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LAW**

# **Addressing human trafficking in the context of gender-based violence: legal insights**

**BACHELOR THESIS**

**AUTHOR:**

Annija Katrīna Grīnfelde  
LL.B. 2023/2024 year student  
student number B021022

**SUPERVISOR:**

Justīne Elferte, LL.M.

**DECLARATION OF HONOUR:**

I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

(Signed) .....

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## **Abstract**

This thesis explores the complex connection between human trafficking and gender-based violence within the European Union, as well as the legal frameworks that have been established to tackle these issues. Through doctrinal legal research the thesis focuses on the effects of gender-based violence on victims of human trafficking, while acknowledging the disproportionate impact on women and girls. The thesis highlights the shortcomings of legal systems such as inadequate victim protection and procedural mistakes, further advocating for greater global collaboration, victim assistance, societal awareness, protection of vulnerable groups, and gender-sensitive laws and policies. The findings suggest that gender-based violence and the psychological effects of it makes women and girls more vulnerable to manipulation and exploitation by traffickers. Thus, the 1949 UN Convention, the Palermo Protocol, Directive 2011/36/EU, CEDAW, and the Istanbul Convention are especially significant and time to time amendment to successfully address these matters.

**Key words:** human trafficking, gender-based violence, women, girls, sexual exploitation, forced labour, European Union

## Summary

The first chapter, which is divided into two sub-chapters, explores the definitions and nuances of human trafficking and gender-based violence. It starts by defining human trafficking as a transnational organised crime that involves the exploitation of people mostly for financial gain and delving into its historical foundations. The discussion then turns to gender-based violence, emphasising its widespread nature and its strong correlation with gender inequality and inequity. It underscores the difference between gender-based violence and violence against women. This chapter further addresses the challenges of implementing legislation against such violence and looks at the broader cultural attitudes that fuel this issue by analysing case studies and legal viewpoints.

The second chapter, consisting of three sub-chapters, delves into the legal framework surrounding human trafficking and gender-based violence, and respective case-law. The chapter highlights the complex connection between respective issues, with a particular emphasis on women and girls, and underscores the vital role that legal measures play in addressing these issues. The first sub-chapter delves into the analysis of the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. Subsequently, it examines the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Finally, it concludes with an analysis of the Directive 2011/36/EU, the primary legislative tool of the European Union for fighting human trafficking. The second sub-chapter examines the legal tactics used to stop violence against women, with a particular emphasis on the Convention on the Elimination of All Forms of Discrimination against Women and the Istanbul Convention. Thus, via in-depth research, the chapter emphasises how these norms contribute to the development of legislative frameworks that prohibit violence, shield victims, and advance gender equality. With a special emphasis on Article 4 of the European Convention on Human Rights, the third sub-chapter analyses case-law from the European Court of Human Rights concerning cases that include child trafficking, forced labour, and sexual exploitation. This emphasises how responsible governmental entities are to safeguard victims and provide unbiased and just judicial processes.

The third and closing chapter, comprising two sub-chapters, provides an in-depth analysis of the most recent human trafficking trends within the European Union, the ongoing challenges in the fight against human trafficking, while also highlighting its commitment to fighting these issues. Emphasis is placed on the 2022 Report on the progress made in the fight against trafficking in human beings, Statistics, and trends in trafficking in human being in the European Union in 2019-2020, and the EU Strategy on Combating Trafficking in Human Beings 2021-2025.

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## **List of acronyms and abbreviations**

<b>1949 UN Convention</b>	Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CFREU</b>	Charter of Fundamental Rights of the European Union
<b>CoE</b>	Council of Europe
<b>CSW</b>	Commission on the Status of Women
<b>DEDAW</b>	Declaration on the Elimination of Discrimination against Women
<b>DEVAW</b>	UN Declaration on the Elimination of Violence Against Women
<b>EC</b>	European Commission
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>EP</b>	European Parliament
<b>ER-CEDAWV-DV 2011</b>	Explanatory Report to the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence
<b>EU</b>	European Union
<b>EU Anti-trafficking Directive</b>	Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA
<b>EU Strategy</b>	EU Strategy on Combating Trafficking in Human Beings 2021–2025

<b>GBV</b>	Gender-based violence
<b>Istanbul Convention</b>	Council of Europe Convention on the Preventing and Combating Violence Against Women and Domestic Violence
<b>MS</b>	Member States
<b>Palermo Protocol</b>	Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime
<b>Trafficking</b>	Human trafficking; Trafficking in human beings
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations
<b>UNTOC</b>	United Nations Convention Against Transnational Organised Crime

## Introduction

Human trafficking (trafficking) and gender-based violence (GBV) is a complex interrelated phenomena that shapes discussions on human rights, societal systems, and legal frameworks. Their interconnectivity is based on a shared acknowledgment that both trafficking and GBV severely infringe upon the autonomy, dignity, physical and emotional well-being of individuals, particularly those who are marginalised or exceptionally vulnerable in today's society. Furthermore, they involve more than simply individual factors; there are larger institutional and systemic factors at play. Specifically, individuals are vulnerable to both GBV and trafficking as a result of factors such as poverty, gender and ethnic discrimination, immigrant status, limited economic and educational prospects, armed conflicts, and forced displacement.

Instances of exploitation, such as forced labour, sexual slavery, and domestic work, have a greater impact on women and girls compared to men. The roots of this exploitation may be attributed to patriarchal systems, gender disparity, and cultural norms that see women as unable to make impartial decisions. This is supported by the data from 2020, which provides that out of every 10 individuals identified as victims of human trafficking worldwide, around four were adult females and approximately two were females under the age of 18.<sup>1</sup> Consequently, women account for 91% of the victims of human trafficking for sexual exploitation that have been identified, and they are three times more susceptible to abuse compared to male victims.<sup>2</sup> To add, an examination of court cases suggests that trafficked children are almost twice as prone as adults to experience physical or any other kind of severe mistreatment.<sup>3</sup> The vulnerability of victims is heightened by the fact that the tactics used in gender-based violence often overlap with those used in human trafficking. There is also a great deal of similarities between GBV perpetrators and traffickers. For instance, they both employ coercion, intimidation, physical assault, and psychological abuse as means of controlling their victims and instilling fear and reliance.

Regarding the significance of the subject matter of the thesis, trafficking and GBV are used on a large scale in the ongoing conflicts all over the world. Starting with the war in Ukraine, continuing with prolonged hostilities in certain parts of Africa and Central Asia, and ending with the ongoing conflict between Israel and Palestine. Due to the instability, population displacement, and vulnerability, armed groups and criminal networks find it simpler to take advantage of people in crisis zones, which is why trafficking and GBV thrives there. It is possible to broadly categorise traffickers into two categories: traffickers who take advantage of victims in conflict zones and armed organisations that engage in trafficking in war zones.<sup>4</sup> These groups prey on the defencelessness and susceptibility of displaced individuals, which are vulnerable due to the state dysfunctionality and the authorities' self-serving mindset.

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<sup>1</sup> UN Women. Facts and figures: Ending violence against women, available on: [https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures#\\_edn20](https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures#_edn20). Accessed February 9, 2024.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> UNODC. *Global Report on Trafficking in Persons 2022*, p. 53. Available on: [https://www.unodc.org/documents/data-and-analysis/glotip/2022/GLOTiP\\_2022\\_web.pdf](https://www.unodc.org/documents/data-and-analysis/glotip/2022/GLOTiP_2022_web.pdf). Accessed January 31, 2024.

The legal problem of the thesis is that although gender-sensitive approaches have been considered in law and policymaking in recent years, recognizing that women and girls are disproportionately affected, existing legal frameworks and policies still often manage to ignore this connection. In other words, it is more like a problem that is simply put on paper, rather than being practically solved. Furthermore, it is imperative to clarify that the research centres on the European Union (EU), given the extensive scope and regional variation of respective issues. In addition, it is well acknowledged that the fundamental principles of the EU are democracy, human rights, and the rule of law. Thus, it is critical and enthralling to evaluate how these principles align with the present condition of affairs in the EU. Moreover, the thesis can contribute with valuable insights by highlighting the link between trafficking and GBV, demonstrating that despite the EU's encouragement, EU Member States (MS) face serious challenges in dealing with these issues due to deep-rooted and outdated cultural norms, as well as the lack of monetary and human resources.

The author has employed doctrinal legal research to examine the connection between trafficking and GBV. The thesis centres on the examination of the safeguarding of women and girls via international legal frameworks established by the European Union and the United Nations (UN). In order to determine the significance of these frameworks, national laws, conventions, charters, directives, regulations, and guidelines, have been studied thoroughly. To add, an evaluation of court cases is conducted to determine the efficacy of the legal instruments under consideration. In order to understand the sociocultural factors influencing the development of these offences, the author has also conducted historical research. While the study primarily employs qualitative approach, quantitative approach has also been used, particularly in the examination of trafficking statistics within the EU.

The thesis aims to provide an answer to the question: "How does gender-based violence contribute to human trafficking, and what is the legal framework to address such issues?" The purpose of this thesis is to analyse laws that target the issue of human trafficking within the context of gender-based violence. To add, the author seeks to enhance the effectiveness of efforts in preventing, safeguarding against, and prosecuting even harder such criminal activities. It is also imperative to underscore the importance of acquiring knowledge and exercising caution, as well as protecting each other, rather than solely relying on governmental bodies.

Concerning the issues that arose throughout the research, all legal instruments were considered too broad by the author. The author discovered that these instruments prioritised the obligations of countries rather than focusing on potential victims and criminals, hence making it more challenging to find an answer to the research question. However, the most significant obstacles were from an absence of case-law, since it was discovered in several instances that court proceedings concerning trafficking cases, particularly those involving children, were mostly conducted in closed courts due to their sensitive nature. Consequently, the author had difficulties in finding rulings from national courts, mostly owing to the language barrier resulting from judgments being published in languages unfamiliar to her.

The thesis consists of three main chapters. The first chapter delves into the concepts of human trafficking and gender-based violence, offering a theoretical perspective to ensure the reader comprehends the primary issues addressed in the thesis and their underlying causes. In the second chapter, the author has analysed significant legal instruments covering human trafficking and gender-based violence, as well as case-law considering the relevant issues. It is



crucial to note that the Universal Declaration of Human Rights (UDHR), the European Convention on Human Rights (ECHR), and the Charter of Fundamental Rights of the European Union (CFREU) serve as the fundamental instruments that prohibit trafficking. However, since they are very general and do not specifically mention human trafficking, the author has opted for other legal instruments that are particularly relevant to the research issue. Furthermore, it is worth noting that, considering the widespread occurrence of prostitution and sexual exploitation within cases of human trafficking, the author has prioritised an analysis of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949 UN Convention) over the Council of Europe Convention on Action Against Trafficking in Human Beings, while still recognizing the latter's importance. Furthermore, in the third chapter, the author analyses human trafficking patterns in the EU and discusses its actions to combat such crimes.

## 1. Defining human trafficking and gender-based violence

### 1.1 Transnational crime: the phenomenon of trafficking in persons

Human trafficking, alternatively referred to as modern slavery, is a transnational organised crime that exploits individuals by means of coercion, frequently with the intention of generating financial profit. Despite collaborative efforts to combat it, trafficking impacts people of all ages, genders, and origins worldwide. Individuals are more vulnerable to being taken advantage of due to factors such as social disparity, stringent immigration regulations, and economic inequality. According to the information provided in the "Trafficking in Human Beings - Baltic Sea Region Summary Report", the primary method used to attract or force victims into trafficking is via direct interaction with the victim.<sup>5</sup> It is crucial to note that in instances of both trafficking and GBV, the traffickers are often family members or other closely related individuals to the victim. Furthermore, trafficking is a phenomenon that occurs within the organisational structures of factions comprising two distinct types of organised crime. Governance-style, in which traffickers use violence and terror to control areas while operating in many illegal marketplaces; and business-like, which consists of three or more human traffickers that smuggle people on a regular basis.<sup>6</sup> Second, there are two other categories of opportunistic traffickers: individual traffickers and opportunistic associations, which entail regular cooperation between two or more traffickers.<sup>7</sup> Thus, this chapter further explores the various dimensions of human trafficking, including its origins, legal frameworks, and effects, with a focus on human rights and states' obligations under international law.

Although it did not provide a complete definition of trafficking, the 1949 UN Convention was one of the earliest efforts to address human trafficking. It was not until the late 1990s that states started to separate human trafficking from other types of illegal activities, such as assisted illegal migration.<sup>8</sup> By that time, a lot of states had simply refused to acknowledge or even expand their duties under international law regarding human rights, especially when it came to the rights of victims who were foreigners, especially third country nationals.<sup>9</sup> After the Cold War and the collapse of the Soviet Union, the process of economic and political liberalisation resulted in significant transformations.<sup>10</sup> These included the expansion of transportation infrastructure and a shift in focus from conventional security concerns to transnational organised crime.<sup>11</sup> The newly established open borders in Eurasia allowed for the unrestricted movement of people and commodities, both legal and illegal.<sup>12</sup> This sparked

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<sup>5</sup> Council of the Baltic Sea States, Vineta Polatside, Endrit Mujaj, and Mathilda Högling. *Human Trafficking – Baltic Sea Region Round-up Report 2020*, p. 88. Available on: [https://cbss.org/wp-content/uploads/2020/08/CBSS\\_Report\\_25.06.2020.pdf](https://cbss.org/wp-content/uploads/2020/08/CBSS_Report_25.06.2020.pdf). Accessed February 2, 2024.

<sup>6</sup> UNODC, *supra* note 4, p. 48.

<sup>7</sup> UNODC, *supra* note 4, p. 48.

<sup>8</sup> United Nations Human Rights Office of the High Commissioner. *Human Rights and Human Trafficking* (2014): p. 2. Available on: [https://www.ohchr.org/sites/default/files/Documents/Publications/FS36\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/FS36_en.pdf). Accessed February 9, 2024.

<sup>9</sup> Beth A. Simmons, Paulette Lloyd, and Brandon M. Stewart, "The Global Diffusion of Law: Transnational Crime and the Case of Human Trafficking", *International Organization* 72, no. 2 (2018): p. 7. Available on: [https://scholar.harvard.edu/sites/scholar.harvard.edu/files/bsimmons/files/lloydstewarysimmons\\_transnationalcrime\\_io\\_2018.pdf](https://scholar.harvard.edu/sites/scholar.harvard.edu/files/bsimmons/files/lloydstewarysimmons_transnationalcrime_io_2018.pdf). Accessed February 12, 2024.

