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“A comparative analysis of the Recovery and Reflection Period on good practices of unconditional assistance and protection measures for victims under the Council of Europe Convention on Action against Trafficking in Human Beings and its implementation in Austria”

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I dedicate this thesis to my grandmother who supported me in realizing to study my dream – human rights and to my father who is my personal hero.

My passionate interest in human trafficking and slavery-related issues stems from an internship in the Gambia in 2011, where I developed a gnawing desire to know more - to know more about the historical transatlantic slave trade and its impact. Nowadays trafficking in human beings.

During my internship in the Gambia, I travelled to the capital city of Senegal, Dakar, visiting the museum of *Île de Gorée*, the famous West African island hub for slave trade. I began to wonder why I knew so little about this human cruelty in history. I started researching about the transatlantic slave trade, on the impact of African slaves in the Americas and the connections of Afro-American traditions. Reading *Alex Haley's 'the roots'* showed and shocked me how inhumane people were treated. I simply could not believe it. I travelled to *Juffure*, the home of *Kunta Kinte*, the main actor in *the roots* and continued my research in order to develop a better understanding.

After my internship I pursued my interest in a Bachelor's thesis in order to understand how identity, transnationalism, globalization and the experience of a gross human rights violation interact. I intend to develop a broad understanding of protection and assistance measure for victims of trafficking and victim's rights with this thesis. It shall also provide me with expertise in order to pursue my interest in my professional career.

Thank you Julia for your useful suggestions and the supervision of my thesis.

“Those who deny freedom to others, deserve it not for themselves”

Abraham Lincoln

TABLE OF CONTENT

1. Introduction	7-9
1.1 Rationale	9-11
1.2 Objective	11-12
1.3 Research Proposal	12-13
1.4 Methodology	13-15
1.5 Limitations	15-18
2. Legal framework	18-20
2.1 Preliminary elaborations	19-21
2.2 State responsibility	23-27
2.3 Associated human rights violations	27-29
2.4 Article 10 Identification of victims	29-31
2.5 Article 12 Assistance to victims	31-32
2.6 Article 13 Recovery and reflection period	32-35
2.7 Article 14 Residence permits	35-36
2.8 Policy concepts	37
2.8.1 Criminalization policy	37-38
2.8.2 Client criminalization policy	38
2.8.3 Regulation policy	39
2.8.4 Decriminalization policy	39-40
2.8.5 Concluding remarks	40-41
2.9 Situation in Austria	41-44
2.10 Compliance with Council of Europe Convention on Action against Trafficking in human beings by Austria	44-46
3. Impediments to detect and identify	47-48
3.1 Root causes of trafficking in human beings	48-51

3.2 Mental and physical impact of trafficking	
in human beings	51-52
3.3 Lover boy method	53-54
3.4 Fear of reprisals	54-56
3.5 Stigmatization of prostitution	56-57
Attitudes in law enforcement and society	58-60
4. Comparative analysis of Council of Europe Member States to the Council of Europe Convention on Action Trafficking in Human Beings	61-64
4.1 Level of compliance of Member States with article 10	65-66
4.2 Level of compliance of Member States with article 12	66-68
4.3 Level of compliance of Member States with article 13	68-70
4.4 Level of compliance of Member States with article 14	70-71
4.5 Conclusion	71-72
5. Findings and suggestions of the comparative analysis for the context in Austria	73
5.1 Recommendations for article 10	73-76
5.2 Recommendations for article 12	76-77
5.3 Recommendations for article 13	77-78
5.4 Recommendations for article 14	79-81
5.5 Central Recommendations for the implementation in Austria	81-82
6. Conclusion	83-86
7. Bibliography	87-105
Appendix	106
Abstract	107

Abbreviations

<i>CEDAW</i>	Convention on the Elimination of all Discrimination against Women
<i>CoE</i>	Council of Europe
<i>CSO</i>	Civil Society Organization
<i>ECtHR</i>	European Court of Human Rights
<i>EU</i>	European Union
<i>EEA</i>	European Economic Area
<i>FYRM</i>	The 'former Yugoslav Republic of Macedonia'
<i>GRETA</i>	Council of Europe Group of Experts on Action against Trafficking in Human Beings
<i>NGO</i>	Non-Governmental Organization
<i>STD</i>	Sexually Transmitted Diseases
<i>THB</i>	Trafficking in Human Beings
<i>UN</i>	United Nations

1. Introduction

30 July 2014 demonstrated the first International day of trafficking in human beings which 'is a global problem and one of the world's most shameful crimes'.¹ The Year of 2015 marks also the 800th anniversary of the Magna Charta², the first document establishing the rule of law and ensuring the enjoyment of rights which are nowadays still infringed by different actors.

Human rights are continuously being denied, especially of victims of human trafficking which is after drugs and arms trafficking, the most profitable business worldwide.³ 'Drug trafficking generates greater dollar revenues, but trafficked woman are far more profitable. (...) Unlike a drug, a human female can be used by the customer again and again'.⁴ Trafficking in human beings constitutes a gross human rights violation which has an extensive dimension with a severe impact onto the lives of victims.⁵

In the current 2015 Eurostat report on trafficking in human beings, which includes statistical data from all 28 EU Member States, as well as Iceland, Montenegro, Norway, Serbia, Switzerland and Turkey, EU Member States 'registered 30 146 victims of trafficking in human beings' over a period of three years and 8805 persons have been brought to trial.⁶ Moreover, '69% of registered victims were trafficked for

¹ UNODC, *UNODC marks first human trafficking day with call for countries to step up fight against this crime*, 30 July 2014, available at: <http://www.unodc.org/unodc/en/frontpage/2014/July/unodc-marks-first-human-trafficking-day-with-call-for-countries-to-step-up-fight-against-this-crime.html?ref=fs1> (accessed on 17 March 2015).

² D. Carpenter, 'Magna Carta – 800 years on', *The Guardian*, 2 January 2015, available at: <http://www.theguardian.com/books/2015/jan/02/magna-carta-800th-anniversary-relevance-david-carpenter> (accessed on 17 March 2015).

³ Austrian Ministry of Foreign Affairs, *Combatting Trafficking in Human Beings*, available at: <http://www.bmeia.gv.at/en/european-foreign-policy/human-rights/priorities-of-austrian-human-rights-policy/combating-trafficking-in-human-beings/> (accessed on 17 March 2015).

⁴ S. Kara, *Sex Trafficking*, New York, Colombia University Press, 2009, p. x.

⁵ Council of Europe, *Convention on Action Against Trafficking in Human Beings*, CETS 197, open for signature 16 May 2005, entry into force 1 February 2008 (herein after *Convention on Action Against Trafficking in Human Beings*), preamble, p. 7.

⁶ European Commission, *Trafficking in Human Beings*, Eurostat report, Luxemburg, European Union, 2015 edition, pp. 10, available at: http://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eurostat_report_on_trafficking_in_human_beings_-_2015_edition.pdf (accessed on 23 June 2015).

the purpose of sexual exploitation' of which 85% were female.⁷

Austria, in particular Vienna, resembles the gate to Eastern Europe due to 'its geographical position, (...) is a transit and destination country' for victims and therefore has to emphasize more on combatting trafficking in human beings.⁸ Majority of victims originate from the Balkans.⁹ The fall of the iron curtain and the opening of borders expedited a flow of migration from the former Soviet bloc¹⁰ and therefore Vienna as the capital city of Austria might have had with laws regulating prostitution an appealing effect. Thus resulted in an increase in trafficking in human beings due to mobility and movement of Eastern European citizens.¹¹

In 2010, 2351 sex workers were registered in Vienna compared to 5621 nationwide registered sex workers, resembling the importance of Vienna within Austria.¹² Furthermore, registered sex workers are subject to taxation and compulsory health checks.¹³ Yet, as a federal state, Austria has provinces such as Vorarlberg which approach prostitution on a prohibition paradigm, emerging in a dilemma to establish numbers of sex workers across the country.¹⁴

Nowadays, there is no taboo talking about sex and love matters with people, friends and family. The motto 'sex sells' is widely disseminated and used. However there is a striking difference – commercial sex is still perceived as immoral and indecent.¹⁵ Stigmatization is high if women who engage in sex work, inform friends and family

⁷ Ibidem, p. 11.

⁸ Federal Ministry of Austria for Europe, Integration, Foreign Affairs, *Combatting Trafficking in Human Beings*, available at: <http://www.bmeia.gv.at/en/european-foreign-policy/human-rights/priorities-of-austrian-human-rights-policy/combating-trafficking-in-human-beings/> (accessed on 20 March 2015).

⁹ United States Department of State, *Trafficking in Persons Report*, Country Profile: Austria, 2014, p. 83.

¹⁰ *Ranste v. Cyprus and Russia* (App no 25965/04) ECtHR 7 January 2010.

¹¹ M. Edelbacher, 'Austrian International Police Cooperation' in D. Koenig, D. Das (eds.), *International Police Cooperation*, Oxford, Lexington Books, 2001, p. 121-128.

¹² Helga Amesberger, based on statistic of the Ministry of the Interior, *Lageberichte 2007 – 2011*, in H. Wagenaar, S. Altink, H. Amesberger, *Final Report of the International Comparative Study of Prostitution Policy: Austria and the Netherlands*, Den Haag, Platform31, 2013, p. 27.

¹³ Office of the High Commissioner of Human Rights, United Nations Committee on Economic, Social and Cultural Rights, *Sex-Worker Forum of Vienna Publication*, 2013, p. 5, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fNGO%2fAUT%2f14625&Lang=en (accessed on 19 March 2015).

¹⁴ See H. Wagenaar, S. Altink, H. Amesberger, *Final Report of the International Comparative Study of Prostitution Policy: Austria and the Netherlands*, Den Haag, Platform31, 2013, p. 16.

¹⁵ G. Pheterson, *The Whore Stigma: Female Dishonor and Male Unworthiness*, *Social Text*, Duke University Press, No. 37, 1993, p. 39-64, available at: <http://www.jstor.org/stable/466259> (accessed on 19 March 2015)

about their profession.¹⁶ Austria has mainly regulated prostitution, however how can be a legal profession cause immense stigmatization and outlaw women? Therefore, an unconditional approach by law enforcement with assistance and protection measures would contribute to support victims in realizing their rights.

1.1 Rationale

In order to combat trafficking in human beings, it is necessary to create a functioning legal system based on International Conventions concurrently protecting human rights and needs of victims.¹⁷

The framework of the *Council of Europe Convention on Action against Trafficking in Human Beings*¹⁸ offers with the recovery and reflection period a possibility, from the initial point of detection, to protect victim's rights unconditionally and impartial without any prerequisites or preconditions. The concept of an unconditional period completes the obligation [of states] to protect the human rights' of victims.¹⁹

Unconditional assistance and protection incorporates a human rights based approach which does not instrumentalise victims of trafficking for the pursuit of prosecution.²⁰ According to the *Experts Group on Trafficking in Human Beings*, a human rights based approach does not exert any pressure onto victims by offering a recovery and reflection which is contingent on the participation in the prosecution on the trafficker.²¹ Providing assistance and protection to victims of trafficking and the

¹⁶ M. Tomura, 'A Prostitute's Lived Experiences of Stigma' in *Journal of Phenomenological Psychology*, vol. 40, 2009, p. 51-84.

¹⁷ C. Rijken, R. Römkens, 'Trafficking for Sexual Purposes as a Globalized Shadow Economy: Human Security as the Tool to facilitate a Human Rights Based Approach' in R. Letschert, J. van Dijk, *New Faces of Victimhood*, Tilburg, Springer, Global Justice Series, 2011, p. 73-98.

¹⁸ Council of Europe, *Convention on Action against Trafficking in Human Beings*, CETS 197, open for signature 16 May 2005, entry into force 1 February 2008 (herein after *Convention on Action Against Trafficking in Human Beings*).

¹⁹ Oxford Journals, 'Opinion of the Experts Group on Trafficking in Human Beings of the European Commission: On the revision of the Council Framework Decision of 19 July 2002 on Combating Trafficking in Human Beings' in *International Journal of Refugee Law*, vol. 21, no. 3, pp. 508-514.

²⁰ Experts Group on Trafficking in Human Beings, *Opinion on reflection period and residence permit for victims of trafficking in human beings*, Brussels, European Commission, 16 April 2004.

²¹ Experts Group on Trafficking in Human Beings, *Opinion on reflection period and residence permit for victims of trafficking in human beings*, Brussels, European Commission, 16 April 2004, para. 10, 11, 12

prosecution of their traffickers need to be separated in order not to create a situation of conditionality where protection and assistance measures are subject to the victim's participation in criminal proceedings.²² 'Conditional protection, however, stands in contradiction to a human rights approach, whereby victims of exploitation are provided with unconditional support and respect for their rights'.²³

The period acknowledges the victimization suffered from being trafficked, thus it serves to rehabilitate from the trauma and to 'take an informed decision on co-operating with' law enforcement.²⁴ It is crucial to be initially identified as a victim in order to receive access to assistance and support, and preventing a failure of identification which may lead to further exposure of victims.²⁵ Although, the Convention explicitly refers in its explanatory report not to subject individuals to 'co-operating with the investigative or prosecution authorities', it is a widespread practice among Member States.²⁶ Thus, consensus has reached in the scholarly debate on the instrumentalisation of victims for law enforcement proceedings.²⁷

The 2004 *Report of the Experts Group on Trafficking in Human Beings* by the European Commission also recalls that 'granting a reflection period (...) assists Member States in their obligation to protect the human rights of trafficked persons and not to treat trafficked persons exclusively as an instrument for the prosecution'.²⁸

Furthermore, the Group of Experts on Action against Trafficking (GRETA), the monitoring body of Council of Europe Convention, 'has seen too many cases where victims still encounter excessive difficulties in benefiting from their rights to

²² A. Brunovskis, *Balancing protection and prosecution in anti-trafficking policies*, Copenhagen, Nordic Council of Ministers, 2012, p. 53.

²³ La Strada International, *Violation of Women's Rights: A cause and consequence of trafficking in women*, Amsterdam, La Strada International, 2008, p. 42.

²⁴ *Convention on Action against Trafficking in Human Beings*, art. 13.

²⁵ See United States Department of State, *Trafficking in Persons Report 2013*, Victim Identification: The First Step in Stopping Modern Slavery, available at: <http://www.state.gov/j/tip/rls/tiprpt/2013/210542.htm> (accessed on 27 May 2015).

²⁶ Council of Europe, Group of Experts on Action against Trafficking (GRETA), *4th General Report on GRETA's activities*, Strasbourg, Council of Europe, 2015, p. 33.

²⁷ A. Gallagher, *The International Law of Human Trafficking*, New York, Cambridge University Press, 2010, p. 298.

²⁸ European Commission, *Report of the Experts Group on Trafficking in Human Beings by the European Commission*, Brussels, European Commission, 2004, p. 105.

assistance, compensation and protection against reprisals'.²⁹ Only if victims receive unconditional protection and support measures by the state, they 'are able to play an effective role in the investigation and prosecution of trafficking cases'.³⁰

Due to the mental and physical health of victims and their vulnerability, article 12 of the *Convention on Action Against Trafficking in Human Beings* addresses assistance measures to be provided for victims, in particular the unconditional protection and support 'to ensure that assistance [...] is not made conditional on his or her willingness to act as a witness'.³¹

In the context of trafficking in human beings, stigmatization and fear of reprisals are one of the biggest impediments to detect and identify victims.³² If victims would encounter less stigmatization among society and more acknowledgement as well as being perceived as a woman and not as an object, identification and therefore assistance and protection would eventually increase. The feeling of safety and protection would help women to seek assistance.³³ Unconditional assistance needs to address a gender dimension due to the extraordinary position of women being trafficked as a result of 'their social and economic position' and the high prevalence of patriarchy.³⁴ Additionally, gender stereotypes underpin the concept of women being 'objects rather than subjects', which is interconnected with patriarchal conceptions.³⁵ Yet, it is crucial to understand the nature of victims in order to unconditionally ensure assistance which would further benefit the combat and prosecution on trafficking and traffickers.

²⁹ GRETA, *4th General Report on GRETA's activities*, Strasbourg, Council of Europe, 2015, p. 6.

³⁰ A. Gallagher, *The International Law of Human Trafficking*, New York, Cambridge University Press, 2010, p. 276.

³¹ *Convention on Action against Trafficking in Human Beings*, art. 12 (6).

³² C. Rijken, R. Römkens, 'Trafficking for Sexual Purposes as a Globalized Shadow Economy: Human Security as the Tool to facilitate a Human Rights Based Approach' in R. Letschert, J. van Dijk, *New Faces of Victimhood*, Global Justice Series, Tilburg, Springer, 2011, pp. 73-98.

³³ A. Jorge-Birol, 'Empowering Victims of Human Trafficking: the Role of Support, Assistance and Protection Policies' in *HUMSEC Journal*, vol. 2, April 2008, pp. 163-178, available at: http://www.humsec.eu/cms/fileadmin/user_upload/humsec/Journal/Pedra.pdf (accessed on 18 June 2015).

³⁴ La Strada International, *Violation of Women's Rights: A cause and consequence of trafficking in women*, Amsterdam, La Strada International, 2008, p. 11.

³⁵ *Ibidem*, p. 12.

1.2 Objective

In order to increase law enforcement and thus combatting trafficking in human beings, unconditional access to assistance and protection measures for victims is substantive.³⁶ Tendencies to contribute to criminal proceedings are higher if victims have been granted a recovery and reflection period without any conditions.³⁷ Effective counter strategies are only possible and to be realized if victims are encountered interdisciplinary with an individual needs assessment and a rights-oriented perspective.³⁸ Austria does not fully meet the standards set forth in the Convention, yet a balance of prosecution and protection and assistance is urgently needed in order to avoid instrumentalisation of victims for law enforcement.³⁹ Therefore, measures to protect and assist during and after the recovery and reflection period are inevitable, in particular unconditional residence is required in order to prevent instrumentalisation by law enforcement and second victimization. The aim of this comparative analysis is to identify best practice examples from all Member States to the European Trafficking Convention in order to implement those into anti-trafficking measures in Austria.

1.3 Research Proposal

Effective counter-trafficking policies shall fulfil the 3Ps: Prevention, Protection and Prosecution – Victims who are able to access and receive unconditional assistance and protection in the Recovery and Reflection period, tend to contribute to criminal proceedings. In order to offer victims an unconditional recovery and reflection period according to article 13 of *the Convention on Action against Trafficking*, thorough and comprehensive assistance measures under article 12 are

³⁶ ³⁶ A. Gallagher, *The International Law of Human Trafficking*, New York, Cambridge University Press, 2010, p. 276.

³⁷ Supra note 29.

³⁸ See La Strada International, *Violation of Women's Rights: A cause and consequence of trafficking in women*, Amsterdam, La Strada International, 2008, p. 98.

³⁹ See GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria*, Strasbourg, Council of Europe, 2011.

indispensable and need to be ensured which eventually benefits law enforcement. Therefore the main research question focuses on the issue of *how Member States implement an effective recovery and reflection period and therefore realize unconditional protection and assistance measures by securing a victim-sensitized approach?*

The following research questions will be answered throughout the text in order to conclude on the main research question.

1. To what extent does Austria implement the relevant provisions of the *Convention on Action against Trafficking*? How are currently victims' needs met in the assistance system?
2. What are impediments to detect and identify victims of trafficking in order to effectively grant a recovery and reflection period? Which Member States constitute good practice examples with their approach of unconditional protection and assistance for victims in the recovery and reflection period? How to respond to a violation of trafficking in human beings on a multidisciplinary basis?
3. How to implement an effective Recovery and Reflection period based on the comparative analysis? How to ensure access to unconditional assistance and protection for victims? How to counterbalance state's interest in prosecution and victim's needs for protection & assistance?

1.4 Methodology

This thesis entails a comparative analysis based on a qualitative approach. It is furthermore a literature review aiming at researching and identifying relevant publications in order to establish conclusions. Moreover, the comparative analysis presents different approaches of measures of victim protection and assistance in different Member States which therefore stipulate the basis of recommendations in Austria. Victim protection and assistance is not solely coordinated and regulated

with article 12; article 10, the identification of victims constitutes the prerequisite in order to obtain access to the recovery and reflection period (article 13). Measures to unconditionally protect and assist do not terminate with the end of the recovery and reflection period, residence permits complete the comprehensive approach of victim protection. Therefore, article 10, 12, 13 and 14 are interlinked and mutually dependent, in consequence, in order to ensure a victim-centered approach all articles must be effectively applied together and not separately.

By evaluating all country reports and GRETA (Group of Experts on Action against Trafficking in Human Beings) recommendations in regards to the beforehand mentioned articles, good practice examples will be identified in order to apply it to the Austrian context. Good practice examples will be complemented by further research according to the nation's context.

GRETA has developed a hierarchy representing a grading system of treaty compliance for each provision which is differentiated between *invite*, *consider* and *urge*.⁴⁰ The term *invite* refers to the recognition of GRETA that 'a country [shall] pursue its efforts in a given area, [and] that the authorities are already on the right track'.⁴¹ GRETA uses *consider* in order to refer 'to make further improvements in order to fully comply with an obligation of the Convention'.⁴² *Urge* which stipulates the highest urgency, refers to the non-fulfilment of a member state to the Convention and the implementation of a key obligation (...) is lacking'.⁴³ A table of all Member States and their overall treaty compliance will be provided in part 3.

This thesis will therefore elaborate in the next chapter the application of legal standards and relevant provisions of the *Council of Europe Convention*, and to what extend Austria corresponds to the Convention.

In chapter 3, obstacles in the detection and identification of victims will be discussed. The examination on impediments on the detection and identification of victims of sexual exploitation provides a general understanding of the nature of

⁴⁰ GRETA, *4th General Report on GRETA's activities*, Strasbourg, Council of Europe 2015, p. 31.

⁴¹ Ibidem.

⁴² Ibidem.

⁴³ Ibidem.

victims and therefore the need of an effective and unconditional recovery and reflection period in Austria.

Followingly, good practice examples of the implementation of article 13, the recovery and reflection period, in all Member States will be presented in order to determine effective ways to ensure unconditional assistance and protection on a victim-sensitized approach during and after the period. For the proper and unconditional realization of the recovery and reflection period, article 13, the enforcement of comprehensive identification procedures (article 10), unconditional assistance measures (article 12) and a residence permit based on the victim's personal situation are indispensable.

In order to increase law enforcement and thus combatting trafficking in human beings, unconditional access to assistance and protection measures for victims is needed. Provisions on the assistance and protection in the Convention on Action against Trafficking in Human Beings exceed the four mentioned articles, however this thesis focuses specifically on those which presuppose the recovery and reflection period.

Only if properly identified, a victim gains access to the assistance measures in the recovery and reflection period and is able to receive a residence permit on either personal grounds or participation in criminal proceedings. Thus, tendencies to contribute to criminal proceedings are higher if victims have been granted a Recovery and Reflection period without any conditions.

In Chapter Five, suggestions, delivered by the identified good practice examples of the comparative analysis, will be used for the implementation of measures for the unconditional assistance and protection during and after the recovery and reflection period in Austria.

1.5. Limitations

The focus of this thesis lays down on the international crime of exploiting women in the sex industry which amounts to human trafficking in the majority of cases in

Austria.⁴⁴ This comparative analysis concentrates on women who have been subject to trafficking which are therefore in need of protection, however the analysis does not focus on their residency status during the exploitation. Some women are in the process of seeking asylum, others are undocumented persons or they are EU nationals, whereas they do not need permits for residence due to the freedom of movement in the European Union. The freedom of movement within in the European Union was established with the Directive 2004/38/EC, allowing a residency for three months in any EU country.⁴⁵

However, it needs to be mentioned that the Council of Europe holds 47 Member States⁴⁶, whereas the European Union includes with 28 Member States⁴⁷ a smaller circle. Therefore, residence permits must be provided to every victim irrespectively of their residential situation.

The author is aware about the debate of semantics of ‘prostitution’ and ‘sex work’. Kathleen Barry, as one of the most popular anti-prostitution feminists, considers prostitution as ‘the most extreme [...] form of all sexual exploitation’ which underpins oppression of women and strengthens gender inequality.⁴⁸ On the other hand, Carol Leigh, pioneering the term ‘sex worker’, advocates for the rights of women in engaging in sex work.⁴⁹ Therefore, both notions resemble different ideologies: sex work acknowledges the right to self-determination and prostitution refers to subordination of women.

⁴⁴ Austrian Federal Ministry for Europe, Integration and Foreign Affairs, *Combatting Trafficking in Human Beings*, available at: <http://www.bmeia.gv.at/en/european-foreign-policy/human-rights/priorities-of-austrian-human-rights-policy/combating-trafficking-in-human-beings/> (accessed on 19 March 2015).

⁴⁵ European Union, Directive 2004/38/EC of the European Parliament and the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, 29 April 2004, 2004/38/EC (accessed on 22 July 2015)

⁴⁶ Council of Europe, Member States, available at: <http://www.coe.int/en/web/portal/47-members-states> (accessed on 22 July 2015)

⁴⁷ European Union, EU member countries, available at: <http://europa.eu/about-eu/countries/member-countries/> (accessed on 22 July 2015)

⁴⁸ K. Barry, *The Prostitution of Sexuality*, New York and London, New York University Press, 1995, p. 11.

