

**A Socio-Legal Study of Stakeholder Perspectives
on the Identification of Victims of Trafficking in
Human Beings for the Purpose of Labour
Exploitation Across European States**

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Dedication

To my family

Acknowledgments

This doctoral study has been completed due to the contribution and encouragement from a number of people.

I wish to express my utmost gratitude to each of the participants in this doctoral study for sharing their knowledge and experience so generously and for giving of their time.

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Plagiarism Declaration



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I hereby certify that this material, which I now submit for assessment on the programme of study leading to the award of Doctor of Philosophy in Law is entirely my own work and has not been taken from the work of others save and to the extent that such work has been cited and acknowledged within the text of my work.

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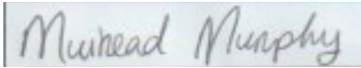
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Abstract

This thesis is a socio-legal analysis of stakeholder perspectives on the identification of victims of trafficking in human beings for the purpose of labour exploitation (THB-LE), focusing on the practical operation of the identification procedure, multi-stakeholder co-operation and, training and awareness measures. Through 42 semi-structured interviews with labour inspectors, criminal law enforcement officials, trade unionists and representatives from non-governmental organisations, it captures bottom-up insights on the gap between the law and practice of identification. This is combined with a top-down analysis of Article 10 of the Council of Europe Convention on Action against Trafficking in Human Beings. Overall, the data highlights both limitations to the international legal framework itself, and gaps between the obligation to identify under international law and its practical realisation in Europe.

The interview findings suggest that the identification procedure should be understood as encompassing the two distinct processes of detection and formal identification. Yet, Article 10 only covers formal identification. The research thus finds a significant lacuna in the legal framework. The analysis also reveals practical barriers to effective identification relating to, for example, shifting the burden of identification to victims and difficulties in distinguishing the boundary between a labour law violation and THB-LE.

The thesis establishes that the enduring criminal justice approach to trafficking in human beings hinders the effectiveness of the identification procedure by limiting the formal identification process to criminal law enforcement officials. Concurrently, it reveals challenges to the substantive realisation of a multi-stakeholder integrated approach due to, *inter alia*, stakeholders' conflicting agendas and the failure to adequately recognise certain labour market stakeholders, including trade unions.

Finally, the thesis makes recommendations for states to improve the practice of identification, for example, by mapping the duties of relevant stakeholders to delineate areas of convergence and align their efforts.

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Abbreviations and Acronyms

CA	Competent Authority
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
Explanatory Memorandum	The Explanatory Memorandum to the Recommendation on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation
Explanatory Report	The Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings
Forced Labour Convention	Convention concerning Forced or Compulsory Labour, 1930 (No. 29)
Forced Labour Protocol	Protocol of 2014 to the Forced Labour Convention, 1930
GRETA	Council of Europe Group of Experts on Action against Trafficking in Human Beings
ILO	International Labour Organization
IOM	International Organization for Migration
NAP	National Action Plan
NGO	Non-Governmental Organisation
NRM	National Referral Mechanism
OSCE	Organization for Security and Co-operation in Europe
Palermo Protocol	United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children
THB	Trafficking in Human Beings
THB-LE	Trafficking in Human Beings for the Purpose of Labour Exploitation
THB-SE	Trafficking in Human Beings for the Purpose of Sexual Exploitation
Trafficking Convention	Council of Europe Convention on Action against Trafficking in Human Beings
UN	United Nations
UN OHCHR	United Nations Office of the High Commissioner for Human Rights
UN OHCHR Recommended Principles and Guidelines	United Nations Office of the High Commissioner for Human Rights Recommended Principles and Guidelines on Human Rights and Human Trafficking
UN Special Rapporteur	United Nations Special Rapporteur on Trafficking in Persons, Especially Women and Children
UNODC	United Nations Office on Drugs and Crime
UNODC Model Law	United Nations Office on Drugs and Crime Model Law Against Trafficking in Persons
UNTOC	United Nations Convention against Transnational Organized Crime
VoT	Victim of Trafficking in Human Beings

Chapter One – Introduction

Introduction

Attention has been paid to preventing and combating trafficking in human beings (THB) for over a century.¹ The gravity of this phenomenon has demanded action from international organisations including the United Nations (UN), the International Labour Organization (ILO), the International Organization for Migration (IOM), the Council of Europe, the European Union (EU), and the Organization for Security and Co-operation in Europe (OSCE).² As a result, a number of international and regional legal instruments have emerged to address THB.³ Recent years have seen increased recognition of the prevalence of trafficking in human beings for the purpose of labour exploitation (THB-LE)⁴ with action to eradicate this practice gathering ‘considerable momentum’,⁵ for example, it has been at the forefront of work by international monitoring bodies.⁶ This impetus is further reinforced by the emerging ‘modern slavery’ frameworks which seek to address such practices.⁷ In addition, there has been increasing political and social scrutiny of THB-LE and other severe forms of labour exploitation in Europe, as demonstrated by the introduction of laws regulating corporate activity in this context.⁸

¹ A number of international agreements and conventions between 1904 and 1933 addressed the issues of white slave traffic and the traffic in women and children. This includes the International Agreement for the Suppression of the White Slave Traffic (adopted 18 May 1904, entered into force 18 July 1905) 1 LNTS 83; International Convention for the Suppression of the White Slave Traffic (adopted 4 May 1910, entered into force 8 August 1912) 3 LNTS 278; International Convention for the Suppression of the Traffic in Women and Children (adopted 30 September 1921, entered into force 15 June 1922) 9 LNTS 415; International Convention for the Suppression of the Traffic in Women of Full Age (adopted 11 October 1933, entered into force 24 August 1934) 150 LNTS 431.

² Marlene Matos, Mariana Gonçalves and Ângela Maia, ‘Human Trafficking and Criminal Proceedings in Portugal: Discourses of Professionals in the Justice System’ (2018) 21(4) Trends in Organized Crime 370-400, 371.

³ These legal instruments are discussed in-depth in Chapter Two.

⁴ Benjamin Ferguson, ‘The Paradox of Exploitation’ (2016) 81(5) Erkenntnis 951-972, 951; Stephanie A. Limoncelli, ‘The Global Development of Contemporary Anti-Human Trafficking Advocacy’ (2017) 32(6) International Sociology 814-834, 814.

⁵ Alison Gardner, ‘An Idea Whose Time Has Come? Modern Slavery, Multiple Streams Approach and Multilayer Policy Implementation’ (2018) 10(3) Journal of Human Rights Practice 461-481, 462.

⁶ See for example, GRETA, *Guidance Note on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2021).

⁷ Including the UK Modern Slavery Act 2015 and the Australian Modern Slavery Act 2018. See also, Fiona David, Katharine Bryant and Jacqueline Joudo Larsen, *Migrants and Their Vulnerability to Human Trafficking, Modern Slavery and Forced Labour* (IOM 2019).

⁸ For example, the German Act on Corporate Due Diligence in Supply Chains of 16 July 2021 and the Norwegian Transparency Act 2022. In addition, EU Directive 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive 2019/1937 and Regulation 2023/2859 was published on 5 July 2024, with transposition required by 26 July 2026.

The identification of victims of trafficking in human beings (VoTs) is a fundamental aspect of an anti-trafficking response.⁹ There is practical significance to the formal identification as a VoT within the international legal framework as it enables access to victim protection and support measures.¹⁰ This is demonstrated by the emergence of an express legal obligation to identify, most notably under Article 10 of the Council of Europe Convention on Action against Trafficking in Human Beings (Trafficking Convention).¹¹ Notwithstanding these international legal obligations, there are recognised difficulties in identifying individuals as victims of THB-LE in practice.¹² It has been reported that it is ‘harder to detect than trafficking for the purpose of sexual exploitation’,¹³ and that it is difficult to distinguish between a victim of THB-LE and an individual subjected to other forms of labour exploitation.¹⁴

This socio-legal thesis examines the identification of victims of THB-LE by combining a top-down analysis of Article 10 of the Trafficking Convention with 42 qualitative semi-structured interviews with key stakeholders¹⁵ across 20 European states¹⁶ to capture bottom-up insights in order to examine the gap between the law and practice of identification.

This chapter introduces the thesis and is divided into five sections. Section one provides a brief background to the phenomenon of THB-LE focusing on the definition of THB(-LE) and its estimated prevalence. The aim of the thesis and the research questions are stated in section two. This is followed in section three by a presentation of the scholarly state of the art on the identification of VoTs and methodological approaches in the field

⁹ Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Survey Report 2021 of Efforts to Implement OSCE Commitments and Recommended Actions to Combat Trafficking in Human Beings* (OSCE 2022) 74.

¹⁰ For example, under Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 6 and Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 12.

¹¹ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10.

¹² Irene Wintermayr and Amy Weatherburn, *Access to Protection and Remedy for Victims of Human Trafficking for the Purpose of Labour Exploitation in Belgium and the Netherlands* (ILO 2021) 7.

¹³ Report by the Secretary General for the Ministerial Session in Helsinki, *Ready for Future Challenges: Reinforcing the Council of Europe* (Council of Europe 2019) 29.

¹⁴ Julia O’Connell Davidson, ‘New Slavery, Old Binaries: Human Trafficking and the Borders of “Freedom”’ (2010) 10(2) *Global Networks* 244-261, 250.

¹⁵ See section 1.4.3.1.

¹⁶ See section 1.4.3.2.

of THB. The socio-legal methodology adopted to meet the aims of this doctoral study is comprehensively detailed and justified in section four. The final section outlines the thesis structure.

1.1. Background to Trafficking in Human Beings for the Purpose of Labour Exploitation

The ground-breaking UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol)¹⁷ defines THB as:

‘the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs’.¹⁸

Prior to the Palermo Protocol, THB was not defined by international law despite appearing in a number of international legal instruments. Gallagher posits reasons for this omission including:

‘major differences of opinion concerning the ultimate end result of trafficking, its constitutive acts, and their relative significance, as well as the similarities and differences between trafficking and related issues such as illegal migration and migrant smuggling’.¹⁹

The Palermo Protocol provided a universally accepted definition of THB which has subsequently informed regional, sub-regional and national anti-trafficking legal frameworks,²⁰ including the Trafficking Convention which adopts the same definition.²¹ THB has been described as a process²² – a number of interrelated actions rather than a

¹⁷ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319.

¹⁸ *ibid* Article 3(a).

¹⁹ Anne T. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010) 12.

²⁰ Joy N. Ezeilo, ‘Achievements of the Trafficking Protocol: Perspectives from the Former UN Special Rapporteur on Trafficking in Persons’ (2015) 4 *Anti-Trafficking Review* 144-149, 146.

²¹ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 4(a).

²² Anne Gallagher, ‘Using International Human Rights Law to Better Protect Victims of Trafficking: The Prohibitions on Slavery, Servitude, Forced Labor, and Debt Bondage’ in Leila Nadya Sadat and Michael P. Scharf (eds), *The Theory and Practice of International Criminal Law: Essays in Honor of M. Cherif*

single act at a given point in time²³ – potentially involving multiple perpetrators and locations.²⁴ It involves the (intended) exploitation of men, women and children for a variety of purposes.²⁵ Although there was a previous focus both in the legal framework²⁶ and in scholarly literature²⁷ on trafficking in human beings for the purpose of sexual exploitation (THB-SE), there has been a growing impetus, both internationally and nationally, ‘to improve understanding and responses to all forms of human trafficking’.²⁸ Research has expanded to consider, *inter alia*, forced criminal activities,²⁹ organ trafficking,³⁰ forced marriage,³¹ illegal adoption,³² forced begging,³³ and criminal

Bassiouni (Martinus Nijhoff Publishers 2008) 399; UN OHCHR, *Human Rights and Human Trafficking* (United Nations 2014) 1; Marija Jovanović, *State Responsibility for ‘Modern Slavery’ in Human Rights Law: A Right Not To Be Trafficked* (Oxford University Press 2023) 4.

²³ UN Special Rapporteur on Trafficking in Persons, especially Women and Children, ‘Identification, Protection of and Assistance to Victims of Trafficking’ (12 August 2009) A/64/290 para 93.

²⁴ Simon Massey and Glynn Rankin, *Exploiting People for Profit: Trafficking in Human Beings* (Palgrave Macmillan 2020) 15; Sigrid Raets and Jelle Janssens, ‘Trafficking and Technology: Exploring the Role of Digital Communication Technologies in the Belgian Human Trafficking Business’ (2021) 27(2) *European Journal on Criminal Policy and Research* 215-238, 220.

²⁵ Jo Goodey, ‘Human Trafficking: Sketchy Data and Policy Responses’ (2008) 8(4) *Criminology & Criminal Justice* 421-442, 421; Alexis A. Aronowitz, *Human Trafficking, Human Misery: The Global Trade in Human Beings* (Praeger 2009) 101.

²⁶ Notably, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (adopted 2 December 1949, entered into force 25 July 1951) 96 UNTS 271.

²⁷ See critique on this matter by, *inter alia*, Tanja Bastia, ‘Stolen Lives or Lack of Rights? Gender, Migration and Trafficking’ (2006) 39(2) *Labour, Capital and Society* 21-47, 22; Madeleine Hulting, ‘Hidden Labour: Knowledge Production of Trafficking Illustrated by a Swedish Case Study’ in Christien van den Anker and Ilse van Liempt (eds), *Human Rights and Migration: Trafficking for Forced Labour* (Palgrave Macmillan 2012) 145; Jeremy S. Norwood, ‘Labor Exploitation of Migrant Farmworkers: Risks for Human Trafficking’ (2020) 6(2) *Journal of Human Trafficking* 209-220, 209. Similarly, it has been observed that discourse on THB has, historically and presently, predominantly focused on the sexual exploitation of women and girls. See, *inter alia*, Robert Uy, ‘Blinded by Red Lights: Why Trafficking Discourse Should Shift Away from Sex and the “Perfect Victim” Paradigm’ (2011) 26(1) *Berkeley Journal of Gender, Law & Justice* 204-219, 205; Alicia L. Jurek and William R. King, ‘Structural Responses to Gendered Social Problems: Police Agency Adaptations to Human Trafficking’ (2020) 23(1) *Police Quarterly* 25-54, 27.

²⁸ Ella Cockbain and Kate Bowers, ‘Human Trafficking for Sex, Labour and Domestic Servitude: How Do Key Trafficking Types Compare and What Are Their Predictors?’ (2019) 72(1) *Crime, Law and Social Change* 9-34, 12.

²⁹ Such as, Carolina Villacampa and Núria Torres, ‘Human Trafficking for Criminal Exploitation: Effects Suffered by Victims in Their Passage Through the Criminal Justice System’ (2019) 25(1) *International Review of Victimology* 3-18.

³⁰ For instance, Sylwia Gawronska, ‘Organ Trafficking and Human Trafficking for the Purpose of Organ Removal, Two International Legal Frameworks Against Illicit Organ Removal’ (2019) 10(3) *New Journal of European Criminal Law* 268-286.

³¹ For example, Muhammad Makki Kakar and Farhan Navid Yousaf, ‘Gender, Political and Economic Instability, and Trafficking into Forced Marriage’ (2022) 32(3) *Women & Criminal Justice* 277-287.

³² To take one example, Yinka Olomjobi and Ajoke Oluwakemi Agbetoba, ‘The Abyss of Baby Factories in Nigeria’ (2020) 30(4) *Women & Criminal Justice* 220-242.

³³ *Inter alia*, Iveta Cherneva, ‘Human Trafficking for Begging’ (2011) 17(1) *Buffalo Human Rights Law Review* 25-73.

exploitation in armed conflicts.³⁴ Each type of exploitation is distinctive³⁵ and each form of THB requires different responses in order to be addressed effectively.³⁶ As Efrat argues, it is important to recognise the differences between these practices to ensure that policy and law makers do not ‘compromise the analysis and design of counter-trafficking efforts’.³⁷ This is one rationale underlying the decision to focus on a specific exploitation type in this thesis, namely THB-LE.

However, it is important to note that THB-LE is not a concept explicitly used or defined within the international legal framework, instead the legal definition of THB refers to a list of exploitative purposes.³⁸ Therefore, this thesis adopts and follows the definition proposed by the Group of Experts on Action against Trafficking in Human Beings (GRETA) which considers THB-LE to encompass forced labour or services, slavery, slavery-like practices, or servitude, in line with their international definitions.³⁹

Ascertaining the scope of THB-LE has posed difficulties in practice and the concept of a continuum of exploitation has emerged within legal scholarship in an attempt to capture the range of exploitative practices⁴⁰ including routine exploitation,⁴¹ and to distinguish between a labour law violation and a criminal law offence.⁴² This doctoral study examines the definitional scope of THB-LE and the concept of the continuum of exploitation in

³⁴ Such as, Carolina Villacampa and Katherine Flórez, ‘Human Trafficking for Criminal Exploitation and Participation in Armed Conflicts: The Colombian Case’ (2018) 69(3) *Crime, Law and Social Change* 421-445.

³⁵ Laura A. Dean, *Diffusing Human Trafficking Policy in Eurasia* (Policy Press 2020) 7; Alexandra Ricard-Guay and Jill Hanley, ‘The Challenge of Addressing Both Forced Labor and Sexual Exploitation’ in John Winterdyk and Jackie Jones (eds), *The Palgrave International Handbook of Human Trafficking* (Palgrave Macmillan 2020) 288.

³⁶ Nicola Jägers and Conny Rijken, ‘Prevention of Human Trafficking for Labor Exploitation: The Role of Corporations’ (2014) 12(1) *Northwestern Journal of International Human Rights* 47-73, 47.

³⁷ Asif Efrat, ‘Global Efforts against Human Trafficking: The Misguided Conflation of Sex, Labor, and Organ Trafficking’ (2016) 17(1) *International Studies Perspectives* 34-54, 34.

³⁸ Nicola Piper, Marie Segrave and Rebecca Napier-Moore, ‘Editorial: What’s in a Name? Distinguishing Forced Labour, Trafficking and Slavery’ (2015) 5 *Anti-Trafficking Review* 1-9, 2.

³⁹ GRETA, *7th General Report on GRETA’s Activities covering the period from 1 January to 31 December 2017* (Council of Europe 2018) 34; GRETA, *Compendium of Good Practices in Addressing Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2020) 5; GRETA, *Guidance Note on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2021) 6.

⁴⁰ Hannah Lewis and Louise Waite, ‘Asylum, Immigration Restrictions and Exploitation: Hyper-precarity as a Lens for Understanding and Tackling Forced Labour’ (2015) 5 *Anti-Trafficking Review* 49-67, 66-67.

⁴¹ Jon Davies, ‘From Severe to Routine Labour Exploitation: The Case of Migrant Workers in the UK Food Industry’ (2019) 19(3) *Criminology & Criminal Justice* 294-310.

⁴² Klara Skrivankova, *Between Decent Work and Forced Labour: Examining the Continuum of Exploitation* (Joseph Rowntree Foundation 2010).

Chapter Two.⁴³ THB-LE is a particularly complex form of THB as it interacts with broader debates on migration and the exploitation of migrant workers. Migrant workers have been frequently identified by academic scholarship,⁴⁴ international organisations⁴⁵ and monitoring bodies⁴⁶ as a population who are susceptible to severely exploitative practices. This may result from vulnerabilities created by and during the migration process.⁴⁷ Increasingly, scholars have recognised the need to address the root causes of vulnerability to THB-LE, including push and pull factors.⁴⁸ Push factors include poverty,⁴⁹ gender inequalities,⁵⁰ political upheaval,⁵¹ structural impediments to migration,⁵² lack of education or illiteracy,⁵³ civil conflict,⁵⁴ economic crises or economic

⁴³ Both in section 2.2.1. and section 2.4.1.

⁴⁴ Mike Grewcock, 'Irregular Migration, Identity and the State – The Challenge for Criminology' (2003) 15(2) *Current Issues in Criminal Justice* 114-135, 128-129; Gao Yun, 'Introduction' in Gao Yun (ed), *Concealed Chains: Labour Exploitation and Chinese Migrants in Europe* (ILO 2010) 5; Matej Blazek, 'Migration, Vulnerability and the Complexity of Violence: Experiences of Documented Non-EU Migrants in Slovakia' (2014) 56 *Geoforum* 101-112, 102; Michael Potter and Jennifer Hamilton, 'Picking on Vulnerable Migrants: Precarity and the Mushroom Industry in Northern Ireland' (2014) 28(3) *Work, Employment and Society* 390-406, 390; Eliza Marks and Anna Olsen, 'The Role of Trade Unions in Reducing Migrant Workers' Vulnerability to Forced Labour and Human Trafficking in the Greater Mekong Subregion' (2015) 5 *Anti-Trafficking Review* 111-128; Natalia Ollus, 'Regulating Forced Labour and Combating Human Trafficking: The Relevance of Historical Definitions in a Contemporary Perspective' (2015) 63(5) *Crime, Law and Social Change* 221-246, 224; Sam Scott, *Labour Exploitation and Work-Based Harm* (Policy Press 2017) 6; Virginia Mantouvalou, *Structural Injustice and Workers' Rights* (Oxford University Press 2023) 29.

⁴⁵ UNODC, *Global Report on Trafficking in Persons* (United Nations 2012) 15.

⁴⁶ United States Department of State, *Trafficking in Persons Report* (USDS 2019) 26; GRETA, *Guidance Note on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2021) 15.

⁴⁷ The Anti-Trafficking Monitoring Group, *All Change: Preventing Trafficking in the UK* (ATMG 2012) 17.

⁴⁸ Ann D. Jordan, 'Human Rights or Wrongs? The Struggle for a Rights-Based Response to Trafficking in Human Beings' (2002) 10(1) *Gender & Development* 28-37, 28.

⁴⁹ Siddharth Kara, *Modern Slavery: A Global Perspective* (Columbia University Press 2017) 29; Annalisa Enrile (ed), *Ending Human Trafficking & Modern-Day Slavery: Freedom's Journey* (Sage Publications 2018) 53; Gabrielle Sinnott and Lysie Clott, 'International Development and Globalization Issues that Contribute to Trafficking in Persons' in Mary C. Burke (ed), *Human Trafficking: Interdisciplinary Perspectives* (3rd edn, Routledge 2022) 264.

⁵⁰ Louise Shelley, *Human Trafficking: A Global Perspective* (Cambridge University Press 2010) 37.

⁵¹ Alex Kreidenweis and Natalie F. Hudson, 'More Than a Crime: Human Trafficking as Human (In)Security' (2015) 16(1) *International Studies Perspectives* 67-85, 69.

⁵² Ronald Weitzer, 'Human Trafficking and Contemporary Slavery' (2015) 41 *Annual Review of Sociology* 223-242, 239.

⁵³ Adki Surender, 'Human Trafficking: Police Response in Andhra Pradesh, India' in S. Caroline Taylor, Daniel Joseph Torpy and Dilip K. Das (eds), *Policing Global Movement: Tourism, Migration, Human Trafficking, and Terrorism* (CRC Press 2012) 210.

⁵⁴ Steve Kwok-Leung Chan, 'Deprivation of Citizenship, Undocumented Labor and Human Trafficking: Myanmar Migrant Workers in Thailand' (2018) 8(2) *Regions & Cohesion* 82-106, 89; The Anti-Trafficking Monitoring Group, *All Change: Preventing Trafficking in the UK* (ATMG 2012) 18.

inequalities,⁵⁵ unemployment,⁵⁶ and a violation of human rights.⁵⁷ On the other hand, pull factors include the expectation of higher income, better living or working conditions, greater employment opportunities abroad, and the increasing demand for cheap labour.⁵⁸ The demand for labour flexibility exploits the vulnerable position of migrant workers, because they tend to have limited options other than to agree to working under poor and exploitative conditions.⁵⁹ However, this thesis explicitly recognises the position of van Meeteren and Heideman, that vulnerability is not restricted to migrant workers, and similarly not *all* migrants are vulnerable to THB-LE.⁶⁰ Specifically in the context of THB-LE, the Explanatory Memorandum to the Recommendation on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation calls on states to:

‘pay specific attention to the identification of potential victims of trafficking amongst at-risk groups, such as undocumented persons, seasonal workers, temporary agency workers, domestic workers, workers hired through recruitment agencies, posted workers, persons in presumed bogus self-employment, asylum seekers, refugees and persons with temporary immigration or dependent status’.⁶¹

⁵⁵ Natalia Ollus and Matti Joutsen, ‘International Policies to Combat Human Trafficking’ in Rochelle L. Dalla and Donna Sabella (eds), *Routledge International Handbook of Human Trafficking: A Multi-Disciplinary and Applied Approach* (Routledge 2020) 79.

⁵⁶ ILO, *ILO Action Against Trafficking in Human Beings* (ILO 2008) 21; Oguzhan Omer Demir and James O. Finckenauer, ‘Victims of Sex Trafficking in Turkey: Characteristics, Motivations, and Dynamics’ (2010) 20(1-2) *Women & Criminal Justice* 57-88, 60.

⁵⁷ William D. Moreto, Richard W. Charlton, Samuel E. DeWitt and Christina M. Burton, ‘The Convergence of CAPTURED Fish and People: Examining the Symbiotic Nature of Labor Trafficking and Illegal, Unreported and Unregulated Fishing’ (2019) 41(6) *Deviant Behavior* 733-749, 735.

⁵⁸ Diego Hernandez and Alexandra Rudolph, ‘Modern Day Slavery: What Drives Human Trafficking in Europe?’ (2015) 38 *European Journal of Political Economy* 118-139, 121.

⁵⁹ Louise Waite, Gary Craig, Hannah Lewis and Klara Skrivankova, ‘Introduction’ in Louise Waite, Gary Craig, Hannah Lewis and Klara Skrivankova (eds), *Vulnerability, Exploitation and Migrants: Insecure Work in a Globalised Economy* (Palgrave Macmillan 2015) 3; Hannah Lewis, Peter Dwyer, Stuart Hodgkinson and Louise Waite, *Precarious Lives: Forced Labour, Exploitation and Asylum* (Policy Press 2015) 22; Natalia Ollus, ‘Forced Flexibility and Exploitation: Experiences of Migrant Workers in the Cleaning Industry’ (2016) 6(1) *Nordic Journal of Working Life Studies* 25-45, 38; Peter Dwyer, Stuart Hodgkinson, Hannah Lewis and Louise Waite, ‘Socio-Legal Status and Experiences of Forced Labour Among Asylum Seekers and Refugees in the UK’ (2016) 32(3) *Journal of International and Comparative Social Policy* 182-198, 183; Annalisa Lucifora, ‘From Old Slavery to New Forms of Exploitation: A Reflection on the Conditions of Irregular Migrant Labour After the *Chowdury* Case’ (2019) 10(3) *New Journal of European Criminal Law* 251-267, 255; Hannah Lewis and Louise Waite, ‘Migrant Illegality, Slavery and Exploitative Work’ in Gary Craig, Alex Balch, Hannah Lewis and Louise Waite (eds), *The Modern Slavery Agenda: Policy, Politics and Practice in the UK* (Policy Press 2019) 220.

⁶⁰ Masja van Meeteren and Nikki Heideman, ‘Taking Stock of Labour Trafficking in the Netherlands’ (2021) 43(1) *Archives of Criminology* 143-168, 146.

⁶¹ Council of Europe, ‘Explanatory Memorandum to Recommendation CM/Rec(2022)21 of the Committee of Ministers to Member States on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation’ (27 September 2022) CM(2022)141-add5final para 19.

Irregular immigration status is a well-documented vulnerability factor in the trafficking literature and international reports.⁶² Urzi argues that immigration status creates ‘a “hierarchy of vulnerability” that exposes migrant workers to the risk of labour exploitation, particularly in the informal labour market’.⁶³ The vulnerable position that these individuals find themselves in, grounded in a fear of deportation, creates a paradox whereby ‘the workers fear losing the job in which they are exploited’.⁶⁴ In addition, problems arise in distinguishing between deserving victims or undeserving (illegal) migrant workers.⁶⁵ Difficulties can arise in coinciding a state’s security oriented or anti-immigration stance (as seen in some states in recent times⁶⁶) with the facilitation of legal entry for those seeking opportunities abroad. Relatedly, scholars have begun to examine some of the structural factors that can ensnare vulnerable workers in exploitative conditions.⁶⁷ Mantouvalou, for example, has focused on what she terms ‘state-mediated structural injustice’, pointing towards legislative provisions promoting legitimate aims but creating vulnerabilities for certain worker cohorts, such as restrictive visa regimes.⁶⁸

⁶² UN OHCHR, *Human Rights and Human Trafficking* (United Nations 2014) 16; Hila Shamir, ‘The Paradox of “Legality”: Temporary Migrant Worker Programs and Vulnerability to Trafficking’ in Prabha Kotiswaran (ed), *Revisiting the Law and Governance of Trafficking, Forced Labor and Modern Slavery* (Cambridge University Press 2017) 471; Masja van Meeteren and Ellen Wiering, ‘Labour Trafficking in Chinese Restaurants in the Netherlands and the Role of Dutch Immigration Policies: A Qualitative Analysis of Investigative Case Files’ (2019) 72(1) *Crime, Law and Social Change* 107-124, 110.

⁶³ Domenica Urzi, ‘Global Citizenship: The Need for Dignity and Respect for Migrants’ in Louise Waite, Gary Craig, Hannah Lewis and Klara Skrivankova (eds), *Vulnerability, Exploitation and Migrants: Insecure Work in a Globalised Economy* (Palgrave Macmillan 2015) 226.

⁶⁴ Natalia Ollus, ‘Forced Flexibility and Exploitation: Experiences of Migrant Workers in the Cleaning Industry’ (2016) 6(1) *Nordic Journal of Working Life Studies* 25-45, 36.

⁶⁵ Wendy Chapkis, ‘Trafficking, Migration, and the Law: Protecting Innocents, Punishing Immigrants’ (2003) 17(6) *Gender and Society* 923-937, 925; Julia O’Connell Davidson, ‘Will the Real Sex Slave Please Stand Up?’ (2006) 83(1) *Feminist Review* 4-22, 16; Rutvica Andrijasevic and Bridget Anderson, ‘Anti-Trafficking Campaigns: Decent? Honest? Truthful?’ (2009) 92(1) *Feminist Review* 151-155, 154.

⁶⁶ Particular debate has arose in the United Kingdom with the introduction of the Illegal Migration Act 2023. See, for example, Paul Arnell, Olayinka Lewis, Erika Kalocsányiová and Andrew Forrester, ‘The UK’s Illegal Migration Bill: Human Rights Violated’ (2023) 63(4) *Medicine, Science and the Law* 267-269.

