

UDC: 343.431:341.24(4-672EU)

## EUROPEAN UNION IN COMBATING HUMAN TRAFFICING

*Ketevan Kukhianidze, PhD candidate*

Grigol Robakidze University, Tbilisi, Georgia

---

### Abstract:

Every day several thousand of people are trafficked in different countries in searching better life. Modern day slavery, trafficking in human beings, presents a grave human rights violation. This is the problem, which covers social, political, and demographic aspects, as well as gender and ethnic stratification, transnational organized crime and human rights abuses, and the facility of states and supranational institutions effectively to deal with those issues. It seems that one of the core causes of trafficking in persons is poverty related to the inequalities between economically developed countries and less developed ones. This main factor pushes people to migrate to different countries, as they have no other options to feed their families. In tandem, pull factors such as European demographic problems ensure continuing demand. Consequently, individual nations' efforts cannot succeed unless global efforts are harmonized and these push and pull factors are addressed. This paper presents the positive and negative aspects of European legal documents in combating trafficking in human beings, where we can clearly see the minuses which need to be overcome.

---

### Introduction

The shame of the modern world, contemporary slavery – trafficking in human beings – is a multi-dimensional threat, which has been high on the political agenda of international organizations, regional organizations and states for more than a decade.<sup>1</sup> Human trafficking is not a product of the collapse of communism.<sup>2</sup> Nor is it as recent of a phenomenon as it may appear to be. Trade in men, women, and children – bought and sold into slavery or slavery-like status such as debt bondage, forced or compulsory labor – has been going on for centuries. It is the third largest crime after drug trafficking and the arms trade.

---

<sup>1</sup>Krieg S.H, 2009. Trafficking In Human Beings : The EU Approach Between Border Control , Law Enforcement And Human Rights, European Law Journal Review ,vol. 15 , Blackwell publishing , pp 775-790

<sup>2</sup> Piotrowicz R., 2002. European Initiatives in the Protections of Victims of Trafficking who Give Evidence Against Their Traffickers, International Journal of Refugee Law ,vol. 14, Number 2/3, Oxford University Press , pp 263-278

The prevention of and the fight against human trafficking is an essential element of the EU's efforts to improve the checks and surveillance at the external borders and to enhance the fight against illegal migration.<sup>3</sup>

In the context of the European Community, the impetus to deal with trafficking came with the adoption and ratification the Treaty of European Union in the early 1990 s. The TEU (Treaty of European Union) created a structure with three so-called pillars: the first being the Community Pillar (Titles II, III, IV); the second relating to Common Foreign and Security Policy (Title V); and the third pillar regarding Justice and Home Affairs (Title VI). All of these pillars are pertinent to the trafficking of human beings.<sup>4</sup>

In order to address the rights and needs of the trafficked persons, the EU has demonstrated a keen interest to deal specifically with trafficking activities. The EU has several instruments that are directed at preventing and combating human trafficking. The Council Framework Decision on Combating Trafficking in Human Beings (FD) is an EU effort to second previous UN endeavors.<sup>5</sup> The Council Directive on Short-Term Residence Permits to the third-country nationals and the Lisbon Treaty are additional attempts to engage the problem.<sup>6</sup>

## **The European Union Framework Decision**

The European Union Framework Decision on Combating Trafficking in Human Beings, comprising eleven substantive Articles, is a welcome step in the fight against trafficking.<sup>7</sup> It was put forward to the Council and the European Parliament in December 2001.<sup>8</sup> The adoption of this Framework Decision was important and significant because it offers three concrete areas for standardization and collaboration.

One of its main tasks is to strengthen EU action by promoting a common approach. Common definition of trafficking facilitates cooperation by law enforcement agencies of

---

<sup>3</sup> Krieg S.H , 2009. *Trafficking In Human Beings : The EU Approach Between Border Control , Law Enforcement And Human Rights*, European Law Journal Review ,vol. 15 , Blackwell publishing , pp 775-790

<sup>4</sup>Obokata T., 2003. *EU Council Framework Decision on Combating Trafficking inhuman Beings :A Critical Appraisal*, Common Market Law Review , vol. 40 Number 3, Kluwer Law International , pp 917- 936

<sup>5</sup> European Union: European Commission, Proposal for a Council Framework Decision on combating trafficking in human beings, 22 January 2001, COM(2000) 854 final/2, available at: <http://www.unhcr.org/refworld/docid/47fdb390.html> [accessed 5 April 2010]