⁴⁹ See K. Kempadoo, J. Doezema (eds.), *Global Sex Workers, Rights, Resistance, and Redefinition*, New York, Routledge, 1998, p. 8.

In the view of the author, the regulating approach of sex work, as it is in Austria, seems to be more impartial, and comprehensive in regards to combatting trafficking in human beings due to non-criminalization of women, and a monitoring system which benefits 'to better identify and support' victims and allows to some extend supervision.⁵⁰ Regulating prostitution and the registration of the occupation can offer safe facilities to work which benefits the security of women and does not expose them to the danger of being abused.

Criminalizing sex work pushes women to work in remote and hidden areas which increases the danger of being abused and subject to violence. Not all sex workers are victims of trafficking and therefore approaching victims of trafficking with a criminalized perspective would expose women to a greater level of vulnerability and stigmatization.

In consequence, it is more difficult for law enforcement to reach women in order to protect them. It is also impeding the outreach work of NGOs to detect women who are in an exploitative situation. Therefore a decriminalizing approach might be able to enhance working conditions if comprehensive and rights-based legislations exist which are appropriately enforced. The dignity of women needs be respected if they are voluntarily engaging in sex work.⁵¹

It is also in the view of the Austrian Ministry for Foreign Affairs 'to differentiate clearly between the needs of persons who voluntarily offer sexual services for monetary reward and those who are victims of human trafficking'.⁵²

'Prohibiting prostitution also raises tricky "freedom of choice" issues concerning both the potential suppliers and clients of prostitution services'.⁵³ Thus, self-determination allows women to administer their own livelihood and freedom over their conduct.⁵⁴

⁵⁰ Bundeskanzleramt Österreich, *Prostitution in Austria*, available at:

<https://www.bka.gv.at/site/6852/default.aspx> (accessed on 19 March 2015).

⁵¹ K. Islam, *Issues in Women's Rights*, A Practitioners' Resource Book, New Delhi, Allied Publishers Pvt. Ltd, 2014, p. 13.

⁵² Supra note 38 (accessed on 19 March 2015).

⁵³ S. Cho, A. Dreher, E. Neumayer, 'Does Legalized Prostitution Increase Human Trafficking?' *World Development*, vol. 41, 2013, pp. 67–82.

⁵⁴ United Nations, *Beijing Declaration and Platform of Action*, adopted at the Fourth World Conference on Women, 27 October 1995, para. 96.

This thesis will not elaborate on demand reduction policies, it will strictly focus on the importance of unconditional protection and assistance in the recovery and reflection period which, if properly implemented and used, benefits eventually the progress of prosecution and law enforcement.

In the terminology debate between 'victim' and 'survivor', people for the latter emphasize the strength of women surviving a serious crime whilst 'victims' are considered to be weak and incapable to defend themselves against threats and the subordination to men.⁵⁵ In order to resemble the notion of the Council of Europe Convention on Action against Trafficking in Human Beings, which specifically uses the term victim in order to accentuate the dimension of the crime, the thesis will therefore use throughout the text the term 'victim' and not 'survivor'.⁵⁶

⁵⁵ R. Gupta, "'Victim' vs 'Survivor': feminism and language", *open democracy*, 16 June 2014, available at: <https://www.opendemocracy.net/5050/rahila-gupta/victim-vs-survivor-feminism-and-language> (accessed at 28 May 2015).

⁵⁶ *Convention on Action against Trafficking in Human Beings*, explanatory report, para. 52b.

2. Legal framework of trafficking in human beings

Although the phenomenon of trafficking in human beings goes back to the slave trade and even further, a comprehensive legal definition has been only recently established with the *Palermo Protocol* which was the first international convention recognizing and defining the terminology of trafficking in human beings in 2000.⁵⁷ The 2005 *Council of Europe Convention on Action against Trafficking in Human Beings* took over the definition of trafficking in human beings from the *2000 Palermo Protocol* because of the established international consensus. Entering into force in February 2008, it extended the scope of the definition with a provision on victims, which 'shall mean any natural person who is subject to trafficking in human beings as defined in this article'.⁵⁸ The definition of trafficking in human beings according to the 2005 *Council of Europe Convention on Action against Trafficking in Human Beings* reads as follows:

'Art. 4: "Trafficking in persons" shall mean the recruitment, (...) by means of the threat or use of force (...) of fraud, of deception, of the abuse of power (...) to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include (...) the exploitation of the prostitution of others (...);'

Trafficking in human beings needs the fulfilment of three prerequisites: action, means and purpose. The prerequisite *action* refers to the 'recruitment, transportation' of people and other forms of movement.⁵⁹ The element *means* constitutes the 'use of force, (...) fraud' or violent suppression in order to gain 'control over another person'.⁶⁰ Therefore, fraud may be false promises of work

⁵⁷ UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, vol. 2237, (hereinafter *Palermo Protocol*), article 3 (a).

⁵⁸ *Convention on Action against Trafficking in Human Beings*, article 4 (e).

⁵⁹ *Convention on Action against Trafficking in Human Beings*, art. 4, explanatory report, para. 74.

⁶⁰ *Ibidem*.

opportunities such as waitresses, dancers, household help and also sex workers.⁶¹ Especially, women decoyed with fabricated promises find themselves in a coercive setting of forced prostitution.⁶² And lastly, the element of *purpose* is ‘exploitation’, which is in the context of this thesis forced prostitution.⁶³

2.1 Preliminary elaborations

Before the Palermo Protocol, the 1926 Slavery Convention⁶⁴ and the 1979 Convention on the Elimination of all forms of Discrimination against Women (CEDAW)⁶⁵ served as a human rights instrument to ensure the prohibition of slavery of human beings. CEDAW was the first legal framework who embedded a trafficking focus however it only focused on the exploitation of women in prostitution.⁶⁶ The 1926 Slavery Convention originates from the historical slave trade and has therefore defined slavery as ‘the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised’.⁶⁷ The *de iure* right to ownership in regard to the traditional meaning of the 1926 Slavery Convention had been encompassed in a modern sense in several judgements where *de facto* circumstances amount to a violation on the prohibition of slavery. Which will be elaborated in the following passage.

In the case of *Kunarac et al*, the International Criminal Tribunal for the former Yugoslavia (ICTY) determined the modern legal concept of slavery in a broader

⁶¹ UNODC, *Human Trafficking FAQs*, available at: http://www.unodc.org/unodc/en/human-trafficking/faqs.html#What_types_of_industries_are_involved_with_human_trafficking (accessed on 20 March 2015).

⁶² D. Castaneda, *The Essential Handbook of Women's Sexuality*, Santa Barbara, Praeger, 2013, p. 391.

⁶³ *Convention on Action against Trafficking in Human Beings*, art. 4, explanatory report, para. 74.

⁶⁴ See League of Nations, *Convention to Suppress the Slave Trade and Slavery*, 25 September 1926, 60 LNTS 253, Registered No. 1414.

⁶⁵ Cf. UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, UNTS 1249.

⁶⁶ *Ibidem*, article 6.

⁶⁷ See League of Nations, *Convention to Suppress the Slave Trade and Slavery*, 25 September 1926, 60 LNTS 253, Registered No. 1414, article 1.

sense. It expressed its opinion on certain identifying factors to conclude on enslavement. Those factors are according to the ICTY the 'control of someone's movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour'.⁶⁸ However, the ECtHR interpreted in its *Siliadin v. France* judgement the 1926 definition of slavery in the classical sense that no exercise of the right to ownership occurred in the respective case.⁶⁹ Yet, in the case of *Rantsev v. Cyprus and Russia*, the Court concluded a violation under article 4 of the ECHR 'that trafficking in human beings, by its very nature and aim of exploitation, is based on the exercise of powers attaching to the right of ownership'.⁷⁰

Those antithetic judgments show great contradiction between the modern interpretation of slavery by the ICTY which was also used in the judgment of *Rantsev v. Cyprus and Russia* and the traditional determination on slavery in the case of *Siliadin* by the ECtHR. Nonetheless, the ECHR is a living instrument which has 'to interpret the Convention in light of present-day conditions' as it was done by the ICTY.⁷¹ Giving a notion to the framework which no other international document has, it lives in the current time spirit and is able to adjust to the features of globalization, meaning also to modern forms of slavery such as trafficking in human beings.⁷²

Although exploited women are not *de iure* owned by traffickers, abusive circumstances amount to *de facto* modern enslavement.

Traffickers do not need to own women as they use subtle means to maintain and exercise control. Means of exercising control will be elaborated in part 3 'impediments to detect and identify'. Therefore, as proven in the judgement of

⁶⁸ *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic (Trial Judgment)*, IT-96-23-T & IT-96-23/1-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 22 February 2001.

⁶⁹ *Siliadin v. France* (App no 73316/01) ECtHR 26 July 2005, para. 122.

⁷⁰ *Rantsev v. Cyprus and Russia* (App no 25965/04) ECtHR 7 January 2010, para. 281.

⁷¹ *Rantsev v. Cyprus and Russia* (App no 25965/04) ECtHR 7 January 2010, para. 282.

⁷² *Rantsev v. Cyprus and Russia* (App no 25965/04) ECtHR 7 January 2010, para. 279.

Ranste v. Cyprus and Russia, trafficking in human beings can amount to slavery under certain circumstances.⁷³

Furthermore, the *Council of Europe Convention* is the first Convention with a victim-centred approach by providing a recovery and reflection period based on presumption of 'reasonable grounds to believe that the person concerned is a victim'.⁷⁴ The Convention further illustrates its 'paramount objectives' of respecting 'victims' rights, protection victims and to combat trafficking in human beings'.⁷⁵ Therefore, the *Council of Europe Convention* has five principal aims. Firstly, prevention and combatting offences of trafficking in human beings, followed by the protection of 'human rights of victims'⁷⁶ which can be only realized with an 'effective investigation and prosecution'.⁷⁷ The fourth aim is the promotion of effective 'international cooperation' which is concluded by the 'monitoring mechanism', the last principal aim.⁷⁸ The mechanism consists of several independent field experts, forming the *Group of Experts on Action against Trafficking in Human Beings* (GRETA) who conduct country visits in periodic cycles. Several articles of the Convention are intertwined to ensure the unconditional protection of victims with measures in the recovery and reflection period (article 13) such as identification procedures (article 10), assistance to victims (article 12) , and residence permit (article 14). In order to secure an unconditional approach in the recovery and reflection period, the articles 10, 12 and 14 are conditional for realizing comprehensive protection and assistance measures for victims of trafficking.

Followingly, in point 2.4, the relevant provisions of the Council of Europe Convention will be provided.

⁷³ *Ranste v. Cyprus and Russia* (App no 25965/04) ECtHR 7 January 2010, para. 279.

⁷⁴ *Convention on Action against Trafficking in Human Beings*, art. 13.

⁷⁵ *Convention on Action against Trafficking in Human Beings*, preamble.

⁷⁶ *Convention on Action against Trafficking in Human Beings*, art. 1.

⁷⁷ *Ibidem*.

⁷⁸ *Ibidem*.

2.2 State responsibilities

For all International Conventions concerning human rights law, States function primarily as duty bearers obliged to respect, protect and fulfil human rights provision.⁷⁹ 'The obligation to respect means that States shall refrain from interfering', if not doing so, it may result in the denial of the enjoyment of human rights.⁸⁰ The enjoyment of rights can be restricted or limited under certain circumstances as regards to a 'respective derogation or limitation clause'.⁸¹ A limitation needs to be provided by law, necessary and proportionate to the act committed. The obligation to protect incorporates positive as well as preventive actions for states to avoid violations 'by other private actors'.⁸² It is also an obligation of means, states need to undertake measures to criminalize trafficking in human beings and offer the possibility of reparation. In the obligation to fulfil, states adopt 'legislative, administrative, judicial' and practical projects and acts to reach the full realization of human rights, such projects to enjoy rights are anti-trafficking action plans and initiatives.⁸³

Obokata determines furthermore four essential obligations for states concerning human rights law, firstly the prohibition of trafficking in human beings, penalizing people involved in trafficking, victim protection and lastly devote to and focus on the root cause and consequences of trafficking in human beings.⁸⁴

To have a sound and comprehensive anti-trafficking policy, the sheer existence of laws combating trafficking in human beings is not sufficient for a victim-centred and human rights based approach.⁸⁵ Legal frameworks need to be transformed into

⁷⁹ J. Planitzer, *Trafficking in Human Beings and Human Rights: The Role of the Council of Europe Convention on Action against Trafficking in Human Beings*, Vienna and Graz, Neuer Wissenschaftlicher Verlag, 2014, pp. 58.

⁸⁰ A. Gallagher, *The International Law of Human Trafficking*, New York, Cambridge University Press, 2010, p. 270

⁸¹ *Ibidem*.

⁸² *Ibidem*.

⁸³ *Ibidem*, p. 271.

⁸⁴ T. Obokata, 'A Human Rights Framework to Address Trafficking in Human Beings' in *Netherlands Quarterly of Human Rights*, vol.3, pp. 379-404.

⁸⁵ C. Rijken, R. Römkens, 'Trafficking for Sexual Purposes as a Globalized Shadow Economy: Human Security as the Tool to facilitate a Human Rights Based Approach' in R. Letschert, J. van Dijk, *New Faces of Victimhood*, Tilburg, Springer, Global Justice Series, 2011, p. 73-98.

effective practical measures and clear structural guidelines in order to ensure accurate criminal investigations and the interests of victims.

In order to safeguard accuracy and efficacy of national legislations to combat trafficking, a National Referral Mechanism (NRM) delivers a solid basis of a structured plan. According to the OSCE, a National Referral Mechanism comprises 'a co-operative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons' which necessitates the collaboration with various stakeholders, in particular NGOs/CSOs.⁸⁶ In order to refer victims in a duly manner, a clear structure of responsibilities facilitates the smooth procedure of providing assistance and protection and consequently safeguarding human rights of victims. The scheme of an NRM combines a national coordinator, and a panel composed by government officials as well as NGOs 'who develop recommendations for national polic[ies] and procedures regarding victims of trafficking'.⁸⁷ The core idea of an NRM is the identification and cooperation with all stakeholders in order to ensure rights of victims.⁸⁸

The European Court of Human Rights specified in the case of *Rantsev v. Cyprus and Russia*, that Member States have the positive obligation 'to take measures to protect' individuals from human rights violations such as trafficking in human beings or slavery.⁸⁹ The Court had ruled that Member States must effectively implement anti-trafficking laws and provisions in order to prevent trafficking in human beings and to provide adequate investigations in cases of trafficking.

In addition to the above mentioned human rights obligations, the doctrine of non-discrimination implies another obligation for states 'to enact legislation to eradicate discrimination' based on race, sex, nationality, religion, political opinion and social

⁸⁶ OSCE, National Referral Mechanisms, Joining Efforts to Protect the Rights of Trafficked Persons A Practical Handbook, Warsaw, OSCE Office for Democratic Institutions and Human Rights, 2004, p. 15.

⁸⁷ Ibidem.

⁸⁸ Ibidem, p. 16.

⁸⁹ *Rantsev v. Cyprus and Russia* (app no 25965/04) ECtHR 7 January 2010, para. 298.

group.⁹⁰ Discrimination against women can be carried out by state actors as well private persons or entities hence 'public international law recognizes that discrimination against women, regardless of who commits it, constitutes human rights violations'.⁹¹

Thus, the nature of state responsibility incorporates the doctrine of due diligence, imposing the positive obligation to prevent human rights abuses and to commence proper examination of the case and the pursuit of criminal proceedings.⁹² That means, a state may be held liable for private acts 'if it can be shown that the state's own organs have omitted to respond appropriately (...) from the breach of consequential, independent legal obligations'.⁹³ Therefore, the principle of due diligence is instrumental for the scrutiny of state accountability under international law and 'refers to the level of care or activity that a duty-bearer, the state, is expected to exercise in the fulfilment of their duties to ensure human rights standards'.⁹⁴

Once victims of trafficking have been granted the recovery and reflection period, the risk of retaliation by the trafficker exposes a great risk, thus Governments have under the concept of due diligence the 'duty to intervene and protect individuals from harm, even where the actors concerned may be private actors'.⁹⁵

The violation on the prohibition of trafficking in human beings committed by a private actor constituting a violation by the state in its legal obligation to prevent such acts and to respond appropriately, was reiterated in the ECtHR judgement

⁹⁰ T. Obokata, *Trafficking in Human Beings from a Human Rights Perspective*, Leiden, M. Nijhoff, 2006, p. 163.

⁹¹ Z. Aziz, J. Moussa, *The Due Diligence Principle and the Role of the State: Discrimination against Women in Family and Cultural Life*, Submission to the United Nations Working Group on Discrimination Against Women in Law and in Practice, 2015, p. 4.

⁹² OHCHR, A. Gallagher, N. Karlebach, *Prosecution of Trafficking in Persons Cases: Integrating a Human Rights Based Approach in the Administration of Criminal Justice*, Background Paper, available at: http://www.ohchr.org/Documents/Issues/Trafficking/Geneva2011BP_GallagherAndKarlebach.pdf (accessed on 26 March 2015).

⁹³ A. Gallagher, *The International Law of Human Trafficking*, New York, Cambridge University Press, 2010, p. 248.

⁹⁴ Council of Europe, *Effective ways to prevent and to combat violence against women and domestic violence*, Statement by Rashida Manjoo, UN Special Rapporteur on Violence against Women, available at: <http://www.coe.int/t/dghl/standardsetting/convention-violence/Seminars/bratislava2011/Speech/Speech%20Manjoo.pdf> (accessed on 25 March 2015).

⁹⁵ Z. Aziz, J. Moussa, *The Due Diligence Principle and the Role of the State: Discrimination against Women in Family and Cultural Life*, Submission to the United Nations Working Group on Discrimination Against Women in Law and in Practice, 2015, p. 4.

Ranste v. Cyprus and Russia. The notion of due diligence had been strengthened by charging the two states subsequently to compensate the victim's family for failing to provide 'legislative and other measures (...) to ensure that the criminal offences (...) are punishable by effective, proportionate and dissuasive sanctions'.⁹⁶

The ECtHR ruled 'a procedural violation of Article 2 [Right to life] of the Convention by Cyprus because of the failure to conduct an effective investigation' after the death of the victim.⁹⁷ Additionally, Cyprus⁹⁸ was charged with an infringement of the prohibition of slavery under article 4 of the ECHR due to the complete failure of protecting her against trafficking in human beings, inter alia Russia was ascribed the responsibility to have failed 'its procedural obligations to investigate the alleged trafficking'.⁹⁹ And lastly, Cyprus was held accountable for infringing article 5, the right to liberty and security.¹⁰⁰

Furthermore, the Court administered the responsibility of states to inspect properly crimes related to trafficking in human beings and 'the positive obligation to take protective measures'.¹⁰¹

Prior to the judgment of *Ranste v. Cyprus and Russia*, the ECtHR broadened the meaning of obligations under the principle of due diligence with the case of *Opuz v. Turkey*.¹⁰² It was a landmark judgement to hold a state accountable for the deficiency 'to provide adequate protection to women who are obviously at risk of being violently abused'.¹⁰³

In conclusion, the obligations of states, under the principle of effective remedies for a violation of human rights, imply to arrange assistance and support for the victim

⁹⁶ *Ranste v. Cyprus and Russia* (App no 25965/04) ECtHR 7 January 2010, para. 170.

⁹⁷ *Ibidem*, para. 242.

⁹⁸ *Ibidem*, para. 349, point 8.

⁹⁹ *Ibidem*, para. 349, point 11.

¹⁰⁰ *Ibidem*, para. 349, point 12.

¹⁰¹ C. Rijken, R. Römkens, 'Trafficking for Sexual Purposes as a Globalized Shadow Economy: Human Security as the Tool to facilitate a Human Rights Based Approach' in R. Letschert, J. van Dijk, *The New Faces of Victimhood*, Tilburg, Springer, 2011, pp. 73-98.

¹⁰² *Opuz v. Turkey* (App no 33401/02) ECtHR 9 June 2009, para. 149.

¹⁰³ C. Rijken, R. Römkens, 'Trafficking for Sexual Purposes as a Globalized Shadow Economy: Human Security as the Tool to facilitate a Human Rights Based Approach' in R. Letschert, J. van Dijk, *The New Faces of Victimhood*, Tilburg, Springer, 2011, pp. 73-98.

‘and to ensure that the victim is protected from further exploitation and harm’.¹⁰⁴ In order to approach each victim individually based on the personal situation, States are therefore required ‘to act with due diligence to ensure their safety and protection against further abuse’.¹⁰⁵ Further abuse, or secondary victimization would not be compatible with a comprehensive human rights based approach. Victims are entitled under the *Convention on Action against Trafficking in Human Beings* to receive unconditional assistance and protection, therefore violating victim’s rights due to the state’s prosecutorial interest would cause additional harm and may lead to a breach of rights.

2.3 Associated human rights violations

Trafficking in human beings is a cause and consequence of human rights violations, whereby several provisions are needed to encompass its broad and complex dimension.¹⁰⁶ Each case of trafficking varies in its grounds and the personal circumstances of women before being exploited. Therefore, violations of rights depend on the circumstances of the case, thus means different rights may be invoked.

In addition to the beforehand mentioned Convention, the *1950 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR) entails as well articles which refer to the dimension of a violation of trafficking in human beings. Firstly article 3, *Prohibition of torture*, may be violated if ‘specific practices (...) during the exploitation’ occur.¹⁰⁷ Thus requires the element of harm, the trafficker ‘inflicts severe pain or suffering on a powerless victim under his/her control for the purpose of intimidation, punishment or discrimination, while the

¹⁰⁴ OHCHR, Recommended principles and guidelines on human rights and human trafficking, *Commentary on Principle 8, Protection of and support for victims*, Geneva, 2010, pp. 141-151.

¹⁰⁵ Ibidem.

¹⁰⁶ La Strada International, *Violation of women’s rights: a cause and consequence of trafficking in women*, Amsterdam, La Strada International, p. 11.

¹⁰⁷ OSCE, *Trafficking in Human Beings amounting to Torture and other forms of Ill-treatment*, Vienna, OSCE Office of the Special Representative and Co-ordinator for Combatting Trafficking in Human Beings, 2013, p. 13

state is taking no necessary measures under the concept of due diligence to protect the victim against this treatment'.¹⁰⁸ Secondly, the *Prohibition of slavery and forced labour* under article 4 gives additional protection and a broader applicability of invoking human rights under the *Europe Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR).¹⁰⁹ Broader applicability means that if Council of Europe Member States have not yet signed and/or ratified the *Convention on Action against Trafficking in Human Beings*, they are still bound by the positive and negative obligations set forth in the ECHR and therefore bound to prevent torture and slavery.¹¹⁰

Both articles are norms of *ius cogens* character which can be under no circumstances derogated.¹¹¹ Also in times of war, conflict or internal disputes.¹¹²

Under the *Convention for the Protection of Human Rights and Fundamental Freedoms* such rights are 'the prohibition on torture and slavery and the non-retroactivity of criminal offences'.¹¹³ Violated rights of victims of trafficking in human beings may include under the 1966 International Covenant on Civil and Political Rights inter alia the right to life (art. 6), prohibition on slavery (art. 8), right to personal liberty (art. 9), the right to freedom of movement (art. 12), and the right to be free from discrimination (art. 2).¹¹⁴ Under the International Covenant on Economic, Social and Cultural Rights trafficking can constitute a violation on economic, social, and cultural rights, such as health (art. 12), free access to education (art. 13), and favourable

¹⁰⁸ Ibidem, p. 26.

¹⁰⁹ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR), as amended by Protocols Nos. 11 and 14, 4 November 1950, CETS 5, art. 4.

¹¹⁰ Council of Europe, Jean-François Akandji-Kombe, *Positive obligations under the European Convention on Human Rights*, Strasbourg, Council of Europe, 2007, p. 5, available at: <http://www.echr.coe.int/LibraryDocs/DG2/HRHAND/DG2-EN-HRHAND-07%282007%29.pdf> (accessed on 23 March 2015).

¹¹¹ Cf. UN General Assembly, *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art. 4 (2).

¹¹² M. Nowak, 'Human Rights from a legal perspective', in M. Nowak, K. Januszewski, T. Hofstätter (eds.), *All Human Rights for All*, Vienna Manual on Human Rights, Wien, Neuer Wissenschaftlicher Verlag, 2012, p. 24.

¹¹³ Cf. Article 15 ECHR, see also M. Shaw, *International Law*, New York, Cambridge University Press, 2008, p. 274.

¹¹⁴ Cf. UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, 999 UNTS 171, art. 2, 6, 8, 9 and 12.

working conditions (art 7), including remuneration and safe and healthy working conditions.¹¹⁵ Thus, cases of trafficking are highly complex with different human rights violations depending on the circumstances and therefore an unconditional approach with assistance and protection measure, including an recovery and reflection, would benefit women to fully comprehend and recuperate from the trauma. For victims of trafficking it is an imperative to receive unconditional assistance and protection, including a residence permit which is not bound to cooperate with law enforcement.