<sup>10</sup> *Ibid.*, p. 8.

<sup>11</sup> *Ibid.*, p. 8.

<sup>12</sup> *Ibid.*, p. 8.

questions about how well developing countries could regulate their borders and legal systems. As global capitalism grew, the collapse of communism in Eastern Europe made it easier for industries drawn to the region's cheap labour and lax regulations, which in turn led to a rise in sexual labour exploitation.<sup>13</sup> In addition, the fall of the Berlin Wall facilitated the trafficking of women from Eastern to Western Europe, which in turn contributed to the growth of underground marketplaces that traded in drugs, weapons, and organs.<sup>14</sup> In essence, the 1990s' liberalisation increased illicit trade, boosting international crime. This led to heightened awareness of migrant exploitation, particularly in Eastern European nations like Albania, Romania, and Bulgaria since the early 2000s.<sup>15</sup> The consequences of conflicts in countries like Kosovo and Bosnia further complicated the situation, leading to an increase in criminal activities. Human trafficking continued to exist in post-socialist nations, and this problem was made worse by economic difficulties and poverty.<sup>16</sup>

Globalisation and militarisation prompted an increase in international efforts to combat human trafficking. The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime (Palermo Protocol) achieved a significant milestone by becoming the first legal instrument to provide a globally agreed definition of human trafficking.<sup>17</sup> For most, if not all, states and organisations, this protocol has served as the foundation for comprehending the concept of human trafficking ever since it came into force. It has been incorporated into legal and policy documents, as well as national laws. The precise explanation of the notion of human trafficking is provided in Article 3 of the Palermo Protocol, with Article 3(a) stipulating that

'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.<sup>18</sup>

In essence, it refers to the act of abusing one's power to establish physical, and often psychological, dominance over a possible target. This prompts an inquiry about the criteria for determining who qualifies as a vulnerable or readily susceptible individual. According to the UN Background Paper "An Introduction to Human Trafficking: Vulnerability, Impact and Action", there is currently no universally agreed-upon meaning for the words "vulnerable" and

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<sup>13</sup> Wilson Center, Gail Kligman. *Trafficking Women after Socialism: from, to and through Eastern Europe*. Meeting Report 312, presentation at Center for European and Eurasian Studies noon discussion, University of California-Los Angeles, March 11, 2005. Available on: <https://www.wilsoncenter.org/publication/312-trafficking-women-after-socialism-to-and-through-eastern-europe>. Accessed February 12, 2024.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> United Nations Treaty Collection. Status of Treaties. 12. a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. New York, November 15, 2000. Available on: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-a&chapter=18](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18). Accessed February 9, 2024.

<sup>18</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Palermo Protocol), supplementing the United Nations Convention against Transnational Organized Crime (Palermo, 15 November 2000) 2237 U.N.T.S. 319, entered into force January 25, 2003. Available on: <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>. Accessed February 9, 2024.

"vulnerability" in the context of trafficking.<sup>19</sup> When discussing trafficking, the word "vulnerable" is sometimes associated with poverty. However, it is important to note that vulnerability extends beyond just economic conditions. Thus, UN Background Paper have introduced a novel concept of "vulnerability" as

a condition resulting from how individuals negatively experience the complex interaction of social, cultural, economic, political and environmental factors that create the context for their communities.<sup>20</sup>

From a legal standpoint, a vulnerable victim is an individual who possesses specific predispositions toward engaging in illicit behaviour, including but not limited to age, mental or physical disability, gender, pregnancy, health, or other relevant characteristics.<sup>21</sup> The concept of vulnerability is also frequently used to enhance punishment in cases of trafficking.<sup>22</sup> Furthermore, in the second sentence of Article 3(a) of the Palermo Protocol, the fundamental objectives of human trafficking are explained by stating that

[e]xploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>23</sup>

Hence, it can be observed that the *act*, *means*, and *purpose* are the three primary components that make up the concept of human trafficking.

Beyond the above-described primary elements of trafficking, the Office to Monitor and Combat Trafficking in Persons of the United States have identified seven additional components. First, victim consent is meaningless, particularly in the case of minors who are not able to legally provide permission.<sup>24</sup> This provision is also provided by the Article 3(b) of the Palermo Protocol. Second, it focuses on the exploitation and coercion of people also inside a state or within a specific community, and not only to cross-border trafficking.<sup>25</sup> Thirdly, debt bondage is when traffickers use a victim's debt as leverage to force them into forced labour or sexual exploitation.<sup>26</sup> Fourth, the "principle of non-punishment", which provides that victims of human trafficking should not be held accountable for crimes they commit as a result of their trafficking.<sup>27</sup> Fifth, state-sponsored human trafficking. Withholding benefits, changing legal status, disciplining family members, and government employees engaged in illegal actions are some of the examples.<sup>28</sup> Jeffrey Epstein's, American financier, sex trafficker and paedophile, case, including Prince Andrew, Donald Trump, and Bill Clinton, shows how government participation in trafficking networks affect society and people's trust in governments.<sup>29</sup> The

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<sup>19</sup> United Nations Office on Drugs and Crime. *An Introduction to Human Trafficking: Vulnerability, Impact and Action* (2008): p. 68. Available on: [https://www.unodc.org/documents/human-trafficking/An Introduction to Human Trafficking - Background Paper.pdf](https://www.unodc.org/documents/human-trafficking/An_Introduction_to_Human_Trafficking_-_Background_Paper.pdf). Accessed February 10, 2024.

<sup>20</sup> *Ibid.*, p. 69.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> Palermo Protocol, *supra* note 18.

<sup>24</sup> United States Department of State, Office to Monitor and Combat Trafficking in Persons. *Understanding Human Trafficking* (2023): p. 3. Available on: <https://www.state.gov/wp-content/uploads/2023/12/Understanding-Human-Trafficking-Accessible-10.18.2023.pdf>. Accessed February 10, 2024.

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

<sup>29</sup> Time. The Biggest Names from Jeffrey Epstein's Unsealed Court Documents, available on: <https://time.com/6552063/jeffrey-epsteins-unsealed-court-documents/>. Accessed February 14, 2024.

absence of obvious repercussions casts doubt on legal institutions' capacity to combat state-sponsored crime and hold the government responsible, jeopardising government transparency and accountability. Sixth, an unlawful recruitment or use of young soldiers. Such an act in most instances has been done by either government, military, or non-state armed groups.<sup>30</sup> This also covers the serious physical and psychological effects of exploiting minors as labour, services, or sexual slavery in conflict situations. Last but not least, responsibility in the supply chain. Forced labour is used extensively in many economic areas, such as construction, manufacturing, agriculture, fishing, and household work.<sup>31</sup> Although there is no official control over the industry, sex trafficking and other types of trafficking are prevalent in industries like mining and hotel business. However, since World War II, individuals, and non-state actors such as armed groups and multinational businesses have been included in the scope of international law. More precisely, the UDHR reference to "every individual and every organ of society" suggests that it applies to all non-state entities, including businesses.<sup>32</sup>

In conclusion, the crime of trafficking is pervasive and occurs both domestically and abroad, posing a variety of difficulties. As a result, human trafficking is acknowledged as one of the most complex types of criminal activity, necessitating extensive global collaboration and creative approaches. Unfortunately, large businesses and governments are often involved in this crime, which makes it even more difficult to deal with it. Despite this, all groups of society must work together and remain committed to the prevention of trafficking. This demonstrates the critical role that group efforts play in the struggle against exploitation and contemporary slavery.

## 1.2 The concept of gender-based violence

Gender-based violence is a widespread human rights violation that stems from gender inequality and inequity. One may argue that the term "gender-based violence" speaks for itself. Specifically, it entails acts of violence against people based only on their gender. While anybody may become a victim of GBV, women and girls are particularly vulnerable. Thus, it is also critical to stress that gender-based violence against women and violence against women are two distinct but related concepts. The Council of Europe Convention on the Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) provides a more thorough definition of each of these terms in Article 3. According to this Article,

'gender-based violence against women' shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately.<sup>33</sup>

Further, it provides that

'violence against women' is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or

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<sup>30</sup> United States Department of State, Office to Monitor and Combat Trafficking in Persons, *supra* note 24, p. 4.

<sup>31</sup> United States Department of State, Office to Monitor and Combat Trafficking in Persons, *supra* note 24, p. 4.

<sup>32</sup> Universal Declaration of Human Rights (10 Dec. 1948), U.N.G.A. Res. 217 A (III) (1948). Available on: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>. Accessed February 9, 2024.

<sup>33</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence Istanbul, 11 May 2011, *OJ L 143I*, 2.6.2023, p. 7-32. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22023A0602%2801%29>. Accessed February 14, 2024.

suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.<sup>34</sup>

Briefly put, the first notion involves abuse conducted towards a person just for being a female, while the second one covers both gender-based violence and other forms of violence. Thus, with a specific emphasis on the difficulties associated with addressing GBV, this chapter will examine its interplay with legislation, public sentiment, and demographic changes.

The legal system is the principal regulator of GBV, as it establishes penalties, provides assistance to victims, and enforces preventive measures. GBV is internationally defined and addressed by international legal instruments, such as the Beijing Declaration and Platform for Action, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Istanbul Convention, and the UN Declaration on the Elimination of Violence against Women (DEVAW). Thus, it is imperative to first recognize and list the types of violence that are under consideration and are provided by the Istanbul Convention. Chapter V, specifically Articles 33 to 42, define multiple manifestations of violence such as psychological, stalking, physical, forced marriages, sexual violence (including rape), female genital mutilation, forced abortion, sterilization, sexual harassment, aiding, abetting, and "honour" crimes.<sup>35</sup> These types of violence are classified into categories like physical, verbal, psychological, sexual, and socioeconomic, and they also might overlap in situations of domestic abuse and harassment.<sup>36</sup> The Istanbul Convention also identifies four contributing factors to GBV, such as cultural, legal, economic, and political.<sup>37</sup> To add, according to Article 40 of the Istanbul Convention,

[p]arties shall take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, ..., is subject to criminal or other legal sanction.<sup>38</sup>

Furthermore, according to Article 41, Part 2 of the Istanbul Convention, Member States are required to pass legislation or implement other measures to classify the violations listed in Articles 35 to 39 as criminal offences.<sup>39</sup> In order to illustrate the manner in which these forms of GBV and obligations of parties manifest, the author attempts to situate them within the context of a recent incident that occurred at the Jāzeps Vītols Latvian Academy of Music in March 2024. For this purpose, an illustration specifically from Latvia has been selected, given that the country ratified the Istanbul Convention most recently. More precisely, according to the CoE, the ratification took place on January 10, 2024, although there were widespread reports in the Latvian media that the Saeima ratified it already on November 30, 2023, but regardless, this Convention entered into force on May 1, 2024.<sup>40</sup> In March and April 2024, there was a great deal of debate after many students filed complaints about potential sexual harassment by the Academy's male lecturers. However, since verbal harassment is not criminalised in Latvia, a little can be done. Regarding this situation, Juris Stukāns, the Prosecutor General of Latvia,

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<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> Council of Europe. What causes gender-based violence, available on: <https://www.coe.int/en/web/gender-matters/what-causes-gender-based-violence>. Accessed February 14, 2024.

<sup>38</sup> Council of Europe Convention, *supra* note 33.

<sup>39</sup> Council of Europe Convention, *supra* note 33.

<sup>40</sup> Council of Europe Portal, Treaty Office. Chart of signatures and ratifications of Treaty 210, available on: <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=210>. Accessed February 23, 2024.

stressed the importance of ensuring precise wording when amending the criminal law.<sup>41</sup> He claimed that people often believe that there is and always will be a dispute over the interpretation of laws.<sup>42</sup> However, the author argues that Latvia signed the Istanbul Convention already in 2016, which unambiguously suggests a clear understanding of the interpretation of the GBV. Despite the recent entry into force of the Istanbul Convention, Latvia had eight years to amend the criminal law. The delay in initiating this criminalization process raises questions about GBV prioritisation in the legal and political agenda. In the absence of public scrutiny, there is a danger of indefinite delay in the implementation of necessary criminalization measures in Latvia and in EU Member States where the full ratification and implementation in domestic laws has not yet taken place such as Bulgaria, Czech Republic, Hungary, Lithuania, and Slovakia.<sup>43</sup>

Based on the information provided in the preceding paragraph, it can be concluded that the legal systems play a fundamental role in determining society's comprehension and reaction to violence. The task of defining violence extends beyond mere categorization, including the establishment of appropriate penalties for offenders and the pursuit of justice. By explicitly acknowledging GBV within their legal systems, these countries, although having antiquated judicial systems, indicate a continued commitment to outdated ideologies that reinforce harmful societal stereotypes. Upon reflection on the common law system, it becomes evident that the law was intricately intertwined with religious beliefs and cultural attitudes, especially those that favoured males.<sup>44</sup> For instance, a husband was obligated to participate in all legal affairs concerning his wife, such as contracts, lawsuits, and wills, since he was considered her legal representative.<sup>45</sup> Under this system, the husband also had the right to physically or verbally discipline a woman. The continental legal system, notably in France and Germany, also used a fairly comparable approach to structure private and public life.<sup>46</sup> Furthermore, the prevailing paradigm in social psychology has received little attention until the last several decades, especially when it comes to social inequality.<sup>47</sup> Symbolic interactionism is the first theory, hypothesising that men and women would behave in a comparable manner if they occupied the same social roles. Second, majority of research was conducted on only one sex, usually males, prior to the 1970s women's and civil rights movements. The research was predicated on the ideas that either women would act entirely different from men, or that the results would be

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<sup>41</sup> TVNET. Prokuratūra aicina skaidri definēt, kas ir seksuālā uzmākšanās (The Prosecutor's Office calls for a clear definition of what constitutes sexual harassment), available on: <https://www.tvnet.lv/7989051/prokuratura-aicina-skaidri-definet-kas-ir-seksuala-uzmaksanas>. Accessed March 30, 2024.

