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TRAFFICKING IN HUMAN BEINGS FOR SEXUAL
EXPLOITATION - LEGALISED OR CRIMINALISED IN THE
EU

(Case study of Romania, Poland, Cyprus and Bulgaria)

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TRAFFICKING IN HUMAN BEINGS FOR SEXUAL EXPLOITATION

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CC	Criminal Code
EU	European Union
GRETA	Group of Experts on Action against Trafficking in Human Beings
MS	Member States
NGO	Non government organisation
SE	sexual exploitation
TFEU	Treaty on the Functioning of the EU
THB	trafficking in human beings
THB for SE	trafficking of human beings for sexual exploitation
UN	United Nations
US	United States

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ABSTRACT

Trafficking in human beings for the purpose of sexual exploitation is one of the priorities in the policy of European Union. The criminalisation of the phenomenon is important because it directly relates to the protection of human rights and the prevention of the involved of greater societal circles. At the European regional level the root causes leading to human trafficking are hidden in the poverty, lack of democracy, corruption among the authorities, gender inequality and violence against women. In 2011, the European Commission adopted the Directive 2011/36/EU on preventing and combating trafficking in human beings, which established new norms on international level. To what extent the implementation of EU legislation is able to fight trafficking of women for purpose of sexual exploitation?

In theory, EU legislation for the eradication of the crime of THB for sexual exploitation has a comprehensive and complete character that establishes the assumption for further effectiveness and success. Unfortunately, it is not true, because in the process of implementation and harmonisation into the national level, the domestic authorities translate and interpret law in their own capacity and perception, which contributes for shifting the meaning of the concept. This is one of the main shortcomings of the EU law.

CHAPTER I
INTRODUCTION

Criminalisation and prosecution of traffickers have a significant meaning for the efforts for elimination of the phenomenon human trafficking. As a result of the globalisation processes, the dimensions of the crime human trafficking have expanded. The improved protection and security, destined to prevent the future endangerment of the problem represents an increasing necessity. Moreover, the human rights, dignity and privacy are facing unpredictable and uncontrolled threats. The phenomenon trafficking in human beings (THB) has an expansive character and therefore represents a main threat, requiring a special attention.

Every year millions of women become victims of human trafficking and the profit generated from sex exploitation increases, while the measures taken by the international community to protect and prevent society seem fruitless. Moreover, trafficking of human beings as “modern day slavery” remains hidden from ordinary people, who perceive victims of sex exploitation as simple prostitutes incapable of gaining money in a moral manner.

The fight against trafficking in human beings for the purpose of sexual exploitation is one of the priorities in the policy of European Union (EU). For that reason, the European authorities have established a legal mechanism to eliminate the crime or at least to eradicate its dimensions within the borders of European Union. However, such eradication to be a great challenge for all member states, because transnational trafficking is linked to many root causes and circumstances that are very specific for the countries of origin, transit and destination.

The criminalisation of trafficking in human beings for sexual exploitation (THB for SE) is important because it directly relates to the protection of human rights and the prevention of the involved in greater societal circles. It also can facilitate the prosecution of perpetrators committing crimes against the humanity in the name of financial benefits. Nobody deserves to be treated as an object, abused, exploited or humiliated sexually in

order to gratify somebody's needs for money or sex. Therefore, because of its comprehensive nature, the phenomenon THB is closely linked with other phenomena such as organised crime and corruption, considered to be a serious cause for instability and undermining the society's basis.

The European Union and its legal mechanisms for combating trafficking in human beings will be under the scope of the current research which will pay a special attention to Directive 2011/36/EU of the European Parliament and of The Council. In addition, the study focuses on the case of Bulgaria as the poorest country in the EU¹, and thoroughly analyses the major factors causing the involvement in the crime. For the better evaluation of the current situation in the context of the THB problem and the implementation of EU law, the paper interprets other three EU states which present countries of origin, transition and destination countries.

The main purpose of the paper is to find an answer of a very important and pivotal question:

To what extent the implementation of EU legislation is able to fight trafficking of women for purpose of sexual exploitation?

In order to answer of the main question, the current research raises some related questions:

1/ Should we pretend that some countries tolerate human trafficking and what are the main causes for that?

2/ Would it be possible to establish proper strategy in order to eradicate the level of human trafficking in the borders of European Union?

This study was undertaken because a large part of scholar researches are focused on the prevention and protection of the crime human trafficking. There is insufficient literature analysing the criminalisation and prosecution of the act and its consequences on the fight

¹ Eurostat Statistic Explained- Europe 2020- indicators: poverty and social exclusion, 2014, available at: http://ec.europa.eu/eurostat/statistics-explained/index.php/Europe_2020_indicators_-_poverty_and_social_exclusion, last access: 07.07.2015.

against THB. In 2011, the European Commission adopted the Directive 2011/36/EU on preventing and combating trafficking in human beings, which established new norms on international level. The Directive has significant importance in the dimensions of the EU law, because it appears to be “the first legal instrument in the area of substantive criminal law since the Lisbon treaty.”² Hence, all of the Member States (MS) have been obliged to transpose it into their national law. As a result, there is a lack of information concerning the implementation and the following outcomes. Despite the comprehensive character of the “Eurostat” data, it is unclear to what extent individual countries combat the crime and what are the main shortcomings of the criminal policy. In addition, the study was carried out in order to fill the gap between the EU law and the shortcomings of the MS in the field of human trafficking. The current research uses the main challenges before the EU to combat human trafficking as criteria³, in order to enlighten the progress in the area. The set of established criteria comprises of: 1/ adequate addressing of root causes, 2/ level of fighting corruption, 3/ implementing and harmonising the EU legal framework within the area of trafficking in human beings.⁴

The second Chapter of the study consists of three different sections. In order to establish a common view of the crime, each of them demonstrates separate elements interlinked with the aim of the current research. The first Section is destined to give a comprehensive and exhaustive interpretation of major terms such as: ‘human trafficking’, ‘human smuggling’, ‘sexual exploitation’ and ‘prostitution’. It gives a clear explanation of what is the difference between the notions, which represents a very important step in establishing the basic framework of the human trafficking problem for the purpose of sexual exploitation.

Under the scope of section two is the EU legislation in the context of human trafficking. Special attention is paid to the Directive 2011/36/EU as the current legal

² Serena Bressan, Criminal Law Against Human Trafficking within the EU: A Comparison of An Approximated Legislation?, *European Journal of Crime, Criminal Law and Criminal Justice*, Vol.20, 2012, p.138.

³ Serena Nielsen, ‘Fighting Human Trafficking in the European Union’, Master Thesis, Roskilde University, 2011, p.7.

⁴ Ibid.,

framework in combating human trafficking and its significance for the purpose of the study. The Directive creates new standards in the field of substantive criminal law, which have to be transmitted and implemented on the national level. The section gives a short overview whether its implementation by the MS could be assessed as a positive outcome in the fight against THB for SE.

The focal point of the third section is the “root causes” leading to favourable conditions for the existence of the crime and the subsequent involvement in the network of trafficking. Moreover, the section describes the meaning of countries of origin, transitional countries and countries of destination, and related “push” and “pull” factors. The section makes a comprehensive analysis of the most important push factors such as corruption, poverty, arm conflict, economic and social instability, and discrimination. In addition, it examines the relation between countries of origin and destination countries.

The third chapter consists of a comparative analysis on the base of established criteria in three EU member states, namely Romania, Poland and Cyprus. The main idea of the chapter is to apply the theoretical explanation of Chapter II into practice, in order to evaluate how countries of origin, transit and destination combat THB for sexual exploitation. The Chapter is divided in four sections, three of them corresponding to one of the criteria, and the fourth one describes the current criminal situation in the countries of study. Special attention is paid to the implementation and harmonisation of the EU law as a main argument regarding the effectiveness of the legislation in the anti-trafficking field. The chapter has a significant importance, due to the lack of information in the area. It gives qualitative information for implementation of the Directive and describes the gaps between the substantive criminal law instrument and national legislations. Cyprus is a very curious and interesting case, because of its controversial status as an EU Member State and autonomous territory for sex trafficking.

Under the scope of the fourth chapter is the case of Bulgaria. As noted above, Bulgaria has a specific place in the paper because of its problematic status as the poorest country in the EU, with very high level of corruption and flourishing organised crime. The general idea of the chapter is to narrow the scope of research and to analyse in details the

current criminal law procedures in the prosecution of traffickers, the complicated situation in the country in the context of THB, and the specific push factors distinctive for Bulgaria in order to clarify the gap between *de jure* and *de facto*.

The chapter is divided in three sections. The first section represents a comprehensive analysis of the Criminal Code in Bulgaria, especially the regulations for prosecution of perpetrators in the crime THB. Moreover, it includes a commentary concerning the gaps in the law in order to explicit explain the possible outcomes.

The second section analyses how the EU Law is implemented on the national level, after the adoption of the Directive 2011/36/EU. It also gives correct information regarding the posterior implementation of the Directive 2011/36/EU because of the political instability and social crises in the country during that time.

The third section pays attention to the locally-specific “push” and “pull” factors, as well as tries to analyse the interlink between Bulgarian organised crime groups and authority’s corruption and their international role in the crime THB for sexual exploitation.

The last chapter is the “Conclusion”. The conclusion is going to evaluate all of the information presented, in order to find a comprehensive and exhaustive answer of the research question.

In accordance with the research concept, the literature review focuses on human trafficking for sexual exploitation and criminal law regulations in the EU. The research gathers relevant information on the phenomenon, reviewing the data provided by the European Commission, the European Parliament and the Council of Europe. Moreover, the study makes extensive review of the selected literature and the information available on the Internet. In order to fulfil the demands of the study, I selected specific literature, zoomed in on the link between THB for SE and relevant criminal law procedures within the borders of the EU.

Therefore, in order to satisfy the requirements of the current study, I established a filtering criterion for better defining the relevance of the existing sources of information and literature. As a piece of academic research aiming to provide comprehensive and clear definitions of the concepts ‘trafficking in human beings’ and ‘sexual exploitation’, it was

necessary to precisely select the sources of information. Due to the purpose of the study and because of the global recognition of the legal instrument, the definitions of ‘trafficking in human beings’ will be those determined in the ‘Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime’. The definitions of ‘sexual exploitation’ will be those determined in the ‘UN Secretary –General’s Bulletin on protection from sexual exploitation and abuse (PSEA)’.

In order to ensure that the most relevant information was included in the data analysis, a filter for relevance was established on the base of quick reading. Only the data which covers the relation between human trafficking, sexual exploitation and criminal law is used. A filter on the basis of data of publishing is also introduced. The current study uses criminal law procedures and information which has current impact on the problem. In addition, most of the researches use irrelevant and not updated information and as a consequence the real dimensions of the phenomenon are not correct. Although a large amount of information concerning THB for sexual exploitation exists on the Internet, the bulk of it remains inadequate. The most difficult moment was the collection of information in the context of contemporary criminal procedures for prosecution among the EU member states.

It is important to be noted that the literature regarding THB for other purpose except sexual exploitation remained irrelevant, except the literature analysing the phenomenon in general. Moreover, because of its narrow character, the research does not include information regarding the problem in the international level as the regional scope is the main target. It excludes the problem of minors as victims of THB for SE, because otherwise the scope of the research would be much wider.

The current study was based on the main data sources, such as European, international and national legal documents. Additional data came from articles, reports, academic literature, and documents by international governmental and non-governmental organisations, media tracks, and an expert interview.

The interview with the expert plays a significant role in the current study. The expert was selected in order to approve the current information and to fill the missing gaps in the research. She was picked on the bases of skills and competence. The expert is specialist in the field of human trafficking for sexual exploitation and has a long-term experience in the process of criminalisation of the act. The expert was asked to participate via semi-structured interview, where she could develop some of the questions in order to give exhaustive information regarding the problem.

In conclusion, the selected sources of information which the study undertakes are sufficient and reliable.

The applied methodology is a mix between quantitative and qualitative methods, with a prevalence of the quantitative approach. On the one hand, there was a lack of qualitative sources of information regarding sexual exploitation and different national legislations, and on the other hand, because of the exploratory nature of the study. Based on this methodology, the research analyses the most important shortcomings standing before the successful fight against THB and the establishment of a new international approach to the problem.

CHAPTER II

Legislation, Poverty, Corruption: problematic dimensions of the crime Human Trafficking

The current chapter demonstrates the problem of human trafficking *per se* and seeks to explain to what extent political, economic and social factors play the role of “root causes” and contribute in the process of crime within the boundaries of the EU. Moreover, it has to be noted that some “push” and “pull” factors differ from country to country and vary over time. The study finds no common answer to the question “what causes human trafficking”.⁵ However, general reasons why people decide to leave their countries via legal or illegal channels remain the same.⁶

This part of the study is separated into three sections. The first one gives a broad interpretation and analysis of the general terminology, in order to create the necessary framework for the problem, of trafficking for sexual exploitation. The second section aims to describe the current dimensions of the problem in the boundaries of the European Union, though it is difficult to narrow a crime with global significance. The third one analyses the comprehensiveness of different “push” and “pull” factors, as a result of the globalisation process in the context of human trafficking.

⁵ K. Bales, What Predicts Human Trafficking?, *International Journal of Comparative and Applied Criminal Justice*, vol. 31, no. 2, 2007, p.271.

⁶ Alexis A. Aronowitz, *Human Trafficking, Human Misery, The Global Trade in Human Beings*, Praeger Publishers, the United States of America, 2009, p.11.

2.1 What is “human trafficking for sexual exploitation”?

Trafficking in human beings is a complex phenomenon which takes various forms. Many attempts have been made to find an internationally accepted definition, which culminated in the adoption of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the 2000 Convention against Transnational Organized Crime.⁷ The Protocol defines “human trafficking” in Article 3.⁸ The phenomenon breaks down into three elements: an “action” being recruitment, transportation, transfer, harbouring or receipt of persons, a “means” by which that action is achieved including threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim, and “purpose” which includes every form of exploitation.⁹

The human trafficking is qualified as a criminal activity only if all these elements are present. However, in case of children, the crime of trafficking does not have to involve the “means” as an element.¹⁰

For the purpose of the study, a clarification of the meaning of some major notions is needed, in order to avoid confusion during the process of interpretation.

In the first place it is necessary, to explain the difference between” human trafficking” and “migrant smuggling”.

The Protocol Against the Smuggling of Migrants by Land, Sea and Air defines the phenomenon in the following way: “*“Smuggling of migrants” shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal*

⁷ Piotr Bakowski, *The problem of human trafficking in the European Union*, (briefing), European Parliamentary Research Service, Brussels, 2014, p.2

⁸ UN General Assembly, Res. 794 (VIII) *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, New York, 15 November 2000, Article 3, available at: <http://www.refworld.org/docid/4720706c0.html>, last access: 18.05.2015

⁹ Ibid.,

¹⁰ See *supra* note 7.

entry of a person into a State Party of which the person is not a national or a permanent resident; ”¹¹

Both human trafficking and human smuggling involve recruitment, movement and delivery of migrants from a country of origin to a destination country. The main difference between the phenomena is whether the migrants are participating voluntarily in the scheme or not. In the case of human trafficking, perpetrators enslave and exploit trafficked persons, while smuggled migrants have consensual relationship with their smugglers and are free at the end of their journey.¹²

The distinction is vague in case that smugglers abuse their consensual agreement with migrants, most often women and children, who may not have any other choice but to accept some form of exploitation, such as sexual one, in order to pay back the “cost” of their journey. In that kind of situations, migrant smuggling is closer to or even turns into trafficking. Moreover, the element of border crossing clarifies the difference between the two crimes. Whereas smuggling automatically leads to crossing a border, and evading frontier controls, this is not the same in the case of trafficking. Some “domestic” or “internal” trafficking cases occur within one country or an area without internal borders.¹³

The current research will analyse only the problem of human trafficking.