<sup>6</sup> Council Directive on the Residence Permit Issued to Third –Country Nationals Who are Victims of Trafficking in Human beings o Who are the Subject of an Action to facilitate Illegal Immigration , Who Cooperate with the Competent Authorities 2004/EC, [2004] OJ L 261/19

<sup>7</sup> Recommendations on the Framework Decision on Combating Trafficking in Human Beings COM (2000) 854 final/2, Bruxelles, 14 September 2001

<sup>8</sup> Askola H. 2007. *Violence against Women , Trafficking , and Migration in the European Union* , European Law Journal Review of European Law Context , Vol. 13 issue 1 , Blackwell Publishing ,pp 204-217

Member States in order to identify victims of trafficking and promotes mutual aid investigation and prosecution of traffickers within or outside of their domestic jurisdictions. This common approach is intended to remove obstacles to the success of the war against trafficking.

The Framework holds the position that the trafficking in persons for labor or sexual exploitation is a violation of their personal integrity. Therefore, the Member States punish any form of recruitment, transportation, transfer or harboring of a person who has been deprived of his/her fundamental rights. All criminal conduct, which abuses the physical or mental vulnerability of a person, is also punished. It has to be emphasized that the victim's consent is irrelevant where the offender's conduct would constitute exploitation within the meaning of the Framework. Consequently, the use of coercion, force or threats, including abduction, the use of deceit or fraud, the abuse of authority or influence or the exercise of pressure, or the offer of payment all constitute a violation of European Law.<sup>9</sup> This gives a common basis for the prosecution of trafficking cases regardless of where they occur.

Once cases are prosecuted the Framework Decision gives a uniform threshold for minimum penalties for trafficking of human beings.<sup>10</sup> The document also emphasizes that penalties for offenders can be "effective, proportionate and dissuasive" if they include criminal or non-criminal fines and specific sanctions such as a temporary or definitive ban on commercial activities, a judicial dissolution measure or the exclusion from public benefits or advantages.

The last key element of the Framework Decision is the protection and assistance to victims. Anomalies in national laws and regulations have created situations where some of those trafficked are protected more than others, depending on where they are trafficked to. In order to remove this problem the Framework provides for legal and personal assistance to victims, and requires signatory states to establish apparatus to fulfill this condition. States must give shelter and clothes, as well as legal and medical assistance to victims that are found on their respective territories.<sup>11</sup>

In addition, the jurisdiction and prosecution criteria form an important part of the document. Individual Member States have jurisdiction where: the offence is committed on its territory (territoriality principle); the offender is a national (active personality principle); the

---

<sup>9</sup> Id Article 1-2

<sup>10</sup> Obokata T. 2006. Trafficking of Human Beings from a Human Rights Perspective Towards a Holistic Approach" International Studies in Human Rights , Martinus Nijhoff Publishers, pp 3-247

<sup>11</sup> Recommendations on the Framework Decision on Combating Trafficking in Human Beings COM (2000) 854 final/2 Bruxelles, 14 September 2001

offence is committed for the benefit of a legal person established in the territory of that Member State. This removes inter-jurisdictional conflict to expedite prosecution.

The Framework Decision itself was formalized on 1 August 2004, by which point the various Member States were expected to have taken all necessary measures to comply with these provisions.<sup>12</sup> Yet, despite the fact that the adoption of a distinct and specific provision of EU law to address trafficking in human beings is undoubtedly a positive development – both from the point of view of the establishment of common definitions and sanctions for the crime, the Framework Decision has met with considerable criticism from different experts.<sup>13</sup>

The main problems in the Framework Decision are the protection of victims and the provision for penalties. The former is not sufficiently provided under this document. The Framework Decision on Victims' Standing only applies to victims in criminal proceedings, and does not bind Member States in providing wider support outside those proceedings. As it is important that protection is given to all victims equally, even when they are not willing to participate in the criminal proceedings.

A number of provisions allow for exceptions or reservations. For example, the language is such that it allows Member States to determine the severity of punishment depending on the types of subsequent exploitation involved. This in effect allows states to qualify the act, resulting in shades of guilt. Increasing the penalties depending on subsequent exploitation creates conceptual difficulty. Trafficking is a migratory process whereby people are transported from one place to another, and increasing sentences based on the types of subsequent exploitation runs the risk of shifting the focus away from the process itself and making Member States concentrate on something, which is already punished by other relevant laws. Member States have a good reason to avoid this conflict; If they perceive that the problem is sufficiently addressed by their own law, they will be less likely to be active on an European level. These conflicts of law obscure the application and enforcement of laws by the concerned authorities, and create procedural difficulties. As a result, the current framework suffers from insufficient or erratic implementation in Member States.

