’s 2017 report about trafficked Vietnamese in the UK comes to mind, in which he described that they are typically used for domestic work, cleaning, restaurant work, cannabis cultivation, nail bars and sexual exploitation.¹²¹

58. The Fundamental Rights Agency (FRA) of the EU published in 2014 the analytical report “Severe forms of Labour Exploitation: Supporting victims of severe forms of labour exploitation in having access to justice in EU Member States”, which includes policy guidelines for detecting risks factors and victim protection.¹²² Those recommendations should also guide non-member States of the EU. In 2019, the FRA published its report Protecting migrant workers from exploitation in the EU, calling for “zero tolerance”.¹²³

59. With the help of NGOs, greater awareness and publicity can be achieved in order to complement governmental action and legislation. The Walk Free Foundation publishes the “Global Slavery Index”,¹²⁴ which analyses and ranks countries and cooperates with the ILO,¹²⁵ but received criticism from other NGOs.¹²⁶ While some NGOs promote decriminalising sex work,¹²⁷ others try to oppose this as a form of human trafficking.¹²⁸ Public campaigns against child labour have contributed to identifying goods produced without child labour.¹²⁹ Such campaigns have been extended to products without forced labour.¹³⁰

60. In the same vein, customers of agricultural products should receive the assurance by producers and shops that their products are produced without forced labour and the exploitation of trafficked workers. In the latter sector, Italy created in 2016 the Quality Agricultural Work Network,¹³¹ given that an estimated 30% of the total labour force is not being duly declared in the Italian agriculture and that many forced labour victims arrived as boat migrants from Africa.¹³²

61. Construction companies should be controlled and certified that they do not employ trafficked persons, in particular if they participate in public tenders.¹³³ The organisation Know The Chain advises companies and investors on forced labour risks within their global supply chains.¹³⁴ Among the many initiatives, I can also mention the Guide for companies and employers on “Managing the Risk of Hidden Forced Labour” published by the Danish National Board of Social Services in 2014.¹³⁵

3.3. Organ trafficking

62. Article 3 of the UN Protocol of 2000 deals with “the removal of organs” as does the identical Article 4 of the Council of Europe Convention on Action against Trafficking in Human Beings. GRETA has paid in the

¹¹⁷ <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>.

¹¹⁸ <https://www.gla.gov.uk/media/1584/jrf-forced-labour-in-the-uk.pdf> and <https://www.reuters.com/article/us-britain-slavery-government-data/britain-accused-of-failing-to-grasp-scale-cost-of-modern-slavery-idUSKBN1KL2F0>.

¹¹⁹ <https://www.antislaverycommissioner.co.uk/>.

¹²⁰ <https://www.bbc.com/news/world-asia-50273470>.

¹²¹ <https://www.antislaverycommissioner.co.uk/media/1159/iasc-report-combating-modern-slavery-experience-by-vietname-nationals-en-route-to-and-within-the-uk.pdf>.

¹²² https://fra.europa.eu/sites/default/files/fra_uploads/severe-labour-exploitation-country_es.pdf.

¹²³ <https://fra.europa.eu/en/publication/2019/victims-severe-labour-exploitation>.

¹²⁴ <https://www.globalslaveryindex.org/>.

¹²⁵ https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf.

¹²⁶ <https://www.opendemocracy.net/en/5050/unravelling-2016-global-slavery-index/>.

¹²⁷ <https://www.opensocietyfoundations.org/publications/ten-reasons-decriminalize-sex-work>.

¹²⁸ <http://www.cap-international.org/about/>.

¹²⁹ <https://www.fairtrade.org.uk/Media-Centre/Blog/2016/June/Ending-child-labour-in-supply-chains>.

¹³⁰ <https://www.fairtrade.net/issue/forced-labour>.

¹³¹ <http://ec.europa.eu/social/BlobServlet?docId=19454&langId=fi>.

¹³² <https://www.theguardian.com/world/2019/jun/20/tomatoes-italy-mafia-migrant-labour-modern-slavery>.

¹³³ <https://www.business-humanrights.org/en/construction-sector-shows-%E2%80%98lack-of-action%E2%80%99-on-tackling-forced-labour-of-workers-globally-says-ngo>.

¹³⁴ <https://knowthechain.org/about-us/>.

¹³⁵ https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/guidelines_risk_management_en.pdf.

course of the second round of evaluation of the Convention on Action against Trafficking in Human Beings particular attention to measures taken by parties to prevent trafficking of people for the purpose of organ removal, and GRETA's country reports contain information of the national legislation and any identified cases.