In the second place, it is important to clarify the “sexual exploitation” and “prostitution” notions, as their meaning is easily confused in the context of human trafficking. The tendency to treat trafficking and prostitution in the same way leads to aggravating the problem. For the purpose of the present paper, the definition of “sexual exploitation“ is as follows:

“any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or

¹¹ UN General Assembly, Res.55/25, *Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, New York, Article 3.

¹² Louise Shelley, *Human Smuggling and Trafficking into Europe. A comparative perspective*, Migration policy Institute, Washington DC, 2014, p 7.

¹³ *See supra* note 10.

*politically from the sexual exploitation of another. Similarly, the term “sexual abuse” means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.”*¹⁴

The main criterion by which one can distinguish between prostitution and sexual exploitation is whether prostitution is delivered as sex service or under conditions of sexual abuse. The big problem here is to identify sex services as consensually delivered because of the difficulties to be proven, and therefore laws criminalising the use of services without the consent of the victim face serious difficulties in implementation and cannot be effectively implemented.¹⁵

After the chapter clarifying the key definitions, the focal point will be moved to the EU and the dimensions of THB for sexual exploitation.

2.2 The dimensions of human trafficking for sexual exploitation into the boundaries of the European Union.

The exact levels of human trafficking in the EU are difficult to be identified as the phenomenon is often hidden within other forms of crime such as prostitution, illegal immigration and labour issues. Many cases of human trafficking remain unrecorded or uninvestigated. Moreover, the sexual exploitation is the most widespread form of human trafficking, with high-profit and low-risk endeavour for the perpetrators.¹⁶

Eurostat’s latest study from January 2015 reports 30,146 registered victims between 2010 and 2012, 80% of which are females. During the period between 2010 and 2012, EU member States report that most of the victims of human trafficking come from EU members and the internal trafficking, such as forced recruitment and exploitation in one country, remains a serious problem. In addition, 69% of the victims face a sexual

¹⁴ UN Secretary, General’s Bulletin on protection from sexual exploitation and abuse (PSEA),(SR/SGB/2003/13) available at: <https://cdu.unlb.org/Portals/0/PdfFiles/PolicyDocC.pdf>, last access:18.05.2015.

¹⁵ *Sexual exploitation and prostitution and Its impact on the gender equality*, (Study), EU, Brussels 2014, p.7.

¹⁶ Ayala Sender, *Trafficking in Human Beings in the EU* ,Special Committee on Organised Crime, Corruption and Money Laundering (CRIM) 2012-2013,September 2012, p.4

exploitation, 19% are victims of forced labour and 12% of other forms of exploitation. Although EU adopted large number of mechanisms and instruments to reinforce the prosecution, the statistical data indicates that the number of convictions is decreasing. The EU member states convicted 1041 offenders of sex trafficking in 2010, compared to 1000 and 767 sex trafficking offenders convicted in 2011 and 2012, respectively. In comparison, according to the 2015 Eurostat report, the total number of prosecuted for sex trafficking is 3873.¹⁷ Hence, despite all anti-trafficking efforts last years, Member states have not been able to transpose all of the efforts into an increased number of convictions.¹⁸

Since the fight of the human beings trafficking is a priority for the EU, the Stockholm Programme (2010) emphasises the necessity for developing a comprehensive and coherent strategy in the problem area. In addition, the Treaty on the Functioning of the EU (TFEU) contains provisions related to combating sexual exploitation [Art.79 (2),(d) TFEU] and human trafficking (Art.83(1)) which stimulated a stream of secondary legislation that endorses a holistic and comprehensive approach to identifying and assisting victims of crimes and to holding their perpetrators to account.¹⁹

2.2.1 European Union legislative acts

The section describes the European legal framework in the field of combating of human trafficking. The legislation under the scope of the section is limited in the period of time. The section approaches the legislation adopted after the introducing of an internationally recognised definition of human trafficking with the Palermo Protocol in 2000, up until the adoption of the Directive 36/2011/EU on Prevention, Combat and Protection in 2011.

¹⁷ Eurostat “*Trafficking in human beings*”(2015 edition), European Commission, Luxembourg, 2014 p.52,p.124.

¹⁸ C. Rijken and A. Bosma, *A review of the implementation of the EU strategy on human trafficking by EU members*, TRACE project ,2014, p.11-12

¹⁹ Steve Peers, Tamara Hervey, *The EU Charter of Fundamental Rights. A Commentary*, Hart Publishing United Kingdom, 2014,p. 873

In 2001 the European Council adopted Framework Decision 2001/220/JHA on the standing of victims. The main purpose of the act was establishing the right to assistance and information of the victims of human trafficking, as well as protection of their families in case of serious risk of reprisal.²⁰

In 2002, the European Council adopted Framework Decision 2002/629/JHA which introduced a framework of common rules at EU level concerning the main issues related to human trafficking - criminal penalties, prosecution, protection and assistance to victims.²¹

In 2004, the Council of the European Union adopted the Directive 2004/81/EC” on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subjects of an action to facilitate illegal immigration, who cooperate with the competent authorities”.²² In spite of the fact that all member states have implemented the Directive in their national regulations, the latest data shows incapability of the governments to identify victims of human trafficking and to give them residence permits, which is incorporated in the EU Strategy towards the Eradication of Trafficking in Human Beings. Moreover EU Member States are criticised for their formal transmittion of the Directive and their wrong understanding for the role of the victim in the crime human trafficking.²³

In 2005, the EU developed a plan for the prevention and fight against human trafficking. Its main purpose is to improve the European strategy in combating human trafficking for all kind of exploitation.

The Framework Decision 2008/841/JHA on the Fight against Organised Crime defines inter alia the offences linked to Organised Crime, as well as the level of penalty related for that type of crime.²⁴

²⁰ Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings, [2001] OJ L 82,

²¹ Council Framework Decision 2002/629/JHA on combating trafficking in human beings,[2002], OJ L 203

²² Council Directive 2004/81/EC 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, [2004], OJ L 261.

²³ European Commission, *Communication from the Commission to the Council and the European Parliament*, Brussels, 17.10.2014. .p.4

²⁴ Council Frame Work Decision 2008/841/JHA on the fight against organised crime,[2008], OJ L 300.

Although the efforts of Member States to implement and comply with the obligations under the Framework Decision 2002/629/JHA, it remains insufficiently or erratically implemented. Moreover, as the Framework Decision focused on criminal law provisions, the effectiveness of law implementation in the Member states about detection and prosecution trafficking remained unsatisfactory.²⁵ Hence, the Framework Decision was replaced by Directive 2011/36/EU,²⁶ whose main purpose is to further align the laws of Member States concerning to offences and penalties, in order to improve prosecution against perpetrators. The Directive consolidates minimum rules to apply common definition of criminal offences and sanctions in the area of human trafficking. It also establishes common gender-related provisions, in order to prevent and protect the victims of the crime.²⁷ The Directive on Prevention Combating and Protection is the first legal agreement between the Council and the European Parliament in the area of substantive criminal law since the Lisbon Treaty was ratified.²⁸ The Directive²⁹ was established on the legal base of the Treaty on the Functioning of The European Union under Chapter 4: *Judicial Cooperation in Criminal Matters*, Article 82(2) and Article 83(1).³⁰

To address the phenomenon, the European Commission adopted an EU Strategy towards the eradication of trafficking in human beings 2012-2016³¹ which focuses on the concrete measures that support the transposition and implementation of Directive

²⁵ See supra note 14

²⁶ Directive 2011/36/EU of The European Parliament and Of The Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA of 5 April 2011, *Official Journal of the European Union L 101/1*, 15.04.2011.

²⁷ Proposal for a Directive on preventing and combating trafficking in human beings and protecting victims, repealing Framework Decision 2002/629/JHA, available at: <http://www.eubusiness.com/topics/human-rights/human-trafficking.01>, last access :07.07.2015.

²⁸ S. Bressan, 'Criminal Law Against Human Trafficking within the EU: A Comparison of An Approximated Legislation?', *European Journal of Crime, Criminal Law and Criminal Justice*, Vol.20,2012, p.138.

²⁹ here and after The Directive 2011/36/EU is replaced by 'The Directive'

³⁰ Article 82(2) and Article 83(1) are referred to as ex Article 31 of the Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, *Official Journal of the EU*, C 326, Vol.55, 26.10.2012, Luxembourg,2012.

³¹ European Commission, *The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016*, Home affairs, Brussels,2013 p.3

2011/36/EU³². In this Strategy, the Commission suggests specific measures that round out legislation and the efforts of governments, international organisations, civil society in the EU and third countries. The purpose of the Strategy is to improve the coordination between different actors working towards the eradication of human trafficking, such as public prosecutors, police officers, border guards, immigration and asylum officials, etc. Specific actions would include the funding of research studies and projects, the establishment of platforms, coalitions and partnerships and every other action contributing to the successful cooperation between actors especially the Group of Experts on Action against Trafficking in Human Beings (GRETA). In addition, the Strategy identifies five main priorities and outlines a number of actions for each of them. These priorities are as follows:” A. *Identifying, protecting and assisting victims of trafficking*; B. *Stepping up the prevention of trafficking in human beings*; C. *Increased prosecution of traffickers*; D. *Enhanced coordination and cooperation among key actors and policy coherence*; E. *Increased knowledge of and effective response to emerging concerns related to all forms of trafficking in human beings*”³³.

First and foremost it should be underlined that the definition of human trafficking in the Directive is clearly based on the Palermo Protocol, meaning that trafficking concerns an act that is undertaken by using any of the means stressed in the definition for the purpose of exploitation. At present, exploitation as such is not defined, although the description of what kinds of practices (at minimum) are considered as exploitation is copied from the Palermo Protocol with some additions. The problematic issue concerning the definition is that it criminalises a ‘forced recruitment’ for the purpose of exploitation and not the exploitation *per se*.³⁴ However, the criminalisation of exploitative practices does not have to follow the established definition in Article 2 of the Directive, in spite of the fact that the most reprehensible aspect of trafficking is the act of exploitation. Moreover, this

³² Ayala Sender, *Trafficking in Human Beings in the EU*, Special Committee on Organised Crime, Corruption and Money Laundering (CRIM) 2012-2013, September 2012, pp.6-7

³³ See *supra* note 17, at 5.

³⁴ C. Rijken and A. Bosma, *A review of the implementation of the EU strategy on human trafficking by EU members*, TRACE project, 2014, p.18

terminological vagueness has led to different variations in the implementation of the definition among the Member States' legislations. However, the prosecution of traffickers still has some difficulties according to the TRACE report. The first and most important problem in the process of prosecution is the identification of the victims. A large amount of crimes remains undetected because, in the first place, victims do not recognise themselves as such, and in the second place, the signals of THB are invisible to the others.³⁵

2.3 What are the main factors contributing development of the crime “human trafficking”?

The process of globalisation has both positive and negative effects in the context of THB. One significantly negative result of the process is the increase of the inequality among people. It creates “factors that push people to leave their home countries and pull them into others countries”.³⁶ There are three types of countries involved in the process of transnational sex trafficking: countries of origin, transit countries and countries of destination. Countries of origin are those from which the victims come from, transit countries have intermediate function and serve for passing through their territory and borders, and destination countries are those states where the victims are delivered for exploitation. Push factors are distinctive for countries of origin because of the greater supply of victims and respectively pull factors are specific for countries of destination, where there is a greater demand of sex services.³⁷

At the European regional level the root causes leading to human trafficking are hidden in the poverty, lack of democracy, corruption among the authorities, gender inequality and violence against women. Moreover, factors such as conflict and post-conflict

³⁵ Ibid.,

³⁶ Karie Kabance, *The Globalization of Sex Trafficking*, International Affairs: Directed Research Project, 2014, p.10

³⁷ Ibid., pp.10-11.

situations, lack of social integration, lack of employment opportunities, lack of education and discrimination, create excellent preconditions for emerging of the phenomenon.³⁸

In order to clarify how the push and pull factors provoke the evolution of the “human trafficking” phenomenon, the current section describes them separately.

2.3.1 “Push” factors:

2.3.1.1 Political insecurity

Political weakness has a significant role in many issues. In Europe, the collapse of the Soviet Union has been the main trigger of political instability and human trafficking. This caused political changes in other Communist countries in Central and Eastern Europe and the Balkans, including the Yugoslavian collapse. The process of Communist destruction demonstrated how unstable political processes create conditions for human trafficking. Moreover, the consequent changes and the need of market economy led to “economic crisis and stagnation forced industrial restructuring, the breakdown of social services, mass unemployment (a hitherto unknown phenomenon) and dramatically lower living standards for large portions of the population.”³⁹ In addition, the fall of Communism created conditions for cheap labour in Western Europe and profitable opportunities for human trafficking.

Now, twenty-six years later, the situation in Europe is not changed at all. The populations of post-Communist countries, such as Bulgaria, Romania, Hungary, struggling to find a better life and profitable jobs in Western Europe, are the main victims of the trafficking for sexual exploitation.⁴⁰

³⁸ European Commission, *The European Union Strategy towards the Eradication of Trafficking in Human Beings (2012 – 2016)*, Brussels, 2012, p.2

³⁹ Gijsbert Van Liemt, *Human Trafficking in Europe: An Economic Perspective*, International Labour Office, Declaration/WP/31/2004, Geneva, 2004, p.1

⁴⁰ Eurostat, *Trafficking in human beings*, (2015 edition), European Commission, Luxembourg, 2014 pp.11-12

2.3.1.2 Conflict situation as a factor for increasing human trafficking

The EU's economic stability and political security have made the bloc one of the most proffered destinations for international migrants. Moreover, conflict and post-conflict territories create preconditions for mass emigration flows from non-European countries to developed countries in Europe. It is clear that there are few possibilities to legally enter and work in the EU member States or other economically stable countries.⁴¹ However, a lot of migrants are relieved when they find somebody who offers help to organise their passage to a better place. This vulnerable position is easily exploited by human traffickers recruiting people, even in remote conflict or post-conflict areas.⁴² In addition, asylum-seekers often have no family or a social support network, they are unable to communicate due to the lack of language skills in the country of destination, and remain insecure about their immigration status while undergoing the international protection procedure. As a result, most of the migrants, especially women and children, become victims of human trafficking and satisfy the demand for sex services in the developed countries in Europe.⁴³

2.3.1.3. Public officials vulnerable to corruption

*“Corruption is probably the most important factor in explaining human trafficking” and that “(c)ountries that make the least effort to fight human trafficking also tend to be those with high levels of official corruption.”*⁴⁴

The European Commission has confirmed that corruption involving officials remains a big challenge for all societies, including European ones. Special attention has to

⁴¹ See supra note 10.

⁴² European Migration Network Study, *Identification of Victims of Trafficking in Human Beings in International Protection and Forced Return Procedures*, 2014, p.20, p.32.