<sup>42</sup> *Ibid.*

<sup>43</sup> European Parliament, Legislative Train Schedule. EU accession to the Council of Europe Convention on preventing and combating violence against women ('Istanbul Convention') in "A New Push for European Democracy", available on: <https://www.europarl.europa.eu/legislative-train/theme-a-new-push-for-european-democracy/file-eu-accession-to-the-istanbul-convention#:~:text=As%20of%20January%202024%2C%20the,Slovenia%2C%20Spain%20and%20Sweden>). Accessed February 15, 2024.

<sup>44</sup> Vivian C. Fox, "Historical Perspectives on Violence Against Women," *Journal of International Women's Studies* 4, article 2, no. 1 (November 2002): p. 19, available on: <https://vc.bridgew.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1559&context=jiws>. Accessed February 28, 2024.

<sup>45</sup> *Ibid.*

<sup>46</sup> Digital Encyclopedia of European History. Civil Law, a Tool of Masculine Domination, available on: <https://ehne.fr/en/encyclopedia/themes/gender-and-europe/civil-law-a-tool-masculine-domination/civil-law-a-tool-masculine-domination#sommaire-women-s-rights-in-various-legal-systems>. Accessed February 29, 2024.

<sup>47</sup> Jocelyn A. Hollander, and Judith A. Howard, "Social Psychological Theories on Social Inequalities", *Social Psychology Quarterly* 63, no. 4 (2000): p. 339, available on: JSTOR database. Accessed March 2, 2024.

similar irrespective of both sexes.<sup>48</sup> This is supported by the fact that Moskowitz et al. investigated this idea in an authentic environment, such as people's workplaces. The results of their research showed that participants acted more authoritatively while managing others than when interacting informally with their own supervisors or other employees.<sup>49</sup> Conceptually, status determined dominance levels more so than one's gender.<sup>50</sup> In this context men and women may act similarly, but it might also be claimed that since they have different access to resources, their results differ. Furthermore, as per psychologist Albert Bandura's social learning theory, individuals acquire novel behaviours through means of observation, scrutiny, and emulation.<sup>51</sup> This theory outlines the several factors that might influence the emergence of violent behaviour in a person, including their surroundings, media consumption, early life experiences, educational history, family dynamics, and cultural background. It is also supported by two other key EU findings on GBV. Women who had never been abused initially believed that domestic partner abuse against women was rare in the country where they lived.<sup>52</sup> In addition, widespread violence makes it appear normal rather than terrible, thus women do not report it.<sup>53</sup> In cultures with considerable cultural pressure to hide violence "behind closed doors" or regard it as "natural", Krug et al. argue non-lethal violence may go unnoticed.<sup>54</sup>

Contrary to the afore-mentioned, social welfare and cultural influences are not the only factors influencing violence against women. For example, there are differences in the long-term rates of violence against women in Sweden (46%) Finland (47%), Denmark (52%), Poland (19%), according to the European Union Agency for Fundamental Rights.<sup>55</sup> As shown by several studies, including the World Health Organization's briefings on violence prevention, this goes contrary to the idea that increased gender equality lowers violence against women. The "Nordic Paradox" is the term used to describe this finding in social and scientific contexts. In connection with this contradiction, the Nordic region's high rate of violence reporting may be attributed, in part, to the perception that discussing and reporting violent crimes of any kind is commonplace and acceptable there. On the other hand, an alternative idea known as the "backlash theory" claims that certain males get afraid by the growing influence of women and resort to aggressive behaviour in order to preserve their dominance.<sup>56</sup> In light of this, it may be argued that increased gender equality can lessen violence against women, but only to the degree that it challenges traditional male authority.<sup>57</sup> Therefore, the author argues that the current laws and political mechanisms can only limit and punish abusers, instead of changing their way of thinking and attitude. It can be compared to a weed, in the sense that its leaves have been torn

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<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*, p. 347.

<sup>50</sup> *Ibid.*, p. 347.

<sup>51</sup> Simply Psychology. Albert Bandura's Social Learning Theory, available on: <https://www.simplypsychology.org/bandura.html>. Accessed March 1, 2024.

<sup>52</sup> European Union. *EU survey on gender-based violence against women and other forms of inter-personal violence (EU-GBV) — first results 2022 edition* (Luxembourg: Publications Office of the European Union, 2022): p. 6. Available on: <https://ec.europa.eu/eurostat/documents/7870049/15323622/KS-FT-22-005-EN-N.pdf/315d443b-ba8d-e607-3ce0-845f642a8c00?version=1.0&t=1669371271599>. Accessed March 1, 2024.

<sup>53</sup> *Ibid.*, p. 11.

<sup>54</sup> Anne Laure Humbert et al., "Undoing the 'Nordic Paradox': Factors affecting rates of disclosed violence against women across the EU", *PloS One* 16, no. 5 (May 5, 2021): e0249693, doi: 10.1371/journal.pone.0249693. Accessed March 1, 2024.

<sup>55</sup> *Ibid.*

<sup>56</sup> Young Feminist Europe. Digging into the "Nordic Paradox", available on: <https://www.youngfeminist.eu/2020/03/digging-into-the-nordic-paradox/>. Accessed March 1, 2024.

<sup>57</sup> Humbert, *supra* note 54.



off, but the root is still in the ground. Through this comparison, the author asserts that the problem is currently being hidden rather than actually being solved. Moreover, the cognitive processes and interpersonal dispositions towards one another are indicative of society, especially in the context of an ageing population. Particularly, the combination of increased longevity and declining fertility rates is altering population demographics.<sup>58</sup> These structures, which resembled pyramids 50 years ago, with a wide base consisting of youthful age groups and a modest peak of senior individuals, are now changing into an inverted pyramid.<sup>59</sup> It is concerning as the younger generations are the ones who are incredibly vocal about injustice. Acknowledging the interdependence of GBV and forms of discrimination, including ableism, racism, homophobia, transphobia, and socioeconomic inequality, their endeavours to combat GBV are distinguished by a profound comprehension of intersectionality. To advance gender equality, they also advocate for the implementation of comprehensive sex education in schools. Additionally, young activists use social media as a powerful tool to further their goals of advancing education and preventing violence. However, given the statistics of an ageing population, the author believes that there is a high possibility of GBV advances slowing down. In fact, it is already evident that certain governments are actively trying to limit women's ability to make choices about their reproductive health and their participation in public life. This includes the imposition of limitations on reproductive rights in the United States, the opposition to feminism in South Korea, the targeting of women's rights activists and organisations by Poland's government, and Chinese censorship of feminist content.<sup>60</sup> To add, in the 2023 Annual Report of the Secretary-General on Women and Peace and Security, the UN Secretary-General, António Guterres, highlighted the ongoing difficulty of fully including women in peace initiatives. This aspect warrants significant attention, as their exclusion from peace negotiations, unresolved criminal cases, and autocratic rule exacerbates persistent hostilities worldwide.<sup>61</sup>

To conclude, GBV is an ongoing and widespread issue. Laws are essential in combating such violence, defining its scope, holding offenders accountable, and offering victim assistance programmes. Recent events, however, emphasise the need of exact phrasing and swift action to close loopholes in the domestic legal frameworks. The dynamics that govern violent behaviour have been clarified by recent advances in gender studies and social psychology, which emphasise the importance of upbringing, environment, and cultural norms. Ageing populations and other demographic shifts make it harder to make advances over time and might lessen the influence of younger generations' advocacy efforts. In the end, combating gender-based violence requires ongoing diligence and coordinated efforts to push social norms, advance gender equality, and harmonise legal systems with international standards.

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<sup>58</sup> OECD. *Trends Shaping Education. Chapter 1: Ageing OECD Societies* (2008): p. 14. Available on: <https://www.oecd.org/berlin/41250023.pdf>. Accessed February 15, 2024.

<sup>59</sup> *Ibid.*, p. 18.

<sup>60</sup> Human Rights Watch. *The Global Backlash Against Women's Rights*, available on: <https://www.hrw.org/news/2023/03/07/global-backlash-against-womens-rights>. Accessed February 15, 2024.

<sup>61</sup> United Nations Security Council. *Women and peace and security: report of the Secretary-General* (2023): p. 1. Available on: <https://documents.un.org/doc/undoc/gen/n23/279/08/pdf/n2327908.pdf?token=7FhloK2rHKD9ukcOmD&fe=true>. Accessed February 17, 2024.

## 2. Legal framework of human trafficking and gender-based violence

GBV and trafficking primarily affect women and girls who are subjected to abuse that deprives them of their dignity and autonomy. Thus, by examining international legal instruments and court rulings, the chapter highlights the diversity and challenges in the legal sphere and thus advocates for strong legal measures targeting GBV within the complex framework of human trafficking. It is important to note that the legal instruments analysed in this chapter are largely based on the UDHR, ECHR and CFREU, considering that they define the very foundations of human rights and their scope.

### 2.1 Analysis of anti-trafficking laws

#### 2.1.1 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others

The 1949 UN Convention is an universal instrument that was adopted on March 21, 1950, in New York, USA, entering into force on July 25, 1951; with 25 Signatories and 82 parties as of April 16, 2024.<sup>62</sup> The Convention itself consists of 28 Articles and its purpose is to prohibit discriminatory practices, promote gender parity, educate the public, support reintegration efforts, and severely penalise the use of child pornography in order to prevent illicit prostitution and generally discourage involvement in such activities.<sup>63</sup> This Convention is applicable to the 82 parties in which it has been legally enforced, including all EU Member States with the exception of Denmark.<sup>64</sup> National courts are the proper courts to address disputes between nations over the subject matter; the International Court of Justice is consulted in cases involving technical or interpretive difficulties.

Firstly, it is important to note that this treaty was ratified 49 years before the recognition of human trafficking as a separate and distinct concept. Thus, the 1949 UN Convention does not provide a specific definition of human trafficking. However, it does encompass actions and intentions that align with the official definition outlined in the Palermo Protocol. Given the Convention's specific emphasis on sex trafficking, it emphasises that prostitution and human trafficking for prostitution have a detrimental impact on human dignity and pose risks to individuals, families, and communities.<sup>65</sup> Subsequently, Article 1 of the 1949 UN Convention outlines the penalties imposed on individuals who coerce or manipulate another individual into engaging in prostitution, irrespective of the manipulated individual's consent.<sup>66</sup> In accordance with Article 2, the Convention also imposes penalties on individuals who aid and abet those

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<sup>62</sup> United Nations Treaty Collection. Status of Treaties. 11. a Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. New York, March 21, 1950. Available on: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=VII-11-a&chapter=7&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=VII-11-a&chapter=7&clang=en). Accessed March 8, 2024.

<sup>63</sup> Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (Lake Success, New York, 21 Mar. 1950) 96 U.N.T.S. 271, *entered into force* 25 July 1951. Available on: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-suppression-traffic-persons-and-exploitation>. Accessed March 8, 2024.

<sup>64</sup> United Nations Treaty Collection, *supra* note 62.

<sup>65</sup> Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, *supra* note 63.

<sup>66</sup> Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, *supra* note 63.

who are subject to punishment under Article 1.<sup>67</sup> This includes individuals who operate, finance, or rent out brothels where others can engage in prostitution.<sup>68</sup> In relation to matters of an international nature and complicity, Article 4 grants authorization for the imposition of penalties for deliberate international involvement in particular transgressions, as permitted by domestic legislation.<sup>69</sup> It establishes that complicity may be regarded as a distinct offence when required to prevent impunity. Article 5 guarantees that foreign nationals, who have been harmed by offences specified by the UN Convention, are entitled to partake in legal proceedings as nationals, without any form of discrimination.<sup>70</sup> In addition, in accordance with the laws of the country, Section 7 specifies that foreign convictions for certain crimes may be examined to ascertain whether a person has committed a repeat offence or to restrict their civil rights, such as the right to vote.<sup>71</sup>

Furthermore, Articles 8 and 9 create a system of responsibility by permitting the extradition or domestic prosecution of those who commit activities that violate the UN Convention, with Article 10 providing a legal exception for state prosecutions to prevent double jeopardy.<sup>72</sup> The 1949 UN Convention does not influence a State's position on its worldwide legal jurisdiction to address criminal proceedings, as stated in Article 11.<sup>73</sup> Furthermore, Article 12 emphasises that the agreement does not change the basic principle that each state is responsible for identifying, investigating, and punishing those who commit the offences specified in the treaty, in accordance with its own domestic legal framework.<sup>74</sup> The basic concept underlying these provisions is that the 1949 UN Convention imposes on States the responsibility to identify, prosecute, and address criminal offences. In relation to the repercussions for offenders and the responsibilities of governments, it is noteworthy to mention that the final protocol stipulates that if a nation has stricter legislation than that delineated in the Convention against human trafficking and prostitution, said legislation shall persist in force and remain unaffected by the Convention.

In addition, the 2023 report by the European Parliament (EP) on the regulation of prostitution, which has been created within the framework of the afore-mentioned Convention, advocates for thorough legislation and collaboration across the European Union, condemning both prostitution and trafficking.<sup>75</sup> Various countries choose varying strategies. For instance,

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<sup>67</sup> Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, *supra* note 63.

<sup>68</sup> Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, *supra* note 63.

<sup>69</sup> Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, *supra* note 63.

<sup>70</sup> Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, *supra* note 63.

<sup>71</sup> Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, *supra* note 63.

<sup>72</sup> Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, *supra* note 63.

<sup>73</sup> Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, *supra* note 63.

<sup>74</sup> Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, *supra* note 63.

<sup>75</sup> European Parliament. *Report on the regulation of prostitution in the EU: its cross-border implications and impact on gender equality and women's rights*. A9-0240/2023, Procedure: 2022/2139(INI), August 30, 2023. Available on: [https://www.europarl.europa.eu/doceo/document/A-9-2023-0240\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-9-2023-0240_EN.html). Accessed March 8, 2024.

Austria, Germany, and the Netherlands opt to legalise all types of prostitution, but Sweden, France, Spain and Ireland adhere to the Nordic/Equality model, which involves decriminalising prostitutes but penalising buyers.<sup>76</sup> Empirical data substantiates that the use of the Nordic/Equality model has positive outcomes, although it may not always be the case.<sup>77</sup> The EP has also addressed the importance of families to be included in addressing child abuse since research has shown that it is one of the main reasons of prostitution normalisation.<sup>78</sup> In order to combat human trafficking, it is also necessary to tackle issues of poverty, social exclusion, and economic development. This would provide equitable labour laws, social security, and opportunity for everyone.