2.4 Article 10 – Identification of victims

Article 10 – Identification of the victims

‘1 Each Party shall provide its competent authorities with persons who are trained and qualified in (...) in identifying and helping victims, (...) and shall ensure that the different authorities collaborate (...) with relevant support organisations (...)

2 Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations. [and that] the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process (...) has been completed (...) the person receives the assistance provided for in Article 12, paragraphs 1 and 2’.¹¹⁶

Article 10 implies the obligation for Member States to implement measures to facilitate the proper identification of victims of trafficking. Therefore, GRETA uses a two-stage approach in the identification of victims of trafficking in human beings, namely ‘detect and identify’, thus ‘detect’ refers to the initial contact, i. e. a police

¹¹⁵ Cf. UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, art. 7, 12 and 13.

¹¹⁶ *Convention on Action against Trafficking in Human Beings*, art. 10.

officer recognizes indicators for a presumed victim.¹¹⁷ Presumed victim is an individual who fulfils 'the criteria of (...) international Conventions but has not been formally identified by the relevant authorities (police) as a trafficking victim'.¹¹⁸ The term 'presumed' is used due to the complexity of the victim's personal situation and circumstances.¹¹⁹ Therefore, the Council of Europe Convention explicitly 'does not require absolute certainty' and indicators are sufficient in order to start the identification process.¹²⁰ The presumed victim will be identified as a victim when 'the identification process establishes conclusively whether or not they are victims of trafficking' and the victims starts to receive assistance by the authorities and NGOs.¹²¹ 'Identified' refers to the individual 'who has been formally identified (...) according to the relevant formal authority'.¹²² It is crucial to mention to have well trained staff which is aware of the dimension of trafficking in human beings and that procedures for the identification are known by everyone. Therefore regular trainings are needed in order to sensitize by improving awareness among law enforcement officials; Cases may be complex and the experience of exploitation is not visible.

The procedure of identification, which is time-consuming, needs to be properly implemented because a failure of identification would cause further harm to the victim.¹²³ In the worst case, consequences would be a 'further denial of that person's rights'.¹²⁴

A multidisciplinary approach composed of a National Referral Mechanism (NRM)

¹¹⁷ See Federal Centre for the Analysis of Migration Flows, *The Protection of Fundamental Rights of Foreigners and the Fight against Human Trafficking, Human Trafficking, Building Bridges*, Annual Report of the independent rapporteur on human trafficking, Belgium, 2013, pp. 28, available at: http://www.diversitybelgium.be/sites/default/files/documents/publication/jv-mh_2013_en.pdf (accessed on 29 May 2015).

¹¹⁸ European Commission, *Trafficking in human beings*, Eurostat report, Luxembourg, European Union, 2013 edition, p. 22.

¹¹⁹ OSCE, *Trafficking in Human Beings: Identification of Potential and Presumed Victims A Community Policing Approach*, SPMU Publication Series Vol. 10, Vienna, OSCE, 2011, p. 45.

¹²⁰ *Convention on Action against Trafficking in Human Beings*, explanatory report, 2013, para. 132.

¹²¹ *Ibidem*.

¹²² European Commission, *Trafficking in human beings*, Eurostat report, Luxembourg, European Union, 2015 edition, p. 60.

¹²³ *Convention on Action against Trafficking in Human Beings*, explanatory report, 2013, para. 131.

¹²⁴ UN Office of the High Commissioner for Human Rights (OHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 20 May 2002, E/2002/68/Add.1, p. 4.

involves all relevant stakeholders which ensure the proper and fast identification of victims.¹²⁵ Stakeholders and therefore participation depend on the national context, however, it may involve a national coordinator, NGOs/CSOs, working groups, health care practitioners and 'a roundtable made up of senior representatives of government'.¹²⁶ Only if each staff knows what to do and where to refer to, victims are able to receive the appropriate assistance and protection and eventually the recovery and reflection period in order to come to a decision in regards to cooperation with the authorities. A good example of means to improve the identification process is the 'trafficking indicators card' by the United States Immigration and Customs Enforcement, a 'credit card-sized' information card about indicators of trafficked people for law enforcement officials.¹²⁷

Article 10 further stipulates that 'residence permits under the conditions provided for in Article 14' shall be supplied, completing a victim-centered approach in a national regulatory framework of ensuring rights of victims.¹²⁸

2.5 Article 12 – Assistance to victims

'1 Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery (...)

2 Each Party shall take due account of the victim's safety and protection needs.
(...)

5 Each Party shall take measures (...) to co-operate with non-governmental organisations, other relevant organisations or other elements of civil society engaged in assistance to victims.

6 Each Party shall (...) ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness'.¹²⁹

¹²⁵ Cf. OSCE, *National Referral Mechanism*, Joining Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook, Warsaw, OSCE/ODIHR, p. 15.

¹²⁶ Ibidem.

¹²⁷ UNODC, *Toolkit to Combat Trafficking in Persons*, Global Programme against Trafficking in Human Beings, Tool 6.4, Indicators of trafficking, Vienna, United Nations, 2008, p. 263.

¹²⁸ *Convention on Action against Trafficking in Human Beings*, art. 10.

¹²⁹ *Convention on Action against Trafficking in Human Beings*, art. 12.

Article 12 greatly addresses the level of vulnerability of victims and the responsibility for member states to offer measures for the victim's 'physical, psychological and social recovery' and to ensure that those are received by the victim based on their own needs.¹³⁰ Thus can be fulfilled by the state or the mandate is transferred to NGOs which offer comprehensive victim assistance, however, the responsibility lies in the state to meet standards enshrined in article 12.¹³¹

'Assistance and support are crucial (...) to effectively exercise their rights' however, the willingness to cooperate in investigations depends greatly on the level of security.¹³²

In order to enable victims to live independently and self-determined, it is highly important to provide clandestine accommodation facilities and strict rules as 'there is the danger that traffickers will try to regain control of the victim'.¹³³ Possible retaliation implies the need of secret accommodations and victims must be willed to break ties with their perpetrator, discontinuing all contacts.¹³⁴

Which can be difficult, if women have been recruited by a lover boy and not seeing herself as a victim. The elaboration on the lover boy method will be in chapter three.

2.6 Article 13 – Recovery and reflection period

'1 Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim (...)

2 During this period, the persons (...) shall be entitled to the measures contained in Article 12, paragraphs 1 and 2'.¹³⁵

¹³⁰ *Convention on Action against Trafficking in Human Beings*, art. 12, explanatory report, para. 150.

¹³¹ *Ibidem*, para. 149.

¹³² UN High Commissioner for Refugees (UNHCR), *Prevent. Combat. Protect: Human Trafficking*, Joint UN Commentary on the EU Directive - A Human Rights-Based Approach, UNODC, UNHCR, OHCHR, UNICEF, ILO and UN Women, November 2011, p. 41.

¹³³ *Convention on Action against Trafficking in Human Beings*, art. 12, explanatory report, para. 154.

¹³⁴ See UNODC, *Toolkit to Combat Trafficking in Persons*, Global Programme against Trafficking in Human Beings, Tool 7.1, Reflection period, Vienna, United Nations, 2008, p. 310.

¹³⁵ *Convention on Action against Trafficking in Human Beings*, art. 13.

In order to facilitate the recovery of a trauma resulting from a gross human rights violation of trafficking in human beings, article 13 has two purposes, firstly, to recover from the physical consequences of being trafficked and to establish 'psychological stability'.¹³⁶ Secondly, the period shall give time to decide on possible participation in legal proceedings against the trafficker.¹³⁷ Every presumed victim must be offered a recovery and reflection period without any conditions, provided with the assistance measures of article 12 which guarantee the safety, protection and the recovery from the trauma of the victim.¹³⁸ Furthermore, victims shall 'not be removed from the Party's territory' during the period.¹³⁹ The length of the recovery and reflection period should have a minimum of thirty days which has to be incorporated into the states internal law, some member states have adopted longer periods.¹⁴⁰

The Convention clearly emphasizes to ensure the rights and safety of victims by supporting the recovery and the escape of 'the influence of traffickers and/or [to] take an informed decision [which shall] not [be] conditional on their co-operating with the investigative or prosecution authorities'.¹⁴¹

The Convention explicitly refers in its explanatory report and in article 13 that the decision of the victim to cooperate shall not be made conditional in regards to the period. However, in many member states the period has been instrumentalised for victims to cooperate.¹⁴² If victims are granted the recovery and reflection period, it may benefit criminal proceedings 'in that assisted and protected trafficking victims may be better able and more willing to cooperate'.¹⁴³

¹³⁶ *Convention on Action against Trafficking in Human Beings*, art. 13, explanatory report, para. 173.

¹³⁷ *Ibidem*.

¹³⁸ *Ibidem*, para. 179.

¹³⁹ *Ibidem*, para. 178.

¹⁴⁰ *Ibidem*, para. 177.

¹⁴¹ *Ibidem*, para. 175.

¹⁴² A. Gallagher, *The International Law of Human Trafficking*, New York, Cambridge University Press, 2010, p. 298.

¹⁴³ A. Brunovskis, R. Surtees, *A fuller picture*. Addressing trafficking related assistance needs and socio-economic vulnerabilities, Fafo report, Oslo, Fafo, 2012, p. 7.

The *Palermo Protocol*, the pioneer in defining trafficking as a crime in a comprehensive way, already incorporated in the year 2000 with article 6 ‘measures to provide for the physical, psychological and social recovery [and] shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory’.¹⁴⁴ However, according to *Piotrowicz*, the protocol mainly aims at ‘tackling the perpetrators of THB’ and proposes only inadequate assistance measures due to the lack of the existence a recovery period for victims of trafficking.¹⁴⁵ Due to the vague wording of the protocol that ‘each state shall consider implementing measures’, it does not put an obligation on Member States to do so.¹⁴⁶

In addition to the previous mentioned recovery period of the *Palermo Protocol*, the 2011 EU directive 2011/36/EU contained various regulations concerning victims of trafficking, specifically with article 11 referring to the obligation of Member States to offer protection measures ‘before, during and for an appropriate period of time after the conclusion of criminal proceedings’.¹⁴⁷ However, the directive does not specify the period of recovery for victims, but emphasizes the unconditional protection in regards to criminal proceedings.¹⁴⁸ Preceding the 2011 EU directive is the directive 2004/81/EC which describes ‘the conditions for granting residence permits of limited duration’ which is conditional to the participation of victims in criminal investigations and only for the duration of the on-going case.¹⁴⁹

¹⁴⁴ Cf. UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000, art. 6.

¹⁴⁵ R. Piotrowicz, *The UNHCR's Guidelines on Human Trafficking*, Oxford University Press, 2008, p. 244.

¹⁴⁶ UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, vol. 2237, article 6 (3).

¹⁴⁷ Council Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on *preventing and combating trafficking in human beings and protecting its victims*, and replacing Council Framework Decision 2002/629/JHA, [15 April 2011] OJ L. 101/1-101/11; 15.4.2011, 2011/36/EU, art. 11

¹⁴⁸ Ibidem, art. 11 (3)

¹⁴⁹ 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*, [6 August 2004] OJ L. 261/19-261/23; 6.8.2004, 2004/81/EC, art. 1.

The regulation concerns only third-country nationals, hereby the prospect of a residence permit is used as an incentive to cooperate, which eventually may expose victims of trafficking to greater vulnerability and become instrumentalised by the authorities for reasons of prosecution.¹⁵⁰

2.7 Article 14 – Residence permit

‘1 Each Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both:

- a the competent authority considers that their stay is necessary owing to their personal situation;
- b the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings’.¹⁵¹

Article 14 foresees a residence permit for victims based on the cooperation with law enforcement for prosecution or victim’s personal circumstances. The residence permit shall therefore accommodate the ‘victim’s needs and the requirements of combating the traffic’.¹⁵²

The ‘immediate return’ risks re-trafficking and retaliation against the victim itself and its relatives which stresses the need to grant a residence permit for victims based on the personal situation.¹⁵³ It is the decision of the Member States to select between a permit based on personal grounds for the victim or on the participation in ‘criminal proceedings (...) or to adopt both simultaneously’.¹⁵⁴ Humanitarian reasons are factors concerning personal circumstances, i.e. ‘victim’s safety, state of health, family situation’ which do not allow to be expelled from the Member State.¹⁵⁵

¹⁵⁰ M. Wijers, ‘Women, Labour, and Migration, The Position of Trafficked Women and Strategies for Support’ in K. Kempadoo, J. Doezema (eds.), *Global Sex Workers, Rights, Resistance, and Redefinition*, New York, Routledge, 1998, p. 75.

¹⁵¹ *Convention on Action against Trafficking in Human Beings*, art. 14.

¹⁵² *Convention on Action against Trafficking in Human Beings*, art. 13, explanatory report, para. 180.

¹⁵³ *Ibidem*, para. 181.

¹⁵⁴ *Ibidem*, para. 182.

¹⁵⁵ *Ibidem*, para. 184.

16 Member States have implemented the strategy to offer residence permits based on both reasons, however, 11 Member States have remained with the practice to grant residence permits only based on victim's participation in criminal investigations.¹⁵⁶ Thus originates from wording of article 14 the Convention 'which allows parties to make the issuing of a temporary residence permit conditional on co-operation'.¹⁵⁷ Unconditional assistance and support implies as well to issue a residence permit after the recovery and reflection, irrespectively of the cooperation of victims in criminal proceedings.

The prerequisite of cooperation with law enforcement in order to obtain a residence permit was originally 'calculated to encourage them to co-operate'.¹⁵⁸ Giving such incentives increases the instrumentalisation of victims for state's prosecutorial interests. It is easier for Member States to offer residence permits based on the cooperation in criminal investigations than offering assistance and protection measure for victims which requires a proactive approach with a victim-rights oriented policy. The two option approach of article 14 is critical due to the fact that Member States can choose to 'issue a renewable residence permit to victims (...) for the purpose of their co-operation with the competent authorities'¹⁵⁹, which clearly instrumentalises victims solely for the purpose of criminal proceedings.

Instead of offering two options under article 14, a human rights based approach would entail only one option: the personal situation of the victim. Thus means, that a victim can still decide to cooperate if she wishes so, however should not experience the pressure to decide on the conditional residence permit. The trend of instrumentalising victims opposes the 'growing acceptance of the need to separate protection and support from victim cooperation' and is therefore incompatible with a human rights based approach.¹⁶⁰

¹⁵⁶ GRETA, *4th General Report on GRETA's activities*, Strasbourg, 2015, p. 48.

¹⁵⁷ GRETA, *4th General Report on GRETA's activities*, Strasbourg, 2015, p. 44.

¹⁵⁸ *Convention on Action against Trafficking in Human Beings*, art. 13, explanatory report, para. 181.

¹⁵⁹ *Convention on Action against Trafficking in Human Beings*, art. 13 (1b)

¹⁶⁰ A. Gallagher, *The International Law of Human Trafficking*, New York, Cambridge University Press, 2010, p. 299.

2.8 Policy concepts of prostitution

Research has shown a broad variety of policy approaches regarding prostitution, no international consensus has reached yet, due to the accompanied moral debate. Prostitution is worldwide approached with concepts of either regulating, decriminalizing, criminalizing or abolishing the act. Kathleen Barry and Carol Leigh are the most prominent advocates for an abolitionist approach, the latter for a liberal regulation model.¹⁶¹ Although there are four main approaches, policies of prostitution can be divided into two notions. Firstly, the abolitionist model which considers prostitution as a form of gender based violence.¹⁶² Thus opposed the liberal view where supporters and advocates believe in the right to self-determination and to select prostitution as a means of income.¹⁶³ Therefore it is crucial to detach prostitution provisions and unconditional measures to assist and protect victims of trafficking.

The following explanations show the great differences and therefore challenges in defining a comprehensive prostitution policy.

2.8.1 Criminalization policy

Criminalization of the sex worker equals the prohibitionist approach, manifested in Ireland and Italy.¹⁶⁴ It aims at penalizing every person involved in sex work, banning all sex work related activities, including selling and buying services, pimping and owning facilities.¹⁶⁵ Wagenaar et al concluded in their report in the *International Comparative Study of Prostitution Policy* that some States tend to condone prostitution albeit it is prohibited, examples are the ban of street prostitution and

¹⁶¹ Supra note 44 and 45.

¹⁶² M. Freeman, C. Chinkin, B. Rudolf (eds.), *The UN Convention on the Elimination of All Forms of Discrimination against Women*, Oxford, Oxford University Press, 2012, 178.

¹⁶³ Ibidem.

¹⁶⁴ H. Wagenaar, S. Altink, H. Amesberger, *Final Report of the International Comparative Study of Prostitution Policy*, Den Haag, Platform31, 2013, p. 15.

¹⁶⁵ European Network for HIV/STI Prevention and Health Promotion among Migrant Sex Workers, *Sex Work, Migration, Health*, Amsterdam, TAMPEP, 2009, p. 12.

the flexibility with escort services.¹⁶⁶

A prohibitionist approach is strongly resembled with the next approach of client criminalization, characterized by the notion of prostitution as a form of gender based violence.¹⁶⁷

2.8.2 Client criminalization policy

Client criminalization seeks to penalize clients and pimps, by eliminating prostitution through 'quenching the demand for it', which is a concept being practised in Sweden, Norway, Finland, Iceland.¹⁶⁸

As stated above, prostitution viewing as a form of violence against women, advocates of the client criminalization approach, portray women as 'victims of circumstance or of structural male domination'.¹⁶⁹ Thus means, that the feminization of poverty and oppression by men drag women into soliciting sex.¹⁷⁰ The policy approach, with an educational sense, aims at establishing equality between men and women, and seems to gain sympathies in the discourse of forming prostitution policies.¹⁷¹ It needs to be noted, that sex worker in Scandinavian countries report of feelings of insecurity with the client criminalization approach.¹⁷²

¹⁶⁶ H. Wagenaar, S. Altink, H. Amesberger, *Final Report of the International Comparative Study of Prostitution Policy*, Den Haag, Platform31, 2013, p. 15.

¹⁶⁷ Ibidem.

¹⁶⁸ Ibidem.

¹⁶⁹ Ibidem.

¹⁷⁰ UN Women, *The Feminization of Poverty*, Fact Sheet No.1, available at: <http://www.un.org/womenwatch/daw/followup/session/presskit/fs1.htm> (accessed on 31 May 2015).

¹⁷¹ H. Wagenaar, S. Altink H. Amesberger, *Final Report of the International Comparative Study of Prostitution Policy*, Den Haag, Platform31, 2013, p. 12.

¹⁷² G. Fouche, 'View from the streets: New Nordic sex laws are making prostitutes feel less safe', *The Independent*, 27 April 2014, available at: <http://www.independent.co.uk/news/world/europe/view-from-the-streets-new-nordic-sex-laws-are-making-prostitutes-feel-less-safe-9294458.html> (accessed on 31 May 2015).

2.8.3 Regulation policy

The regulatory model describes the tolerance of the State in regards to prostitution with laws governing it.¹⁷³ This harm reduction policy strategy contains provisions of criminal and public law, 'such as restricting the number of sex workers and sex facilities, containing sexually transmitted diseases', prostitution zones and combat policies against trafficking in human beings, which are practices in Austria and the Netherlands.¹⁷⁴ The regulatory approach implies duties to sex workers, such as the mandatory registry in the respective jurisdiction, obligatory checks of the health status and taxation.¹⁷⁵

Therefore, the regulatory approach may be seen as a policy of empowering women however, this may be only on account of registered sex workers, obstructive immigration regulations hinder undocumented migrants to seek legal protection and therefore drive them into underground prostitution although sex work is legalized in the state.¹⁷⁶

2.8.4 Decriminalisation policy

The decriminalisation policy approach has some similarities with the regulation model. Firstly, it address sex work as labour in a non-discriminatory way, incorporating hereby laws and regulations and involves lobby work.¹⁷⁷ It utilizes regulations in areas of 'criminal, corporate and administrative law' order to ensure the enjoyment of rights of sex workers.¹⁷⁸ Secondly, addressing the issue of stigma, entails 'an active involvement of the state', which may contribute to a wider societal

¹⁷³ European Network for HIV/STI Prevention and Health Promotion among Migrant Sex Workers, *Sex Work, Migration, Health*, Amsterdam, TAMPEP, 2009, p. 15.

¹⁷⁴ H. Wagenaar, S. Altink, H. Amesberger, *Final Report of the International Comparative Study of Prostitution Policy*, Den Haag, Platform31, 2013, p. 15.

¹⁷⁵ Ibidem.

¹⁷⁶ See European Network for HIV/STI Prevention and Health Promotion among Migrant Sex Workers, *Sex Work, Migration, Health*, Amsterdam, TAMPEP, 2009, pp. 34.

¹⁷⁷ Supra note 161, pp. 15.

¹⁷⁸ Ibidem.

tolerance and acceptance.¹⁷⁹ In conclusion, the approach focuses on addressing and combatting issues of forced labour and cases of abuse in a criminal law perspective, while specifying sex work as a means of employment.

2.8.5 Concluding remarks

The above mentioned policy approaches raise questions regarding the adequately implementation into practice and if the approaches are comprehensible and persistent.¹⁸⁰ The highly contested moral debate about prostitution and to distinguish which approach fits best in a national context, is not scope of this thesis, however, it is crucial to bear in mind that criminalizing prostitution pushes women to the edge of society, marginalizes by increasing vulnerability and stigmatization.¹⁸¹ José Mendes Bota, Rapporteur for the Committee on Equality and Non-Discrimination, placed in the draft resolution for *Prostitution, trafficking and modern slavery in Europe* emphasis on the abolitionist Swedish model, serving best to combat trafficking effectively.¹⁸² Thus was adopted with the resolution 1983 (2014), reiterating the Swedish approach in order to prevent and combat trafficking in human beings.¹⁸³ However, he further pointed out that ‘the lack of reliable and comparable data (...) does not make it possible to understand clearly whether trafficking is increasing or decreasing’.¹⁸⁴ Therefore, it not possible to explicitly determine an approach that tackles all issues concerning human trafficking.

In the international scholarly debate, due to the vagueness and the lack of clarity of the topic, reaching to a potential consensus has not yet been possible. The

¹⁷⁹ H. Wagenaar, S. Altink, H. Amesberger, *Final Report of the International Comparative Study of Prostitution Policy*, Den Haag, Platform31, 2013, p. 16

¹⁸⁰ Ibidem.

¹⁸¹ A.Topping, ‘UK urged to follow Nordic model of criminalising prostitution clients’, *The Guardian*, 11 December 2013, available at: <http://www.theguardian.com/global-development/2013/dec/11/uk-nordic-model-prostitution-clients-buyer-sex> (accessed on 30 March 2015).

¹⁸² See Council of Europe, Rapporteur J. Bota, Draft Resolution 1983, *Prostitution, trafficking and modern slavery in Europe*, Doc 13446, Parliamentary Assembly, 2014.

¹⁸³ See Council of Europe, Resolution 1983, *Prostitution, trafficking and modern slavery in Europe*, Parliamentary Assembly, Text adopted by the Assembly on 8 April 2014.

¹⁸⁴ Ibidem.

Committee to the *UN Convention on the Elimination of All Forms of Discrimination against Women* holds two contradictory views. Firstly, the abolitionist approach would harm women, and secondly, opposing, 'that decriminalization could have negative effect on migrant prostitutes'.¹⁸⁵

A policy approach formulates the ultimate goal of governmental pursuits, involving a moral debate which should not negatively influence victims to seek and receive assistance and protection measure. Therefore it is crucial to detach the prostitution policy from measure of assistance and protection if states want to realize an unconditional recovery and reflection period.

In the view of the author, it is necessary to evade double standards and apply a policy which is consistent in concept of unconditionality and its practice; not only in law inter alia in the empowerment of women.

2.9 Situation in Austria

The law regulating human trafficking, accordingly to the Council of Europe Convention, is stipulated in article 104 (a) of the Austrian Criminal Code.¹⁸⁶ The provisions in article 104 (a) contain the three prerequisites in order to fulfil the statutory offense: *action means and purpose*.¹⁸⁷ In 2013, law enforcement authorities had 'investigated 192 trafficking cases (...) 112 [cases] under Article 217; 72 under Article 104(a); and eight under Article 104'.¹⁸⁸

As it can be seen, the majority of cases were filed under article 217 CC which prohibits the transboundary prostitution trade.¹⁸⁹ Transboundary prostitution trade has a similar content as 104 (a) with the provisions on *action* and *means* however the element of *purpose* is not included. It is difficult to prove for law enforcement officials, that a woman has been brought to Austria for the purpose of

¹⁸⁵ Ibidem, p. 179

¹⁸⁶ Section 104 (a) of the Code of Criminal Procedure (Strafgesetzbuch 1975) FLG No. 60/1974 as amended by FLG I No. 13/2015.

