

## Trafficking in women in a human rights perspective<sup>1</sup>

### Summary

Trafficking in human beings is one of the most serious transnational organized crime. Despite increased international efforts and resources from states and international organizations, the number of people falling victim to human trafficking worldwide continues to grow. Data on the prevalence of this crime show that the majority of its victims are women and girls – they account for 80% of victims. The above-mentioned statistics justify the thesis that this form of human rights violation is gender-determined and as such constitutes discrimination against women.

The aim of the article is to present and analyze sources of international and European law as a response of the international community to the trafficking in women in human rights perspective. To increase the effectiveness of legal instruments on preventing and combating the offence at issue, account should be taken of both the specificity of women as victims of trafficking and a victim-centred approach to the human trafficking crime. Only then anti-trafficking measures won't adversely affect the human rights and dignity of those who have been trafficked.

**Keywords:** trafficking in women, human rights, discrimination based on gender

### Introduction

Trafficking in human beings is an increasingly worrying phenomenon. It is of a structural, rather than of an episodic nature, affecting numbers of individual per year and having extensive social, psychological economic and legal implications. The phenomenon is facilitated by globalisation and by modern technologies<sup>2</sup>.

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<sup>2</sup> As pointed by G. Vermeulen, *International trafficking in women and children. General report*, "Revue internationale de droit penal" 2001, No. 3 (72), p. 837.

Despite increased international efforts and resources from states and other non-governmental institutions, the number of people falling victim to human trafficking worldwide continues to grow. Between 2008 and 2016 the number of human trafficking victims identified on a global scale increased from 30 961 to 66 520<sup>3</sup>. Data on the prevalence of this crime show that the majority of its victims are women and girls. The Eurostat data on trafficking in human beings indicate that 80 % of registered victims were female (women account for 67%, girls – for 13%)<sup>4</sup>. Their vulnerability, especially as a consequence of violence, and the demand for their sexual services are two leading factors which contribute to trafficking in women. The above-mentioned statistics justify the thesis that this form of human rights violation is gender-determined and as such constitutes discrimination against women. Thus the trafficking in human beings *in genere*, and in women in particular, is one of the most pressing political challenges bit at national and international. Despite its extreme severity, also in terms of human rights violation, it remains one the most difficult phenomena to prevent, detect and combat<sup>5</sup>.

The aim of the article to present and analyze sources of international and European law as an answer of the international community to the trafficking in women in human rights perspective. The human rights approach to human trafficking is vital as a “full appreciation of the new legal landscape around trafficking requires an understating of the changing role and positions of international human rights law”<sup>6</sup>.

## 1. Understanding trafficking in women

### 1.1. Historical background of human trafficking

The crime of trafficking in persons is nowadays considered as form of a modern slavery<sup>7</sup> that undermines the basic human rights and human dignity.

The history of slavery is long as history of the human civilization. This phenomenon was present in all ancients civilizations: in Babylon – 18th century

<sup>3</sup> *Human trafficking - statistics and facts*, <https://www.statista.com/topics/4238/human-trafficking/> [access: 22.09.2018].

<sup>4</sup> *Eurostat Statistical working papers, Trafficking in human beings – 2015 edition*, Luxembourg 2015, pp. 10-11.

<sup>5</sup> C. Morehouse, *Combating Human Trafficking: Policy Gaps and Hidden Political Agendas in the USA and Germany*, Wiesbaden 2009, p. 13.

<sup>6</sup> A. T. Gallagher, *The International Law of Human Trafficking*, New York 2010, p. 3.

<sup>7</sup> As confirmed by the European Court of Human Rights, which in the case of Rantsev (application 25965/04, CE: ECHR:2010:0107JUD002596504), concerning a female Russian national being trafficked for sexual exploitation, held that art. 4 of the European Convention on Human Rights should be extended to cover human trafficking. See also A. Mowbray, *European Court of Human Rights: May 2009-April 2010*, “European Public Law” 2010, No. 4, pp. 496-500.

BC, in Greece – from the 7th century BC, in Rome – from the 2nd century BC<sup>8</sup>. Although this abomination implies physical and emotional exploitation, the poor situation of slaves was generally accepted for subsequent centuries and trafficking in human beings continued to expand. In the 1400's people from Africa were transporting to Portugal and used as slaves. In 1952 Britain joined the slaved trade. During the 1600's the slave trade was widely spread in European countries including: Spain, the Netherlands, France, Sweden, and Denmark<sup>9</sup>.