### 2.1.2 Palermo Protocol

One of the primary legal tools in the battle against human trafficking, is the 2000 United Nations Convention Against Transnational Organised Crime (UNTOC) and its protocols. It was adopted in Palermo, Italy on November 15, 2000, came into effect on September 25, 2003; and as of April 16, 2024, it has 117 signatories and 182 parties.<sup>79</sup> The general provisions, protection of victims of human trafficking, prevention, collaboration, and other measures, and final provisions make up the four major sections of the protocol and it consists of 20 Articles in total. According to Article 2 of the Palermo Protocol, its main purpose is to proactively prevent and fight trafficking, with a specific focus on women and children.<sup>80</sup> It also aims to safeguard and provide support to victims, while also fostering collaboration among participating countries. Consequently, the Convention initially applies exclusively to the 182 parties, including all 27 EU Member States. If there are any disputes between countries over the interpretation of this Convention, the International Court of Justice serves as the appropriate legal body to resolve them. However, the provisions that fall under the Palermo Protocol are primarily resolved in the national courts.

As previously mentioned, the first globally accepted definition of the term "human trafficking" was adopted within the Palermo Protocol. The full definition of this concept is provided in the first sub-chapter of the first chapter of the thesis; therefore, it will not be restated here. The exploitation most of the time occurs against the will of the person. However, even when the victim does grant permission, it is usually not taken into consideration or recognized legally, especially if the consent was given by someone under the age of 18. This concept is a crucial tool for recognizing all types of exploitation that go under the umbrella of human trafficking, as well as for identifying victims of any gender or age. To be more precise, the definition's act-means-purpose model serves as a tool for figuring out whether a certain circumstance qualifies as human trafficking. Human trafficking occurs when a perpetrator, often referred to as a trafficker, does any of the "actions", listed in the definition, and then employs coercion, fraud, or force as "means" to compel the victim to engage in commercial sexual activities or provide labour or services.<sup>81</sup>

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<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*

<sup>79</sup> United Nations Treaty Collection, *supra* note 17.

<sup>80</sup> Palermo Protocol, *supra* note 18.

<sup>81</sup> Greater New Orleans Human Trafficking Task Force. What is Human Trafficking, available on: <https://www.nolatrafficking.org/what-is-human-trafficking>. Accessed February 8, 2024.

Article 1 of the Palermo Protocol explicitly states that it is meant to complement the UNTOC and highlights the need of ensuring consistent interpretation.<sup>82</sup> Additionally, the states are allowed to make appropriate amendments as needed based on the *mutatis mutandis* principle. Furthermore, Article 1 of the Palermo Protocol explicitly recognizes that the crimes mentioned under Article 5 are subject to the jurisdiction of the UNTOC.<sup>83</sup> Additionally, it is essential to note that Article 3 of the Palermo Protocol establishes the fundamental principles, such as the definition of human trafficking, the significance of consent, and the importance of safeguarding children. These principles serve as criteria to determine the applicability of the Palermo Protocol in a specific situation. The Palermo Protocol, as stated in Article 4, applies to crimes specified in Article 5, and these offences must have an international nature and include an organised criminal group.<sup>84</sup> This distinguishes the Palermo Protocol from the two previous legal instruments, which were mentioned briefly. Thus, it is crucial to note that the EU defines an "organised criminal group" as

a structured group of three or more people, existing for a period and acting cooperatively with the aim to commit one or more serious crimes or offences.<sup>85</sup>

Likewise, an "organised criminal group" is defined under UNTOC as an established group of three or more people.<sup>86</sup> Therefore, it may be inferred that this legal instrument is not applicable to instances of trafficking that occur inside the same country and involve just one or two individuals.

With respect to the criminalisation of these acts, as specified in Article 5, each State Party to the Agreement must enact legislation designating as unlawful, when committed knowingly, the activities specified in Article 3 of the Protocol.<sup>87</sup> In other words, MS must pass laws that make it illegal to intentionally commit the offences listed in Article 3. However, it could be argued that several factors influence the effectiveness of the Palermo Protocol and the legal liability for its acts. The effectiveness of combating trafficking is influenced by several variables, such as inadequate law enforcement, the global nature of the problem, difficulties in identifying and assisting victims, and the need for preventive measures. While it plays a crucial role in facilitating global cooperation, the efficacy of this instrument is hindered by shortcomings in victim support, enforcement, and preventive actions.

The anti-trafficking programmes implemented based on the Palermo Protocol have mostly been ineffective in meeting expectations, as shown by the growing number of victims.<sup>88</sup> Under the framework of the Palermo Protocol, there has been a disproportionate focus on prosecution rather than prevention, resulting in an imbalance in the emphasis placed on the three P's: Prevention, Protection, and Prosecution.<sup>89</sup> Thus, the author notes that

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<sup>82</sup> Palermo Protocol, *supra* note 18.

<sup>83</sup> Palermo Protocol, *supra* note 18.

<sup>84</sup> Palermo Protocol, *supra* note 18.

<sup>85</sup> European Union. Glossary: organised criminal group, available on: [https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/organised-criminal-group\\_en](https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/organised-criminal-group_en). Accessed March 8, 2024.

<sup>86</sup> UNODC, *supra* note 4, p. 48.

<sup>87</sup> Palermo Protocol, *supra* note 18.

<sup>88</sup> UNU Macau. The Palermo Protocol Turns 20: Failures of the Past and Shifting Paradigms for the Future, available on: <https://unu.edu/macau/news/palermo-protocol-turns-20-failures-past-and-shifting-paradigms-future>. Accessed March 17, 2024.

<sup>89</sup> *Ibid.*

multidisciplinary collaboration is necessary to move away from prosecution-focused strategies and towards more successful approaches to end human trafficking.

### 2.1.3 Directive 2011/36/EU on combating human trafficking

Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (EU Anti-trafficking Directive) is the main EU regulation targeting human trafficking and has to be viewed within the framework of the Treaty on the Functioning of the European Union, particularly in relation to Articles 82(2) and 83(1).<sup>90</sup> It is composed of 25 Articles that define respective crimes and aim to prohibit trafficking, protect victims' rights in criminal procedures, prosecute traffickers, and establish national rapporteurs. This is a very special legal instrument, as it takes into account both the rights of children and the gender perspective.<sup>91</sup> The purpose of the EU Anti-trafficking Directive as stated in Article 1, is to provide minimum standards for the classification of crimes and their corresponding penalties in the context of human trafficking.<sup>92</sup> Furthermore, EU directives are binding on all MS, while their national authorities have flexibility in determining how to integrate them into respective national laws. That said, Ireland has expressed its desire to participate in this EU Anti-trafficking Directive, whereas Denmark has opted not to include it.<sup>93</sup> The national courts of the EU Member States must have the authority to decide on matters pertaining to the EU Anti-trafficking Directive. The Court of Justice of the European Union has the jurisdiction to provide clarification in cases where there are technical disagreements or ones over interpretation.

The EU Anti-trafficking Directive acknowledges the existence of gender disparities in trafficking and the need for customised assistance. It also recognizes that the motives behind trafficking differ depending on the industry, such as sexual or labour exploitation in industries like construction, agriculture, or domestic servitude.<sup>94</sup> Thus, trafficking is considered a severe criminal offence carried out in conjunction with organised crime under Article 1 of this EU Anti-trafficking Directive.<sup>95</sup> As a result, the “push” and “pull” factors are also acknowledged. Push factors refer to the circumstances or conditions that motivate a population to depart from their place of origin, whereas pull factors are the variables that attract a population to relocate to a different region or location.<sup>96</sup> The essential elements of trafficking that must be considered when trying to prevent and address cases of human trafficking are specified in Article 2 of the EU Anti-trafficking Directive. Thus, the following may be concluded. Firstly, being in a “position of vulnerability” refers to the state of being compelled to do action due to a lack of other options.<sup>97</sup> Secondly, the act of exploiting someone involves using force or manipulation

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<sup>90</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, 15 April 2011, *OJ L 101/1-101/11; 15.4.2011, p. 1-11*. Available on: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32011L0036>. Accessed March 27, 2024.

<sup>91</sup> *Ibid.*

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*

<sup>94</sup> *Ibid.*

<sup>95</sup> *Ibid.*

<sup>96</sup> Oxford Reference. Push-and-pull factors, available on: <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803100355608>. Accessed March 29, 2024.

<sup>97</sup> Directive 2011/36/EU, *supra* note 90.

to make them engage in activities they do not consent to, such as engaging in sexual acts for money or compelling them to work.<sup>98</sup> The legality of any possible agreement to provide such labour or services must be assessed on an individual basis for each unique circumstance, taking into account the relevant case-law. However, it is still considered criminal to exploit someone if they were tricked or forced into it, even if they give their permission.<sup>99</sup>

According to Clause 8 of the recital, while carrying out this EU Anti-trafficking Directive, the child's best interests should be given priority, in line with the 1989 United Nations Convention On the Rights of the Child and the European Union Charter of Fundamental Rights.<sup>100</sup> Referring to the afore-mentioned, any apparent permission from a minor has no legal power. It follows from this that children are given special protection within this EU Anti-trafficking Directive because they are deemed to be especially vulnerable.<sup>101</sup> This principle remains valid even in cases where the age of the human trafficking victim is disputed, but there are signs suggesting that the individual may be under the age of 18.<sup>102</sup> After examining the pertinent EU Anti-trafficking Directive in general, the author have come to the conclusion that Article 4 punishes human trafficking, particularly when it involves vulnerable victims like children, and that Articles 13 to 16 essentially help child victims by giving priority to their needs and, if needed, appointing guardians.<sup>103</sup>

The EU Anti-trafficking Directive jurisdiction extends to the corporate responsibility regarding human trafficking discussed in the first subsection of the first chapter of the thesis. Specifically, Article 5 stipulates that organisations might face legal charges for offences committed on their behalf by individuals responsible, even if they failed to properly supervise the conduct of the individuals.<sup>104</sup> According to Article 6, states are required to penalise companies that are proven guilty under Article 5 by implementing measures such as denying them public benefits, imposing temporary or permanent bans on their commercial activities, subjecting them to judicial supervision, shutting down establishments used for the offence.<sup>105</sup> In addition to that, Article 7 states that states must authorise authorities to seize assets connected to the offences mentioned in Articles 2 and 3.<sup>106</sup> Article 10 establishes the authority of Member States on the specific offences mentioned in Articles 2 and 3. MS are obligated to assert jurisdiction if the crime is committed inside their territory or if the criminal is a citizen.<sup>107</sup> Moreover, it grants MS the authority to extend their legal authority in certain situations, such as when a crime affects one of their residents or when it benefits a legal entity operating inside their territory.<sup>108</sup> Member States possess the jurisdiction to prosecute offenders, even if the act committed is not considered a crime in the state where it took place. Additionally, they have the power to prosecute criminals when specific proof, such as a victim's statement or a formal accusation from a state, is required for the legal proceedings.<sup>109</sup> Provisions on the definition of

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<sup>98</sup> Directive 2011/36/EU, *supra* note 90.

<sup>99</sup> Directive 2011/36/EU, *supra* note 90.

<sup>100</sup> Directive 2011/36/EU, *supra* note 90.

<sup>101</sup> Directive 2011/36/EU, *supra* note 90.

<sup>102</sup> Directive 2011/36/EU, *supra* note 90.

<sup>103</sup> Directive 2011/36/EU, *supra* note 90.

<sup>104</sup> Directive 2011/36/EU, *supra* note 90.

<sup>105</sup> Directive 2011/36/EU, *supra* note 90.

<sup>106</sup> Directive 2011/36/EU, *supra* note 90.

<sup>107</sup> Directive 2011/36/EU, *supra* note 90.

<sup>108</sup> Directive 2011/36/EU, *supra* note 90.

<sup>109</sup> Directive 2011/36/EU, *supra* note 90.

offences and penalties linked to human trafficking are outlined in Articles 1 and 4 of this EU Anti-trafficking Directive. The MS are obligated to guarantee that trafficking offences carry a minimum jail sentence of five years, and for more severe instances, such as trafficking of a child, the minimum penalty should be for a period of 10 years.<sup>110</sup> If state officials commit a violation while carrying out their official responsibilities, it is regarded as an aggravating factor.<sup>111</sup> Furthermore, the punishments for these offences must be effective, just, and serve as a preventive measure, perhaps including extradition.

Regarding the efficacy of the legal instrument, the EP in the EU Anti-trafficking Directive's Revision has determined that, despite advancements in the execution of measures, human trafficking continues to be a profitable criminal activity that mostly targets women and girls.<sup>112</sup> Recently, there has been an increase in the usage of emerging digital technologies to establish connections with potential victims. Despite the European Commission (EC) and the European Parliament's persistent demands for sanctions to be enforced against those who knowingly engage in trafficking services, both traffickers and customers of such services continue to avoid significant punishment.<sup>113</sup> However, the amendments have been proposed to improve the existing rules, seal any potential loopholes, and reduce the differences between the systems of EU Member States.<sup>114</sup>

## **2.2 Legal strategies for combating violence against women**

### **2.2.1 Convention on the Elimination of All Forms of Discrimination against Women**

While it is true that there is a need for states to protect equal rights for both men and women, it is important to note that just acknowledging women's individuality has never been sufficient in guaranteeing their rights. Consequently, the establishment of the Commission on the Status of Women (CSW), which analyses human rights treaties from a gender perspective, creating important declarations and conventions that protect women's rights, took place on June 21, 1946.<sup>115</sup> In the 1960s, the United Nations acknowledged the need of tackling gender discrimination in a more comprehensive way.<sup>116</sup> As a result, the Declaration on the Elimination of Discrimination against Women (DEDAW) was adopted on 7 November 1967.<sup>117</sup> The DEDAW had a significant influence in challenging the social stigma and establishing worldwide acknowledgment of violence against women as a breach of human rights, despite its lack of legal enforceability.<sup>118</sup> Efforts persisted and ultimately resulted in the United Nations General Assembly adopting the Convention On the Elimination of All Forms of Discrimination

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<sup>110</sup> Directive 2011/36/EU, *supra* note 90.

<sup>111</sup> Directive 2011/36/EU, *supra* note 90.

<sup>112</sup> European Parliament. *Revision of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims* (2023): p. 1. Available on: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/740213/EPRS\\_BRI\(2023\)740213\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/740213/EPRS_BRI(2023)740213_EN.pdf). Accessed March 31, 2024.