---

<sup>12</sup> Id Article 10 part(1)

<sup>13</sup> Downes P., Zule-Lapimaa A., Ivanechchko L. , Blumberg A. 2008. *Not One Victim More: Human Trafficking in the Baltic States*, Living for Tomorrow , pp 1-298

## **The European Union Council Directive on Short Term Residence Permits**

Residence permit or visa options are mechanisms to provide forced migrants with alternative humanitarian-based means to remain in a country. A new system specifically for victims of human trafficking offers the possibility to develop a common temporary residence permit in the European Union. In February 2002, the European Commission published a proposal for a Council Directive on the establishment of a short-term residence permit, in which it was suggested that a period of thirty days would compromise an appropriate period of reflection for a victim of trafficking.<sup>14</sup>

This proposal was immediately criticized as being manifestly inadequate for the needs of victims, and in April 2004 the Council adopted a distinct directive, consisting of five Chapters and nineteen Articles, on the establishment of a short-term residence permit for non-EU nationals who are victims of nationals of trafficking offences.

The directive is a concise document that recognizes that it is necessary to introduce a measure of protection to those who choose to cooperate with the national authorities and to establish harmonized criteria for such persons throughout the Member States of the EU. Protection is deemed to apply to victims of offences relating to trafficking, even if they have entered the territory of the Member State in question illegally. Under these circumstances, Article 6 provides that such persons are entitled to a reflection period allowing them to recover and to escape the influence of the perpetrators of the offences so that they can make an reasoned decision as to whether to cooperate with the competent authorities.<sup>15</sup> However the reflection period “shall not create any entitlement to residence in the host country.”<sup>16</sup>

The length of the reflection period is to be determined according to national laws and appears to vary considerable throughout the EU Member States.<sup>17</sup> Once the reflection period has expired the authorities are able to offer a temporary six-month residence permit to the individual in question, which may be renewed on the basis of the continued cooperation of that person.<sup>18</sup> In this respect, in granting and renewing such a permit the Member States are well served by the opportunity to prolong their stay for the purpose of investigations and judicial proceedings.<sup>19</sup>

---

<sup>14</sup> European Union, Proposal for a Council Directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities (COM (2002) 71 final) Commission of the European Communities 2002/0043.

<sup>15</sup> Id Article 6 part(1)

<sup>16</sup> Id Article 6 part(3)

<sup>17</sup> Id Article 6 part(1)

<sup>18</sup> Id Article 8 (part 3)

<sup>19</sup> Id Article 8 (part 2)

Again, as with the Framework Decision, this is largely a minimum standards directive and states are free to adopt and maintain more favorable provisions for persons covered by the Directive.<sup>20</sup> During the period that the short-term permit covers, victims holding such a permit are guaranteed:...”a minimum standard of living; access to emergency medical treatment; attention to their safety and protection needs; translation and interpretation where appropriate ;free legal aid(optional ) and necessary medical or other assistance to third – country nationals concerned, who do not have sufficient resources and have special needs, such as pregnant women, the disabled or victims of sexual violence or other forms of violence”.<sup>21</sup> Member States are also expected to define the rules for victims’ access to the labor market, vocational training, and education during the period covered by the residence permit.<sup>22</sup> Additionally conditions regarding participation on programs or schemes for third-country nationals can be imposed on permit-holders.<sup>23</sup>

The permit is renewable but shall not be renewed if the conditions cease to be fulfilled.<sup>24</sup> The permit can also be revoked if the authorities determine that the person’s charge is fraudulent. It can also be lost if the person no longer cooperates or the proceedings are discontinued.<sup>25</sup>

Despite its great importance, and huge promise, it suffers from a number of practical drawbacks and deficiencies, which must be taken into consideration.

Although the Council Directive on Short-Term Residence Permits to Third-country Nationals is a distinct improvement upon many national regimes to combat trafficking offences, there has been some substantial disquiet over the fact that protection for the victim is entirely dependent upon their full and continuing cooperation with the national authorities. It is said that common humanity will dictate that such vulnerable persons should be protected as a matter of course. The obvious quid pro quo arrangement is not in line with European ideals. As the arrangements stands, the victims do not have access the kind of health care, psychosocial support, and shelter assistance they will need upon escaping from trafficking situations unless they agree to work with the State.<sup>26</sup>

---

<sup>20</sup> Id Article 4

<sup>21</sup> Id Article 9

<sup>22</sup> Id Article 11

<sup>23</sup> Id Article 12

<sup>24</sup> Id Article 13

<sup>25</sup> Id Article 14

<sup>26</sup> Haynes D. F. 2004. *Used . Abused , Arrested and Deports Extending Immigration Benefits to Protect the Victims of Trafficking and to Secure the Prosecution of Traffickers* , Human Rights Quarterly A Comparative And International Journal Of The social Sciences and Humanities, Vol. 26 Number 1, The Johns Hopkins University Press, pp 2- 558

Further concerns are raised about the length of time afforded to victims of trafficking. The adopted time limit in many states is unfeasibly short. Fear of reprisals, is a common occurrence.