¹⁸⁷ See *Convention on Action against Trafficking in Human Beings*, article 4.

¹⁸⁸ United States Department of State, *Trafficking in Persons Report*, Country Profile: Austria, 2014, p. 84.

¹⁸⁹ United States Department of State, *Trafficking in Persons Report*, Country Profile: Austria, 2014, p. 84 and see also Section 217 of the Code of Criminal Procedure.

sexual exploitation unless she confesses so. The factors which impede to prosecute the crime of trafficking in human beings under the article 104 (a) will be therefore discussed in chapter 3.

In addition, the Austrian Criminal Code (CC) prohibits the promotion of sex work (section 215), coercion for the purposes of prostitution (section 106 (1)), and procuration (section 216) and all activities involving children.¹⁹⁰ Austria has also enshrined in law that specifically exploitation of a foreign, undocumented, person is prohibited.¹⁹¹ In order to regulate venues of prostitution, several decrees and laws determine places to engage in sex work, women will be fined if they perform sex work in unauthorized places.¹⁹²

It needs to be noted that regulations of sex work depends on the province and therefore on the magistrate and local law enforcement authorities.¹⁹³ An illustrative example of the miscellaneous approach of policing sex work and its implementation are Vorarlberg, a province bordering with Switzerland, with a prohibition on prostitution, allowed street prostitution in Vienna and on the other hand, Upper Austria with a ban of street prostitution.¹⁹⁴ Furthermore, provisions regarding sex work are to be found in civil law, labour law, social insurance, country competencies, public health as well as STD regulations and provisions in the trade law.¹⁹⁵

In 2004, the Austrian government established the anti-trafficking *Task Force* which organizes and strengthens the anti-trafficking policy approach in Austria by drafting

¹⁹⁰ Section 215 and 216 of the Code of Criminal Procedure (Strafgesetzbuch 1975) FLG No. 60/1974 as amended by FLG I No. 13/2015.

¹⁹¹ Section 116 of the Alien Police Law (Fremdenpolizeigesetz 2005) FLG I No.100/2005 as amended by FLG I No. 70/2015.

¹⁹² Section 2 of the Vienna Prostitution Law (Wiener Prostitutionsgesetz 2011) FLG I No. 24/2011 as amended by FLG I No. 33/2013.

¹⁹³ Section 15 (1) and section 118 (3) of the Federal Constitutional Law (Bundesverfassungsgesetz 1945) as amended by FLG I No. 65/2012.

¹⁹⁴ H. Wagenaar, S. Altink H. Amesberger, *Final Report of the International Comparative Study of Prostitution Policy*, Den Haag, Platform31, 2013, p. 47.

¹⁹⁵ Taskforce Menschenhandel, ExpertInnenkreis "Prostitution", *Prostitution in Österreich. Rechtslage, Auswirkungen, Empfehlungen*, Vienna, 2008, available at: <https://www.bka.gv.at/DocView.axd?CobId=31425> (accessed on 2 June 2015).

and auditing National Action Plans by ‘includ[ing] measures for national coordination, prevention, protection of victims, prosecution and international cooperation’.¹⁹⁶ The National Coordinator on Combating Human Trafficking, Ambassador Tichy-Fisslberger, represents the chief of the Taskforce action program, a part of the Federal Ministry for European and International Affairs.¹⁹⁷ It combines actors from different areas¹⁹⁸ and focuses on the supervision of ‘National Action Plans on Combating Human Trafficking and (...) monitoring their implementation’.¹⁹⁹ The Task force also includes member of civil society organisations (CSOs), such as Lefö (for female victims), ECPAT, MEN VIA (for male victims) and the *Ludwig Boltzmann* institute for human rights.²⁰⁰ In the reporting period from 2012 to 2014, Lefö offered in 249 cases assistance and protection measures, in particular with legal assistance, housing and psychosocial counselling.²⁰¹

As already stated earlier, prostitution is regulated in Austria and therefore sex workers need ‘to be registered with the local authorities (...) and must undergo regular mandatory health checks and are taxed as self-employed workers’.²⁰² In order to undergo health checks for STDs, HIV and other infections, each woman

¹⁹⁶ Austrian Ministry of Foreign Affairs, *Combatting Trafficking in Human Beings*, available at: <http://www.bmeia.gv.at/en/european-foreign-policy/human-rights/priorities-of-austrian-human-rights-policy/combating-trafficking-in-human-beings/> (accessed on 30 March 2015).

¹⁹⁷ Federal Ministry for Europe, Integration and Foreign Affairs, *Combatting Trafficking in Human Beings*, available at: <http://www.bmeia.gv.at/en/european-foreign-policy/human-rights/priorities-of-austrian-human-rights-policy/combating-trafficking-in-human-beings/> (accessed on 24 July).

¹⁹⁸ Members are: Federal Ministry for European and International Affairs; Women’s Directorate at the Federal Chancellery; Federal Ministry of Finance, Federal Ministry for Health; Federal Ministry of the Interior; Federal Ministry of Justice; Federal Ministry of Economy, Family and Youth; Federal Ministry for Defence and Sports; Federal Ministry of Labour, Social Affairs and Consumer Protection; Federal Ministry for Education, Arts and Culture; The Offices of the Province Governments of all Federal Provinces; ADA - Austrian Development Agency; LEFÖ-IBF (Intervention Centre for Migrant Women Affected by Human Trafficking); Ludwig Boltzmann Institute of Human Rights; ECPAT (“End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes”) Austria, to be found at: Task Force on Combating Human Trafficking, available at: http://www.bmeia.gv.at/fileadmin/ZZZ_Medien_alt/bmeia/media/2-Aussenpolitik_Zentrale/Menschenrechte/Folder_Task_Force_Menschenhandel_engl_V20091006_FINAL.pdf (accessed on 24 July 2015).

¹⁹⁹ Federal Ministry for Europe, Integration and Foreign Affairs, *Combatting Trafficking in Human Beings*, available at: <http://www.bmeia.gv.at/en/european-foreign-policy/human-rights/priorities-of-austrian-human-rights-policy/combating-trafficking-in-human-beings/> (accessed on 24 July)

²⁰⁰ Bundesministerium für Europa, Integration und Äußeres, 3. Österreichischer Bericht zur Bekämpfung des Menschenhandels 2012 – 2014, Umsetzung des Nationalen Aktionsplans zur Bekämpfung des Menschenhandels von Jänner 2012 bis Dezember, Wien, 2014, p. 13.

²⁰¹ Ibidem, p. 9.

²⁰² European Network for HIV/STI Prevention and Health Promotion among Migrant Sex Workers, *Sex Work, Migration, Health*, Amsterdam, TAMPEP International Foundation, 2009, p. 15.

receives a control card which she has to carry with her and display to the police as well.²⁰³ The ‘failure to register, to carry the registration card, to attend the health checks’ may result in a financial fine or being sent back home.²⁰⁴

It has come to the public attention in Austria that practices of ‘degrading treatment by forced vaginal inspections’ occur which are legitimized based on the perspective of public health.²⁰⁵ In addition to that, ‘forced HIV tests’ are justified by the Austrian Government in order to secure the public safety and as well as health.²⁰⁶ The discrimination of sex workers to undergo compulsory medical tests has been determined in several judgements by the ECtHR which held that forced medical inspections may amount to degrading treatment.²⁰⁷

Thus, the differences of sex work regulations has an effect on the combat against trafficking, in particular, deficiencies in the national approach in different countries create an uneven level of compliance with the *Council of Europe Convention*.²⁰⁸

2.10 Compliance with the Council of Europe Convention on Action against Trafficking in Human Beings by Austria

In the evaluation report, GRETA has ‘considered’ for the provision on the identification of victims a lack of awareness among law enforcement officials which results in the need of developing ‘training on the identification of victims [for staff] in detention centers for irregular migrants’.²⁰⁹ GRETA further ‘considers’ to allow

²⁰³ OHCHR, United Nations Committee on Economic, Social and Cultural Rights, Sex-Worker Forum of Vienna Publication, *Austria: Discriminations against Sex Workers in the Rights to Work and to Health*, 2013, p. 5 at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fNGO%2fAUT%2f14625&Lang=en (accessed on 1 April 2015).

²⁰⁴ Ibidem.

²⁰⁵ Ibidem, p. 16.

²⁰⁶ Ibidem.

²⁰⁷ See *Yazg l Yilmaz v Turkey* (App no 36369/06) ECtHR 1 February 2011, *Duval v France* (App 19868/08) ECtHR 26 May 2011)

²⁰⁸ Group of Experts on Action against Trafficking in Human Beings (GRETA), *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria*, Strasbourg, Council of Europe, 2011, para. 13.

²⁰⁹ Group of Experts on Action against Trafficking in Human Beings (GRETA), *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria*, Strasbourg, Council of Europe, 2011, para. 90.

NGOs access to the facilities in order to secure the identification process.²¹⁰ Additionally, GRETA 'considers' that Austria shall strengthen the cooperation between various stakeholders, especially that victims are being 'duly referred for assistance and are informed about their rights'.²¹¹ Therefore GRETA is suggesting to use the potential of weekly health checks for registered sex workers in order 'to detect possible victims', yet the situation remains critical for unregistered sex workers.²¹²

Secondly, for the provision on assistance measures, GRETA identified serious shortcomings in ensuring 'protection and assistance to all victims'.²¹³ There is no clear legal regulation on assistance measures, appropriate protection cannot be guaranteed especially due to the circumstances that 'LEFÖ-IBF is the only NGO mandated by the state to assist'.²¹⁴ GRETA is moreover concerned that 'victims [in the recovery and reflection period] have access only to emergency medical assistance' and not the common public health sector.²¹⁵ Thus is of paramount importance for victims in order to cope with the trauma. Thirdly, GRETA identified insufficient awareness of the recovery and reflection period of law enforcement officials resulting in inadequate information provided to victims by law enforcement officials and the failure to offer the period.²¹⁶ The period of 30 days for the recovery and reflection had been regulated 'by an internal decree' which has been disseminated to police officers, however victims 'are not sufficiently informed' about the period, due to the fact of existing inexplicit measures for assistance and support.²¹⁷

Therefore, GRETA addresses the imminent need to enact a precise law governing the recovery and reflection period and stresses to 'guarantee (...) assistance measures' in the recovery and reflection period and to inform about the rights of victims in the

²¹⁰ Ibidem, para. 92.

²¹¹ Ibidem.

²¹² Ibidem, para. 87.

²¹³ Ibidem, para. 105.

²¹⁴ Ibidem, para. 94f.

²¹⁵ Ibidem, para. 100.

²¹⁶ Ibidem, para. 108.

²¹⁷ Ibidem, para. 108.

period.²¹⁸

Lastly, in regards to residence permits, GRETA identified the need for improvement due to obstacles towards the integration of victims. Women, who lawfully reside in Austria, 'experience difficulties in accessing the labour market and vocational training' due to language barriers, and hereby impeding the possibilities of employment.²¹⁹ In order to pursue work, the future employer has to initiate the work permit on the victim's behalf, creating difficulties for victims to find employers.²²⁰ Consequently, women are at total exposure to the employer.

Further, it remains highly problematic, that there is no regulation to receive a residence permit based on humanitarian –personal- grounds.²²¹ In addition to that, the Law on Settlement and Residence requires victims to demand on their own a residency permit, which is only possible with 'the existence of an offence and that legal proceedings have started'.²²² Women may not have all legal documents which are needed to pursue a permit, furthermore language barriers impede to seek assistance, and the fact that a permit depends on criminal proceedings exercises pressure onto the women, leaving a feeling of being an object for the Austrian law enforcement.

Conclusively, the restricted access to the labour market, no residence permit based on humanitarian ground and the conditionality to investigations in order to be granted a residence permit contradicts with the concept of unconditional assistance and support, which does not end with the recovery and reflection period.

²¹⁸ Ibidem, para. 109.

²¹⁹ Ibidem, para. 114.

²²⁰ Ibidem.

²²¹ Group of Experts on Action against Trafficking in Human Beings (GRETA), *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria*, Strasbourg, Council of Europe, 2011, para. 111.

²²² Ibidem, para 110 and 111.

3. Impediments to detect and identify victims of trafficking

The identification of victims of trafficking remains the highest obstacle in ensuring that women receive assistance and protection.²²³ A failure to identify may also lead to a 'further denial of that person's rights.'²²⁴ In order to detect and identify victims of trafficking it is crucial to understand the nature of victims and to understand the reasons of migrating abroad.

Firstly, root causes of trafficking in human beings will be addressed followed by the mental and physical impact of being a victim of a crime of trafficking in human beings. Thirdly, the 'lover boy method' as an impeding factor will be discussed which leads to elaboration on the fear of reprisals. In addition to that, the phenomenon of stigmatization will be elaborated in the context of society and law enforcement. Root causes as well as physical and mental consequences, fear of reprisals, the 'lover boy method', and stigmatization accumulate in different ways and levels and are closely intertwined, thus constitute to be the major impediments for women to contact NGOs or authorities for help.²²⁵

The process of detecting and identifying victims of sexual exploitation is exacerbated as many women do not consider 'themselves as victims'.²²⁶ TAMPEP had discovered that many women only work provisionally for a certain period of time, and thereby not regarding 'themselves as prostitutes', which originates from lacking accurate knowledge on conditions of work and remuneration.²²⁷

It is the broad dimension of trafficking, including various factors which influences the reluctance of victims to seek assistance with NGOs or authorities.

Simultaneously, authorities experience great difficulties in identifying victims and to

²²³ See United States Department of State, *Trafficking in Persons Report 2013*, Victim Identification: The First Step in Stopping Modern Slavery, available at: <http://www.state.gov/j/tip/rls/tiprpt/2013/210542.htm> (accessed on 23 July 2015)

²²⁴ UN Office of the High Commissioner for Human Rights (OHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 20 May 2002, E/2002/68/Add.1, p. 4.

²²⁵ La Strada International, *Violation of Women's Rights: A cause and consequence of trafficking in women*, Amsterdam, La Strada International, 2008, p. 36.

²²⁶ Ibidem, p. 40.

²²⁷ K. Kempadoo, J. Doezeema (eds.), *Global Sex Workers, Rights, Resistance, and Redefinition*, New York, Routledge, 1998, p. 247.

detect activities of organized crime, both in countries with an abolitionist or a regulatory approach on prostitution.²²⁸ When 'sex trafficking takes place in underground venues, such as private homes or brothels [or] massage parlours [and] spas', due to a restrictive prostitution policy, it becomes increasingly difficult to detect victims.²²⁹

Cho et al identified in their study on *Does Legalized Prostitution Increase Human Trafficking?* that 'countries with legalized prostitution experience a larger degree of reported human trafficking inflows' though it is easier to monitor legalized prostitution as working conditions can be improved.²³⁰ However *Cho et al*, also determined in the study, that due to 'the clandestine nature of (...) prostitution and trafficking' it is not possible to conclude on one policy approach which works best.²³¹ With reservations, legal prostitution may have the benefit 'to carry out various controls and to issue penalties of different kinds relating to breaches of legislation', however it remains highly critical and disputable to solely regard legal prostitution as a way of effectively combatting trafficking in human beings.²³² Liberal models of prostitution may have the advantage to consider women as human beings and not as law offenders or criminals which might help women to feel more comfortable to seek assistance and be eventually identified as a victim of trafficking. If law enforcement authorities do not 'identify trafficked persons correctly, states effectively and permanently deny victims the ability to realize the rights and protection they are legally entitled'.²³³

²²⁸ S. Cho, A. Dreher, E. Neumayer, 'Does Legalized Prostitution Increase Human Trafficking?' in *World Development*, vol. 41, 2013, pp. 67–82.

²²⁹ UNODC, 'Trafficking in Persons to Europe for sexual exploitation' in *The Globalization of Crime — A Transnational Organized Crime Threat Assessment*, Vienna, United Nations, 2010, p. 45.

²³⁰ S. Cho, A. Dreher, E. Neumayer, 'Does Legalized Prostitution Increase Human Trafficking?' in *World Development*, vol. 41, 2013, pp. 67–82.

²³¹ *Ibidem*.

²³² European Parliament, Policy Department C: Citizens' Rights and Constitutional Affairs, Gender Equality, *Sexual exploitation and prostitution and its impact on gender equality*, Brussels, European Union, 2014, p. 23.

²³³ A. Gallagher, *The International Law of Human Trafficking*, New York, Cambridge University Press, 2010, p. 282.

3.1 Root Causes of trafficking in human beings

Root causes of trafficking are of numerous reasons and often differ according to the nations' context. In the pursuit of a better life, vulnerable people are allured by criminals who offer well-paid jobs abroad in order to exhaust the human resource in slavery-like conditions for their own good.²³⁴ 'Gender inequality determines a specific vulnerability of women' to be subject of trafficking, therefore inequality fosters the discrimination of women 'to have access to major resources'.²³⁵

The 'prospect of gaining employment [and] attractive living conditions [and] the demand for unskilled work' are appealing to women coming from less affluent countries with a low level of education. Thus are appealing determinants, also called pull factors, for women to migrate in order to support their family.²³⁶ 'Migrant women [are] mostly working in the area of domestic work, child care, (...) and in the entertainment and sex industry'.²³⁷ Some women are at the point of recruitment aware of the future occupation as a sex worker, however they agree in despair to do so due to their personal circumstances.²³⁸ The crux is that women who had agreed to engage in prostitution, are being exploited by deprived income, high living costs imposed by the trafficker who also takes away passports and uses other ways of intimidation.²³⁹ Yet, consent becomes 'irrelevant if the traffickers used at least one of the improper means listed within it'.²⁴⁰ Improper means resemble the element of *means* in the definition of trafficking, in particular the use of force or threat.

Economic and social inequalities, poverty, lack of education, high prevalence of crime and violence, systems of patriarchy and traditional beliefs create the

²³⁴ D. Castaneda, *The Essential Handbook of Women's Sexuality*, Santa Barbara, Praeger, 2013, p. 391.

²³⁵ S. Scarpa, *Trafficking in Human Beings: Modern Slavery*, New York, Oxford University Press, 2008, p. 13.

²³⁶ UNGIFT/Transparency International, *Corruption and Human Trafficking*, available at:

http://www.ungift.org/doc/knowledgehub/resource-centre/CSOs/TI-Working_Paper_Human_Trafficking_28_Jun_2011.pdf (accessed 15 April 2015).

²³⁷ C. Rijken, R. Römkens, 'Trafficking for Sexual Purposes as a Globalized Shadow Economy: Human Security as the Tool to facilitate a Human Rights Based Approach' in R. Letschert, J. van Dijk, *The New Faces of Victimhood*, Tilburg, Springer, 2011, p. 73-98.

²³⁸ K. Jaishankar, N. Ronel, *Global Criminology: Crime and Victimization in a Globalized Era*, Boca Raton, Taylor & Francis Group, LLC, 2013, p. 300.

²³⁹ *Convention on Action against Trafficking in Human Beings*, explanatory report, 2013, para. 128.

²⁴⁰ S. Scarpa, *Trafficking in Human Beings: Modern Slavery*, New York, Oxford University Press, 2008, p. 17,

dangerous situation of vulnerability which exposes people, in particular women, to oppression and the risk of being subject to trafficking.²⁴¹ Those precarious situations which 'tend to exert pressures on victims that "push" them into migration and hence into the control of traffickers', are called push factors.²⁴² Reasons of vulnerability vary from woman to woman, and therefore it is difficult to name all push factors. However, it is important to bear in mind that systems of patriarchy which are highly prevalent in Eastern European countries, increase the vulnerability of women and the risk of being exploited.²⁴³ Majority of victims in Austria are from Eastern Europe.²⁴⁴

'In many societies, girls are less valued than boys and are expected to sacrifice their education and assume domestic responsibilities such as taking care of their parents and siblings'.²⁴⁵ Women are pushed by societal ideas of the country of origin into the role of domestic responsibilities which reflects the prevalence of patriarchy, concurrently also called *feminization of poverty* mirroring the high representation of woman among the world's poor.²⁴⁶ The demand of low-skilled labour feeds additionally trafficking in human beings.²⁴⁷

In conclusion, the effects of globalization have 'negatively impact[ed] the position of women in general and their vulnerability for trafficking practices more specifically' and increases the gap between rich and poor.²⁴⁸ Globalization 'has increased economic inequality' which facilitates social insecurity, and diminishes human's liberty to enjoy rights.²⁴⁹ The liberty to enjoy rights is presupposes that individuals

²⁴¹ UNODC, *Toolkit to Combat Trafficking in Persons*, Global Programme against Trafficking in Human Beings, Tool 9.2, Addressing the root causes of trafficking, Vienna, United Nations, 2008, p. 424,

²⁴² Ibidem.

²⁴³ R. Salecl, *The Spoils of Freedom: Psychoanalysis and Feminism After the Fall of Socialism*, New York, Routledge, 1994, p. 37.

²⁴⁴ United States Department of State, *Trafficking in Persons Report*, Country Profile: Austria, 2014, p. 83.

²⁴⁵ UNODC, *Toolkit to Combat Trafficking in Persons*, Global Programme against Trafficking in Human Beings, Introduction, Vienna, United Nations, 2006, p. xviii,

²⁴⁶ UN Women, *The Feminization of Poverty*, available at:

<http://www.un.org/womenwatch/daw/followup/session/presskit/fs1.htm> (accessed 15 April 2015),

²⁴⁷ C. Rijken, R. Römkens, 'Trafficking for Sexual Purposes as a Globalized Shadow Economy: Human Security as the Tool to facilitate a Human Rights Based Approach' in R. Letschert; J. van Dijk, *The New Faces of Victimhood*, Tilburg, Springer, 2011, p. 73-98.

²⁴⁸ S. Scarpa, *Trafficking in Human Beings: Modern Slavery*, New York, Oxford University Press, 2008, p.78

²⁴⁹ C. Rijken, R. Römkens, 'Trafficking for Sexual Purposes as a Globalized Shadow Economy: Human Security as the Tool to facilitate a Human Rights Based Approach' in R. Letschert; J. van Dijk, *The New Faces of Victimhood*, Tilburg, Springer, 2011, p. 73-98.

are seen and recognized as rights-holders. In regard to victims of trafficking, Member States must recognize and acknowledge rights of women and understand the fear of stigmatization and reprisals which prevents women to come forward and report.

3.2 Mental and physical impact of trafficking in human beings

The devastating experience of a gross human rights violation as trafficking in human beings has severe consequences for the human condition as 'traffickers exert extremely brutal and manipulative control over their victims, from both a physical and a psychological perspective'.²⁵⁰ Victims of trafficking are lured with false promises of well-paid work into exploitation. Women migrate for various reasons, the high prevalence of poverty as mentioned earlier and therefore economic reasons constitute a part of it.²⁵¹ 'The false promise of attaining freedom is a powerful tool that brothel owners utilize to control their victims', hence creating a situation of vulnerability making it difficult to escape from the trafficker because victims are dependent on their income.²⁵²

Firstly, victims of trafficking are subject to the use of force and are constantly threatened with violence.²⁵³ 'Women reported broken bones, contusions, pain, loss of consciousness, headaches' which were the consequence of the exploitative situation.²⁵⁴ Those are only a few to name, additionally, sexual abuse can lead to HIV infections and other STIs as well as 'vaginal discharge and gynaecological

²⁵⁰ IOM, Psychosocial Notebook, *Psychosocial Support to Groups of Victims of Human Trafficking in Transit Situations*, Geneva, International Organization for Migration, vol. 4, February 2004, p. 20.

²⁵¹ G.Tyldum, M. Tveit, A. Brunovskis, *Taking Stock, a review of existing research on trafficking for sexual exploitation*, Oslo, Fafo, 2005, p. 36.

²⁵² S. Kara, *Sex Trafficking*, New York, Colombia University Press, 2009, p. 3.

²⁵³ UNODC, *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, Background Paper, Vienna, 2008, p. 83.

²⁵⁴ C. Zimmermann et al, *The Health Risks and Consequences of Trafficking in Women and Adolescents*, London, London School of Hygiene & Tropical Medicine (LSHTM), 2003, p. 4 available at: <http://www.lshtm.ac.uk/php/ghd/docs/traffickingfinal.pdf> (accessed 16 April 2015).

infections'.²⁵⁵

Secondly, they may also experience sleeping difficulties, weight loss, general pain and a weakened immune system.²⁵⁶ Untreated infections or injuries, e.g. broken limbs can additionally contribute negatively to the health conditions of the victim. Trafficking in human beings infringes the right of every woman to 'basic bodily integrity'.²⁵⁷ This constant threat of violence and being subject to violence impacts the mental health of a victim. Hossain et al found out in his study on 'the Relationship of Trauma to Mental Disorders Among Trafficked and Sexually Exploited Girls and Women' that women are primarily suffering from depression, anxiety as well as posttraumatic stress disorder.²⁵⁸ The constant threat of violence and being subject to violence has also another effect, particularly in being 'incapable of trusting any one'.²⁵⁹ The consequence of the suppressive power a trafficker, in particular a lover boy, has over a victim results in difficulties for the victim to trust anyone as 'traffickers exert extremely brutal and manipulative control over their victims'.²⁶⁰ Victims may encounter other persons 'in a hostile or aggressive way [as they] may have adopted these tactics and emotions to cope with or to survive their ordeal'.²⁶¹ Consequently, it is difficult for law enforcement to gain trust of the victim due to the oppressive relationship between traffickers and victims, especially, if a woman has been recruited through the 'lover boy method'.²⁶²

²⁵⁵ UNODC, *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, Background Paper, 2008, p. 83.