<sup>113</sup> *Ibid.*

<sup>114</sup> *Ibid.*

<sup>115</sup> UN Women. Short History of CEDAW Convention, available on: <https://www.un.org/womenwatch/daw/cedaw/history.htm>. Accessed April 25, 2024.

<sup>116</sup> *Ibid.*

<sup>117</sup> *Ibid.*

<sup>118</sup> Council of Europe Portal. Instruments and measures adopted by the United Nations, available on: <https://www.coe.int/en/web/gender-matters/united-nations>. Accessed April 25, 2024.



against Women on 8 December 1979.<sup>119</sup> The treaty came into force on September 3, 1981, representing a significant achievement in global efforts to safeguard women's rights.<sup>120</sup> Definition of discrimination, reproductive rights, social reforms, maternal protection, and a variety of other subjects are addressed in the Preamble and 30 Articles of the CEDAW.<sup>121</sup> Moreover, monitoring the observance of the Convention by states is a critical function of the CEDAW Committee, which comprises 23 international specialists on women's rights.<sup>122</sup> Regarding relevance to the EU, by virtue of being parties to the CEDAW, every Member State supports core principles of the EU, including human rights, non-discrimination, and gender equality.<sup>123</sup>

Given its leading role in advocating for women's rights, it can be argued that CEDAW also serves a similar purpose in addressing the exploitation of women and girls. This is because it promotes the prevention and legal action against trafficking, tackles fundamental problems like gender inequality, and guarantees that countries are held accountable for their actions through monitoring. Although human trafficking is not extensively addressed in CEDAW, there are several Articles in the Convention that are applicable to the fight against human trafficking as a type of gender-based violence. First, it is important to consider what is meant by the word “discrimination” in the context of this Convention. This is explained by Article 1 of the CEDAW stating that

[d]efinition of discrimination against women: any distinction, exclusion, or restriction, made based on sex, with the purpose or effect of impairing the enjoyment by women of political, economic, social, cultural, or civil human rights on equal footing with men.<sup>124</sup>

Furthermore, Article 5 addresses the issue pertaining to societal norms that has been previously mentioned multiple times in the thesis. Specifically, it underscores the imperative for states to reform antiquated gender norms and promote the idea that both genders bear the duty of raising their children.<sup>125</sup> Addressing harmful cultural norms and practices can help prevent both GBV and trafficking victims, a point that has been emphasised multiple times in the thesis. This pertains to CEDAW's Article 6, which provides that

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.<sup>126</sup>

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<sup>119</sup> UN Women, *supra* note 115.

<sup>120</sup> UN Women, *supra* note 115.

<sup>121</sup> Convention on the Elimination of All Forms of Discrimination against Women (New York, 18 Dec. 1979) 1249 U.N.T.S. 13, 19 I.L.M. 33 (1980), *entered into force* 3 Sept. 1981. Available on: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>. Accessed March 30, 2024.

<sup>122</sup> OHCHR. Committee on the Elimination of Discrimination against Women, available on: <https://www.ohchr.org/en/treaty-bodies/cedaw>. Accessed March 30, 2024.

<sup>123</sup> Policy Department C: Citizens' Rights and Constitutional Affairs, Directorate General for Internal Policies, Violeta Neubauer. *How could the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) be implemented in the EU legal framework* (2011): p. 19. Available on: [https://www.europarl.europa.eu/RegData/etudes/note/join/2011/453193/IPOL-FEMM\\_NT\(2011\)453193\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/note/join/2011/453193/IPOL-FEMM_NT(2011)453193_EN.pdf). Accessed April 27, 2024.

<sup>124</sup> Council of Europe Portal. UN Convention (CEDAW) - Summary, available on: <https://www.coe.int/en/web/gender-matters/convention-on-the-elimination-of-all-forms-of-discrimination-against-women-cedaw>. Accessed April 25, 2024.

<sup>125</sup> *Ibid.*

<sup>126</sup> *Ibid.*

Moreover, Article 9 specifically addresses the issue of providing women with the same rights as men in matters related to nationality.<sup>127</sup> Guaranteeing equal rights can protect victims from trafficking as they often face obstacles related to their nationality or status as citizens. Furthermore, Article 11 emphasises the right to work, equal pay, and equal treatment in employment opportunities as components of employment equality.<sup>128</sup> This is important as victims of trafficking are frequently subjected to exploitative labour, and guaranteeing equal employment rights can serve as a safeguard against this form of exploitation. Last but not least, Article 16 addresses a number of aspects of eliminating gender-based discrimination with regard to marriage and family matters.<sup>129</sup> This Article is relevant in protecting the rights of individuals who have been subjected to human trafficking, and who may be forced into marriage or exploited within their own communities. Therefore, this provision guarantees that women and girls possess the autonomy to select their own spouses, marry only with their complete agreement, and enjoy equal privileges and protections within the institution of marriage and family.

In conclusion, the pursuit of gender equality and equity has been characterised by notable achievements. The journey towards gender equality and the protection of women's rights has been marked by significant milestones, starting with the establishment of the CSW and the adoption of important instruments such as the DEDAW and the CEDAW. Moreover, by means of monitoring mechanisms, the provisions of CEDAW not only serve to empower women but also oblige states to account for their conduct. By endorsing these principles, EU Member States reassert their dedication to safeguarding fundamental values. While these instruments represent significant advancement, merely acknowledging the uniqueness of women has not been sufficient to guarantee their rights. Therefore, the forthcoming chapter analyses a modern and influential legal instrument that reinforces the safety and rights of women.

### 2.2.2 Istanbul Convention

The Istanbul Convention plays a vital role in the fight against GBV, highlighting the obligation of nations to prevent, confront, and punish all types of violence against women. Consisting of a Preamble and 81 Articles, which are based on the principles of non-discrimination and equality, it requires a thorough legislative framework and promotes solutions that are sensitive to gender. It identifies abuse as manifestations of structural problems that contribute to masculine domination.<sup>130</sup> While the Istanbul Convention does address the safety of women, particularly migrants and refugees, it especially emphasises the protection of children. Children are not only the most vulnerable to crimes that may be committed against them, but also to witnessing such crimes. Namely, in the same way that violence affects women's health and wellbeing, it also hurts children, impairing their development and creating trauma.<sup>131</sup> Thus, according to the Istanbul Convention, children who witness domestic abuse are also seen as

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<sup>127</sup> *Ibid.*

<sup>128</sup> *Ibid.*

<sup>129</sup> *Ibid.*

<sup>130</sup> Council of Europe Portal. About the Convention, available on: <https://www.coe.int/en/web/istanbul-convention/about-the-convention>. Accessed April 28, 2024.

<sup>131</sup> Council of Europe Portal. The Convention in brief, available on: [https://www.coe.int/en/web/istanbul-convention/the-convention-in-brief#%2211642301%22:\[\]](https://www.coe.int/en/web/istanbul-convention/the-convention-in-brief#%2211642301%22:[]). Accessed April 28, 2024.

victims.<sup>132</sup> In addition to that, it recognizes that domestic abuse has an impact on other groups, such as boys, men, homosexual men, transgender men, or anyone who challenges traditional norms.<sup>133</sup> To eliminate such violence and promote progress, it is crucial to address both the legal and practical aspects of equality, acknowledging its systemic character and influence.<sup>134</sup> Therefore, after providing an overview of the Istanbul Convention's historical context, this chapter will delve into analysis of Articles of the Istanbul Convention that are pertinent to the thesis topic, and conclude with an assessment of its significance in relation to human trafficking.

The Council of Europe (CoE), as a leading human rights organisation, has been actively promoting the protection of women against violence since the 1990s. This effort resulted in initiatives like the adoption of Recommendation Rec (2002)5 in 2002 and a Europe-wide campaign from 2006-2008 to combat violence against women, including domestic violence.<sup>135</sup> However, national reports highlighted the varying responses to violence against women across Europe, prompting the need for harmonised legal standards. Consequently, the CoE established an expert group in December 2008, which drafted the Convention On preventing and combating violence against women and domestic violence by December 2010.<sup>136</sup> The Convention was adopted on 7 April 2011, and entered into force on 1 August 2014 after being ratified by ten countries.<sup>137</sup> After the EU signed the Convention in June 2017, the European Parliament's approval was necessary for the EU to join the Convention. While awaiting the CoE's formal request for this approval, the Parliament passed an interim resolution in September 2017 and assessed progress toward EU accession in June 2018.<sup>138</sup> During the May 2023 Plenary Session, the Parliament granted its consent by a significant majority for the EU's accession to the Convention, and it entered into force on October 1, 2023.<sup>139</sup> Regarding EU involvement, all EU Member States signed the Convention by January 2018, and by 27 April 2024, 22 have ratified it.<sup>140</sup> Overall, encouraging the EU's admission to the Istanbul Convention, the European Parliament has continuously supported the fight against violence against women. This is important as data collecting, legal certainty, and victim assistance may all be enhanced by the EU and its Member States' entry into the Convention. Additionally, implementation-wise, a two-pillar monitoring mechanism including the Committee of the Parties and GREVIO, an independent expert body, has been formed.<sup>141</sup> The Committee examines the reports prepared by GREVIO regarding the subjects addressed in the Convention and presents recommendations to the parties concerned.<sup>142</sup> Monitoring consists of two types of monitoring procedures: a

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<sup>132</sup> *Ibid.*

<sup>133</sup> *Ibid.*

<sup>134</sup> *Ibid.*

<sup>135</sup> Council of Europe Portal. Historical background, available on: <https://www.coe.int/en/web/istanbul-convention/historical-background>. Accessed April 28, 2024.

<sup>136</sup> *Ibid.*

<sup>137</sup> *Ibid.*

<sup>138</sup> European Parliament. *The Istanbul Convention: A tool to tackle violence against women and girls* (2018). Available on: [https://www.europarl.europa.eu/RegData/etudes/ATAG/2018/630297/EPRS\\_ATA\(2018\)630297\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2018/630297/EPRS_ATA(2018)630297_EN.pdf). Accessed April 21, 2024.

<sup>139</sup> European Parliament, Legislative Train Schedule, *supra* note 43.

<sup>140</sup> Council of Europe Portal, Treaty Office, *supra* note 40.

<sup>141</sup> European Parliament, *supra* note 138, p. 2.

<sup>142</sup> European Parliament, *supra* note 138, p. 2.

comprehensive examination performed on a country-by-country basis, and GREVIO-initiated specific imperative inquiries.<sup>143</sup>

This paragraph further outlines the Istanbul Convention's Articles and their significance to human trafficking. First of all, although the Istanbul Convention is often linked to domestic abuse, Article 1(1)(a) of the Convention clearly specifies that its goals are to protect women from all forms of violence and to prevent, punish, and end such actions.<sup>144</sup> Moreover, Article 2(1) underscores the disproportionate impact of domestic violence on women, whereas Article 2(2) promotes the application of this Convention to all victims, including men and boys, of domestic violence by parties.<sup>145</sup> Furthermore, Article 3 of this Convention offers various definitions for the fundamental concepts it is built upon. However, it is worth noting that in the preceding subsection, the materials examined regarding human trafficking consistently highlight the categorization of female individuals into women and girls, based on their age. Nevertheless, Article 3(f) explicitly specifies that the word "women" apply to women of all ages.<sup>146</sup> Initially, the author hypothesised that the drafters' unwillingness to use the term "female" may stem from its improper and negative use on social media platforms, where certain male groups use it to humiliate women and girls. However, the author found that the word "female", in fact, has no negative meaning and is used to refer to women of all age groups in both biological and social contexts. In addition, the Explanatory Report to the Council of Europe Convention On Preventing and Combating Violence Against Women and Domestic Violence (ER-CEDAWV-DV 2011) explicitly clarifies that the Istanbul Convention applies to women of all ages, not just adult victims.<sup>147</sup> This emphasises the need of using exact terminology in legal texts, a topic covered in the first chapter of the thesis on the concept of GBV. Additionally, the author draws attention to Article 12(1) of the Istanbul Convention, which states that parties should advocate for cultural norms to be altered in order to eliminate gender stereotypes and biases.<sup>148</sup> The goal of this provision is to reach the hearts and minds of people who, by their actions, contribute to the continuation of the forms of violence covered by the scope of this Convention, as is explained in the ER-CEDAWV-DV 2011.<sup>149</sup> The absence of concrete measures increases scepticism on the dedication of governments to Article 12(1), especially in patriarchal countries. In addition, although Article 14(1) does not explicitly mention trafficking, however, the explanatory report clarifies that it is a gender-based violence and is considered as persecution.<sup>150</sup> The author concludes that the Convention's remaining provisions focus on states' duty to recognize, protect, and help victims, rather than trafficking perspective.

The European Parliament resolution of 28 November 2019 on the EU's accession to the Istanbul Convention and other measures to combat gender-based violence (2019/2855(RSP)) underscores the profound impact of human trafficking on women and girls, indirectly, yet

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<sup>143</sup> European Parliament, *supra* note 138, p. 2.

<sup>144</sup> Council of Europe Convention, *supra* note 33.

<sup>145</sup> Council of Europe Convention, *supra* note 33.

<sup>146</sup> Council of Europe Convention, *supra* note 33.

<sup>147</sup> Council of Europe. *Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence*. CETS No.: 210. Istanbul, May 11, 2011: p. 9. Available on: <https://rm.coe.int/ic-and-explanatory-report/16808d24c6>. Accessed April 17, 2024.

<sup>148</sup> Council of Europe Convention, *supra* note 33.

<sup>149</sup> Council of Europe, *supra* note 147, p. 16.