The reflection period is simply not long enough. If temporary residence permits are not extended to victims, they will not be available to testify against traffickers.

### **The Lisbon Treaty Against Trafficking in Human Beings**

The Lisbon Treaty is the latest milestone in the decades-long evolution of comprehensive EU law. In the Lisbon Treaty border, issues and inter-judicial cooperation are the most salient to human trafficking. Chapter two of the Treaty deals with asylum, immigration and border checks in the European Union and Title V, “Area of Freedom, Security and Justice,” concerns criminal law.

In recent years, progress in justice in Europe has been rather limited, and the focus has been more on security issues. Of course, there is no freedom without security, and there is no security without justice.<sup>27</sup> The changes that the Lisbon treaty introduces in the area of Justice and Home Affairs give the EU more power to strengthen police co-operation between Member States and develop minimum common standards for defining crimes and punishments cross-border crimes, including human trafficking.<sup>28</sup>

These sections of this Lisbon Treaty describe ambitious standards for crimes with a cross-border dimension, such as drug trafficking, trafficking in persons and money laundering. The aim comes from the desire to develop legislation that ensures uniform status of asylum for nationals from third countries that is valid throughout the Union and to protect the rights of third country nationals who residing legally in Member States.<sup>29</sup>

The treaty prohibits gender discrimination and promotes equality between men and women as a fundamental EU value and objective. It mainstreams gender into all EU activities, and includes the objectives of combating discrimination based on sex and fighting against trafficking and sexual exploitation of women.

The Lisbon Treaty would not only prohibit human trafficking, but would also make it much easier for countries to work together to combat the trafficking and sexual exploitation

---

<sup>27</sup> Viviane Reding 2010. *The Future of European Criminal Justice under the Lisbon Treaty*, SPEECH/10/89

<sup>28</sup> Burca D. 2009, *The Lisbon Treaty is good for women*, available at: [http://www.greenparty.ie/news/latest\\_news/the\\_lisbon\\_treaty\\_is\\_good\\_for\\_women](http://www.greenparty.ie/news/latest_news/the_lisbon_treaty_is_good_for_women)

<sup>29</sup> Article 67 and 69 (b) Lisbon Treaty

of women and children. Specifically, the European Union would be able to develop minimum common standards when it comes to defining crime and punishment for a limited number of cross border crimes, including human trafficking and sexual exploitation of women and children. This makes it harder for criminals to avoid justice by moving to another EU country.<sup>30</sup>

## Conclusion

In addition, I think that the Framework Decision needs revision of both approach and penalty. Approach because it is not bold enough. As a result, a number of provisions allow for States to make exceptions or reservations. This makes cooperation and standardization difficult. The penalties need to be changed so that it sufficiently criminalizes the act so that guilty parties would fear the law. While it had a good beginning, it seems to have ultimately failed. Very recently the possibility was raised that the Framework Decision should be discarded,<sup>31</sup> this very fact says a lot about the success of the Framework Decision .

The European Union Council Directive on short-term residence permits seems to be insufficient, as it grants too little to trafficked persons. The six-month residence permit does not grant to enough time for psychological recuperation, legal proceedings nor is it sensitive to potential human rights infringements on the victims. The provisions for repatriation do not take into account whether or not conditions in the place of origin will result in further human rights abuses. The Council Directive contains apparent double standards. It states very clearly that if a trafficked person does not cooperate the protection offered by the Directive is rescinded. Still the idea of the residence permit instead of immediately repatriation is a good one.

Abraham Lincoln, the 16<sup>th</sup> American president, said “Freedom is the last, best hope of the Earth.” The nobility of these words is not reflected in the world we live in, a world in which Human Trafficking still exists. However, the trafficking in persons is not a new phenomenon that can be solved instantly through legislation. It is a longstanding activity with a multidimensional nature including trade, transportation, and various push and pull factors in individual countries. Abuse of people, founded on greed, by cheating, fraud and even force, has deep roots that must be completely removed from the mindset of modern man.