Initially, the banning of this cruel practice was focused on so called “white slavery”, i.e. the enslavement of Europeans, mainly white woman or girl – by the use of force, drugs, or by dishonesty – for sexual exploitation. In the course of time European states decided to criminalize all forms of slavery in their internal legal orders, e.g. on 25 March 1807 the British Parliament passed the Abolition of the Slave Trade Act<sup>10</sup>, under which all manner of dealing and trading in the purchase, sale, barter, or transfer of slaves or of persons intending to be sold, transferred, used, or dealt with as slaves, practiced or carried in, at, or from any part of the coast or countries of Africa was abolished, prohibited and declared to be unlawful<sup>11</sup>.

The international action aimed at preventing and suppressing human trafficking, with particular attention paid to female victims, started with International Agreement of 18 May 1904 for the suppression of the White Slave Traffic<sup>12</sup> that obliged States Parties “to establish or name some authority charged with the coordination of all information relative to the procuring of women or girls for immoral purposes abroad” (art. 1) and “to have a watch kept, especially in railway stations, ports of embarkation, and *en route*, for persons in charge of women and girls destined for an immoral life” (art. 2). It was followed by the International Convention for the Suppression of the White Slave Traffic<sup>13</sup>, signed in Paris on 4 May 1910. It was the first source of international law<sup>14</sup> aimed at ensuring punishment of whoever, “in order to gratify the passions of another person, has procured, enticed, or led away, even with her consent, a woman or girl under age, for immoral purposes” (art. 1) as well those who “has, by fraud, or by means of violence,

<sup>8</sup> <http://www.historyworld.net/wrldhis/PlainTextHistories.asp?historyid=ac41> [access: 18.07.2018].

<sup>9</sup> On the history of slave trade in Europe see History of human trafficking see: <https://sexualexploitatio.weebly.com/history-of-human-trafficking.html> [access: 8.08.2018].

<sup>10</sup> <http://www.nationalarchives.gov.uk/slavery/pdf/abolition.pdf> [access: 8.08.2018].

<sup>11</sup> [http://abolition.e2bn.org/slavery\\_113.html](http://abolition.e2bn.org/slavery_113.html) [access: 8.08.2018].

<sup>12</sup> [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=VII-7&chapter=7&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VII-7&chapter=7&clang=_en) [access: 8.08.2018].

<sup>13</sup> amended by the Protocol signed at Lake Success, New York, 4 May 1949, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=VII-9&chapter=7&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VII-9&chapter=7&clang=_en) [access: 08.08.2018].

<sup>14</sup> As noticed by F. Lanzerini, *International legal instruments on human trafficking and a victim-orientated approach: which gaps are to be filled?*, “Intercultural Human Rights Law Review” 2009, No. 4, p. 207.

threats, abuse of authority, or any other method of compulsion, procured, enticed, or led away a woman or girl over age, for immoral purposes” (art. 2). The idea of combating exclusively white slave trafficking was abandoned thanks to the League of Nations, for which combating trafficking in human beings, especially women, with no discrimination as to race, has become one of the statutory goals. On 11 October 1933 in Geneva, the organization adopted international agreement titled International Convention for the Suppression of the Traffic in Women of Full Age<sup>15</sup> which obliged the States Parties to punish all acts of procuring, enticing or leading away a woman or girl even with her consent (art. 1).

The successor of the League of Nations – the United Nations – took over and developed a legacy of its predecessor adopting numerous legal and political instruments in order to prevent and combat the crime of human trafficking.

Nowadays both states’ and international organization’ approach to this issue is twofold and includes mechanisms both for fighting with human trafficking and for strengthening international cooperation in this field.

## 1.2. Causes and risk factors of trafficking in women

„Different theorists attribute different factors to the causes of trafficking depending on their theoretical approach to the issue of trafficking itself”<sup>16</sup>. Not going into detail of this doctrinal dispute, suffice to say that there are two categories of factors that contribute to trafficking in women: push factors (such as poverty, unemployment, lack of social security, gender inequalities, conflicts and violence) and pull factors (consisting of promises of steady employment, better living conditions and demand for cheap unskilled labour as well as for sexual services). What’s interesting, victimisation and exploitation are often the result of a combination of these factors<sup>17</sup>.