63. In addition, the Council of Europe Convention against Trafficking in Human Organs specifically addresses organ trafficking. The latter convention is new and should be signed and ratified by more States. Its Article 4 criminalises the removal and trafficking of human organs "without the free, informed and specific consent" of the donor, or "where, in exchange for the removal of organs, the living donor, or a third party, has been offered or has received a financial gain or comparable advantage".

64. The removal of an organ and the payment of money or similar benefits can normally be established by law enforcement authorities, when such cases reach them. Discussions about coercion or consent are thus obsolete. Media reports suggest that migrants sometimes agreed to organ removal in order to pay their smugglers for a trip to Europe.¹³⁶

65. The European Parliament prepared in 2015 a study on trafficking in human organs.¹³⁷ In the same year, the United Nations Office on Drugs and Crime produced a toolkit to better assess the trafficking in persons for the purpose of organ removal.¹³⁸

66. The Additional Protocol to the Convention on Human Rights and Biomedicine Concerning Transplantation of Organs and Tissues of Human Origin (ETS N° 186) complements this convention through ethical norms.

3.4. Trafficking for the purpose of forced marriage and illegal adoption

67. Neither the UN Convention of 1949, nor the Protocol of 2000 directly addresses the issue of human trafficking for the purpose of forced marriage or adoption, although the Legislative Guide to the 2000 Protocol states that slavery and similar practices may include illegal adoption in some circumstances.¹³⁹

68. However, GRETA's reports address this issue and provide information on any identified cases. For example, in a number of countries monitored by GRETA there are reports about vulnerable women from EU countries subjected to exploitative sham marriages with third-country nationals. Other GRETA reports refer to cases of trafficking for the purpose of child, early or forced marriages in Roma communities, and measures to prevent this phenomenon as well as protect victims.

69. Cases of forced marriage have serious dimensions today.¹⁴⁰ An EU-funded project entitled Preventing Human Trafficking and Sham Marriages: A Multidisciplinary Solution (HESTIA) was conducted in Estonia, Finland, Ireland, Latvia, Lithuania and the Slovak Republic.¹⁴¹ Child marriage cases of Syrian child refugees have recently been reported in Turkey¹⁴² and other countries.¹⁴³ The Fundamental Rights Agency of the European Union published in 2014 a report on "Addressing forced marriage in the EU: legal provisions and promising practices", which outlines policy guidelines.¹⁴⁴

70. The Committee on Equality and Non-Discrimination prepared a report on forced marriage in Europe in 2018 which led to Assembly Resolution 2233 (2018). In view of the magnitude of this phenomenon, anti-trafficking measures should be applied against the trafficking for such marriages.

¹³⁶ <https://www.theguardian.com/global-development/2019/feb/09/trafficking-people-smugglers-organs-egypt-mediterranean-refugees-migrants>.

¹³⁷ http://www.europarl.europa.eu/RegData/etudes/STUD/2015/549055/EXPO_STU%282015%29549055_EN.pdf.

¹³⁸ https://www.unodc.org/documents/human-trafficking/2015/UNODC_Assessment_Toolkit_TIP_for_the_Purpose_of_Organ_Removal.pdf.

¹³⁹ https://www.unodc.org/pdf/crime/legislative_guides/03%20Legislative%20guide_Trafficking%20in%20Persons%20Protocol.pdf.

¹⁴⁰ <http://www.refuge.org.uk/files/1001-Forced-Marriage-Middle-East-North-East-Africa.pdf>.

¹⁴¹ <https://www.heuni.fi/material/attachments/heuni/reports/ci5Y5cgbB/Nettiin.pdf>.

¹⁴² <http://www.hurriyetdailynews.com/survey-sheds-light-on-severity-of-turkeys-child-marriage-problem-126103>.

¹⁴³ <https://www.nrc.no/perspectives/2019/what-you-need-to-know-about-syrian-child-marriage/>.

¹⁴⁴ https://fra.europa.eu/sites/default/files/fra-2014-forced-marriage-eu_en.pdf.pdf.