<sup>150</sup> Council of Europe, *supra* note 147, p. 53.

presenting it as a manifestation of gender-related violence. Namely, its first provision states that the EP

[c]ondemns all forms of gender-based violence and deplors the fact that women and girls continue to be exposed to ... sexual exploitation and human trafficking and other forms of violence which constitute a serious violation of their human rights and dignity;  
....<sup>151</sup>

Furthermore, clause N of the recital of this resolution also emphasises that modern forms of slavery and human trafficking persist in the EU, with women being the primary victims.<sup>152</sup> It notes that globally, 71% of trafficking victims are female, with three out of four of them being sexually exploited.<sup>153</sup> For example, the Ukraine crisis has increased the likelihood of human trafficking as a result of preexisting trafficking networks, extensive displacement, and the significant number of unaccompanied women and children travelling.<sup>154</sup> As previously stated, the Istanbul Convention acknowledges the increased vulnerability of refugee and immigrant women to various forms of abuse.<sup>155</sup> This is especially important since gender dynamics play a big role in determining the opportunities and difficulties associated with international relocation. Individuals with irregular immigration status are frequently targeted by criminals, including child traffickers who prey on impressionable victims. To add, according to recent studies, migrant women face a "double disadvantage" as they are both women and migrants.<sup>156</sup> Globally and within the EU, women represent half of all migrants. In mid-2020, female migrants constituted just under half (48.1%) of the global migrant population, totalling around 135 million.<sup>157</sup> Conversely, in the European Union by mid-2021, women slightly outnumbered men, comprising slightly over half (51.2%) of all migrants, totalling about 33 million.<sup>158</sup> The author contends that these figures will only rise due to the escalating economic crisis and armed conflicts, making it crucial to address the political and legal systems as soon as possible. The Istanbul Convention is one of the most principal elements in this respect. First, Article 2(3) provides that "This Convention Shall apply in times of peace and in situations of armed conflict".<sup>159</sup> Second, it gives migrant women and girls legal protection from exploitation and abuse by putting legal obligations on states to stop and prevent human trafficking. For instance, laws expressly pertaining to migration and asylum are contemplated in the seventh chapter of the Istanbul Convention. Thirdly, it requires nations to foster global cooperation and offer specific support services focused on victims of human trafficking.

In conclusion, this chapter has examined the Istanbul Convention in the context of the European Parliament and Council of Europe's fight against violence against women. A detailed

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<sup>151</sup> European Parliament resolution of 28 November 2019 on the EU's accession to the Istanbul Convention and other measures to combat gender-based violence (2019/2855(RSP)), *OJ C 232*, 16.6.2021, p. 48–53. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52019IP0080%2801%29>. Accessed April 17, 2024.

<sup>152</sup> *Ibid.*

<sup>153</sup> *Ibid.*

<sup>154</sup> IOM, UN Migration. Human trafficking in times of conflict: the case of Ukraine, available on: <https://rovienna.iom.int/news/human-trafficking-times-conflict-case-ukraine>. Accessed April 17, 2024.

<sup>155</sup> Council of Europe Portal, *supra* note 126.

<sup>156</sup> EMN. *Integration of migrant women* (2022): p. 7. Available on: [https://home-affairs.ec.europa.eu/system/files/2022-09/EMN\\_STUDY\\_integration-migrant-women\\_23092022.pdf](https://home-affairs.ec.europa.eu/system/files/2022-09/EMN_STUDY_integration-migrant-women_23092022.pdf). Accessed April 28, 2024.

<sup>157</sup> *Ibid.*

<sup>158</sup> *Ibid.*

<sup>159</sup> Council of Europe Convention, *supra* note 33.

review of the Istanbul Convention's main Articles, particularly those concerning human trafficking, has highlighted the importance of this international legal framework in the fight against GBV. It clearly recognizes the vulnerability of men and boys to such abuse, despite its original association with the protection of women and girls. Furthermore, its recognition of human trafficking as a form of GBV emphasises how important it is to address the exploitation and abuse that women and girls endure, particularly the particularly vulnerable migrant and refugee women. It follows that this Convention has the potential to improve safety and equity for all people in societies, irrespective of gender or immigration status, when combined with regional and international advocacy and cooperation.

### 2.3 Analysis of the ECtHR case-law

The prohibition of slavery and forced labour mentioned in Article 5(1) and (2) of the CFREU are equivalent to Article 4(1) and (2) of the ECHR, since they have identical language.<sup>160</sup> For clarification, forced labour refers to work performed under the threat of terror, ownership implies a state of being enslaved, and coercive service without ownership denotes a condition of servitude.<sup>161</sup> These rights are inherently unrestricted, with the exception of certain conditions such as prison work, state emergency, and civic duties.<sup>162</sup> The specific context of human trafficking is taken into consideration in the interpretation of Article 4 of the ECHR, though it does not specifically address it. Consequently, the ECtHR, in the *S.M. v. Croatia* (no. 60561/14) case, affirmed that for an individual to qualify as a victim of human trafficking under Article 4, all three elements of the international definition of human trafficking - action, means, and exploitative aim - must be present.<sup>163</sup>

According to Article 52(3) of the CFREU, it has the same meaning and scope as the ECHR Article.<sup>164</sup> Hence, to examine human rights infringements associated with trafficking, this chapter provides an overview of judgments of the European Court of Human Rights (ECtHR) that are grounded on Article 4 of the ECHR. The cases centre on forced labour, sexual exploitation, including GBV, and child trafficking. The author has selected these instances since previous chapters of the thesis have emphasised the high-risk vulnerability of migrants, particularly those who are third-country nationals, and children, as well as the state duties that arise from the legal instruments concerning human trafficking.

#### 2.3.1 The state's duty to safeguard trafficking victims: *S.M. v. Croatia*

Ms. S.M., a Croatian national born in 1990, asserted that T.M., a former law enforcement officer, coerced her into prostitution in 2011 after initially.<sup>165</sup> She claimed that T.M. exerted

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<sup>160</sup> FRA. EU Charter of Fundamental Rights, Article 5, available on: <https://fra.europa.eu/en/eu-charter/Article/5-prohibition-slavery-and-forced-labour>. Accessed May 1, 2024.

<sup>161</sup> Equality and Human Rights Commission. Article 4: Freedom from slavery and forced labour, available on: <https://www.equalityhumanrights.com/human-rights/human-rights-act/article-4-freedom-slavery-and-forced-labour>. Accessed May 1, 2024.

<sup>162</sup> *Ibid.*

<sup>163</sup> Council of Europe, European Court of Human Rights. *Guide on Article 4 of the Convention – Prohibition of slavery and forced labour* (2022): p. 6-7. Available on: [https://www.echr.coe.int/documents/d/echr/Guide\\_Art\\_4\\_ENG](https://www.echr.coe.int/documents/d/echr/Guide_Art_4_ENG). Accessed May 1, 2024.

<sup>164</sup> FRA, *supra* note 160.

<sup>165</sup> European Court of Human Rights, Case of *S.M. v. Croatia*, July 7, 2018, Application no. 60561/14, p. 1, press release: <https://hudoc.echr.coe.int/eng/?i=003-6150030-7955970>. Accessed May 1, 2024.

intimidation towards her when she voiced her objections, exercised control over her, and demanded that she give him 50 percent of her earnings.<sup>166</sup> As of 2012, T.M. was found guilty of trafficking, and the applicant was recognized as a trafficking victim.<sup>167</sup> Despite the existence of evidence found during a police search and T.M.'s prior convictions for comparable offences, T.M. was convicted, as Ms. S.M.'s testimony from 2013 contained contradictions and implied voluntary participation in sexual services.<sup>168</sup> The State Attorney's Office's appeals and Ms. S.M.'s constitutional complaint were both turned down.<sup>169</sup>

Referring to Article 4 of the ECHR, the applicant filed a complaint with the ECtHR on August 27, 2014.<sup>170</sup> On May 15, 2019, the Grand Chamber, consisting of 17 judges, made the final decision after the Croatian government referred the case to it, following the Chamber's July 19, 2018, ruling regarding an Article 4 violation.<sup>171</sup> Regarding the applicant's case, the ECtHR found *prima facie* evidence of human trafficking and forced prostitution. Despite the Government's arguments, the ECtHR noted the means used by T.M. to recruit the applicant and her vulnerable situation.<sup>172</sup> The ECtHR also took issue with the investigating authorities' failure to follow important inquiries, over-reliance on the applicant's testimony, disregard for other relevant evidence, and, most importantly, their failure to interview every potential witness.<sup>173</sup> Consequently, it was challenging for the authorities to determine their genuine relationship and whether exploitation took place.<sup>174</sup> According to the ECtHR, the respondent State breached its procedural obligation under Article 4 of the ECHR because of the improper application of the criminal law mechanisms in this case.<sup>175</sup> The ECtHR issued its decision on June 25, 2020, ordering Croatia to compensate the applicant with EUR 5,000 for emotional distress under Article 41.<sup>176</sup>

### **2.3.2 Inadequate protection of potential victims of child trafficking: V.C.L. AND A.N. v. the United Kingdom**

Before delving into the case, the author seeks to clarify that while the United Kingdom is no longer a member of the EU, it still was a Member State during the initial proceedings. The case involves two Vietnamese minors, Mr. V.C.L. and Mr. A.N., who were discovered on cannabis plantations in the United Kingdom on May 6, 2009, and later charged and convicted of drug-related offences.<sup>177</sup> After being recognized as victims of trafficking by a competent authority, the prosecution service reevaluated their decision to prosecute them.<sup>178</sup> They ultimately concluded that the individuals were not victims of trafficking, thus the Court of Appeal

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<sup>166</sup> *Ibid.*

<sup>167</sup> *Ibid.*, p. 2.

<sup>168</sup> *Ibid.*, p. 2.

<sup>169</sup> *Ibid.*, p. 2.

<sup>170</sup> *Ibid.*, p. 2.

<sup>171</sup> *Ibid.*, p. 2.

<sup>172</sup> *Ibid.*, p. 4.

<sup>173</sup> *Ibid.*

<sup>174</sup> *Ibid.*, p. 4.

<sup>175</sup> *Ibid.*, p. 4.

<sup>176</sup> *Ibid.*, p. 4.

<sup>177</sup> European Court of Human Rights, Case of *V.C.L. AND A.N. v. the United Kingdom*, February 16, 2021, Application no. 77587/12 and 74603/12, p. 2, press release: <https://hudoc.echr.coe.int/eng?i=003-6940249-9330764>. Accessed May 1, 2024.

<sup>178</sup> *Ibid.*

determined that the decision to prosecute was justified.<sup>179</sup> Therefore, notwithstanding signs that they might have been trafficking victims, they were not directed to the proper authorities for evaluation; rather, they pleaded guilty.<sup>180</sup>

The applications, which were based on Articles 4 and 6(1) of the ECHR, were submitted to the ECtHR on November 20 and 21, 2012.<sup>181</sup> The ECtHR firstly considered whether to apply Article 4, and highlighted the duty of countries to protect people who are suspected of being involved in human trafficking, especially children.<sup>182</sup> In the instance of claimants, accusations were brought forth without carrying out an appropriate evaluation, despite indications of possible human trafficking.<sup>183</sup> Subsequent reviews lacked coherent, consistent reasoning regarding trafficking.<sup>184</sup> The ECtHR concluded that the authorities had not gone far enough in protecting these individuals, even though they might have been victims of human trafficking, thus violating Article 4.<sup>185</sup>

Furthermore, the ECtHR conducted a thorough analysis of Article 6(1) to ascertain whether the applicants' rights under the Convention were infringed upon by the failure to acknowledge them as potential victims of human trafficking. The absence of a comprehensive trafficking evaluation rendered their pleas insufficient, despite their explicit nature.<sup>186</sup> The ECtHR concluded that the applicants' failure to obtain relevant evidence to support their defence as a result of improper evaluation led to an unfair proceedings and a violation of Article 6(1).<sup>187</sup> The United Kingdom was ordered by the Chamber of seven judges on February 16, 2021, to provide compensation of EUR 25,000 to each applicant for non-pecuniary harm and EUR 20,000 for costs and expenses, according to the Article 41 on just satisfaction.<sup>188</sup>

### 2.3.3 Child sexual exploitation: *N.Ç. v. Turkey*

EU-Turkey accession talks started in 2005, but in 2018, the Council called a halt to the talks because of ongoing obstacles in crucial reform domains including judicial independence, democracy, and fundamental rights.<sup>189</sup> In its annual report for 2023, the EC referred to Turkey's protracted application for EU membership as "unjust and biased".<sup>190</sup> In light of this, the author sought to analyse the judgment, which in a way also draws attention to internal problems in Turkey. Namely, Turkey is one of the most well-known destinations for victims of human trafficking, has a long-standing migrant smuggling industry, and a widespread GBV and

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<sup>179</sup> *Ibid.*

<sup>180</sup> *Ibid.*

<sup>181</sup> *Ibid.*, p. 3.

<sup>182</sup> *Ibid.*, p. 3.

<sup>183</sup> *Ibid.*, p. 4.

<sup>184</sup> *Ibid.*, p. 3.

<sup>185</sup> *Ibid.*, p. 4.

<sup>186</sup> *Ibid.*, p. 4.

<sup>187</sup> *Ibid.*, p. 4.

<sup>188</sup> *Ibid.*, p. 4.

<sup>189</sup> European Neighbourhood Policy and Enlargement Negotiations. Türkiye, available on: [https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/turkiye\\_en](https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/turkiye_en). Accessed May 3, 2024.

<sup>190</sup> Reuters. Turkey says EU is 'unjust and biased' on membership bid, available on: <https://www.reuters.com/world/turkey-says-eu-is-unjust-biased-membership-bid-2023-11-09/>. Accessed May 3, 2024.



migration problem that has strained relations with EU Member States and prevents it from being able to join the EU.<sup>191</sup>

In July 2002, two women coerced N.Ç., who was 12 years old at the time, into engaging in prostitution.<sup>192</sup> On January 8, 2003, N.Ç. filed a complaint against both the females and males with whom she had engaged in relationships, prompting the Mardin public prosecutor to open a criminal investigation.<sup>193</sup> A total of twenty-eight individuals were identified as suspects, resulting in the pre-trial detention of twenty-seven of them.<sup>194</sup> On 20 January 2003, a formal accusation, known as a bill of indictment, was submitted, accusing the individuals with many crimes such as rape, unlawful confinement, and participation in the sex trade.<sup>195</sup> A closed-door session was held on 24 February 2003 in the Mardin Assize Court, as the case involved sensitive information.<sup>196</sup> N.Ç., together with her father and the Child Protection Agency, took part in the criminal proceedings. Following the hearing, N.Ç. and her representatives were assaulted by relatives of certain defendants.<sup>197</sup> Despite the pleas for protective precautions and a change in the location of the trial, no steps were done.<sup>198</sup> The defendants were released gradually, with the final release occurring in June 2003.<sup>199</sup>

Assize Court of Mardina cleared three defendants who were charged with child rape on September 28, 2010, on the grounds of insufficient evidence.<sup>200</sup> The assize court dropped charges pertaining to "forced imprisonment for fulfilment of sexual desires" after concluding that N.Ç. had given consent.<sup>201</sup> Because the statute of limitations had run out, the assize court dismissed the allegations pertaining to "consensual imprisonment".<sup>202</sup> The assize court decided that while it was illegal to have intercourse with a minor under the age of fifteen, there was an exception if the victim gave their permission.<sup>203</sup> Based on a psychological evaluation and further information, the assize court found that N.Ç. had not been wholly unwilling and had not found any evidence of used force by the defendants.<sup>204</sup> With the exception of two offenders, the Assize court utilised the first paragraph of Article 414 of the former Criminal Code, imposing minimum terms on all of them.<sup>205</sup> N.Ç. was admitted to a specialist child protection facility in Malatya on March 13, 2003, she was then taken to Adana for psychiatric observation and, finally, to Istanbul until she reached majority age.<sup>206</sup>

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<sup>191</sup> Human Rights Watch. Interview: How Turkey's Failure to Protect Women Can Cost Them Their Lives, available on: <https://www.hrw.org/news/2022/05/26/interview-how-turkeys-failure-protect-women-can-cost-them-their-lives>. Accessed May 3, 2024.