⁴³ Ibid.,

⁴⁴ United Nations Office of Drugs and Crime, *The Role of Corruption in Trafficking in Persons*, (Issue Paper), Vienna, 2011, p. 27

be paid on its cross-border dimension and connection with grave crimes such as human trafficking.⁴⁵

Moreover, the link between official corruption and organised crime such as human trafficking has been strengthened⁴⁶, especially the corruption as a facilitator allowing organised criminal groups, such as human traffickers, to acquire information in order to clear the way for illegal activities or to control the risk and protect their interests.⁴⁷

Public officials' corruption, namely the abuse of public service for personal benefit in transitional societies, occurs as a result of general social hopelessness where social regulation and integration cannot function well.⁴⁸ The contribution of official corruption to trafficking is recognised as an important indicator. Logically, there is an informal relation between countries with high level of corruption and a high level of human trafficking, due to low life standards and efforts. Respectively, States with low level of corruption have higher standard of life and strong efforts in combating human trafficking. The existence of a high-level corruption is linked with lack of political stability in the countries⁴⁹. In addition, unstable legal framework, including the "underdevelopment of democratic mechanisms, the underdevelopment of the market and financial systems, economic instability, profiteering from the transformation and privatisation of social capital, manipulation of the system by political power holders, are all factors that provide significant indicators of the presence of official corruption and subsequently human trafficking."⁵⁰

⁴⁵ European Commission, Migration and Home Affairs Directorate General, Corruption, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-humantrafficking/corruption/index_en.htm, last accessed 2.05.2015.

⁴⁶ European Commission, *Report from the Commission to the Council and the European Parliament: EU AntiCorruption Report*, Brussels, 3.2.2014 COM (2014) 38 final, p. 19.

⁴⁷ See supra note 27, at 9 and 27

⁴⁸ Velinka Grozdanic, *Corruption as a Metaphor for Societies in Transition?*, (Chapter 7), A. Selih and A. Zavrsnik (eds.), *Crime and Transition in Central and Eastern Europe*, Springer, 2012, p. 180.

⁴⁹ Council of Europe, Programme against Corruption and Organised Crime in South-eastern Europe (PACO), Report on the regional seminar Portoroz, Project PACO Networking Trafficking in Human Beings and Corruption, Slovenia (19 - 22 June 2002), p.8.

⁵⁰ Amy Weatherburn, Ionut Lupascu, *Deliverable D5.1: Report on how external factors such as socio, political and economic factors, or interaction with other criminal industries shape the phenomenon of trafficking*, TRACE project, 2015, p.20

Despite the lack of specific official data regarding the link between human trafficking and corruption, there is enough evidence indicating the importance of corruption in facilitating and protecting the crime of human trafficking, in most cases for sexual exploitation. The corruption among law enforcement authorities could support human traffickers in the process of recruitment, transportation and exploitation of victims. Corruption among the criminal justice authorities may block the investigation and prosecution of cases, and create obstacles for applying adequate protection of victims of the crime. Moreover, corruption involving the private sector – such as travel agencies, model agencies, marriage bureaus, hotels, construction companies and others may also contribute to human trafficking. The lack of data and a consequent analysis of integrated strategies to understand and combat human trafficking and corruption as such is rarely a focal point in anti-trafficking research or policies, although the large amount of information on corruption in human trafficking cases are available through other, non-related sources.⁵¹

In conclusion, the link between corruption of officials and organised crime is threatening the rule of law, social justice, human rights, and democracy. It also endangers the stability of democratic institutions and social morality. The successful fight against official corruption and human trafficking requires comprehensive investigations on the entire criminal structure, keeping relationship with authorities.⁵²

2.3.2 Socio-economic factors contributing to human trafficking for sexual exploitation

2.3.2.1. Poverty

⁵¹ United Nations Office of Drugs and Crime, *The Role of Corruption in Trafficking in Persons*, Issue Paper, Vienna, 2011, pp 4-6.

⁵² Георги Петрунов, Основни схеми за пране на пари от трафик на хора за сексуална експлоатация, РискМонитор Фондация, София, 2009, стр.127/George Petrunov, *Main Schemes of Laundering Money Obtained from Human Trafficking*, RiskMonitor Foundation, Sofia, 2009, p. 127.

Poverty is described as a factor having strong relation with trafficking in the Palermo Trafficking Protocol.⁵³ The conceptual understanding of poverty is multi-faceted, depending not only on economic measures but also on political, social and cultural indicators of ill-being.⁵⁴ The main roots of human trafficking are deeply related to poverty and social vulnerability. Moreover, the lack of opportunity and the ineffective use of resources create potential conditions for trafficking.⁵⁵

The low wages and unemployment are important indicators showing the level of poverty of a country and key preconditions for involvement in human trafficking. In addition, the low standard of living is a significant factor leading to implication of trafficking.⁵⁶ The lack of financial stability forces many young women to look for whatever job, in order to improve their life standard and conditions. Unfortunately very often, while searching for better future, they find themselves as victims of human trafficking for sexual exploitation.

Poverty is very often linked to a number of political and socio-economic factors that have impacted upon the standard of living in a particular country. These factors have an impact on the vulnerability of persons to human trafficking, such as “the opening of borders in transition economies, economic factors such as feminisation of poverty, large income differential between the country of origin and destination, high illiteracy rate, highly unequal income distribution, as well as significant disruptions in socio-economic conditions such as natural disasters, presence of conflict, and transition to a different economic system in countries of origin.”⁵⁷

⁵³ María Fernanda Perez Solla, *World Bank, Slavery and Human Trafficking International Law and the Role of the World Bank*, (SP Discussion Paper), The World Bank, USA, April 2009, p.38.

⁵⁴ United Nations Economic, Social and Cultural Organisation, Poverty, *Learning to Live Together*, available at: <http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/poverty>, last accessed 25.05.15

⁵⁵ See *supra* note 36, at 37.

⁵⁶ B. Andrees, *International Labour Organisation, Forced labour and trafficking in Europe: how people are trapped in, live through and come out.*, International Labour Organisation (ILO) Geneva, February 2008, pp. 16-17.

⁵⁷ G. Danailova-Trainor & P. Belser, *Globalisation and the illicit market for human trafficking: an empirical analysis of supply and demand*, (Working Paper No. 78), Policy Integration Department International Labour Office, Geneva, 2006, pp 5-8.

In conclusion, the lack of rule of law creates excellent conditions for the development of criminal activities and creates an environment where human trafficking can flourish.

2.3.2.2 Social exclusion, gender inequality and feminisation of poverty

The relation between educational levels and vulnerability to trafficking of human beings remains unclear because of insufficient information concerning the socio-economic background of the victims. For instance, in Bulgaria the majority of trafficked persons for sexual exploitation often have a basic educational level and, consequently, less economic opportunities and capacity to earn money.

In most of the cases women are more vulnerable to poverty than men as a result of the lack of access to education and limited employment opportunities. In 2011, the European Parliament announced that “preventing and reducing women’s poverty is an important component of the fundamental principle of social solidarity to which the European Union is committed as provided in Article 3 of the Treaty on European Union, implying equality between women and men, social justice and protection and combating social exclusion and discrimination. The ‘feminisation of poverty’ means that women have a higher incidence of poverty than men, that their poverty is more severe than that of men and that poverty among women is on the increase.”⁵⁸ Special attention is paid to the vulnerability of women and girls regarding human trafficking and their potential victimisation.

Interlink between human trafficking and feminisation of poverty shows the victims of human trafficking for sexual exploitation as “an identity that responds to the increased mobility and economic burden placed upon women.”⁵⁹

⁵⁸ European Parliament Resolution 2010/2162(INI), on the face of female poverty in the European Union,[2011].

⁵⁹ A. Russell, *Victims of Trafficking: The Feminisation of Poverty and Migration in the Gendered Narratives of Human Trafficking*, ed. Valerie Zedilski, Societies, Vol.4, October 2014, p.543.

In the case of human trafficking for sexual exploitation, gender inequality plays a significant role because of the cultural specifications in the view for the position of men and women in society. In spite of the fact that most of the countries of origin pretend to have a democratic policy and a democratic society, some problems concerning gender equality remain unresolved. For this reason many women become vulnerable to sexual exploitation.⁶⁰

In addition, violence against women, feminisation of poverty, patriarchal relationship, gender inequality and discrimination on the labour market are main reasons for the involvement in human trafficking. Most of these reasons are interlinked with the cultural subordination of women in many societies leading to exploitation and vulnerability to trafficking for sexual exploitation.

“The root causes of violence against women are similar to the root causes of trafficking in persons, especially women and children. It has been recognized that the relationship between poverty, gender inequalities and violence is a mutually reinforcing one. There is a long standing failure to protect women from gender based violence. Nonetheless, we must address economic, social and cultural issues particularly gender inequalities that cause gender based-violence and make women and girls vulnerable in order to effectively combat trafficking.”⁶¹ The socio-economic conditions are a good prerequisite in the act of recruiting victims, because human traffickers mainly focus on the promises of material benefits and opportunities for a higher income. Usually after such promises are made, the victims are transported to the final destination.⁶²

2.3.2.3 Discrimination

⁶⁰ Ibid.,

⁶¹ UN, Statement by Ms. Joy Ngozi Ezeilo, UN Special Rapporteur on Trafficking in Persons, Especially Women and Children, 57th session of the Commission on the Status of Women New York, 11 March 2013

⁶² Г Петрунов , *Основни схеми за пране на пари от трафик на хора за сексуална експлоатация*, Риск Монитор Фондация,София, 2009, стр.32;
G.Petrunov, *Main Schemes of Laundering Money Obtained from Human Trafficking*, RiskMonitor Foundation, Sofia, 2009, p. 32

Most of the victims of human trafficking for sexual exploitation are discriminated on the base of gender inequality which contributes in increasing vulnerability of women and girls to human trafficking. One particular vulnerable group to human trafficking are representatives of ethnic minorities. For instance, in Bulgaria the most vulnerable group to human trafficking for sexual exploitation are women from Roma ethnicity.⁶³ Socio-economic difficulties and social deprivation of minorities' rights create excellent preconditions for a potential victimisation and human trafficking.

Factors that lead to Roma being vulnerable to trafficking include: poverty, multi-generational social exclusion, and discrimination - including insufficient access to social services, education, and employment. For instance, because of poor access to financing and less employment opportunities, Romani often resort to using informal moneylenders that charge exorbitant interest rates, contributing to high levels of debt, which heighten trafficking vulnerability. There are also a number of cases in which exploiters are fraudulently claiming social benefits from Romani trafficking victims, depriving them of such assistance.⁶⁴ Moreover, other social factors which contribute to increasing vulnerability to human trafficking are: discrimination of minorities on the labour market and discrimination of minorities from rural areas in the countries of origin.

2.3.3 “Pull” factors

The large amount of pull factors represents a specific characteristic for destination countries, because of the large demand for victims. Pull factors in countries of destination incorporate: higher salaries, good job opportunity, demand for migrant workers, relaxed border control, political stability, social security, low level of corruption, and demand for

⁶³ Denitsa Baeva , National expert in the National Commission for Combating Trafficking in Human Beings , Bulgaria, Sofia (08.04.2015)

⁶⁴ US Department of States, *Trafficking in Persons Report*, 2014, available at: <http://www.state.gov/documents/organization/226844.pdf> , p.19, last accessed 25.05.15

commercial sex.⁶⁵ Moreover, better standard of living conditions in big and economic developed cities are always key factors for the young women.⁶⁶

Traffickers use pull factors to attract desperate and poor women and girls offering them good future perspectives such as profitable jobs, good education, high wages, and marriage. There are women who voluntarily enter the sex industry because of the lack of alternatives in the home country, but there are women who are enticed by traffickers with promises of work in hotels, disco clubs, restaurants or factories.

Generally, countries of destination are states with well developed sex tourism (such as Cyprus) industries because of the cheap sex and the endless demand. In most of the cases, organised criminal groups have controlled the “supply” and “demand” situation in order to traffic and exploit victims for generating profits for themselves.⁶⁷ Although the prostitution *per se* is wide spread in these countries, the market for sex workers still exists because “sex slavery is the profit-maximising version of prostitution”.⁶⁸

In addition, there are cases where the link between countries of origin and destination is very strong. The relation depends on a number of factors, such as the connection between traffickers, the “local knowledge, key locations and weaknesses in border or migration control”.⁶⁹ Other important factors are the dimensions of the extensive sex industry and social tolerance of it. Moreover, historical and colonial connection between states and the existence of immigrant population play a significant role as a “root cause” for human trafficking.⁷⁰

This chapter has defined general terms such as “human trafficking”, “human smuggling”, “prostitution” and “sexual exploitation” and has examined a number of issues closely related to the problem. The main topics which have been explained are related to

⁶⁵Karie Kabance, *The Globalization of Sex Trafficking*, International Affairs: Directed Research Project, 2014, p.12.

⁶⁶ A. A. Aronowitz, “Human Trafficking, Human Misery, The Global Trade in Human Beings”, Praeger Publishers, the United States of America, 2009, p.12

⁶⁷ K. Bales, What Predicts Human Trafficking?, *International Journal of Comparative and Applied Criminal Justice*, vol. 31, no. 2, 2007, p.278.

⁶⁸ Ibid.,

⁶⁹ See supra note 54, at 13

⁷⁰ Ibid.,

the EU legislation as well as push and pull factors in the context of the crime. The general aim of the chapter has been to define the EU legislative framework and to explore the main “root causes” contributing to the act of human trafficking for sexual exploitation, because significant part of the eradication process is their abolishment.

CHAPTER III

Romania, Poland and Cyprus in the fight against human trafficking for sexual exploitation –comparative analyses

The current chapter analyses three EU member states and their efforts in the process of eradication and elimination of the phenomenon of trafficking in human beings. The countries were chosen in order to demonstrate how different member states understand the meaning of the problem as such and established different legal mechanisms necessary for the implementation of Directive 2011/36/EU. Moreover, the current study especially collected these three countries to present three different patterns in the process of human trafficking - Romania as a country of origin, Poland as a country of origin and transit⁷¹ and Cyprus as a country of destination. In addition, all of the countries are ranked in different levels.⁷²

In order to evaluate to what extent the implementation of EU Law establishes positive changes contributing to the eradication of THB for SE, the chapter embodies three main criteria: 1/ adequate addressing of root causes, 2/ level of fighting corruption,

⁷¹ Poland is recognised as a country of origin, transit and destination country for THB for SE, but to in the international community it is known as a transit country

⁷² Ranking is according to U.S. Government’s minimum standards to eliminate human trafficking. The minimum standards are listed in Section 108 of the Victims of Trafficking and Violence Protection Act of 2000.

3/implementation and harmonisation of the EU legal framework within the area of trafficking in human beings.⁷³

Because of the narrow structure of the study, the first two criteria will not be analysed into their depth, although they take special place into the global strategy for fighting THB for SE. Special attention will be paid to the third criterion, in order to emphasise the significance of the legislation in the process of eradication of the crime. The third part of the paper will contribute to a great extent for setting proper arguments regarding the research question.

3.1 The effectiveness of eradication the root causes in the context of THB for SE in Romania, Poland and Cyprus

As already mentioned in the previous chapter, the root causes leading to enlargement and persistence of the THB for SE are specific in separate regions and could vary during time. The factors differ in the countries of origin and transition, and countries of destination. Under the scope of the current section I will put some limitations in order to keep the concept of the thesis. Firstly, I will briefly examine the three main push factors which are adequate for the EU region⁷⁴ -1/poverty and social exclusion; 2/unemployment; 3/discrimination. Secondly, the fourth section analyses the current situation in practice regarding THB among the three states.