71. With the assistance of Europol, the Danish and German police dismantled in 2018 criminal networks offering sham marriages.¹⁴⁵ Germany has been the target country for sham marriages for visa purposes¹⁴⁶ and German men have falsely certified their fatherhood of new-born children of foreign mothers in exchange for money.¹⁴⁷ Faced with similar cases, the United Kingdom government published in 2015 a guidance about sham marriages and the offences involved.¹⁴⁸ The wider aspects of such phenomena were described in a 2012 study on marriages of convenience and false declarations of parenthood prepared by the European Migration Network for the European Commission.¹⁴⁹

72. The latter cases do not necessarily involve trafficking as such but fall under fraud. However, the customers of such visa fraud, for instance, must bear the burden of high fees.¹⁵⁰ It is very likely that those persons do not have sufficiently high money savings but pay back the fees through prostitution or other criminal activities, given that their qualifications are typically inadequate for other high-income jobs. In this regard, visa or citizenship fraud are directly linked to human trafficking.

73. Parents selling their children for adoption engage de facto in human trafficking. The definition of human trafficking in the Council of Europe Convention on Action against Trafficking in Human Beings does not refer to illegal adoption as such. Nevertheless, as noted in the Explanatory report to the Convention, where an illegal adoption amounts to a practice similar to slavery as defined in Article 1.d of the Supplementary Convention on the Abolition of Slavery, the Slave trade, and Institutions and Practices Similar to Slavery, it will also fall within the Convention's scope. GRETA has paid attention to this issue in the course of the second round of evaluation of the Convention and has highlighted in several country reports cases of trafficking for the purpose of illegal adoption.

74. The number of illegal adoptions is high, with children being typically offered to wealthy parents in Western Europe and North America.¹⁵¹ However, the numbers of such illegal adoptions seem to be declining.¹⁵² In 2017, the Special Rapporteur of the UN Human Rights Council on the sale of children, child prostitution and child pornography, Ms Maud De Boer-Buquicchio presented her thematic report on illegal adoptions.¹⁵³

75. The revised European Convention on the Adoption of Children (CETS N° 202) stipulates standards for child adoptions, including that "no one shall derive any improper financial or other gain from an activity relating to the adoption of a child" (Article 17). Under the Explanatory Report to this convention, the reimbursement of direct and indirect costs and expenses of an adoption and the payment of reasonable remuneration in relation to services rendered are allowed.¹⁵⁴ Regrettably, only 18 member States have signed this convention so far, with 10 having also ratified it.

4. Gender dimension of human trafficking

76. According to estimates, more than two thirds or all victims of human trafficking are women.¹⁵⁵ Women make up an even higher percentage of victims of forced prostitution,¹⁵⁶ which occurs also widely in countries of transit towards Europe.¹⁵⁷

77. Men might be less inclined to report forced labour and launch a complaint, as Ms Annabel Canzian from the NGO "Committee Against Modern Slavery" (CCEM) in Paris reported to the Committee on Migration,

¹⁴⁵ <https://www.europol.europa.eu/newsroom/news/sham-marriage-network-dismantled-in-denmark-and-germany>.

¹⁴⁶ <https://www.dw.com/en/german-police-in-widespread-raids-on-visa-marriages/a-40466231>.

¹⁴⁷ <https://www.dw.com/en/germany-sees-growing-fake-father-racket-for-migrants/a-39138581>.

¹⁴⁸ <https://www.gov.uk/government/publications/criminal-investigation-sham-marriage>.

¹⁴⁹ http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/family-reunification/0a_emn_misuse_family_reunification_study_publication_bf_en.pdf.

¹⁵⁰ In a case in Italy in 2017, Moroccans had to pay up to 10 000 € per person in order to be married with Italians and receive visas for Italy. http://www.ansa.it/english/news/2017/12/07/19-arrested-in-fake-marriage-scam-for-italian-stay-permits_d146829c-85ff-40a6-bfcf-3256267a6173.html.

¹⁵¹ <https://www.unric.org/en/human-trafficking/27450-illegal-adoption>.

¹⁵² <https://www.ft.com/content/eb32208a-b625-11e6-ba85-95d1533d9a62>.

¹⁵³ https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/55.

¹⁵⁴ <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d3833>

¹⁵⁵ https://www.ilo.org/wcmsp5/groups/public/---dqreports/---dcomm/documents/publication/wcms_575479.pdf.

¹⁵⁶ <https://www.unodc.org/unodc/data-and-analysis/glotip.html>.

¹⁵⁷ <https://www.hrw.org/report/2019/08/27/you-pray-death/trafficking-women-and-girls-nigeria>.

Refugees and Displaced Persons on 27 June 2019. Males engaged in prostitution seem to receive less support.¹⁵⁸ They need therefore special protection measures.