²⁵⁶ UNODC, *Anti-human trafficking manual for criminal justice practitioners, Module 3: Psychological reactions of victims of trafficking in persons*, 2009, p. 8.

²⁵⁷ IOM, *Psychosocial Notebook, Psychosocial Support to Groups of Victims of Human Trafficking in Transit Situations*, vol. 4, February 2004, p. 20.

²⁵⁸ M. Hossain et al., 'The Relationship of Trauma to Mental Disorders Among Trafficked and Sexually Exploited Girls and Women' in *American Journal of Public Health*, vol. 100, no. 12, December 2010, p. 2445, available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2978168/> (accessed on 14 April 2015).

²⁵⁹ IOM, *Psychosocial Notebook, Psychosocial Support to Groups of Victims of Human Trafficking in Transit Situations*, vol. 4, February 2004, p. 20.

²⁶⁰ Ibidem.

²⁶¹ UNODC, *Anti-human trafficking manual for criminal justice practitioners, Module 3: Psychological reactions of victims of trafficking in persons*, Vienna, United Nations, 2009, p. 2.

²⁶² Anti-Slavery International, *human traffic, human rights: redefining victim protection*, London, Anti-Slavery International, 2002, p. 143.

3.3 Lover boy method

The method prescribes the approach of a man who ‘seduces a girl by promising her marriage and a rosy future and, once abroad, either sells her or forces her (through love or violence) into prostitution’.²⁶³ The trafficker, also called lover boy, pretends to be a charming boyfriend, giving gifts to women and hereby seducing and manipulating her. The ‘traffickers become involved in personal relationships with victims (...) as a means of controlling their victims’.²⁶⁴ Thus is supported by the psychological submission of the victim towards the trafficker who manipulates her knowing the victims’ ‘economic dependence’ and fear of stigma in the home country.²⁶⁵ Most women engage in sex work in order to financially support family and relatives however, the high level of stigmatization of a prostitute hinders a woman from cooperating with law enforcement and therefore testifying is not possible.²⁶⁶ In addition, women are terrified by their lover boy, aggravating the tendencies to inform the authorities.²⁶⁷ Especially in the Balkans, the lover boy method is particularly prevailing which is therefore of high importance of law enforcement authorities in Vienna due to its geographical location.²⁶⁸

In addition to the submissive means used by the trafficker ‘it is difficult to identify an individual as a victim of’ trafficking when that individual does not believe it’.²⁶⁹ It takes time for a victim to realize that she has been exploited and that her ‘boyfriend’ is indeed a criminal, a trafficker. Having escaped the influence of the traffickers,

²⁶³ P. Monzini, *Sex Traffic: Prostitution, Crime and Exploitation*, New York, Zed Books Ltd., 2005, p. 76.

²⁶⁴ UNODC, *Toolkit to Combat Trafficking in Persons, Global Programme against Trafficking in Human Beings tool 6.2, Considerations before identification*, Vienna, United Nations, 2008, p. 256.

²⁶⁵ Supra note 240, p. 76.

²⁶⁶ L. Tsai et al, “There is no other option; we have to feed our families...who else would do it?”: The Financial Lives of Women Engaging in Sex Work in Ulaanbaatar, Mongolia, in *Global Journal of Health Science*, vol. 5, no. 5, 2013, p. 41-50, available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4041103/> (accessed 17 April 2015).

²⁶⁷ Cf. Government of Netherlands, Ministry of Security and Justice, *Comprehensive Action Plan on the Issue of ‘Loverboys’*, Action Plan 2011 - 2014, p. 5, available at: http://www.coe.int/t/dghl/monitoring/trafficking/Source/Public_R_Q/RQ_GRETA_NLD_annexeII.pdf (accessed on 29 May 2015).

²⁶⁸ See J. Arsovska, ‘Decline, change or denial: human trafficking activities and EU responses in the Balkan Triangle’. *Policing: A Journal of Policy and Practice*, vol. 2, no. 1, 2008, p. 50-62.

²⁶⁹ Anti-Slavery International, *human traffic, human rights: redefining victim protection*, London, The Printed Word, 2002, p. 34.

exposes a greater risk of vulnerability through reprisals against victims' relatives as 'traffickers use threats against victims' friends and family, and have access to them'.²⁷⁰

Consequently, possible reprisals against family members or herself by the lover boy supports the woman's fear not to report that she has been a victim of trafficking to the authorities.²⁷¹

3.4 Fear of reprisals

Traffickers often threaten victims by means of oppression, particularly reprisals in order to prevent victims to contact NGOs or authorities for help. Such reprisals can be food and sleep deprivation, 'physical or financial punishment, increased working hours' or other forms of oppression by the traffickers' coercive power.²⁷² Additionally, traffickers often use the threat of exposing the victims' occupation to their families in order to stigmatize, increase the vulnerability of the woman and therefore she will comply with everything.²⁷³

In its report of 'redefining victim protection', Anti-Slavery International concluded that 'trafficked persons who had testified against traffickers suffered increased incidences of reprisals'.²⁷⁴ Reprisals might occur when a woman is not willed or able to fulfil the work requirements of the traffickers and would be mostly were directed against trafficked persons and their families.²⁷⁵

It is crucial to mention that especially in the context of migrants, either documented or undocumented, the level of control by the trafficker increases because victims 'who do not speak the language of the country of residence and are frightened to

²⁷⁰ UNODC, *Toolkit to Combat Trafficking in Persons*, Global Programme against Trafficking in Human Beings, Tool 6.2, Considerations before identification, Vienna, United Nations, 2008, p. 255.

²⁷¹ Anti-Slavery International, *human traffic, human rights: redefining victim protection*, London, Anti-Slavery International, 2002, p. 165.

²⁷² Ibidem.

²⁷³ IOM, *Psychosocial Notebook, Psychosocial Support to Groups of Victims of Human Trafficking in Transit Situations*, vol. 4, February 2004, p. 20.

²⁷⁴ Anti-Slavery International, *human traffic, human rights: redefining victim protection*, London, The Printed Word, 2002, p. 47.

²⁷⁵ Ibidem.

denounce their captors'.²⁷⁶ The undocumented immigration status creates additionally an immense fear of extradition and therefore pressure for victims, making it easier for traffickers to exert control over the victims.²⁷⁷ Thus, promise of 'freedom is a powerful tool that brothel owners utilize to control their victims' which forces women to obey with the instructions by their trafficker.²⁷⁸ The dilemma of coming into contact with authorities or NGOs is even more fatal as 'many potential victims fear that in accessing the criminal justice system, they will be exposed to the risk of deportation or other reprisals, such as incarceration'.²⁷⁹ In addition to the fear of deportation, laws criminalizing prostitution increase the reluctance of victims to cooperate.

There is a clear link between the fear of reprisals and the 'lover boy' method, aggravated if women are undocumented migrants, making it impossible for victims of trafficking to reach out and seek assistance.²⁸⁰ As a result, the undocumented immigration situation leads to a life in a shadow world, and usually migrants will only have very limited knowledge about the language spoken in the destination country.²⁸¹ Victims tend to own a vocabulary which is needed in order to accomplish their work.²⁸²

Conclusively, in regards to the recovery and reflection period, Member States have to understand 'the complexity of the relationship between traffickers and trafficked persons' in order to offer unconditional assistance and protection.²⁸³ This entails an assessment of the needs and the environment of the victim, including possible

²⁷⁶ S. Scarpa, *Trafficking in Human Beings: Modern Slavery*, New York, Oxford University Press, 2008, p. 16.

²⁷⁷ OSCE, *National Referral Mechanisms, Joining Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook*, Warsaw, ODIHR, 2004, p. 17.

²⁷⁸ S. Kara, *Sex Trafficking*, New York, Colombia University Press, 2009, p. 3.

²⁷⁹ Ibidem.

²⁸⁰ Cf. IOM, South African Counter Trafficking Assistance Program, *10 Questions about Human Trafficking*, available at: http://www.ungift.org/doc/knowledgehub/resource-centre/IOM_SACTAP_South_Africa_10_Questions_about_Human_Trafficking.pdf (accessed 17 April 2015).

²⁸¹ A. Gallagher, *The International Law on Human Trafficking*, New York, Cambridge University Press, 2010, p. 278.

²⁸² UNODC, *humans trafficking indicators*, available at: http://www.unodc.org/documents/human-trafficking/HT_indicators_E_LOWRES.pdf (accessed 17 April 2015).

²⁸³ Anti-Slavery International, *human traffic, human rights: redefining victim protection*, London, Anti-Slavery International, 2002, p. 34.

retaliation by the perpetrator against the victim itself or victim's relatives. Anti-Slavery International emphasizes that a victim-centered approach needs 'to ensure trafficked persons are provided with the necessary support and assistance to make informed decisions about their lives' and therefore bearing in mind acts of retaliation.²⁸⁴

3.5 Stigmatization of prostitution

In the research of *Miyuki Tomura* of experienced stigmatization of women who are engaging in sex work, she determines several matters: 'negative labelling by people who discover that she is a prostitute [and therefore] hiding and lying' about her occupation in order to prevent negative experiences.²⁸⁵ Those coping mechanisms may result in extreme stress which is only possible to manage with 'developing occupational self esteem'.²⁸⁶ The research of *Tomura* focused on women which decided to be employed in the sex work sector, however those coping mechanisms may resemble motifs of women who are forced to work as a prostitute.

Christiansen determined that occupation is affiliated with identity and therefore the chosen work reflects the personal identity and also serves for 'maintaining an identity'.²⁸⁷ Occupation and identity are intertwined and socially constructed, reflecting the societal status thus society decides who to stigmatize.²⁸⁸ Stigma 'refers to an attribute that is deeply discrediting'.²⁸⁹ Therefore, if prostitution is considered as 'a socially and morally deviant act [it] implies that prostitutes are criminals and

²⁸⁴ Ibidem.

²⁸⁵ M. Tomura, 'A Prostitutes Lived Experiences of Stigma' *Journal of Phenomenological Psychology*, vol.40, 2009, p.51-84, available at: <http://home.hccnet.nl/r.ermers/MOPerspectief/doc/Tomura-prostitute-stigma.pdf> (accessed 18 April 2015).

²⁸⁶ Ibidem.

²⁸⁷ Charles H. Christiansen, 'Defining Lives: Occupation as Identity: An Essay on Competence, Coherence, and the Creation of Meaning' in *American Journal of Occupational Therapy*, vol. 53, 1999, p. 547-558.

²⁸⁸ American Psychological Association, *Ethnic and Racial Minorities & Socioeconomic Status*, available at: <http://www.apa.org/pi/ses/resources/publications/factsheet-erm.aspx> (accessed 18 April 2015).

²⁸⁹ E. Goffman, *Stigma: Notes on the Management of Spoiled Identity*, Prentice-Hall 1963, p. 3.

sinners' which then legitimizes to stigmatize.²⁹⁰

Due to socially constructed stereotypes of prostitution, women are viewed 'as "abnormal" women' which brings disgrace to the family.²⁹¹

Moreover, the 'stigmatization of prostitutes in many societies increases victim's vulnerability and makes it impossible for them to be reintegrated in their native communities'.²⁹² The experience of 'social ostracism' and fear of reprisals are interconnected due of the power of control by the trafficker and consequently restrains the victim from speaking out.²⁹³

Also, it is essential to note that 'the social stigmatization of sex work is the main reason why "rescued" victims return to work at the brothels because of the lack of sufficient income.²⁹⁴ Women, who have been subject to trafficking may become involved in the process of trafficking, are also called *Madames*.²⁹⁵

Therefore, hesitation and reluctance to return back to their families in the home country depends on the level of possible stigmatization in the native country and the ability to cope with the experienced trauma.²⁹⁶ 'Many victims know that cultural attitudes to prostitution could prevent them from being accepted by their families and communities'.²⁹⁷

²⁹⁰ R. Narag, S. Maxwell, 'Prostitution' in J. Miller (Ed.), 21st Century criminology: A reference handbook (pp. 572-581), Thousand Oaks, SAGE Publications, 2009, p. 577.

²⁹¹ B. Gwinnett, 'Policing prostitution, Gender, the state and community, politics' in Randall, V., Waylen, G. (eds.), *Gender, Politics and the State*, London, Routledge, 2002, p. 80-99.

²⁹² S. Scarpa, *Trafficking in Human Beings: Modern Slavery*, New York, Oxford University Press, 2008, p. 21.

²⁹³ IOM, *More Needs to Be Done to Address Stigma and Discrimination Towards Women Trafficked for Sexual Exploitation*, 7 March 2006, available at: <https://www.iom.int/statements/more-needs-be-done-address-stigma-and-discrimination-towards-women-trafficked-sexual> (accessed on 20 April 2015).

²⁹⁴ University of Stanford, *Sex Trafficking, Prostitution and Social Stigma, Sex Trafficking and Prostitution Blog*, 13 November 2008, available at: <http://stanford.edu/group/womenscourage/cgi-bin/blogs/sextraffickingandprostitution/2008/11/13/sex-trafficking-prostitution-and-social-stigma/> (accessed on 20 April 2015).

²⁹⁵ Europol, *Trafficking in Human Beings in the European Union*, Knowledge Report, The Hague, Europol Public information 2011, pp. 11.

²⁹⁶ UNODC, *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, Background Paper, 2008, p. 86 and see also Anti-Slavery International, *human traffic, human rights: redefining victim protection*, London, Anti-Slavery International, 2002, p. 165.

²⁹⁷ Ibidem.

3.6 Attitudes in law enforcement and society

Helga Konrad, former OSCE Special Representative for the Fight Against Trafficking in Persons, argues that ‘almost everyone has picked up the politically correct language. But (...) when confronted with human trafficking, (...) they envision suspects of all sorts’ originating from the lack of awareness and prejudices.²⁹⁸ Society as well as law enforcement officials are empathetic towards ‘the stereotype of the naïve and innocent victim’ but sympathizing with women who chose to engage in the field of sex work, remains difficult and may ‘turn into indifference’.²⁹⁹

It is in the ‘confusing spectrum of sex work and exploitation that many women knowingly become sex workers’, which does not embody the picture of a victim.³⁰⁰ The ‘unsuitable “victimhood” is augmented further when women involved in sex work are called as witnesses in the criminal justice process, where they are still characterized (...) as untrustworthy, disreputable, and suspicious’.³⁰¹ Being untrustworthy stems from the societal perception of women.³⁰² A woman who has been knowingly engaged in sex work ‘does not “deserve” the sympathies of the public or the criminal justice process, because she has transcended respectable behaviour – irrespective of how seriously she has been victimized’.³⁰³ Additionally, clients are hesitating to contact the police due to being socially stigmatized by the community.³⁰⁴ Vice versa, men may ‘be considered brave for admitting such

²⁹⁸ Helga Konrad, former OSCE Special Representative for the Fight Against Trafficking in Persons (2004-2006), ‘Ignorance and misunderstanding undermine current anti-trafficking initiatives: Q&A | Part II’ in *Open Democracy*, 16 October 2014, available at: <https://www.opendemocracy.net/beyondslavery/helga-konrad/ignorance-and-misunderstanding-undermine-current-antitrafficking-initiati> (accessed on 20 April 2015) and see also GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria*, Strasbourg, Council of Europe, 2011, p. 6.

²⁹⁹ M. Wijers, ‘Women, Labour, and Migration, The Position of Trafficked Women and Strategies for Support’ in K. Kempadoo, J. Doezenia (eds.), *Global Sex Workers, Rights, Resistance, and Redefinition*, New York, Routledge, 1998, p. 77.

³⁰⁰ K. Jaishankar, N. Ronel, *Global Criminology: Crime and Victimization in a Globalized Era*, Boca Raton, Taylor & Francis Group, LLC, 2013, p. 300.

³⁰¹ Ibidem.

³⁰² G. Peterson, ‘The whore stigma, Female Dishonor and Male Unworthiness’ in *Social Text*, vol.37, 1993, pp. 39-64.

³⁰³ K. Jaishankar, N. Ronel, *Global Criminology: Crime and Victimization in a Globalized Era*, Boca Raton, Taylor & Francis Group, LLC, 2013, p. 300.

³⁰⁴ G. Peterson, ‘The whore stigma, Female Dishonor and Male Unworthiness’ in *Social Text*, vol.37, 1993, pp. 39-64.

"normal" politically incorrect behavior than depraved for indulging in it'.³⁰⁵

Therefore, criminalizing prostitution exposes a greater threat for victims of trafficking because of suspiciousness and greater stigmatization through law enforcement and prosecution. Due to high incidences of police violence and mistreatment in countries with a criminalizing approach, 'one of the objectives of legalizing prostitution was to decriminalize the act of selling sex with consequently less police controls and a reduced likelihood of police mistreatment'.³⁰⁶

Negative experiences with authorities, especially with corrupt authorities, contribute to the decision not to cooperate. Women might presume malfeasance by the authorities due to their negative 'attitudes towards law enforcement in their country of origin' and remain skeptical about the comprehension of their personal situation by the authorities in the country of destination.³⁰⁷

Furthermore 'many trafficked victims are told by their traffickers that the authorities are complicit with their trafficking and will harm, arrest or detain them, thereby deterring the victim from seeking assistance' which is especially of importance in the process of identification of victims with an irregular immigration status.³⁰⁸

Victims are at the mercy of traffickers who have powerful control over the victim due to the economic dependence, fear of reprisals in various ways and the mistrust in law enforcement. Mistrust is higher if the victim originates from a country with high levels of corruption and police violence, aggravating the establishment of trust towards law enforcement.³⁰⁹ In the majority of cases, police is relying on victims to 'volunteer information' which implies trust is a key ingredient that reporting their traffickers will lead to improvement of their situation.³¹⁰ It is crucial for victims of trafficking in human beings, if they have decided to escape the influence of the

³⁰⁵ Ibidem.

³⁰⁶ European Parliament, Policy Department C: Citizens' rights and constitutional affairs, gender equality, *Sexual exploitation and prostitution and its impact on gender equality*, Brussels, European Union, 2014, p. 23.

³⁰⁷ UNODC, *Toolkit to Combat Trafficking in Persons*, Global Programme against Trafficking in Human Beings, Tool 6.2, Considerations before identification, Vienna, United Nations, 2008, p. 256.

³⁰⁸ Ibidem, p. 255.

³⁰⁹ H. Askola, *Legal Responses to Trafficking in Women for Sexual Exploitation in the European Union*, Portland, Hart Publishing, 2007, p. 90.

³¹⁰ A. Brunovskis, G. Tyldum, *Crossing Borders: An Empirical Study of Transitional Prostitution and Trafficking in Human Beings*, Oslo, Fafo, 2004, p. 119.

trafficker, to receive impartial trust and security from law enforcement. If states do not 'identify trafficked persons correctly, states effectively and permanently deny victims the ability to realize the rights and protection they are legally entitled'.³¹¹ Consequently, it requires a proactive approach by the state in the identification process of victims.

Suffering from the denial of 'rights as a consequence of subsequent identification failure' leads to losing access to protection and assistance measures.³¹² In addition, the basic problem of identifying victims is that women do not want to be identified because of their economic dependency, fear of reprisals and stigmatization.³¹³ Victims do not want to reveal their suffered ordeal, therefore declining assistance due to the 'distrust of authorities (...), fear of criminal sanctions, publicity and stigmatization related to the trafficking experience' and not comprehending the measures of assistance.³¹⁴ Thus accumulates with the fear of reprisals against family relatives and against the victim itself. Therefore, the 'conditional assistance' impairs victim's integrity and moreover aggravates levels of distrust against the authorities.³¹⁵

Eventually, trafficking in human beings constitutes an assault on female sexuality.

Based on this previous elaboration of various impediments for states to realize assistance and protection measures for victims, the comparative analysis of good practices of the recovery and reflection period will follow in chapter four.

³¹¹ A. Gallagher, *The International Law of Human Trafficking*, New York, Cambridge University Press, 2010, p. 282.

³¹² Ibidem, p. 279.

³¹³ OSCE, *Trafficking in Human Beings: Identification of Potential and Presumed Victims*, A Community Policing Approach, SPMU Publication, vol. 10, 2011, p. 28, available at: <http://www.osce.org/secretariat/78849?download=true> (accessed on 20 April 2015).

³¹⁴ IOM, R. Surtees, *Second Annual Report on Victims of Trafficking in South-Eastern Europe*, Geneva, IOM, 2005 p. 15, available at: http://lastradainternational.org/lisidocs/494%20iom_2005_second_annual_report_on_victims_of_trafficking_in_south_eastern_europe_2005_22.pdf (accessed on 25 April 2015).

³¹⁵ OHCHR, A. Gallagher, N. Karlebach, *Prosecution of Trafficking in Persons Cases: Integrating a Human Rights-Based Approach in the Administration of Criminal Justice*, Background Paper, 2011, p. 11, available at: http://www.ohchr.org/Documents/Issues/Trafficking/Geneva2011BP_GallagherAndKarlebach.pdf (accessed on 25 April 2015).

4. Comparative analysis of Council of Europe Member States to the Council of Europe Convention on Action against Trafficking in Human Beings

The following chart provides an overview of the level of compliance with the *Council of Europe Convention on Action against Trafficking in Human Beings* of all Member States concerning articles 10, 12, 13 and 14, determined by GRETA's terms of 'invite, consider and urge'. If a Member State receives an 'invite', GRETA recognizes the efforts in the right direction in order to fully conform to the provisions of the *Convention on Action against Trafficking in Human Beings*.³¹⁶ 'Consider' implies further action to completely fulfil with the requirements of the Convention.³¹⁷ Lastly, 'urge', the strongest GRETA recommendation, specifies that national laws 'are not in compliance with the Convention' and may have substantive practical shortcomings.³¹⁸

In the recent report of GRETA's activities, several deficits have been allocated, particularly concerning the recovery and reflection period, which originates from shortcomings in the identification of victims, assistance measures and the conditionality of participation in criminal proceedings in order to receive support.³¹⁹ Because women do not identify themselves as victims of sexual exploitation, the burden of proof must lie subsequently in the mandate of the competent agency of the Member State in collaboration with NGOs/CSOs, which is an essential element in the identification procedure.³²⁰ The process of identification remains highly time-consuming, consequently, to keep a low threshold, authorities are obliged with the slightest indication to consider individuals as victims of trafficking in human beings, symptoms vary from case to case and might not be visible at first sight.³²¹ Accurate

³¹⁶ GRETA, *4th General Report on GRETA's activities*, Strasbourg, Council of Europe, 2015, p. 31.

³¹⁷ Ibidem.

³¹⁸ Ibidem

³¹⁹ GRETA, *4th General Report on GRETA's activities*, Strasbourg, Council of Europe, 2015, p. 33.

³²⁰ Ibidem, p. 40.

³²¹ Ibidem.

identification of victims necessitates the implementation of a clear National Referral Mechanism in order to determine 'responsibilities of different actors' and to administer structural components without infringing rights of victims.³²² In addition, an organizational scheme of referral, inter alia, with incorporating a broad unconditional supportive approach, creates 'binding mechanisms to harmonize victim assistance' and consequently a governmental scheme on an interdisciplinary basis which ensures the protection of victims.³²³ 'GRETA has urged 27 of the 35 evaluated countries' to increase the participation and implementation of a multi-stakeholder approach in the identification process of victims.³²⁴

Secondly, GRETA has urgently stressed in 28 Member States the importance of improvements of a non-discriminatory approach in assistance measures to victims, irrespective of residency status and other reasons, in order to remedy deficiencies in the support of victims.³²⁵ It was also stipulated with the criticism of GRETA in regards to the conditionality of assistance with victim's participation in criminal proceedings and has therefore placed emphasis in 20 Member States to set priorities of delinking assistance and cooperation with authorities in practice.³²⁶ Another aspect on the provision of assistance is the access to health care for victims, which remains difficult in several Member States.³²⁷

Concerning the recovery and reflection period, GRETA has identified several shortcomings, namely a low number of granted recovery and reflection periods.³²⁸ It may also originate from the state practice to require victim's participation in the prosecution process, as in the example of Sweden, and therefore many victims decline assistance measures.³²⁹ Another contributing factor may stem from the non-awareness of women that they do not consider 'themselves as victims'.³³⁰

³²² Ibidem, p. 41.

³²³ OSCE/ODIHR, *National Referral Mechanisms*, Joining Efforts to Protect the Rights of Trafficked Persons A Practical Handbook, Warsaw, OSCE Office for Democratic Institutions and Human Rights, 2004, p. 15.

³²⁴ GRETA, *4th General Report on GRETA's activities*, Strasbourg, Council of Europe, 2015, p. 42.