The United States’s State Department after extensive research on the prevention and combating different forms of trafficking in persons, among the main causes of this crime listed: poverty, the desire for a higher standard of living, weak social and economic structures, unemployment, organized crime, violence,

<sup>15</sup> [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=VII-5&chapter=7&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VII-5&chapter=7&lang=en) [access: 8.08.2018].

<sup>16</sup> L. Fergus, *Trafficking in women for sexual exploitation*, “ACSSA. Briefing” 2005/5, p. 7, [https://aifs.gov.au/sites/default/files/publication-documents/acssa\\_briefing5.pdf](https://aifs.gov.au/sites/default/files/publication-documents/acssa_briefing5.pdf) [access: 22.09.2018].

<sup>17</sup> S. Voronova, A. Radjenovic, *The gender dimension of human trafficking*, European Parliamentary Research Service 2016/2, [http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/577950/EPRS\\_BRI\(2016\)577950\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/577950/EPRS_BRI(2016)577950_EN.pdf), p. 4 [access: 22.09.2018].

discrimination, corruption, political instability, armed conflict, and cultural traditions including traditional slavery<sup>18</sup>.

John Cotton Richmond – a founding director of the Human Trafficking Institute – says: “The root cause of human trafficking is traffickers. Stopping the trafficker frees victims and provides them with a fighting chance to improve their situation or benefit from important development programs. Any serious effort to combat human trafficking must include striking at its root cause: the traffickers”<sup>19</sup>. Sally Moyle, who was the director of the Sex Discrimination Unit of the Human Rights and Equal Opportunity Commission in Australia, among causes of trafficking in woman points also to factors like: discrimination, race and psychological determinants. She says that „woman will be trafficked, tricked and exploited to the sex industry so long as rich men think it is OK to continue exploiting young women”<sup>20</sup>.

In the European Union most victims (65%) come from the Member States. Collected data showed that sexual exploitation is the main purpose of trafficking in persons, mostly – women and underaged girls (95%). The causes of this phenomenon are typified by: poverty, difficult economic situation, social and gender inequality, domestic violence, and request for sexual services and forced labour<sup>21</sup>.

One of the main cause of development of trafficking in human beings is the income generated by this organized crime. Although it’s difficult to determine the exact amount of profits gained by traffickers as a result of human trafficking, the United Nations estimates the total market value of illicit human trafficking at 32 billion US dollars<sup>22</sup>.

### 1.3. Forms of trafficking in women

Trafficking in women and girls is a specific form of trafficking in human beings, form that targets and affects women and girls – in particular, but not limited to, those in the most disadvantaged positions<sup>23</sup>. Trafficking in women takes various forms, but the most common, both in Europe and worldwide, is sexual exploi-

<sup>18</sup> L. Fergus, *Trafficking...*, op. cit., pp. 7-8.

<sup>19</sup> J. C. Richmond, *The Root Cause of Trafficking is Traffickers*, <https://www.traffickinginstitute.org/the-root-cause-of-trafficking-is-traffickers/> [access: 16.07.2018].

<sup>20</sup> Citation come from L. Fergus, *Trafficking...*, op. cit., p. 9.

<sup>21</sup> A. Radjenovic, *Trafficking in Women*, <https://epthinktank.eu/2015/11/25/trafficking-in-women-2/> [access: 18.07.2018].

<sup>22</sup> *Factsheet on Human Trafficking*, [https://www.unodc.org/documents/human-trafficking/UNVTF\\_fs\\_HT\\_EN.pdf](https://www.unodc.org/documents/human-trafficking/UNVTF_fs_HT_EN.pdf) [access: 18.07.2018].

<sup>23</sup> See *Gender Equality Glossary and Thesaurus*, <http://eige.europa.eu/rdc/thesaurus/terms/1412> [access: 22.09.2018].

tation. The data published in the Eurostat report (2015 edition) indicate that in Europe 80% of the registered victims of trafficking in persons were female and 69% of them were trafficked for the purpose of sexual exploitation<sup>24</sup>. The „2016 UNODC Global Report on Trafficking in Persons” shows that most of the victims of trafficking in persons were women (51%) and underage girls (20%); although the rapport underlines that humans are trafficked for many purposes, sexual exploitation is one of the most frequent. There are many forms of sexual exploitation: prostitution, pornography, pole/lap dancing, stripping, stripping on a web cam, live sex shows, phone sex lines, mail-order brides, military prostitution, sexual tourism and forced marriage. It is important to distinguish between trafficking for sexual exploitation and prostitution. Prostitution may be one of the ways of exploiting victims of sex trafficking if the conditions of the crime of human trafficking are met<sup>25</sup>. The situation may be qualified as a human trafficking if it constitutes at least one of the following acts: “the recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”<sup>26</sup>.