3.1.1 Poverty and social exclusion

According to the Eurostat data, Romania takes the second place on the list of poorest countries in the EU, following Bulgaria.⁷⁵ Despite the fact that the Romanian Government made many efforts to decrease the level of poverty and social exclusion on the base of EU

⁷³ The criteria act for the main challenges embodied into the Directive

⁷⁴ The exemplified factors have been chosen by the author

⁷⁵ EuroStat, *People at risk of poverty and social exclusion*, available at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/File:People at risk of poverty or social exclusion, by age group, 2013.png](http://ec.europa.eu/eurostat/statistics-explained/index.php/File:People_at_risk_of_poverty_or_social_exclusion_by_age_group_2013.png), last access: 07.07.2015

Strategy Europe 2020⁷⁶, there are remaining challenges in many economic and social public fields.⁷⁷ Meanwhile Cyprus and Poland, as countries of transition and destination they are far from the poverty threshold and social exclusion.⁷⁸

3.1.2 Unemployment

Romania is definitely the leader in the range of unemployed women, in comparison with the other EU Member States.⁷⁹ The fact completely justifies the high level of Romanian citizens involved in the networks of human trafficking for sexual exploitation, and shows the incapability of the Government to create the necessary mechanism to change the statistics.

3.1.3 Ethnical discrimination

‘Discrimination on grounds of ethnic origin is seen as the most widespread’.⁸⁰ Cyprus has the highest level of discrimination in comparison with Poland and Romania. Ethnical discrimination, as it was said above, is the key factor for involvement in human trafficking for sexual exploitation.

3.2 Fighting corruption in Romania, Cyprus and Poland

Corruption is closely related to the problem of human trafficking, because it seriously harms the economic and social stability in the countries. The Financial economic crisis contributes to the enlargement of corruption patterns. Moreover, the number of organised crime groups is larger if corruption is widespread. Hence, the level of THB for SE is

⁷⁶ The EU Strategy ‘Europe 2020’ will not be under the scope of the current study

⁷⁷ EU Recommendation for Romania, available at:

http://ec.europa.eu/europe2020/pdf/csr2014/challenges2014_romania_en.pdf, last access :07.07.2015

⁷⁸ See *supra* note 74

⁷⁹ Eurostat, *Unemployment rates 2014, ranked on the average of male and female*, available at:

http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Figure_7_Unemployment_rates,_2014,_ranked_on_the_average_of_male_and_female.png, last access: 07.07.2015.

⁸⁰ Special Eurobarometer 393, *Discrimination in the EU in 2012*, available at:

http://ec.europa.eu/public_opinion/archives/ebs/ebs_393_en.pdf, last access: 07.07.2015

higher, because it is one of the most spread activities of the organised crime groups.⁸¹ The current section will make brief analysis of the problem and show how the countries are fighting against it.

Bearing in mind that the risk level of corruption in the public procurement process is relatively high', anti-corruption and anti-fraud safeguards in public procurement are a matter of priority for both EU Member States and EU institutions'.⁸²

According to the latest report of the EU Commission, Romania is one of the most corrupted countries in the EU.⁸³ Moreover, Romania still has problems with corruption and "the rate of adjudicated high-level corruption cases in courts has noticeably risen in the last two years."⁸⁴ The factor of corruption is recognised as one of the strongest "push factors"⁸⁵ for THB in the country. In Poland, the corruption practices among public authorities are less than these in Romania, but still remain widespread. There are many potential risk factors that 'increase vulnerability to corruption in the public procurement procedures'.⁸⁶ Additionally, the level of corruption in Cyprus is perceived to be 'mostly widespread among politicians, public servants responsible for public procurement, local authorities and officials at regional and local level, as well as the Police'.⁸⁷

Considering this information, it should be concluded, that the fight against corruption still remains insufficient, regardless of the efforts of EU institutions and mechanisms.

⁸¹ V. Grozdanic, *Corruption as a Metaphor for Societies in Transition?* , (Ch. 7), A. Selih and A. Zavrsnik (eds.), *Crime and Transition in Central and Eastern Europe*, Springer, New York, 2012, p. 180.

⁸² *Report from the Commission to the Council and the European Parliament. EU Anti-Corruption Report*, European Commission, Brussels, 2014, p.21

⁸³ *Ibid.*,p.6

⁸⁴ Annex, *Romania to the EU Anti-Corruption Report.*, European Commission, Brussels,2014, p.5

⁸⁵ K. Bales, What Predicts Human Trafficking?, *International Journal of Comparative and Applied Criminal Justice*, vol. 31,no. 2,2007,p. 276

⁸⁶ *'Poland to the EU Anti-Corruption Report'* European Commission, *Brussels*, 2014,p.9

⁸⁷ *'Anti-corruption Measures in Cyprus'*, Transparency International, Nicosia-Cyprus,2013,p.6

3.3 Implementation and harmonisation⁸⁸ of the EU legal Framework within the national legislation in human trafficking for sexual exploitation in Romania, Poland and Cyprus

The European Union legislation concerning human trafficking is perceived to be one of the most comprehensive and precise legal tools, that objectivity and good implementation of procedures are indicators for completeness and successful functionality. However, this perception contradicts with the insufficient results in the process of eradication the phenomenon trafficking in human beings.⁸⁹

One of the main purposes of the Directive is the improvement of prosecution against traffickers as a consequence of the harmonisation of the EU law with the national legislations.

According to some scholars, from the penal law perspective, in reality the harmonisation does not have to be accepted as such a grateful achievement in the prevention and combating criminality, because it is just a reform mechanism and a form of intergovernmental collaboration.⁹⁰ According to other scholars, from the norms and penal procedure perspective, the harmonisation means uniformity, because ‘community penal regulations’, even accepted by the Member States are refracted through the prism of national authorities on the base of their individual perception. This is exactly the explanation why in theory the ‘penal regulations are considered adequate and efficient’, but in practice their implementation remains unsatisfied.⁹¹

The current section aims to analyse to what extent the harmonisation of the EU law with the national legislation has positive or negative shortcomings in the process of eradication of THB for sexual exploitation. In this sense, there will be five indicators established⁹², which

⁸⁸ The author will used “harmonisation” rather “approximisation” because both of the terms are perceived to be with same meaning by the most of scholars

⁸⁹ Ada. I. Popescu, European penal Law an instrument to fight against human trafficking, *Economic Sciences*, Vol.36, 2009, p.1

⁹⁰ Ibid., p.2

⁹¹ Ibid.,

⁹² S. Bressan, Criminal Law against Human Trafficking within the EU: Comparison of Approximate legislation, *European Journal of Crime, Criminal Law and Criminal Justice* Vol.20 ,2012, p 138

will be used as a focal point in order to evaluate the extent of harmonisation between the national legal mechanisms and the established five EU standards, as they are interpreted in the Directive: 1/ the action element, 2/ the means element, 3/the purpose element, 4/the penalties, 5/the aggravating circumstances. The modalities of these indicators of harmonisation are: fully compliance in case that the normative mechanisms are equal as the established by the Directive, partially compliance when some of the elements are missing or are not-compliant, when none of the required elements is embodied into the national law.⁹³

3.3.1. The action element- “*The recruitment, transportation, transfer, harbouring or receipt of persons*”⁹⁴

The action element assesses to what extent the national legislations is in compliance with the first EU standard against THB for sexual exploitation. It incorporates three phases in the process of human trafficking: 1/the first phase includes *recruitment*, 2/ the second phase incorporate *transportation* and *transfer*, and 3/the third phase consists of *harbouring* and *receipt* of trafficked person. Article 2, paragraph 1 of the Directive 2011/36/EU prescribes the actions that is necessary to be criminalised by the Member States ‘legislations. In case that all of the three phases are incorporated into the national legislation, then the EU MS are “fully compliant”.⁹⁵

Firstly, national legal instruments should conceive the element of *recruitment*. This phase prescribes the time when the victim is in a close relationship with the trafficker, who individually or through proclaimed travelling or job agencies, deceives the victims by promising attractive job abroad. In many cases, the process of recruitment starts with an emotional relationship between the trafficker and the victim. This manner of recruitment is known as a “lover-boy” technique.

⁹³ The concept of harmonisation has been defined by De Cruz as the process of "co-ordination of different legal provisions or systems by eliminating major differences and creating minimum requirements or standards",Ibid.p.141

⁹⁴ Ibid.,140

⁹⁵ Ibid.,141

Secondly, the domestic legislations should conceive the elements *transportation* and *transfer*. This element is connected to the transportation of women from one country to another, or transportation within the borders of the country. “Both international and cross-border trafficking exists.”⁹⁶ Thirdly, the action of harbouring and receipt should be criminalised as substantive elements of the crime. In many cases women are enforced to stay and to live in apartments or hotels often used as places for sexual exploitation or servitude.

Article 210⁹⁷, paragraph 1 of the Romanian Criminal Code incorporates the three phases of the element of action, which means that the country fully complies with the requirements of the EU framework. In the current Polish legislation, the definition of THB is embodied into Article 115, Section 22⁹⁸ of the Criminal Code, and the three phases are incorporated.

In April 2014, the EU Directive 2011/36/EU entered into force and was implemented into the national legislation in Cyprus. The new national legislation ‘Law 60(I)/2014’ regarding human trafficking was ratified. The Cypriot Criminal Law fully complies with requirements for incorporation of the element of action into national level.⁹⁹

3.3.2 The means element

⁹⁶ Ibid.,p.144

⁹⁷ Law No.286/2009, New Criminal Code, Romania, Section VII Special Part, Art.210,(entered into force ,12.11.2012,available at: <https://just.ro/LinkClick.aspx?fileticket=72y7HkFZ%2BRw%3D&tabid=89>,

⁹⁸ ‘Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons by means of: (1)violence or unlawful threat, (2)abduction, (3)deception, (4) misleading, the exploitation of a person’s mistake or their inability to properly comprehend the action being undertaken, (5) the abuse of a relation of dependence, taking advantage, (6) of a critical situation or state of helplessness, giving or receiving of payments or benefits or its promise to achieve the consent of a person having control over another person – for the purpose of exploitation, even with the person’s consent. Exploitation shall include, at a minimum, the exploitation of the prostitution of others, pornography, or other forms of sexual exploitation, forced labour or services, beggary, slavery or practices similar to slavery, servitude or the removal of cells, tissues, or organs against the regulations of the article. Should the perpetrator’s behaviour concern a minor, it shall be considered “trafficking in persons” even if this does not involve any of the means set forth in points 1-6 of this article.’ (Polish Penal Code, September, 8th,2010)

⁹⁹ See supra note 96, at 145

The means element is the second established standard by the EU legislation in the context of human trafficking. According to this standard, countries should criminalise all of the following actions: “1/ coercive acts: threat, use of force, abduction; 2. deceitful acts: fraud, deception, abuse of a position of vulnerability; 3. financial acts: giving or receiving payments or benefits.”¹⁰⁰

It has to be noted that the consent between victim and trafficker is impossible in case of existence of one or more of mentioned acts. Even though there are examples for giving the initial consent, women who gave it, are included in the victim’s category. In most of the cases the victims are coerced without knowing for the subsequent exploitation.¹⁰¹

This element is fully incorporated into the Romanian, Polish and Cypriot legislation.

3.3.3 The purpose element

The purpose element aims to analyse to what extent the established standards by Article 2, paragraph 3 of Directive 2011/36/EU are complied with the national legislations. The element is linked with the exploitation sectors in which women might be involved.¹⁰²

Romania, Poland and Cyprus fully complied with the implementation of the element purpose into the domestic legislation. Moreover, the first three elements established the international recognised definition for what is the act of human trafficking and the study countries fully complied with it.

3.3.4 Penalties

¹⁰⁰ Ibid.,

¹⁰¹ Ibid.,

¹⁰² "as a **minimum**, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs", (Directive 2011/36/EU, Article 2, para. 3)

The fourth indicator for harmonisation and important EU standard against THB is incorporated into Article 4, para 1 of the Directive 2011/36/EU. According to the EU Law, whoever commits any act of the crime THB “shall be punishable by effective, proportionate and dissuasive penalties of a maximum of at least five years of imprisonment”¹⁰³

According to this indicator, Romanian criminal law does not comply with the requirement, because the proscribed penalty is “no less than three and no more than 10 years of imprisonment”¹⁰⁴. In Poland, the criminal law procedure proscribes punishments of not less than three years of imprisonment,¹⁰⁵ which means that Poland does not comply with the established standard for punishment. In comparison, Cyprus has adopted very severe penal system, because prescribed penalties for human trafficking of adults are “up to ten years”.¹⁰⁶

3.3.5 Aggravating Circumstances

The aim of aggravating circumstances indicator is to assess the level of harmonisation with the EU standards against THB for SE, under Article 4, para.2 of the Directive, which requires “at least 10 years of imprisonment” for aggravating circumstances.

“These circumstances can be divided into two categories: those referring to the offender, and those related to the trafficked person. First, an increased penalty shall be imposed if the crime has been committed by a public official and within the framework of a criminal organisation. Secondly, other prescribed circumstances relate to the victim: 1. the crime has been committed against a vulnerable victim (e.g. a child, a pregnant woman); 2. the offence has caused serious bodily injury and psychological damage to the trafficked person; 3. the

¹⁰³ Ibid., 149.

¹⁰⁴ Law no.678/2001, Criminal Code, Romania, Article 210, para. 1(c).

¹⁰⁵ Code of Criminal Procedure, Poland, Art.115, Section 23, 8 September, 2010

¹⁰⁶ U.S. Department of State, Office to Monitor and Combat Trafficking in Persons-Cyprus, available at: <http://www.state.gov/documents/organization/226845.pdf>, last access: 06.06.2015

actions committed have intentionally or by gross negligence endangered the life of the victim.”¹⁰⁷

According to the requirements of the “aggravating circumstance” element, Romania does not comply with the established norms, because Romanian criminal procedure in the context of human trafficking and aggravating circumstances prescribed not less than three and not more than twelve years imprisonment. Especially for involvement of public official in the act of human trafficking, the penal procedure proscribes “not less than five years imprisonment”.¹⁰⁸

Poland does not comply with the conditions embodied into the Directive regarding aggravating circumstances either. The law prescribed punishment between three and fifteen years imprisonment¹⁰⁹ In comparison with Poland and Romania, Cypriot criminal law prescribes for aggravating circumstances penalty up to twenty years of imprisonment for traffickers.¹¹⁰

The section analyses the current situation regarding the implementation and harmonisation of the Directive into national level. Despite the fact that the last two criteria remain problematic for Romania and Poland, all of them have fully transmitted the recognised definition of human trafficking with exploitative purpose, incorporated in the EU legal framework.

In theory, the three countries have established good legislative mechanisms whose effectiveness is not confirmed. Moreover, all of the countries have amended their Penal Codes in order to fulfil the requirements established by the EU legislation.

In order to understand into depth whether the EU regulations contribute to eradication of the THB for SE in practice, it is necessary to approach the problem *de facto*. The next section is going to analyse to what extent the country of origin, transition and destination implied effectively the new incorporated standards into their practice.

¹⁰⁷ Ibid.,153

¹⁰⁸ Romanian Criminal Code, Law no.678/2001, article 210, para. 2

¹⁰⁹ Code of Criminal Procedure, Poland, Art.115,Section 23,8 September, 2010, Art.197

¹¹⁰ U.S. Department of State, Office to Monitor and Combat Trafficking in Persons-Cyprus, available at: <http://www.state.gov/documents/organization/226845.pdf>, last access: 06.06.2015

3.4 The gap between “*de jure*” and “*de facto*”

The section will give an overview of the current real situation in the countries. Moreover, it will include a short overview of the legislative amendments from last years, in order to assess critically whether the transmission of EU Law has positive consequences.

3.4.1 Romania- step up to success

In Romania the crime of trafficking is heavily punished. The level and number of convictions in Romania is one of the highest in the European Union.”

Romania’s National Rapporteur for Human Trafficking, Romulus Ungureanu¹¹¹

In 2002, Romania ratified the United Nation’s Convention against Transnational Organised Crime with its Protocols. The country is one of the first member states of the Council of Europe which signed and ratified the Convention on Action against Trafficking in Human Beings. The Convention’s provisions entered into force in Romania in February, 2008, contributing to forming of a well-structured legal mechanism for combating human trafficking.