<sup>192</sup> European Court of Human Rights, Case of *VN.Ç. v. Turkey*, February 9, 2021, Application no. 40591/11, p. 1, press release: <https://hudoc.echr.coe.int/eng?i=003-6931183-9316853>. Accessed May 4, 2024.

<sup>193</sup> *Ibid.*

<sup>194</sup> *Ibid.*

<sup>195</sup> *Ibid.*

<sup>196</sup> *Ibid.*

<sup>197</sup> *Ibid.*

<sup>198</sup> *Ibid.*

<sup>199</sup> *Ibid.*, p. 2.

<sup>200</sup> *Ibid.*, p. 2.

<sup>201</sup> *Ibid.*, p. 2.

<sup>202</sup> *Ibid.*, p. 2.

<sup>203</sup> *Ibid.*, p. 2.

<sup>204</sup> *Ibid.*, p. 2.

<sup>205</sup> *Ibid.*, p. 2.

<sup>206</sup> *Ibid.*, p. 2.

Alleging violations of Articles 3, 6, 8, 13, and 14 of the Convention, the applicant filed complaints with the ECtHR on March 25, 2011.<sup>207</sup> These complaints included allegations of inadequate professional assistance, being humiliated in front of the defendants, threats from the defendants knowing that the charges were out of date, sentencing mitigation based on good behaviour, inadequate protection, lengthy and unproductive proceedings, and discrimination against women.<sup>208</sup> The ECtHR decided that the applicant had good cause to file concerns against Articles 3 and 8 of the Convention.<sup>209</sup> It concluded that neither the investigation's efficacy nor the applicant's personal integrity had been sufficiently safeguarded throughout the criminal procedures pertaining to her sexual abuse.<sup>210</sup> The ECtHR emphasized several significant issues, including the applicant's lack of professional support during the proceedings, the inability to shield her from her attackers during the proceedings, the needless reconstruction of rape incidents, the overbearing and intrusive medical examinations, the absence of a secure environment during the hearings, and the incorrect evaluation of the victim's consent.<sup>211</sup>

The ECtHR also criticised the drawn-out procedures and the dismissal of charges for being past due.<sup>212</sup> It was believed that these actions violated the need to protect a juvenile who has been sexually abused or exploited and that they constituted secondary victimisation of the applicant.<sup>213</sup> Despite the fact that Turkey's judicial system has advanced since 2005, this did not apply in this specific case.<sup>214</sup> The ECtHR concluded that, as a consequence, the processes did not ensure that the principles secured by Articles 3 and 8 of the Convention would be adequately defended by criminal law.<sup>215</sup> The applicant's gender discrimination case was rejected under Article 14 on December 1, 2018, since it was submitted too late, with the relevant proceedings having concluded in January and March of 2014.<sup>216</sup> Under Article 41 of ECHR, the ECtHR, which consisted of a Chamber of seven judges, determined on February 9, 2021, that Turkey must provide the claimant EUR 25,000 in non-pecuniary damages and EUR 3,000 in costs and expenses.<sup>217</sup>

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<sup>207</sup> *Ibid*, p. 2.

<sup>208</sup> *Ibid*, p. 2.

<sup>209</sup> *Ibid*, p. 3.

<sup>210</sup> *Ibid*, p. 3.

<sup>211</sup> *Ibid*, p. 3.

<sup>212</sup> *Ibid*, p. 4.

<sup>213</sup> *Ibid*, p. 4.

<sup>214</sup> *Ibid*, p. 4.

<sup>215</sup> *Ibid*, p. 4.

<sup>216</sup> *Ibid*, p. 4.

<sup>217</sup> *Ibid*, p. 4.

### 3. Measures taken by the EU to combat human trafficking

#### 3.1 Trends of trafficking in the EU

The EC publishes biennial reports since 2016, which provide a comprehensive overview of progress, challenges, barriers, and accomplishments in the fight against human trafficking within the EU.<sup>218</sup> This chapter focuses on the 2022 report and primarily examines the statistics presented in the accompanying document on Statistics and trends in human trafficking in the EU in 2019-2020.<sup>219</sup> The overview of the 2022 report is covered at the outset of this chapter, followed by analyses of victim categories, trends in exploitation, and finally, the advancements in indicators of the system of criminal justice.

According to the 2022 report, the 27 EU Member States recorded 14,311 victims during 2019-2020, or eight registered EU residents for every million people.<sup>220</sup> The decrease in recorded victims from 7,777 in 2019 to 6,534 in 2020 was probably related to difficulties in victim identification caused by COVID-19.<sup>221</sup> Moreover, compared to the 14,145 instances that were reported over the preceding two-year period in the EU, this number indicates a small rise.<sup>222</sup> Countries with the highest number of recorded victims were France (2,709), the Netherlands (2,318), Italy (2,114), Romania (1,294), and Germany (1,271).<sup>223</sup> The report also shed information on the patterns that are associated with victim citizenship. European Union nationals made up 53% of victims of human trafficking, while non-EU citizens made up 43% of victims.<sup>224</sup> Furthermore, internal trafficking was shown by the fact that 37% of all victims who were recorded were nationals of the country in which they were registered.<sup>225</sup> Among the countries who registered their own nationals as victims, Estonia (100%), Hungary (99%), Bulgaria (99%), Romania (99%), and Slovakia (98%) took the lead.<sup>226</sup>

Regarding patterns of exploitation, sexual and labour exploitation constitute the majority of trafficking cases in the EU, accounting for 51% and 28%.<sup>227</sup> Nightclubs, prostitution, escort services, and pornography are all high-risk sectors where sexual exploitation continues to be prevalent.<sup>228</sup> Exploitative services are promoted through online advertisements, the popularity of "sex tours" is on the rise, technology facilitates victim recruitment and abuse, and traffickers deceive individuals into signing agreements that appear to be voluntary, thereby

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<sup>218</sup> European Union. Legal and Policy Framework, available on: [https://home-affairs.ec.europa.eu/policies/internal-security/organised-crime-and-human-trafficking/together-against-trafficking-human-beings/legal-and-policy-framework\\_en](https://home-affairs.ec.europa.eu/policies/internal-security/organised-crime-and-human-trafficking/together-against-trafficking-human-beings/legal-and-policy-framework_en). Accessed May 6, 2024.

<sup>219</sup> European Commission. *Commission Staff Working Document: Statistics and trends in trafficking in human being in the European Union in 2019- 2020*, Brussels, 19.12.2022, SWD (2022) 429 final. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022SC0429>. Accessed May 4, 2024.

<sup>220</sup> *Ibid.*

<sup>221</sup> European Commission. *Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Report on the progress made in the fight against trafficking in human beings (Fourth Report)*, Brussels, 19.12.2022, COM (2022) 736 final. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022DC0736>. Accessed May 4, 2024.

<sup>222</sup> *Ibid.*

<sup>223</sup> European Commission, *supra* note 219.

<sup>224</sup> European Commission, *supra* note 219.

<sup>225</sup> European Commission, *supra* note 219.

<sup>226</sup> European Commission, *supra* note 219.

<sup>227</sup> European Commission, *supra* note 221.

<sup>228</sup> European Commission, *supra* note 221.

blurring the line between consent and exploitation.<sup>229</sup> The majority of sexual exploitation victims are female constituting 87%, comprising 27% girls and 73% women.<sup>230</sup> The countries with the largest numbers of female victims include Romania (901), the Netherlands (878), Germany (786), Austria (435), Italy and Spain (429).<sup>231</sup> Adults accounted for 78% and children for 22% of those who were sexually exploited. The three Member States with the highest number of recorded minor victims of trafficking for sexual exploitation were Romania (477), Germany (140), and the Netherlands (104).<sup>232</sup> Overall, there were 3,037 victims of trafficking for sexual exploitation in 2020 compared to 3,833 victims in 2019.<sup>233</sup>

In contrast to 2017-2018, labour exploitation trafficking increased substantially by 15%, with men comprising 66%, women 34% and children 3%.<sup>234</sup> Criminal networks employ online recruitment through subcontractors and agencies to conceal their activities while exploiting labourers in money-intensive sectors such as agriculture, construction, and hospitality.<sup>235</sup> While males remain the primary targets, domestic employment and cleaning services are increasingly exploiting women.<sup>236</sup> Following France (792) on the list of countries with the most victims of labour exploitation is Italy (681), the Netherlands (660), and Poland (311).<sup>237</sup> Among reported victims, the EU citizenships with the greatest occurrence are Romanian (493), Polish (267), and French (266).<sup>238</sup> In 2020, there were 1,548 victims of labour exploitation in the European Union, compared to 1,786 in 2019.<sup>239</sup>

Furthermore, the 2022 report looked at specific age, gender, and nationality categories of victims. Nevertheless, as the initial paragraph addressed the citizenship category, the subsequent discussion will centre on the age and gender of the victims. The age group is taken into consideration first in the 2022 report, with a focus on minors, as a total of 23% of all reported victims in 2019-2020 were minors, of which 75% were female.<sup>240</sup> Of the child victims that were registered, 85% were EU nationals, of whom 75% were registered in their country of origin.<sup>241</sup> The remaining 10% were non-EU citizens.<sup>242</sup> A total of 50% were sexually exploited, 17% were trafficked for labour exploitation and 4% were forced to beg.<sup>243</sup> This is due to the fact that dating and escort websites portray child victims as adults at times, and certain platforms specialize in helping individuals seeking sexual relations with juveniles.<sup>244</sup> Violent means, intimidation, extortion, manipulation, and the "lover boy" strategy are all employed by traffickers to exploit their victims.<sup>245</sup> To clarify, lover boys are human traffickers that trick adolescents into relationships in order to take advantage of them, especially in the sex

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<sup>229</sup> European Commission, *supra* note 221.

<sup>230</sup> European Commission, *supra* note 219.

<sup>231</sup> European Commission, *supra* note 219.

<sup>232</sup> European Commission, *supra* note 219.

<sup>233</sup> European Commission, *supra* note 219.

<sup>234</sup> European Commission, *supra* note 219.

<sup>235</sup> European Commission, *supra* note 221.

<sup>236</sup> European Commission, *supra* note 221.

<sup>237</sup> European Commission, *supra* note 219.

<sup>238</sup> European Commission, *supra* note 219.

<sup>239</sup> European Commission, *supra* note 219.

<sup>240</sup> European Commission, *supra* note 221.

<sup>241</sup> European Commission, *supra* note 221.

<sup>242</sup> European Commission, *supra* note 221.

<sup>243</sup> European Commission, *supra* note 221.

<sup>244</sup> European Commission, *supra* note 221.

<sup>245</sup> European Commission, *supra* note 221.

business.<sup>246</sup> While criminal networks often exploit children from non-EU countries for illegal activities and adoption schemes, Europol and several Member States have also observed cases where EU family clans traffic their own children and those from their communities for labour-intensive tasks like begging (individuals compelled to beg), theft, and housework.<sup>247</sup> With 672, 657, 582, and 419 child victims recorded, respectively, France, Italy, Romania, and Germany.<sup>248</sup> According to particular nationalities, the percentages of child victims were greatest for Maltese (100%), Greek (75%), German (67%), Italian (63%), Czech (53%), and Finnish (51%).<sup>249</sup>

Further, the report considered the trend in terms of gender, finding that 63% of all victims in the EU were female, underscoring the need for gender-sensitive methods.<sup>250</sup> The highest proportions of female victims were found in Slovenia (97%), Bulgaria (92%), and Ireland (89%).<sup>251</sup> These states are more likely to have a higher number of female victims of human trafficking owing to several variables such as their geographical location, economic inequalities, migrant routes, varying legal systems, demand for sexual services and labour, and cultural considerations. While Latvia (66%), Portugal (61%), and Luxembourg (57%) had the highest proportions of male victims.<sup>252</sup> Both Belgium and Finland had 50% male and female victims.<sup>253</sup> In terms of the precise number of victims, the Netherlands (1,063), Italy (1,099), France (802), and Germany (263) had the largest proportion of male victims.<sup>254</sup> The author notes that these indicators are likely impacted by the fact that the Netherlands and Germany are presently highly desired work destinations, particularly among Eastern European and Baltic residents seeking higher-paying employment opportunities.

Finally, the 2022 report also highlighted changes in indicators of the criminal justice system. Approximately 62% of the 15,214 criminal suspects were EU citizens.<sup>255</sup> The majority of suspects for such crime were with nationalities of Germany, Romania, Italy, and France. Nigerians, Chinese, Albanians, and Pakistanis were the most often suspected non-EU nationalities.<sup>256</sup> In terms of gender, 74% of suspects were men, with the exception of Finland, where 53% of suspects were women.<sup>257</sup> Prosecutions were initiated against 6,539 individuals, with 70% of them being EU citizens.<sup>258</sup> The countries that prosecuted the most were France, Romania, Belgium, and Hungary.<sup>259</sup> The most often prosecuted non-EU nationalities were Moroccans, Chinese, Nigerians, and British.<sup>260</sup> 3,019 persons were found guilty of THB charges; of those found guilty, 66% were EU citizens.<sup>261</sup> Romania, Germany, France, and Bulgaria had the highest proportion of convicted citizens.<sup>262</sup> Among non-EU citizens, British,

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<sup>246</sup> European Commission, *supra* note 221.

<sup>247</sup> European Commission, *supra* note 221.

<sup>248</sup> European Commission, *supra* note 219.