The second most common form of trafficking in women is forced labour. The International Labour Organization has provided data showing that 14.2 million persons worldwide were victims of this criminal activity. Victims are forced to very hard work for long hours and do not receive a salary. Conditions in which they live are unacceptable and dangerous for health, they suffer humiliation and often psychological and physical violence<sup>27</sup>. Victims of forced labour are recruited by use of violence or intimidation, accumulated debt, withdrawal identity documents and threat of exposure to public services including immigration authorities<sup>28</sup>. A form of forced labor that particularly threatens women and underage girls is domestic servitude, which is difficult to detect because is placed in private houses<sup>29</sup>.

The very specific form of trafficking in human beings that affects woman and girls exclusively is trafficking for forced or sham marriages. Victims of this type

<sup>24</sup> Eurostat *Statistical working papers*..., op. cit., 10-11.

<sup>25</sup> N. A. Deshpande, N. M. Nour, *Sex Trafficking of Women and Girls*, “Reviews in Obstetrics and Gynecology” 2013, 6 (1), pp. 22-23.

<sup>26</sup> Art. 2 (1) of the directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101 (2011).

<sup>27</sup> S. Voronova, A. Radjenovic, *The gender dimension*..., op. cit.

<sup>28</sup> <https://www.stophetraffik.org/about-human-trafficking/types-of-exploitation/> [access: 16.07.2018].

<sup>29</sup> Ibidem.

of human trafficking may experience physical or sexual violence or are placed under psychological pressure in order to marry. The practice occurs on a worldwide scale and can take different forms from organized irregular immigration through illegal acquisition of benefits in Europe to the trade of women for marriages in South-East Asia<sup>30</sup>.

Women are also trafficked for the purpose of removal of organs. „Organs can be taken in a number of ways:

- Trade – a victim formally or informally agrees to sell an organ, but are then cheated because they are not paid for the organ, or are paid less than the promised price,
- Ailments – a vulnerable person is treated for an ailment, which may or may not exist, and the organs are removed without the victim’s knowledge,
- Extortion – a victim may be kidnapped from their family and organs removed without consent<sup>31</sup>.

Considering that trafficking in women is an evolving phenomenon, it cannot be ruled out that victims can be used for many other purposes. The business of trafficking in women gives a high profit with relatively low risk. It should be emphasized that the data concerning the phenomenon are difficult to estimate, due to the fact that a large number of victims remains undisclosed.

## **2. Combating trafficking in women in the international systems of human rights protection**

### **2.1. The UN instruments concerning trafficking in women**

The United Nations (the UN) has framed various conventions, protocols and treaties to combat trafficking in human beings, especially in women<sup>32</sup>.

On July 25, 1951 the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others<sup>33</sup> entered into force. The document is limited to suppression of all forms of exploitation of prostitution, including recruiting victims for that purpose. It consolidates the various former white slavery/trafficking agreements expanding their personal scopes of applications as it applies to both women and men. The document obliges the States Parties

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<sup>30</sup> *Global Report on Trafficking in Persons 2016*, Vienna 2016, p. 32.

<sup>31</sup> <https://www.stopthetraffik.org...>, op. cit.

<sup>32</sup> On this issue see i.a. J. N. Aston, V. N. Paranjape, *Victims of Human Trafficking: A Human Rights Perspective*, <https://ssrn.com/abstract=2237914> [access: 31.07.2018].

<sup>33</sup> <https://www.ohchr.org/EN/ProfessionalInterest/Pages/TrafficInPersons.aspx> [access: 31.07.2018].



to punish the traffickers (art. 1) as well as those involved in keeping, managing or financing of brothels (art. 2). The States are obliged to undertake measures to check the traffic in persons of either sex for the purpose of prostitution (Article 17). These measures include supervision of employment agencies in order to prevent persons seeking employment, in particular women and children, from being exposed to the danger of prostitution (art. 21) although, in fact, the Convention does not prohibit prostitution nor demand its criminalization. It requires the States Parties only to take appropriate measures to prevent prostitution<sup>34</sup>. Relatively small number of ratifications diminish the significance of the Convention<sup>35</sup>.