Since Romania entered into the European Union in 2007, border crossing procedures were simplified and many new opportunities for illegal transportation of people and goods from Eastern to Western Europe were established. Throughout Europe, Romanian women and girls have consolidated significant part of the individuals exploited in the sex industry.¹¹²

Although the Government of Romania makes efforts to create good legislative mechanisms and cooperative relations in the combat of human trafficking, the country “does not fully

¹¹¹Europe’s sex slave shame: is enough being done to fight human trafficking? *On the Frontline*., available at: <http://www.euronews.com/2014/11/12/europe-s-sex-slave-shame-is-enough-being-done-to-fight-human-trafficking-across/>, last access:06.06.2015.

¹¹² “Not for sale “, available at: <http://notforsalecampaign.org/our-strategy/romania/>,

comply with the minimum standards for the elimination of trafficking” and it is presented in rank Tier2.¹¹³

The country is a major source of trafficking victims in Europe, although it could be seen as both a transit and destination country.¹¹⁴ Most of the victims of human trafficking in the EU have been identified as Romanian citizens and majority of them recognised as victims of transnational trafficking for sexual exploitation.¹¹⁵ Trafficked persons are exploited via forced sexual activities which are similar to prostitution. These sexual exploitations more often take place on the street, in clubs, hotels and in private or public spaces.¹¹⁶

In the last years, the Romanian Government systematically has improved its anti-trafficking law and has conducted a high number of prosecutions.¹¹⁷ Moreover, the Romanian Government has created good partnerships with European counterparts on joint investigations which help the country in the process of eradication of the level of trafficked persons in the state.

The Romanian Criminal code has been amended in the last years. During the period from 2001 to February 2014, trafficking of human beings was criminalised through Law no.678/2001 on “preventing and combating trafficking in human beings”. As a consequence, the Law had been introduced in the Criminal Code in 2009 and 5 years later entered into force (February 2014). Therefore, the new Criminal Code aims to objectify Romanian punitive policy reform as well as to reconsider the sentences. In addition, it aims to adjust the Criminal punishment for traffickers in order to be effective in the current realities. The changes regarding human trafficking could be seen in Chapter VII of Title I

¹¹³ U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, Romania, *Trafficking in Persons Report*, 2014, available at: <http://www.state.gov/j/tip/rls/tiprpt/countries/2014/226803.htm>,

¹¹⁴ Ibid.,

¹¹⁵ GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Romania*, Strasbourg, 2012, p.9

¹¹⁶ C. RIJKEN, A. BOSMA, Deliverable D1.1: *A review of the implementation of the EU strategy on human trafficking by EU members*, TRACE, 2014, p.19

¹¹⁷ U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, Romania-Trafficking in Persons Report, 2013 available at: <http://www.state.gov/documents/organization/210741.pdf>, p.309, last access: 16.06.2015.

of the special part of the New Criminal Code - "Law no. 286 / 17.07.2009, entitled Trafficking and exploitation of vulnerable persons include offenses of trafficking and related offenses and is made with a part of incriminations currently contained in Law no. 678/2001 on preventing and combating trafficking in persons, as amended and supplemented. The incriminations of the New Penal Code are likely to avoid different interpretations and inconsistent practice created by the application of the texts from special criminal law and also representing transposition into internal criminal law obligations under international legal instruments to which Romania is a party."¹¹⁸ The provisions and prescribed penalties are equivalent with these from other severe crimes, such as rape. In the new Criminal Code of July 17 2009, Chapter VII (Trafficking and exploitation of vulnerable persons), the focal point is protection of minors through modern approach following the European and international regulations.¹¹⁹

In 2013, Romanian officers investigated 714 trafficking cases versus 867 cases in 2012. The authorities prosecuted fewer defendants in 2013, compared with the previous years. Moreover, Romanian court convicted 252 traffickers in 2013, against 427 in 2012. The Romanian Government does not separate law enforcement statistics in order to make visible its action against both sex and labour trafficking. In comparison with Bulgaria, the Romanian Government sentenced successfully 59 percent of convicted traffickers in 2013. Moreover in Romania there is no data for incrimination of officers and government employees involved in human trafficking.¹²⁰

According to the data, the Romanian Government has made many efforts to justify the good functioning of the new Criminal Code in the context of human trafficking. It is important to notice that the growing success of this approach has caused an increase of the number of prosecutions of offenders.¹²¹ Moreover, as a relatively new European Union

¹¹⁸Romania: *Institutional and Legal framework*, available at: https://ec.europa.eu/anti-trafficking/member-states/romania-2-institutional-and-legal-framework_en, last access: 18.05.2015.

¹¹⁹ Ibid.,

¹²⁰ Ibid.,

¹²¹ See supra note 116, at 52.

Member State, Romania has implemented the EU legislation for combating trafficking in human beings to a large extent.

However, the geopolitical status and other internal and external factors play significant role as obstacles in the combating of trafficking in human beings, especially for sexual exploitation. One of the major factors is the lack of institutional support for victims.¹²² Another factor is the problem with organised crime and corruption.

3.4.2 Poland- the good example?

Poland is traditionally seen as both a country of origin and country of destination for trafficking of human beings. The access of Poland to the EU and the Schengen Zone has made it an important transit country.¹²³ In the period 2010- 2012 the Polish authorities registered 527 cases of human trafficking and the bulk of them include sexual exploitation.¹²⁴ In large amount of the cases the identified foreign victims come from Ukraine, Belarus, and Bulgaria.¹²⁵

The Polish Criminal Code criminalises all forms of exploitation mentioned in the Palermo Protocol and it does not have distinct regulations for individual forms of exploitation. In addition, it has to be noted that supporting part of legislation is the National Action Plan against human trafficking, first established for the period 2003-2004, but now covering the period of 2013-2015.¹²⁶

¹²² GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Romania, Strasbourg, 2012,p.42

¹²³ A.M.Dyk,Combating Human Trafficking in Poland: When Victims are Lost in Translation, *Washington University Global Studies Law Review*, Vol. 12(4),2013, p793

¹²⁴ Deliverable D1.2: *Review of the media framing of human trafficking*, TRACE,2014,p.29

¹²⁵ See supra note 123, at, 794.

¹²⁶ Due to the narrow character of the paper “The National Action Plan against human trafficking” will not be object of the study;

The Government of Poland successfully complies with the minimum standards for elimination trafficking in human beings, which puts the country in Tier 1, according to the Department of State's Office to Monitor and Combat Trafficking in Persons.¹²⁷

In 2010 Poland made some amendments to the regulations regarding THB in order to extend the definition for THB in the sense that "preparatory-activities are punished as well."¹²⁸ In addition, Poland made efforts to change and reinforce the anti-trafficking legislation because for many years the definition of THB was only mentioned in a document called "Methodological guidance for prosecutors carrying out or supervising cases of trafficking in human beings," issued in 2003. The guidance was not efficient enough and very often neglected by the prosecutors. Therefore, most of the cases of human trafficking for sexual exploitation were prosecuted under Article 204, paragraph 4, which was not connected with THB, but rather sexual exploitation and forced prostitution.¹²⁹

In the current Polish legislation, as it was mentioned above, the definition of THB is embodied into Article 115, Section 22¹³⁰ of the Criminal Code. Article 115, Section 23 defined slavery as a condition of dependency, in which a person is treated as an object of property, and Article 189a, which determined the "parameters of criminal liability for

¹²⁷ "The Department of State's Office to Monitor and Combat Trafficking in Persons, headed by Acting Director Kari Johnstone, leads the United States' global engagement against human trafficking, an umbrella term used to describe the activities involved when someone obtains or holds a person in compelled service," available at: <http://www.euronews.com/2014/11/12/human-trafficking-full-debate/>, last access: 16.06.2015.

¹²⁸ See supra note 116, at.25-33.

¹²⁹ A. M. Dyk, Combating Human Trafficking in Poland: When Victims are Lost in Translation, *Washington University Global Studies Law Review*, Vol. 12(4), 2013, p 798

¹³⁰ 'Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons by means of: (1) violence or unlawful threat, (2) abduction, (3) deception, (4) misleading, the exploitation of a person's mistake or their inability to properly comprehend the action being undertaken, (5) the abuse of a relation of dependence, taking advantage, (6) of a critical situation or state of helplessness, giving or receiving of payments or benefits or its promise to achieve the consent of a person having control over another person – for the purpose of exploitation, even with the person's consent. Exploitation shall include, at a minimum, the exploitation of the prostitution of others, pornography, or other forms of sexual exploitation, forced labour or services, beggary, slavery or practices similar to slavery, servitude or the removal of cells, tissues, or organs against the regulations of the article. Should the perpetrator's behaviour concern a minor, it shall be considered "trafficking in persons" even if this does not involve any of the means set forth in points 1-6 of this article.' (Code of Criminal Procedure, State Gazette 98/20/05/2010, paragraph 626, effective 08.09.2010)

human trafficking”¹³¹. Article 204, Section 3 and Article 203 both are applicable for cases of human trafficking for sexual exploitation. The sentences can be assessed as sufficient in comparison with the serious crime punishment such as rape.¹³²

Moreover, before September 2010, human trafficking was listed under “Crimes against the public order”, but now the position is changed - human trafficking is recognised as a crime against liberty. In addition, because of the comprehensiveness of the Criminal Code, the legislature has the right to cancel certain crimes, where the material elements are equal with the phenomenon of human trafficking, but offence requires less harsh sentences. However, the legislation has significant omission in order to prevent and protect immigrants, victims of human trafficking.¹³³ According to the criminal legislation, the criminalisation of illegal employment of foreigners, including victims of human trafficking for sexual exploitation are not seen as linked to human trafficking legislation and prosecution in Poland.¹³⁴ There are many cases where after the moment the crime came to light, the victim disappeared and the judicial procedure was stopped.¹³⁵ In spite of the fact that the Government made efforts to improve the Polish criminal legislation, it has to be noted that the authorities “did not initially understand that the primary purpose for criminalising human trafficking was to protect victims of exploitation”¹³⁶. In addition, during one of the interviews of Dr. Myria Vassiliadou¹³⁷, she said that the most important thing for the Member States is to “translate and implement European law into the national law,”¹³⁸ in order to combat human trafficking successfully. According to Antonia Maria Dyk, it is not efficient for member states to “incorporate international treaties combating

¹³¹ See supra note 129, at 802.

¹³² U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, Poland -Trafficking in Persons Report, 2014, available at: <http://www.state.gov/documents/organization/226848.pdf>, last access: 16.06.2015.

¹³³ Ibid., p.804

¹³⁴ Deliverable D1.1: *A review of the implementation of the EU strategy on human trafficking by EU members*, TRACE, 2014, p.34

¹³⁵ Deliverable D1.2: *Review of the media framing of human trafficking*, TRACE, 2014, p.31

¹³⁶ See supra note 6, at 805

¹³⁷ Myria Vassiliadou, the current EU anti-trafficking coordinator
<http://www.euronews.com/2014/11/12/human-trafficking-full-debate/>

¹³⁸ See supra note 129

human trafficking into their national law through direct translation”. Poland is a bright example of how the translation of THB, confused judiciary for a long time. There are many criminal proceedings where, even when the victims were identified the law enforcement often met difficulties in order to proceed with criminal investigation.¹³⁹

Although these amendments have not led to increasing the number of prosecutions, the number of offences investigated by the authorities is larger. In 2013, Polish authorities investigated 68 new cases of human trafficking in comparison with 60 in 2012. Moreover, the border guard began up to 10 new investigations. In 2013 the Polish Government prosecuted 48 trafficking offenders but convicted 35 in comparison with 24 persecuted and 39 perpetrators of human trafficking convicted in 2012.¹⁴⁰ On the basis of the data it can be concluded that around of 50% of the convicted offenders received suspending sentences. Therefore, the authorities did not report for corruption or implication of public officials into cases of human trafficking. The Government cooperates in the process of investigation with peers in different EU member states. It is important to be highlighted that the Polish Government organised and financed different trainings for police officers and invited civil society to assist in the project.¹⁴¹ This shows how the Government tries to create a collaborative connection between civil society and authorities in order to extend the awareness of how to fight human trafficking efficiently.

3.4.3 Cyprus- on the bottom of the list

Cyprus¹⁴² is considered to be a country of destination and transit for trafficking in human beings for the purpose of sexual exploitation. A large number of women, especially from Eastern Europe, Latin America, Morocco, and Syria have found themselves victims of human trafficking. Unfortunately, recent tendencies indicate an increasing number of

¹³⁹ See supra note 6, at 805

¹⁴⁰ U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, *Poland -Trafficking in Persons Report,2014*, available at: : <http://www.state.gov/documents/organization/226848.pdf>

¹⁴¹ Ibid.,

¹⁴² In Cyprus, all forms of mediated prostitution are illegal, except individual prostitution in private space.(A. Constantinou ,Human Trafficking on Trail, *Feminist Legal Studies*, Vol.21.,2013,p.165)

trafficked women for sexual exploitation, which is a clear sign for a mismatch between the legislation and its implementation.¹⁴³ Moreover, according to the ranking elaborated by the U.S. Department of States, Office to Monitor and Combat Trafficking in Persons, Cyprus is the only EU member State which is categorised in tier 2 watch list.¹⁴⁴ Despite past efforts to fight human trafficking, Cyprus has failed to implement the necessary reforms in order to protect victims. Moreover, forced prostitution and sexual exploitation of migrants are completely normal cases in the country. According to the US Department report, sex trafficking is widely spread in private apartments and hotels. Therefore, commercial sex trade occurs in bars, cabarets and coffee shops. There are victims recruited with promises of marriage or promises for work as a barmaids and hostesses.¹⁴⁵

The Government of Cyprus does not make enough efforts to comply with the minimum standards for elimination THB. In addition, the Government does not even demonstrate increasing efforts in the field of human trafficking in comparison with the previous years.

As it was mentioned above, in April 2014, the EU Directive 2011/36/EU was implemented into the national legislation. The new national legislation Law 60(I)/2014 was ratified. As a result, the authorities adopted a national Action Plan for combating human trafficking for the period 2013-2015. However, the data shows that there was a “significant decrease in all law enforcement efforts”¹⁴⁶. In 2013 the Government investigated 15 new cases of suspected traffickers (13 cases for sex trafficking and 2 cases for labour trafficking) which is less in comparison with 47 investigated cases in 2012. The number of prosecutions decreased significantly too, in 2012 the authorities’ prosecuted 29 cases involving 60 defendants compared with 7 prosecuted cases for human trafficking with 22 defendants. Moreover, six of the cases “remain under investigation” and other two cases were not prosecuted because they had been classified as other acts. In 2013 only nine perpetrators of human trafficking were convicted in comparison with 20 convicted in 2012. Of the nine,

¹⁴³ “Human Trafficking & Modern-day Slavery”, available at: <http://gvnet.com/humantrafficking/Cyprus.htm>.