⁶⁷ Bridget Anderson, ‘Migration, Immigration Controls and the Fashioning of Precarious Workers’ (2010) 24(2) *Work, Employment and Society* 300-317; Inga Thiemann, ‘Villains and Victims, But No Workers: Why a Prosecution-Focused Approach to Human Trafficking Fails Trafficked Persons’ (2016) 6 *Anti-Trafficking Review* 126-129, 128-129; Vera Pavlou, ‘Where to Look for Change?: A Critique of the Use of Modern Slavery and Trafficking Frameworks in the Fight against Migrant Domestic Workers’ Vulnerability’ (2018) 20(1) *European Journal of Migration and Law* 83-107, 106; Clíodhna Murphy, David M. Doyle and Stephanie Thompson, ‘Workers’ Perspectives on State-Constructed Vulnerability to Labour Exploitation: Experiences of Migrant Fishers in Ireland’ (2023) 32(4) *Social & Legal Studies* 562-585.

⁶⁸ Virginia Mantouvalou, ‘Structural Injustice and the Human Rights of Workers’ (2020) 73(1) *Current Legal Problems* 59-87; Virginia Mantouvalou, *Structural Injustice and Workers’ Rights* (Oxford University Press 2023). See also, Virginia Mantouvalou, ‘Legal Construction of Structures of Exploitation’ in Hugh Collins (ed), *Philosophical Foundations of Labour Law* (Oxford University Press 2018) 198.

Estimates of severely exploitative practices have been made by various international organisations.⁶⁹ The ILO, Walk Free and IOM, for example, reported that on any given day in 2021, 27.6 million people were in situations of forced labour. Most recently, the ILO has estimated that the ‘total illegal profits generated from forced labour amount to an estimated US\$236 billion annually, resulting from almost US\$10,000 profit per victim’, with US\$173 billion deriving from forced commercial sexual exploitation.⁷⁰ THB-LE has consistently ranked as the second most common form of THB, with figures increasing annually.⁷¹ Most recently, in the EU, for instance, the number of registered victims of THB-LE and THB-SE each amounted to 41 per cent of the total VoTs.⁷² Overall female VoTs have remained the highest detected cohort, but increasingly male VoTs are being detected.⁷³ This latter point is particularly pronounced in relation to THB-LE.⁷⁴ However, the reliability of these estimates has been questioned by some scholars.⁷⁵ For Scullion, such estimates may vary due to different organisational mandates and resources available for data collection.⁷⁶ Moreover, as the identification of victims of THB-LE is a challenge, GRETA has outlined that the available statistics ‘do not reflect

⁶⁹ ILO, Walk Free and IOM, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (ILO, Walk Free and IOM 2022) 1.

⁷⁰ ILO, *Profits and Poverty: The Economics of Forced Labour* (ILO 2024) 13 and 15.

⁷¹ To take an example, the UNODC reported that the share of detected trafficking victims included 50 per cent who were subjected to sexual exploitation, while 38 per cent were subjected to forced labour. UNODC, *Global Report on Trafficking in Persons* (UNODC 2020) 34.

⁷² Eurostat, ‘Trafficking in Human Beings Statistics’ <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Trafficking_in_human_beings_statistics#The_prevalence_of_labour_exploitation_is_almost_equal_to_that_of_sexual_exploitation> accessed 15 March 2024.

⁷³ For example, in 2020 the UNODC reported that 40 per cent of detected VoTs were men and boys, in comparison to 16 per cent in 2004. UNODC, *Global Report on Trafficking in Persons* (United Nations 2022) 11.

⁷⁴ For example, the UNODC reported that female VoTs make up one third of victims of forced labour. UNODC, *Global Report on Trafficking in Persons* (United Nations 2022) 36. In 2024, the UNODC reported that 42 per cent of all VoTs detected were subjected to forced labour, and of those, 67 per cent were male VoTs. UNODC, *Global Report on Trafficking in Persons* (United Nations 2024) 20.

⁷⁵ Penelope McRedmond, ‘Defining Organized Crime in the Context of Human Trafficking’ in Gillian Wylie and Penelope McRedmond (eds), *Human Trafficking in Europe: Character, Causes and Consequences* (Palgrave MacMillan 2010) 181; Andrew Guth, Robyn Anderson, Kasey Kinnard and Hang Tran, ‘Proper Methodology and Methods of Collecting and Analyzing Slavery Data: An Examination of the Global Slavery Index’ (2014) 2(4) *Social Inclusion* 14-22, 19; Ronald Weitzer, ‘New Directions in Research on Human Trafficking’ (2014) 653(1) *The Annals of the American Academy of Political and Social Science* 6-24, 11. A similar criticism is made by Munro in relation to the divergences in national level statistics between different stakeholders, such as those gathered by police or social service providers, Vanessa E. Munro, ‘A Tale of Two Servitudes: Defining and Implementing a Domestic Response to Trafficking of Women for Prostitution in the UK and Australia’ (2005) 14(1) *Social Legal Studies* 91-114, 93.

⁷⁶ Dianne Scullion, ‘Assessing the Extent of Human Trafficking: Inherent Difficulties and Gradual Progress’ (2015) 3(1) *Social Inclusion* 22-34, 26.

the actual scale of the phenomenon'.⁷⁷ Possible reasons for such statistical challenges for THB-LE include its clandestine nature⁷⁸ and ineffective state practices in identifying VoTs.⁷⁹ This is compounded by, *inter alia*, a lack of organisational capacity due to personnel or financial constraints,⁸⁰ or a lack of awareness of THB-LE on the part of stakeholders operating on the frontline.⁸¹

1.2. The Aim of the Thesis and the Research Questions

The aim of this thesis is to critically assess the international legal obligation to identify VoTs, in particular under Article 10 of the Trafficking Convention, as well as the practical implementation of identification at national level. In doing so, it combines a top-down legal analysis with bottom-up stakeholder perspectives to examine the gap between law and practice. The importance and originality of this research is achieved by conducting a study of stakeholder perspectives on the initial detection and subsequent formal identification of adult victims of THB-LE in Europe. These stakeholder perspectives are analysed in relation to the practical operation of the identification procedure, multi-stakeholder co-operation and, training and awareness measures. This research generates fresh insights into the distinct challenges faced by stakeholders operating on the ground with the aim of improving states' efforts to promptly and effectively identify victims of THB-LE.⁸²

⁷⁷ GRETA, *7th General Report on GRETA's Activities covering the period from 1 January to 31 December 2017* (Council of Europe 2018) 39.

⁷⁸ Galma Jahic and James O. Finckenaer, 'Representations and Misrepresentations of Human Trafficking' (2005) 8(3) *Trends in Organized Crime* 24-40, 27; Emily I. Troshynski and Jennifer K. Blank, 'Sex Trafficking: An Exploratory Study Interviewing Traffickers' (2008) 11(1) *Trends in Organized Crime* 30-41, 31; Mary C. Burke, Tina Krolikowski, Shannon White and Nour Alabase, 'Introduction to Human Trafficking' in Mary C. Burke (ed), *Human Trafficking: Interdisciplinary Perspectives* (3rd edn, Routledge 2022) 16.

⁷⁹ Diego Hernandez and Alexandra Rudolph, 'Modern Day Slavery: What Drives Human Trafficking in Europe?' (2015) 38 *European Journal of Political Economy* 118-139, 119.

⁸⁰ Most recently, GRETA has stressed the importance of adequately resourcing labour inspectors for the purpose of detecting and identifying instances of THB-LE. GRETA, *Guidance Note on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2021) 13. Likewise such recommendations have been made in the Council of Europe, 'Explanatory Memorandum to Recommendation CM/Rec(2022)21 of the Committee of Ministers to Member States on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation' (27 September 2022) CM(2022)141-add5final, 15.

⁸¹ As explored in-depth in section 5.3.1. of Chapter Five. In the US context, see Kelle Barrick, Pamela K. Lattimore, Wayne J. Pitts and Sheldon X. Zhang, 'When Farmworkers and Advocates See Trafficking But Law Enforcement Does Not: Challenges in Identifying Labor Trafficking in North Carolina' (2014) 61(2) *Crime, Law and Social Change* 205-214.

⁸² Anette Brunovskis and Rebecca Surtees, 'Identifying Trafficked Migrants and Refugees Along the Balkan Route. Exploring the Boundaries of Exploitation, Vulnerability and Risk' (2019) 72(1) *Crime, Law and Social Change* 73-86, 80.

To achieve this aim the doctoral study addresses the following research questions:

- (a) What are the international legal obligations of European states regarding the identification of victims of THB-LE, in particular under Article 10 of the Council of Europe Convention on Action against Trafficking in Human Beings?
- (b) What are the barriers to and facilitators of the identification of victims of THB-LE at national level?
- (c) How do stakeholders interpret and exercise their duties to identify victims of THB-LE?
- (d) How can stakeholder perspectives on identifying victims of THB-LE inform the effective implementation of states' legal obligations under the Council of Europe Convention on Action against Trafficking in Human Beings, and contribute to the enhancement of anti-trafficking law and policy?

A socio-legal methodology was adopted to meet the overall aim of the thesis and to answer the research questions. The data derives from three main sources: primary legal sources, a literature review and an analysis of empirical evidence gathered via 42 qualitative semi-structured interviews with a range of stakeholders across 20 European states.⁸³ For the purpose of this thesis, stakeholders are individuals and organisations engaged in national anti-trafficking efforts and include criminal law enforcement officials, labour inspectors, representatives of non-governmental organisations (NGOs), and trade unionists. The research methodology is extensively detailed in section 1.4.

The Trafficking Convention⁸⁴ is the core legal instrument analysed in this doctoral study for a number of reasons. First, the Trafficking Convention is binding on the 46 ratifying Council of Europe Member states⁸⁵ and other non-member ratifying states.⁸⁶ Thus, it has

⁸³ Austria, Belgium, Bulgaria, Czech Republic (Czechia), Estonia, Finland, Germany, Greece, Hungary, Iceland, Ireland, the Netherlands, Norway, Portugal, Slovenia, Spain, Sweden, Switzerland, Ukraine, and the United Kingdom.

⁸⁴ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197.

⁸⁵ Council of Europe Member states include: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czechia (Czech Republic), Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Montenegro, the Netherlands, North Macedonia, Norway, Poland, Portugal, Republic of Moldova, Romania, San Marino, Serbia, Slovak Republic (Slovakia), Slovenia, Spain, Sweden, Switzerland, Turkey (Türkiye), Ukraine and the United Kingdom.

⁸⁶ The ratification of the Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 is not limited to Council of Europe Member states, as provided for in the first line of its Preamble. To date, non-Council of Europe Member states who have ratified the Convention include Israel and Belarus.

a much wider scope than the EU's anti-trafficking framework, for example.⁸⁷ Secondly, it addresses some of the gaps left by the Palermo Protocol and adopts a more human rights-based approach to tackle the phenomenon.⁸⁸ It elaborates on what is required of states, most notably in relation to the protection of VoTs and the obligation to identify instances of THB.⁸⁹ Thirdly, a comprehensive explanatory report accompanies the Trafficking Convention and provides a level of guidance as to the scope and intention of its provisions.⁹⁰ Fourthly, the European Court of Human Rights (ECtHR) has increasingly made reference to the provisions of the Trafficking Convention and reports from its monitoring body,⁹¹ establishing a direct relationship between the 'living instrument'⁹² of Article 4 of the European Convention on Human Rights (ECHR)⁹³ and the Trafficking Convention.⁹⁴ Finally, in contrast to other international instruments, the Trafficking Convention has a comprehensive monitoring mechanism in place to assess state compliance with its provisions.⁹⁵ The work of its monitoring body, GRETA – which is the 'only independent panel of experts monitoring the implementation of binding international legal provisions on combating trafficking in human beings'⁹⁶ – and the recommendations of the Committee of the Parties, have contributed to the improvement

⁸⁷ For instance, the EU Trafficking Directives of 2011 and 2024 are binding on the 27 EU Member states. 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 [2011] OJ L 101; Directive 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

⁸⁸ Julia Planitzer and Helmut Sax, 'Introduction' in Julia Planitzer and Helmut Sax (eds), *A Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings* (Elgar Publishing 2020) 2.

⁸⁹ Contained within Chapter III of the Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 entitled 'Measures to protect and promote the rights of victims, guaranteeing gender equality'.

⁹⁰ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005).

⁹¹ *J and Others v Austria* App no 58216/12 (ECtHR, 17 January 2017) para 61; *Chowdury and Others v Greece* App No 21884/15 (ECtHR, 30 March 2017) para 104; *SM v Croatia* App No 60561/14 (ECtHR, 25 June 2020) para 295; *VCL and AN v The United Kingdom* App nos 77587/12 and 74603/12 (ECtHR, 16 February 2021) para 150; *Zoletic and Others v Azerbaijan* App no 20116/12 (ECtHR, 7 October 2021) para 118; *Krachunova v Bulgaria* App no 18269/18 (ECtHR, 28 November 2023) para 83-109; *TV v Spain* App no 22512/21 (ECtHR, 10 October 2024) para 74; *BB v Slovakia* App no 48587/21 (ECtHR, 24 October 2024) para 52-55.

⁹² See, for example, *Chowdury and Others v Greece* App no 21884/15 (ECtHR, 30 March 2017) para 67.

⁹³ Convention for the Protection of Human Rights and Fundamental Freedoms, as amended (adopted 4 November 1950, entered in force 3 September 1953) 213 UNTS 222 Article 4.

⁹⁴ Helmut Sax, 'Article 4: Definitions' in Julia Planitzer and Helmut Sax (eds), *A Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings* (Elgar Publishing 2020) 68.

⁹⁵ Established under Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Articles 36 to 38.

⁹⁶ GRETA, *8th General Report on GRETA's Activities covering the period from 1 January to 31 December 2018* (Council of Europe 2019) 9; GRETA, *12th General Report on GRETA's Activities covering period from 1 January to 31 December 2022* (Council of Europe 2023) 10.

of state anti-trafficking efforts. This is evidenced by developments of legal frameworks and policies, and increasing political recognition of the phenomenon.⁹⁷ It is important to state that this thesis acknowledges that there have been considerable legal developments at EU level which have been highly influential for anti-trafficking responses by EU Member states, including the 2011 Directive⁹⁸ and most recently the recast Directive of 2024.⁹⁹ However, for the reasons outlined above and due to the fact that the EU anti-trafficking legal instruments largely mirror the provisions of the Trafficking Convention, the choice was made to focus primarily on an analysis of the Trafficking Convention in this doctoral study.

1.3. The State of the Art

This section outlines the relationship between this doctoral study and the current state of the art, from both conceptual and methodological standpoints. It focuses on legal approaches to address THB-LE, the identification of VoTs, diverse stakeholder perspectives, and research in the European region.

1.3.1. Legal Approaches to Address Trafficking in Human Beings for the Purpose of Labour Exploitation

Debates about the best legal approach to address the phenomenon of THB remain ongoing.¹⁰⁰ These debates primarily have centred on the adoption of a criminal justice approach, a human rights approach, or a labour law approach to tackle the issue.¹⁰¹ A criminal justice approach to THB has been dominant in terms of both longevity and practice. This may be explained by the close connection between the Palermo Protocol

⁹⁷ GRETA, *Practical Impact of GRETA's Monitoring Work* (Council of Europe 2019); GRETA, *Practical Impact of GRETA's Monitoring Work in Improving the Implementation of the Convention on Action Against Trafficking in Human Beings* (Council of Europe 2024).

⁹⁸ 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 [2011] OJ L 101.

⁹⁹ Directive 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

¹⁰⁰ Austin Choi-Fitzpatrick, 'From Rescue to Representation: A Human Rights Approach to the Contemporary Anti-Slavery Movement' (2015) 14(4) *Journal of Human Rights* 486-503.

¹⁰¹ Notable contributions in this regard include, *inter alia*, Ann D. Jordan, 'Human Rights or Wrongs? The Struggle for a Rights-Based Response to Trafficking in Human Beings' (2002) 10(1) *Gender and Development* 28-37; Tom Obokata, 'A Human Rights Framework to Address Trafficking of Human Beings' (2006) 24(3) *Netherlands Quarterly of Human Rights* 379-404; Conny Rijken 'A Human Rights Based Approach to Trafficking in Human Beings' (2009) 20(3) *Security and Human Rights* 212-222; Hila Shamir, 'A Labor Paradigm for Human Trafficking' (2012) 60(1) *UCLA Law Review* 76-136; Virginia Mantouvalou, "'Am I Free Now?": Overseas Domestic Workers in Slavery' (2015) 42(3) *Journal of Law and Society* 329-357.

and the United Nations Convention against Transnational Organised Crime,¹⁰² primarily a criminal law instrument. In the main, an emphasis has remained on deterrence and punishment,¹⁰³ and most stringently, as Goodey posits, on the ‘tangible results’ from the prosecution of traffickers.¹⁰⁴ However, the success of this approach is questionable and this is most clearly reflected in low prosecution and conviction rates.¹⁰⁵ Furthermore, due to the stringent focus on prosecution,¹⁰⁶ scholars have questioned the benefit to VoTs under this approach.¹⁰⁷ Notwithstanding criticism of a solely criminal justice approach to THB, for Gallagher¹⁰⁸ and Mantouvalou¹⁰⁹ it remains a necessary part of anti-trafficking efforts in order to effectively respond to the phenomenon. In this regard, McDonald posits that:

‘the primary role of the criminal justice system should be [to] discover victims and connect them to the resources that are being provided to help them reclaim their lives’.¹¹⁰

On the other hand, there has been growing support to tackle severely exploitative practices, such as THB-LE, via fields of law beyond criminal justice.¹¹¹ A human rights-

¹⁰² United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 29 September 2003) 2225 UNTS 209.

¹⁰³ Alexandra Amiel, ‘Integrating a Human Rights Perspective into the European Approach to Combating the Trafficking of Women for Sexual Exploitation’ (2006) 12(1-2) Buffalo Human Rights Law Review 5-56.

¹⁰⁴ Jo Goodey, ‘Migration, Crime and Victimhood: Responses to Sex Trafficking in the EU’ (2003) 5(4) Punishment & Society 415-431.

¹⁰⁵ Anne T. Gallagher, ‘Editorial: The Problems and Prospects of Trafficking Prosecutions: Ending Impunity and Securing Justice’ (2016) 6 Anti-Trafficking Review 1-11, 3.

¹⁰⁶ Maria Eriksson, ‘The Prevention of Human Trafficking – Regulating Domestic Criminal Legislation through the European Convention on Human Rights’ (2013) 82(3) Nordic Journal of International Law 339-368, 340.

¹⁰⁷ Marie T. Segrave and Sanja Milivojevic, ‘Sex Trafficking – A New Agenda’ (2005) 24(2) Social Alternatives 11-16; Daphne Demetriou, ‘“Tied Visas” and Inadequate Labour Protections: A Formula for Abuse and Exploitation of Migrant Domestic Workers in the United Kingdom’ (2015) 5 Anti-Trafficking Review 69-88; Conny Rijken, Leyla Khadraoui and Marian Tankink, ‘(Preventing) Secondary Victimization of Trafficking Victims through Law Enforcement Interventions’ (2021) 2(1) Journal of Human Trafficking, Enslavement and Conflict-Related Sexual Violence 3-25; Maayan Niezna, ‘Paper Chains: Tied Visas, Migration Policies, and Legal Coercion’ (2022) 49(2) Journal of Law and Society 362-384.

¹⁰⁸ Anne T. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010) 370.

¹⁰⁹ Virginia Mantouvalou, ‘The UK Modern Slavery Act 2015 Three Years On’ (2018) 81(6) Modern Law Review 1017-1045, 1045.

¹¹⁰ William F. McDonald, ‘Explaining the Under-Performance of the Anti-Human-Trafficking Campaign: Experience from the United States and Europe’ (2014) 61(2) Crime, Law and Social Change 125-138, 136.

¹¹¹ Conny Rijken, ‘Trafficking in Human Beings for Labour Exploitation: Cooperation in an Integrated Approach’ (2013) 21(1) European Journal of Crime, Criminal Law and Criminal Justice 9-35, 19; Nicola Jägers and Conny Rijken, ‘Prevention of Human Trafficking for Labor Exploitation: The Role of Corporations’ (2014) 12(1) Northwestern Journal of International Human Rights 47-73, 48.

based approach has been advocated by scholars, such as Jones,¹¹² Obokata¹¹³ and Pati,¹¹⁴ and international bodies, including the UN Office of the High Commissioner for Human Rights (UN OHCHR).¹¹⁵ The UN OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (Recommended Principles and Guidelines) outline that human rights should ‘be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims’.¹¹⁶ This approach aims to bolster the human rights for VoTs.¹¹⁷ Sax has argued that a rights-based approach:

‘follows a double strategy of empowering rights holders to benefit from their rights, and building capacity for duty bearers to be effectively held accountable’.¹¹⁸

Yet in practice, the protections available to VoTs can be circumscribed by states who favour a criminal justice approach to THB-LE and place a particular emphasis on immigration controls.¹¹⁹

Another proposed approach is a labour law approach and Thiemann outlines that it operates on the premise that a minimum standard of labour protection is required for all workers.¹²⁰ This approach argues that by protecting basic labour rights, the potential risk for exploitative practices will be reduced. From a labour law perspective, the enforcement and regulation of labour rights is necessary to prevent the exploitation of a worker’s

¹¹² Jackie Jones, ‘Is It Time to Open a Conversation About a New United Nations Treaty to Fight Human Trafficking that Focuses on Victim Protection and Human Rights?’ in John Winterdyk and Jackie Jones (eds), *The Palgrave International Handbook of Human Trafficking* (Palgrave Macmillan 2020).

¹¹³ Tom Obokata, ‘A Human Rights Framework to Address Trafficking of Human Beings’ (2006) 24(3) *Netherlands Quarterly of Human Rights* 379-404.

¹¹⁴ Roza Pati, ‘Trafficking in Human Beings: The Convergence of Criminal Law and Human Rights’ in Jennifer Bryson Clark and Sasha Poucki (eds), *The Sage Handbook of Human Trafficking and Modern Day Slavery* (Sage Publications 2019) 292.

¹¹⁵ UN OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (United Nations 2002).

¹¹⁶ *ibid.*

¹¹⁷ Elizabeth M. Bruch, ‘Models Wanted: The Search for an Effective Response to Human Trafficking’ (2004) 40(1) *Stanford Journal of International Law* 1-45; Marija Jovanović, *State Responsibility for ‘Modern Slavery’ in Human Rights Law: A Right Not to Be Trafficked* (Oxford University Press 2023).

¹¹⁸ Helmut Sax, ‘Child Trafficking – A Call for Rights-Based Integrated Approaches’ in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 254.

¹¹⁹ Tom Obokata, *Trafficking of Human Beings from a Human Rights Perspective: Towards a Holistic Approach* (Martinus Nijhoff Publishers 2006).

¹²⁰ Inga K. Thiemann, ‘Beyond Victimhood and Beyond Employment? Exploring Avenues for Labour Law to Empower Women Trafficked into the Sex Industry’ (2019) 48(2) *Industrial Law Journal* 199-224. This is similarly stated by Costello writing in the context of forced labour. Cathryn Costello, ‘Migrants and Forced Labour: A Labour Law Response’ in Alan Bogg, Cathryn Costello, ACL Davies and Jeremias Prassl (eds), *The Autonomy of Labour Law* (Oxford University Press 2015).

dependent position, and to guarantee decent working conditions and standard of living.¹²¹ Shamir argues that the difference between the exploitation of workers and THB is a matter of degree not of kind.¹²² She calls for systemic changes beyond addressing the criminal acts of individual traffickers. Instead, she points to issues of restrictive immigration regimes and deregulated labour regimes which render workers vulnerable to THB. While a labour law approach to THB-LE has certain benefits, *inter alia*, its emphasis on protecting labour rights of all workers to reduce vulnerability to THB-LE,¹²³ it has been argued that it cannot be proposed as a stand-alone approach to address THB. In that vein Segrave and Milivojevic have noted that ‘this framework has no relationship to the practices of human trafficking for organ removal and potentially, trafficking for the purposes of marriage’.¹²⁴

The dominant legal approach adopted by states shapes and influences the policies developed in responding to this phenomenon. Equally, however, there is scope for the consideration of an integrated legal approach ‘in which various disciplines cooperate’ to tackle THB-LE, as proposed by Rijken.¹²⁵ This is a necessary development as ‘oversimplifications’ of an understanding of THB(-LE), as Jahic and Finckenauer posit, ‘do a disservice to both victims as well as governments in the long run. Trafficking *is* in fact all of those problems, but it is *not* any of those problems *alone*’.¹²⁶ Similarly, other scholars have adopted the position that these approaches may ‘co-exist, overlap and change over time, or they may contradict each other’¹²⁷ and that it is in fact ‘virtually impossible to separate any one of these from the other’.¹²⁸ Furthermore, Smit has argued that:

¹²¹ Ingrid Landau and Shelley Marshall, ‘Should Australia Be Embracing Modern Slavery Model of Regulation?’ (2018) 46(2) Federal Law Review 313-339, 315; Clíodhna Murphy, David M. Doyle and Muiread Murphy, ‘“Still Waiting” for Justice: Migrant Workers’ Perspectives on Labour Exploitation in Ireland’ (2020) 49(3) Industrial Law Journal 318-351, 351.

¹²² Hila Shamir, ‘A Labor Paradigm for Human Trafficking’ (2012) 60(1) UCLA Law Review 76-136, 110.
¹²³ *ibid*, 84.

¹²⁴ Marie Segrave and Sanja Milivojevic, ‘Human Trafficking: Examining Global Responses’ in Gregg Barak (ed), *The Routledge International Handbook of the Crimes of Powerful* (Routledge 2015) 138.

¹²⁵ Conny Rijken, ‘Trafficking in Human Beings for Labour Exploitation: Cooperation in an Integrated Approach’ (2013) 21(1) European Journal of Crime, Criminal Law and Criminal Justice 9-35, 10.

¹²⁶ Galma Jahic and James O. Finckenauer, ‘Representations and Misrepresentations of Human Trafficking’ (2005) 8(3) Trends in Organized Crime 24-40, 37.

¹²⁷ Maggy Lee, *Trafficking and Global Crime Control* (Sage Publications 2011) 20.

¹²⁸ Alexis A. Aronowitz, *Human Trafficking, Human Misery: The Global Trade in Human Beings* (Praeger 2009) 29.

‘some situations can and should be seen and dealt with as infringements of labour regulations, others as trafficking cases. Enforcement of labour law can complement criminal law enforcement, or be used as an alternative channel to seek justice, including financial compensation for victims’.¹²⁹

Strikingly, the greater part of the academic literature examining legal approaches to THB focus on theoretical accounts rather than empirical research on how anti-trafficking law is implemented on the ground. This doctoral study addresses this gap in scholarly knowledge by grounding the analysis in stakeholder practical insights. Through the lens of victim identification, this thesis highlights that the criminal justice model is the persistent legal approach to THB-LE in practice across European states. In doing so, it reveals that this dominant approach has a number of consequences for the detection and identification of victims of THB-LE, for example, by limiting the formal identification mandate to criminal justice stakeholders.

1.3.2. The Obligation to Identify Victims

This doctoral study seeks to advance the understanding of the implementation of a core protective measure by states within their anti-trafficking response namely, the obligation under international law to identify victims of THB-LE, in particular the comprehensive requirement contained in Article 10 of the Trafficking Convention.¹³⁰ Despite its significance as a ‘cornerstone of anti-trafficking efforts’,¹³¹ few European scholarly studies have specifically examined the identification of VoTs.¹³² The limited exceptions

¹²⁹ Monika Smit, ‘Trafficking in Human Beings for Labour Exploitation. The Case of the Netherlands’ (2011) 14(2) *Trends in Organized Crime* 184-197, 195.

¹³⁰ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10.

¹³¹ Marika McAdam, ‘Who’s Who at the Border? A Rights-Based Approach to Identifying Human Trafficking at International Borders’ (2013) 2 *Anti-Trafficking Review* 33-49, 34; David R. Hodge, ‘Assisting Victims of Human Trafficking: Strategies to Facilitate Identification, Exit from Trafficking, and the Restoration of Wellness’ (2014) 59(2) *Social Work* 111-118, 113; Silvia Rodríguez-López, ‘The Invisibility of Labour Trafficking in Spain. A Critical Analysis of Cases and Policies’ (2020) 18(2) *Revista Española de Investigación Criminológica* 1-25, 8; Vladislava Stoyanova, ‘Article 10: Identification of the Victims’ in Julia Planitzer and Helmut Sax (eds), *A Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings* (Elgar Publishing 2020) 133; Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Putting Victims First: The ‘Social Path’ to Identification and Assistance* (OSCE 2023) 6.

¹³² In contrast, US studies are more evident. See, for instance, Amy Farrell, Jack McDevitt and Stephanie Fahy, ‘Where are All the Victims? Understanding the Determinants of Official Identification of Human Trafficking Incidents’ (2010) 9(2) *Criminology & Public Policy* 201-233; David Okech, Whitney Morreau and Kathleen Benson, ‘Human Trafficking: Improving Victim Identification and Service Provision’ (2012) 55(4) *International Social Work* 488-503.

of Roth,¹³³ Villacampa¹³⁴ and, Brunovskis and Surtees¹³⁵ have centred on identifying THB-SE, THB for forced criminal activities, or THB encompassing a number of exploitative forms. Scholarly research focusing solely on the detection and formal identification of victims of THB-LE is limited.¹³⁶ This thesis therefore contributes to the scholarly literature on THB-LE by analysing the obligation to identify in light of the provisions of the Trafficking Convention, the guidance from its Explanatory Report, and the outputs of its monitoring mechanism, GRETA and the Committee of the Parties.¹³⁷ It further expands this evaluation to the detection of THB-LE leading to a subsequent formal identification process and the designation of the status of VoT. This broader understanding of the identification procedure is provided by the qualitative data gathered from a range of stakeholders involved in these processes across European states. Understanding the complexity of the identification procedure is vitally important to improve state responses and to ameliorate any barriers encountered.

There is a particular scarcity of scholarly analysis on the co-operation between stakeholders on the ground in the context of identifying (potential) VoTs. There is a small body of literature concerned with co-operation between relevant stakeholders.¹³⁸ However, this limited scholarly attention has persisted despite calls by international bodies for multi-stakeholder engagement and collaboration,¹³⁹ and its express inclusion

¹³³ Venla Roth, *Defining Human Trafficking and Identifying its Victims: A Study on the Impact and Future Challenges of International, European and Finnish Legal Responses to Prostitution-Related Trafficking in Human Beings* (Martinus Nijhoff Publishers 2012).

¹³⁴ Carolina Villacampa, 'Human Trafficking for Criminal Exploitation: The Failure to Identify Victims' (2017) 23(3) *European Journal on Criminal Policy and Research* 393-408.

¹³⁵ Anette Brunovskis and Rebecca Surtees, 'Identification of Trafficking Victims in Europe and the Former Soviet Union' in Jennifer Bryson Clark and Sasha Poucki (eds), *The Sage Handbook of Human Trafficking and Modern Day Slavery* (Sage Publications 2019) 339-359.