78. The 8th General Report on GRETA's activities also refers to the gender dimension of human trafficking, Trafficking in human beings, when it is carried out for the purposes of sexual exploitation, mainly affects women. Women are also trafficked for other purposes, such as forced labour, domestic servitude, forced marriage, forced begging or forced criminality. Women and girls are often targeted because they are disproportionately affected by poverty and discrimination, factors that impede their access to employment, educational opportunities and other resources. It is critical, therefore, that the gender dimension of prevention and protection measures recognise these risks and include survivors of trafficking in the design and implementation of social inclusion and reintegration measures.¹⁵⁹ However, not enough resources are available to assist female victims of other forms of exploitation. The situation of women who have children can also be particularly challenging, given the risks of secondary victimisation of children. The number of male victims of trafficking has been on the rise across State Parties to the Convention due to the proliferation of cases of trafficking for the purpose of labour exploitation. However, there is still a marked shortage of assistance projects for male victims of trafficking. Greater awareness raising, and targeted programmes recognising men and boys as potential victims, are critical to ensure identification and referral to assistance.¹⁶⁰

79. The European Parliament specifically addressed the gender dimension of human trafficking in its Resolution of 26 February 2014 on sexual exploitation and prostitution and its impact on gender equality.¹⁶¹ Following-up from this resolution, the European Commission produced a comprehensive study on the gender dimension of trafficking in human beings with a number of detailed recommendations.¹⁶²

80. The European Institute for Gender Equality of the EU produced a report which provides guidance to member States on gender-specific measures to better identify and support victims of trafficking in human beings and contains a list of indicators concerning the implementation of the provisions of the EU's Anti-Trafficking Directive and Victims' Rights Directive.¹⁶³

5. Related crime

81. Human trafficking is frequently linked to other criminal activities and criminal offences, such as physical assault, drug trafficking and dealing, illegal gambling, theft, visa fraud, fraud of identity documents, tax fraud and money laundering.

82. In two of these fields, the Council of Europe has drafted the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS N° 198) and the Agreement on Illicit Traffic by Sea, implementing Article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (ETS N° 156). Transnational cooperation of law enforcement authorities is also essential and can be facilitated under the European Convention on Mutual Assistance in Criminal Matters and its protocols (ETS N° 30, 99 and 182).

83. The OSCE produced an analysis of the typical business models of human traffickers, in order to better understand where to combat human trafficking.¹⁶⁴ Financial streams linked to human trafficking can only be fought with relevant knowledge and information by law enforcement authorities. In order to disrupt the money-flows within the EU created by human trafficking, member States are bound by Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime, as well as Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property.

¹⁵⁸ <https://www.dw.com/en/helping-berlins-male-prostitutes-one-night-at-a-time/a-2861555>.

¹⁵⁹ See Explanatory Report on the Convention, paragraph 210.

¹⁶⁰ See 7th General report on GRETA's activities (2018), paragraph 178.

¹⁶¹ <https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0162+0+DOC+XML+V0//EN>.

¹⁶² https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study_on_the_gender_dimension_of_trafficking_in_human_beings_final_report.pdf.

¹⁶³ <https://eige.europa.eu/publications/gender-specific-measures-anti-trafficking-actions-report>.

¹⁶⁴ <https://www.osce.org/secretariat/69028?download=true>.

84. The effective implementation of laws against human trafficking is sometimes hampered by corrupt practices, especially by organised crime gangs.¹⁶⁵ Therefore, the Criminal and Civil Law Conventions on Corruption (ETS N° 173 and 174) can be of added value in this regard.

6. Compensation of victims

85. Besides Article 15 (3) of the 2005 Council of Europe Convention on Action against Trafficking in Human Beings on the right of victims to compensation from the perpetrators, the European Convention on the Compensation of Victims of Violent Crimes (ETS N° 116) could also be an instrument for providing compensation to victims of human trafficking, who have been subjected to severe violence.

86. The Convention on Action against Trafficking in Human Beings has the most advanced provisions on compensation and GRETA's monitoring of these provisions has provided a lot of information. It is also the focus of the current, third, evaluation round of the Convention.

7. Conclusions

87. Prevention of human trafficking is better than dealing with victims of human trafficking afterwards. For this purpose, we need more awareness, greater attention and more effective deterrence. This should include greater awareness-raising among customers, employers and the general public, including bystanders or third-party witnesses of cases of human trafficking.