¹⁴⁴ U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, *Cyprus*, available at: <http://www.state.gov/documents/organization/226845.pdf>, p.86

¹⁴⁵ Ibid.,

¹⁴⁶ Ibid.,

merely two were convicted for labour exploitation and the remaining were convicted under non-trafficking legislation.¹⁴⁷ It is crystal clear that offenders have received lenient sentences than they deserved. In addition, in spite of the fact that anti-trafficking police unit provided supervision through the court and investigation, the court system behaves in a negative manner to the victim witnesses, and very long trial procedures resulted in narrow numbers of convictions. The Cypriot authorities have problem with the tracking of human trafficking cases which is obstacle for movement through judicial system.¹⁴⁸

The curious fact in the case of Cyprus is that the most of offenders continued to be convicted under regulations which prescribe less strict penalties than it is required under the anti-trafficking legislative regulations. In conclusion, Cyprus authorities identified fewer victims of human trafficking and one of them was deported in a different from legal way.¹⁴⁹

The legal framework of the Cypriot legislation for combating trafficking in human beings has got through specific changes. The new law reconsiders the regulations concerning prevention, protection and exploitation of persons. It established severe sentences for human trafficking offenders, which are harsher in case that the victim is a child. In addition, the new Law provides better punishment for use of illegal services, in case that there are enough circumstances to be defined that the services are provided by victim of human trafficking. The mechanism has replaced “The Law for Combating Trafficking, Exploitation of Human Beings and for the protection of Victims of 2007 (N.87 (I) 2007).¹⁵⁰

The implementation of new law L60 (I)/2014 which follows the requirements of the Directive 2011/36/EU, determines human trafficking as:

“The recruitment, transportation, transfer, harbouring or reception or sheltering 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

¹⁴⁷ Ibid.,

¹⁴⁸ Ibid.,

¹⁴⁹ Ibid.,

¹⁵⁰ *Together Again Trafficking in Human beings, Cyprus 2:Institutional and Legal Framework*, available at: https://ec.europa.eu/anti-trafficking/member-states/cyprus-2-institutional-and-legal-framework_en, last access: 28.06.2015

benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”¹⁵¹

But what does the” purpose of exploitation” mean under the Cypriot Law?

Cypriot legislation interprets the term of “exploitation” rather broadly. It includes the “exploitation of the prostitution of others or forms of sexual exploitation or services including forced labour or services, begging, forced pedlary and it concerns children, it also includes the worst forms of child labour...”¹⁵²

According to the new legislative regulations, all forms of human trafficking are prohibited.

¹⁵³ It is important to be noted that the new legislation L 60 (I)/2014 has incorporated a provision which penalises “the exploitation of a person for the commission of any criminal offense”¹⁵⁴ Moreover, the act of crime of human trafficking is no longer limited to sexual or labour exploitation, but to any act which is penalised under the local Criminal Code.¹⁵⁵

Apart of the harmonisation process of the national legislation under the EU Directive, Cyprus has ratified the “Council of Europe’s Convention on Action Against Human Trafficking” of 2005.¹⁵⁶

All these legislative changes have created a new legal mechanism and new parameters for combating trafficking in human beings for purpose of sexual exploitation, which are not practically effective.

In order to analyse the whole picture in Cyprus, the study is going to overview the situation regarding human trafficking in the north area of the country, which is administrated by Turkish Cypriots. In summary, Turkish Cypriots proclaimed the north part of Cyprus for “Turkish republic of Northern Cyprus” in 1983. The United Nations does not recognise the statute of the new republic, neither the other countries except Turkey. The area

¹⁵¹ Deliverable D1.2: Review of the media framing of human trafficking, TRACE, 2014 p. 22

¹⁵² Deliverable D1.1: A review of the implementation of the EU strategy on human trafficking by EU members, TRACE, 2014, p.30

¹⁵³ See supra note 7

¹⁵⁴ See supra note 8

¹⁵⁵ Ibid.,

¹⁵⁶ Ibid.,

is a “paradise of human trafficking for sexual exploitation” because of the lack of proper legal regulations and mechanisms for combating THB. Cyprus is a destination of increasing number of women from Central Asia, Eastern Europe, and Africa who are victims of human trafficking forced to prostitution in licensed night clubs, regulated by Turkish Cypriots. A large amount of women entered in to “TRNC” from Turkey, with tourist or student visas have trapped into forced prostitution in apartments. Moreover, migrants and refugees as well as their children are at high risk of sexual exploitation.

The area of Turkish Cypriots does not make any efforts to tackle with the demand of sexual services. Therefore, the authorities complicit in the process of facilitating human trafficking and police officers continue keeping the passports upon arrival of women working in night clubs. The “law” combating human trafficking as such does not exist. The procedure for punishment the act of human trafficking is under the Criminal code but it is still pending expert advice. The authorities in the north part of Cyprus do not have records or data for cases of human trafficking, nor specific trainings how to identify cases of human trafficking. In case of forced labour or sexual exploitation against the will of the individual, the act is punishable by one year of imprisonment.

Turkish Cypriot authorities do not make efforts to establish anti-trafficking measures conversely they encourage the process of trafficking for sexual exploitation. It is curious that the authorities do not need shelter for victims of trafficking, because the police immediately deport foreign women who wish to leave their employers to Turkey. Moreover, the authorities do not encourage the victims to assist during the prosecutions against traffickers, and most foreign victims are deported. During the trial, witnesses are not allowed to live in the “TRNC”.¹⁵⁷

Although most of the countries make efforts to increase the level of prosecution, we can see that the process still suffers some difficulties. One of the common problems is the perception to the victims. Romania is very focused on its improvement in order to punish

¹⁵⁷ Ibid.,

the perpetrators more severely, but somehow it neglects the role of victims-the most important in the process of investigation. The same could be concluded for Poland and Cyprus. In spite of the fact that criminal policy has changed its focal point from the perpetrator to the victim, *de facto* countries cannot presume that victims are the key for more effective criminal system. Moreover, Cyprus is a specific example of how the authorities do not take enough actions to eradicate the crime. In the case of Cyprus we can conclude that the country needs external support and control in order to increase the level of efficiency in the prosecution. In my opinion, Cyprus has a special statute in the EU policy. Firstly, it is an offshore zone, secondly Cyprus is a territory for sex tourism and thirdly because of the persistence of the Turkish element in the north part of the island it is difficult for an equal policy for the entire country to be imposed. The geopolitical statute of Cyprus also creates unstable conditions regarding the political control. However, the country is part of the EU and it could be seen as one of the cases where the establishment of the bloc's policy in the context of THB, is unsuccessful.

CHAPTER IV

Case study: Bulgaria between criminalisation and legalisation of human trafficking for sexual exploitation

Bulgaria is a country with many problems in the public sphere. According to latest report of Transparency International¹⁵⁸, it is among the most corrupt member states of the European Union¹⁵⁹. Moreover, the organised crime in Bulgaria cooperates with public authorities at all levels and as it was mentioned above THB for SE is a major business for the organised crime. Although Bulgaria ratified all international mechanisms for combating human trafficking and the Criminal Code criminalised trafficking for sexual exploitation, there is a big gap between theory and practice.

In the first place, the chapter analyses the Bulgarian Criminal Code in order to study the national legal framework which criminalises the act of human trafficking for sexual exploitation. In the second place, the current research is trying to demonstrate to what extent the Directive 2011/36/EU is implemented into the national legislation for improvement of the fight against human trafficking. The chapter also analyses all factors which contribute to the involvement in the crime, in order to find all factors causing the high level of human trafficking and low level of criminalisation. Special attention is paid to the factor organised crime, because it plays a key role as an obstacle for the regular implementation of the national legislation in the fight against human trafficking for sexual exploitation. As a conclusion, the chapter presents the current situation in the fight against human trafficking for sexual exploitation in Bulgaria based on an interview with Mrs Denitsa Boeva, a Bulgarian National Expert in combating

¹⁵⁸ “**Transparency International**”- Non-Governmental Organisation that collaborate with governments, business organisations and citizens in order to eradicate the corruption levels worldwide;

¹⁵⁹ *Bulgaria is among the Most Corrupted EU States*, available at:

<http://www.novinite.com/articles/165169/Bulgaria+Is+Among+the+Most+Corrupt+EU+States+%E2%80%93+Transparency+International>, last access: 18.06.2015.

trafficking in human beings from the National Commission for Combating Trafficking in Human Beings in Bulgaria.¹⁶⁰

4.1 Bulgarian law on criminalisation of trafficking in human beings for sexual exploitation

In 2002 the Bulgarian legislation criminalised the act of “trafficking” in a section IX, Chapter II of the special part of Criminal Code “Trafficking in human beings”, in accordance with Bulgarian obligations under the UN Convention against Transnational Organised Crime (2000).¹⁶¹ In 2003 the country adopted the “The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children” (Palermo Protocol, 2000) and some years later Bulgaria ratified The Council of Europe Convention on Action against Trafficking in Human Beings (2005). In May 2003, as a result of joining the “Palermo Protocol”, the Bulgarian legislation adopted The Combating Trafficking in Human Beings Act. It focuses on prevention and protection of victims, especially women and children as well as defines the role and relationship between Government and NGOs¹⁶²

During the process of integration into the European Union Bulgaria recognised the European Union’s Legal System for combating human trafficking in general. In April 2009, the Criminal code added a new article in the issue of human trafficking (Art.159c new), which criminalised the exploitation of trafficking victims in accordance with requirements of the Council of Europe Convention on against Trafficking.

The evolution of legislation has defined the crime of human trafficking as a relatively new for both Bulgarian and international law? Thus, as a consequence, there are

¹⁶⁰ The interview is conducted on the 8th of April 2015 in Bulgaria (by the author of the current research)

¹⁶¹ *The Travaux Préparatoires of the Negotiations for the Elaboration of the UN Convention against Transnational Organized Crime and the Protocols thereto*, UN Office on Drugs and Crime, New York 2006, p. 347.

¹⁶² National Commission for Combating Trafficking in Human Beings ,*Legislation*, available at: <http://antitrafficking.government.bg/en/%D0%B7%D0%B0%D0%BA%D0%BE%D0%BD%D0%BE%D0%B4%D0%B0%D1%82%D0%B5%D1%81%D1%82%D0%B2%D0%BE/>, last access 04.05.2015.

some complications in the legal formulation and its translation and implementation, and impossibility of using foreign experience in the field.¹⁶³

What is “human trafficking” according to the Bulgarian legislation?

The national definition as provided in Article 159(a) of Section IX of the Criminal Code is formulated in the following way: *“An individual who recruits, transports, hides or admits individuals or groups of people in view of using them for sexual activities, forceful labour or begging, dispossession of bodily organs, tissues, cells and body fluid or holding them in forceful subjection, regardless of their consent, shall be punished by deprivation of liberty of two to eight years and a fine from three thousand to twelve thousand BGN.”*¹⁶⁴

In order to harmonise the definition of human trafficking according the Directive with Bulgarian legislation, it has to be noted that the element of “means” is not incorporated in the domestic law definition which is contradictory in the court practice. In addition, the definition of human trafficking raises other questions concerning contradictions in the process of interpretation. However, in July 2009 the Bulgarian Supreme Court of Cassation¹⁶⁵ answered with an interpretative decision on Section IX of the Criminal Code¹⁶⁶. According to the interpretative decision, the element “means” is removed by the Bulgarian legislator in order to hold more individuals responsible for their criminal acts of human trafficking as there is no coercion or deception to be proven. The Supreme Court of Cassation explained the difference between national and international law by referring to

¹⁶³ И. Пушкарлова, “Трафик на хора. Проблеми на наказателноправния режим”, Сиб, София, 2012, I. Pushkarova, *Issues of The Criminal Regime of Human Trafficking*, Sibi, Sofia, 2012., p.15.

¹⁶⁴ *Criminal Code, SG No. 47/23.06.2009*, entered into force 01.10.2009, available at: http://www.antitrafficking.government.bg/images/documents/Polezna_informacia/EN/1251896607.pdf, last access: 02.05.2015.

¹⁶⁵ The Supreme Court of Cassation is the final court of appeal in the Republic of Bulgaria. According to Article 124 of the Constitution, it exercises supreme judicial supervision over the application of the law in all courts.

¹⁶⁶ Bulgarian Supreme Court of Cassation, Interpretative decision No.2 of 16 July 2009. A summary of the interpretative decision in English is available at: http://www.antitrafficking.government.bg/images/documents/Polezna_informacia/EN/1263815111.doc

the principle of state sovereignty and the state's right to define all elements of the act of crime in order to fulfil the national needs for effectiveness of the legal regulations.¹⁶⁷

Another legal definition of "human trafficking" is given in the Additional Provision (paragraph 1, 2 and 3) of The Bulgarian Trafficking of Human Beings Act.¹⁶⁸ The general opinion is that this definition is more systematic and is closer to the definition given by the Palermo Protocol (Article 2). Nevertheless, because of the purpose of the paper I am going to use the Criminal Code's definition. Moreover, in the same Additional Provision other legal definitions are given, such as "victim means any person who has become subject of human trafficking"¹⁶⁹, and "risk group means a group of individuals who due to their age, sex, social status or the geographical location of the region where they reside pose potential victims"¹⁷⁰. A region which is inhabited by risk groups is defined as a "risk area", and any individual who is less than 18 years old is recognised as a "child".¹⁷¹

The common recognised interpretation of "trafficking in human beings" includes all forms of act under Article 159 (a), Article 159 (b) of the Penal Code. The country whose citizen is a victim" is recognised as a "country of origin" and a "country of destination" is the country where the victim of human trafficking is exploited. Concerning the definition for "domestic and international traffic", it depends on whether the exploitation of victims is within the borders of the country or across the border of Bulgaria.¹⁷²

De jure, Bulgarian law has established good mechanism for identifying human trafficking. However, there is one very interesting and in the same time contradictory part, namely the differentiation between recruitment with purpose for sexual exploitation (Art 159a) and pimping under Art 155(1) of the Criminal Code.

¹⁶⁷ Vladislava Stoyanova, *The Crisis of a Definition: Human Trafficking in Bulgarian Law*, Amsterdam Law Forum, 2013, p 70-71

¹⁶⁸ *Combating Trafficking of Human Beings Act*, Adopted by the National Commission for Combating Trafficking in Human beings, Promulgated, State Gazette, No. 46/20.05.2003, amended SG 86/28.10.2005, effective 29.04.2006, supplemented, S No. 33/28.03.2008, amended, SG No. 74/15.09.2009, effective 15.09.2009

¹⁶⁹ Ibid., Additional Provision, (Paragraph 1)

¹⁷⁰ Ibid.,

¹⁷¹ Ibid.,

¹⁷² Manual for Combating Trafficking of Human Beings" STENO, Bulgaria Varna, 2008, pp. 9-10/ Наръчник за борба с трафика на хора, СТЕНО, Варна, 2008, стр. 9-10.

Trafficking in human beings is a complex crime whose range covers various public relations. They refer to different groups of basic human rights related to various aspects of human freedom, dignity and integrity.¹⁷³

4.1.1. The Act of Human Trafficking

4.1.1.1 Domestic human trafficking

According to its structure, the act of trafficking in human beings can be separated in two parts – national (domestic) and international. The definition of domestic trafficking is embodied in Art 159 (a), paragraph (1) and (2).

Under the Article 159 (a) of the Criminal Code, the act of human trafficking consists of four different forms – recruitment, transportation, harbouring and reception. These forms are different stages of the process of trafficking in human beings. In spite of the fact that under the Bulgarian legislation there is no factual relation between the forms, it is known that the crime starts with the process of recruitment of victims.¹⁷⁴

In theory, “recruitment” means every form of psychological impact from one individual to another, or group of people, in order to achieve one or more goals of the crime.¹⁷⁵ The same statement is interpreted into the Interpretative Decision of the Bulgarian Supreme Court of Cassation (2009), and it is recognised by numerous national courts.¹⁷⁶ It should be noted that one person is victim only if the purpose of participation requires its own exploitation otherwise the participation is interpreted as complicity. Moreover, the element of “long lasting” participation or involvement in organised form with only purpose

¹⁷³ I. Pushkarova, *Issues of The Criminal Regime of Human Trafficking*, Sibi, Sofia, 2012, p.19.