Another legal act adopted within the framework of the UN on the issue of trafficking in women is the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>36</sup>. Article 6 of the CEDAW stipulates that "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women". Despite the vagueness of this treaty obligation, the CEDAW marks considerable departure from the earlier treaties on issue at stake in several aspect<sup>37</sup>.

The other important shift in the international legal framework on women trafficking was marked by the additional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Trafficking in Persons, Especially Women and Children to the Convention against Transnational Organised Crime adopted by the United Nations General Assembly in 2000 that entered into force on December 25 2003<sup>38</sup>. The Protocol is the first international source of law which defines the phenomenon of trafficking as: "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs" (art. 3(a)). The rationale behind the Protocol was to create a comprehensive tool

<sup>34</sup> More on the Convention A. T. Gallagher, *The International...*, op. cit., pp. 58-64.

<sup>35</sup> As assessed by F. Lanzerini, *International legal instruments...*, op. cit., pp. 208-209.

<sup>36</sup> <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx> [access: 31.07.2018].

<sup>37</sup> Pointed to by A. T. Gallagher, *The International...*, op. cit., pp. 64-65.

<sup>38</sup> [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg\\_no=XVIII-12-a&chapter=18&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=XVIII-12-a&chapter=18&lang=en) [access: 31.08.2018].



for combating preventing of human trafficking as well was effective protection of victims of trafficking by establishing mandatory and detailed provisions for them<sup>39</sup>.

In March 2007 the United Nations Office on Drugs and Crime (UNDOC), the UN leader in the fight against international crime, launched the United Nations Global Initiative to Fight Trafficking in human beings (UN. GIFT), which unfortunately not all member states have ratified<sup>40</sup>.

The organization also undertakes activities in order to raise public awareness on trafficking in persons and increase solidarity with the victims, such as the Blue Heart Campaign - a global initiative to fight human trafficking by stimulating governments, civil society, the corporate sector and individuals alike, to participation in preventive actions. All proceeds to the Blue Heart Campaign go to the United Nations Voluntary Trust Fund for Victims of Trafficking in Persons, Especially Women and Children launched in August 2010 by the UN General Assembly to facilitate cooperation between private and public parties: governments, international organizations, NGO's and individuals in order to help victims of human trafficking. The fund is managed by UNDOC<sup>41</sup>.

## **2.2. The actions of Council of Europe in the field of combating trafficking in women**

The Council of Europe is one of the most active international organizations in the field of combating trafficking in women. It's endeavors in this respect can be tracked back to the early 1990's preceding steps taken by other international organizations and states. The Council of Europe's system of human rights protection is based on the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>42</sup>, better known as the European Convention on Human Rights, opened for signature in Rome on 4 November 1950 and its additional protocols. The observance of the conventional rights and freedoms is supervised by the European Court of Human Rights, an international court to which every person claiming violation of his or her rights has an access after fulfilling certain conditions provided for in the Convention<sup>43</sup>. The judicial decisions of the European Court of Human

<sup>39</sup> As explained by K. E. Hyland, *The Impact of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, "Human Rights Brief" 2001, No. 8 (2), p. 38.

<sup>40</sup> J. N. Aston, V. N. Paranjape, *Victims...*, op. cit.

<sup>41</sup> <https://www.unodc.org/blueheart/en/-about-the-blue-heart.html> [access: 10.09.2018].

<sup>42</sup> [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf) [access: 13.09.2018].

<sup>43</sup> For practical guidelines see P. Leach, *Taking a Case to the European Court of Human Rights*, Oxford-New York 2005.

Rights are of great importance for the protection of human rights of victims of trafficking in women, unfortunately problem of human trafficking is rather rare subject of its case-law and issue arises most often in the context of slavery and forced labor, prohibited under art. 4 of the Convention.

The central role in the Council of Europe's legal framework on human trafficking is played by the Convention on Action against Trafficking in Human Beings<sup>44</sup> which came into force on February 1 2008, following a series of other *soft law* initiatives. The main purpose of this international agreement was to prevent and combat trafficking in human beings, while guaranteeing gender equality, protect the human rights of victims and promote international cooperation against trafficking in human beings (art. 1(1)). The forms of exploitation covered by the Convention are, at a minimum, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs (art. 4 (a)).