88. Victims of human trafficking deserve better protection, including specific measures for witness protection in prosecutions and trials of human traffickers. Trafficked victims should not be punished or criminalised, but their traffickers and customers should be held responsible. Through training of border guards, police, health professionals and immigration officers, victims of human trafficking should be detected earlier.

89. International cooperation is the key to increasing the effectiveness of strategies and action against human trafficking. The Council of Europe is well placed to contribute greatly to this cooperation based on its various legal treaties which may be of added value in this context and are in principle open for signature by non-member States even outside Europe. In addition, Interpol,¹⁶⁶ Europol¹⁶⁷ and Eurojust¹⁶⁸ have a prominent role in actively combating human trafficking. International cooperation should also be sought with other regional organisations, in particular the African Union¹⁶⁹ and the ASEAN countries¹⁷⁰ as well as organisations such as the British Commonwealth¹⁷¹ and the Francophonie.¹⁷²

90. Human trafficking in all its forms must be treated as a crime, including when committed abroad by citizens of member States. National legislators are called upon to ensure that national laws are adequate and relevant international treaties are ratified and implemented.

91. For this purpose, members of the Parliamentary Assembly should cooperate more actively, for instance by establishing a collaborative anti-trafficking parliamentary network among themselves and with parliamentarians outside Europe, in close partnership with relevant NGOs.

92. A multitude of excellent reports by outstanding experts have addressed human trafficking over many years. There does not seem to be a shortage of expert analyses, but instead a lack of willingness to make a change and to revise culturally engrained perceptions which are conducive to human trafficking. Parliamentarians are in a privileged position to support such changes in policies, legislation and action.

¹⁶⁵ https://www.europol.europa.eu/sites/default/files/documents/23-11_report_child_trafficking.pdf.

¹⁶⁶ <https://www.interpol.int/en/Crimes/Human-trafficking>.

¹⁶⁷ <https://www.europol.europa.eu/crime-areas-and-trends/crime-areas/trafficking-in-human-beings>.

¹⁶⁸ <http://eurojust.europa.eu/press/PressReleases/Pages/2019/2019-06-06.aspx>.

¹⁶⁹ <https://au.int/en/newsevents/20190213/technical-consultation-draft-african-union-ten-year-action-plan-eradicate-child>.

¹⁷⁰ <https://asean.org/wp-content/uploads/2012/05/APA-FINAL.pdf>.

¹⁷¹ <https://www.gov.uk/government/news/commonwealth-countries-unite-to-stamp-out-human-trafficking-and-child-exploitation>.

¹⁷² <https://www.parlament.ch/centers/documents/fr/traite-etres-humains-espace-francophone-rapport-m-reynard-2019-07-06.pdf>.

93. In concluding this report, I wish to cite a paper of 2002 prepared in the framework of the Organisation of American States (OAS), which I would submit to my parliamentary colleagues in Europe as a brief but thorough and comprehensive political analysis of why concerted action has not progressed so far:¹⁷³

“A lack of concerted attention and response to trafficking around the world has occurred for several reasons. Among them are the following:

First, victims rarely denounce traffickers. Trafficked persons are held in locations far from any support networks, often have identification papers and travel documents withheld, and may be threatened by their keepers. In addition, traffickers have power over their victims because in many instances they are from the same country of origin and have the capability of harming members of the victim’s family.

Second, the trafficked women and children often are from the lowest economic and social strata of their societies and their families have neither the economic nor the political capability of bringing about pressure on public authorities to try to save their loved ones from this terrible fate. In some societies, it is in fact poverty that drives families to sell their children into what they frequently believe are legitimate jobs.

Third, national laws, policies, and practices have engendered a series of disincentives against aggressively combating trafficking. Most national criminal laws are inadequate to deal with this contemporary phenomenon. Even when such laws are sufficient, policy considerations make it difficult to reach the traffickers, exploiters, and pimps. Law enforcement and prosecutorial authorities in most countries place prostitution at the lowest end of their enforcement priorities. Corruption of law enforcement and immigration officials also contributes to the lack of investigation and prosecution. Furthermore, many of these victims may be in need of medical and social services which states are reluctant to provide.

Finally, economic, racial, and gender prejudices are the unarticulated premise for the neglectful way in which national laws and policies respond to this widespread criminal phenomenon. This is particularly true in developing and least developed countries, where women and children are generally the weakest elements of the society.”

¹⁷³ <https://www.oas.org/en/mesecvi/docs/AoD31-Trafficking.ENG.doc>.