³²⁵ Ibidem.

³²⁶ Ibidem, p. 44.

³²⁷ Ibidem, p. 45.

³²⁸ Ibidem, p. 46.

³²⁹ Ibidem p. 46.

³³⁰ Ibidem, p. 40.

Some Member States grant the recovery and reflection period only to EU or EEA, which infringes the non-discrimination clause, article 3, of the Convention which stipulates that ‘the enjoyment of measures to protect and promote the rights of victims’ must be ensured.³³¹ GRETA has further emphasized the importance of clear instructions and trained law enforcement officials in order to guarantee unconditional access to the recovery and reflection period.³³²

35 Member States had been assessed by GRETA, determining and stressing the importance of fulfilling the requirements of article 10, 12 and 13³³³ due to the beforehand mentioned inadequacies. The chart below shows the tendency of ‘urge’ recommendations, representing the shortcomings and inaccuracy of laws in Member States in executing the *Convention on Action against Trafficking in Human Beings* into practice.

³³¹ Ibidem, and see also Convention on Action against Trafficking in Human Beings, art. 3.

³³² GRETA, *4th General Report on GRETA's activities*, Strasbourg, Council of Europe, 2015, p. 47.

³³³ Ibidem, p. 32.

Member State	Identification of Victims (art. 10)			Assistance measures (art. 12)			Recovery and Reflection Period (art. 13)			Residence Permit (art. 14)		
Level of Compliance	invite	consider	urge	invite	consider	urge	invite	consider	urge	invite	consider	urge
Albania		x				x	x					
Andorra			x			x			x		x	
Armenia			x			x			x			x
Austria	x			x				x			x	
Azerbaijan			x			x			x		x	
Belgium	x					x			x		x	
BIH			x			x			x		x	
Bulgaria			x			x			x		x	
Croatia	x			x						x		
Cyprus			x			x			x			
Denmark			x			x			x			x
France			x			x			x			x
Georgia	x			x					x		x	
Germany			x			x			x		x	
Hungary			x			x			x		x	
Iceland			x			x			x	x		
Ireland			x	x					x			x
Italy			x			x			x	x		
Latvia			x			x			x		x	
Lithuania			x			x			x	x		
Luxembourg			x			x			x			x
Malta			x			x			x			x
Moldova			x			x						
Montenegro			x			x			x			x
Netherlands			x			x			x		x	
Norway			x		x				x		x	
Poland			x		x				x			x
Portugal			x			x			x	x		
Romania	x					x			x		x	
San Marino			x			x			x		x	
Serbia	x					x			x			x
Slovakia			x		x				x		x	
Slovenia			x			x			x			x
Spain			x			x			x		x	
Sweden			x			x			x		x	
FYRM			x			x			x			x
Ukraine			x			x			x			x
United Kingdom	x				x		x			x		

Figure 1: Compliance status of Council of Europe Member with the Convention on Action against Trafficking in Human Beings (developed by the author)

4.1 Level of compliance of Member States with article 10

Regarding article 10 on the provision of identification of victims, Belgium, despite having received a 'consider' by GRETA, constitutes a good example in raising awareness campaigns and a specialized asylum unit, which is particularly trained in indicating victims of trafficking in human beings. Leaflets and posters have been disseminated to all hospitals in Belgium as well as in 'social welfare centres [and] schools' in order to raise awareness among professional staff which might come into contact with possible victims of trafficking.³³⁴ Within the office for asylum applications, a specialized unit evaluates case by case in order to detect possible victims of trafficking in human beings.³³⁵ Furthermore, Belgium has instructed and implemented a clear identification framework, resulting from a comprehensive National Referral Mechanism.³³⁶ The circular incorporates the interdisciplinary collaboration of all stakeholders involved in the field of trafficking, specifically the joint decision on the formal identification of victims by the public prosecutor and the respective NGO hosting the victim.³³⁷

In addition to the clear referral structure in Belgium concerning victims, the competency to 'identify victims or apply for reflection periods [lies with] one of the three designated NGOs', bearing in mind the complex circumstances of trafficking cases.³³⁸ Denmark has as well incorporated a two way identification approach in which police or an NGO can identify depending on the immigration status, additionally a hotline is used by police officers to contact social workers if a possible victim of trafficking is detected.³³⁹ Although Denmark was 'urged' by GRETA due to deficiencies in the identification procedure, the element of a two way approach

³³⁴ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belgium*, Strasbourg, Council of Europe, 2013, para. 102 and 103.

³³⁵ Ibidem, para. 133.

³³⁶ Ibidem, para. 138.

³³⁷ Ibidem, para. 129.

³³⁸ A. Brunovskis, *Balancing protection and prosecution in anti-trafficking policies*, Copenhagen, Nordic Council of Ministers, 2012, p. 51.

³³⁹ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Denmark*, Strasbourg, Council of Europe, 2011, para. 110 and 112.

represents a good practice.³⁴⁰

A comprehensive social work approach tackles the victimization from a different, more holistic perspective which contains a low threshold for victims and prioritizes the protection and safety of women, in contrast to a law enforcement approach which tends to focus primarily on the prosecution of the trafficker.

The initiation of the identification procedure by various stakeholders is already in practice in Bulgaria, Denmark, France, Iceland, Latvia, Former Yugoslav Republic Macedonia, Moldova, Norway, Poland, Serbia, Slovenia, and Slovakia, which allows social workers, health care staff and others, to detect possible victims of trafficking.³⁴¹ Therefore, involved professionals should be trained and sensitized, cases of trafficking might be complex and not visible with first sight. Cultural aspects, gender dimension, language barriers are obstacles which prevent women from speaking out loud and seeking assistance. Although the majority of the beforehand mentioned Member States have received an 'urge' in the chart by GRETA, they resemble interdisciplinary approaches due to the involvement of different stakeholders in the process of identification. GRETA strongly accentuates on an interdisciplinary approach, benefiting eventually victims in order to receive assistance and protection measures under the recovery and reflection period.³⁴²

Identification in the criminal law sense, will remain with the competent authorities of the Member State and does not influence the process of identification in itself.

4.2 Level of compliance of Member States with article 12

Measures to assist as stipulated in article 12, can only be accomplished if identified as a victim and only if all stakeholders involved are sensitized and properly interdisciplinary trained in the assistance with victims of trafficking.

³⁴⁰ Ibidem, para. 130.

³⁴¹ Please see GRETA reports by Bulgaria, 2011, para. 145, Denmark, 2011, para. 110, France, 2013, para. 127, Iceland, 2014, para. 116, Latvia, 2013, para. 117, Former Yugoslav Republic Macedonia, 2014, para. 144, Moldova, 2012, para. 105, Norway, 2013, para. 126, Poland, 2013, para. 137 and 138, Serbia, 2014, para. 149, Slovenia, 2014, para. 105, Slovakia, 2011, para. 77.

³⁴² GRETA, *4th General Report on GRETA's activities*, Strasbourg, Council of Europe, 2015, p. 40.

Assistance measure in Georgia, which has received a ‘consider’ by GRETA, include the draft of an individual plan for each victim concerning their social reintegration.³⁴³ Social workers develop together with the victim a plan based on empowerment in order to sustain an independent life. An individual plan for the victim’s social reintegration delivers a solid basis for professionals and women themselves to evaluate the progress of recovery and rehabilitation.

GRETA welcomed further the unconditional access to assistance measures in practice in the Former Yugoslav Republic of Macedonia, despite being ‘urged’ by GRETA, particularly to offer health care protection irrespective of the status of health care insurance.³⁴⁴ Health care treatment might be crucial and live-saving under certain circumstances if women e.g. had illegal abortions, or are suffering from injuries of domestic violence. GRETA also acknowledged practices in Ukraine which has incorporated in its assistance policy a possibility to extend accommodation for victims if it is necessary according to the authorities.³⁴⁵ Although, Ukraine received an ‘urge’ due to indifferences in offering ‘all assistance measures for (...) victims’, the possible extension of accommodation is a good practice and acknowledges the severity of trafficking.³⁴⁶ Circumstances vary from woman to woman, coping mechanisms about the experience of being trafficked differ from woman to woman, and therefore it is difficult to establish a precise period in order to recover from the trauma effectively. Offering a possibility to prolong the recovery and reflection period, resembles the idea of unconditional support for victims. Furthermore, the Netherlands offer a high monthly allowance to assist victims in the reintegration into society of 930€ during the recovery and reflection period.³⁴⁷ The Netherlands have received an ‘urge’ because of discrepancies in ensuring ‘adequate assistance

³⁴³ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Georgia*, Strasbourg, Council of Europe, 2012, para. 160.

³⁴⁴ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by "the former Yugoslav Republic of Macedonia"*, Strasbourg, Council of Europe, 2014, para. 153.

³⁴⁵ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ukraine*, Strasbourg, Council of Europe, 2014, para. 150.

³⁴⁶ *Ibidem*, para. 161.

³⁴⁷ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Netherlands*, Strasbourg, Council of Europe, 2014, para. 168.

uninterruptedly', however the financial support is a small element in the area of assistance measures which offers to some extent autonomy of victims.³⁴⁸

Hereby needs to be noted that the tendency to decline assistance remains high, due fear of stigmatization, women prefer to stay at home and not in shelters.³⁴⁹

4.3 Level of compliance of Member States with article 13

Article 13 strongly involves article 12, stipulating the necessity to fulfil assistance measures under article 12, in order to comply with the provision in article 13. Initially, a victim needs to be properly identified in order to accede to assistance measures under article 12 and the recovery and reflection period under article 13. Unconditional assistance and protection is however only to be realized with a clear implemented framework, a National Referral Mechanism, resulting in effectively granting the recovery and reflection period without any conditions. Thus, 'it is a prerequisite to have an efficient and flexible system for victim identification and referral, and for subsequent assistance provision'.³⁵⁰

Recovery and reflection periods longer than the compulsory 30 days according to the Convention are found in 'Ireland, Luxembourg, "the former Yugoslav Republic of Macedonia", Montenegro, the Netherlands, Portugal, Romania, and Slovenia' whilst Norway and Iceland are the only Member States offering a period of six months.³⁵¹ Norway's purpose in the recovery and reflection period lays on prosecution and therefore requires the involvement of victims in criminal proceedings, which has led to issue an 'urge' recommendation by GRETA, although Norway offers a six month period.³⁵² Sweden incorporated as well an unconditional approach of the recovery and reflection period, however it occurs in practice, only if victims cooperate with

³⁴⁸ Ibidem, para. 172.

³⁴⁹ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Latvia*, Strasbourg, Council of Europe, 2013, para. 153.

³⁵⁰ A. Brunovskis, *Balancing protection and prosecution in anti-trafficking policies*, Copenhagen, Nordic Council of Ministers, 2012, p. 67.

³⁵¹ GRETA, *4th General Report on GRETA's activities*, Strasbourg, Council of Europe, 2015, p. 46.

³⁵² GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Norway*, Strasbourg, Council of Europe, 2013, para. 197.

the authorities, they receive the necessary protection.³⁵³

While GRETA welcomed the long period in Iceland, it still issued an ‘urge’ recommendation due shortcomings in the implementation of the recovery and reflection period, namely to provide the protection of the period to all victims of trafficking.³⁵⁴

In comparison, the Group of Experts on Trafficking in Human Beings of the European Commission recommends three months in order to recover properly from the experienced trauma.³⁵⁵

Unconditional access to the period irrespective of nationality is practiced in Moldova, FYRM and Latvia, in contrast to the ongoing practice of granting the period to third-nationals only.³⁵⁶ The possibility to prolong the recovery and reflection period constitutes a best practice example in the United Kingdom, which received an ‘invite’ by GRETA and Spain, received an ‘urge’.³⁵⁷ Italy as well has implemented a strategy concerning the period, a ‘special support programme’ which serves as the recovery and reflection period according to the authorities and offers assistance and protection for three months with the possibility to prolong it for three additional months.³⁵⁸ However, the recovery and reflection period is not clearly codified in the Italian legislation which led to issue GRETA an ‘urge’.³⁵⁹ Thus, leaves a legal inaccuracy which might harm the victim eventually by not being granted the period.

Therefore, giving the possibility to prolong the recovery and reflection period in all Council of Europe Member States would acknowledge the vulnerability and needs of

³⁵³ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden*, Strasbourg, Council of Europe, 2014, para. 159.

³⁵⁴ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Iceland*, Strasbourg, Council of Europe, 2014, para. 146.

³⁵⁵ Experts Group on Trafficking in Human Beings, *Opinion on reflection period and residence permit for victims of trafficking in human beings*, Brussels, European Commission, 16 April 2004, para. 3.

³⁵⁶ GRETA, *4th General Report on GRETA's activities*, Strasbourg, Council of Europe, 2015, p. 46.

³⁵⁷ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by United Kingdom*, Strasbourg, Council of Europe, 2012, para. 280 and the Report by Spain, 2013, para. 198.

³⁵⁸ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy*, Strasbourg, Council of Europe, 2014, para. 152 and see also para 140

³⁵⁹ *Ibidem*, para. 155.

victims. This victim-centered approach offers the option to prolong the period based on the circumstances of the situation and context which varies from woman to woman. If Member States create the opportunity to extend the assistance measure in the recovery and reflection period, they would eventually comprise victim's needs by bearing in mind the time-consuming identification process.³⁶⁰

4.4. Level of compliance of Member States with article 14

Concerning the regulations on residence permits, article 14 has been well implemented in Iceland, Italy, Luxembourg, Netherlands, Norway, Portugal, San Marino, Spain, and the United Kingdom with the option of granting residency based on victim's personal circumstances.³⁶¹ Italy, Iceland, Portugal and the United Kingdom received an 'invite', Luxembourg was 'urged' and the Netherlands, Norway, San Marino, Spain, were issued with an 'consider' by GRETA. Residence permits due to individual circumstances comprehends the personal situation of victims, and acknowledges not being able to testify due to their state of health or their fear of reprisals against themselves or family members.³⁶²

Sweden, receiving a 'consider', goes a step further and offers equal rights to victims of trafficking as compared with Swedish nationals when granted a residence permit.³⁶³ Iceland has no minimum requirements for residence permits, which commonly certifies a permit for six months, still there is no minimum period stipulated in law leaving a dangerous legal inaccuracy for victims in the realization of receiving a permit.³⁶⁴

In order to offer and grant unconditional residency permits to victims, laws should

³⁶⁰ GRETA, *4th General Report on GRETA's activities*, Strasbourg, Council of Europe, 2015, p. 40.

³⁶¹ Please see GRETA reports by Iceland, 2014, para. 147, Italy, 2014, para. 157, Luxembourg, 2014, para. 118, the Netherlands, 2014, para. 186, Norway, 2013, para. 200, Portugal, 2013, para. 141, San Marino, 2014, para. 95, Spain, 2013, para. 217, United Kingdom, 2012, para. 289.

³⁶² GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Netherlands*, Strasbourg, Council of Europe, 2014, para. 186.

³⁶³ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden*, Strasbourg, Council of Europe, 2014, para. 170.

³⁶⁴ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Iceland*, Strasbourg, Council of Europe, 2014, para. 149.

clearly determine immigration regulations and paving the way for possible minimum residence permits.

Netherlands grants allowances to victims once they have completed the recovery and reflection period in order to assist continuously and unconditionally until victims are able to sustain a livelihood on their own.³⁶⁵ If victims have decided to cooperate with law enforcement authorities in the Netherlands, 'no passport is required' in order to obtain a complimentary residence permit, which is dispatched 'within 24 hours'.³⁶⁶ The practice of a fast and free issuance of a residence permit, constitutes an element of a good practice example, however should be transposed without the condition of binding the victim to cooperate in the pursuit of criminal proceedings in the Netherlands.³⁶⁷

Victims of trafficking in Portugal are eligible for a residence permit in cases where the situation does not allow the victim to participate in investigations which may be their fear of reprisals or matters concerning circumstances of 'health [and] family'.³⁶⁸ Because many victims experience great difficulties in finding an employment, Cyprus has implemented a system to increase the possibility for victims to successfully find work, through 'a year's subsidy' for enterprises by the state if victims of trafficking are hired.³⁶⁹ Nonetheless, the 'access to employment' continues to be the biggest obstacles for victims.³⁷⁰

4.5 Conclusion

In conclusion, the interdisciplinary approach involving different stakeholders in order to ensure the accurate identification of victims fulfils the obligations under article 10 and constitutes therefore a solid suggestion for Austria.

³⁶⁵ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Netherlands*, Strasbourg, Council of Europe, 2014, para. 168.

³⁶⁶ Ibidem, para. 187.

³⁶⁷ Ibidem.

³⁶⁸ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Portugal*, Strasbourg, Council of Europe, 2013, para. 141.

³⁶⁹ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Cyprus*, Strasbourg, Council of Europe, 2011, para. 144.

³⁷⁰ Ibidem.

The possibility to prolong the recovery and reflection period would strengthen a victim-centred approach by focusing on victim's rights and needs according to individual circumstances. By prolonging the period, assistance measures need to have the option to be extended as well in order to avoid a double standard. Trafficking in human beings is a complex phenomenon and some victims might not be able to recuperate in 30 days, which creates immense pressure for women to come to a fast conclusion of future steps. The recovery and reflection period shall not depend on the involvement of victims in criminal proceedings, else the concept of unconditional protection and assistance cannot be realized.

Residence permits according to article 14 must be issued due to the personal situation of women, in this way a non-discriminatory and unconditional approach can be ensured and Member States will be in line with the obligations under the Convention.

In the following chapter, the good practice examples which have been determined will be transposed into the context of Austria.

5. Findings and suggestions of the comparative analysis for the context of Austria

As previously elaborated and also criticized by GRETA, the state's interest are primarily determined in the prosecution of traffickers and combating organized crime in order to main the social order.³⁷¹ A balance between prosecution and victim rights and protection in the criminal proceedings has not been fully successful yet in Austria.³⁷² Although Member States having received an 'urge' or 'consider', they constitute with their practice of unconditional assistance and protection measures a good example. Thus might be a small element in the overall assistance scheme but it is a crucial element for victims realizing their rights and being acknowledged as a victim of a human rights violation.

In the following sub-chapters, the findings in chapter four according to the respective article will be transferred.

5.1. Recommendations for article 10

GRETA determined a lack of awareness among law enforcement officials in Austria, hereby the practice of campaigns in Belgium has shown substantive progress in raising awareness. Proper identification according to article 10 of the Convention requires extensive consciousness of professionals regarding visible and invisible signs of victimization. Cases of trafficking in human beings are often complex, and victims might not want to disclose their ordeal which requires an extensive understanding of the nature of trafficking.³⁷³

Due to the fact, that Austrian NGOs do not have access to detention centres,

³⁷¹ La Strada International, *Violation of Women's Rights: A cause and consequence of trafficking in women*, Amsterdam, La Strada International, 2008, p. 35.

³⁷² See GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria*, Strasbourg, Council of Europe, 2011

³⁷³ GRETA, *4th General Report on GRETA's activities*, Strasbourg, Council of Europe, 2015, p. 40.

especially in asylum cases, Belgium may embody a leading example.³⁷⁴ Specialized asylum units concerning trafficking-related offenses have proven to be successful, and additional awareness raising campaigns in Belgium included the dissemination of leaflet and posters in schools, hospitals, etc. in order to sensitize professionals and the broad society.³⁷⁵ A specialized trafficking department in the asylum sector and essential awareness campaigns constitute best practice examples, however it needs to be noted, that victims in Belgium are required to participate in criminal investigations in order to be eligible to receive assistance which does not resemble an unconditional practice.³⁷⁶

Accurate and fast identification of victims according to article 10 necessitates sensitization programmes for all involved professionals.³⁷⁷ Incorporating the involvement of all 'jointly trained' stakeholders would eventually increase the interdisciplinary approach and the efficacy of a National Referral Mechanism (NRM).³⁷⁸ A multiparty program and approach offers the possibility for all professional participants to learn from other professions, as well as gaining a useful insight of a different perspective which in turn would result in the best case scenario in consensus of an effective anti-trafficking policy. A 'human rights centred approach requires early identification' which is possible with a clear structured and interdisciplinary NRM providing assistance and protection measure to victims.³⁷⁹ NRMs do not only assist the identification procedure, it simultaneously benefits the victim in receiving appropriate protection and assistance. A National Referral Mechanism defines 'a co-operative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons, co-

³⁷⁴ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria*, Strasbourg, Council of Europe, 2011, para. 92.

³⁷⁵ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belgium*, Strasbourg, Council of Europe, 2013, para. 102 and 103.

³⁷⁶ European Migration Network, *The Identification of victims of trafficking in human beings in international protection and forced return procedures in Belgium*, Brussels, European Commission, 2013, p. 16.

³⁷⁷ Council of Europe, *Recommendations on Identification and Referral to Services of Victims of Trafficking in Human Beings*, 2008, p. 3.

³⁷⁸ Ibidem, p. 5.

³⁷⁹ Ibidem, p. 1.

ordinating their efforts in a strategic partnership with civil society'.³⁸⁰ The implemented framework complements the state's responsibility to fulfil its human rights obligation.

The best practice example in Belgium to transfer the mandate identifying victims by specialized NGOs which constitutes a comprehensive and unconditional approach, offers a possibility of implementation in Austria.³⁸¹ Negative imagines or bad experiences with police officers in the country of origin, combined with the irregular situation hinder however women from seeking assistance.³⁸² The fear of deportation is considered by women as a 'worse prospect than accepting the situation' which forces her to stay and settle with the circumstances of the exploitative situation.³⁸³

In the legalized system of prostitution, registered sex workers need to undergo health checks in Austria, yet these appointments are not used for raising awareness of assistance services among women, neither as for the detection of possible victims.³⁸⁴ The Dutch system of health care where workers are well trained on indicators of trafficking, may be a useful suggestion for Austria to change the policy of weekly health checks for sex workers. Regarding the lists of indicators, if adapted to the national context and methods, 'should avoid further stereotyping' which may constitute a reliable and holistic approach.³⁸⁵ A draft of an indication list needs to be gender-sensitive and not discriminatory in order to prevent second victimization. US State Department has as well given recommendations for Austria to increase prosecution and convictions and 'sentences that are proportionate to the gravity of

³⁸⁰ OSCE/ODIHR, *National Referral Mechanisms*, Joining Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook, Warsaw, OSCE Office for Democratic Institutions and Human Rights, 2004, p. 15

³⁸¹ A. Brunovskis, *Balancing protection and prosecution in anti-trafficking policies*, Copenhagen, Nordic Council of Ministers, 2012, p. 51.

³⁸² UNODC, *Toolkit to Combat Trafficking in Persons*, Global Programme against Trafficking in Human Beings Tool 6.2, Considerations before identification, Vienna, United Nations, 2008, p. 256.

³⁸³ M. Wijers, 'Women, Labour, and Migration, The Position of Trafficked Women and Strategies for Support' in K. Kempadoo, J. Doezema (eds.), *Global Sex Workers, Rights, Resistance, and Redefinition*, New York, Routledge, 1998, p. 75.

³⁸⁴ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria*, Strasbourg, Council of Europe, 2011, para. 87.

³⁸⁵ Council of Europe, *Recommendations on Identification and Referral to Services of Victims of Trafficking in Human Beings*, 2008, p. 4.

the crime’ as well as creating a NRM, by also consolidating an identification system and referral.³⁸⁶ Furthermore, the US State Department urges raise awareness among law enforcement officials, especially in regards to the mental nature of victims, and sensitize clients, who use the services of a sex worker, with ‘a targeted campaign’.³⁸⁷

5.2. Recommendations for article 12

Assistance and support measures for victims as described in article 12, which inter alia acknowledges their rights, have become a secondary and subordinate agenda due to the ‘prosecutorial interests’ of States.³⁸⁸ A ‘policy aimed at countering trafficking in persons’ should encompass measures to assist and protect victims which will benefit the woman herself and enhance prosecution.³⁸⁹

Currently, Austria does not have a national regulation on assistance measures³⁹⁰, an NRM in Belgium for example may compose a useful incentive for a clearer structured NRM in the Austrian context.³⁹¹ A proper structured and interdisciplinary NRM in Austria would safeguard the management and collaboration ‘of government action (...) with civil society organizations’ resulting in the appropriate protection of victims.³⁹²

Alarmingly, victims of trafficking are only allowed for emergency medical treatment in Austria³⁹³, the practice in FYRM was welcomed by GRETA, that all victims received

³⁸⁶ United States Department of State, *2014 Trafficking in Persons Report*, Austria, 2014, p. 83.

³⁸⁷ Ibidem.

³⁸⁸ C. Rijken, R. Römkens, ‘Trafficking for Sexual Purposes as a Globalized Shadow Economy: Human Security as the Tool to facilitate a Human Rights Based Approach’ in R. Letschert, J. van Dijk, *New Faces of Victimhood*, Tilburg, Springer, Global Justice Series, 2011, p. 73-98.

³⁸⁹ UNODC/UNGIFT, *Needs Assessment Toolkit on the Criminal Justice Response to Human Trafficking*, Vienna, United Nations, 2010, p. 39.