¹³⁶ For example, this is one part of an Irish study on victims of THB-LE. David M. Doyle, Clíodhna Murphy, Muiread Murphy, Pablo Rojas Coppari and Rachel J. Wechsler, "'I Felt Like She Owns Me': Exploitation and Uncertainty in the Lives of Labour Trafficking Victims in Ireland' (2019) 59(1) *British Journal of Criminology* 231-251.

¹³⁷ Where relevant and appropriate other international hard and soft law instruments are referenced.

¹³⁸ Notable exceptions include, Josefina Erikson and Oscar L. Larsson, 'How Platforms Facilitate Collaboration Across Organizational Boundaries: Fighting Human Trafficking in Sweden' (2020) 53(1) *Policy Sciences* 181-203; Laura Pajón and Dave Walsh, 'The Importance of Multi-Agency Collaborations During Human Trafficking Criminal Investigations' (2023) 33(3) *Policing and Society* 296-314.

¹³⁹ This includes, for example, GRETA, *7th General Report on GRETA's Activities covering the period from 1 January to 31 December 2017* (Council of Europe 2018) 61; Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *The Critical Role of Civil Society in Combating Trafficking in Human Beings* (Occasional Paper No. 8, OSCE 2018) 11; United States Department of State, *Trafficking in Persons Report* (USDS 2023) 34.

in THB legal instruments.¹⁴⁰ This doctoral study therefore addresses the lacuna by analysing the interactions amongst public authorities and civil society organisations in terms of detecting and identifying victims of THB-LE. In doing so, it provides an insight into the operation of an integrated legal approach as called for by Rijken and de Volder.¹⁴¹ It explores stakeholders who operate primarily from criminal justice, labour law and human rights-based perspectives.

1.3.3. Study Participants and Jurisdictional Scope

This section demonstrates that from a methodological standpoint the dissertation diverges from other scholarly contributions through its engagement with a large number of qualitative semi-structured interviews,¹⁴² its inclusion of a range of key stakeholders,¹⁴³ and its broad jurisdictional scope.¹⁴⁴

There is a significant body of THB research involving interviews with one participant type largely centring on criminal justice actors. Some studies focus solely on police officers,¹⁴⁵ border officers,¹⁴⁶ or judges.¹⁴⁷ In other instances, scholars have interviewed

¹⁴⁰ For instance, but not limited to, Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Articles 12(5) and 35; Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 6(3).

¹⁴¹ Conny Rijken and Eefje de Volder, 'The European Union's Struggle to Realize a Human Rights-Based Approach to Trafficking in Human Beings: A Call on the EU to Take THB-Sensitive Action in Relevant Areas of Law' (2009) 25(1) Connecticut Journal of International Law 49-80. See also, Jonathan Todres, 'Human Rights, Labor, and the Prevention of Human Trafficking: A Response to a Labor Paradigm for Human Trafficking' (2013) 60 UCLA Law Review 142-158.

¹⁴² 42 interviews with 50 participants.

¹⁴³ Criminal law enforcement officials, labour inspectors, trade unionists and non-governmental organisation representatives.

¹⁴⁴ Encompassing 20 European states, namely, Austria, Belgium, Bulgaria, Czech Republic (Czechia), Estonia, Finland, Germany, Greece, Hungary, Iceland, Ireland, Norway, Portugal, Slovenia, Spain, Sweden, Switzerland, the Netherlands, the United Kingdom and Ukraine.

¹⁴⁵ Amy Farrell, Rebecca Pfeffer and Katherine Bright, 'Police Perceptions of Human Trafficking' (2015) 38(3) Journal of Crime and Justice 315-333; Ella Cockbain and Helen Brayley-Morris, 'Human Trafficking and Labour Exploitation in the Casual Construction Industry: An Analysis of Three Major Investigations in the UK Involving Irish Traveller Offending Groups' (2018) 12(2) Policing: A Journal of Policy and Practice 129-149.

¹⁴⁶ Katerina Hadjimatheou and Jennifer K. Lynch, '"Once They Pass You, They May Be Gone Forever": Humanitarian Duties and Professional Tensions in Safeguarding and Anti-Trafficking at the Border' (2017) 57(4) British Journal of Criminology 945-963.

¹⁴⁷ Sharron A. FitzGerald, 'Trafficked Women's Presentation of Self Before the German Courts' (2020) 27(1) European Journal of Women's Studies 57-71.

both police officers and prosecutors,¹⁴⁸ or police officers and magistrates¹⁴⁹ in the relevant jurisdiction. On the other hand, interviews have been conducted with non-profit organisations,¹⁵⁰ NGOs,¹⁵¹ social service providers,¹⁵² and social workers,¹⁵³ although the studies capturing these perspectives and voices are considerably more limited. The same observation holds true for research employing interviews with trade unionists¹⁵⁴ and journalists.¹⁵⁵

Writing in 2007, Laczko criticised the scholarly body due to an absence of ‘systematic studies of the role of actors involved in the fight against trafficking, such as service providers, law enforcement agencies and NGOs’.¹⁵⁶ Since this observation, academic scholarship engaged in research involving multiple stakeholders, although an emphasis

¹⁴⁸ Rose Broad, ‘“A Vile and Violent Thing”: Female Traffickers and the Criminal Justice Response’ (2015) 55(6) *British Journal of Criminology* 1058-1075; Noemi Katona, ‘Combating Trafficking of Hungarian Women to Western Europe: A Multi-Level Analysis of the International Law Enforcement Cooperation’ (2020) 23(2) *Trends in Organized Crime* 115-142; Isabel Schoultz and Heraclitos Muhire, ‘Is There Any Criminal Law Protection for Exploited Migrant Workers in Sweden? Logics of Criminal Law and the Labour Migration Regime’ (2023) 24(2) *Nordic Journal of Criminology* 1-20.

¹⁴⁹ Paola Monzini, ‘Trafficking in Women and Girls and the Involvement of Organised Crime in Western and Central Europe’ (2004) 11(1) *International Review of Victimology* 73-88.

¹⁵⁰ Jaclyn D. Houston-Kolnik, Christina Soibatian and Mona M. Shattell, ‘Advocates’ Experiences With Media and the Impact of Media on Human Trafficking Advocacy’ (2020) 35(5-6) *Journal of Interpersonal Violence* 1108-1132.

¹⁵¹ Anette Brunovskis and Rebecca Surtees, ‘Identifying Trafficked Migrants and Refugees Along the Balkan Route. Exploring the Boundaries of Exploitation, Vulnerability and Risk’ (2019) 72(1) *Crime, Law and Social Change* 73-86; Carolina Villacampa, ‘Challenges in Assisting Labour Trafficking and Exploitation Victims in Spain’ (2022) 71 *International Journal of Law, Crime and Justice* 1-11.

¹⁵² Guiomar Merodio, Elena Duque and Juan Carlos Peña Axt, ‘They Are Not *Romeo Pimps*, They Are Traffickers: Overcoming the Socially Dominant Discourse to Prevent the Sex Trafficking of Youth’ (2020) 26(8-9) *Qualitative Inquiry* 1010-1018.

¹⁵³ Anette Brunovskis, ‘Identification Work: Ambivalence, Qualms and Resistance in Social Workers’ Identification of Trafficking Victims’ (2024) 67(1) *International Social Work* 242-254.

¹⁵⁴ Eliza Marks and Anna Olsen, ‘The Role of Trade Unions in Reducing Migrant Workers’ Vulnerability to Forced Labour and Human Trafficking in the Greater Mekong Subregion’ (2015) 5 *Anti-Trafficking Review* 111-128; Isabel Schoultz and Heraclitos Muhire, ‘Mobilizing the Rights of Migrant Workers: Swedish Trade Unions’ Engagement with Law and the Courts’ (2024) 42(1) *Nordic Journal of Human Rights* 70-88.

¹⁵⁵ Jessica Reichert, Jaclyn Houston-Kolnik, Amanda L. Vasquez and Emma Peterson, ‘News Reporting on Human Trafficking: Exploratory Qualitative Interviews with Illinois News Journalists’ (2018) 4(1) *Journal of Human Trafficking* 6-20.

¹⁵⁶ Frank Laczko, ‘Enhancing Data Collection and Research on Trafficking in Persons’ in Ernesto U. Savona and Sonia Stefanizzi (eds), *Measuring Human Trafficking: Complexities and Pitfalls* (Springer 2007) 42-43.

was placed on criminal justice stakeholders,¹⁵⁷ including prosecutors and police.¹⁵⁸ More recently however, scholarly literature has begun to explore perspectives from both criminal justice stakeholders and victim service providers.¹⁵⁹ In other instances, criminal justice stakeholder perspectives have been obtained alongside immigration personnel,¹⁶⁰ court officials,¹⁶¹ lawyers,¹⁶² and community stakeholders.¹⁶³

¹⁵⁷ Carolyn Hoyle, Mary Bosworth and Michelle Dempsey, 'Labelling the Victims of Sex Trafficking: Exploring the Borderland Between Rhetoric and Reality' (2011) 20(3) *Social & Legal Studies* 313-329; Marlene Matos, Mariana Gonçalves and Ângela Maia, 'Human Trafficking and Criminal Proceedings in Portugal: Discourses of Professionals in the Justice System' (2018) 21(4) *Trends in Organized Crime* 370-400.

¹⁵⁸ Vesna Nikolić-Ristanović and Sanja Čopić, 'Combating Trafficking in Human Beings for Labour Exploitation in Serbia' in Conny Rijken (ed), *Combating Trafficking in Human Beings for Labour Exploitation* (Wolf Legal Publishers 2011); Victoria A. Greenfield, Letizia Paoli and Andries Zoutendijk, 'The Harms of Human Trafficking: Demonstrating the Applicability and Value of a New Framework for Systematic, Empirical Analysis' (2016) 17(2) *Global Crime* 152-180.

¹⁵⁹ Amy Farrell, Meredith Dank, Ieke de Vries, Matthew Kafafian, Andrea Hughes and Sarah Lockwood, 'Failing Victims? Challenges of the Police Response to Human Trafficking' (2019) 18(3) *Criminology & Public Policy* 649-673; Alexandra Ricard-Guay and Jill Hanley, 'The Challenge of Addressing Both Forced Labor and Sexual Exploitation' in John Winterdyk and Jackie Jones (eds), *The Palgrave International Handbook of Human Trafficking* (Palgrave Macmillan 2020); Ieke de Vries and Amy Farrell, 'Explaining the Use of Traditional Law Enforcement Responses to Human Trafficking Concerns in Illicit Massage Businesses' (2023) 40(3) *Justice Quarterly* 337-362.

¹⁶⁰ Vanessa E. Munro, 'A Tale of Two Servitudes: Defining and Implementing a Domestic Response to Trafficking of Women for Prostitution in the UK and Australia' (2005) 14(1) *Social & Legal Studies* 91-114; Ruth Van Dyke, 'Monitoring and Evaluation of Human Trafficking Partnerships in England and Wales' (2017) 8 *Anti-Trafficking Review* 131-146; Laurens ten Kate, Arjan W. Braam, Rijk van Dijk, Jette van Ravesteyn and Fenna Bergmans, 'Professional and Religious Approaches to Care for West African Victims of Human Trafficking in the Netherlands: The Challenge of New Pentecostalism' (2021) 19(4) *Journal of Immigrant & Refugee Studies* 511-525.

¹⁶¹ Amy Farrell and Rebecca Pfeffer, 'Policing Human Trafficking: Cultural Blindness and Organizational Barriers' (2014) 653(1) *The Annals of the American Academy of Political and Social Science* 46-64; Alex Kreidenweis and Natalie F. Hudson, 'More Than a Crime: Human Trafficking as Human (In)Security' (2015) 16(1) *International Studies Perspectives* 67-85; Amy Farrell, Monica J. DeLateur, Colleen Owens and Stephanie Fahy, 'The Prosecution of State-Level Human Trafficking Cases in the United States' (2016) 6 *Anti-Trafficking Review* 48-70.

¹⁶² Jessica Elliott and Kieran McCartan, 'The Reality of Trafficked People's Access to Technology' (2013) 77(3) *Journal of Criminal Law* 255-273; Nogah Ofer, 'Implementation of the Non-Punishment Principle in England: Why Are Victims of Trafficking Not Benefiting from the Protection from Prosecution Provided by International Law?' (2019) 11(3) *Journal of Human Rights Practice* 486-507; Veronica M. Herrera and Lidia E. Nuño, 'Challenges to Identifying Labor Trafficking at the Local Level: A Qualitative Study of Service Providers and Stakeholders in California' (2024) *Journal of Human Trafficking* <https://doi.org/10.1080/23322705.2023.2301216>.

¹⁶³ Amy Farrell, Colleen Owens and Jack McDevitt, 'New Laws but Few Cases: Understanding the Challenges to the Investigation and Prosecution of Human Trafficking Cases' (2014) 61(2) *Crime, Law and Social Change* 139-168.

To a lesser degree, scholarly literature utilising interviews has encompassed trade unionists¹⁶⁴ or labour inspectors¹⁶⁵ within this mixed stakeholder approach.¹⁶⁶ In other cases, academics have focused on victim service providers, international organisations and government officials.¹⁶⁷ A smaller body of research has included perspectives from journalists,¹⁶⁸ doctors and psychologists,¹⁶⁹ technology innovators,¹⁷⁰ and national rapporteurs.¹⁷¹

Therefore, from a methodological perspective, this thesis contributes to the current state of the art by obtaining qualitative data through semi-structured interviews with relevant stakeholders including criminal law enforcement officials, labour inspectors, trade unionists and NGO representatives. The purpose of this data is to incorporate different voices which have not, as yet, been fully explored in the literature. Moreover, it intends to bring together key voices including those that have been recognised as central to THB-LE efforts such as criminal law enforcement officials, and other cohorts who are currently underrepresented in the literature, namely, trade unionists. The overall aim is to link the

¹⁶⁴ Deirdre Coghlan and Gillian Wylie, 'Defining Trafficking/Denying Justice? Forced Labour in Ireland and the Consequences of Trafficking Discourse' (2011) 37(9) *Journal of Ethnic and Migration Studies* 1513-1526; Eefje de Volder, 'Trafficking in the Domestic-Work Sector in the Netherlands: A Hidden Phenomenon' (2017) 15(2) *Journal of Immigrant & Refugee Studies* 140-154.

¹⁶⁵ Ben Middleton, Georgios A. Antonopoulos and Georgios Papanicolaou, 'The Financial Investigation of Human Trafficking in the UK: Legal and Practical Perspectives' (2019) 83(4) *The Journal of Criminal Law* 284-293; Laura Pajón and Dave Walsh, 'Proposing a Theoretical Framework for the Criminal Investigation of Human Trafficking Crimes' (2020) 14(2) *Policing: A Journal of Policy and Practice* 493-511.

¹⁶⁶ Julia Planitzer and Helmut Sax, 'Combating Trafficking in Human Beings for Labour Exploitation in Austria' in Conny Rijken (ed), *Combating Trafficking in Human Beings for Labour Exploitation* (Wolf Legal Publishers 2011); Carolina Villacampa, 'Labour Trafficking Prosecution: What is Not Working in Spain?' (2023) 26(1) *Contemporary Justice Review* 1-27; Jon Davies, Hanna Maria Malik, Anniina Jokinen and Saara Haapasaari, 'Private and Public Co-operation in Preventing and Addressing Corporate Crime: The Case of Labour Trafficking in the Finnish Construction Industry' (2024) 81(3) *Crime, Law and Social Change* 301-319.

¹⁶⁷ Jill Hanley, Jacqueline Oxman-Martinez, Marie Lacroix and Sigalit Gal, 'The "Deserving" Undocumented? Government and Community Response to Human Trafficking as a Labour Phenomenon' (2006) 39(2) *Labour, Capital and Society* 78-103; Rebecca Surtees, 'Traffickers and Trafficking in Southern and Eastern Europe: Considering the Other Side of Human Trafficking' (2008) 5(1) *European Journal of Criminology* 39-68; Klea Ramaj, 'The Aftermath of Human Trafficking: Exploring the Albanian Victims' Return, Rehabilitation, and Reintegration Challenges' (2023) 9(3) *Journal of Human Trafficking* 408-429.

¹⁶⁸ Roxane de Massol de Rebetz and Maartje van der Woude, 'A Socio-Legal Analysis of the Belgian Protective Legislation Towards Victims of Aggravated Forms of Migrant Smuggling' (2022) 78(4) *Crime, Law and Social Change* 357-378.

¹⁶⁹ Emel Coskun, '"Consent" Issue in Sex Trafficking and Evidence from Turkey' (2016) 23(3) *Social Politics* 437-458.

¹⁷⁰ Jennifer Lynne Musto and Danah Boyd, 'The Trafficking-Technology Nexus' (2014) 21(3) *Social Politics* 461-483.

¹⁷¹ Danai Angeli, 'Migrant Domestic Workers and Human Trafficking in Greece: Expanding the Narrative' (2017) 15(2) *Journal of Immigrant & Refugee Studies* 187-203.

personal accounts of these individuals to the broader THB-LE legal and policy context. The range of participants is further warranted on the basis of calls by international organisations, such as the OSCE¹⁷² and GRETA,¹⁷³ for the involvement of a diverse cohort of stakeholders trained for the purpose of anti-trafficking responses. Finally, the perspectives provided by this diverse group of interviewees provide a contextual understanding of how the legal obligations under Article 10 of the Trafficking Convention¹⁷⁴ operate in practice and provide pertinent bottom-up perspectives which can be contrasted to the top-down approach by states.

In terms of research utilising qualitative interviews, the jurisdictional scope varies considerably across European states, with the vast majority being at national level. The United Kingdom (UK), for example, has a considerable body of academic literature using this research method that has focused specifically on THB-SE,¹⁷⁵ THB-LE,¹⁷⁶ and THB,¹⁷⁷ or labour exploitation more broadly.¹⁷⁸ The response and experience of THB in the Netherlands has similarly been analysed,¹⁷⁹ while literature centring on Spain has

¹⁷² OSCE and ODIHR, *National Referral Mechanisms – Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook* (OSCE 2004) 64.

¹⁷³ See, for example, GRETA, *Compendium of Good Practices in Addressing Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2020) 16; GRETA, *Guidance Note on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2021) 12.

¹⁷⁴ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10.

¹⁷⁵ Carolyn Hoyle, Mary Bosworth and Michelle Dempsey, ‘Labelling the Victims of Sex Trafficking: Exploring the Borderland Between Rhetoric and Reality’ (2011) 20(3) *Social & Legal Studies* 313-329; Xavier L’Hoiry, Alessandro Moretti and Georgios A. Antonopoulos, ‘Identifying Sex Trafficking in Adult Services Websites: An Exploratory Study with a British Police Force’ (2024) 27(1) *Trends in Organized Crime* 34-55.

¹⁷⁶ Ella Cockbain and Helen Brayley-Morris, ‘Human Trafficking and Labour Exploitation in the Casual Construction Industry: An Analysis of Three Major Investigations in the UK Involving Irish Traveller Offending Groups’ (2017) 12(2) *Policing: A Journal of Policy and Practice* 129-149.

¹⁷⁷ Ben Brewster, ‘Collaborating to Identify, Recover and Support Victims of Modern Slavery’ (2018) 4(2) *Journal of Modern Slavery* 200-223; Katerina Hadjimatheou, ‘UK Anti-Slavery Policy at the Border: Humanitarian Opportunism and the Challenge of Victim Consent to Assistance’ (2020) 17(5) *European Journal of Criminology* 678-698.

¹⁷⁸ Hannah Lewis and Louise Waite, ‘Asylum, Immigration Restrictions and Exploitation: Hyper-precarity as a Lens for Understanding and Tackling Forced Labour’ (2015) 5 *Anti-Trafficking Review* 49-67; Virginia Mantouvalou, ‘“Am I free Now?”: Overseas Domestic Workers in Slavery’ (2015) 42(3) *Journal of Law and Society* 329-357; Siyu Luo, David Gadd and Rose Broad, ‘The Criminalisation and Exploitation of Irregular Chinese Migrant Workers in the United Kingdom’ (2023) 20(3) *European Journal of Criminology* 1016-1036.

¹⁷⁹ Judith Vocks and Jan Nijboer, ‘The Promised Land: A Study of Trafficking in Women from Central and Eastern Europe to the Netherlands’ (2000) 8(3) *European Journal on Criminal Policy and Research* 379-388; Marijn Heemskerk and Conny Rijken, ‘Combating Trafficking in Human Beings for Labour Exploitation in the Netherlands’ in Conny Rijken (ed), *Combating Trafficking in Human Beings for Labour Exploitation* (Wolf Legal Publishers 2011).

grown in recent times.¹⁸⁰ For other states, including Finland,¹⁸¹ Ireland,¹⁸² and Sweden,¹⁸³ interviews have tended to be conducted more frequently in relation to THB-LE. In other instances, a strong focus remains on THB-SE in research on Bulgaria,¹⁸⁴ Germany,¹⁸⁵ Greece,¹⁸⁶ and Norway.¹⁸⁷ However, literature utilising interviews is very limited in

¹⁸⁰ Carmen Meneses-Falcón and Jorge Uroz-Olivares, 'Identification, Rescue, and Social Intervention with the Victims of Trafficking for Sexual Exploitation in Spain' in Jennifer Bryson Clark and Sasha Poucki (eds), *The Sage Handbook of Human Trafficking and Modern Day Slavery* (Sage Publications 2019); Carolina Villacampa, 'Human Trafficking for Labour Exploitation: The Survivors' Perspective' (2024) 30(2) *International Review of Victimology* 240-260.

¹⁸¹ Natalia Ollus and Anniina Jokinen, 'Exploitation of Migrant Workers and Trafficking in Human Beings: A Nexus of the Demand by Employers, Workers, and Consumers' in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018); Jon Davies, Hanna Maria Malik, Anniina Jokinen and Saara Haapasaari, 'Private and Public Co-operation in Preventing and Addressing Corporate Crime: The Case of Labour Trafficking in the Finnish Construction Industry' (2024) 81(3) *Crime, Law and Social Change* 301-319.

¹⁸² Deirdre Coghlan and Gillian Wylie, 'Defining Trafficking/Denying Justice? Forced Labour in Ireland and the Consequences of Trafficking Discourse' (2011) 37(9) *Journal of Ethnic and Migration Studies* 1513-1526; David M. Doyle, Clíodhna Murphy, Muiread Murphy, Pablo Rojas Coppari and Rachel J. Wechsler, "'I Felt Like She Owns Me': Exploitation and Uncertainty in the Lives of Labour Trafficking Victims in Ireland' (2019) 59(1) *British Journal of Criminology* 231-251. See the exceptions of Eilís Ward and Gillian Wylie, "'Reflexivities of Discomfort': Researching the Sex Trade and Sex Trafficking in Ireland' (2014) 21(3) *European Journal of Women's Studies* 251-263; Amy Erbe Healy, "'They Never Self-Identify': Victims of Human Trafficking for Sexual Exploitation, the Island of Ireland' in Barbara Górnicka and Mark Doyle (eds), *Sex and Sexualities in Ireland: Interdisciplinary Perspectives* (Palgrave Macmillan 2023) 279-296.

¹⁸³ Madeleine Hulting, 'Hidden Labour: Knowledge Production of Trafficking Illustrated by a Swedish Case Study' in Christien van den Anker and Ilse van Liempt (eds), *Human Rights and Migration: Trafficking for Forced Labour* (Palgrave Macmillan 2012); Isabel Schoultz and Heraclitos Muhire, 'Is There Any Criminal Law Protection for Exploited Migrant Workers in Sweden? Logics of Criminal Law and the Labour Migration Regime' (2023) 24(2) *Nordic Journal of Criminology* 1-20. An exception includes, Eleonora Rossi, Maria Thulemark and Tara Duncan, 'Employee Perspectives on Sex Trafficking in Swedish Chain Hotels' (2023) 34(1) *Anatolia: An International Journal of Tourism and Hospitality Research* 45-58.

¹⁸⁴ Georgi Petrunov, 'Managing Money Acquired from Human Trafficking: Case Study of Sex Trafficking from Bulgaria to Western Europe' (2011) 14(2) *Trends in Organized Crime* 165-183; Georgi Petrunov, 'Human Trafficking in Eastern Europe: The Case of Bulgaria' (2014) 653(1) *The Annals of the American Academy of Political and Social Science* 162-182.

¹⁸⁵ Cornelia Helfferich, Barbara Kavemann and Heike Rabe, 'Determinants of the Willingness to Make a Statement of Victims of Human Trafficking for the Purpose of Sexual Exploitation in the Triangle Offender-Police-Victim' (2011) 14(2) *Trends in Organized Crime* 125-147; Sharron A. Fitzgerald, 'Trafficked Women's Presentation of Self Before the German Courts' (2020) 27(1) *European Journal of Women's Studies* 57-71.

¹⁸⁶ Georgios A. Antonopoulos and John A. Winterdyk, 'Techniques of Neutralizing the Trafficking of Women: A Case Study of an Active Trafficker in Greece' (2005) 13(2) *European Journal of Crime, Criminal Law and Criminal Justice* 136-147; Danai Angeli, 'Migrant Domestic Workers and Human Trafficking in Greece: Expanding the Narrative' (2017) 15(2) *Journal of Immigrant & Refugee Studies* 187-203.

¹⁸⁷ Anette Brunovskis and May-Len Skilbrei, 'Two Birds with One Stone? Implications of Conditional Assistance in Victim Protection and Prosecution of Traffickers' (2016) 6 *Anti-Trafficking Review* 13-30; Heidi Fischer Bjelland, 'Conceptions of Success: Understandings of Successful Policing of Human Trafficking' (2020) 14(3) *Policing: A Journal of Policy and Practice* 712-725.

relation to Austria,¹⁸⁸ Hungary,¹⁸⁹ Slovenia,¹⁹⁰ and Ukraine.¹⁹¹ Finally, the Czech Republic (Czechia), Estonia, Iceland, and Switzerland have been overlooked in the use of these methods. Moreover, these European states are remarkably absent from the body of literature on THB more broadly.

As demonstrated above, research in the form of case studies has been carried out on certain states,¹⁹² but as Shelley has argued, although case studies are useful, there has been a failure by scholars to look at the problem holistically.¹⁹³ Scholars such as Smartt,¹⁹⁴ Piotrowicz¹⁹⁵ and, Hernandez and Rudolph¹⁹⁶ have considered THB in the European region more broadly, with other studies focusing exclusively on THB-SE.¹⁹⁷ Relatedly, certain research has centred on the EU.¹⁹⁸ There has also been doctrinal analysis of relevant legal instruments in the European context.¹⁹⁹ Considering the large

¹⁸⁸ Julia Planitzer and Helmut Sax, 'Combating Trafficking in Human Beings for Labour Exploitation in Austria' in Conny Rijken (ed), *Combating Trafficking in Human Beings for Labour Exploitation* (Wolf Legal Publishers 2011).

¹⁸⁹ Noemi Katona, 'Combating Trafficking of Hungarian Women to Western Europe: A Multi-Level Analysis of the International Law Enforcement Cooperation' (2020) 23(2) *Trends in Organized Crime* 115-142.

¹⁹⁰ Urša Kavčič, 'Trafficking in Human Beings From, To and Through Slovenia' in Simona Zavratnik Zimic (ed), *Women and Trafficking* (Mirovni Inštitut 2004); Danijela Frangež and Aleš Bučar Ručman, 'Specific Forms of Human Trafficking in Slovenia: Overview and Preventive Measures' (2017) 18(3) *Police Practice and Research* 230-244.

¹⁹¹ Rebecca Surtees, 'At Sea: The Trafficking of Seafarers and Fishers from Ukraine' in Molly Dragiewicz (ed), *Global Human Trafficking: Critical Issues and Contexts* (Routledge 2015).

¹⁹² For example, Gillian Wylie and Penelope McRedmond (eds), *Human Trafficking in Europe: Character, Causes and Consequences* (Palgrave Macmillan 2010); Stefano Caneppele and Marina Mancuso, 'Are Protection Policies for Human Trafficking Victims Effective? An Analysis of the Italian Case' (2013) 19(3) *European Journal on Criminal Policy and Research* 259-273; Vladislava Stoyanova, 'The Crisis of a Legal Framework: Protection of Victims of Human Trafficking in Bulgarian Legislation' (2013) 17(5-6) *The International Journal of Human Rights* 668-688.

¹⁹³ Louise Shelley, *Human Trafficking: A Global Perspective* (Cambridge University Press 2010) 216.

¹⁹⁴ Ursula Smartt, 'Human Trafficking: Simply a European Problem?' (2003) 11(2) *European Journal of Crime, Criminal Law and Criminal Justice* 164-177.

¹⁹⁵ Ryszard Piotrowicz, 'The European Legal Regime on Trafficking in Human Beings' in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018).

¹⁹⁶ Diego Hernandez and Alexandra Rudolph, 'Modern Day Slavery: What Drives Human Trafficking in Europe?' (2015) 38 *European Journal of Political Economy* 118-139.

¹⁹⁷ Gail Kligman and Stephanie Limoncelli, 'Trafficking Women After Socialism: To, Through, and From Eastern Europe' (2005) 12(1) *Social Politics* 118-140; Martti Lehti and Kauko Aromaa, 'Trafficking in Humans for Sexual Exploitation in Europe' (2007) 31(2) *International Journal of Comparative and Applied Criminal Justice* 123-145.

¹⁹⁸ Sarah H. Krieg, 'Trafficking in Human Beings: The EU Approach Between Border Control, Law Enforcement and Human Rights' (2009) 15(6) *European Law Journal* 775-790; Rachel Tallmadge and Robert Jeffrey Gitter, 'The Determinants of Human Trafficking in the European Union' (2018) 4(2) *Journal of Human Trafficking* 155-168.

¹⁹⁹ See, *inter alia*, Anne T. Gallagher, 'Recent Legal Developments in the Field of Human Trafficking: A Critical Review of the 2005 European Convention and Related Instruments' (2006) 8(2) *European Journal of Migration and Law* 163-189; Alice Bosma and Conny Rijken, 'Key Challenges in the Combat of Human

body of national level studies using interview methods, few studies engage with more than one jurisdiction. For instance, two studies contrast the UK to Australia²⁰⁰ and Finland²⁰¹ respectively. Other studies, mostly focusing on THB-SE, have involved between five²⁰² and seven European states,²⁰³ while a further study by Surtees focused broadly on the region of Southern and Eastern Europe.²⁰⁴ One additional study focused on THB more broadly and involved seven European states.²⁰⁵ This doctoral study thus contributes to scholarly literature by examining the experiences of stakeholders across a range of European states bound by the Trafficking Convention using a semi-structured interview method.

In sum, although the scholarly literature on THB is considerable, the central focus of the thesis derived from gaps in the literature on specific aspects of the anti-trafficking response regarding THB-LE in Europe. This is particularly evident in relation to knowledge regarding national implementation of the identification obligation. Despite THB featuring as a priority for over two decades and the body of research growing considerably over this same period, there remain significant gaps in obtaining a clear understanding of the processes involved in identifying victims of THB-LE. Thus, this thesis provides a valuable insight into stakeholder experiences of the identification

Trafficking: Evaluating the EU Trafficking Strategy and EU Trafficking Directive' (2016) 7(3) *New Journal of European Criminal Law* 315-330; Vladislava Stoyanova, *Human Trafficking and Slavery Reconsidered: Conceptual Limits and States' Positive Obligations in European Law* (Cambridge University Press 2017); Julia Planitzer and Helmut Sax (eds), *A Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings* (Elgar Publishing 2020).