Although the Convention highlights its relationships with the UN Trafficking Protocol there is a difference between the two. The Convention applies to all forms of trafficking: national, international, linked or not to organized crime and is based on human right approach, while the Palermo Protocol emphasizes crime organized aspects of human trafficking<sup>45</sup>. The main added value of the Convention is its human rights perspective and focus on victim protection. The implementation if the Convention is monitored by the Group of Experts on Action against Trafficking in Human Beings (GRETA)<sup>46</sup>.

In addition to legally binding documents, the Council of Europe also adopted many soft law instruments devoted to the protection of rights of victims of human trafficking for example:

- Recommendation R (85) 11 to the Member States on the position of the victim in the framework of criminal law and procedure, adopted by the Committee of Ministers on 28 June 1985. The document contains guidelines for the police and other enforcement bodies to improve the victims' situation and protect their interests at every stage of the criminal proceedings<sup>47</sup>;
- Recommendation R (2002) 5 on the protection of women against violence, adopted by the Committee of Ministers on 30 April 2002, which defines the term "violence against women". The recommendation

<sup>44</sup> <https://rm.coe.int/168008371d> [access: 22.09.2018].

<sup>45</sup> A. Florczak, *Handel ludźmi* [in:] A. Florczak, A. Lisowska (red.), *Organizacje międzynarodowe w działaniu*, Wrocław 2014, p. 298.

<sup>46</sup> More on this issue see GRETA, <https://www.coe.int/en/web/anti-human-trafficking/greta> [access: 22.09.2018].

<sup>47</sup> K. Starmer, A. Hopkins, *Human Rights in the Investigation and Prosecution of Crime*, Oxford 2009, p. 451.

underlines that this concept encompasses such practices as: trafficking in women for the purposes of sexual and economic exploitation and sex tourism or marriages contracted and forced pregnancy. It was emphasized that listed practices constitute a violation of human rights<sup>48</sup>;

- Recommendation R (2006) 8 on assistance to crime victims, which is focused on the principal procedural rights of victims in the criminal justice system<sup>49</sup>.

### 2.3. Combating trafficking in the European Union

In the field of combating trafficking in women, the European Union is a very active entity and its approach to the problem is multi-faceted, including organizational and legal means of prevention and combating this crime. The EU key legal instruments to tackle trafficking in women “are based on a victim-centred approach and recognise that support and protection of victims, as well as prevention should be gender-specific”<sup>50</sup>.

The issue of trafficking in human beings for the first time was introduced in the Treaty on European Union of 7 February 1992<sup>51</sup>, under the third pillar: justice and home affairs. In May 1999, the European Union committed member states to fight against trafficking in human beings in Title VI of the Amsterdam Treaty<sup>52</sup>. Nowadays, Articles 79 and 83 of the Treaty on the functioning of the European Union<sup>53</sup> refer to combating trafficking in human beings, in particular women and children.

The prohibition of trafficking in human is expressed also in Article 5 (3) of the EU Charter of Fundamental Rights of December 7, 2000<sup>54</sup>. Indirectly to trafficking in persons refers Article 5 (1) of the Charter, which states that “no one shall be held in slavery or servitude” and art. 5(2) stipulating that “no one shall be required to perform forced or compulsory labour”.

However, as the protection of victims of human trafficking at the international level, including the EU level, is difficult to enforce, the EU concentrates on harmonization of legal orders of the Member States through directives.

The most important and the most comprehensive is directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

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<sup>48</sup> *Eradicating violence against children: Council of Europe actions*. Strasbourg 2008, p. 40.

<sup>49</sup> K. Starmer, A. Hopkins, *Human...*, op. cit., p. 452.

<sup>50</sup> As highlighted by S. Voronova, A. Radjenovic, *The gender dimension ...*, op. cit., p. 1.

<sup>51</sup> OJ C 191 (1992).

<sup>52</sup> OJ C 340 (1997).

<sup>53</sup> OJ C 326 (2012).

<sup>54</sup> OJ C 326 (2012).

Prevention, prosecution and protection of victim's rights is the main objective of the directive. This source of secondary legislation underlines the global character of the trafficking in persons, the importance of cooperation and coordination between Member States and comprehensive and human rights-based approach to the fight against trafficking in human beings, especially in women. The directive establishes the definition of crime of trafficking in human beings (art. 2) and requires its punishment at national level, highlighting the necessity to ensure that each form of trafficking is tackled with the most efficient measures. The minimum penalty for offences concerning trafficking in human beings should be, in accordance with art. 4 (1) of the directive, at least five years of imprisonment.