³⁹⁰ GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria, Strasbourg, Council of Europe, 2011, para. 94

³⁹¹ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belgium*, Strasbourg, Council of Europe, 2013, para. 138.

³⁹² Council of Europe, *Recommendations on Identification and Referral to Services of Victims of Trafficking in Human Beings*, 2008, p. 2.

³⁹³ Section 2 (1) 3 Basic Services Act (Grundversorgung 2005) FLG I No. 405/1991 as amended by FLG I No. 70/2015.

unconditional health protection and services.³⁹⁴ Lefö, the Austrian NGO which has the governmental mandate to care and offer assistance and protection to victims, ensures the coordination of supply of medical care to women and furthermore offers psychosocial counselling.³⁹⁵ However, measures to support and assist in issues concerning the health status of women, need to be impartially offered, not only in cases of emergency and also to women who are not receiving help from the Austrian NGO Lefö. Continuous medical check-ups benefits as well the recovery progress of exploited women.

5.3. Recommendations for article 13

Regarding the recovery and reflection period, article 13 of the Convention, Austria only offers 30 days of protection for victims, which seems to concern only women who participate in the prosecution on their traffickers.³⁹⁶ As previously elaborated, several countries have already implemented longer periods in order to ensure the appropriate assistance and protection of victims, or have established the possibility to extend the period, if it is necessary, such as Italy, Spain, and United Kingdom.

Long or short periods for recovering targets the issue, whom shall it benefit: law enforcement or the victim.³⁹⁷ Depending on the states interest of what to pursue: the fast prosecution of the crime or the stabilization and protection of victims which may afterwards contribute to criminal proceedings.

Short period may have the benefit to ensure an accurate information flow though long periods may influence the memory of victims and 'become less reliable witnesses' due to the loss of information.³⁹⁸ Consequently, long periods should have

³⁹⁴ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by "the former Yugoslav Republic of Macedonia"*, Strasbourg, Council of Europe, 2014, para. 153.

³⁹⁵ Lefö, *Migrantinnenrechte sind Frauenrechte*, Jahresbericht 2014, Wien, Verein Lefö, 2015, p. 36.

³⁹⁶ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria*, Strasbourg, Council of Europe, 2011, para. 108.

³⁹⁷ A. Brunovskis, *Balancing protection and prosecution in anti-trafficking policies*, Copenhagen, Nordic Council of Ministers, 2012, p. 48.

³⁹⁸ Ibidem.

a purpose and program in order to stabilize and empower victims with ‘meaningful rights and contents, and that [making] the process (...) clear and predictable’.³⁹⁹ It is crucial that victims are aware of the procedures of a recovery and reflection period in order to ensure structure in their everyday lives, and also to avoid confusion in the web of the system. Stabilizing victims with sufficient time for trauma healing and offering protection measures in order to contribute to the safety of women, will eventually benefit the process of prosecution and investigations.⁴⁰⁰ As mentioned before, the Expert Group of the European Commission recommends three months in order to allow the victim to fully recover from its trauma.

The recovery and reflection period is not clearly enshrined in Austrian law⁴⁰¹, whereas Belgium composes with its clear NRM, a comprehensive approach in ensuring rights of victims within the recovery and reflection period.⁴⁰²

A clear framework and a detailed structure of the recovery and reflection period decreases the risk of women being victimized by the authorities as Austrian officials are not aware of ‘what kind of assistance and support potential victims are entitled to during this period’.⁴⁰³ If law enforcement is properly sensitized and informed, legal limbos can be prevented as well as an imminent denial of the recovery and reflection period due to non-awareness of officials.

³⁹⁹ A. Brunovskis, *Balancing protection and prosecution in anti-trafficking policies*, Copenhagen, Nordic Council of Ministers, 2012, p. 49.

⁴⁰⁰ A. Jorge-Birol, ‘Empowering Victims of Human Trafficking: the Role of Support, Assistance and Protection Policies’, *HUMSEC Journal*, vol. 2, April 2008, pp. 163-178, available at: http://www.humsec.eu/cms/fileadmin/user_upload/humsec/Journal/Pedra.pdf (accessed on 18 June 2015).

⁴⁰¹ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria*, Strasbourg, Council of Europe, 2011, para. 109 and see also cf. item no. 22 of the Council Resolution Minutes No. 70 of 9 November 2004.

⁴⁰² GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belgium*, Strasbourg, Council of Europe, 2013, para. 138 and see also Belgian Federal Migration Centre, *Annual Report on Human Trafficking*, 2013, available in French at: http://www.emnbelgium.be/sites/default/files/publications/rapport_annuel_traite_des_etres_humains_2013.pdf (accessed on 25 July 2015).

⁴⁰³ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria*, Strasbourg, Council of Europe, 2011, para. 108.

5.4. Recommendations for article 14

In order to comply with the provisions of article 14 of the Action against Trafficking in Human Beings, criminal law and immigration law needs to be dissociated in order to provide unconditional assistance and support regardless the status of immigration or participation in criminal proceedings, else it will facilitate the instrumentalisation of victims.⁴⁰⁴ By detaching regulations on criminal and immigration law, a possibility would be arranged to grant residence permits based on personal grounds. The convention explicitly refers to the option of providing a permit based on the 'personal situation' which therefore acknowledges the difficulties of women to participate in criminal proceedings.⁴⁰⁵

Additionally, women do not have access to the labour market until immigration authorities have issued the positive approval of a residence permit.⁴⁰⁶ Thus creates a dangerous gap which needs to be filled with meaningful activities such as vocational training or life-skills workshops. It is questionable how women should bring up sufficient income for the residence permit when having stopped working as a prostitute.

Several Member States, as explained in Chapter 3, provide permits based on personal reasons as it also stipulated in article 14 of the Convention. As stated earlier, Portugal gives the opportunity to receive a residence permit based on victim's fear of reprisals, also against family members. By offering the possibility of granting a permit due to personal circumstances, instrumentalisation and second victimization are avoided.⁴⁰⁷

The fast issuance of a residency permit in the Netherlands without a passport resembles a victim-centred approach in its idea however, the connection to

⁴⁰⁴ C. Rijken, R. Römkens, 'Trafficking for Sexual Purposes as a Globalized Shadow Economy: Human Security as the Tool to facilitate a Human Rights Based Approach' in R. Letschert, J. van Dijk, *New Faces of Victimhood*, Tilburg, Springer, Global Justice Series, 2011, p. 73-98.

⁴⁰⁵ *Convention on Action against Trafficking*, art. 14.

⁴⁰⁶ Lefö, *Migrantinnenrechte sind Frauenrechte*, Jahresbericht 2014, Wien, Verein Lefö, 2015, p. 40.

⁴⁰⁷ IOM, *Psychosocial Notebook, Psychosocial Support to Groups of Victims of Human Trafficking in Transit Situations*, vol. 4, February 2004, p. 25.

participation in criminal proceedings suspends the policy.⁴⁰⁸ Victims are in a vulnerable position and in most cases not in possession of their documents, therefore in order to ensure unconditional protection, a residence permit without the identification documents would offer a low threshold and may support to gain trust in the authorities and seeking assistance and protection.

Assessing the situation of a victim should then include issues concerning possible retaliation, 'the capacity and willingness of the authorities in the country of origin to protect the victim from such reprisals', and the peril of 'being arrested, detained or prosecuted by the authorities in his or her home country for trafficking-related offences' which would be a constant threat as 'the use of false documents and engaging in prostitution' may lead to being subject to prosecution.⁴⁰⁹ Furthermore, the accessibility of programs to support victims 'and the opportunities for long-term employment' in community of the victim need to be considered and evaluated.⁴¹⁰

Victims of trafficking 'experience [great] difficulties' in Austria in acceding to the employment market, mainly due to the fact that the employee has to initiate the working contract.⁴¹¹ Whereas Cyprus approaches such issues with a subsidy quota which offers enterprises the opportunity to 'receive a year's subsidy covering 65% of labour costs if they hire staff from "vulnerable groups", which includes victims of THB'.⁴¹²

Lastly, residence permits issued on humanitarian grounds due to the personal situation of the victim prevents second victimization and lowers the chance of re-

⁴⁰⁸ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Netherlands*, Strasbourg, Council of Europe, 2014, para. 187.

⁴⁰⁹ UNODC, *Needs Assessment Toolkit on the Criminal Justice Response to Human Trafficking*, Vienna, United Nations, 2010, p. 46.

⁴¹⁰ Ibidem.

⁴¹¹ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria*, Strasbourg, Council of Europe, 2011, para. 114 and see also Section 3 and 4 of the Aliens Employment Act (Ausländerbeschäftigungsgesetz 1975) FLG I No.218/1975 as amended by FLG I No. 72/2013.

⁴¹² GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Cyprus*, Strasbourg, Council of Europe, 2011, para. 144. See also European Commission, Directorate-General for Employment, Social Affairs and Inclusion Unit C.1, *Stimulating job demand: the design of effective hiring subsidies in Europe*, European Employment Policy Observatory Review, Luxembourg, European Union, 2014.

trafficking when granted a permission to stay.⁴¹³ IOM Kosovo has found out, that the victims' 'willingness to receive information and to participate in reintegration activities significantly increases' when they receive unconditional assistance impartially and unbiased.⁴¹⁴

5.5. Central recommendations for the implementation in Austria

Ideologies of sex work and trafficking in human beings may constitute national semantics which might mismatch and do not target the needs of victims and anti-trafficking policies.⁴¹⁵ Thus, the conditionality of cooperation in order to receive a right to reside fosters the danger of secondary victimization.

Therefore, the abolitionist approach 'negates [the] individual choice and denies women the status of subjects capable of assuming agency and responsibility'.⁴¹⁶ No self-determination is possible, if women are not allowed to freely choose their own agenda, they got 'freedoms such as the right to work as a prostitute or not'.⁴¹⁷

Five components which are crucial to comprehend the situation of women who become victims of trafficking: 'migration laws, (...) laws dealing with migrant workers, (...)prostitution laws, (...) criminal policies on trafficking [and] their position as women' in the country of origin and host country.⁴¹⁸ All aspects are interwoven however, it is crucial to separate it in practice with a formalized NRM in order to prevent instrumentalisation and therefore a second victimization of women by the authorities.⁴¹⁹

Measures to assist and protect victims benefits not only the psychological and

⁴¹³ UNODC/UNGIFT, *Needs Assessment Toolkit on the Criminal Justice Response to Human Trafficking*, Vienna, United Nations, 2010, p. 45.

⁴¹⁴ IOM, *Psychosocial Notebook, Psychosocial Support to Groups of Victims of Human Trafficking in Transit Situations*, vol. 4, February 2004, p. 25.

⁴¹⁵ Supra note 349.

⁴¹⁶ M. Wijers, 'Women, Labour, and Migration, The Position of Trafficked Women and Strategies for Support' in K. Kempadoo, J. Doezema (eds.), *Global Sex Workers, Rights, Resistance, and Redefinition*, New York, Routledge, 1998, p. 73.

⁴¹⁷ Ibidem, p. 69.

⁴¹⁸ Ibidem, p. 70.

⁴¹⁹ Anti-Slavery International, *human traffic, human rights: redefining victim protection*, London, The Printed Word, 2002, p.1.

physical state of health, but also it strengthens the readiness and tendencies of victims 'to report crimes and contribute to the criminal lawsuit'.⁴²⁰ Therefore, victims need to be firstly stabilized in order to enable them to cooperate with the authorities, by also ensuring protection.

Examining victim's needs depends on the understanding of trafficking in human beings of all involved parties, only then a comprehensive anti-trafficking strategy is viable. A 'monitoring and evaluation' system as an integral part of an NRM would provide constant supervision of the referral process and therefore optimize anti-trafficking policies.⁴²¹

A residence permit issued on humanitarian grounds due to the personal situation of the victim prevents second victimization and lowers the chance of re-trafficking when granted a permission to stay.⁴²²

⁴²⁰ A. Jorge-Birol, 'Empowering Victims of Human Trafficking: the Role of Support, Assistance and Protection Policies', *HUMSEC Journal*, vol. 2, April 2008, pp. 163-178, available at: http://www.humsec.eu/cms/fileadmin/user_upload/humsec/Journal/Pedra.pdf (accessed on 18 June 2015).

⁴²¹ A. Brunovskis, R. Surtees, *A fuller picture*, Addressing trafficking-related assistance needs and socio-economic vulnerabilities, Oslo, Fafo, 2012, p. 41.

⁴²² UNODC/UNGIFT, *Needs Assessment Toolkit on the Criminal Justice Response to Human Trafficking*, Vienna, United Nations, 2010, p. 45.

6. Conclusion

Trafficking in human beings constitutes in most cases, and especially in Europe, a transnational crime which therefore requires transnational responsibility to combat trafficking in human beings effectively. The responsibility of states does not halt at national borders, due diligence means also to contribute and collaborate internationally. Effective anti-trafficking policies can only work if the 3P mandate of 'prevention, prosecution and protection' is properly administered and executed. Which means, excellent laws in theory need to be transferred into practice otherwise the legal framework becomes void. It is therefore crucial to train respective law enforcement officials in order to increase efficacy and effectiveness of anti-trafficking laws through the accurate identification of victims.

The crime of trafficking in human beings regularly involves a breach of immigration regulations, 'hence the legal response is defined by the aims and interests that form these two legal frameworks: prosecution of the suspect, protection of national borders and control of transnational migration'.⁴²³ Thus, vulnerability of victims is not properly addressed in protection and assistance systems which leaves serious gaps in practise to recognise the needs of victims.⁴²⁴ Several Council of Europe member states do not embed a victim-centred approach in their national legislation which resembles the critique by GRETA concerning the instrumentalisation of victims for law enforcement purposes.

Discussions of tackling the demand in prostitution portrays an unnecessary debate about morals which does not support combatting trafficking in human beings. Trafficking and prostitution have to be differentiated, the self-determination of women has been and is continuously denied.

Systems and traditions of patriarchy, as cause of human rights violations, need to be

⁴²³ C. Rijken, R. Römkens, 'Trafficking for Sexual Purposes as a Globalized Shadow Economy: Human Security as the Tool to Facilitate a Human Rights Based Approach' in R. Letschert, J. Van Dijk, (eds.), *The New Faces of Victimhood*, Globalization, Transnational Crimes and Victim Rights, Tilburg, Springer, 2011, p. 73-98.

⁴²⁴ C. Rijken, D. Koster, *A Human Rights Based Approach to Trafficking in Human Beings in Theory and Practice*, working paper, 2008, p.1, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1135108 (accessed on 21 June 2015).

addressed and effectively combatted, the demand of commercial sex does not imply the right to exploit others.

States can prevent trafficking in human beings and also protect victims in order to enable them to establish a livelihood. If states fail to prevent human rights violations, mitigating the consequences and offering protection should be at least ensured.

A comprehensive strategy to combat trafficking implies four areas: the understanding of sex trafficking, financial funding and international cooperation, proper implementation of laws and 'a systematic business and economic analysis (...) to identify strategic points of intervention'.⁴²⁵ States must understand the root causes of human trafficking and address it properly to the public and all involved professionals. Monetary support is crucial in order to realize an effective anti-trafficking strategy, in particular anti-trafficking policies should have its own budget, and not should not be funded through the budget of another division.

Trafficking in human beings stems not only from individual social and economic circumstances, it is also a result of 'discrimination, exclusion, vulnerability and structural inequality'.⁴²⁶ Therefore, victim assistance and protection measures need to incorporate a multi-disciplinary approach, a National Referral Mechanism (NRM), with different levels in order to adapt to the broad dimension of a human rights violation and the complex situation of exploited women.⁴²⁷ With the effective cooperation of different stakeholders on the basis of a National Referral Mechanism, rights of victim are placed 'at the centre of all efforts to prevent and combat trafficking and to protect [and] assist' women who have been subject of sexual exploitation.⁴²⁸

'A policy of inclusion that considers sex workers as social subjects (...) is a necessary condition to overcome marginalisation and discrimination' which needs to be integrated into domestic law in order to ensure comprehensive and unconditional

⁴²⁵ S. Kara, *Sex Trafficking*, New York, Colombia University Press, 2009, p. 200.

⁴²⁶ A. Brunovskis, R. Surtees, *A fuller picture*. Addressing trafficking related assistance needs and socio-economic vulnerabilities, Fafo report, Oslo, Fafo, 2012, p. 38.

⁴²⁷ OSCE/ODIHR, *Compensation for Trafficked and Exploited Persons in the OSCE Region*, Warsaw, ODIHR, 2008, p. 51.

⁴²⁸ United Nations Office of the High Commissioner for Human Rights (OHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1, 2002, article 1.

assistance and protection and eventually prevent second victimization of victims.⁴²⁹ Access to the recovery and reflection period requires a low threshold which also includes the proper implementation of laws, the collaboration between all involved actors and a precise identification framework which is internalized by everyone. Offering a residence permit based on participation in criminal proceedings 'may constitute undue inducement, or an unethical level of pressure'.⁴³⁰ The instrumentalisation exposes victim of a greater risk of vulnerability, in particular the risk of retaliation and the fear of deportation of undocumented migrant woman is considered by victims as the 'worse prospect than accepting the situation'.⁴³¹ In order to accede to the recovery and reflection period and its assistance and protection measures, victims need to be identified and therefore, 'the mandate to identify should be broader than just law enforcement'.⁴³² A procedure to identify victims by NGOs as in the case of Belgium offers an impartial possibility to detect victims. NGOs are especially sensitized and more able to spot indicators of exploited women, than law enforcement officials who may lack awareness about the dimension of trafficking.

The '3P' framework for trafficking in human beings necessitates the fulfilment of all elements: to prevent trafficking by protecting women and through protection, prosecution is viable. States have shown their great interest in securing justice and prevention of crime however, the question of justice for victims seems to be forgotten. The question for governments and law enforcement is whether to use the recovery and reflection period as a tool to prosecute or as a social tool to offer and ensure assistance and protection. Considering the period as a mechanism of justice would

⁴²⁹ European Network for HIV/STI Prevention and Health Promotion among Migrant Sex Workers, *Sex Work, Migration, Health*, Amsterdam, TAMPEP, 2009, p. 10.

⁴³⁰ A. Brunovskis, *Balancing protection and prosecution in anti-trafficking policies*, Copenhagen, Nordic Council of Ministers, 2012, p. 11.

⁴³¹ M. Wijers, 'Women, Labour, and Migration, The Position of Trafficked Women and Strategies for Support' in K. Kempadoo, J. Doezema (eds.), *Global Sex Workers, Rights, Resistance, and Redefinition*, New York, Routledge, 1998, p. 75.

⁴³² Supra note 371, p. 67

eventually combine an unconditional approach, benefiting both sides. 'Providing adequate assistance and protection to victims serves to both support the victim and prosecute the offender'.⁴³³ If assistance measures are presented and implemented to victims without any conditions with the prospect of a secure future, it may contribute to a positive decision of victims to participate in criminal proceedings and in seeking justice.⁴³⁴

Implementing an effective recovery and reflection period realizes victim's rights through unconditional protection and assistance measures. Access to measures are only viable if women are considered as victims of crime and right-holders and not as a tool of law enforcement. Therefore, measures are an interdisciplinary approach in the identification of victims, the opportunity to prolong assistance and protection measures of the recovery and reflection period, and a residence permit solely based on personal reasons.

⁴³³ UNODC, *Needs Assessment Toolkit on the Criminal Justice Response to Human Trafficking*, Vienna, United Nations, 2010, p. 40.

⁴³⁴ Ibidem.

7. Bibliography

American Psychological Association, Ethnic and Racial Minorities & Socioeconomic Status, available at: <http://www.apa.org/pi/ses/resources/publications/factsheet-erm.aspx> (accessed 18 April 2015).

Anti-Slavery International, *human traffic, human rights: redefining victim protection*, London, The Printed Word, 2002.

Arsovska, J., 'Decline, change or denial: human trafficking activities and EU responses in the Balkan Triangle', *Policing: A Journal of Policy and Practice*, vol. 2, no. 1, 2008, p. 50-62.

Askola, H., *Legal Responses to Trafficking in Women for Sexual Exploitation in the European Union*, Portland, Hart Publishing, 2007.

Austrian Federal Ministry of Foreign Affairs, *Combatting Trafficking in Human Beings*, available at: <http://www.bmeia.gv.at/en/european-foreign-policy/human-rights/priorities-of-austrian-human-rights-policy/combating-trafficking-in-human-beings/> (accessed on 30 March 2015).

Austrian Federal Ministry of Foreign Affairs, *Combatting Trafficking in Human Beings*, available at:

http://www.bmeia.gv.at/fileadmin/ZZZ_Medien_alt/bmeia/media/2-Aussenpolitik_Zentrale/Menschenrechte/Folder_Task_Force_Menschenhandel_engl_V20091006_FINAL.pdf

Austrian Federal Ministry of Foreign Affairs, Task Force on Combatting Human Trafficking, National Action Plan on Combating Human Trafficking for the period 2012 - 2014, Vienna, 2014.

Austrian Law:

Section 3 and 4 of the Aliens Employment Act (Ausländerbeschäftigungsgesetz 1975) FLG I No.218/1975 as amended by FLG I No. 72/2013.

Section 104 (a) of the Code of Criminal Procedure (Strafgesetzbuch 1975) FLG No. 60/1974 as amended by FLG I No. 106/2014.

Section 215 and 216 of the Code of Criminal Procedure (Strafgesetzbuch 1975) FLG No. 60/1974 as amended by FLG I No. 106/2014.

Section 116 of the Alien Police Law (Fremdenpolizeigesetz 2005) FLG I No.100/2005 as amended by FLG I No. 70/2015.

Section 2 of the Prostitution Law (Wiener Prostitutionsgesetz 2011) FLG I No. 24/2011 as amended by FLG I No. 33/2013.

Section 2 (1) 3 Basic Services Act (Grundversorgung 2005) FLG I No. 405/1991 as amended by FLG I No. 70/2015.

Section 15 (1) and section 118 (3) of the Federal Constitutional Law (Bundesverfassungsgesetz 1945) FLG I No. 1/1930 as amended by FLG I No. 102/2014.

Austrian Ministerial Council: no. 22 of the Council Resolution Minutes No. 70 of 9 November 2004.

Aziz, Z., Moussa, J., *The Due Diligence Principle and the Role of the State: Discrimination against Women in Family and Cultural Life*, Submission to the United Nations Working Group on Discrimination Against Women in Law and in Practice, 2015.

Barry, K., *The Prostitution of Sexuality*, New York and London, New York University Press, 1995.

Belgian Federal Migration Centre, *Annual Report on Human Trafficking*, 2013, available in French at:

http://www.emnbelgium.be/sites/default/files/publications/rapport_annuel_trait_e_des_etres_humains_2013.pdf (accessed on 25 July 2015).

Brunovskis, A., Surtees, R., *A fuller picture*, Addressing trafficking related assistance needs and socio-economic vulnerabilities, Fafo report, Oslo, Fafo, 2012.

Brunovskis, A., *Balancing protection and prosecution in anti-trafficking policies*, Copenhagen, Nordic Council of Ministers, 2012.

Brunovskis, A., Tyldum, G., *Crossing Borders: An Empirical Study of Transitional Prostitution and Trafficking in Human Beings*, Oslo, Fafo, 2004.

Bundeskanzleramt Österreich, *Prostitution in Austria*, available at: <https://www.bka.gv.at/site/6852/default.aspx> (accessed on 19 March 2015).

Carpenter, D. 'Magna Carta – 800 years on', *The Guardian*, 2 January 2015, available at: <http://www.theguardian.com/books/2015/jan/02/magna-carta-800th-anniversary-relevance-david-carpenter> (accessed on 17 March 2015).

Castaneda, D., *The Essential Handbook of Women's Sexuality*, Santa Barbara, Praeger, 2013.

Cho, S., Dreher, A., Neumayer, E., 'Does Legalized Prostitution Increase Human Trafficking?' *World Development*, 2013, vol. 41, p. 67-82, available at: 10.1016/j.worlddev.2012.05.023.

Christiansen, C., 'Defining Lives: Occupation as Identity: An Essay on Competence, Coherence, and the Creation of Meaning' *American Journal of Occupational Therapy*, vol. 53, 1999, p.547-558.

Council of Europe, Akandji-Kombe, J., *Positive obligations under the European Convention on Human Rights*, Strasbourg, Council of Europe, 2007.

Council of Europe, *Council of Europe Convention on Action against Trafficking in Human Beings*, CETS 197, open for signature 16 May 2005.

Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)*, as amended by Protocols Nos. 11 and 14, 4 November 1950, CETS 5, open for signature 4 November 1950.

Council of Europe, Group of Experts on Action against Trafficking (GRETA), *4th General Report on GRETA's activities*, Strasbourg, Council of Europe, 2015.

Council of Europe, Rapporteur J. Bota, *Draft Resolution 1983, Prostitution, trafficking and modern slavery in Europe*, Doc 13446, Parliamentary Assembly, 2014.

Council of Europe, Member States, available at:

<http://www.coe.int/en/web/portal/47-members-states> (accessed on 22 July 2015).