<sup>249</sup> European Commission, *supra* note 219.

<sup>250</sup> European Commission, *supra* note 219.

<sup>251</sup> European Commission, *supra* note 219.

<sup>252</sup> European Commission, *supra* note 219.

<sup>253</sup> European Commission, *supra* note 219.

<sup>254</sup> European Commission, *supra* note 219.

<sup>255</sup> European Commission, *supra* note 219.

<sup>256</sup> European Commission, *supra* note 219.

<sup>257</sup> European Commission, *supra* note 219.

<sup>258</sup> European Commission, *supra* note 219.

<sup>259</sup> European Commission, *supra* note 219.

<sup>260</sup> European Commission, *supra* note 219.

<sup>261</sup> European Commission, *supra* note 219.

<sup>262</sup> European Commission, *supra* note 219.

Chinese, and Nigerian nationals were the most frequently found guilty.<sup>263</sup> Similar to the gender distribution of suspects and prosecutions, 74% of those found guilty were men.<sup>264</sup> However, Czechia, the sole Member State, with 67% of convicted women.<sup>265</sup> Sexual exploitation was identified as the leading cause of prosecutions and convictions, with forced labour following it.<sup>266</sup>

### 3.2 The EU's strategy on Combating Trafficking in Human Beings (2021-2025)

The EU Strategy on Combating Trafficking in Human Beings 2021–2025 (EU Strategy) was adopted by the EC in April 2021. It encompasses a wide range of initiatives, including victim protection, crime prevention, prosecution, and imprisonment of traffickers, and specific attention to protection of women and girls.<sup>267</sup> According to the 2022 report, the EU Strategy has advanced a variety of legislative, policy, and operational measures in each of its four primary domains.<sup>268</sup> This effort is predicated on the evaluation of Directive 2011/36/EU concerning human trafficking, which has demonstrated its effectiveness and brought to light areas that require enhancement in the areas of data collection, victim support, and law enforcement.<sup>269</sup> Furthermore, since her appointment on 1 July 2021, EU Anti-Trafficking Coordinator, Diane Schmitt, has been actively involved in bolstering collaboration with relevant parties and supervising the implementation of the EU's Strategy.<sup>270</sup> In addition to coordinator, the Organization for Security and Cooperation in Europe, Europol, GRETA, European Union Agency for Fundamental Rights, United Nations Office on Drugs and Crime, International Labor Organization, and various other entities are also engaged in the efforts to combat human trafficking in the EU. Nevertheless, the author argues that the EC bears the main responsibility for enacting substantive legislative and political transformations. Consequently, this chapter examines the EU strategy within the framework of the Commission's competence.

At its core, human trafficking is a complex criminal activity that preys on those who are vulnerable for financial gain. Businesses, employers, users, and customers gain as a result, while victims suffer catastrophic harm.<sup>271</sup> Namely, the EU made EUR 14 billion from sexual exploitation in a single year, compared to the global income of EUR 29.4 billion from human trafficking in 2015.<sup>272</sup> In order to prevent this, the Anti-trafficking Directive suggests that it be illegal to employ individuals who have been trafficked for services; however, local legal variations must be taken into account.<sup>273</sup> Thus, companies operating in vulnerable locations,

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<sup>263</sup> European Commission, *supra* note 219.

<sup>264</sup> European Commission, *supra* note 219.

<sup>265</sup> European Commission, *supra* note 219.

<sup>266</sup> European Commission, *supra* note 219.

<sup>267</sup> European Commission, *supra* note 221.

<sup>268</sup> European Commission, *supra* note 221.

<sup>269</sup> European Commission, *supra* note 221.

<sup>270</sup> European Union. EU Anti-Trafficking Coordinator, available on: [https://home-affairs.ec.europa.eu/policies/internal-security/organised-crime-and-human-trafficking/together-against-trafficking-human-beings/eu-anti-trafficking-coordinator\\_en](https://home-affairs.ec.europa.eu/policies/internal-security/organised-crime-and-human-trafficking/together-against-trafficking-human-beings/eu-anti-trafficking-coordinator_en). Accessed May 7, 2024.

<sup>271</sup> European Commission. *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Strategy on Combating Trafficking in Human Beings 2021 - 2025, COM/2021/171 final, 14 April 2021*. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021DC0171>. Accessed May 7, 2024.

<sup>272</sup> *Ibid.*

<sup>273</sup> *Ibid.*

particularly those involved in global supply chains, must also incorporate anti-trafficking measures into their policies. It is forbidden to employ nationals of third countries with irregular residence, especially those who have been subjected to human trafficking, in accordance with the Employers' Sanctions Directive.<sup>274</sup> It establishes minimum requirements for penalties and other actions that MS must implement in response to employer noncompliance with the Directive.<sup>275</sup>

Furthermore, internationally operating criminal syndicates actively enlist, transport, and exploit individuals who are more vulnerable. In addition, they often participate in other illicit activities such as money laundering and the smuggling of migrants. The EC has additionally advocated for increased international collaboration and partnerships and proposed an EU Action Plan against migrant smuggling, utilising a range of EU foreign policy instruments and initiatives.<sup>276</sup> Enhancing collaboration with non-EU countries and international organisations such as the CoE and UN is of utmost importance.<sup>277</sup> The EC further underscores the potential for trade agreements to more accurately reflect global standards pertaining to the prevention of human trafficking.<sup>278</sup> Moreover, it stresses the criticality of trade policy in furthering the goals of sustainable development, and supports the utilisation of the EU Global Human Rights Sanctions Regime as a tool to hold those accountable for egregious violations of human rights.<sup>279</sup> Significant measures include endorsing the methodical participation of EU delegations in specific nations, enhancing communication with international partners, adopting an EU Action Plan against Migrant Smuggling, and increasing collaboration with non-EU countries.<sup>280</sup>

Cooperation between Member States and European Union entities such as Europol and Eurojust is promoted in order to enhance cross-border cooperation and information sharing while simultaneously combating human trafficking.<sup>281</sup> Thus, EC has urged the MS to use asset seizure and financial investigations to disrupt and undermine these operations of the targeted entities.<sup>282</sup> It is essential to equip law enforcement and judicial personnel with training in digital evidence collection in order to combat the proliferation of digital methods employed by traffickers.<sup>283</sup> Moreover, establishing effective communication channels with technology companies and intensifying preventive measures are crucial in mitigating the risks linked with online exploitation.<sup>284</sup> The EC aims to enhance cross-border cooperation, establish a dedicated group of prosecutors, foster engagement with the business sector, and bolster data collection for informed decision-making.<sup>285</sup> Meanwhile, MS are requested to enhance data collection, optimise the use of existing operational instruments with the support of Europol, and enhance the digital capabilities of law enforcement.<sup>286</sup>

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<sup>274</sup> *Ibid.*

<sup>275</sup> *Ibid.*

<sup>276</sup> *Ibid.*

<sup>277</sup> *Ibid.*

<sup>278</sup> *Ibid.*

<sup>279</sup> *Ibid.*

<sup>280</sup> *Ibid.*

<sup>281</sup> *Ibid.*

<sup>282</sup> *Ibid.*

<sup>283</sup> *Ibid.*

<sup>284</sup> *Ibid.*

<sup>285</sup> *Ibid.*

<sup>286</sup> *Ibid.*

## Conclusions

The purpose of the research was to examine human trafficking as a form of gender-based violence, with a particular emphasis on the disproportionate impact of both issues on women and girls. Thus, the research question for the thesis was: "How does gender-based violence contribute to human trafficking, and what is the legal framework to address such issues?" The author's objective in exploring these questions was to underscore the utmost need of safeguarding and being vigilant for each other in the contemporary world, regardless of one's affiliation or socioeconomic status, and not relying just on the responsible governmental institutions and organisations.

Considering the first chapter, the author presented the theoretical dimension of the pertinent issues, thus, the following observations can be made. First, the identification of human trafficking requires that the offence encompasses the elements of *act*, *means*, and *purpose*, as specified in Article 3 of the Palermo Protocol. Second, human traffickers and perpetrators of GBV often have pre-existing connections with their victims, including friendships, familial ties, or acquaintanceships. Third, GBV increases the vulnerability of women and girls to trafficking. The vulnerability of women and girls is heightened by GBV as it disrupts their social networks, leaving them feeling abandoned and more prone to manipulation and exploitation by their initial abusers and traffickers. Moreover, the trauma and psychological consequences of GBV can hinder their capacity to identify and oppose trafficking strategies. Fourth, vulnerability in general is a crucial concept in understanding trafficking, since it includes not just economic situations but also social, cultural, political, and environmental factors. Fifth, sometimes governments actively participate in human trafficking, either as a perpetrator or an enabler. This emphasises how crucial it is to ensure transparency and accountability of the governments and other state actors. Sixth, frequently, major corporations are implicated in the practice of trafficking, underscoring the importance of economic motives in perpetuating this crime. Seventh, trafficking is a sophisticated crime that calls for broad international cooperation as well as innovative strategies for successful intervention and prevention. This emphasises the necessity of establishing collaborative initiatives across multiple sectors, including governments, corporations, civil society, and law enforcement, to successfully combat trafficking and GBV.

In the second chapter, an analysis was conducted on the legal framework and case-law pertaining to trafficking and GBV. When addressing the research question about the legal framework, it is crucial to highlight that the rights outlined in Article 5(1) and (2) of the CFREU aligns with Article 4(1) and (2) of the ECHR, which possess identical language and explicitly forbids slavery and forced labour. They have the same meaning and scope, according to Article 52(3) of the CFREU. These legal provisions, in conjunction with UN instruments, are essential for the prevention and punishment of trafficking in the EU. Although there are many important legal instruments, the non-inclusion of which is explained in the introduction of the thesis, the author identified the instruments that, in her view, most correspond to the manifestation of trafficking and GBV problems in the current dynamic EU landscape. First, the object of the analysis was the 1949 United Nations Convention, which seeks to prohibit discriminatory practices and aid victims of prostitution and human trafficking. It primarily focuses on imposing sanctions for the act of forcing or exploiting individuals in prostitution and includes strategies to deter involvement in the global crime of human trafficking. The rationale behind this is that



individuals who experience sexual assault, harassment, and rape often belong to marginalized communities, such as ethnic minorities, disabled individuals, and minors. To add, studies show that family dynamics normalize prostitution among children, so within context of this Convention, the European Parliament has stressed the importance of involving families in child abuse prevention efforts. The following section provided a detailed explanation of the 2000 Palermo Protocol. It offers a comprehensive framework to tackle the problem of human trafficking, with a specific emphasis on the challenging circumstances faced by women and children. The Palermo Protocol also provides the primary and official definition of human trafficking and outlines the fundamental principles related to prevention, protection, and prosecution. Finally, the author analysed the Directive 2011/36/EU, the principal regulation of the European Union that sets standards for combating human trafficking, as it places a specific emphasis on protection of women and children. Despite concerted efforts to enhance enforcement measures and address legal loopholes, trafficking continues to be a financially rewarding illicit enterprise that frequently concentrates on young women and girls, according to the author. Nevertheless, the Directive 2011/36/EU undergoes regular modifications, a task primarily attributed to the European Union and the European Commission, to adapt to the changing global landscape. Further in the chapter, legal frameworks including the Istanbul Convention and the CEDAW were discussed. Acknowledging the susceptibility of women and girls, specifically migrants and refugees, they prioritise prohibition, safeguarding, and legal action. Regarding the national environments, where these two instruments are functioning, their efficacy has been demonstrated to be favourable. Nonetheless, it is critical to note that in addition to the tools themselves, this positive change has been also impacted by the cultural shifts and determination of the people.

Furthermore, the legal framework, specifically Article 4 of the ECHR and its equivalent in the CFREU, is vital in protecting victims of human trafficking, according to an analysis of ECtHR case law. Prominent instances that underscore the significance of governmental responsibilities to safeguard victims and effectively combat trafficking include cases of *S.M. v. Croatia*, *V.C.L. AND A.N. v. the United Kingdom*, and *N.Ç. v. Turkey*. The case-law highlights the inadequate protections offered to victims of human trafficking, which arise from deficiencies in comprehensive evaluation and procedural errors within legal systems. Frequently, victims are subjected to additional victimisation during legal proceedings, thereby exacerbating their trauma. The cases also serve as an example of how procedural rules and legal interpretations often fail to provide adequate protection for children who are the victims of sexual exploitation and trafficking. Occasionally, national courts make the mistake of assuming that minors who are not yet of legal consent are voluntarily engaging in sexual relations with adults, which results in more injustices and victimisation. This emphasises how urgently legal systems must prioritise protecting children, provide appropriate services for their needs, and ensure that their rights are fully upheld.

The EU's efforts to prevent human trafficking are examined in the third chapter, which also reveals that labour exploitation has increased. However, the most generic form of human trafficking continues to be sexual exploitation, which mostly affects women and girls. Despite the progress made in the past ten years to assist the European Union in its fight against human trafficking, the risks persist. Institutions, the rule of law, and sustainable development are seriously threatened by this crime in both EU Member States and surrounding countries. Furthermore, according to the EC, fresh patterns in human trafficking need to be swiftly

managed by implementing safety precautions and conducting in-depth analyses of the circumstances in both EU external and internal domains. To maximise results of initiatives and strategies, initiative-taking development of strong partnerships must be pursued.

Preserving fundamental rights, upholding the rule of law, protecting vulnerable groups of people, ensuring economic stability, and combating trafficking are all crucial elements of European security. However, it is undeniable that current legal methods often fall short in effectively addressing the intricate aspects of human trafficking, leading to shortcomings in protections and accountability. Enhanced collaboration among international organisations, governments, law enforcement agencies, and civil society groups is an imperative requirement to effectively address these challenges. This collaborative approach should prioritise prevention, victim assistance, and prosecution equally. This will ensure that legal structures are strong, focused on helping victims, and able to adapt to the constantly changing nature of human trafficking. Moreover, to safeguard susceptible individuals, specifically women and children, and to counteract human trafficking, it is important to promptly execute supplementary comprehensive measures. The author posits that this objective can be achieved through a comprehensive investigation of legal frameworks, case analyses, and the dynamics of GBV. Moreover, all actors of society should actively promote, educate, and raise awareness to confront the prevailing societal standards that perpetuate violence and exploitation based on gender. By doing this, society may eventually foster a culture characterised by fairness, equality, and justice.

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