A catalog of directives which directly or indirectly relate to the problem of human trafficking and aimed at the prevention or criminalization of this offence includes also:

- Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims<sup>55</sup>,
- Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals<sup>56</sup>,
- Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals<sup>57</sup>,
- Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted<sup>58</sup>,
- Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order<sup>59</sup>,
- Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA<sup>60</sup>.

<sup>55</sup> OJ L 261 (2004).

<sup>56</sup> OJ L 348 (2008).

<sup>57</sup> OJ L 168 (2009).

<sup>58</sup> OJ L 337 (2011).

<sup>59</sup> OJ L 338 (2011).

<sup>60</sup> OJ L 315 (2012).

### 3. Trafficking in women as a violation of human rights

#### 3.1. Rights and freedoms violated by trafficking of human beings

Trafficking in women can be considered in various contexts: illegal migration, including people smuggling<sup>61</sup>, forced labor, sexual abuse or violence against women. All of them reveal the nature of this crime as a brutal violation of victims' rights and freedoms, such as right to liberty and security and freedom of movement. Because of the above-mentioned human trafficking has been recognized as "a threat to the democratic way of life and the basic rule of law"<sup>62</sup>.

The right to personal liberty lies at the center of human rights as it is connected to the essentialist rudiments of an individual's physical freedom. The essence of this right is the ability of the individual to choose his or her own way of life and shape his or her own destiny, what the person in the hands of human traffickers is deprived of. As the victims often experience physical and psychological violence, torture and degrading treatment<sup>63</sup> human trafficking undermines women's freedom from external coercion in the use of one's good or faculties and the their status of not being the property or chattel of another as the core of the right at issue<sup>64</sup>. Due to its relevance for human well-being and integrity the right to liberty and security has been regulated in many international treaties on human rights, including the constitution of human rights – Universal Declaration of Human Rights of 1948<sup>65</sup>.

In most dramatic cases trafficking in women could breach of one of the most fundamental rights – the right to life. It is protected i.a. in Article 3 of the Universal Declaration of Human Rights in Article 2 Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and in Article 6 of the International Covenant on Civil and Political Rights and in the Constitutions of individual States.

The interesting classification of rights violated as a result of trafficking in human beings, including women, was proposed by prof. Bistra Netkova. She divided the process of human trafficking into three stages – the pre-trafficking stage, the trafficking stage and the post-trafficking stage. For each stage, she assigned human rights violation to perpetrators. In the pre-trafficking stage prof. Netkova

<sup>61</sup> On this crossborder crime with respect to the issue of human trafficking in the EU see more detail analyzes of M. Ventrella, *The Control of People Smuggling and Trafficking in the EU. Experiences from the UK and Italy*, Farnham 2010.

<sup>62</sup> More on this C. Morehouse, *Combating Human Trafficking...*, op. cit., p. 13.

<sup>63</sup> O. Gajic-Veljanoski, D. E. Stewart, *Women Trafficked into Prostitution: Determinants, Human Rights and Health Needs*, "Transcultural psychiatry" 2007/ 9, p. 339.

<sup>64</sup> Y. Olomajobi, *Right to Personal Liberty in Nigeria*, <https://ssrn.com/abstract=3062580> or <http://dx.doi.org/10.2139/ssrn.3062580> [access: 12.09.2018].

<sup>65</sup> [https://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf) [access: 12.08.2018].

points to breaking the prohibition of discrimination both by the state itself and by private entities. At the trafficking stage human rights violations is made by criminals using the victim. The rights violated can be: the right to life, the prohibition of slavery and forced labor, the prohibition of torture and other cruel, degrading or inhuman treatment or punishment. In this case, the State violates the victims' rights indirectly because of its failure to establish effective measures in area of combating trafficking in human beings. In the post-trafficking stage there is a violation of the right to privacy, the right to liberty and security of person and freedom of movement, most often committed by state officials<sup>66</sup>.

### 3.2. Rights of victims of human trafficking

A human rights-based approach can be an effective factor for eliminate discriminatory practices against victims of trafficking<sup>67</sup> and can reduce resistance of the victims to cooperate with law enforcement agencies. The hesitancy of the victims of trafficking in persons, including women, to contact law enforcement agencies, such as police or border guards, results from victims' unregulated legal status. What's more they have often committed crimes under coercion or being threatened by traffickers what compounds their fear to contact officers and other officials and even non-governmental organizations. The above-mentioned leads to closing their way to enforce their rights. States, unfortunately, tend to treat victims of human trafficking as criminals. It is extremely important to remember that the qualification of such persons as victims, not offenders, helps to remove the stigma associated with human trafficking.