Council of Europe, *Recommendations on Identification and Referral to Services of Victims of Trafficking in Human Beings*, 2008, available at:

http://www.humantrafficking.org/uploads/publications/council_eur_08_rec_ident_i_0408.pdf (accessed on 22 June 2015).

Council of Europe, *Resolution 1983, Prostitution, trafficking and modern slavery in Europe*, Parliamentary Assembly, Text adopted by the Assembly on 8 April 2014.

Council of Europe, Statement by Rashida Manjoo, UN Special Rapporteur on Violence against Women, *Effective ways to prevent and to combat violence against*

women and domestic violence, Council of Europe, 2011, available at:
<http://www.coe.int/t/dghl/standardsetting/convention-violence/Seminars/bratislava2011/Speech/Speech%20Manjoo.pdf> (accessed on 25 March 2015).

European Commission, Directorate-General for Employment, Social Affairs and Inclusion Unit C.1, *Stimulating job demand: the design of effective hiring subsidies in Europe*, European Employment Policy Observatory Review, Luxembourg, European Union, 2014.

European Commission, *Report of the Experts Group on Trafficking in Human Beings by the European Commission*, Brussels, European Commission, 2004.

European Commission, *Trafficking in Human Beings*, Eurostat report, Luxembourg, European Union, 2015 edition.

European Commission, *Trafficking in human beings*, Eurostat report, Luxembourg, European Union, 2013 edition.

European Parliament, Policy Department C: Citizens' Rights and Constitutional Affairs, Gender Equality, *Sexual exploitation and prostitution and its impact on gender equality*, Brussels, European Union, 2014.

European Union, Directive 2004/38/EC of the European Parliament and the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, 29 April 2004, 2004/38/EC (accessed on 22 July 2015)

European Union, EU member countries, available at: <http://europa.eu/about-eu/countries/member-countries/> (accessed on 22 July 2015).

European Commission, Directorate-General for Employment, Social Affairs and Inclusion Unit C.1, Stimulating job demand: the design of effective hiring subsidies in Europe, European Employment Policy Observatory Review, Luxembourg, European Union, 2014.

European Network for HIV/STI Prevention and Health Promotion among Migrant Sex Workers, *Sex Work, Migration, Health*, Amsterdam, TAMPEP, 2009.

Europol, *Trafficking in Human Beings in the European Union*, Knowledge Report, The Hague, Europol Public information 2011.

Experts Group on Trafficking in Human Beings, *Opinion on reflection period and residence permit for victims of trafficking in human beings*, Brussels, European Commission, 16 April 2004.

Federal Centre for the Analysis of Migration Flows, the Protection of Fundamental Rights of Foreigners and the Fight against Human Trafficking, *Human Trafficking, Building Bridges*, Annual Report of the independent rapporteur on human trafficking, Belgium, 2013, available at: http://www.diversitybelgium.be/sites/default/files/documents/publication/jv-mh_2013_en.pdf (accessed on 29 May 2015).

Fouche, G., 'View from the streets: New Nordic sex laws are making prostitutes feel less safe', *The Independent*, April 2014, available at: <http://www.independent.co.uk/news/world/europe/view-from-the-streets-new-nordic-sex-laws-are-making-prostitutes-feel-less-safe-9294458.html> (accessed on 31 May 2015).

Gallagher, A., *The International Law of Human Trafficking*, New York, Cambridge University Press, 2010.

Group of Experts on Action against Trafficking in Human Beings, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria*, Strasbourg, Council of Europe, 2011.

GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belgium*, Strasbourg, Council of Europe, 2013.

GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bulgaria*, Council of Europe, 2011.

GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Cyprus*, Strasbourg, Council of Europe, 2011.

GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Denmark*, Strasbourg, Council of Europe, 2011.

GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by France*, Strasbourg, Council of Europe, 2013.

GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Georgia*, Strasbourg, Council of Europe, 2012.

GRETA, *Report concerning the implementation of the Council of Europe Convention on*

Action against Trafficking in Human Beings by Iceland, Strasbourg, Council of Europe, 2014.

GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy, Strasbourg, Council of Europe, 2014.

GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Latvia, Strasbourg, Council of Europe, 2013.

GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Portugal, Strasbourg, Council of Europe, 2013.

GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Netherlands, Strasbourg, Council of Europe, 2014.

GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Norway, Strasbourg, Council of Europe, 2013.

GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Poland, Strasbourg, Council of Europe, 2013.

GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Serbia, Strasbourg, Council of Europe, 2014.

GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Slovakia*, Strasbourg, Council of Europe, 2011.

GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Slovenia*, Strasbourg, Council of Europe, 2014.

GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain*, Strasbourg, Council of Europe, 2013.

GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden*, Strasbourg, Council of Europe, 2014.

GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by "the former Yugoslav Republic of Macedonia"*, Strasbourg, Council of Europe, 2014.

GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ukraine*, Strasbourg, Council of Europe, 2014.

GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by United Kingdom*, Strasbourg, Council of Europe, 2012.

Government of Netherlands, Ministry of Security and Justice, *Comprehensive Action Plan on the Issue of 'Loverboys'*, Action Plan 2011 - 2014, available at:

http://www.coe.int/t/dghl/monitoring/trafficking/Source/Public_R_Q/RQ_GRETA_NLD_annexII.pdf (accessed on 29 May 2015).

Goffman, E., *Stigma: Notes on the Management of Spoiled Identity*, New Jersey, Prentice-Hall 1963.

Gupta, R., “‘Victim’ vs ‘Survivor’: feminism and language”, *open democracy*, 16 June 2014, available at: <https://www.opendemocracy.net/5050/rahila-gupta/victim-vs-survivor-feminism-and-language> (accessed on 28 May 2015).

Gwinnett, B., ‘Policing prostitution, Gender, the state and community, politics’ in Randall, V., Waylen, G. (eds.), *Gender, Politics and the State*, London, Routledge, 2002, pp. 80-99.

Hossain, M., et al., ‘The Relationship of Trauma to Mental Disorders Among Trafficked and Sexually Exploited Girls and Women’ *American Journal of Public Health*, vol. 100, no. 12, December 2010, available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2978168/> (accessed on 14 April 2015).

IOM, *More Needs to Be Done to Address Stigma and Discrimination Towards Women Trafficked for Sexual Exploitation*, 7 March 2006, available at: <https://www.iom.int/statements/more-needs-be-done-address-stigma-and-discrimination-towards-women-trafficked-sexual> (accessed on 20 April 2015).

IOM, South African Counter Trafficking Assistance Program, *10 Questions about Human Trafficking*, available at: http://www.ungift.org/doc/knowledgehub/resource-centre/IOM_SACTAP_South_Africa_10_Questions_about_Human_Trafficking.pdf (accessed 17 April 2015).

Islam, K., *Issues in Women's Rights, A Practitioners' Resource Book*, New Delhi, Allied Publishers Pvt. Ltd, 2014.

Jaishankar, K., Ronel, N., *Global Criminology: Crime and Victimization in a Globalized Era*, Boca Raton, Taylor & Francis Group, LLC, 2013.

Jorge-Birol, A., 'Empowering Victims of Human Trafficking: the Role of Support, Assistance and Protection Policies', *HUMSEC Journal*, vol. 2, April 2008, available at: http://www.humsec.eu/cms/fileadmin/user_upload/humsec/Journal/Pedra.pdf (accessed on 18 June 2015).

Kara, S., *Sex Trafficking*, New York, Colombia University Press, 2009.

Kempadoo, K., Doezema, J. (eds.), *Global Sex Workers, Rights, Resistance, and Redefinition*, New York, Routledge, 1998.

La Strada International, *Violation of Women's Rights. A cause and consequence of trafficking in women*, La Strada International, 2008.

League of Nations, *Convention to Suppress the Slave Trade and Slavery*, 25 September 1926, 60 LNTS 253, Registered No. 1414.

Letschert, R. van Dijk, J., *The New Faces of Victimhood*, Tilburg, Springer, 2011.

Lefö, *Migrantinnenrechte sind Frauenrechte*, Jahresbericht 2014, Wien, Verein Lefö, 2015.

Monzini, P., *Sex Traffic: Prostitution, Crime and Exploitation*, New York, Zed Books Ltd., 2005.

Narag, R., Maxwell, S., 'Prostitution' in J. Miller (eds.), *21st Century criminology: A reference handbook*, Thousand Oaks, SAGE Publications, 2009, pp. 572-581.

Nowak, M., Januszewski, K., Hofstätter, T. (eds.), *All Human Rights For All*, Wien, Neuer wissenschaftlicher Verlag, 2012.

Nowak, M., *Introduction To The International Human Rights Regime*, Leiden, M. Nijhoff, 2011.

Obokata, T., *Trafficking in Human Beings from a Human Rights Perspective*, Leiden, M. Nijhoff, 2006.

Obokata, T., 'A Human Rights Framework to Address Trafficking in Human Beings', *Netherlands Quarterly of Human Rights*, vol.3, pp. 379-404.

OSCE/ODIHR, *Compensation for Trafficked and Exploited Persons in the OSCE Region*, Warsaw, ODIHR, 2008.

Organization for Security and Co-operation in Europe (OSCE), *National Referral Mechanism, Joining Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook*, Warsaw, OSCE/ODIHR, 2004.

OSCE Office of the Special Representative and Co-ordinator for Combatting Trafficking in Human Beings, *Trafficking in Human Beings amounting to Torture and other forms of Ill-treatment*, Vienna, OSCE Office of the Special Representative and Co-ordinator for Combatting Trafficking in Human Beings, 2013.

OSCE, *Trafficking in Human Beings: Identification of Potential and Presumed Victims, A Community Policing Approach*, SPMU Publication Series Vol. 10, Vienna, OSCE, 2011.

Oxford Journals, 'Opinion of the Experts Group on Trafficking in Human Beings of the European Commission: On the revision of the Council Framework Decision of 19 July 2002 on Combating Trafficking in Human Beings' in *International Journal of Refugee Law*, vol. 21, no. 3, pp. 508-514.

Pheterson, G., The Whore Stigma: Female Dishonor and Male Unworthiness, *Social Text*, Duke University Press, No. 37, 1993, p. 39-64, available at: <http://www.jstor.org/stable/466259> (accessed on 19 March 2015).

Planitzer, J., *Trafficking in Human Beings and Human Rights: The Role of the Council of Europe Convention on Action against Trafficking in Human Beings*, Vienna and Graz, Neuer Wissenschaftlicher Verlag, 2014.

Piotrowicz, R., *The UNHCR's Guidelines on Human Trafficking*, Oxford University Press, 2008.

Rijken, C., Koster, D., *A Human Rights Based Approach to Trafficking in Human Beings in Theory and Practice*, working paper, 2008, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1135108 (accessed on 21 June 2015).

Salecl, R., *The Spoils of Freedom: Psychoanalysis and Feminism After the Fall of Socialism*, New York, Routledge, 1994.

Scarpa, S., *Trafficking in Human Beings: Modern Slavery*, New York, Oxford University Press, 2008.

Schinina, G. (eds.), Psychosocial Notebook, *Psychosocial Support to Groups of Victims of Human Trafficking in Transit Situations*, Geneva, International Organization for Migration, vol. 4, February 2004.

Shaw, M., *International Law*, Cambridge, Cambridge University Press, 2003.

Stiglitz, J., *Globalization and its Discontents*, New York, Norton, 2003.

Task Force Menschenhandel, ExpertInnenkreis „Prostitution“, *Prostitution in Österreich, Rechtslage, Auswirkungen, Empfehlungen*, Wien, 2008, available at: <https://www.bka.gv.at/DocView.axd?CobId=31425> (accessed on 2 June 2015).

Tomura, M., ‘A Prostitute’s Lived Experiences of Stigma’, *Journal of Phenomenological Psychology*, vol. 40, 2009, p. 51-84.

Topping, A., ‘UK urged to follow Nordic model of criminalising prostitution clients’, *The Guardian*, 11 December 2013, available at: <http://www.theguardian.com/global-development/2013/dec/11/uk-nordic-model-prostitution-clients-buyer-sex> (accessed on 30 March 2015).

Tsai, L., et al, “There is no other option; we have to feed our families...who else would do it?": The Financial Lives of Women Engaging in Sex Work in Ulaanbaatar, Mongolia, *Global Journal of Health Science*, vol. 5, no. 5, 2013, p. 41-50, available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4041103/> (accessed 17 April 2015).

Tyldum, G., Tveit, M., Brunovskis, A., *Taking Stock, a review of existing research on trafficking for sexual exploitation*, Oslo, Fafo, 2005.

United Nations (UN), Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women, 27 October 1995.

United Nations, Universal Declaration of Human Rights, *The foundation of international human rights law*, United Nations, available at:

http://www.un.org/en/documents/udhr/hr_law.shtml (accessed on 31 May 2015).

UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, UNTS 1249.

UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, 999 UNTS 171.

UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3.

UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, vol. 2237.

UNGIFT, *Transparency International, Corruption and Human Trafficking*, available at: http://www.ungift.org/doc/knowledgehub/resource-centre/CSOs/TI-Working_Paper_Human_Trafficking_28_Jun_2011.pdf (accessed 15 April 2015).

United Nations Office of the High Commissioner for Human Rights (OHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 20 May 2002, E/2002/68/Add.1.

OHCHR, Gallagher, A., Karlebach, N., *Prosecution of Trafficking in Persons Cases: Integrating a Human Rights Based Approach in the Administration of Criminal Justice*, Background Paper, available at: http://www.ohchr.org/Documents/Issues/Trafficking/Geneva2011BP_GallagherAndKarlebach.pdf (accessed on 25 April 2015).

OHCHR, United Nations Committee on Economic, Social and Cultural Rights, Sex-

Worker Forum of Vienna Publication, *Austria: Discriminations against Sex Workers in the Rights to Work and to Health*, 2013, available at:
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fNGO%2fAUT%2f14625&Lang=en (accessed on 1 April 2015).

UN High Commissioner for Refugees (UNHCR), *Prevent. Combat. Protect: Human Trafficking, Joint UN Commentary on the EU Directive - A Human Rights-Based Approach*, UNODC, UNHCR, OHCHR, UNICEF, ILO and UN Women, 2011.

United Nations Office on Drugs and Crime (UNODC), *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, Background Paper, Vienna, United Nations, 2008.

UNODC, *Human Trafficking FAQs*, available at:
http://www.unodc.org/unodc/en/human-trafficking/faqs.html#What_types_of_industries_are_involved_with_human_trafficking (accessed on 20 March 2015).

UNODC, *Human Trafficking Indicators*, available at:
http://www.unodc.org/documents/human-trafficking/HT_indicators_E_LOWRES.pdf (accessed 17 April 2015).
UNODC/UNGIFT, *Needs Assessment Toolkit on the Criminal Justice Response to Human Trafficking*, Vienna, United Nations, 2010.

UNODC, 'Trafficking in Persons to Europe for sexual exploitation' in *The Globalization of Crime — A Transnational Organized Crime Threat Assessment*, Vienna, United Nations, 2010.

UNODC, *Toolkit to Combat Trafficking in Persons*, Global Programme against Trafficking in Human Beings, Vienna, United Nations, 2008.

UNODC, *Toolkit for Combatting Human Trafficking*, Global Programme against Trafficking in Human Beings, Vienna, United Nations, 2006.

UNODC, *UNODC marks first human trafficking day with call for countries to step up fight against this crime*, 30 July 2014, available at: <http://www.unodc.org/unodc/en/frontpage/2014/July/unodc-marks-first-human-trafficking-day-with-call-for-countries-to-step-up-fight-against-this-crime.html?ref=fs1> (accessed on 17 March 2015).

UN Women, *The Feminization of Poverty*, Fact Sheet No.1, available at: <http://www.un.org/womenwatch/daw/followup/session/presskit/fs1.htm> (accessed 15 April 2015).

University of Stanford, Sex Trafficking, Prostitution and Social Stigma, Sex Trafficking and Prostitution Blog, 13 November 2008, available at: <http://stanford.edu/group/womenscourage/cgi-bin/blogs/sextraffickingandprostitution/2008/11/13/sex-trafficking-prostitution-and-social-stigma/> (accessed on 20 April 2015).

United States Department of State, *Trafficking in Persons Report*, Country Profile: Austria, 2014.

United States Department of State, *Trafficking in Persons Report 2013*, Victim Identification: The First Step in Stopping Modern Slavery, available at: <http://www.state.gov/j/tip/rls/tiprpt/2013/210542.htm>.

Wagenaar, H., Altink. S., Amesberger, H., *Final Report of the International Comparative Study of Prostitution Policy: Austria and the Netherlands*, Den Haag, Platform31, 2013.

Zimmermann, C., et al, The Health Risks and Consequences of Trafficking in Women and Adolescents, London, *London School of Hygiene & Tropical Medicine (LSHTM)*, 2003, available at: <http://www.lshtm.ac.uk/php/ghd/docs/traffickingfinal.pdf>

(accessed 16 April 2015).

Case law:

Duval v France (App 19868/08) ECtHR 26 May 2011.

Juhnke v Turkey (App no 52515/99) ECtHR 13 May 2008.

Opuz v. Turkey (App no 33401/02) ECtHR 9 June 2009.

Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic (IT-96-23-T & IT-96-23/1-T) International Criminal Tribunal for the former Yugoslavia (ICTY) 22 February 2001.

Ranste v. Cyprus and Russia (App no 25965/04) ECtHR 7 January 2010.

Siliadin v. France (App no 73316/01) ECtHR 26 July 2005.

Yazgöl Yilmaz v Turkey, (App no 36369/06) ECtHR 1 February 2011.

Y.F. v Turkey (App no 24209/94) ECtHR 22 October 2003.

Appendix

Member State	Identification of Victims (art. 10)			Assistance measures (art. 12)			Recovery and Reflection Period (art. 13)			Residence Permit (art. 14)		
Level of Compliance	invite	consider	urge	invite	consider	urge	invite	consider	urge	invite	consider	urge
Albania		x				x	x					
Andorra			x			x			x		x	
Armenia			x			x			x			x
Austria	x			x			x				x	
Azerbaijan			x			x			x		x	
Belgium	x					x			x		x	
BIH			x			x			x		x	
Bulgaria			x			x			x		x	
Croatia	x			x						x		
Cyprus			x			x			x			
Denmark			x			x			x			x
France			x			x			x			x
Georgia	x			x					x		x	
Germany			x			x			x		x	
Hungary			x			x			x		x	
Iceland			x			x			x	x		
Ireland			x	x					x			x
Italy			x			x			x	x		
Latvia			x			x			x		x	
Lithuania			x			x			x	x		
Luxembourg			x			x			x			x
Malta			x			x			x			x
Moldova			x			x						
Montenegro			x			x			x			x
Netherlands			x			x			x		x	
Norway			x		x				x		x	
Poland			x		x				x			x
Portugal			x			x			x	x		
Romania	x					x			x		x	
San Marino			x			x			x		x	
Serbia	x					x			x			x
Slovakia			x		x				x		x	
Slovenia			x			x			x			x
Spain			x			x			x		x	
Sweden			x			x			x		x	
FYRM			x			x			x			x
Ukraine			x			x			x			x
United Kingdom	x				x		x			x		

Figure 1: Compliance status of Council of Europe Member with the Convention on Action against Trafficking in Human Beings (developed by the author)

ABSTRACT

Effective counter-trafficking policies shall fulfil the 3Ps: Prevention, Protection and Prosecution – Victims who are able to access and receive unconditional assistance and protection in the Recovery and Reflection period, tend to contribute to criminal proceedings. In order to ensure unconditional assistance to victims under article 12 and a residence permit under article 14 of the Convention on Action against Trafficking in Human Beings and to increase law enforcement, the adequate implementation of article 13, the Recovery and Reflection period, is indispensable. A prerequisite to enjoy assistance and protection measure according to the Convention, is the proper identification of victim, also to prevent a further denial of rights.

To combat trafficking in human beings, it is necessary to create a functioning legal system based a National Referral Mechanism and on International Conventions concurrently protecting rights and needs of victims. In the scholarly debate, consensus has reached on the instrumentalisation of victims for law enforcement proceedings. Therefore, effective counter strategies are only possible and to be realized if victims are encountered interdisciplinary with an individual needs assessments and a rights-oriented perspective. Measures to protect and assist after the recovery and reflection period are inevitable, and necessitates unconditional residence based on personal grounds in order to prevent instrumentalisation by law enforcement and secondary victimization.

ABSTRAKT

Effektive Menschenhandelsstrategien sollen das 3P-Mandat erfüllen: Prävention (Prevention), Schutz (Protection) und strafrechtliche Verfolgung (Prosecution) – Opfer, die Zugang zu uneingeschränkten Schutzmaßnahmen in der Reflektionszeit haben sowie erhalten, tendieren an der Strafverfolgung mitzuwirken. Um uneingeschränkte Schutzmaßnahmen unter Artikel 12 sowie eine Aufenthaltsgenehmigung nach Artikel 14 der Europaratskonvention gegen Menschenhandel für Opfer zu garantieren, bedingt es eine adäquate Implementierung der Reflektionszeit, Artikel 13. Eine Voraussetzung für die Inanspruchnahme von Schutzmaßnahmen unter der Konvention, ist die ordentliche Identifizierung von Opfern, auch um eine weitere Verletzung von Rechten vorzubeugen. Um Menschenhandel zu bekämpfen ist es notwendig ein funktionierendes rechtliches System zu etablieren, basierend auf einem ‚National Referral Mechanism‘ und auf internationalen Konventionen, welche die Rechte von Opfern schützt.

In der wissenschaftlichen Debatte ist man zur Übereinstimmung gekommen, dass Opfer für die Prioritäten der Strafverfolgung instrumentalisiert werden. Deswegen sind effektive Gegenstrategien nur möglich und umsetzbar, wenn Opfer interdisziplinär mit einer individuellen Bedarfsanalyse und einer Rechte-orientierten Perspektive begegnet werden. Maßnahmen zum Schutz und zur Unterstützung nach der Reflektionszeit sind unvermeidlich, und erfordert deswegen eine vorbehaltlose Aufenthaltsgenehmigung basierend auf persönlichen Gründen um die Instrumentalisierung durch die Strafverfolgungsbehörden und sekundäre Viktimisierung zu verhindern

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- 10/2009 – 09/2013 **Bachelor of Arts** in International Social Work and Development at the University for Applied Sciences and Arts in Coburg, Germany
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Major subjects: International and Intercultural Social Work, Focus on work with Women and Youth
11/2012 – 04/2013 Exchange Student at Loyola College Chennai, India
Major subjects: Contemporary Issues of Human Rights in India, Human Rights and Social Work Practice, Counselling
- 09/2006 – 07/2008 **University-entrance Diploma at Franz-Oberthür-Schule, Specialized Secondary College for Social Studies, Würzburg, Germany**
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Major subjects: German, English, Mathematics, Pedagogy

Professional Experience

- 01/2015 -02/2015 **Intern at Group of Experts on Action against Trafficking in Human Beings, Council of Europe, Straßbourg**
Preparation of country visits, research on treaty compliance, report evaluation
- 08/2014- 12/2014 **Intern at International Narcotic Control Board Secretariat (INCB), United Nations Office on Drugs and Crime (UNODC), Austria**
Communication and correspondence with national authorities; clarification of cases of non-compliance and discrepancies in data; consultancy on medical and scientific use of narcotic drugs and on legislative activities and aspects
- 05/2013 -05/2013 **Summer School on Social Work and Human Rights, University of Applied Sciences Coburg, Germany**
International perspectives on challenges of Social Work in a globalized world, focus on Human Rights, Inclusion and Social Justice
- 03/2012 – 07/2012 **Student Employee for the Project “Kulturvermittlung im Raum Coburg”, Germany**
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- 05/2012 – 05/2012 **IP LLP Erasmus Project: Social Work and Voluntary Activities**
Draft of a volunteer recruiting manual, Presov, Slovakia
- 03/2011 – 04/2011 **National Model United Nations, New York**
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07/2008 – 09/2010	Vocational worker at “Care Fusion”, Würzburg, Germany Support work of Data management
09/2008 -07/2009	Volunteer at “LekaGape” NGO, South Africa Life skills training, orphanage program management, sports education, fundraising, shelter coordination responsibilities

Voluntary Activities

10/2013 -	Student Representative of the Master Programm in Human Rights, University of Vienna
07/2010 – 09/2010	Volunteer in En Hashoshlah Kibbutz, Israel
09/2006 – 09/2008	Assistant coach for a U12 Handball team, TG Heidingsfeld, Würzburg, Germany
09/2006 – 07/2008	Member of the Student’s Union at the Franz-Oberthür-Schule, Würzburg
09/2004 – 07/2006	Deputy Speaker of the student body at Schönborn High School, Würzburg

Skills

Languages:	German (native), English (fluent), French (basic), Hebrew, Mandinka, Tamil (all basic)
IT:	MS Office (very good), SPSS (Basic)

Interests

Sports: Handball, Basketball, Skiing/Snowboarding, Cross Country
Culture: African Music, Afro-Caribbean Music, African Cultures

References

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