²⁰⁰ Vanessa E. Munro, 'A Tale of Two Servitudes: Defining and Implementing a Domestic Response to Trafficking of Women for Prostitution in the UK and Australia' (2005) 14(1) *Social & Legal Studies* 91-114.

²⁰¹ Jon Davies and Natalia Ollus, 'Labour Exploitation as Corporate Crime and Harm: Outsourcing Responsibility in Food Production and Cleaning Services Supply Chains' (2019) 72(1) *Crime, Law and Social Change* 87-106.

²⁰² This study centred on Albania, Bosnia, Bulgaria, Serbia and the Netherlands, Biljana Meshkovska, Nikola Mickovski, Arjan E.R. Bos and Melissa Siegel, 'Trafficking of Women for Sexual Exploitation in Europe: Prosecution, Trials and Their Impact' (2016) 6 *Anti-Trafficking Review* 71-90. This study focused on the UK, Australia, the Netherlands, Sweden and Italy, Vanessa E. Munro, 'Stopping Traffic? A Comparative Study of Responses to the Trafficking in Women for Prostitution' (2006) 46(2) *British Journal of Criminology* 318-333.

²⁰³ This study included research on Albania, Bosnia, Bulgaria, Italy, Montenegro, the Netherlands, and Serbia, Biljana Meshkovska, Arjan E.R. Bos and Melissa Siegel, 'Long-Term (Re)Integration of Persons Trafficked for the Purpose of Sexual Exploitation' (2021) 27(3) *International Review of Victimology* 245-271.

²⁰⁴ Rebecca Surtees, 'Traffickers and Trafficking in Southern and Eastern Europe: Considering the Other Side of Human Trafficking' (2008) 5(1) *European Journal of Criminology* 39-68.

²⁰⁵ This study focused on Albania, Belgium, Bosnia-Herzegovina, Italy, Norway, Romania and Serbia, Anette Brunovskis and Rebecca Surtees, 'Identification of Trafficking Victims in Europe and the Former Soviet Union' in Jennifer Bryson Clark and Sasha Poucki (eds), *The Sage Handbook of Human Trafficking and Modern Day Slavery* (Sage Publications 2019).

procedure through an in-depth analysis of conceptual and practical difficulties that arise in identifying cases of THB-LE across a number of European states grounded in qualitative data.

1.4. Research Methodology

This section provides a comprehensive outline of the socio-legal methodological approach adopted to achieve the aim and to answer the research questions of this dissertation. This entails a two-pronged approach: a doctrinal analysis of the international legal instruments on THB, with a particular emphasis on the Trafficking Convention, and the utilisation of a qualitative method whereby 42 semi-structured interviews were conducted with 50 stakeholders across 20 European states. During the qualitative data collection phase, four stakeholder cohorts emerged, namely, criminal law enforcement officials, labour inspectors, trade unionists and NGO representatives. The intention behind the adoption of this socio-legal approach was to enhance the doctrinal analysis of THB legal instruments and to capture on the ground realities on implementing the identification obligation. As such, the thesis contributes to and differs from current scholarly literature due to the high number of qualitative interviews, the range of study participants, and the jurisdictional scope, as detailed in section 1.3.3.

This section is structured in three parts. First, it discusses the legal analysis and desk-based research undertaken. The second section outlines the socio-legal methodology adopted. The final section provides an in-depth account of the qualitative method utilised. This comprises a detailed description of the data collection phase and its subsequent analysis. It presents information regarding sampling approach, study participants, jurisdictional scope, semi-structured interviews and ethical considerations.

1.4.1. Socio-Legal Methodology

This thesis engages with empirical methods to enhance the doctrinal analysis and address some of the criticisms of doctrinal research articulated by scholars, that it is ‘normative or purely theoretical’,²⁰⁶ ‘intellectually rigid, inflexible and inward-looking’,²⁰⁷ and that

²⁰⁶ Ian Dobinson and Francis Johns, ‘Legal Research as Qualitative Research’ in Mike McConville and Wing Hong Chui (eds), *Research Methods for Law* (2nd edn, Edinburgh University Press 2017) 21.

²⁰⁷ Douglas W. Vick, ‘Interdisciplinarity and the Discipline of Law’ (2004) 31(2) *Journal of Law and Society* 163-193, 164.

it relies predominantly on legal sources to explain law.²⁰⁸ While doctrinal analysis informs an understanding of the current law governing THB-LE, it does not allow for an examination of what occurs in practice.²⁰⁹ Instead, this doctoral study adopts a socio-legal methodology which entails ‘systematic methods of collecting information to examine, in some way, legal phenomena’ to extend beyond the law and involve ‘actors, institutions, and processes related to or interacting with the law’.²¹⁰ Such empirical legal research can involve the use of different research methods, including interviews, observation or survey questionnaires.²¹¹

There is no consensus on a precise definition of socio-legal research,²¹² but it establishes that ‘law is all over’,²¹³ in that the analysis of the law is directly linked to the analysis of the social situation to which the law applies²¹⁴ and impacts upon.²¹⁵ O’Donovan states that within this methodology:

‘law is not viewed as an autonomous force to which society is subjected, but rather shapes and is shaped by broader social, political and economic logics, contexts and relations’.²¹⁶

As such, the socio-legal approach enables a distinction between the law in theory and the law in practice or in ‘action’.²¹⁷ In other words, it facilitates an analysis of the gap

²⁰⁸ Mike McConville and Wing Hong Chui, ‘Introduction and Overview’ in Mike McConville and Wing Hong Chui (eds), *Research Methods for Law* (2nd edn, Edinburgh University Press 2017) 4-5.

²⁰⁹ Roger Cotterrell, *Law’s Community: Legal Theory in Sociological Perspective* (Oxford University Press 1995) 296.

²¹⁰ Herbert M. Kritzer, *Advanced Introduction to Empirical Legal Research* (Edward Elgar Publishing 2021) 2.

²¹¹ Mandy Burton, ‘Doing Empirical Research: Exploring the Decision-Making of Magistrates and Juries’ in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (2nd edn, Routledge 2018) 66.

²¹² Fiona Cownie and Anthony Bradney, ‘Socio-Legal Studies: A Challenge to the Doctrinal Approach’ in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (2nd edn, Routledge 2018) 42.

²¹³ Susan S. Silbey, ‘What Makes a Social Science of Law? Doubling the Social in Socio-Legal Studies’ in Dermot Feenan (ed), *Exploring the ‘Socio’ of Socio-Legal Studies* (Palgrave Macmillan 2013) 34.

²¹⁴ David N. Schiff, ‘Socio-Legal Theory: Social Structure and Law’ (1976) 39(3) *Modern Law Review* 287-310, 287; John Clarke, ‘The Contested Social’ in Dermot Feenan (ed), *Exploring the ‘Socio’ of Socio-Legal Studies* (Palgrave Macmillan 2013) 39.

²¹⁵ Lisa Webley, ‘The *Why* and *How* to of Conducting a Socio-Legal Empirical Research Project’ in Naomi Creutzfeldt, Marc Mason and Kirsten McConnachie (eds), *Routledge Handbook of Socio-Legal Theory and Methods* (Routledge 2019) 59.

²¹⁶ Darren O’Donovan, ‘Socio-Legal Methodology: Conceptual Underpinnings, Justifications and Practical Pitfalls’ in Laura Cahillane and Jennifer Schweppe (eds), *Legal Research Methods: Principles and Practicalities* (Clarus Press 2016) 109. See also, Sally Wheeler and Phil Thomas, ‘Socio-Legal Studies’ in David Hayton (ed), *Law’s Future(s)* (Hart Publishing 2000) 271; David Ibbetson, ‘Historical Research in Law’ in Mark Tushnet and Peter Cane (eds), *The Oxford Handbook of Legal Studies* (Oxford University Press 2003) 863-864.

²¹⁷ Jon B. Gould and Scott Barclay, ‘Mind the Gap: The Place of Gap Studies in Sociolegal Scholarship’ (2012) 8 *Annual Review of Law and Social Science* 323-335, 324.

between the legal provisions and principles, and how law is experienced and enforced in reality.

The chosen research focus is particularly suited to the use of a socio-legal methodology, as a purely doctrinal analysis would inadequately explain how, and to what extent, THB-LE is understood and the obligations under Article 10 of the Trafficking Convention²¹⁸ are exercised by stakeholders across Europe. This thesis focuses on the current practical implementation of the identification obligation and the barriers encountered by stakeholders operating on the frontline. Thus, a purely doctrinal study would not meet this objective. In contrast, the socio-legal approach reveals how legal instruments are enforced and facilitates an in-depth consideration of the experiences of stakeholders. As stated in section 1.3.3., this dissertation diverges from other scholarly contributions from a methodological standpoint in three ways: first, through its engagement with a large number of qualitative semi-structured interviews,²¹⁹ secondly, by capturing the views of a diverse range of key stakeholders,²²⁰ and thirdly, on the basis of its broad jurisdictional scope.²²¹

1.4.2. Desk-Based Research: Doctrinal Analysis and Literature Review

This thesis engages with a doctrinal analysis of key legal instruments related to THB-LE, with a primary focus on the Trafficking Convention. This is necessary in order to ascertain the obligations placed on Contracting States. In conjunction with this, a thorough review of scholarly literature enables an appraisal of research to date and the ascertainment of gaps in the knowledge base.

²¹⁸ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10.

²¹⁹ 42 interviews with 50 participants.

²²⁰ Criminal law enforcement officials, labour inspectors, trade unionists and non-governmental organisation representatives.

²²¹ Encompassing 20 European states, namely, Austria, Belgium, Bulgaria, Czech Republic (Czechia), Estonia, Finland, Germany, Greece, Hungary, Iceland, Ireland, Norway, Portugal, Slovenia, Spain, Sweden, Switzerland, the Netherlands, the United Kingdom and Ukraine.

1.4.2.1. Doctrinal Analysis

Doctrinal analysis is viewed by Kennedy as the ‘heart’ of traditional legal research.²²² It places an emphasis on coherence and unity through analysing the scope of legal obligations and rules,²²³ and therefore is a valid, purposeful method.²²⁴ Hutchinson proposes that doctrinal research entails:

‘a critical conceptual analysis of all relevant legislation and case law to reveal a statement of the law relevant to the matter under investigation’.²²⁵

It provides clarity on the law of a particular topic through a comprehensive analysis of available primary and secondary sources. Kennedy argues that this is important because it facilitates a critique of legal systems and practices.²²⁶

As outlined in section 1.2., the Trafficking Convention is the core legal instrument analysed in this doctoral study, with a particular emphasis placed on analysing the requirements under Article 10. Article 10 is one of the most comprehensive provisions on victim identification in the international legal framework, and this is further examined in Chapters Two, Three, Four and Five. Other relevant THB and forced labour legal instruments of the UN²²⁷ and the ILO²²⁸ supplement the analysis of the Trafficking Convention provisions. Together, these legal sources highlight how THB and other severe forms of labour exploitation²²⁹ have been defined, interpreted and applied overtime. Furthermore, soft law instruments, such as the UN OHCHR Recommended Principles

²²² Rónán Kennedy, ‘Doctrinal Analysis: The Real “Law in Action”’ in Laura Cahillane and Jennifer Scheppe (eds), *Legal Research Methods: Principles and Practicalities* (Clarus Press 2016) 21.

²²³ Terry Hutchinson and Nigel Duncan, ‘Defining and Describing What We Do: Doctrinal Legal Research’ (2012) 17(1) *Deakin Law Review* 83-119, 85; P. Ishwara Bhat, *Idea and Methods of Legal Research* (Oxford University Press 2019) 11 and 29.

²²⁴ Shane Kilcommins, ‘Doctrinal Legal Method (Black-Letterism): Assumptions, Commitments and Shortcomings’ in Laura Cahillane and Jennifer Scheppe (eds), *Legal Research Methods: Principles and Practicalities* (Clarus Press 2016) 9 and 18.

²²⁵ Terry Hutchinson, ‘Valé Bunny Watson? Law Librarians, Law Libraries, and Legal Research in the Post-Internet Era’ (2014) 106(4) *Law Library Journal* 579-592, 584.

²²⁶ Rónán Kennedy, ‘Doctrinal Analysis: The Real “Law in Action”’ in Laura Cahillane and Jennifer Scheppe (eds), *Legal Research Methods: Principles and Practicalities* (Clarus Press 2016) 21.

²²⁷ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319.

²²⁸ Convention concerning Forced or Compulsory Labour (No. 29) (adopted 28 June 1930, entered into force 1 May 1932) 39 UNTS 55; Convention concerning the Abolition of Forced Labour (No. 105) (adopted 25 June 1957, entered into force 17 January 1959) 320 UNTS 291; Protocol of 2014 to the Forced Labour Convention 1930 (adopted 11 June 2014, entered into force 9 November 2016) 103rd ILC Session.

²²⁹ Such as slavery, servitude or forced labour.

and Guidelines,²³⁰ the UN Office on Drugs and Crime Model Law and Model Legislative Provisions Against Trafficking in Persons,²³¹ and reports from the UN Special Rapporteur on Trafficking in Persons, Especially Women and Children (UN Special Rapporteur),²³² are included in this analysis based on their provision of ‘valuable, and credible, information’ on different Contracting States and their guidance in relation to the application of THB legal provisions.²³³

This dissertation is informed by jurisprudence that emanates from the ECtHR under Article 4 of the ECHR.²³⁴ Although there is a modest body of case law under Article 4 regarding THB-related offences,²³⁵ the ECtHR has clarified a number of positive and procedural obligations. Briefly they include, *inter alia*, to put in place an administrative and legal framework on THB; to take operational measures to protect (potential) VoTs; to investigate situations of potential THB; and to enable VoTs to claim compensation from their trafficker.²³⁶ Such case law is useful in that it requires states to ‘show due

²³⁰ UN OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (United Nations 2002).

²³¹ UNODC, *Model Law Against Trafficking in Persons* (United Nations 2009); UNODC, *Model Legislative Provisions Against Trafficking in Persons* (United Nations 2020).

²³² To take three examples, UN Special Rapporteur on Trafficking in Persons, especially Women and Children, ‘Identification, Protection of and Assistance to Victims of Trafficking’ (12 August 2009) A/64/290; UN Special Rapporteur on Trafficking in Persons, especially Women and Children, ‘20 Years After: Implementing and Going Beyond the Palermo Protocol towards a Human Rights Centred Approach’ (17 July 2020) A/75/169; UN Special Rapporteur on Trafficking in Persons, especially Women and Children, ‘Implementation of the Non-Punishment Principle’ (17 May 2021) A/HRC/47/34.

²³³ Anne T. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010) 141; Clíodhna Murphy, Mary Gilmartin and Leanne Caulfield, ‘Using International Law in Interdisciplinary Human Rights Research’ in Laura Cahillane and Jennifer Schweppe (eds), *Case Studies in Legal Research Methodologies: Reflections on Theory and Practice* (Clarus Press 2019) 52.

²³⁴ This body of case law includes, *Rantsev v Cyprus and Russia* App No 25965/04 (ECtHR, 7 January 2010); *CN v The United Kingdom* App no 4329/08 (ECtHR, 13 November 2012); *LE v Greece* App no 71454/12 (ECtHR, 21 January 2016); *J and Others v Austria* App No 58216/12 (ECtHR, 17 January 2017); *Chowdury and Others v Greece* App No 21884/15 (ECtHR, 30 March 2017); *TI and Others v Greece* App no 40311/10 (ECtHR, 18 July 2019); *SM v Croatia* App No 60561/14 (ECtHR, 25 June 2020); *VCL and AN v The United Kingdom* App nos 77587/12 and 74603/12 (ECtHR, 16 February 2021); *Zoletic and Others v Azerbaijan* App no 20116/12 (ECtHR, 7 October 2021); *Krachunova v Bulgaria* App no 18269/18 (28 November 2023); *TV v Spain* App no 22512/21 (ECtHR, 10 October 2024); *BB v Slovakia* App no 48587/21 (ECtHR, 24 October 2024); *FM and Others v Russia* App nos 71671/16 and 40190/18 (ECtHR, 10 December 2024). In addition, in the context of servitude and forced labour, *Siliadin v France* App no 73316/01 (ECtHR, 26 July 2005) and *CN and V v France* App no 67724/09 (ECtHR, 11 October 2012).

²³⁵ Vladislava Stoyanova, ‘European Court of Human Rights and the Right Not to Be Subjected to Slavery, Servitude, Forced Labor, and Human Trafficking’ in John Winterdyk and Jackie Jones (eds), *The Palgrave International Handbook of Human Trafficking* (Palgrave Macmillan 2020) 1394.

²³⁶ These are further delineated in section 2.3. of Chapter Two.

diligence and grant effective protection against abuse and exploitation, especially of vulnerable persons' through investigation, prosecution and sufficient punishment.²³⁷

1.4.2.2. Literature Review of Secondary and Scholarly Sources

Following an analysis of the legal sources, relevant secondary sources were reviewed, such as country-specific THB annual reports, National Action Plans and strategies on THB, publications from international organisations²³⁸ and NGOs, and outputs from monitoring bodies.²³⁹ In particular, this dissertation conducted an examination of the outputs from the Trafficking Convention monitoring mechanism, including annual general reports²⁴⁰ and evaluation reports (in the English language) on the 20 chosen states.²⁴¹ The latter involved an assessment of the four evaluation round cycles²⁴² carried out by GRETA and the corresponding recommendations of the Committee of the Parties. Therefore, where possible,²⁴³ four documents were accessed in relation to each round including:

- (i) The Government's Reply to GRETA's Questionnaire;
- (ii) GRETA's Country Evaluation Report;
- (iii) The Recommendation of the Committee of the Parties, and;
- (iv) The Government's Reply to the Committee of the Parties Recommendation.

²³⁷ Marta C. Johansson, 'State (In)capacity to Prevent Human Trafficking: Adequate Responses to the Market for Servitude and Forced Labour, *et al*' in Joakim Nergelius and Eleonor Kristoffersson (eds), *Human Rights in Contemporary European Law* (Hart Publishing 2015) 115.

²³⁸ For example, the International Labour Organization (ILO), International Organization for Migration (IOM), Organization for Security and Co-operation in Europe (OSCE), and United Nations Office on Drugs and Crime (UNODC).

²³⁹ For example, of the Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 monitoring mechanism, GRETA and the Committee of the Parties, and the United States Department of State Trafficking in Persons Annual Reports.

²⁴⁰ To date, thirteen General Reports have been published. GRETA, *1st General Report on GRETA's Activities covering the period from February 2009 to July 2011* (Council of Europe 2011) up to GRETA, *13th General Report on GRETA's Activities covering the period from 1 January to 31 December 2023* (Council of Europe 2024).

²⁴¹ GRETA is currently undertaking its fourth evaluation round, with the first final evaluation reports (relating to Austria, Cyprus and Slovak Republic (Slovakia)) which were due for publication in November 2024.

²⁴² The evaluation rounds were launched 1 February 2010, 15 May 2014, 20 November 2018 and 30 June 2023 respectively. Council of Europe, 'Country Reports and Evaluation Rounds' <<https://www.coe.int/en/web/anti-human-trafficking/country-reports-and-evaluation-rounds>> accessed 8 January 2024.

²⁴³ In certain instances, due to different ratification timelines, some States have not undergone all rounds, for example, the Czech Republic (Czechia) [ratified 29 March 2017], Estonia [ratified 5 February 2015] and Greece [ratified 11 April 2014]. Thus, for the purpose of the analysis, all up-to-date, accessible documentation for each state was analysed, irrespective of the evaluation round.

These documents reveal state (non-)compliance with the provisions of the Trafficking Convention, and provide a basis for tracking positive legal developments and persistent implementation gaps. This strand of analysis reveals important information regarding states' identification practices and their compliance with Article 10 of the Trafficking Convention, and it bolsters the findings emerging from the primary qualitative data.

In addition, a comprehensive literature review of academic monographs and journal articles was undertaken. This 'essential part of the research process'²⁴⁴ established the underlying basis for the qualitative research phase. It identified the key debates within the scholarly body, drawing on scholars such as, *inter alia*, Gallagher²⁴⁵ and Stoyanova.²⁴⁶ The literature review also pinpointed the gaps in academic research on THB-LE to date. A notable lacuna emerged regarding an absence of empirical research on the practice of identifying (potential) VoTs, and more specifically, the dearth of literature capturing diverse frontline stakeholder perspectives.

Research outputs were gathered from multiple sources online and in libraries. A manual search was conducted on journal websites, facilitated by university subscriptions where open access was unavailable. Search engines, including Google Scholar, and research databases²⁴⁷ were utilised to ensure that relevant information was accessed and reviewed where available. The literature was selected on the basis of its relevance to the topic of THB-LE, with a particular emphasis on European studies, all of which were published in the English language. This thesis did not limit itself to a consideration of legal studies, rather it reviewed publications across a diverse range of subject areas reflecting on and capturing the complexity of THB(-LE).

1.4.3. The Qualitative Research Method

As part of the socio-legal methodological approach, and to build upon and enrich the doctrinal analysis, this thesis used a qualitative data collection method to comprehensively answer the research questions. Qualitative methods are primarily

²⁴⁴ Colin Robson and Kieran McCartan, *Real World Research* (4th edn, Wiley Publishing 2016) 82.

²⁴⁵ Anne T. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010).

²⁴⁶ Vladislava Stoyanova, *Human Trafficking and Slavery Reconsidered: Conceptual Limits and States' Positive Obligations in European Law* (Cambridge University Press 2017).

²⁴⁷ Databases included HeinOnline Law Journal Library, LexisNexis, and ProQuest Central.

employed to obtain an in-depth appreciation²⁴⁸ and understanding of the unique perspectives offered by study participants,²⁴⁹ whilst also considering their individual contexts and circumstances.²⁵⁰ More specifically, qualitative interviews have been viewed as effective in ‘gathering data on individuals’ perceptions or views’²⁵¹ and on their constructions of reality.²⁵² The interview method ‘allows participants to express themselves in their own words’²⁵³ and to ‘talk about *their* experiences and perspectives’²⁵⁴ leading to information accuracy. This is imperative in capturing and analysing the experiences of stakeholders who are involved in identifying THB-LE. These perspectives can be compared to official responses to the problem,²⁵⁵ thus facilitating a differentiation between top-down and bottom-up insights.

1.4.3.1. The Sampling Approach and Study Participants

The participant sample was selected to reflect the multifaceted nature of the stakeholders engaged in identifying victims of THB-LE, but it does not claim nor was it intended to account for *all* potentially relevant stakeholders. Four categories of stakeholders were interviewed, namely, criminal law enforcement officials, labour inspectors, trade unionists and NGO representatives. These stakeholders are in a position to provide far-reaching and varied perspectives on this complex phenomenon.²⁵⁶ The participants may be referred to as experts due to being ‘the key to practical insider knowledge’ of THB-

²⁴⁸ Anne-Marie Ambert, Patricia A. Adler, Peter Adler and Daniel F. Detzner, ‘Understanding and Evaluating Qualitative Research’ (1995) 57(4) *Journal of Marriage and the Family* 879-893, 880.

²⁴⁹ Hennie Boeije, *Analysis in Qualitative Research* (Sage Publications 2010) 11, as its purpose is to: ‘describe and understand social phenomena in terms of the meaning people bring to them’.

²⁵⁰ Monique Hennink, Inge Hutter and Ajay Bailey, *Qualitative Research Methods* (Sage Publications 2011) 10.

²⁵¹ Lisa Webley, ‘Qualitative Approaches to Empirical Legal Research’ in Peter Cane and Herbert M. Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010) 937.

²⁵² Keith F. Punch, *Introduction to Social Research: Quantitative & Qualitative Approaches* (3rd edn, Sage Publications 2014) 144.

²⁵³ Mario Cardano, *Defending Qualitative Research: Design, Analysis, and Textualisation* (Routledge 2020) 36.

²⁵⁴ Virginia Braun and Victoria Clarke, *Successful Qualitative Research: A Practical Guide for Beginners* (Sage Publications 2013) 77.

²⁵⁵ Monique Hennink, Inge Hutter and Ajay Bailey, *Qualitative Research Methods* (Sage Publications 2011) 109.

²⁵⁶ Audrey A. Trainor, ‘Interview Research’ in Audrey A. Trainor and Elizabeth Graue (eds), *Reviewing Qualitative Research in the Social Sciences* (Routledge 2013) 128; Michael Doherty, ‘Getting Down and Dirty: The Case for Empirical Legal Research’ in Laura Cahillane and Jennifer Schweppe (eds), *Legal Research Methods: Principles and Practicalities* (Clarus Press 2016) 142.

LE and the identification procedure.²⁵⁷ These stakeholders traverse different areas of the law including criminal justice, labour law, and human rights law. The methodological approach links the personal accounts and experiences of these participants to the broader European legal context relevant to the identification of THB-LE.

Sampling can be an important part of the research process and it has been stated that the selection of an appropriate sampling approach can ensure robustness of a study.²⁵⁸ As Creswell and Poth posit, purposive sampling can be beneficial in qualitative research because it involves selecting:

‘individuals and sites for study because they can purposefully inform an understanding of the research problem and central phenomenon in the study’.²⁵⁹

In this dissertation, a purposive sampling approach was primarily applied in determining the research population. At the outset, 100 emails were sent to possible interviewees. Participants were contacted via publicly available contact details, published on websites for government offices, NGOs and relevant European organisations.²⁶⁰ Snowball sampling was used on three occasions whereby individuals were contacted directly upon being recommended by other study participants who provided the relevant information and contact details. Due to the small number of interviewees approached in this way, bias is not a concern. Further to this, the participants were cross-checked with the ‘List of public bodies, intergovernmental organisations, non-governmental organisations and other civil society actors with which GRETA held consultations’ contained within GRETA’s country evaluation reports to ensure that they had recognised standing within the THB field.

The inclusion criteria for participation in the data collection phase required that participants were English-speaking professionals directly involved in THB efforts, and

²⁵⁷ Alexander Bogner, Beate Littig and Wolfgang Menz, ‘Generating Qualitative Data with Experts and Elites’ in Uwe Flick (ed), *The Sage Handbook of Qualitative Data Collection* (Sage Publications 2018) 653.

²⁵⁸ Maggi Savin-Baden and Claire Howell Major, *Qualitative Research: The Essential Guide to Theory and Practice* (Routledge 2013) 313.

²⁵⁹ John W. Creswell and Cheryl N. Poth, *Qualitative Inquiry & Research Design: Choosing Among Five Approaches* (4th edn, Sage Publications 2018) 158.

²⁶⁰ For example, the European Commission, ‘Together Against Trafficking in Human Beings’ <https://home-affairs.ec.europa.eu/policies/internal-security/organised-crime-and-human-trafficking/together-against-trafficking-human-beings_en> accessed 2 January 2024.

more specifically, in the identification of instances of THB-LE. While this language requirement was selected at the outset, it did not pose any hindrance to the data collection phase or limit participation in the study, as all interviewees contacted were proficient in the English language. In addition, the participants had to originate from a Council of Europe Member state and be over 18 years of age. Therefore, all participants operated in a state that ratified the Trafficking Convention (see Appendix A).

As categorised in Figure A, the interviewees purposively chosen to address the research questions include trade unionists, NGO representatives, labour inspectors, and criminal law enforcement officials. These were deemed to be particularly relevant to the specific form of THB under consideration, namely THB-LE, for a number of reasons. First, labour inspectors and trade unionists have regular contact with worksites and employees which provides them with an opportunity to uncover potential instances of THB-LE. Secondly, criminal law enforcement officials are, by and large, the main authorities designated with the responsibility of formally identifying VoTs and punishing perpetrators of THB. Lastly, (migrant) workers who have been severely exploited may fear authorities and be more comfortable seeking assistance from NGOs.²⁶¹

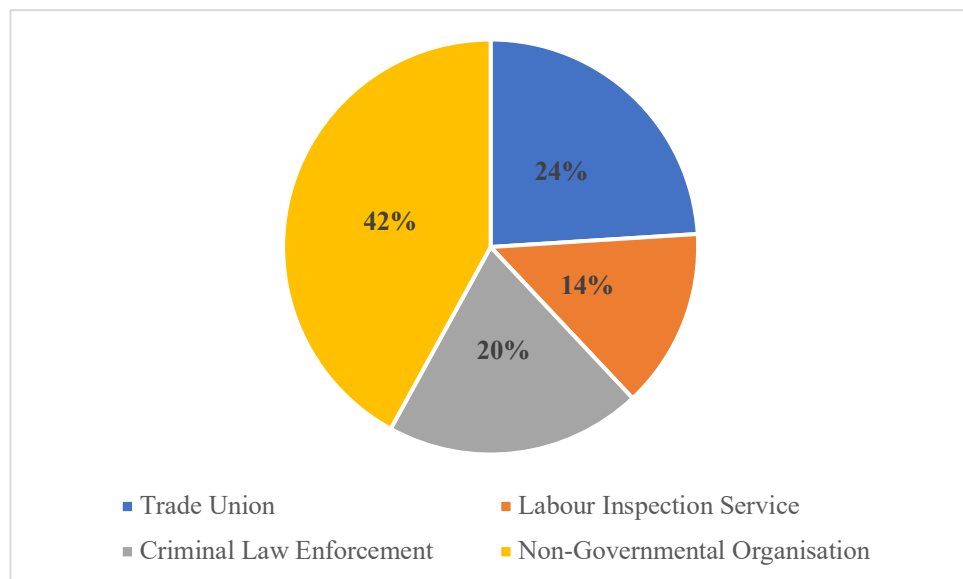


Figure A – Breakdown of Participants by Stakeholder Categorisation

²⁶¹ These rationales are further elucidated in the thesis' substantive chapters (Chapters Three to Five).

50 participants took part in the 42 interviews conducted (see Appendix B).²⁶² This can be explained by the fact that in certain instances, the interviews included more than one representative from the organisation, for example, the interview conducted with a Swiss trade union consisted of two representatives.²⁶³ It is acknowledged that this study cohort is not representative of the experiences of *all* stakeholders involved in the field of THB-LE, as other relevant personnel, such as healthcare professionals, social workers and employer organisations, were not included within the scope of this thesis. To take one example, the latter cohort of employer organisations were excluded on the basis that currently they are not fully integrated into anti-trafficking responses or if active in the field, focus primarily on prevention efforts, and resultantly would be unable to provide the required insights into the detection and identification of VoTs. Recently, the need to begin integrating these organisations into anti-trafficking efforts has been recognised by European states, for example, the Irish NAP 2023-2027 explicitly outlines that one action is to engage with ‘employers’ representative bodies to establish what role they can play’.²⁶⁴ On the other hand, the thesis did not engage with survivors or VoTs due to its focus on professionals’ experiences of identifying instances of THB-LE. Initially, a broader scope of participants were contacted to participate in this research, but access, implications of the COVID-19 global pandemic,²⁶⁵ and participant non-response, impacted on the availability of some cohorts. A number of other potential participants did not partake due to workload or other commitments,²⁶⁶ with some opting to provide information via email. A specific challenge was encountered in attempting to interview criminal law enforcement officials, due to resourcing limitations,²⁶⁷ additional ethical requirements and data protection concerns. These difficulties in accessing public

²⁶² This entailed 21 NGO representatives, 12 trade unionists, 7 labour inspectors, and 10 criminal law enforcement officials.