¹⁷⁴ Ibid., p. 41-42.

¹⁷⁵ А. Стойнов, Наказателно право. Особена част. Престъпления против правата на човека. София, Сиела 2006, стр. 229/ A. Stoynov, *Criminal Law. Special Part. Crimes Against Humanity*, Siela, Sofia (2006), p.229.

¹⁷⁶ I. Pushkarova, *Issues of The Criminal Regime of Human Trafficking*, Sofia- Sibi, 2012, p. 42

of exploitation has to be added. The presence of that kind of “long lasting” relation between victim and perpetrator is recognised by the case law.¹⁷⁷

Some Bulgarian judgments accept, as a form of recruitment, the act of cooperation between victim and perpetrator in order to supply documents necessary for crossing a border and temporary settlement, before the process of transportation in the exploitation zone.

Bulgarian case law has some hesitations regarding the question “whether the victim’s activity influences the constituting of recruitment, when her/his contribution to committing a crime is relevant to that of the perpetrator?” The core of these hesitations is a wrong interpretation of the terms “active” and “proactive” behaviour.¹⁷⁸

Bulgarian legal theory and practice defines the form of “transportation” as transportation only by vehicle. The narrow interpretation is based on the original term “*transportation*” by the international legal standards. Under the language of origin the notion describes “Take or carry (people or goods) from one place to another by means of a vehicle, aircraft, or ship”.¹⁷⁹ However, this creates circumstances for artificial limitation of the implementation of Bulgarian legislation and in the process of victim’s protection.¹⁸⁰ As a result, many perpetrators avoid crime liability as moving the victims in an absence of a vehicle. When the victim is adult, the legislation does not have a mechanism to recognise “carrying” as kidnapping under Art.159 (2) of the Criminal Code.¹⁸¹ G. Petrunov indicates three main ways for transportation of victims from Bulgaria - by public transport, by private vehicle and combination between both of them.¹⁸²

¹⁷⁷ Ibid.,p.42

¹⁷⁸ R.Kostadinova, *Human Trafficking - Crime under Bulgarian Criminal Code*, available at; <http://www.nbu.bg/PUBLIC/IMAGES/File/departamenti/pravo/11.pdf>, p.5, last access: 03.05.2015.

¹⁷⁹ Oxford Dictionaries, definition available at: <http://www.oxforddictionaries.com/definition/english/transport>, last access,01.05.2015.

¹⁸⁰ Bulgarian Supreme Court of Cassation, Interpretative decision No.2 of 16 July 2009. A summary of the interpretative decision in English is available at: http://www.antitrafficking.government.bg/images/documents/Polezna_informacia/EN/1263815111.doc

¹⁸¹ Criminal Code SG No. 47/23.06.2009, entered into force, 01.10.2009

http://www.antitrafficking.government.bg/images/documents/Polezna_informacia/EN/1251896607.pdf

¹⁸² Г. Перунов, “Справедлив процес за жертвите на трафик”, Съюз на съдиите в България, София,2009, стр.12 / G.Petrunov, *A Fair Trail for Victims of Human Trafficking*, Bulgarian Judges Association, Sofia, 2009, p.12.

The third form of the process of human trafficking is identified as “harbouring”. The harbouring as such occurs when the location of victim is unknown for relatives and the authorities. The act of harbouring is accomplished when the victim is placed in obscurity. The harbouring is identified in case of communication between victims and their relatives, but the perpetrator deliberately puts limitation for knowing the location. This case is typical for international trafficking in human beings.

When the relatives of the injured party are aware of the victim’s location, but they are unaware of the circumstances around the residency, there is no harbouring under the Bulgarian legislation.

The fourth form of “receipt” is defined in the legal theory as the establishment of a contact with the victim in order for a shelter to be provided for some period of time, subsequent transportation, harbouring, and transfer of other individuals or directly performing activities, helping to achieve some goals of human trafficking.¹⁸³ The definition brings some practical hesitations in order to make clear the distinction between the forms.¹⁸⁴

4.1.1.2. International human trafficking

The international trafficking in human beings is criminalised under Art.159 (b) of the Criminal Code. This crime has an international element because the state of origin and the state of destination are different for the victim. In that reason, the crime always requires at least two different criminal jurisdictions. Unlike the domestic trafficking, the international one is a complex crime consisting of two parts. The first crime is “national traffic” under Art.159 (a) paragraph 1 of the Criminal Code. The second act of crime constitutes the transfer of the injured part through an established international state border. The Bulgarian case law defines that as crossing the national border by the victim.¹⁸⁵ In contrast with the national trafficking, there is no requirement for transportation via vehicle. Moreover, there

¹⁸³ А. Стойнов, Наказателно право. Особена част. Престъпления против правата на човека. Сиела София, 2006, стр. 229/ A. Stoynov, Criminal Law. Special Part, Crimes Against Humanity, Sofia ,Siela 2006, p.230

¹⁸⁴ I. Pushkarova, *Issues of The Criminal Regime of Human Trafficking*, Sibi, Sofia, 2012, p. 57

¹⁸⁵ Ibid., p.63

is no requirement of infringement visa or border regime during the act of crossing the frontier. The international trafficking is distinguished from the smuggling in accordance to Art.280 of the Criminal Code.

Both acts of the crime “trafficking in human beings” are chronologically related. The act of crossing border is functionally subordinated of the first one (traffic).¹⁸⁶

The international trafficking always consists of an action and a crime. The process of international human trafficking is completed when the victim crosses the national border. In addition, the crime of international trafficking in human beings has two subjects. The first one is the injured part and the other is the national border as a line outlining internationally recognised territory.¹⁸⁷

4.1.2. Trafficking for exploitation as a purpose of the crime

The purpose of exploitation outlines the object of the crime “Human Trafficking” under Art.159 paragraph (1) of the Criminal Code¹⁸⁸ which includes debauchery, forced labour, slavery or begging, removal of body organs, tissues, cells and body fluid or keeping in forceful subjection.¹⁸⁹

In regard to the scope of the present research, namely the “criminalisation of trafficking in persons for sexual exploitation under Bulgarian Criminal Code”, only purposes in context of the problem will be used as focal point.

4.1.2.1 Debauchery (sexual exploitation)

The term of debauchery in the Bulgarian Criminal Code has been assumed by the cancelled Penal Code (1956). It was analysed in order to interpret Art 175 (2) of the Penal Code, keeping under criminal liability any individual who has opened or maintained a

¹⁸⁶ Ibid.,

¹⁸⁷ RiskMonitor, *Prostitution and Sexual Exploitation*. Sofia, Risk Monitor, 2010. p.56

¹⁸⁸ Ibid

¹⁸⁹ Vladislava Stoyanova, *The Crisis of a Definition: Human Trafficking in Bulgarian Law*, Amsterdam Law Forum, 2013, p 72

debauchery place. According to the Supreme Court of Cassation' Decision No 897-57-III, the debauchery (sexual) relations are not a result of close or intimate relationship, and the only purpose is erotic or physiological satisfaction. The Supreme Court of Cassation pays attention to the nature of relations whether they are illegitimate or celibate, in order to exclude the possibilities for occurring of debauchery between married couple. Nevertheless when the extramarital intercourse is related with some kind of intimate relationship between man and woman there is no possibility for act of crime.¹⁹⁰

Prostitution and pornography are the most common purposes of sexual activities. Hence, these hypotheses are identified as an act of sexual exploitation according to the international standards,¹⁹¹ and all foreign legislations concerning the relation between prostitution, pornography in the context of sexual exploitation.¹⁹²

The actual case law in Bulgaria relates the purpose of exploitation with future profit by the victim's debauchery. As a result, the legal acts in Bulgaria accept that in a case where the purpose of exploitation is absent but a paid sexual activity exists, then it is irrelevant to talk about trafficking.¹⁹³

On the base of judicial practices and national survey, it could be concluded that most of the victims of human trafficking have been involved in prostitution. The main reason is the profit from business with sex workers.

4.1.2.2 Purpose of forced servitude (enslavement)

The purpose of forced servitude is a subjective act of motivation directed to potential victims in order to adopt behaviour against their own will.¹⁹⁴ The servitude, as such, is characterized with extent of durability and continuity. The purpose of enslavement

¹⁹⁰ I. Pushkarova, *Issues of The Criminal Regime of Human Trafficking*, Sibi, Sofia, 2012, p. 97

¹⁹¹ Directive 2011/36/EU of The European Parliament and of The Council on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims, and replacing Council Framework Decision 2002/629/JHA, 5 April 2011, Article 2,

¹⁹² The legislation of Germany, Italy, Russia and etc

¹⁹³ I. Pushkarova, *Issues of The Criminal Regime of Human Trafficking*, Sibi, Sofia, 2012, p. 98

¹⁹⁴ А. Стойнов, *Наказателно право. Особена част. Престъпления против правата на човека*. Сиела, София, 2006, стр. 231 / A. Stoynov, *Criminal Law, Special Part, Crimes Against Humanity*, Siela, Sofia, 2006, p.231

scopes the behaviour of the injured person, which can be understood neither as forced labour, nor as debauchery.

Moreover, the purpose of forced servitude is formulated in accordance with Article 159a, paragraph 1 of the Penal Code and Section 1 of the Combating Trafficking in Human Being Act. Both formulations have deviation of the international standards. However, all of the acts interpret the same phenomenon and recognised enslavement and forced servitude as synonymous. In addition, Directive 2011/36/EU mentioned “slavery and practices similar to slavery”¹⁹⁵ together with forced servitude, which leads to the conclusion that the main idea of the legislator is to guarantee a protection against the phenomenon no matter of the national jurisdictions.

The enslavement and forced servitude are forms of action which seriously restrict the fundamental rights of human beings. Therefore, this type of exploitation creates circumstances under which the victim is exploited and treated as an object or property which could be sold or inherited.

One specific characteristic of “slavery” is the impossibility of the victim to surcease the act of slavery by their own. In addition, that kind of statute is linked with the position of helplessness. In that reason Article 159a of the Bulgarian Criminal Code covers the state “keeping in forced servitude”.

The main characteristics of forced servitude are high intensity of exploitation and inhumane attitude towards victims. Moreover, according to judicial practice in cases of trafficking with purpose of forced servitude, the victim is sold or submitted for temporary exploitation to different individuals (the control is changed or transferred under the Article 2 of the Directive).

In the cases of enslavement the victim is depersonalised. The perpetrator uses coercive and inhumane measures in order to obey and exploit the victim.

As a result of the mentioned facts concerning exploitation for purpose of forced servitude, there is a high risk for the life and health of the injured individual. In conclusion,

¹⁹⁵ See supra note 42 at Article 2, Paragraph (3),

this type of exploitation has higher degree of public threat in comparison with the other purposes of exploitation in the context of human trafficking.¹⁹⁶

4.2 The Directive 2011/36/EU of the European Parliament and European Council on preventing and combating trafficking in human beings and its implementation into Bulgarian Legislation

This section analyses the implementation of Directive 2011/36/EU into Bulgarian legislation and the following amendments.

A major step in combating trafficking in human beings at European Union level was the adoption of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.¹⁹⁷ The Directive adopts complicated, integrated approach focusing on human rights, victim's rights as well as gender specific issues. It is expected to have considerable impact, once fully transposed by the Member States from 6 April 2013. The purpose is not only law enforcement but also to prevent crime and ensure that the victims of human trafficking have opportunity to recover and reintegrate themselves in the society.¹⁹⁸

Bulgaria, as a member state of the European Union, fully transposed the Directive. However, it has to be emphasised that Bulgaria was late with the implementation of the Directive into the national law.¹⁹⁹ All amendments were published in the State Gazette on 27th September 2013²⁰⁰, issue 84.²⁰¹

¹⁹⁶ I. Pushkarova, *Issues of The Criminal Regime of Human Trafficking*, Sibi, Sofia, 2012. pp. 105-107

¹⁹⁷ Directive 2011/36/EU of The European Parliament and Of The Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA of 5 April 2011, *Official Journal of the European Union L 101/1*, 15.04.2011.

¹⁹⁸ Communication from the Commission to the European Parliament, The Council, The ECOSOC and The Committee of the Regions "The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016", Brussels, 2014, p.3

¹⁹⁹ According to the requirement of the Directive, all member states have to transmit the new regulation by 6 April 2013, but Bulgaria transmitted it in the 27th of September 2013;

²⁰⁰ The Directive is transposed after the deadline because of the long lasting political turmoil.

Bulgarian legislation is amended under the Directive in order to upgrade the standards of the Council of Europe Convention on Action against Trafficking in Human Beings.²⁰² The other provisions of the Directive have already been implemented in previous amendments by other regulations.

The present Section is going to analyse the Draft Bill to Amend Criminal Law in Bulgaria in order to clarify the national legal amendments under the Directive regarding the phenomenon of human trafficking.

The first paragraph of the Bill transposes the requirements in accordance with Art. 8 of the Directive, namely victims of trafficking in human beings to be protected from prosecution or punishment for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subject of trafficking. Paragraph 4 and paragraph 5 of the bill introduces the requirements of Art. 2,(3) and Article 4 (3) of Directive 2011/36 / EU, begging to be added as an independent composition for the crime of human trafficking and to provide an aggravating circumstance where human trafficking is carried out "by officials in the performance of their duties."²⁰³ In the transitional and final provisions of the bill some amendments to the Combating Trafficking in Human Beings Act and Child Protection Act are provided, in accordance with Art. 14 (1) of the Directive (second sentence), concerning the state obligation to provide access to education for child victims and the children of victims of human trafficking. The other amendment is under Art.13 (2) of the Directive for establishment of measures for protection and respects of person subject to human trafficking in an uncertain age, but there is a reason to believe that the person is a child.²⁰⁴

²⁰¹ The National State Gazette, 27.09.2013/84, available at:
<http://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=79027>

²⁰² The Convention was ratified by law in the State Gazette issue 24, 2007 and entered into force on 01.02.2008.

²⁰³ Directive 2011/36/EU, Article 4 (3).

²⁰⁴ Законопроект за изменение и допълнение на Наказателния кодекс, № 302-01-3/ 21.06.2013 г., внесен от Министерски съвет/ Draft Bill to Amend and Supplement the Criminal Code, № 302-01-3/ 21.06.2013, submitted to the Council of Ministers

One and a half years after the amendment to the Criminal Code under the Directive and the vain hopes for improvement in combating trafficking in human beings, Bulgaria is on the first place in terms of quantity of victims of human trafficking for the purpose of sexual exploitation. Moreover, Bulgaria is in the top 5 in the list of countries of origin within the borders of the EU.

The Directive does not bring many special amendments in Bulgarian Criminal Code, except for providing an aggravating circumstance where human trafficking is carried out "by officials in the performance of their duties" which could be used for better criminalisation of trafficking for sexual exploitation than before.

4.3 Where is the gap between “de jure” and “de facto”?

In order to evaluate the current situation in combating human trafficking, the present paper used as sources of information the latest international and regional reports.

According to the Trafficking in persons report (2013) by the US Government²⁰⁵, Bulgaria is a country of origin and, to a lesser extent a transit and destination country for victims of sex trafficking. Unfortunately, Bulgarian Government does not fulfil the minimum standards for the elimination of trafficking, in spite of the efforts to do so, which places Bulgaria in Tier 2 of the Ranking.²⁰⁶

Between 2010 and 2013, the government prosecuted a small number of cases against suspected trafficking offenders, “and the majority of the convicted offenders did not receive a sentence requiring time in prison.”²⁰⁷

In 2012, police investigated 121 cases of human trafficking for sexual exploitations, compared with 119 sex trafficking investigations in 2011. The court prosecuted 91 persons who committed trafficking for sexual exploitation in 2012, versus 102 individuals prosecuted in 2011. In 2012, the government convicted 94 offenders of trafficking for

²⁰⁵ “Trafficking in Persons Report 2013”, the Department of States, USA, July 2013.