---

<sup>30</sup> REASON 3:Protect women and children from human trafficking and exploitation. Available at: <http://womenforeurope.ie/index.php/get-the-facts/why-vote-yes/73-reason-3>

<sup>31</sup> Proposal for a Directive on preventing and combating trafficking in human beings and protecting victims, repealing Framework Decision 2002/629/JHA



## References:

International Labor Office, ILO Action against Trafficking In Human Beings, ILO Publication. 2008.

Krieg S.H. Trafficking in Human Beings: The EU Approach between Border Control Law Enforcement and Human Rights, *European Law Journal Review*, vol. 15, Blackwell publishing. 2009.

Piotrowicz R. European Initiatives in the Protections of Victims of Trafficking who Give Evidence Against Their Traffickers, *International Journal of Refugee Law*, vol. 14, Number 2/3, Oxford University Press. 2002.

Facts about Human Trafficking, 13 November 2008, available at: <http://www.buzzle.com/articles/facts-about-human-trafficking.html>

Human Trafficking: the Facts (UNODC, 2009)

Available at [www.unodc.org/documents/blueheart/Fact\\_sheet\\_english.pdf](http://www.unodc.org/documents/blueheart/Fact_sheet_english.pdf)

Laczko F. and Klekowski A. von Koppenfels, Barthel J. Trafficking in Women from Central and Eastern Europe: A Review of Statistical Data, *European Conference on Preventing and Combating Trafficking in Human Beings: Global Challenge for the 21<sup>st</sup> Century*, International Organization for Migration (IOM), Asser Press. 2002.

Proverbs 31: 8-9, February 6, 2009, available at

<http://silverthreadsgoldenneedles.wordpress.com/2009/02/06/speak-up-for-those-who-cannot-speak-for-themselves-for-the-rights-of-all-who-are-destitute-speak-up-and-judge-fairly-defend-the-rights-of-the-poor-and-needy-proverbs-318-9/>

Obokata T. EU Council Framework Decision on Combating Trafficking inhuman Beings: A Critical Appraisal, *Common Market Law Review*, vol. 40 Number 3, Kluwer Law International. 2003.

European Union: European Commission, Proposal for a Council Framework Decision on combating trafficking in human beings, 22 January 2001, COM(2000) 854 final/2,

Available at: <http://www.unhcr.org/refworld/docid/47fdfb390.html> [accessed 5 April 2010].

Council Directive on the Residence Permit Issued to Third –Country Nationals Who are Victims of Trafficking in Human beings o Who are the Subject of an Action to facilitate Illegal Immigration , Who Cooperate with the Competent Authorities 2004/EC, [2004] OJ L 261/19.

Recommendations on the Framework Decision on Combating Trafficking in Human Beings COM (2000) 854 final/2, Bruxelles, September 14, 2001.

Askola H. Violence against Women, Trafficking, and Migration in the European Union European Law Journal Review of European Law Context , Vol. 13 issue 1, Blackwell Publishing. 2007.

European Union: European Commission, Proposal for a Council Framework Decision on combating trafficking in human beings, 22 January 2001, COM(2000) 854 final/2, available at: <http://www.unhcr.org/refworld/docid/47fdfb390.html> [accessed 5 April 2010]

Downes P., Zule-Lapimaa A., Ivanechchko L., Blumberg A. Not One Victim More: Human Trafficking in the Baltic States, Living for Tomorrow. 2008.

European Union, Proposal for a Council Directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities (COM (2002) 71 final) Commission of the European Communities 2002/0043.

Haynes D. F. Used, Abused, Arrested and Deports Extending Immigration Benefits to Protect the Victims of Trafficking and to Secure the Prosecution of Traffickers. Human Rights Quarterly a Comparative and International Journal Of The social Sciences and Humanities, Vol. 26 Number 1, The Johns Hopkins University Press. 2004.

Reding V. The Future of European Criminal Justice under the Lisbon Treaty, SPEECH/10/89. 2010.

Burca D. The Lisbon Treaty is good for women. 2009. Available at:

[http://www.greenparty.ie/news/latest\\_news/the\\_lisbon\\_treaty\\_is\\_good\\_for\\_women](http://www.greenparty.ie/news/latest_news/the_lisbon_treaty_is_good_for_women)

Burton J. 2008. Lisbon Treaty to Help Combat People Trafficking. Available at: <http://www.joanburton.ie/?postid=880>

REASON 3: Protect women and children from human trafficking and exploitation. Available at: <http://womenforeurope.ie/index.php/get-the-facts/why-vote-yes/73-reason-3>

Proposal for a Directive on preventing and combating trafficking in human beings and protecting victims, repealing Framework Decision 2002/629/JHA