²⁶³ In total, five interviews were conducted with more than one individual representing the organisation, namely, the interviews with German law enforcement, a Swiss trade union, a Finnish trade union, a Dutch trade union and UK law enforcement.

²⁶⁴ Government of Ireland, *National Action Plan to Prevent and Combat Human Trafficking 2023-2027* (Government of Ireland 2023) 27.

²⁶⁵ For example, a Hungarian NGO potential interviewee explained ‘Unfortunately, due to the increased workload brought about by the pandemic we will not be able to assist in your research’ and the UK GLAA labour inspection service explained that ‘We are currently prioritising work and resources on Covid-19 and therefore we are unable to assist with your request on this occasion’.

²⁶⁶ For instance, a UK NGO potential interviewee replied ‘Unfortunately, we receive a high-volume of similar requests and do not currently have the capacity to reply to all (as much as we’d like to!’).

²⁶⁷ To take one example, a Swiss law enforcement department outlined that ‘an interview is not possible for resource reasons’.

authorities is not unique to this doctoral study and has been documented by Mopas and Turnbull who reported that:

‘gaining access to state institutions appears to have become progressively more difficult. Despite the claims of greater transparency, openness, and public accountability, government agencies – from prisons to school boards – remain highly averse to opening their doors to university researchers’.²⁶⁸

While it might seem that NGOs are over-represented in the sample, the thesis argues that this was necessary to capture the diversity of NGOs working in this field. Some NGOs, for example, work on issues related to labour exploitation more broadly, others work on THB as part of violence against the person, and there are also those focusing specifically on the challenges faced by migrants or foreign national workers. On the other hand, the lower uptake of trade union officials must be viewed in light of the low number of individuals involved in these roles and their limited experience in certain states. Similar to the issues encountered with criminal law enforcement officials outlined above, labour inspectors also pointed towards lack of capacity and understaffing as reasons for non-participation in the research.²⁶⁹

Finally, although some interviews were conducted with a number of National Rapporteurs and ministry representatives, the responses did not enable a thorough assessment of practices relating to the identification of victims of THB-LE across the chosen jurisdictions. As such, they were not included in the analysis undertaken. The final cohort of interviewees was concisely shaped as the data collection progressed. Accordingly, the intention behind the final chosen cohort was to capture stakeholders who play an active role on the ground and on the frontline for identification purposes.

1.4.3.1.1. The Term Stakeholder

The individuals who participated in the qualitative interviews are referred to as ‘stakeholders’. The justification for the use of this term is twofold. First, THB studies have increasingly utilised this term in relation to a broad range of professionals operating

²⁶⁸ Michael S. Mopas and Sarah Turnbull, ‘Negotiating a Way In: A Special Collection of Essays on Accessing Information and Socio-Legal Research’ (2011) 26(3) Canadian Journal of Law & Society 585-590, 586.

²⁶⁹ To take one example, the Belgian labour inspection service did not partake as ‘Our unit is currently understaffed and we are unfortunately unable to respond favorably to all requests’.

in and around the field of THB.²⁷⁰ As such, this terminology is adopted in accordance with current scholarly and international organisations' classification of these participants. More precisely, Hounmenou has defined THB stakeholders²⁷¹ as 'groups or individuals who can affect or are affected by an issue'.²⁷² In the context of stakeholder engagement in research, Hounmenou outlines that they may include government departments, policymakers, NGOs, international organisations, funders, businesses, local community groups, professional groups, service providers, patients/clients/victims, researchers working in relevant fields, educators, students, media and other key people with any interest in the study.²⁷³ Secondly, the term stakeholder has been used by international bodies²⁷⁴ and monitoring reports.²⁷⁵ At the conclusion of each national evaluation report, GRETA lists consulted cohorts who are recognised as having important insights into state anti-trafficking responses. These regularly include state ministries, the police, border police, immigration services, prosecutors, judiciary, labour inspectors, National Rapporteurs, and civil society organisations.²⁷⁶ The importance of considering their perspectives is clearly recognised by international monitoring bodies, but this has not fully transferred to scholarly research.

For the purpose of this thesis, stakeholders are envisaged as individuals and organisations engaged in national anti-trafficking efforts. Therefore, it is important to clarify from the outset that the term stakeholder encapsulates *only* those operating in a professional

²⁷⁰ See, *inter alia*, Galma Jahic and James O. Finckenauer, 'Representations and Misrepresentations of Human Trafficking' (2005) 8(3) Trends in Organized Crime 24-40; Anne T. Gallagher and Rebecca Surtees, 'Measuring the Success of Counter-Trafficking Interventions in the Criminal Justice Sector: Who Decides – and How?' (2012) 1 Anti-Trafficking Review 10-30; Fakhru Islam, 'Human Trafficking Law Enforcement Over the Victims and Offenders: The Perspective of Anti-Trafficking Stakeholders' (2024) 19(8) Victims & Offenders 1512-1540; Veronica M. Herrera and Lidia E. Nuño, 'Challenges to Identifying Labor Trafficking at the Local Level: A Qualitative Study of Service Providers and Stakeholders in California' (2024) Journal of Human Trafficking <https://doi.org/10.1080/23322705.2023.2301216>.

²⁷¹ Charles Hounmenou, 'Engaging Anti-Human Trafficking Stakeholders in the Research Process' (2020) 6(1) Journal of Human Trafficking 30-49, 31-32.

²⁷² This is closely in line with the classic definition provided by Edward Freeman, *Strategic Management: A Stakeholder Approach* (Cambridge University Press 1984) 46.

²⁷³ Charles Hounmenou, 'Engaging Anti-Human Trafficking Stakeholders in the Research Process' (2020) 6(1) Journal of Human Trafficking 30-49, 31-32.

²⁷⁴ UNODC, *The Effects of the COVID-19 Pandemic on Trafficking in Persons and Responses to the Challenges: A Global Study of Emerging Evidence* (United Nations 2021); Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Survey Report 2021 of Efforts to Implement OSCE Commitments and Recommended Actions to Combat Trafficking in Human Beings* (OSCE 2022).

²⁷⁵ *Inter alia*, GRETA, *11th General Report on GRETA's Activities covering the period from 1 January to 31 December 2021* (Council of Europe 2022); United States Department of State, *Trafficking in Persons Report* (USDS 2022).

²⁷⁶ Other relevant stakeholders are consulted depending on each national context.

capacity. All participants are categorised in relation to their professional identity, for example, ‘a Spanish labour inspector’. Thus, the stakeholders are as follows: criminal law enforcement officials, labour inspectors, NGO representatives and trade unionists.

Article 10(1) of the Trafficking Convention states that:

‘Each Party shall provide its **competent authorities** with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with **relevant support organisations, ...**’.²⁷⁷ [*emphasis added*]

In line with Article 10(1) of the Trafficking Convention,²⁷⁸ Table 1 illustrates their classification for (formal) identification purposes.

Competent Authority	Relevant Support Organisation
Criminal Law Enforcement Official	Non-governmental Organisation
Labour Inspector	Trade Union

Table 1 – Stakeholder Classification

a) Criminal Law Enforcement Officials

Where states have adopted a primarily criminal justice approach to address the offence of THB-LE, criminal law enforcement officials, primarily police officers, are the principal stakeholders assigned the duty of eradicating this offence.²⁷⁹ As they operate in the criminal justice sphere, duties assigned to such officials predominantly relate to the investigation and prosecution of THB-LE.²⁸⁰ In addition, they are primarily, but not solely, assigned the role of formally identifying VoTs.²⁸¹ They are key informants regarding the interaction between criminal justice aims and victim protection objectives, on the basis of granting VoT status through the formal identification process. Thus,

²⁷⁷ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2017, entered into force 1 February 2008) CETS 197 Article 10(1).

²⁷⁸ *ibid.*

²⁷⁹ Ieke de Vries and Amy Farrell, ‘Explaining the Use of Traditional Law Enforcement Responses to Human Trafficking Concerns in Illicit Massage Businesses’ (2023) 40(3) *Justice Quarterly* 337-362.

²⁸⁰ Amy Farrell and Brianna Kane, ‘Criminal Justice System Responses to Human Trafficking’ in John Winterdyk and Jackie Jones (eds), *The Palgrave International Handbook of Human Trafficking* (Palgrave Macmillan 2020) 645.

²⁸¹ Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Survey Report 2021 of Efforts to Implement OSCE Commitments and Recommended Actions to Combat Trafficking in Human Beings* (OSCE 2022) 66.

criminal law enforcement officials offer a clear insight into the enforcement of national legislation and operational challenges faced from a criminal justice perspective.

Nevertheless, criminal law enforcement efforts have been subjected to criticism relating to: the limited knowledge on the part of local criminal law enforcement officials when compared to specialist investigators; the priorities set by criminal law enforcement agencies; and the reactive nature of responses to THB.²⁸² Kaye et al. question the efficacy of criminal law enforcement officials due to the narrow scope of the legal definition of THB and attempts to meet the criminal threshold, combined with resource constraints.²⁸³ While Dandurand refers to the ‘glaring gap’ between the reality of victim experiences and criminal law enforcement perceptions of THB generally,²⁸⁴ these criticisms are intensified in relation to THB-LE which has been observed as being ‘sidelined’,²⁸⁵ ‘overlooked’,²⁸⁶ and that it ‘has often taken a backseat’²⁸⁷ due to a greater focus on THB-SE.²⁸⁸

While a sole criminal justice approach is insufficient for an effective response to THB-LE,²⁸⁹ such criminal justice stakeholders should not be overlooked and their potential contribution and observations regarding identification and co-operation in such efforts

²⁸² Jeremy M. Wilson and Erin Dalton, ‘Human Trafficking in the Heartland: Variation in Law Enforcement Awareness and Response’ (2008) 24(3) *Journal of Contemporary Criminal Justice* 296-313, 297; Veerendra Mishra, ‘Combating Human Trafficking: Gaps in Law Enforcement’ in Veerendra Mishra (ed), *Human Trafficking: The Stakeholder Perspective* (Sage Publications 2013) 275; Vladimir A. Sergevnnin, ‘Law Enforcement Awareness and Training in Human Trafficking’ in Michael J. Palmiotto (ed), *Combating Human Trafficking: A Multidisciplinary Approach* (CRC Press 2015) 193; Amy Farrell, Katherine Bright, Ieke de Vries, Rebecca Pfeffer and Meredith Dank, ‘Policing Labor Trafficking in the United States’ (2020) 23(1) *Trends in Organized Crime* 36-56, 38.

²⁸³ Julie Kaye, John Winterdyk and Lara Quartermann, ‘Beyond Criminal Justice: A Case Study of Responding to Human Trafficking in Canada’ (2014) 56(1) *Canadian Journal of Criminology and Criminal Justice* 23-48, 35.

²⁸⁴ Yvon Dandurand, ‘Human Trafficking and Police Governance’ (2017) 18(3) *Police Practice and Research* 322-336, 326.

²⁸⁵ Ronald Weitzer, ‘New Directions in Research on Human Trafficking’ (2014) 653(1) *The Annals of the American Academy of Political and Social Science* 6-24, 7.

²⁸⁶ Ella Cockbain, Kate Bowers and Galina Dimitrova, ‘Human Trafficking for Labour Exploitation: The Results of a Two-Phase Systematic Review Mapping the European Evidence Base and Synthesising Key Scientific Research Evidence’ (2018) 14(3) *Journal of Experimental Criminology* 319-360, 320.

²⁸⁷ William D. Moreto, Richard W. Charlton, Samuel E. DeWitt and Christina M. Burton, ‘The Convergence of CAPTURED Fish and People: Examining the Symbiotic Nature of Labor Trafficking and Illegal, Unreported and Unregulated Fishing’ (2020) 41(6) *Deviant Behavior* 733-749.

²⁸⁸ Examples include, Heather M. Smith, ‘Sex Trafficking: Trends, Challenges, and the Limitations of International Law’ (2011) 12(3) *Human Rights Review* 271-286; Peter Munro, ‘Harbouring the Illicit: Borderlands and Human Trafficking in South East Asia’ (2012) 58(2) *Crime, Law and Social Change* 159-177.

²⁸⁹ Virginia Mantouvalou, ‘The UK Modern Slavery Act 2015 Three Years On’ (2018) 81(6) *Modern Law Review* 1017-1045, 1045.

must be considered. As many of the obligations on states, including identification, tend to be first placed within the remit of criminal law enforcement officials, their perspective must be assessed in attempting to understand the legal obligation to identify under Article 10 of the Trafficking Convention.²⁹⁰

b) Labour Inspectors

This thesis follows GRETA's designation of labour inspectors as:

‘all those authorities and institutions, both generalist and specialist, that are responsible for ensuring the application of labour legislation in the workplace’.²⁹¹

Since 1919, the ILO has recommended the introduction of labour inspection services.²⁹² More recently, Article 2(c)(ii) of the ILO Protocol of 2014 to the Forced Labour Convention, 1930 reinforced the crucial role of labour inspections.²⁹³ GRETA has called on states to expand the mandate and enhance the role of labour inspectors in the detection of THB-LE²⁹⁴ and scholars, such as Shelley, have similarly highlighted the need to further integrate these stakeholders in anti-trafficking efforts.²⁹⁵ In addition, they are explicitly recognised in the Explanatory Report to the Trafficking Convention as one of the possible competent authorities for formal identification purposes under Article 10.²⁹⁶

²⁹⁰ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10.

²⁹¹ GRETA, *Guidance Note on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2021) 11.

²⁹² Labour Inspection (Health Services) Recommendation 1919 (No. 5) [withdrawn] R005. The Recommendation was adopted to ensure that workshops and factories were subject to effective inspections and that a public service responsible for protecting worker's health was put in place. Furthermore, the Labour Inspection Convention, No. 81 was adopted in 1947. That is considered to be ‘the universal reference instrument on labour inspection’, Report of the Committee of Experts on the Application of Conventions and Recommendations, *Labour Inspection* (ILO 2006) 2. The 1947 Convention was supplemented by the Labour Inspection (Agriculture) Convention No. 129 of 1969 and Protocol of 1995 to the Labour Inspection Convention.

²⁹³ Protocol of 2014 to the Forced Labour Convention 1930 (adopted 11 June 2014, entered into force 9 November 2016) 103rd ILC Session. Article 2(c)(ii) requires that ‘labour inspection services and other services responsible for the implementation of this legislation are strengthened’.

²⁹⁴ GRETA, *Guidance Note on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2021) 12. For example, despite GRETA and the Committee of the Parties calling on Switzerland to expand the mandate of labour inspectors, ‘the Swiss Authorities have indicated that there are no plans to include the detection of THB in the mandate of labour inspectors’. GRETA, *Evaluation Report: Switzerland – Third Evaluation Round* (Council of Europe 20 June 2024) 44; Committee of the Parties, *Recommendation CP/Rec(2024)08 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Switzerland: Third Evaluation Round* (Council of Europe 21 June 2024) 2.

²⁹⁵ Louise Shelley, *Human Trafficking: A Global Perspective* (Cambridge University Press 2010) 304.

²⁹⁶ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 129.

The system of labour (or social) inspection varies considerably across European states,²⁹⁷ but it is increasingly acknowledged that inspectors have an important role to play in detecting instances of THB-LE.²⁹⁸ The ILO outlines that the main functions of labour inspectors are to assess general working conditions, occupational safety and health, (illegal) employment, and industrial relations.²⁹⁹ However, this same report emphasises that:

‘Labour inspection without determined enforcement and enforcement without visible application of available and effective legal sanctions will however not contribute to combating the problem of forced labour outcomes of trafficking’.³⁰⁰

They have unique powers and access to worksites, which can be contrasted to criminal law enforcement officials who may not enter without prior approval.³⁰¹ They have the potential to proactively detect instances of THB-LE and make referrals to criminal justice professionals.³⁰² In meeting the objective of eradicating THB-LE, labour inspectors can play a key role in uncovering exploitative situations and therefore, there is a growing consensus that they must be more involved in the identification procedure.³⁰³ Through regular inspections of workplaces, indicators of forced labour situations and instances of THB-LE may be uncovered.³⁰⁴ Therefore, labour inspectors have valuable insights that should be unearthed when analysing the identification of victims of THB-LE.

²⁹⁷ The European Federation of Public Service Unions (EPSU), *A Mapping Report on Labour Inspection Services in 15 European Countries* (EPSU 2013).

²⁹⁸ Irene Wintermayr and Amy Weatherburn, *Access to Protection and Remedy for Victims of Human Trafficking for the Purpose of Labour Exploitation in Belgium and the Netherlands* (ILO 2021) 8; GRETA, *Guidance Note on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2021) 11.

²⁹⁹ ILO, *Trafficking for Forced Labour: How to Monitor the Recruitment of Migrant Workers* (ILO 2005) 53.

³⁰⁰ *ibid*, 54.

³⁰¹ Rebecca Paraciani and Roberto Rizza, ‘When the Workplace is the Home: Labour Inspectors’ Discretionary Power in the Field of Domestic Work – An Institutional Analysis’ (2021) 41(1) *Journal of Public Policy* 1-16.

³⁰² Government of the Netherlands, *Manual for Experts on Multidisciplinary Cooperation Against Trafficking in Human Beings for Labour Exploitation* (Government of the Netherlands 2016) 24.

³⁰³ ILO, *Human Trafficking and Forced Labour Exploitation: Guidelines for Legislation and Law Enforcement* (ILO 2005) 49; Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *An Agenda for Prevention: Trafficking for Labour Exploitation* (OSCE 2011) 12.

³⁰⁴ Beate Andrees, *Forced Labour and Human Trafficking: Handbook for Labour Inspectors* (ILO 2008) 1.

c) Non-Governmental Organisations

Article 5(6) and Article 12(5) of the Trafficking Convention explicitly recognises the important role of NGOs in preventing THB and protecting VoTs.³⁰⁵ They are not a homogenous group, but a concern raised by van den Anker and van Liempt is that many NGOs have tended to focus on THB-SE.³⁰⁶ In fact, they may be involved in this area exclusively as designated THB NGOs, or they may focus primarily on women's rights or migrant's rights. NGOs can offer substantial assistance in identifying, assisting and supporting victims of THB-LE and severely exploitative labour abuses.³⁰⁷ They are vital in assisting the fulfilment of the requirement under Article 10 of the Trafficking Convention as they may be the first stakeholder to encounter VoTs.³⁰⁸ NGOs are recognised as significant in the protection and support of VoTs through the provision of numerous services, but they are also active in training professionals, raising awareness among professionals and the wider public, assisting VoTs during the criminal justice process, and engaging in advocacy efforts.³⁰⁹ Tzvetkova described NGOs as 'the conscience of government' and entities who step in where 'governments have failed to take the initiative'.³¹⁰ Thus, NGOs can address some of the potential shortcomings left by public authorities and are positioned to provide a wealth of information on THB(-LE). Yet, as GRETA has stated, increased integration of these stakeholders in state responses to THB is required³¹¹ as they are critical for placing VoTs at the centre of all actions.

³⁰⁵ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Articles 5(6) and 12(5); GRETA, *5th General Report on GRETA's Activities covering the period from 1 October 2014 to 31 December 2015* (Council of Europe 2016) 5.

³⁰⁶ Christien van den Anker and Ilse van Liempt, 'Introduction: The Wider Context of Trafficking for Forced Labour' in Christien van den Anker and Ilse van Liempt (eds), *Human Rights and Migration: Trafficking for Forced Labour* (Palgrave Macmillan 2012) 7. See also, Conny Rijken, 'Trafficking in Human Beings for Labour Exploitation: Cooperation in an Integrated Approach' (2013) 21(1) *European Journal of Crime, Criminal Law and Criminal Justice* 9-35, 10.

³⁰⁷ GRETA, *4th General Report on GRETA's Activities covering the period from 1 August 2013 to 30 September 2014* (Council of Europe 2015) 40.

³⁰⁸ Eefje de Volder, 'Trafficking in the Domestic-Work Sector in the Netherlands: A Hidden Phenomenon' (2017) 15(2) *Journal of Immigrant & Refugee Studies* 140-154, 151.

³⁰⁹ Stephanie A. Limoncelli, 'What in the World Are Anti-Trafficking NGOs Doing? Findings from a Global Study' (2016) 2(4) *Journal of Human Trafficking* 316-328, 320; Albina Balidemaj, 'Human Rights Legislation in Albania: The Case of Human Trafficking' (2019) 23(8) *The International Journal of Human Rights* 1300-1316, 1312.

³¹⁰ Marina Tzvetkova, 'NGO Responses to Trafficking in Women' (2002) 10(1) *Gender & Development* 60-68, 61.

³¹¹ GRETA, *5th General Report on GRETA's Activities covering the period from 1 October 2014 to 31 December 2015* (Council of Europe 2016) 5.

d) Trade Unions

A trade union is an organisation formed to protect the rights and interests of its members, usually focusing on workers in a particular industry, with Beirnaert commenting that ‘strong, independent, democratic and effective trade unions guarantee the eradication of exploitation at work’.³¹² They can play an important role in organising workers, monitoring (and negotiating for better) working conditions,³¹³ and resolving disputes with employers.³¹⁴ Ford notes that ‘as institutional representatives of workers, trade unions have a mandate to oppose all forms of exploitation associated with employment’.³¹⁵ Both GRETA³¹⁶ and the OSCE³¹⁷ have recognised that trade unions have a crucial role to play in anti-trafficking responses and that they ‘should be involved in the development and implementation of anti-trafficking measures and their evaluation’.³¹⁸ They are vital stakeholders in uncovering exploitative situations, interacting first-hand with (potential) VoTs, and referring such instances to other relevant authorities.

A limiting factor to the role that may be played by a trade union relates to whether potential VoTs must be a union member in order to receive assistance. The ability of trade unions to represent non-union members differs between jurisdictions³¹⁹ and this can have implications both for potential VoTs, and for the effectiveness and remit of trade union

³¹² Jeroen Beirnaert, ‘A Trade Union Perspective on Combating Trafficking and Forced Labour in Europe’ in Conny Rijken (ed), *Combating Trafficking in Human Beings for Labour Exploitation* (Wolf Legal Publishers 2011) 483.

³¹³ June Kane, ‘Making Money Out of Misery: Trafficking for Labor Exploitation’ in Mary C. Burke (ed), *Human Trafficking: Interdisciplinary Perspectives* (3rd edn, Routledge 2022) 73.

³¹⁴ Mumtaz Lalani and Hilary Metcalf, *Forced Labour in the UK: The Business Angle* (Joseph Rowntree Foundation 2012) 26; Jon Davies, ‘Criminological Reflections on the Regulation and Governance of Labour Exploitation’ (2020) 23(1) *Trends in Organized Crime* 57-76, 62.

³¹⁵ Michele Ford, ‘Trade Unions, Forced Labour and Human Trafficking’ (2015) 5 *Anti-Trafficking Review* 11-29, 12.

³¹⁶ GRETA, *Guidance Note on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2021) 19.

³¹⁷ Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *An Agenda for Prevention: Trafficking for Labour Exploitation* (OSCE 2011) 29; Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Survey Report 2021 of Efforts to Implement OSCE Commitments and Recommended Actions to Combat Trafficking in Human Beings* (OSCE 2022) 23.

³¹⁸ GRETA, *12th General Report on GRETA’s Activities covering period from 1 January to 31 December 2022* (Council of Europe 2023) 58.

³¹⁹ See, for example, Christian Dufour and Adelheid Hege, ‘The Legitimacy of Collective Actors and Trade Union Renewal’ (2010) 16(3) *Transfer: European Review of Labour and Research* 351-367, 355. This research identified certain segments of the workforce that remain outside trade unions’ scope, including private service workers, workers in small businesses, young people, women, workers on atypical contracts, and immigrants.

efforts in the anti-trafficking field.³²⁰ Relatedly, while the impact of trade unions may be affected by low levels of union membership,³²¹ the ILO has recognised that its effectiveness is impacted by their limited presence in rural isolated areas.³²²

Research has argued that developing the capacity of criminal justice professionals is necessary to respond to THB, however, in the case of THB-LE, the context in which these offences generally arise is in a workplace.³²³ As such THB-LE necessitates the involvement of stakeholders active in the labour market field, such as labour inspectors and trade unionists.³²⁴ However, criticism has been raised that trade unions are not recognised as key players in THB-LE efforts.³²⁵ Finally, in identifying situations of THB-LE, trade unionists are key stakeholders focusing on labour-related concerns and provide an insight into the operationalisation of a labour law response to severely exploitative situations.

It is important to note that this thesis explicitly acknowledges van Doorninck's argument that 'anti-trafficking civil society is by no means a homogenous group and should not be addressed as such'.³²⁶ However, it recognises the importance of civil society stakeholders in THB-LE efforts,³²⁷ the significant contribution of which is captured by Article 5,

³²⁰ Zack Bowersox, 'Union Density and Human Trafficking: Can Organized Labor Discourage Trafficking?' (2024) 10(4) *Journal of Human Trafficking* 529-542, 539.

³²¹ Trade unions previously played a significant role in collective bargaining, but due to the decline in union density this 'power' has eroded quite significantly. Statistics from the UK, for example, reveal that '82% of workers were covered by collective agreements in 1980 but by 2012 this had declined to 23% overall, and 16% in the private sector', Sam Scott, *Labour Exploitation and Work-Based Harm* (Policy Press 2017) 207 citing Bernard Ryan, 'From labour migration to labour reform' in Bernard Ryan (ed), *Labour Migration in Hard Times* (Institute of Employment Rights 2013) 71.

³²² ILO, *Assessment Report on Necessary Amendments of the Legal Framework Regarding Inspections in Agriculture and Recommendations for Reforms in Line with ILO Convention No 129* (ILO 2018) 12.

³²³ ILO, *Human Trafficking and Forced Labour Exploitation: Guidelines for Legislation and Law Enforcement* (ILO 2005) 49; Fiona David, 'Building the Infrastructure of Anti-Trafficking: Information, Funding, Responses' (2010) 9(2) *Criminology & Public Policy* 235-243, 240.

³²⁴ Jon Davies, 'From Severe to Routine Labour Exploitation: The Case of Migrant Workers in the UK Food Industry' (2019) 19(3) *Criminology & Criminal Justice* 294-310, 297.

³²⁵ Eliza Marks and Anna Olsen, 'The Role of Trade Unions in Reducing Migrant Workers' Vulnerability to Forced Labour and Human Trafficking in the Greater Mekong Subregion' (2015) 5 *Anti-Trafficking Review* 111-128, 112; GRETA, *7th General Report on GRETA's Activities covering the period from 1 January to 31 December 2017* (Council of Europe 2018) 43; Irene Wintermayr and Amy Weatherburn, *Access to Protection and Remedy for Victims of Human Trafficking for the Purpose of Labour Exploitation in Belgium and the Netherlands* (ILO 2021) 8 and 35.

³²⁶ Marieke van Doorninck, 'Changing the System from Within: The Role of NGOs in the Flawed Anti-trafficking Framework' in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 420.

³²⁷ Mike Dottridge, *Emerging Good Practice by State Authorities, the Business Community and Civil Society in the Area of Reducing Demand for Human Trafficking for the Purpose of Labour Exploitation* (Council of Europe 2016) 27; UN Special Rapporteur on Trafficking in Persons, especially Women and

Article 12 and Article 35 of the Trafficking Convention,³²⁸ and they are increasingly viewed as necessary for enforcement efforts.³²⁹ Relatedly, GRETA has stated that:

‘civil society plays an important role in the implementation of the Convention, through awareness raising, training, detecting victims of trafficking and providing them with accommodation, assistance and support throughout the criminal justice process’.³³⁰

In GRETA’s country reports and government replies, civil society are referred to as crucial and highly important in THB measures.³³¹ More precisely, they have a significant role in the ‘critical stages of early identification and referral’,³³² with Article 10 of the Trafficking Convention requiring collaboration with these relevant support organisations for identification purposes.³³³ They further contribute in a number of ways, including documenting worker abuse, developing guidance for assessing whether abusive practices are occurring, and supporting victims in accessing remedies for such abuses.³³⁴ Likewise, the UN Special Rapporteur has observed that:

‘civil society organizations have become even more active, undertaking outreach activities and providing support to and empowering trafficked and exploited persons, with or without government funding’.³³⁵

Children, ‘20 Years After: Implementing and Going Beyond the Palermo Protocol towards a Human Rights Centred Approach’ (17 July 2020) A/75/169 para 39.

³²⁸ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Articles 5, 12 and 35.

³²⁹ Louise Shelley, *Human Trafficking: A Global Perspective* (Cambridge University Press 2010) 316; Eunhye Yoo and Elizabeth Heger Boyle, ‘National Human Trafficking Initiatives: Dimensions of Policy Diffusion’ (2015) 40(3) *Law & Social Inquiry* 631-663, 631.

³³⁰ GRETA, *12th General Report on GRETA’s Activities covering period from 1 January to 31 December 2022* (Council of Europe 2023) 6.

³³¹ For instance, in relation to NGOs specifically see: GRETA, *Reply from Sweden to the Questionnaire for the Evaluation of the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties: Second Evaluation Round* (Council of Europe 10 April 2017) 53; GRETA, *Evaluation Report: Bulgaria – Third Evaluation Round* (Council of Europe 29 April 2021) 13.

³³² GRETA, *8th General Report on GRETA’s Activities covering the period from 1 January to 31 December 2018* (Council of Europe 2019) 6.

³³³ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10.

³³⁴ Mike Dottridge, *Emerging Good Practice by State Authorities, the Business Community and Civil Society in the Area of Reducing Demand for Human Trafficking for the Purpose of Labour Exploitation* (Council of Europe 2016) 27.

³³⁵ UN Special Rapporteur on Trafficking in Persons, especially Women and Children, ‘20 Years After: Implementing and Going Beyond the Palermo Protocol Towards a Human Rights Centred Approach’ (17 July 2020) A/75/169 para 39.

In conclusion, this section has clearly outlined the four stakeholder cohorts captured in the qualitative data and has underscored their importance for providing insights on the identification procedure in the context of THB-LE.