²⁰⁶ Ibid.p.65

²⁰⁷ Ibid., p.108

sexual exploitation, in comparison with 95 convicted offenders in 2011. In addition, the percentages of convicted offenders who were sentenced to prison terms remained very low.

The implementation of legislation against public and police officers was not sufficient either. In 2012 the government investigated 5 police officers, who were related to the crime of human trafficking, in comparison with seven investigated police officers in 2011 and 12 officers in 2010.²⁰⁸

Why does the number of prosecuted and convicted sex traffickers remain insufficient in Bulgaria?

To begin with, according to Article 356, Section 1, paragraph 3 of the Bulgarian Criminal Procedure Code²⁰⁹, if the perpetrator confessed the perpetrated crime, a summary proceeding is applied which means that the court has to adjudicate a sentence less than the standard minimum for a similar crime. In cases of human trafficking it could be a fine or suspended sentences, especially when the chance of imprisonment is greater.²¹⁰

The first reason is the complex character of the crime – many executive acts; the geographical distance between the area of recruitment and the area of exploitation requires more than two individuals involved in the process of trafficking. Moreover, the complexity appears when law enforcement authorities disclosed the actors²¹¹ who are trying to hide their activity. In most of the cases the leader scarifies some of the perpetrators at the lower level, in order to protect the perpetrators at the middle and higher level of the group.

The second reason is that most individuals and especially the mass media cannot distinguish between the two similar crimes “human trafficking” and human smuggling (Art.159a-d and Article 280 of the Criminal Code) and the act of human smuggling is

²⁰⁸ Ibid.

²⁰⁹ Bulgarian Criminal Procedure Code, available at: http://antitrafficking.government.bg/images/documents/Polezna_informacia/EN/1251896944.pdf, last access: 18.06.2015

²¹⁰ Denitsa Boeva, National expert in combating trafficking in human beings, interview

²¹¹ Most of the actors are part of the organised crime groups.

recognised as a human trafficking. This tendency is popular among the public administration which provides wrong statistic data and mixes the crimes.²¹²

The third reason is linked to the victim's consent in the process of recruitment. Although the Criminal Code says "independently of the victim's consent", the authorities have a problem to prove the exploitation or to attract the victim as a witness in the Court.

The next reason is the fact that large amount of victims of human trafficking for sexual exploitation remains unidentified. The majority of them are scared to recognise themselves as victims or they cannot identify themselves as such. Hence, many of the cases of human trafficking stay unrevealed and as a consequence authorities are incapable of starting an investigation.²¹³

The last reason which the current study has found is the mistrust of victims in the law enforcement and legal system, as well as in supportive organisation (NGOs and other civil organisations) and institutions.

In conclusion, THB is a transnational crime and the conviction of traffickers faces some obstacles. The first general problem is the collection of evidence. In the bulk of the cases, the criminal proceeding is based on the victim's testimony, but as it was mentioned above, this is quite difficult. Most of the victims do not feel secured and protected and very often they refuse to testify against traffickers, even though in the beginning they consent to collaborate with the authorities.²¹⁴

4.3.1 .What are the main factors contributing to the involvement in human trafficking for sexual exploitation in Bulgaria?²¹⁵

²¹² The Supreme Cassation Prosecution date available at: http://www.prb.bg/media/filer_public/89/d2/89d2c2f6-3f51-4017-a729-087fd2b8f9e0/docs_2771.pdf, last access 18.06.2015

²¹³ Denitsa Boeva, National expert in combating trafficking in human beings, interview

²¹⁴ Ibid.

²¹⁵ Г. Перунов, "Справедлив процес за жертвите на трафик", Съюз на съдиите в България, София, 2009, стр. 16-17/ G.Petrunov, *A Fair Trail for Victims of Human Trafficking*, Bulgarian Judges Association, Sofia, 2009, pp.16-17

On the basis of a national survey, the main reason for involvement in human trafficking is related with psychological problems-drug addiction, psychological and physical harassment.

Very often traffickers take advantage of the drug addicts who are being easily manipulated. Moreover, young women and children who have grown in an unsafe home environment, subject to violation and lack of parental control are a target point for the perpetrators. The absence of family relations makes the involvement in human trafficking easier. The lack of support environment (family, friends, and relatives) as a factor represents 83% of all cases.

Economic factors such as poverty, unsustainable economy, high level of unemployment generate, preconditions for the involvement in sex trafficking. One of the main reasons for the vulnerability of individuals is the lack of money and possibility for a professional development in their own country. The desire for a better life makes them victims of different fraudulent schemes organised by traffickers who use promises such as large salary and secure work abroad to lure them. According to the data, the factor of poverty is the second most important for the involvement in human trafficking.

In Bulgaria, a disturbing factor is the high level of unemployed young people at the age of between 15 and 34. According to data by the National Statistical Institute, the number of unemployed young people is twice as high as the one of unemployed adults.²¹⁶

Socio cultural factors (illiteracy, the collapse of moral values and ethnic discrimination, the influence of media and internet) are another group of reasons contributing to the involvement in trafficking for sexual exploitation. Low level of education and lack of qualification are a factor that facilitates the recruitment of victims. Moreover, the open boundaries between countries in the EU, the development of information technologies, and the different opportunities for travelling established a favourable environment for sex trafficking.

²¹⁶ Employed and Employment Rates of Population Aged 15 years and Over in 2014, available at: <http://www.nsi.bg/en/content/6500/employed-and-employment-rates-national-level-statistical-regions-districts>, last access: 03.05.2015.

The last group of factors comprises the Geopolitical ones and includes international organised crime and geographical position. In 2007 Bulgaria became a member state of the European Union. Since then, the outflow of emigrants has been rising every year. The factor of poverty and high unemployment rate are the main reasons for emigration. Bulgarian emigrants are unqualified in most cases and this contributes to their involvement in human trafficking and sexual exploitation.²¹⁷

All of these conditions contribute to development of human trafficking in Bulgaria because of the high profit from human trafficking for sexual exploitation this crime is attractive for the organised criminal groups. Today, human trafficking for sexual exploitation, as activity of organised crime, remains a significant problem for the development of the country. Bulgarian organised crime generates enormous profits and economic power via well functioning channels and networks for sex trafficking.

One of the main features of the Bulgarian trafficking network is its striving to establish a full control over the whole process of trafficking, from the recruitment to the exploitation. In this regard, some main groups cooperate with other associations working in the sphere of legal or illegal economy. One part of these associations offer services related to the transport of people. Moreover, the main groups control human trafficking and exploitation markets on a national level, and attract other smaller associations, such as separate traffickers controlling networks in smaller areas. The whole network is managed by a central group which is situated abroad. Its main duty is to ensure security for actors which include a wide-spread corruption practice. The corruption of senior government officials and magistrates has different shape such as receiving special status as a client, direct money payments, the transfer of property, etc. As a result, the government does not take any actions in prevention and prosecution the act of crime and perpetrators.²¹⁸

²¹⁷ Г. Петрунов, "Справедлив процес за жертвите на трафик", Съюз на съдиите в България, София, 2009, стр. 32-33/ G. Petrunov, *A Fair Trail for Victims of Human Trafficking*, Bulgarian Judges Association, Sofia 2009, pp. 32-33

²¹⁸ Г. Петрунов, "Основни схеми за изпиране на пари с цел сексуална експлоатация", РискМонитор, София 2009, стр. 65-68/ G. Petrunov, *Main Schemes of Laundering Money Obtained from Human Trafficking*, RiskMonitor, Sofia 2009, pp 65-68

4.3.2. The real situation in Bulgaria in the context of human trafficking

The current situation in Bulgaria in the context of the fight against human trafficking for sexual exploitation is quite complicated. Moreover, Bulgaria is accused by the European Commission not only of its own incapability to cope with the large amount of victims of human trafficking for sexual exploitation and traffickers in Europe, but Bulgaria, as an external boundary of the EU, has the potential to be transformed into a final destination for illegal migrants, organised criminal groups and exploitation of women. For that reason, Bulgarian policy in combating all of the mentioned problems has a significant meaning for the security of the whole EU. In addition, there is a big threat for the civil security, rights, and freedoms.

The right coordination and good evaluation of the fulfilment of the policy are the most important factors in the process of combating human trafficking and protection of victims' rights, because the success cannot be evaluated immediately. Unfortunately, the accurate evaluation as such cannot be provided on the national level because this is the last priority of the authorities. In addition, the problem of human trafficking is not a priority for the Government no matter that it pretends so.

CHAPTER V
CONCLUSION

The aim of this study is to explicitly address one of the gravest crimes against humanity, named trafficking in women for sexual exploitation and its criminalisation by investigating its root causes, the level of corruption as well as the appropriate implementation and harmonisation of EU law across the countries in question, namely Romania, Poland, Cyprus and Bulgaria.

1) Addressing the root causes.

This passage deals with the root causes, their similarities and distinctions across the countries in question. Firstly, despite the efforts of EU institutions to create a sustainable policy for decreasing the level of poverty, Bulgaria and Romania are the leaders in the category of poorest countries among the EU MS. The poverty as such has its negative impact on the institutions engaged in financing new strategies and programs for eradication of THB. Therefore, Bulgaria and Romania still have difficulty to eradicate the high percentage of unemployed women and young people. In addition, both of the countries have unresolved issue concerning political instability, as an important precondition for human trafficking. Poland, as more economically developed country in comparison with Bulgaria and Romania has improved its policy regarding unemployment among women and young people outcompeting of poverty. Cyprus, as a country of destination does not make any efforts in order to regulate the demand of sex services in the illegal area of prostitution. Hence, the eradication of the root causes still remains one of the general problems in the fight against THB for SE in the EU.

2/Level of fighting corruption:

Another core issue in the area of THB for SE remains the level of corruption. In Bulgaria the fight against corruption remains implicit. To high extent the corruption

encompasses criminal justice authorities who blocked the investigation and prosecution of cases of THB. Romanian political instability enlightens the ineffective eradication of the corruption level in the country. The lack of good strategy against corruption could be seen in Poland where the phenomenon is widespread among public authorities. The fight against corruption spreading in Cyprus is not successful either. Its dissemination encompasses politicians, public servants, local authorities, officials and the Police. Unfortunately, the phenomenon of corruption has extremely negative impact in the evaluation process of law effectiveness. All of the countries have suffered from widespread corruption, whose eradication appears to be impossible.

3/ harmonisation and implementation of EU law

The roots causes for THB must be inspected and properly addressed in terms of the level of harmonisation and implementation of EU law in the different countries.

On the one hand, there is the positive side of process of law implementation. The effectiveness of the EU law is related with the harmonisation of legislations, which makes the control upon them easier. Moreover, the transmission of the Directive into the national level contributes to the establishment of high standards of crime control and crime managing, which is essential for the current dimensions of our risk society. In theory, EU legislation for the eradication of the crime of THB for SE has a comprehensive and complete character that establishes the assumption for further effectiveness and success.

The definition is fully complied in the all case countries, but Bulgarian legislation eliminated one of the elements “means” in order to extend the level of prosecution. The country has established comprehensive criminal law on the base of the Directive. In Romania the harmonisation and implementation of the EU law has its positive impact in the number of prosecuted and convicted individuals. Although the number of prosecuted and convicted is insufficient, the data shows progress. In Poland the level of investigated cases has increased since the transmission of the Directive. Cyprus has established severe system for penalisation perpetrators of human trafficking.

On the other hand, the terminology used in the Directive is obscure. Namely, in the process of implementation and harmonisation into the national level, the domestic

authorities translate and interpret law in their own capacity and perception, which contributes to shifting the meaning of the concept, which is the main shortcoming of the EU law. The Penalty system in Bulgaria does not comply with the requirements set in the Directive. Therefore, translation of the law differs from that in the EU legal framework.

Among the authorities in Bulgaria, there is persistent confusion whether the case is regarding a prostitute or victim of human trafficking. In addition, the role of the victim in the trial process is significantly confined and underestimated. There is lack of information among police officials concerning cases of human trafficking. In Romania, despite the efforts, the number of prosecuted and convicted still remains insufficient. Romanian Penal system does not comply with the established conditions by the Directive. In addition, the role of victims in human trafficking is neglected and underestimated during the trial process. The education amongst police officials is not sufficient at all. In the case of Poland, the Directive leads to decreasing level of prosecution. The country does not comply with the Penal requirements and these established for aggravating circumstances of the Directive. Therefore, the lack of institutional support for the victims of human trafficking and undemanding their role is a big shortcoming in Poland. In Cyprus, there is no any evidence that after the transmission, the Directive is implemented in practice. There, the implementation of the Directive in practice does not exist, although Cyprus fully complies with the Directive penal requirements. The country has problems with translation of the EU legislation and the victims' involvement in the judicial trial. Moreover, there is a sharp decrease in the number of prosecuted and convicted perpetrators of THB for SE.

1/ Should we pretend that some countries tolerate human trafficking and what are the main causes for that?

Cyprus is the country which does not fight the THB for SE, what is more, the authorities tolerate the crime. One of the reasons is the highly convoluted distinction between forced and voluntary prostitution. Another one is the judiciary lack of sensitivity and stability over the issue.

Bulgaria tolerates up to some extent the illegality of human trafficking. Because of the relations between organised crime and judicial system in Bulgaria, many cases of human trafficking remain unsolved or supplied convictions are less than the officially published in the Criminal Code. The corruption amongst police officials and border guards contribute to the development of the human trafficking in Bulgaria. Hence, it has to be noted that Cyprus and Bulgaria tolerate the crime of human trafficking for sexual exploitation.

2/ Would it be possible to establish proper strategy in order to eradicate the level of human trafficking in the borders of European Union?

All states will have to establish their own strategy in order to approve the efficiency in the field. Special attention has to be paid to the State's legislation and its implementation. Therefore, EU control on the judicial system of all countries has to be improved for better implementation of law.

In Bulgaria and Romania, a special strategy has to be established for reduction of poverty and unemployment as well as encouraging minorities to participate in the education process. Establishment of a long-term program for cooperation between institutions, NGO's, Civil Society and international organisation would create good policy in order to eradicate the crime's level.

In the case of Poland, a strategy has to be established in order to decrease the level of corruption and improve the work of the judicial system.

Countries of destination such as Cyprus have to consolidate higher control on the state borders, as well as to increase the police surveillance actions in the night clubs, hotels, and brothels. It is necessary to increase the number of criminal investigations in the non-legal sector of prostitution in order to criminalise in early stage the act of human trafficking and its perpetrators. Therefore, countries of demand have to establish severe criminal

procedures for all clients of sexual services. In this regard, if the level of demand decreases, the level of supply will decrease immediately.

For this purpose, the education and training of officials, police officers and border guards has to be extended from all countries, because the authorities are not capable in many cases to recognise the indicators for victimization and do not know how to approach the case professionally.

Therefore, special training concerning the role of victims in the prosecution process would have significant positive result for the implementation of EU law. The cooperation between member states would have positive impact in order to eradicate the crime.

The issue regarding the eradication of human trafficking for sexual exploitation will be in the EU agenda in a very long time, because the problem extends its dimensions every single day.

In conclusion, criminal law procedures and norms have created a well-structured framework incorporated in Directive 2011/36/EU and its further effectiveness relays on the potential changes coming from the political, social and economic development of the Member States.

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