Among international legal instruments that apply the human rights perspective to human trafficking is the Palermo Protocol. This document grants many human rights to the trafficked persons. Moreover, it has become the point of reference for subsequent legal instruments in this respect. Under the Protocol, the victim should be protected from incrimination for illegal entry into the territory of the country of destination or other unlawful activities which are related to the fact of being a victim of trafficking in persons. The Protocol guarantee also, in Article 6, the right to safety which means that the countries should protect victims while the lawsuit against the traffickers and ensure them proper and safe place to live as well as the right to privacy that protects the identity of the victims with regard to

<sup>66</sup> See M. Pawłowski, *Międzynarodowe standardy ścigania handlu ludźmi i ochrony jego ofiar*, Warszawa 2014, pp. 17-18.

<sup>67</sup> *Ibidem*.

excluding the media and the public from the court proceeding. The victims of trafficking under the Protocol have also the right to information in a understandable language during any court or administrative proceedings the persecution of the traffickers. The right to legal representation imposes on the State the obligation to provide the victims of human trafficking with legal assistance, counseling, information about their legal rights. The right to be heard in court means that the victims are entitled to active participation during the court proceedings and can provided information for the prosecution of the traffickers. A huge impact on the improvement of the situation of trafficked persons has the right to compensation for damages during exploitation. Another important right is the right to assistance according to which trafficked persons should be provided with assistance in medical, physical, psychological and social recovery and also with residence or housing, legal rights, education, employment and training. The right to seek residence requires the States to permit the victims of trafficking to reside temporarily or permanently in their territory (art. 7) and in case of absence of such intention to ensure them proper protection during their return to the country of origin (the right to return, art. 8)<sup>68</sup>.

Also the EU approach to human trafficking is characterized by the recognition of the gender-specific nature of trafficking in human beings and placing the victim and its human rights at the centre. EU rights of victims of trafficking in human beings, including women, include i.a.: right to assistance and support as soon as the competent authorities have reasonable grounds to believe that they might have been trafficked, right to appropriate protection based on an individual risk assessment prior to criminal proceedings, right to specific treatment aimed at preventing secondary victimization during and after criminal proceedings, right to access existing compensation schemes for victims of violent intentional crimes or right to access to existing programmes or schemes aimed for them to recover to a normal life, including where appropriate courses designed to improve their professional skills, or preparation of their assisted return to the country of origin. Among the rights of victims' of human trafficking guaranteeing in the EU law the very important one is the „right to reflect”. The concept of “time to think” refers to the time intended to allow a third-country national who is a victim of human trafficking to make a decision on cooperation with law enforcement agencies. During the reflection period victims cannot be expelled from the territory of the Member State as well as they are entitled to receive at least emergency medical treatment and specific services, including psychological services for the most vulnerable<sup>69</sup>.

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<sup>68</sup> More detailed commentary on the Protocol provisions see J. N. Aston, V. N. Paranjape, *Victims...*, op. cit.

<sup>69</sup> For more detail analysis of rights grated to victims of trafficking in human beings in the EU law see *The EU rights of victims of trafficking in human beings*, Luxembourg 2013.



## Conclusion

Human trafficking is one of the most serious transnational organized crime. Despite its detrimental effects – it is a crime against humanity that violates human rights and human dignity and expose human beings to exploitation<sup>70</sup> – it is very difficult to prevent, detect and punish traffickers. Because of its concealed nature it is also very difficult, if not impossible, to assess an exact number of victims of human trafficking. Nevertheless there is no doubt that women constitute majority of victims of human trafficking. Their position of vulnerability in this respect is a result of feminisation of poverty, gender discrimination and a lack of educational and professional opportunities in their countries of origin<sup>71</sup>. The international, European and national legal instruments on preventing and combating human trafficking should take into account this specificity of trafficking in women in order to be more accurate and, in consequence, more effective. This must include also a victim-centred approach in dealing with the human trafficking crime. Only then anti-trafficking measures won't adversely affect the human rights and dignity of those who have been trafficked. As shown in the analysis above, the modern international and European legal instruments, designed to prevent and criminalize the trafficking in human beings, including women, respond to this need as they are based on human rights approach and recognize the gender-specific nature of this offence.

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