1.4.3.2. Jurisdictional Scope

Due to the pronounced regional variation in experiences of, and responses to, THB-LE, and the intention to focus on an analysis of the Trafficking Convention’s identification obligation,³³⁶ this doctoral study chose to limit its focus to the European region. Therefore, the interviewees derive from 20 different states across Europe, as illustrated in Figure B (see Appendix B). These include: Austria, Belgium, Bulgaria, Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Iceland, Ireland, the Netherlands, Norway, Portugal, Slovenia, Spain, Sweden, Switzerland, Ukraine, and the UK.

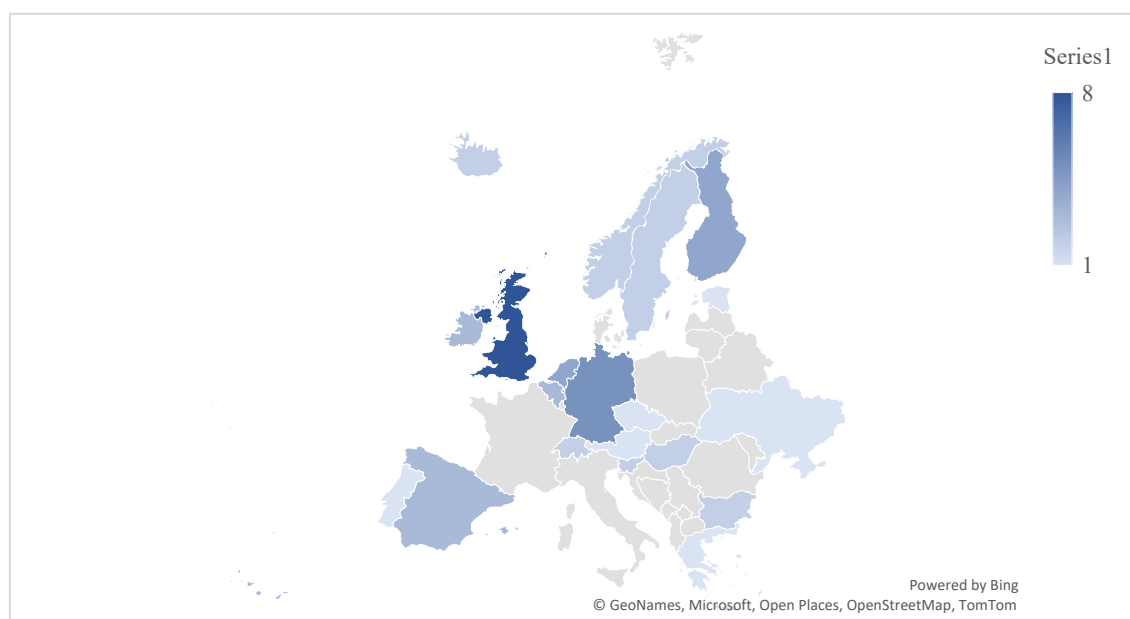


Figure B – Geographical Spread of Interviewees

By ascertaining the experiences of this geographically diverse study cohort, a more rounded understanding of the fulfilment of this obligation across Europe is determined. These states comprise 44 per cent of the 46 Council of Europe Member states.³³⁷ Whilst

³³⁶ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10.

³³⁷ Russia was expelled in March 2022. See, the Council of Europe Committee of Ministers, ‘Consequences of the Aggression of the Russian Federation against Ukraine’ (16 March 2022) CM/Del/Dec(2022)1428ter/2.3.

other states may fulfil the inclusion criteria, they could not be included in the data collection phase due to difficulties in accessing participants and a lack of uptake regarding participation requests,³³⁸ as detailed in section 1.4.3.1. As a result, this research does not deduce how *all* European states address the issue, but the final jurisdictional sample touches on all regions of Europe.³³⁹

This thesis is not intended to be a comparative project engaging in a direct analysis of the THB national legal provisions between two or more states. As Banks and Baker outline:

‘merely reciting the contents of a procedural criminal law tells us little about how it operates in practice and how the various actors charged with implementing it perceive their roles and responsibilities and their connections and interactions with other actors’.³⁴⁰

Instead, it aims to capture the realities of victim identification across the European region by ascertaining the practical on-the-ground perspectives of a diverse group of stakeholders across a large number of states. This thesis acknowledges that by taking this broader perspective to understand the approach to victim identification across a range of European states, it may mean that certain local or national nuances in identifying THB-LE are not fully captured. However, the approach adopted in this thesis is novel in THB

³³⁸ This was particularly evident in relation to requests to organisations in Cyprus, where the sole response received explained that as THB is ‘not the responsibility’ of the organisation, that they would not partake in an interview.

³³⁹ There is no definitive statement regarding the division of Europe into distinct regions, but the UN Geoscheme Classification and Definition of Regions provides one account (not necessarily representing historical or cultural divisions of the European Region) caveated by the statement that this categorisation is for statistical convenience’. United Nations Department of Economic and Social Affairs, *Standard Country or Area Codes for Statistical Use* (UN 1999 No. 49/Rev.4) available at: <<https://unstats.un.org/unsd/methodology/m49/>> accessed 8 January 2024. As such, the studied states can be classified on this basis as follows:

Eastern Europe: Bulgaria, Czech Republic (Czechia), Hungary, Ukraine.

Northern Europe: Estonia, Finland, Iceland, Ireland, Norway, Sweden, the United Kingdom.

Southern Europe: Greece, Portugal, Slovenia, Spain.

Western Europe: Austria, Belgium, Germany, the Netherlands, Switzerland.

³⁴⁰ Cyndi Banks and James Baker, *Comparative, International and Global Justice: Perspectives from Criminology and Criminal Justice* (Sage Publications 2016) 20.

research, but has been employed in relation to other crimes,³⁴¹ contexts,³⁴² and disciplines³⁴³ which have illustrated the benefit of taking a systematic approach to an examination of complex issues across a broad range of European states.

There are a number of rationales for the choice of states in this dissertation. First, these states are party to, and bound by, international instruments which represent a common legal framework to address THB-LE,³⁴⁴ and more specifically, they are all bound by Article 10 of the Trafficking Convention which is the core legal focus of this doctoral study. However, they are not necessarily all members of the EU (see Appendix C).³⁴⁵ Secondly, these states differ in their country type categorisation and how they are affected by THB.³⁴⁶ This designation can be useful in planning anti-trafficking responses,³⁴⁷ especially in states with limited resources. GRETA has recorded this categorisation and change over time in its country evaluation reports, as displayed in Table 2.

³⁴¹ See for example, Mike Hellenbach, Sue Elliott, F. Jeane Gerard, Becky Crookes, Thanos Stamos, Helen Poole and Erica Bowen, 'The Detection and Policing of Gun Crime: Challenges to the Effective Policing of Gun Crime in Europe' (2018) 15(2) *European Journal of Criminology* 172-196. (This study involved 42 interviews with stakeholders from 13 European countries); Stefano De Paoli, Jason Johnstone, Natalie Coull, Ian Ferguson, Georgina Sinclair, Patrick Tomkins, Maureen Brown and Rebecca Martin, 'A Qualitative Exploratory Study of the Knowledge, Forensic, and Legal Challenges from the Perspective of Police Cybercrime Specialists' (2021) 15(2) *Policing: A Journal of Policy and Practice* 1429-1445. (This study involved 13 interviews across 8 countries).

³⁴² Laura Neiva, Rafaela Granja and Helena Machado, 'Big Data Applied to Criminal Investigations: Expectations of Professionals of Police Cooperation in the European Union' (2022) 32(10) *Policing and Society* 1167-1179.

³⁴³ Stephanie Sampson, Rachel Edworthy, Birgit Völm and Erik Bulten, 'Long-Term Forensic Mental Health Services: An Exploratory Comparison of 18 European Countries' (2016) 15(4) *International Journal of Forensic Mental Health* 333-351. (This study involved 22 interviews across 16 EU countries).

³⁴⁴ These include the Convention concerning Forced or Compulsory Labour (No. 29) (adopted 28 June 1930, entered into force 1 May 1932) 39 UNTS 55, Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319, and the Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197.

³⁴⁵ This relates to Iceland, Norway, Switzerland, Ukraine and the United Kingdom.

³⁴⁶ A country can serve as a country of origin, a country of destination and/or a country of transit. Sheldon X. Zhang, 'Measuring Labor Trafficking: A Research Note' (2012) 58(4) *Crime, Law and Social Change* 469-482, 469; Johanna Schönhöfer, 'Political Determinants of Efforts to Protect Victims of Human Trafficking' (2017) 67(2) *Crime, Law and Social Change* 153-185, 154.

³⁴⁷ Mohamed Y. Mattar, 'Monitoring the Status of Severe Forms of Trafficking in Foreign Countries: Sanctions Mandated under the U.S. Trafficking Victims Protection Act' (2003) 10(1) *Brown Journal of World Affairs* 159-178, 167.

State	Evaluation Round One	Evaluation Round Two	Evaluation Round Three
<i>Austria</i>	Transit and Destination	Transit and Destination	Transit and Destination
<i>Belgium</i>	Transit and Destination	Origin, Transit and Destination	Origin, Transit and Destination
<i>Bulgaria</i>	Primarily Origin	Origin, Transit and Destination	Origin, Transit and Destination
<i>Czech Republic</i>	Origin, Transit and Destination	Origin, Transit and Destination	-----
<i>Estonia</i>	Origin, Transit and Destination	Origin, Transit and Destination	-----
<i>Finland</i>	Origin, Transit and Destination	Origin, Transit and Destination	Primarily Destination
<i>Germany</i>	Primarily Destination	Origin, Transit and Destination	Origin, Transit and Destination
<i>Greece</i>	Origin, Transit and Destination	Origin, Transit and Destination	-----
<i>Hungary</i>	Origin and Transit	Origin, Transit and Destination	Origin and Destination
<i>Iceland</i>	Transit and Destination	Transit and Destination	Transit and Destination
<i>Ireland</i>	Transit and Destination	Origin and Destination	Primarily Destination
<i>Norway</i>	Destination	Destination	Destination
<i>Portugal</i>	Origin and Destination	Origin, Transit and Destination	Origin, Transit and Destination
<i>Slovenia</i>	Origin, Transit and Destination	Origin, Transit and Destination	Origin, Transit and Destination
<i>Spain</i>	Transit and Destination	Origin, Transit and Destination	Transit and Destination
<i>Sweden</i>	Destination	Origin, Transit and Destination	Primarily Destination
<i>Switzerland</i>	Transit and Destination	Transit and Destination	Primarily Destination
<i>The Netherlands</i>	Origin, Transit and Destination	Origin, Transit and Destination	Origin and Destination
<i>The UK</i>	Primarily Destination	Origin and Destination	Origin, Transit and Destination
<i>Ukraine</i>	Origin, Transit and Destination	Origin	-----

Table 2 – Country Designation Detailed in GRETA Reports

This change of country type designation highlights the complex and dynamic process of THB. It emphasises the need for continuous monitoring of these offences at national level to enable states and relevant stakeholders to formulate appropriate and effective policies in line with contemporary developments. Thirdly, the occurrence of different forms of THB within a jurisdiction varies.³⁴⁸ This is particularly evident regarding the existence and prevalence of detected and recorded instances of THB-LE.³⁴⁹ GRETA in its report on Greece, for example, stated that:

³⁴⁸ For example, Austria, Bulgaria, Germany, Ireland, Sweden and the Netherlands regularly report THB-SE as the main form of THB recorded. GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany: Second Evaluation Round* (Council of Europe 20 June 2019) 7; GRETA, *Evaluation Report: Austria – Third Evaluation Round* (Council of Europe 10 June 2020) 5; GRETA, *Evaluation Report: Bulgaria – Third Evaluation Round* (Council of Europe 29 April 2021) 5; GRETA, *Evaluation Report: Ireland – Third Evaluation Round* (Council of Europe 28 September 2022) 4; GRETA, *Evaluation Report: Sweden – Third Evaluation Round* (Council of Europe 19 October 2023) 5; GRETA, *Evaluation Report: The Netherlands – Third Evaluation Round* (Council of Europe 9 November 2023) 7.

³⁴⁹ In Slovenia, for instance, it was reported that there were no instances of THB-LE recorded between 2017 and 2021, GRETA, *Evaluation Report: Slovenia – Third Evaluation Round* (Council of Europe 15 June 2023) 11. In contrast to this, THB-LE has more recently been the predominant form of THB detected in Belgium, Portugal, Ukraine and the UK. GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ukraine: Second Evaluation Round* (Council of Europe 22 November 2018) 7; GRETA, *Evaluation Report: The United Kingdom – Third Evaluation Round* (Council of Europe 20 October 2021) 12; GRETA, *Evaluation Report: Portugal*

‘Trafficking for the purpose of labour exploitation appears to be significantly underreported (the number of presumed victims was, respectively, none in 2017, one in 2018, 23 in 2019, 21 in 2020, and 39 in 2021) compared to the large number of undocumented workers in Greece (an estimated 10 000), many of whom are land workers from Bangladesh and Pakistan, domestic workers, and persons employed in the construction industry and tourism’.³⁵⁰

Finally, as discussed in section 1.3.3., the selected countries vary from an empirical research standpoint. Notably, for example, the literature review undertaken revealed that the Czech Republic (Czechia), Estonia, Iceland and Switzerland have been remarkably absent from the scholarly literature on THB.

Having presented the rationale for the choice of study participants and states, the next section describes the chosen qualitative method in the form of semi-structured interviews. It outlines the additional challenges encountered due to COVID-19 pandemic restrictions during the research data collection period.³⁵¹ The format of the semi-structured interview is provided and the section concludes with an outline of the data analysis undertaken.

1.4.3.3. The Semi-Structured Interview and Data Analysis

At the outset, the intention was to schedule interviews in-person with key stakeholders across Europe because face-to-face interviews have been deemed by James and Busher as the ‘optimal way to actively engage with research participants’.³⁵² Furthermore, some methodological scholars have expressed that the absence of non-verbal cues and facial expressions is a drawback to online interviews as potential ambiguities and misunderstandings may arise when compared with traditional offline approaches.³⁵³ On

– *Third Evaluation Round* (Council of Europe 13 June 2022) 4; GRETA, *Evaluation Report: Belgium – Third Evaluation Round* (Council of Europe 20 October 2022) 4.

³⁵⁰ GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece: Second Evaluation Round* (Council of Europe 23 March 2023) 6.

³⁵¹ Broader concerns were expressed by a number of international organisations and monitoring bodies during this period regarding the potential effects of this pandemic as it ‘created fertile ground for crime to flourish’, exacerbated vulnerabilities to THB which traffickers exploited, demonstrating a high degree of adaptability. See, UNODC, *UNODC Strategy 2021-2025* (United Nations 2021) 3; GRETA, *10th General Report on GRETA’s Activities covering the period from 1 January to 31 December 2020* (Council of Europe 2021) 6; Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Policy Responses to Technology-Facilitated Trafficking in Human Beings: Analysis of Current Approaches and Considerations for Moving Forward* (OSCE 2022) 14.

³⁵² Nalita James and Hugh Busher, *Online Interviewing* (Sage Publications 2009) 11.

³⁵³ Henrietta O’Connor, Clare Madge, Robert Shaw and Jane Wellens, ‘Internet-based Interviewing’ in Nigel Fielding, Raymond M. Lee and Grant Blank (eds), *The Sage Handbook of Online Research Methods* (Sage Publications 2008) 280; Claire Hewson, ‘Research Design and Tools for Online Research’ in Nigel

the other hand, certain platforms, for example Skype, are considered by Deakin and Wakefield as sufficient alternatives to in-person interviews and deemed to have little impact on the quality of the interview itself.³⁵⁴ The visual components of contemporary software address some of the shortcomings of non-traditional interview formats. However, the data collection was conducted during the first year of the COVID-19 Pandemic (December 2020 to March 2021)³⁵⁵ and thus, a methodological challenge encountered was the imposition of travel restrictions and national lockdowns. As a result, the success of this doctoral study, in terms of participation, was facilitated by the use of online technologies to conduct interviews, which were flexible in terms of time zones, other work commitments and co-ordination requirements. Additionally, accessibility and lower financial costs are noted benefits of this internet-based approach.³⁵⁶

1.4.3.3.1. Interview Format

All interviews, with the exception of one,³⁵⁷ were single occurrence and semi-structured in nature. They lasted between 18 and 105 minutes. The shorter interview duration is explained whereby the participant provided written information prior to the interview and the interview itself clarified certain aspects of the documentation received. The interviews were largely conducted using the online platforms Microsoft Teams and Zoom, and by telephone on three occasions.

G. Fielding, Raymond M. Lee and Grant Blank (eds), *The Sage Handbook of Online Research Methods* (2nd edn, Sage Publications 2017) 63.

³⁵⁴ Hannah Deakin and Kelly Wakefield, 'Skype Interviewing: Reflections of Two PhD Researchers' (2014) 14(5) *Qualitative Research* 603-616, 608.

³⁵⁵ The first detection of COVID-19 in Europe occurred in January 2020. The first infection wave peaked in Spring 2020 and eased during that Summer. The second wave peaked in Autumn 2020 and endured throughout the Winter period. During periods of high concern, strict public health measures with varying durations were imposed across European states to reduce virus transmission. This resulted in the shutdown of a number of economic sectors, border closures, travel restrictions, bans on public events, and the imposition of social distancing and mask-wearing requirements. These responses were generally quite similar across Europe. Muiread Murphy, 'Key Stakeholder Perspectives on the Potential Impact of COVID-19 on Human Trafficking for the Purpose of Labour Exploitation' (2023) 21 *Anti-Trafficking Review* 105-120, 106-107 citing Amílcar Moreira, Margarita León, Flavia Coda Moscarola and Antonios Roumpakis, 'In the Eye of the Storm...Again! Social Policy Responses to COVID-19 in Southern Europe' (2021) 55(2) *Social Policy & Administration* 339-357; Barry Colfer, 'Public Policy Responses to COVID-19 in Europe' (2020) 6(2) *European Policy Analysis* 126-137.

³⁵⁶ Chris Mann and Fiona Stewart, 'Internet Interviewing' in Jaber F. Gubrium and James A. Holstein (eds), *Handbook of Interview Research* (Sage Publications 2001) 608.

³⁵⁷ Interview 16 (a THB focused NGO).

The qualitative data was collected using a semi-structured topic guide (Appendix D). These semi-structured interviews involved pre-set questions with additional follow-up questions. This semi-structured format allowed for research flexibility when responding to each participant's reactions and comments.³⁵⁸ Such malleability would not be provided for through the distribution of a survey, for example. Thus, the semi-structured interview format ensured that each participant was asked a set of similar questions,³⁵⁹ but it also allowed for the topic guide to be adjusted where necessary. This approach enabled the clear demarcation of the parameters of the research, but provided a means through which additional interviewee insights could be explored.

The participants were asked a series of questions. The first question elicited information on the participant's role in anti-trafficking efforts and their understanding of THB-LE within their jurisdiction. The remaining questions were organised into specific themes based on key issues and concepts arising from the in-depth literature review undertaken in order to inform the research questions. The key topics related to: legal concepts, the legal framework, identification, investigation, government response, the overall experience of interviewees in their role, obstacles encountered, and recommendations. To conclude the interview, participants were asked an open-ended question that allowed them to comment on any aspect of THB-LE that they felt was relevant and significant.

1.4.3.3.2. Transcription and Data Analysis

Following the conclusion of the data collection phase and prior to analysing the qualitative data, the recorded interviews were transcribed and anonymised to remove any personally identifiable information. The transcription process involved two stages. In the first stage, the recorded file was processed through a software application that generated a transcription of the recorded audio. The second stage involved manually amending these outputs alongside the original audio recording. During the latter stage, any inaccuracies detected in the software output were amended. The transcript was provided to individuals on request. This allowed the respondent to remove any ambiguities or make changes that

³⁵⁸ Maggi Savin-Baden and Claire Howell Major, *Qualitative Research: The Essential Guide to Theory and Practice* (Routledge 2013) 359; Colin Robson and Kieran McCartan, *Real World Research* (4th edn, Wiley Publishing 2016) 248 and 290.

³⁵⁹ H. Russell Bernard, Amber Wutich and Gery W. Ryan, *Analyzing Qualitative Data: Systematic Approaches* (2nd edn, Sage Publications 2017) 76.

they felt more accurately represented their opinions.³⁶⁰ This led to a more reliable data collection. The transcripts were labelled and filed following the format of ‘Interview 1’. A separate document was created and stored with details regarding the participant type and jurisdiction as it corresponded to the affixed label (see Appendix E).

The next phase involved an analysis of the data. This required the segmentation of the data collected and the transformation of this raw data into comprehensive findings.³⁶¹ The analysis may be seen as interpretive in the sense that it enables researchers to interpret the meanings that ‘participants themselves give to their views and experiences’.³⁶² Braun and Clarke acknowledge the widespread use of thematic analysis and define this analysis as ‘a method for identifying themes and patterns of meaning across a dataset in relation to a research question’.³⁶³ Furthermore, as Guest et al. state, thematic analysis moves ‘beyond counting explicit words or phrases’ and focuses on ‘identifying and describing both implicit and explicit ideas within the data, that is, themes’.³⁶⁴ The usefulness of thematic analysis has been recognised in analysing large data sets.³⁶⁵ Based on these recognised benefits, the interviews were subjected to thematic analysis using NVivo12.³⁶⁶ This data analysis software helps researchers to analyse, manage and shape qualitative data.³⁶⁷ The data was coded during this analytical process which enabled themes in the research data to be distinguished. This was imperative for the purpose of data management.³⁶⁸

Each theme was examined to ascertain the participants’ experiences of identifying victims of THB-LE. The thesis themes are therefore based on the core issues that emerged from

³⁶⁰ Just four participants sought to make minor changes to their transcript.

³⁶¹ Hennie Boeijs, *Analysis in Qualitative Research* (Sage Publications 2010) 94.

³⁶² Monique Hennink, Inge Hutter and Ajay Bailey, *Qualitative Research Methods* (Sage Publications 2011) 17.

³⁶³ Virginia Braun and Victoria Clark, *Successful Qualitative Research: A Practical Guide for Beginners* (Sage Publications 2013) 173.

³⁶⁴ Greg Guest, Kathleen M. MacQueen and Emily E. Namey, *Applied Thematic Analysis* (Sage Publications 2012) 10.

³⁶⁵ Lorelli S. Nowell, Jill M. Norris, Deborah E. White and Nancy J. Moules, ‘Thematic Analysis: Striving to Meet the Trustworthiness Criteria’ (2017) 16(1) *International Journal of Qualitative Methods* 1-13.

³⁶⁶ See Kerry Dhakal, ‘NVivo’ (2022) 110(2) *Journal of the Medical Library Association* 270-272 for a succinct overview of the abilities of the NVivo software.

³⁶⁷ John W. Creswell and Cheryl N. Poth, *Qualitative Inquiry & Research Design: Choosing Among Five Approaches* (4th edn, Sage Publications 2018) 213.

³⁶⁸ Hennie Boeijs, *Analysis in Qualitative Research* (Sage Publications 2010) 95 and 119; Frans L. Leeuw with Hans Schmeets, *Empirical Legal Research: A Guidance Book for Lawyers, Legislators and Regulators* (Edward Elgar Publishing 2016) 203.

the in-depth literature review, but are also shaped by the participants' responses in the qualitative data. The themes that emerged from the analysis include, *inter alia*, the formal identification of VoTs, practical identification challenges, stakeholder co-operation, awareness of the offence of THB-LE, and the threshold whereby labour law violations become criminal offences.

1.4.3.4. Ethical Considerations

Prior to commencing this doctoral study, approval to undertake this research was granted by Maynooth University Social Research Ethics Subcommittee in 2020 (see Appendix F). Informed consent is of particular importance from an ethical perspective and Boeije states that there is an:

‘obligation to outline fully the nature of the data collection and the purpose for which the data will be used to the people or community being studied in a style and language that they can understand’.³⁶⁹

It is imperative that the study participants are aware that the data will be collected, analysed and reported anonymously, unless they expressly consent to identification within the research.³⁷⁰ Farrimond identified three aspects of informed consent namely, information, comprehension, and voluntariness.³⁷¹ Thus, when participants were invited to take part in this doctoral study, they were provided with an information sheet and requested to sign a consent form prior to the interview taking place (see Appendices G and H). On each occasion, participants were asked if they were comfortable with the content of both forms. In some instances, oral consent was recorded. From the outset, interviewees were aware that their participation in the research was entirely voluntary and that they could cease participation at any time. It was emphasised to participants that they could refrain from answering any question without explanation. Every effort was made to ensure that the interviews were conducted in a sensitive manner.

³⁶⁹ Hennie Boeije, *Analysis in Qualitative Research* (Sage Publications 2010) 45.

³⁷⁰ Monique Hennink, Inge Hutter and Ajay Bailey, *Qualitative Research Methods* (Sage Publications 2011) 71.

³⁷¹ Hannah Farrimond, *Doing Ethical Research* (Palgrave Macmillan 2013) 109. See also Mark Israel and Iain Hay, *Research Ethics for Social Scientists* (Sage Publications 2006) 61.

Confidentiality and anonymity are two important features of ethical research. Anonymity refers to disguising, removing or altering personally identifiable data to ensure that the participant cannot be identified in the research. Examples of such data include personal names and addresses.³⁷² Confidentiality and anonymity are closely linked and ensured by the fact that participants' names and other unique identifiers are not attached to the data.³⁷³ The data was anonymised throughout this thesis to avoid individuals being personally identified, but the majority of participants consented to their organisation being named in the study. It was decided to categorise the study participants according to their jurisdiction and their professional association, for example, a Belgian NGO representative (see Appendix E for a description of transcripts). This approach maintained the personal anonymity of participants, whilst enabling the geographical and vocational categorisation incorporated throughout the thesis.

The data collection phase adhered to the Maynooth Data Protection Policy 2019. Each interview was recorded on an audio recorder. This was outlined to participants in the consent form and information leaflet provided to them prior to the commencement of the interview (see Appendices G and H). The interview recordings were stored on an encrypted laptop and hard drive that were password protected. Participants were thanked for taking part in the data collection phase and for their generous contribution.

In sum, this socio-legal approach allows for the presentation of original findings and offers a novel contribution to academic scholarship in the field of THB-LE in Europe. The desk-based 'legal' aspect of this approach facilitates a comprehensive examination of the legal and conceptual context surrounding THB-LE within which the stakeholders operate. The 'socio' aspect enhances the legal analysis and addresses a current gap in the scholarly literature by gathering a range of perspectives from criminal law enforcement officials, labour inspectors, trade unionists and NGO representatives. Specifically, from a methodological perspective, it is novel and robust as it engages with qualitative data from a variety of stakeholders across a range of European states.

³⁷² *ibid* 128.

³⁷³ Hennie Boeijs, *Analysis in Qualitative Research* (Sage Publications 2010) 46.

1.5. Thesis Structure

To achieve the aim of this doctoral study and to address the research questions, this thesis is composed of six substantive chapters.

Chapter One provides an introductory overview to this research topic which includes a statement of the research aim and corresponding research questions. The chapter emphasises the overall importance of the study in addressing certain knowledge gaps and building on the current scholarly state of the art. It provides a detailed account of the socio-legal methodological approach adopted to investigate stakeholder perspectives on the identification of THB-LE, namely utilising doctrinal analysis and a qualitative method in the form of semi-structured interviews.

Chapter Two sets out the international legal framework on THB-LE, with a primary focus on the Trafficking Convention. It discusses the key contributions of the Palermo Protocol, with a focus on the definition of THB. The related ILO Conventions on forced labour are examined, due to the inclusion of forced labour within the definition of THB under international law. The doctrinal analysis in this chapter primarily centres on an examination of the chosen legal touchstone of the Trafficking Convention and the corresponding obligations imposed on Contracting States. As part of the evaluation, it considers the monitoring mechanism attached to the Convention. This chapter also explores the relevant jurisprudence under Article 4 of the ECHR as pronounced by the ECtHR. Building on the doctrinal analysis of the definition of THB(-LE), the final section draws on the qualitative data to analyse the perspectives of the study participants on the distinction between a labour law violation and a criminal law offence of THB-LE. As part of this discussion, the utility of a continuum of exploitation is considered.

Chapter Three examines the structures in place to implement the obligation under Article 10 of the Trafficking Convention to identify VoTs. It investigates the core aspects of the identification procedure, namely, designated competent authorities (CAs) and the National Referral Mechanism (NRM). It outlines the importance of identification and the consequences of non-identification for (potential) victims of THB-LE. The chapter delineates the identification procedure by distinguishing the two distinct processes of detection and formal identification. It analyses the obligation to identify under Article 10 of the Trafficking Convention to discuss the reasonable grounds and conclusive decision

for identifying VoTs. The final section in this chapter explores the study participant on the ground perspectives on the barriers to achieving a comprehensive identification procedure. These relate to the designation of CAs beyond the criminal justice sphere, the development of NRMs to encompass diverse contact points, and the barriers to victims reporting on the basis of fear of authorities and self-declaration. Chapter Three highlights the need to employ a multi-stakeholder integrated approach and to move away from a strict framing of THB-LE as a criminal justice issue.

Chapter Four investigates multi-stakeholder co-operation in the identification procedure at national level. It asserts the importance of multi-stakeholder co-operation as emphasised by international organisations, monitoring bodies and national policymakers. It conducts a doctrinal analysis of the relevant legal provisions obliging Contracting States to ensure and encourage co-operation under the Trafficking Convention including Article 5(6), Article 10, Article 12(5) and Article 35. The final section of this chapter draws on the qualitative data to examine the interactions between and amongst public authorities and civil society organisations. It explores the co-operation between criminal law enforcement officials and labour inspectors by discussing a current collaborative practice in the form of joint inspections. It subsequently evaluates the co-operation between public authorities and civil society organisations, including that which occurs with NGOs and trade unions. Chapter Four demonstrates that a multi-stakeholder integrated approach is not sufficient in and of itself. It is more important that the relevant stakeholders are coordinated at the most appropriate time and in the most effective manner, to contribute more effectively to a comprehensive approach to identify VoTs.

Chapter Five assesses how stakeholders are equipped to identify THB-LE. It focuses on an evaluation of three specific measures, including stakeholder awareness, training, and the use of indicators of THB-LE. It underscores the importance of these measures for improving the identification procedure and ameliorating some of the barriers identified in Chapters Three and Four. The legal obligations under Article 5, Article 10 and Article 29 of the Trafficking Convention are subject to doctrinal analysis. The final section presents an exploration of these measures grounded in the qualitative data. It discusses two core concerns for stakeholder awareness relating to a denial of the existence and prevalence of THB(-LE) in their jurisdiction and an undue focus on THB-SE. It examines the reality of multi-stakeholder training. It concludes with an exploration of the utilisation

of indicators of THB-LE for identification purposes. Chapter Five shows that there are measures that must be facilitated via a three-pronged approach in order to equip stakeholders to more effectively and efficiently engage in an appropriate and operable multi-stakeholder integrated approach to identify THB-LE.

Chapter Six concludes the thesis. It summarises the core findings and highlights the key contributions to the scholarly literature. It presents four concrete practical recommendations for states to improve their identification efforts. Finally, it outlines areas for future research.

Chapter Two – The International Legal Framework on Trafficking in Human Beings for the Purpose of Labour Exploitation

Introduction

This chapter has two purposes. First, it sets out and critically assesses the international legal framework on trafficking in human beings for the purpose of labour exploitation (THB-LE), with a particular focus on the Council of Europe Convention on Action against Trafficking in Human Beings (Trafficking Convention).¹ Secondly, the chapter examines the lack of clarity surrounding the definition of THB-LE, primarily caused by the absence of a definition of labour exploitation within the trafficking in human beings (THB) legal framework. In doing so, it draws on stakeholder perspectives to highlight some of the tensions in practice in differentiating between a criminal law offence of THB-LE and other labour law violations.

The primary legal touchstone for the analysis in this thesis is the Trafficking Convention due to its position in the anti-trafficking field as the ‘most comprehensive’ international and regional legal instrument with the ‘highest standards’.² Notably, the Trafficking Convention addresses some of the shortcomings of earlier international legal instruments on THB, for example, by the inclusion of an express obligation to identify victims of trafficking in human beings (VoTs).³ In addition to analysing the Trafficking Convention in detail, this chapter discusses pertinent international legal sources on THB, including

¹ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197.

² United Nations and Council of Europe, *Trafficking in Organs, Tissues and Cells and Trafficking in Human Beings for the Purpose of the Removal of Organs* (Council of Europe and United Nations 2009) 77; GRETA, *2nd General Report on GRETA’s Activities covering the period from 1 August 2011 to 31 July 2012* (Council of Europe 2012) 4. See also, Petya Nestorova, ‘Combating Trafficking in Human Beings: The Council of Europe Response’ in Belachew Gebrewold, Johanna Kostenzer and Andreas Th. Müller (eds), *Human Trafficking and Exploitation: Lessons from Europe* (Routledge 2018) 181.

³ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10. This is in addition to the reasons for the focus on the Trafficking Convention as outlined in section 1.2. of Chapter One which included, *inter alia*, its active monitoring mechanism and the fact that the ECtHR draws on its provisions in formulating positive obligations on States.

both hard⁴ and soft⁵ law instruments,⁶ which influenced the formation of the Trafficking Convention, and provided a definition of THB and other related concepts. Moreover, the emerging body of jurisprudence under Article 4 of the European Convention on Human Rights (ECHR)⁷ has been useful in clarifying a number of positive and procedural obligations in relation to THB. Furthermore, the European Court of Human Rights (ECtHR) has increasingly made reference to the provisions of the Trafficking Convention and the work of its monitoring body, the Group of Experts on Action against Trafficking in Human Beings (GRETA), in its Article 4 THB case law. Collectively, the international legal framework and emerging jurisprudence are building towards a comprehensive legal anti-trafficking response, however, this chapter demonstrates that there are gaps in the international legal framework. This is further highlighted in the subsequent chapters in terms of effective implementation and enforcement of the relevant THB provisions.

In relation to the definitional issues, the Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings (the Explanatory Report) provides that the definition of THB ‘is essential in that it crucially affects the implementation of the provisions’ of the Trafficking Convention.⁸ This is even more stark in relation to THB-LE due to the persistent definitional ambiguities that affect its

⁴ Including, *inter alia*, the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 and the Convention concerning Forced or Compulsory Labour (No. 29) (adopted 28 June 1930, entered into force 1 May 1932) 39 UNTS 55.

⁵ International hard law instruments are supplemented by non-legally binding soft law instruments which complement and amplify the hard law provisions. They include, *inter alia*, the UN OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (United Nations 2002), UNODC, *Model Law Against Trafficking in Human Beings* (United Nations 2009), and UN General Assembly Resolutions, including UN General Assembly, ‘Exploitation of Labour through Illicit and Clandestine Trafficking’ (15 November 1972) A/RES/2920 (XXVII); UN General Assembly, ‘Improving the Coordination of Efforts against Trafficking in Persons’ (18 December 2013) A/RES/68/192; UN General Assembly, ‘Global Compact for Safe, Orderly and Regular Migration’ (19 December 2018) A/RES/73/195. See also UN General Assembly, ‘United Nations Global Plan of Action to Combat Trafficking in Persons’ (12 August 2010) A/RES/64/293. This was reaffirmed by UN General Assembly, ‘2021 Political Declaration on the Implementation of the United Nations Global Plan of Action to Combat Trafficking in Persons’ (23 November 2021) A/RES/76/7. In addition, the UN Sustainable Development Goals, superseding the Millennium Development Goals 2000-2015, aim to end the exploitation and trafficking of persons by 2030, UN General Assembly, ‘Transforming Our World: The 2030 Agenda for Sustainable Development’ (25 September 2015) A/RES/70/1, Goals 5.2, 8.7 and 16.2.

⁶ They are also drawn on throughout the substantive chapters of this thesis where appropriate, in affirming or differing from the provisions of the Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197.

⁷ Convention for the Protection of Human Rights and Fundamental Freedoms, as amended (adopted 4 November 1950, entered in force 3 September 1953) 213 UNTS 222.

⁸ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 73.

understanding.⁹ This has implications for the identification procedure,¹⁰ as without a common interpretation stakeholders on the ground who encounter situations of THB-LE will lack the certainty and clarity in order to accurately detect these instances and individuals subjected to this severely exploitative phenomenon. Although the Trafficking Convention does not expressly define the concept of THB-LE, for the purpose of this thesis THB-LE is taken to encompass forced labour or services,¹¹ slavery,¹² slavery-like practices,¹³ or servitude,¹⁴ as defined in international law.¹⁵ This chapter establishes that the stakeholders have difficulty in applying the definition in practice. Scholarly literature has revealed that ambiguity persists regarding the concept of exploitation,¹⁶ which is reinforced by an absence of an agreement between European states on the definition of labour exploitation.¹⁷ In efforts to remedy this lacuna, the concept of a continuum of exploitation has been proposed by, *inter alia*, Skrivankova.¹⁸ The continuum of exploitation demonstrates that exploitation is experienced on a scale, which ranges from decent work to severe forms of labour exploitation. More specifically, it aims to distinguish between labour law violations and criminal law offences, including THB.¹⁹

⁹ Ronald Weitzer, 'Human Trafficking and Contemporary Slavery' (2015) 41 Annual Review of Sociology 223-242, 225; Orlando Patterson and Xiaolin Zhuo, 'Modern Trafficking, Slavery, and Other Forms of Servitude' (2018) 44(1) Annual Review of Sociology 407-439, 409.

¹⁰ Marja Paavilainen, 'Towards a Cohesive and Contextualised Response: When is it Necessary to Distinguish between Forced Labour, Trafficking in Persons and Slavery?' (2015) 5 Anti-Trafficking Review 158-161.

¹¹ Convention concerning Forced or Compulsory Labour (No. 29) (adopted 28 June 1930, entered into force 1 May 1932) 39 UNTS 55 Article 2(1).

¹² Convention to Suppress the Slave Trade and Slavery (adopted 25 September 1926, entered into force 9 March 1927) 60 LNTS 253 Article 1(1).

¹³ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (adopted 7 September 1956, entered into force 30 April 1957) 226 UNTS 3.

¹⁴ UNODC, *Model Law Against Trafficking in Persons* (United Nations 2009) Article 5(r).

¹⁵ GRETA, *7th General Report on GRETA's Activities covering the period from 1 January to 31 December 2017* (Council of Europe 2018) 34.

¹⁶ John Lawrence Hill, 'Exploitation' (1994) 79(3) Cornell Law Review 631-699; Virginia Mantouvalou, 'The Right to Non-Exploitative Work' in Virginia Mantouvalou (ed), *The Right to Work: Legal and Philosophical Perspectives* (Hart Publishing 2015); Marija Jovanović, 'The Essence of Slavery: Exploitation in Human Rights Law' (2020) 20(4) Human Rights Law Review 674-703. See also, UNODC, *The Concept of "Exploitation" in the Trafficking in Persons Protocol* (Issue Paper, United Nations 2015).

¹⁷ Michael Dottridge, 'Trafficked and Exploited: The Urgent Need for Coherence in International Law' in Prabha Kotiswaran (ed), *Revisiting the Law and Governance of Trafficking, Forced Labour and Modern Slavery* (Cambridge University Press 2017); Ella Cockbain, Kate Bowers and Galina Dimitrova, 'Human Trafficking for Labour Exploitation: The Results of a Two-Phase Systematic Review Mapping the European Evidence Base and Synthesising Key Scientific Research Evidence' (2018) 14(3) Journal of Experimental Criminology 319-360; Jean Allain, 'Conceptualizing the Exploitation of Human Trafficking' in Jennifer Bryson Clark and Sasha Poucki (eds), *The Sage Handbook of Human Trafficking and Modern Day Slavery* (Sage Publications 2019).

¹⁸ Klara Skrivankova, *Between Decent Work and Forced Labour: Examining the Continuum of Exploitation* (Joseph Rowntree Foundation 2010).

¹⁹ Julia O'Connell Davidson, 'New Slavery, Old Binaries: Human Trafficking and the Borders of "Freedom"' (2010) 10(2) Global Networks 244-261; Conny Rijken, 'Trafficking in Human Beings for

Yet, the exact point at which this demarcation occurs is ambiguous from a practical standpoint and lacks consensus.²⁰ Therefore, the chapter captures and presents the specific factors that stakeholders understand as the defining features of THB-LE, namely coercion and control of movement.

This chapter is structured in four sections. The first section provides an overview of international legal anti-trafficking instruments which are the legal foundation for the Trafficking Convention. The second section critically analyses the Trafficking Convention, drawing on some of its key provisions. This section explores the definition of THB and in particular, the offence of THB-LE to ascertain its scope. It also examines the monitoring mechanism attached to the Trafficking Convention which consists of GRETA and the Committee of the Parties. The third section provides a succinct overview of the jurisprudence arising under Article 4 of the ECHR to the field of THB, including its contribution in terms of the positive obligation to investigate and identify victims of THB-LE. The final section draws on the qualitative data to highlight the complexities that arise in distinguishing between a labour law violation and the criminal law offence of THB-LE in practice. In doing so, it discusses the continuum of exploitation as a means to determine the threshold of THB-LE.

2.1. The Development of the International Legal Framework

For over a century international legal instruments have been developed in response to THB and as Ollus and Joutsen have observed, the content of these instruments differ due to concerns at the time of drafting.²¹ This section traces the evolution of the legal framework that has led to the modern understanding of THB and Table 3 below

Labour Exploitation: Cooperation in an Integrated Approach' (2013) 21(1) European Journal of Crime, Criminal Law and Criminal Justice 9-35; Klara Skrivankova, 'Defining Exploitation in the Context of Trafficking – What is a Crime and What is Not' in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018).

²⁰ Nicola Jägers and Conny Rijken, 'Prevention of Human Trafficking for Labor Exploitation: The Role of Corporations' (2014) 12(1) Northwestern Journal of International Human Rights 47-73; Mariyana Radeva Berket, 'Labour Exploitation and Trafficking for Labour Exploitation – Trends and Challenges for Policy-Making' (2015) 16 ERA Forum 359-377; Vladislava Stoyanova, *Human Trafficking and Slavery Reconsidered: Conceptual Limits and States' Positive Obligations in European Law* (Cambridge University Press 2017); Janie A. Chuang, 'Contemporary Debt Bondage, "Self-Exploitation," and the Limits of the Trafficking Definition' in Prabha Kotiswaran (ed), *Revisiting the Law and Governance of Trafficking, Forced Labor and Modern Slavery* (Cambridge University Press 2017).

²¹ Natalia Ollus and Matti Joutsen, 'International Policies to Combat Human Trafficking' in Rochelle L. Dalla and Donna Sabella (eds), *Routledge International Handbook of Human Trafficking: A Multi-Disciplinary and Applied Approach* (Routledge 2020) 72.

summarises the relevant legal instruments. It has been well-researched in the literature, most notably by Gallagher,²² Allain²³ and Stoyanova,²⁴ and it is not proposed to revisit this discussion in-depth, but it is acknowledged that the establishment of international and regional legal instruments is a core aspect of a concrete, actionable response to THB.²⁵ These instruments have been beneficial in setting minimum standards to address THB and promote international compliance.²⁶ Human rights treaties, including Article 4 of the Universal Declaration of Human Rights,²⁷ Article 8 of the International Covenant on Civil and Political Rights,²⁸ and Article 4 of the ECHR,²⁹ set the foundation for future anti-trafficking measures by prohibiting slavery, servitude and forced labour and by encompassing important rights for victims of THB-LE.³⁰ This includes, *inter alia*, the right to work in just and favourable conditions and the free choice of employment.³¹

²² Anne T. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010).

²³ Jean Allain, *Slavery in International Law: Of Human Exploitation and Trafficking* (Brill Nijhoff 2013).

²⁴ Vladislava Stoyanova, *Human Trafficking and Slavery Reconsidered: Conceptual Limits and States' Positive Obligations in European Law* (Cambridge University Press 2017).

²⁵ ILO, *Trafficking for Forced Labour: How to Monitor the Recruitment of Migrant Workers* (ILO 2005) 27.

²⁶ Helen Duffy, 'Litigating Modern Day Slavery in Regional Courts: A Nascent Contribution' (2016) 14(2) *Journal of International Criminal Justice* 375-403, 376; May Ikeora, *Bilateral Cooperation and Human Trafficking: Eradicating Modern Slavery Between The United Kingdom and Nigeria* (Palgrave Macmillan 2018) 253.

²⁷ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) Article 4.

²⁸ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Article 8.

²⁹ Convention for the Protection of Human Rights and Fundamental Freedoms, as amended (adopted 4 November 1950, entered in force 3 September 1953) 213 UNTS 222 (ECHR) Article 4.

³⁰ To note, Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 Article 6 requires States to 'take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women'.

³¹ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR) Article 6. See also, Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) Article 23; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 Article 7.

Focused instruments relating to the prevention and abolition of slavery,³² forced labour,³³ and THB³⁴ were also developed. In brief, in relation to the former, the League of Nations slavery treaties collectively require states to prevent and suppress the slave trade³⁵ and related practices,³⁶ bring about the complete abolition of slavery in all its forms,³⁷ and to criminalise the acts.³⁸ Although these legal instruments have been criticised for the lack of accompanying enforcement mechanisms,³⁹ perhaps most pertinent for present-day purposes are the definitions contained within these treaties regarding slavery,⁴⁰ the slave

³² Convention to Suppress the Slave Trade and Slavery (adopted 25 September 1926, entered into force 9 March 1927) 60 LNTS 253; Protocol amending the Slavery Convention (adopted 23 October 1953, entered into force 7 December 1953) 182 UNTS 51; Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (adopted 7 September 1956, entered into force 30 April 1957) 226 UNTS 3.

³³ Convention concerning Forced or Compulsory Labour (No. 29) (adopted 28 June 1930, entered into force 1 May 1932) 39 UNTS 55 (Forced Labour Convention); Convention concerning the Abolition of Forced Labour (No. 105) (adopted 25 June 1957, entered into force 17 January 1959) 320 UNTS 291; Protocol of 2014 to the Forced Labour Convention 1930 (adopted 11 June 2014, entered into force 9 November 2016) 103rd ILC Session.

³⁴ International Agreement for the Suppression of the White Slave Traffic (adopted 18 May 1904, entered into force 18 July 1905) 1 LNTS 83; International Convention for the Suppression of the White Slave Traffic (adopted 4 May 1910, entered into force 8 August 1912) 3 LNTS 278; International Convention for the Suppression of the Traffic in Women and Children (adopted 30 September 1921, entered into force 15 June 1922) 9 LNTS 415; International Convention for the Suppression of the Traffic in Women of Full Age (adopted 11 October 1933, entered into force 24 August 1934) 150 LNTS 431; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (adopted 2 December 1949, entered into force 25 July 1951) 96 UNTS 271; Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319; Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197.

³⁵ Convention to Suppress the Slave Trade and Slavery (adopted 25 September 1926, entered into force 9 March 1927) 60 LNTS 253 Article 2(a).

³⁶ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (adopted 7 September 1956, entered into force 30 April 1957) 226 UNTS 3 Article 1.

³⁷ Convention to Suppress the Slave Trade and Slavery (adopted 25 September 1926, entered into force 9 March 1927) 60 LNTS 253 Article 2(b).

³⁸ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (adopted 7 September 1956, entered into force 30 April 1957) 226 UNTS 3 Articles 3(1), 5 and 6.

³⁹ Claude E. Welch, 'Defining Contemporary Forms of Slavery: Updating a Venerable NGO' (2009) 31(1) Human Rights Quarterly 70-128, 73.

⁴⁰ Silvia Scarpa, 'The Nebulous Definition of Slavery: Legal Versus Sociological Definitions of Slavery' in John Winterdyk and Jackie Jones (eds), *The Palgrave Handbook of Human Trafficking* (Palgrave Macmillan 2020) 132. Convention to Suppress the Slave Trade and Slavery (adopted 25 September 1926, entered into force 9 March 1927) 60 LNTS 253 Article 1(1). Restated under Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (adopted 7 September 1956, entered into force 30 April 1957) 226 UNTS 3 Article 7(a).

trade⁴¹ and slavery-like practices.⁴² The Explanatory Report⁴³ and the ECtHR⁴⁴ refer to these instruments for the purpose of defining slavery. These definitions remain in place and are the foundation for modern understandings. Moreover, these offences are explicitly contained within the definition of THB as listed forms of exploitative purposes,⁴⁵ as discussed in section 2.2.1.1. Notwithstanding, considerable debate remains regarding the scope of these practices.⁴⁶

⁴¹ Convention to Suppress the Slave Trade and Slavery (adopted 25 September 1926, entered into force 9 March 1927) 60 LNTS 253 Article 1(2).

⁴² Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (adopted 7 September 1956, entered into force 30 April 1957) 226 UNTS 3 provided that ‘institutions and practices similar to slavery’ include debt bondage, serfdom, institutions or practices within marital relationships, or child exploitation.

⁴³ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 93.

⁴⁴ For example, *Siliadin v France* App no 73316/01 (ECtHR, 26 July 2005) para 122-125.

⁴⁵ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 4(a) matches the definition provided under the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 3(a).

⁴⁶ *Inter alia*, Jean Allain, *Slavery in International Law: Of Human Exploitation and Trafficking* (Brill Nijhoff 2013); Julia O’Connell Davidson, *Modern Slavery: The Margins of Freedom* (Palgrave Macmillan 2015); Vladislava Stoyanova, *Human Trafficking and Slavery Reconsidered: Conceptual Limits and States’ Positive Obligations in European Law* (Cambridge University Press 2017); Orlando Patterson and Xiaolin Zhuo, ‘Modern Trafficking, Slavery, and Other Forms of Servitude’ (2018) 44(1) *Annual Review of Sociology* 407-439.

Instrument Title	Adopted On	Entry Into Force	Focus
International Agreement for the Suppression of the White Slave Traffic	18 May 1904 (1 LNTS 83)	18 July 1905	Prostitution
International Convention for the Suppression of the White Slave Traffic	4 May 1910 (3 LNTS 278)	8 August 1912	Prostitution
International Convention for the Suppression of the Traffic in Women and Children	30 September 1921 (9 LNTS 415)	15 June 1922	Prostitution
Convention to Suppress the Slave Trade and Slavery (Slavery Convention)	25 September 1926 (60 LNTS 253)	9 March 1927	Slavery
Convention Concerning Forced or Compulsory Labour (Forced Labour Convention)	28 June 1930 (ILO No. 29, 39 UNTS 55)	1 May 1932	Forced Labour
International Convention for the Suppression of the Traffic in Women of Full Age	11 October 1933 (150 LNTS 431)	24 August 1934	Prostitution
Universal Declaration of Human Rights	10 December 1948 (UNGA Res 217 A (III))	10 December 1948	Human Rights
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others	2 December 1949 (96 UNTS 271)	25 July 1951	Prostitution
Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)	4 November 1950 (213 UNTS 222)	3 September 1953	Human Rights
Protocol amending the Slavery Convention	23 October 1953 (182 UNTS 51)	7 December 1953	Slavery
Slavery Convention as amended by the Protocol	7 December 1953 (212 UNTS 17)	7 July 1955	Slavery
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery	7 September 1956 (266 UNTS 3)	30 April 1957	Slavery
Convention concerning the Abolition of Forced Labour	25 June 1957 (ILO No. 105, 320 UNTS 291)	17 January 1959	Forced Labour
International Covenant on Economic, Social and Cultural Rights	16 December 1966 (993 UNTS 3)	3 January 1976	Human Rights
International Covenant on Civil and Political Rights	16 December 1966 (999 UNTS 171)	23 March 1976	Human Rights
Convention on the Elimination of All Forms of Discrimination against Women	18 December 1979 (1249 UNTS 13)	3 September 1981	Human Rights
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime	15 November 2000 (2237 UNTS 319)	25 December 2003	Human Trafficking
Council of Europe Convention on Action against Trafficking in Human Beings	3 May 2005 (CETS No. 197)	1 February 2008	Human Trafficking
Protocol of 2014 to the Forced Labour Convention, 1930	11 June 2014 (103rd ILC Session)	9 November 2016	Forced Labour

Table 3 – Key Regional and International Legal Instruments

Regarding THB specifically, throughout the 20th Century there was a general emphasis in the legal framework on women and girls who were exploited for sexual purposes.⁴⁷

⁴⁷ Vanessa E. Munro, 'A Tale of Two Servitudes: Defining and Implementing a Domestic Response to Trafficking of Women for Prostitution in the UK and Australia' (2005) 14(1) Social & Legal Studies 91-114, 95-96; Joyce Outshoorn, 'The Trafficking Policy Debates' in Molly Dragiewicz (ed), *Global Human*

The International Agreement for the Suppression of the White Slave Traffic (1904 Agreement)⁴⁸ and International Convention for the Suppression of the White Slave Traffic (1910 Convention)⁴⁹ focused only on the transnational prostitution of white females. For Lammasniemi, the 1904 Agreement ‘did little to create provisions for the protection of women’.⁵⁰ Instead, the requirements under the 1904 Agreement included the provision of avenues of repatriation,⁵¹ to monitor (dis)embarking points and to instruct officials ‘to obtain, within legal limits, all information likely to lead to the detection of criminal traffic’.⁵² Unlike the 1904 Agreement, the 1910 Convention obliged states to facilitate the imposition of punishment for offences committed⁵³ and to amend national legislation for this purpose.⁵⁴ The use of the term ‘white slave traffic’ in these instruments, as Allain opines, is ‘clearly objectionable on a number of grounds, most obviously its overt racism’.⁵⁵ Despite this, these instruments introduced language which permeates the current understanding of the THB offence, including the terms fraud, threats, violence and abuse of authority.⁵⁶ In addition, the irrelevance of consent, which is explicit in the modern definition of THB,⁵⁷ is similarly included within the text of Article 1 of the 1910 Convention:

Trafficking: Critical Issues and Contexts (Routledge 2015) 7; Anne T. Gallagher, ‘Trafficking in Transnational Criminal Law’ in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 21.

⁴⁸ International Agreement for the Suppression of the White Slave Traffic (adopted 18 May 1904, entered into force 18 July 1905) 1 LNTS 83. The ratifying states to this Agreement included Belgium, Denmark, France, Germany, Italy, the Netherlands, Portugal, Russia, Spain, Sweden and Norway, Switzerland and the United Kingdom.

⁴⁹ International Convention for the Suppression of the White Slave Traffic (adopted 4 May 1910, entered into force 8 August 1912) 3 LNTS 278.

⁵⁰ Laura Lammasniemi, ‘International Legislation on White Slavery and Anti-Trafficking in the Early Twentieth Century’ in John Winterdyk and Jackie Jones (eds), *The Palgrave International Handbook of Human Trafficking* (Palgrave Macmillan 2020) 71.

⁵¹ International Agreement for the Suppression of the White Slave Traffic (adopted 18 May 1904, entered into force 18 July 1905) 1 LNTS 83 Articles 3 and 4.

⁵² *ibid* Article 2. As Siller notes, ‘the 1904 Agreement served administrative functions, as opposed to demanding the enactment of legislative measures’. Nicole J. Siller, ‘Human Trafficking in International Law Before the Palermo Protocol’ (2017) 64(3) *Netherlands International Law Review* 407-452, 417.

⁵³ International Agreement for the Suppression of the White Slave Traffic (adopted 18 May 1904, entered into force 18 July 1905) 1 LNTS 83 Articles 1 and 2.

⁵⁴ *ibid* Article 3.

⁵⁵ Jean Allain, ‘White Slave Traffic in International Law’ (2017) 1(1) *Journal of Trafficking and Human Exploitation* 1-40, 1. Allain provides a detailed account of the development of both the 1904 Agreement and the 1910 Convention. See also, Jean Allain, ‘Genealogies of Human Trafficking and Slavery’ in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 5-8.

⁵⁶ *ibid* 31. In particular, International Convention for the Suppression of the White Slave Traffic (adopted 4 May 1910, entered into force 8 August 1912) 3 LNTS 278 Article 2.

⁵⁷ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 4(b) and Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention

‘Any person who, to gratify the passions of others, has hired, abducted or enticed, even with her consent, a woman or a girl who is a minor, for immoral purposes, even when the various acts which together constitute the offence were committed in different countries, shall be punished’.⁵⁸

The International Convention for the Suppression of the Traffic in Women and Children (1921 Convention)⁵⁹ and the International Convention for the Suppression of the Traffic in Women of Full Age (1933 Convention)⁶⁰ more explicitly shifted to the language of ‘traffic’ rather than white slavery,⁶¹ but the focus remained on the sexual exploitation of women and children.⁶² At this point, the League of Nations defined trafficking as ‘the direct or indirect procurement and transportation for gain to a foreign country of women and girls for the sexual gratification of one or more other persons’.⁶³ The 1921 Convention obliged states to both discover and prosecute persons who (attempt to)⁶⁴ engage in the traffic of children of both sexes for immoral purposes,⁶⁵ and to facilitate the extradition of such individuals.⁶⁶ In addition to criminalisation, it contained a number of protection and prevention measures, including the introduction of regulations for the licensing and supervision of employment agencies,⁶⁷ and requiring states to display ‘notices warning women and children of the danger of the traffic and indicating the places where they can

against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 3(b).

⁵⁸ International Convention for the Suppression of the White Slave Traffic (adopted 4 May 1910, entered into force 8 August 1912) 3 LNTS 278 Article 1.

⁵⁹ International Convention for the Suppression of the Traffic in Women and Children (adopted 30 September 1921, entered into force 15 June 1922) 9 LNTS 415.

⁶⁰ International Convention for the Suppression of the Traffic in Women of Full Age (adopted 11 October 1933, entered into force 24 August 1934) 150 LNTS 431.

⁶¹ Legg explains that it was at an international conference of the League of Nations in June 1921 that ‘the rhetoric of the white slave trade was de-racialized to that of Traffic in Women and Children’, Stephen Legg, ‘“The Life of Individuals as well as of Nations”: International Law and the League of Nations’ Anti-Trafficking Governmentalities’ (2012) 25(3) *Leiden Journal of International Law* 647-664, 656. See also, Stephanie Limoncelli, *The Politics of Trafficking* (Stanford University Press 2010) 76; Paul Knepper, ‘The International Traffic in Women: Scandinavia and the League of Nations Inquiry of 1927’ (2013) 14(1) *Journal of Scandinavian Studies in Criminology and Crime Prevention* 64-80.

⁶² International Convention for the Suppression of the Traffic in Women and Children (adopted 30 September 1921, entered into force 15 June 1922) 9 LNTS 415 Preamble; International Convention for the Suppression of the Traffic in Women of Full Age (adopted 11 October 1933, entered into force 24 August 1934) 150 LNTS 431 Preamble.

⁶³ Lindsay Farmer, ‘Trafficking, the Anti-Slavery Project and the Making of the Modern Criminal Law’ in Rita Haverkamp, Ester Herlin-Karnell and Claes Lernestedt (eds), *What is Wrong with Human Trafficking? Critical Perspectives on the Law* (Hart Publishing 2019) 25 citing League of Nations, *Report of the Special Body of Experts on Traffic in Women and Children* (League of Nations 1927) 8-9.

⁶⁴ International Convention for the Suppression of the Traffic in Women and Children (adopted 30 September 1921, entered into force 15 June 1922) 9 LNTS 415 Article 3.

⁶⁵ *ibid* Article 2.

⁶⁶ *ibid* Article 4.

⁶⁷ *ibid* Article 6.

obtain accommodation and assistance’.⁶⁸ The 1933 Convention required states to punish those who (attempt to) commit an offence against a woman or girl of full age for immoral purposes in another country,⁶⁹ amend their laws to facilitate this punishment,⁷⁰ and exchange information with other states regarding individuals who have committed an offence under the Conventions of 1910, 1921 or 1933.⁷¹ In contrast to the 1921 Convention, it placed the emphasis on the criminalisation of offenders and did not include any specific reference to protective measures or the detection of the offence. However, similar to Article 1 of the 1910 Convention, it reiterated the irrelevance of consent.⁷²

Thereafter, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949 Convention)⁷³ consolidated the prior treaties from 1904 to 1933.⁷⁴ However, the impact of the 1949 Convention was limited on the basis of a low ratification rate,⁷⁵ explained to a certain extent by its promotion of an abolitionist approach to prostitution.⁷⁶ The 1949 Convention was primarily concerned with criminal justice objectives,⁷⁷ such as the criminalisation of (preparatory) offences⁷⁸ and the extradition of offenders.⁷⁹ It retained the focus on prostitution and the traffic in persons for prostitution,⁸⁰ however it adopted a more gender-neutral approach through the use of the phrase ‘another person’⁸¹ and with its title ‘traffic in persons’. One

⁶⁸ *ibid* Article 7.

⁶⁹ International Convention for the Suppression of the Traffic in Women of Full Age (adopted 11 October 1933, entered into force 24 August 1934) 150 LNTS 431 Article 1.

⁷⁰ *ibid* Article 2.

⁷¹ *ibid* Article 3.

⁷² *ibid* Article 1.

⁷³ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (adopted 2 December 1949, entered into force 25 July 1951) 96 UNTS 271.

⁷⁴ Eun-hye Yoo and Elizabeth Heger Boyle, ‘National Human Trafficking Initiatives: Dimensions of Policy Diffusion’ (2015) 40(3) *Law & Social Inquiry* 631-663, 633. This is clearly stated in the Preamble to the Convention.

⁷⁵ There are 82 parties to the 1949 Convention, as of December 2024.

⁷⁶ Silvia Scarpa, *Trafficking in Human Beings: Modern Slavery* (Oxford University Press 2008) 54. See also, Janie Chuang, ‘Redirecting the Debate over Trafficking in Women: Definitions, Paradigms, and Contexts’ (1998) 11 *Harvard Human Rights Journal* 65-107, 75.

⁷⁷ Although it did include certain measures aimed at the prevention of prostitution. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (adopted 2 December 1949, entered into force 25 July 1951) 96 UNTS 271 Articles 16, 17 and 20. These largely encapsulate the protective measures outlined in the International Convention for the Suppression of the Traffic in Women and Children (adopted 30 September 1921, entered into force 15 June 1922) 9 LNTS 415.

⁷⁸ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (adopted 2 December 1949, entered into force 25 July 1951) 96 UNTS 271 Articles 1, 2, and 4.

⁷⁹ *ibid* Article 8.

⁸⁰ *ibid* Preamble.

⁸¹ *ibid* Article 1.

drawback of the 1949 Convention was that it introduced the term ‘exploitation’ in its title without defining it.

A stark feature of the legal framework up to this point is that due to the focus on sexual exploitation offences, other forms of THB, including THB-LE, were not captured by these legal instruments. Moreover, with limited exception,⁸² there were no stringent obligations placed on states to uncover or detect these offences, rather the main emphasis centred on criminalisation and the corresponding punishment of offenders. No further international legal developments on THB emerged until 2000. The new legal instrument in 2000 was based on the increasing recognition that:

‘historical characterizations of trafficking are outdated, ill-defined and non-responsive to the current realities of the movement of and trade in people and to the nature and extent of the abuses inherent in and incidental to trafficking’.⁸³

These criticisms were addressed to a certain extent by the transnational criminal law instrument introduced by the United Nations (UN).

2.1.1. Transnational Criminal Law: The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

One of the most significant legal developments for contemporary understandings of THB is the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol).⁸⁴ According to Gallagher, the impetus behind the Palermo Protocol was that:

‘Powerful states of destination in particular were becoming increasingly worried about the reach and impact of transnational criminal groups in regard to a range of illicit activities, including the movement of individuals across national borders

⁸² See International Agreement for the Suppression of the White Slave Traffic (adopted 18 May 1904, entered into force 18 July 1905) 1 LNTS 83 Article 2, as reaffirmed in Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (adopted 2 December 1949, entered into force 25 July 1951) 96 UNTS 271 Article 17.

⁸³ UN Special Rapporteur on Violence against Women, its Causes and Consequences, ‘Report on Trafficking in Women, Women’s Migration and Violence against Women’ (29 February 2000) E/CN.4/2000/68 para 10. Furthermore, at the EU level, the European Parliament called on ‘the Commission and the Member States to take action at an international level to draft a new UN convention to supersede the obsolete and ineffective Convention on the Suppression of Traffic in Persons and of the Prostitution of Others (1949)’. Resolution of the European Parliament on Trafficking in Human Beings (18 January 1996) OJEC 32/88.

⁸⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319.

for purposes of exploitation. Those states understood very well that individual action, or even a coordinated response amongst a small, like-minded coalition, would be next to useless. The only chance to recalibrate the odds in their favour was to push for a genuinely multilateral cooperation framework'.⁸⁵

Relatedly, the Preamble to the Palermo Protocol outlines that effective action:

‘requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights’.⁸⁶

Considerable attention has been paid to THB at international and national level following the Palermo Protocol’s adoption and ratification.⁸⁷ It supplements the UN Convention against Transnational Organized Crime (UNTOC)⁸⁸ adopted by the UN General Assembly in 2000,⁸⁹ which has the purpose of promoting ‘cooperation to prevent and combat transnational organized crime more effectively’.⁹⁰ The impetus behind the introduction of the UNTOC included concern for:

‘the negative economic and social implications related to organized criminal activities, and convinced of the urgent need to strengthen cooperation to prevent and combat such activities more effectively at the national, regional and international levels’.⁹¹

The UNTOC includes provisions on, *inter alia*, money-laundering offences,⁹² corruption,⁹³ the confiscation of proceeds of crime,⁹⁴ mutual legal assistance⁹⁵ and co-

⁸⁵ Anne T. Gallagher, ‘Human Rights and Human Trafficking’ in André Nollkaemper and Ilias Plakokefalos (eds) and Jessica Schechinger (Assist. ed), *The Practice of Shared Responsibility in International Law* (Cambridge University Press 2017) 557.

⁸⁶ This mirrors its purposes as laid out in Article 2. Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Preamble and Article 2.

⁸⁷ As of December 2024, it has 117 signatories and 182 parties, all of whom have varying political, cultural and legal systems.

⁸⁸ United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 29 September 2003) 2225 UNTS 209.

⁸⁹ UN General Assembly, ‘United Nations Convention against Transnational Organized Crime’ (15 November 2000) A/RES/55/25.

⁹⁰ United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 29 September 2003) 2225 UNTS 209 Article 1.

⁹¹ UN General Assembly, ‘United Nations Convention against Transnational Organized Crime’ (15 November 2000) A/RES/55/25.

⁹² United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 29 September 2003) 2225 UNTS 209 Articles 6 and 7.

⁹³ *ibid* Articles 8 and 9.

⁹⁴ *ibid* Articles 12 to 14.

⁹⁵ *ibid* Article 18.

operation,⁹⁶ the protection of witnesses⁹⁷ and victims,⁹⁸ and prevention measures.⁹⁹ States are required to be a party to the UNTOC before they may become a party to any of the three protocols attached.¹⁰⁰ Due to this connection, criticism by Verhoeven et al. centres on its potential to create and maintain misconceptions regarding the offence of THB,¹⁰¹ in particular Van Dyke¹⁰² and Constantinou¹⁰³ both point towards a perception that it is committed *only* by organised criminal groups. In more recent times, there has been a move away from this framing,¹⁰⁴ but it has not been set aside entirely as organised crime groups continue to engage in this illicit practice.¹⁰⁵

The Palermo Protocol is heralded by a number of scholars for establishing a definition of THB¹⁰⁶ and placing it on the political agenda.¹⁰⁷ As further expanded on in section 2.2.1., the definition of THB is provided for under Article 3(a) of the Palermo Protocol which establishes three core elements, namely, action, means and purpose, and this is the definition of THB that remains applicable today:

⁹⁶ Ibid Article 27.

⁹⁷ Ibid Article 24.

⁹⁸ Ibid Article 25.

⁹⁹ Ibid Article 31.

¹⁰⁰ Ibid Article 37(2). The two other Protocols are: The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (adopted 31 May 2001, entered into force 3 July 2005) 2326 UNTS 209 and the Protocol against the Smuggling of Migrants by Land, Sea and Air (adopted 15 November 2000, entered into force 28 January 2004) 2241 UNTS 507.

¹⁰¹ Maite Verhoeven, Barbra van Gestel, Deborah de Jong and Edward Kleemans, 'Relationships Between Suspects and Victims of Sex Trafficking. Exploitation of Prostitutes and Domestic Violence Parallels in Dutch Trafficking Cases' (2015) 21(1) European Journal on Criminal Policy and Research 49-64, 50. See also, Maggy Lee, *Trafficking and Global Crime Control* (Sage Publications 2011) 84.

¹⁰² Ruth Van Dyke, 'The UK's Response to Modern Slavery: Law, Policy and Politics' in Gary Craig, Alex Balch, Hannah Lewis and Louise Waite (eds), *The Modern Slavery Agenda: Policy, Politics and Practice in the UK* (Policy Press 2019) 51.

¹⁰³ Angelo G. Constantinou, 'The Roles and Actions of Sex Traffickers in Cyprus: An Overview' (2020) 23(2) Trends in Organized Crime 324-349, 327 and 332.

¹⁰⁴ Marie Segrave, Sanja Milivojevic and Sharon Pickering, *Sex Trafficking and Modern Slavery: The Absence of Evidence* (2nd edn, Routledge 2018) 5.

¹⁰⁵ Matt Hopkins, Rachel Keighley and Teela Sanders, 'Organised Crime and the Ecosystems of Sexual Exploitation in the United Kingdom: How Supply and Demand Generate Sexual Exploitation and Protection from Prosecution' (2024) 27(1) Trends in Organized Crime 56-76.

¹⁰⁶ See, Anne T. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010) 12; Fiona David, 'Building the Infrastructure of Anti-Trafficking: Information, Funding, Responses' (2010) 9(2) Criminology & Public Policy 235-243, 237; Anne T. Gallagher, 'Trafficking in Transnational Criminal Law' in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 30; Karen E. Bravo, 'The Roles of Past Slavery in Contemporary Anti-Human Trafficking Discourse' in Rochelle L. Dalla and Donna Sabella (eds), *Routledge International Handbook of Human Trafficking: A Multi-Disciplinary and Applied Approach* (Routledge 2020) 10.

¹⁰⁷ Gillian Wylie and Penelope McRedmond, 'Introduction: Human Trafficking and Europe' in Gillian Wylie and Penelope McRedmond (eds), *Human Trafficking in Europe: Character, Causes and Consequences* (Palgrave MacMillan 2010) 2; Marija Jovanović, 'International Law and Regional Norm Smuggling: How the EU and ASEAN Redefined the Global Regime on Human Trafficking' (2020) 68(4) The American Journal of Comparative Law 801-835, 804.

‘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’.¹⁰⁸

The Palermo Protocol explicitly departs from the prior sole focus on sexual exploitation and it targets THB in all its forms.¹⁰⁹ The exploitative purposes contained within the definition of THB under the Palermo Protocol are, at a minimum, as follows:

‘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’.¹¹⁰

Yet, while celebrated for expanding the understanding of THB¹¹¹ through the inclusion of exploitative purposes beyond sexual exploitation,¹¹² the Palermo Protocol has been criticised by Abramson,¹¹³ Broad¹¹⁴ and Gallagher¹¹⁵ for maintaining an emphasis on THB in women and children. This is most clearly demonstrated through the explicit mention of these cohorts in its title and under the listed purposes in Article 2 which refers to ‘paying particular attention to women and children’.¹¹⁶ Statistical data reflects this emphasis on female VoTs and thus can offer a partial justification for their explicit

¹⁰⁸ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 3(a).

¹⁰⁹ Jo Doezeema, *Sex Slaves and Discourse Masters: The Construction of Trafficking* (Zed Books 2010) 112.

¹¹⁰ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 3(a). This is a non-exhaustive list, as ensured by the inclusion of the phrase ‘at a minimum’.

¹¹¹ Marie Segrave and Sanja Milivojevic, ‘Human Trafficking: Examining Global Responses’ in Gregg Barak (ed), *The Routledge International Handbook of the Crimes of the Powerful* (Routledge 2015) 135.

¹¹² Natalia Ollus, ‘Regulating Forced Labour and Combating Human Trafficking: The Relevance of Historical Definitions in a Contemporary Perspective’ (2015) 63(5) *Crime, Law and Social Change* 221-246, 222.

¹¹³ Kara Abramson, ‘Beyond Consent, Toward Safeguarding Human Rights: Implementing the United Nations Trafficking Protocol’ (2003) 44(2) *Harvard International Law Journal* 473-502, 478.

¹¹⁴ Rose Broad, ‘“A Vile and Violent Thing”: Female Traffickers and the Criminal Justice Response’ (2015) 55(6) *British Journal of Criminology* 1058-1075, 1058.

¹¹⁵ Anne T. Gallagher, ‘Trafficking in Transnational Criminal Law’ in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 24 citing UNODC, *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (United Nations 2006) 322.

¹¹⁶ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 2(a).

reference. Nevertheless in terms of victims of THB-LE, a large percentage of this cohort are male VoTs.¹¹⁷

In addition, Johansson has criticised the Palermo Protocol for its particular focus on targeting perpetrators through obligatory criminal justice measures.¹¹⁸ In terms of criminalising certain (attempted) actions, for instance, the requirement is that each state ‘shall adopt such legislative and other measures’.¹¹⁹ Contrastingly, the obligation regarding victim protection measures is weakened¹²⁰ by the use of the language ‘shall consider’¹²¹ and ‘shall endeavour to provide’.¹²² Most pertinent for the purpose of this doctoral study is that the Palermo Protocol does not impose an express obligation on states to identify VoTs.¹²³ This is one of the major shortcomings in the framework of the Palermo Protocol because, as will be expanded upon in the subsequent chapters of this thesis,¹²⁴ identification is a crucial part of the anti-trafficking response. This difference in the language employed in relation to prosecutorial objectives and protection measures may be explained to a certain extent by the fact that the Palermo Protocol is a criminal law treaty focused on states’ responses to the offence, with its origins in a ‘desire of governments to counter transnational organized crime’,¹²⁵ rather than operating from a victim-centred perspective.

¹¹⁷ To take one example, the UNODC reported that female victims (women and children) account for 60 per cent of the detected VoTs globally. The data on male victims demonstrates an increase in their detection from 16 per cent in 2004 to 40 per cent in 2020. Moreover, in 2020, in Western and Southern Europe there was a 22 per cent increase in male VoTs detected when compared to 2019 data regarding this cohort. The UNODC stated that ‘women and girls remain more detected as victims of trafficking than men and boys. But a longer historical trend towards identifying more male victims seems to have accelerated in 2020’. UNODC, *Global Report on Trafficking in Persons* (United Nations 2022) xvii and 25.

¹¹⁸ Marta C. Johansson, ‘State (In)capacity to Prevent Human Trafficking: Adequate Responses to the Market for Servitude and Forced Labour, *et al*’ in Joakim Nergelius and Eleonor Kristoffersson (eds), *Human Rights in Contemporary European Law* (Hart Publishing 2015) 105. See also, Anne T. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010) 72; Maggy Lee, *Trafficking and Global Crime Control* (Sage Publications 2011) 83; Shahrzad Fouladvand, ‘Decentering the Prosecution-Oriented Approach: Tackling Both Supply and Demand in the Struggle against Human Trafficking’ (2018) 52 *International Journal of Law, Crime and Justice* 129-143, 133.

¹¹⁹ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 5.

¹²⁰ Janie Chuang, ‘Beyond a Snapshot: Preventing Human Trafficking in the Global Economy’ (2006) 13(1) *Indiana Journal of Global Legal Studies* 137-163.

¹²¹ For example, Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 6(3) and Article 7(1).

¹²² *ibid* Article 6(5).

¹²³ One partial exception to this gap is contained within Article 11(1) on border measures.

¹²⁴ In particular, see section 3.1. of Chapter Three.

¹²⁵ Dominika Borg Jansson, *Modern Slavery: A Comparative Study of the Definition of Trafficking in Persons* (Brill Nijhoff 2015) 73.

Despite these criticisms, it must be acknowledged that the Palermo Protocol made a vital contribution to the THB legal framework by requiring states to criminalise the offence of THB as defined under Article 3,¹²⁶ providing for certain victim protection measures,¹²⁷ obliging states to engage in preventative efforts,¹²⁸ and underlining international co-operation obligations.¹²⁹ It provided the basis upon which subsequent regional and sub-regional legal instruments have been developed.¹³⁰ Notably, these instruments are intended to complement rather than replace the Palermo Protocol, demonstrating its recognised importance and influence. This is unambiguous in the Trafficking Convention which clearly outlines that it:

‘shall not affect the rights and obligations derived from the provisions of the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organised crime, and is intended to enhance the protection afforded by it and develop the standards contained therein’.¹³¹

In sum, the Palermo Protocol made a number of key changes regarding the requirements on states. However, due to its criminal justice focus it lacks stringent obligations in the context of victim protection measures, most evidently the absence of an express identification obligation. As such, regional legal instruments which build upon this foundation were necessary to strengthen the response by states to THB. The deficiencies of a purely criminal justice approach to anti-trafficking efforts have been captured by Amiel, particularly in relation to the emphasis on prosecutorial objectives or the misinformed understanding of THB as illegal migration.¹³² This points towards the need

¹²⁶ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 5.

¹²⁷ *ibid* Article 6.

¹²⁸ *ibid* Article 9.

¹²⁹ For example, *ibid* Article 10.

¹³⁰ Carol Allais, ‘The Profile Less Considered: The Trafficking of Men in South Africa’ (2013) 44(1) *South African Review of Sociology* 40-54, 41; Anne T. Gallagher, ‘Two Cheers for the Trafficking Protocol’ (2015) 4 *Anti-Trafficking Review* 14-32, 32; Joy N. Ezeilo, ‘Achievements of the Trafficking Protocol: Perspectives from the Former UN Special Rapporteur on Trafficking in Persons’ (2015) 4 *Anti-Trafficking Review* 144-149, 144; Julie Lima de Pérez, ‘A Criminological Reading of the Concept of Vulnerability: A Case Study of Brazilian Trafficking Victims’ (2016) 25(1) *Social & Legal Studies* 23-42; Annalisa Enrile and Melanie G. Ferrer-Vaughn, ‘Landmark Policies in Trafficking and Modern-Day Slavery’ in Annalisa Enrile (ed), *Ending Human Trafficking & Modern-Day Slavery: Freedom’s Journey* (Sage Publications 2018) 188.

¹³¹ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 39.

¹³² Alexandra Amiel, ‘Integrating a Human Rights Perspective into the European Approach to Combating the Trafficking of Women for Sexual Exploitation’ (2006) 12(1-2) *Buffalo Human Rights Law Review* 5-56, 27.

to engage with other areas of the law in an integrated manner, including labour law to protect and enforce workers' rights and strengthen labour standards, as called for by Costello¹³³ and Fouladvand.¹³⁴ Within the THB definition, THB-LE encompasses concepts including forced labour which is clearly defined within an International Labour Organization (ILO) labour law instrument. Thus, there is a clear link between the legal concepts of THB-LE and forced labour. This underscores the importance of international labour law instruments and the ILO has been the main international organisation encouraging a labour law approach to address a number of exploitative conditions and conduct.

2.1.2. International Labour Law: The International Labour Organization and Forced Labour

The concept of forced labour is important within the THB framework as it is one of the listed exploitative purposes within the definition of THB.¹³⁵ In the context of forced labour, the ILO has been the main international body setting standards and expectations for states.¹³⁶ No other legal instrument to date has dealt with forced labour in-depth and where it is included within human rights instruments, the intention is its prohibition.¹³⁷ The ILO adopted its first Forced Labour Convention in 1930 (Forced Labour Convention)¹³⁸ and it has been ratified by the vast majority of Council of Europe Member

¹³³ Cathryn Costello, 'Migrants and Forced Labour: A Labour Law Response' in Alan Bogg, Cathryn Costello, ACL Davies and Jeremias Prassl (eds), *The Autonomy of Labour Law* (Hart Publishing 2015) 189-227.

¹³⁴ Shahrzad Fouladvand, 'Decentering the Prosecution-Oriented Approach: Tackling Both Supply and Demand in the Struggle against Human Trafficking' (2018) 52 *International Journal of Law, Crime and Justice* 129-143, 139.

¹³⁵ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 3(a); Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 4(a).

¹³⁶ Daniel Roger Maul, 'The International Labour Organization and the Struggle Against Forced Labour from 1919 to the Present' (2007) 48(4) *Labor History* 477-500.

¹³⁷ For example, Convention for the Protection of Human Rights and Fundamental Freedoms, as amended (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 222 Article 4; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 Article 8(3); Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 Article 27(2).

¹³⁸ Convention concerning Forced or Compulsory Labour (No. 29) (adopted 28 June 1930, entered into force 1 May 1932) 39 UNTS 55.

states.¹³⁹ The main contribution of the Forced Labour Convention was defining forced labour,¹⁴⁰ the definition of which remains valid to date:

‘the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily’.¹⁴¹

The definition consists of two primary criteria, namely, ‘the menace of a penalty’ and lack of ‘voluntariness’. The scope of these criteria has been elucidated by the Director-General of the ILO as follows:

‘the menace of a penalty can take many different forms. Arguably, its most extreme form involves physical violence or restraint, or even death threats addressed to the victim or relatives. There can also be subtler forms of menace, sometimes of a psychological nature. Situations examined by the ILO have included threats to denounce victims to the police or immigration authorities when their employment status is illegal, or denunciation to village elders in the case of girls forced to prostitute themselves in distant cities. Other penalties can be of a financial nature, including economic penalties linked to debts. Employers sometimes also require workers to hand over their identity papers, and may use the threat of confiscation of these documents in order to exact forced labour. As regards “voluntary offer”, ... Many victims enter forced labour situations initially out of their own choice, albeit through fraud and deception, only to discover later that they are not free to withdraw their labour, owing to legal, physical or psychological coercion. Initial consent may be considered irrelevant when deception or fraud has been used to obtain it.’¹⁴²

Pertinently for Council of Europe Member states, the ILO forced labour concept is used as the ECtHR’s definition of forced labour.¹⁴³ The ECtHR has clarified that such ‘penalty’:

¹³⁹ With the three exceptions of Andorra, Liechtenstein and Monaco which are not members of the ILO.

¹⁴⁰ Beyond the provision of this definition, the Forced Labour Convention binds ratifying states to undertake to suppress the use of forced or compulsory labour and impose punishments that are ‘really adequate’ and strictly enforced. Convention concerning Forced or Compulsory Labour (No. 29) (adopted 28 June 1930, entered into force 1 May 1932) 39 UNTS 55 Articles 1 and 25.

¹⁴¹ *ibid* Article 2.

¹⁴² ILO Director-General, *The Cost of Coercion: Global Report Under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* (ILO 2009) 5-6.

¹⁴³ For example, in *Van Der Musselle v Belgium* App no 8919/80 (ECtHR, 23 November 1983) para 32 and 34; *Siliadin v France* App no 73316/01 (ECtHR, 26 July 2005) para 117; *Rantsev v Cyprus and Russia* App no 25965/04 (ECtHR, 7 January 2010) para 276; *CN and V v France* App no 67724/09 (ECtHR, 11 October 2012) para 74; *Chowdury and Others v Greece* App no 21884/15 (ECtHR, 30 March 2017) para 39-40; *SM v Croatia* App no 60561/14 (ECtHR, 25 June 2020) para 281-285; *Zoletic and Others v Azerbaijan* App no 20116/12 (ECtHR, 7 October 2021) para 147-151; *FM and Others v Russia* App nos 71671/16 and 40190/18 (ECtHR, 10 December 2024) para 288.

‘may go as far as physical violence or restraint, but it can also take subtler forms, of a psychological nature, such as threats to denounce victims to the police or immigration authorities when their employment status is illegal’.¹⁴⁴

This is a welcome clarification as severely exploitative circumstances, including THB-LE, may not necessarily involve physical penalties and more often, subtle forms of control are utilised by exploiters. In relation to the second criteria of voluntariness, some clarity has similarly been provided by the ECtHR which has stated:

‘where an employer abuses his power or takes advantage of the vulnerability of his workers in order to exploit them, they do not offer themselves for work voluntarily. The prior consent of the victim is not sufficient to exclude the characterisation of work as forced labour. The question whether an individual offers himself for work voluntarily is a factual question which must be examined in the light of all the relevant circumstances of a case’.¹⁴⁵

In 1957 the ILO introduced the Abolition of Forced Labour Convention¹⁴⁶ (1957 Convention) which Allain notes supplemented rather than revised the Forced Labour Convention.¹⁴⁷ For instance, it did not alter the definition provided for under the Forced Labour Convention.¹⁴⁸ Instead, the 1957 Convention clarified five situations whereby forced labour should not be used.¹⁴⁹ As laid out under Article 1, these include:

- ‘(a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;
- (b) as a method of mobilising and using labour for purposes of economic development;
- (c) as a means of labour discipline;
- (d) as a punishment for having participated in strikes;
- (e) as a means of racial, social, national or religious discrimination’.¹⁵⁰

¹⁴⁴ *CN and V v France* App no 67724/09 (ECtHR, 11 October 2012) para 77; *Zoletic and Others v Azerbaijan* App no 20116/12 (ECtHR, 7 October 2021) para 151.

¹⁴⁵ *Chowdury and Others v Greece* App no 21884/15 (ECtHR, 30 March 2017) para 96.

¹⁴⁶ Convention concerning the Abolition of Forced Labour (No. 105) (adopted 25 June 1957, entered into force 17 January 1959) 320 UNTS 291.

¹⁴⁷ Jean Allain, *Slavery in International Law: Of Human Exploitation and Trafficking* (Brill Nijhoff 2013) 238; Jean Allain, *The Law and Slavery: Prohibiting Human Exploitation* (Brill Nijhoff 2015) 12-13.

¹⁴⁸ Kadriye Bakirci, ‘Human Trafficking and Forced Labour: A Criticism of the International Labour Organisation’ (2009) 16(2) *Journal of Financial Crime* 160-165, 160.

¹⁴⁹ Convention concerning the Abolition of Forced Labour (No. 105) (adopted 25 June 1957, entered into force 17 January 1959) 320 UNTS 291 Article 1. It was also more forceful in requiring states to ‘take effective measures to secure the immediate and complete abolition of forced or compulsory labour’ under Article 2.

¹⁵⁰ *ibid* Article 1.

Taken together, the ILO Conventions of 1930 and 1957 provide a definition of forced labour, delineate circumstances where forced labour should not be used, and indicate certain exceptions to this prohibition,¹⁵¹ for example, military service¹⁵² or cases of emergency.¹⁵³ Notably, in light of the low ratification of other ILO instruments,¹⁵⁴ these Conventions have some of the highest ratification rates of all the ILO Conventions,¹⁵⁵ 181 and 178 respectively.¹⁵⁶ Yet, beyond requiring states to suppress and abolish forced or compulsory labour, the Conventions do not place any specific obligations on states regarding the protection of victims.

Additions were made to the ILO forced labour legal apparatus that Swepston deemed as necessary because:

‘no systematic attention had been paid in international human rights law to how to prevent forced labour, how to protect those who were in forced labour and prevent them from being abused, and how to provide remedies for its imposition’.¹⁵⁷

These materialised in the form of the Protocol of 2014 to the Forced Labour Convention, 1930 (Forced Labour Protocol),¹⁵⁸ and its accompanying Forced Labour (Supplementary Measures) Recommendation No. 203 (2014 Recommendation).¹⁵⁹ The intention was to

¹⁵¹ Convention concerning Forced or Compulsory Labour (No. 29) (adopted 28 June 1930, entered into force 1 May 1932) 39 UNTS 55 Article 2(2).

¹⁵² *ibid* Article 2(2)(a).

¹⁵³ *ibid* Article 2(2)(d).

¹⁵⁴ See, for example, Luc Demaret, ‘Editorial – ILO Standards and Precarious Work: Strengths, Weaknesses and Potential’ (2013) 5(1) *International Journal of Labour Research* 9-21, 14.

¹⁵⁵ Only the Worst Forms of Child Labour Convention (No. 182) (adopted 17 June 1999, entered into force 19 November 2000) 2133 UNTS 161 has more ratifications, at 187 in total.

¹⁵⁶ ILO, *A Global Alliance Against Forced Labour and Trafficking in Persons: Key Achievements of the ILO’s Special Action Programme to Combat Forced Labour 2001-2011* (ILO 2012) 1.

¹⁵⁷ Lee Swepston, ‘Trafficking and Forced Labour: Filling in the Gaps with the Adoption of the Supplementary ILO Standards, 2014’ in Prabha Kotiswaran (ed), *Revisiting the Law and Governance of Trafficking, Forced Labor and Modern Slavery* (Cambridge University Press 2017) 404. Prior to the introduction of these new express requirements, the ILO forced labour framework was limited in calling on states to ‘suppress the use of forced or compulsory labour’ and punish the ‘illegal exaction’ of such labour. Convention concerning Forced or Compulsory Labour (No. 29) (adopted 28 June 1930, entered into force 1 May 1932) 39 UNTS 55 Article 1 and Article 25; Convention concerning the Abolition of Forced Labour (No. 105) (adopted 25 June 1957, entered into force 17 January 1959) 320 UNTS 291 Article 1.

¹⁵⁸ Protocol of 2014 to the Forced Labour Convention 1930 (adopted 11 June 2014, entered into force 9 November 2016) 103rd ILC Session Preamble.

¹⁵⁹ Forced Labour (Supplementary Measures) Recommendation 2014 (No. 203) (adopted 11 June 2014). Some guidance on how best to meet the obligations under the Forced Labour Protocol is provided for in the accompanying 2014 Recommendation which clarifies and details the measures required by states. In relation to identification, for example, the 2014 Recommendation provides that ‘targeted efforts should be made to identify and release victims of forced or compulsory labour’. In doing so, it outlines that states

address some of the implementation gaps¹⁶⁰ arising under the 1930 and 1957 Conventions.¹⁶¹ It placed a duty on states to undertake these actions through affirmative language, including ‘shall develop’¹⁶² and ‘shall take’.¹⁶³ Marks and Olsen assert that the international community, through the adoption of the Forced Labour Protocol, recognised ‘the importance of an approach that addresses labour and migration structures, focuses on prevention and protection and emphasises multi-stakeholder collaboration’.¹⁶⁴

The Forced Labour Protocol recognises that the context and forms of forced labour have changed over time¹⁶⁵ and it explicitly identifies a link between THB and forced labour.¹⁶⁶ Nevertheless, it was a missed opportunity to further clarify the precise distinction between forced labour and THB-LE in contemporary times, an absence which continues to cause confusion. More recently, the ILO has offered some limited clarification on this account:

‘Trafficking in persons and forced labour are closely related, but not identical phenomena. There are forms of forced labour that may not be considered as trafficking in persons, such as forced prison labour and some instances of bonded labour. Similarly, there are forms of trafficking in persons, including for organ removal or for forced marriage or wrongful adoption, that are not necessarily forced labour’.¹⁶⁷

The United Nations Office on Drugs and Crime (UNODC) has also attempted to shed some light on this distinction by outlining that:

should ‘strengthen efforts to identify victims, including by developing indicators of forced or compulsory labour’ for use by a broad cohort of stakeholders.

¹⁶⁰ These gaps relate to, *inter alia*, prevention measures (Article 2), victim protection and the identification of victims of forced or compulsory labour (Article 3), and access to compensation (Article 4).

¹⁶¹ Protocol of 2014 to the Forced Labour Convention 1930 (adopted 11 June 2014, entered into force 9 November 2016) 103rd ILC Session Preamble. See also ILO, *Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation* (11-15 February) TMELE/2013/6, 2.

¹⁶² Such as, Protocol of 2014 to the Forced Labour Convention 1930 (adopted 11 June 2014, entered into force 9 November 2016) 103rd ILC Session Article 1(1).

¹⁶³ For example, *ibid* Article 3.

¹⁶⁴ Eliza Marks and Anna Olsen, ‘The Role of Trade Unions in Reducing Migrant Workers’ Vulnerability to Forced Labour and Human Trafficking in the Greater Mekong Subregion’ (2015) 5 *Anti-Trafficking Review* 111-128, 116.

¹⁶⁵ Protocol of 2014 to the Forced Labour Convention 1930 (adopted 11 June 2014, entered into force 9 November 2016) 103rd ILC Session Preamble. See also, Natalia Ollus, ‘Regulating Forced Labour and Combating Human Trafficking: The Relevance of Historical Definitions in a Contemporary Perspective’ (2015) 63(5) *Crime, Law and Social Change* 221-246, 235.

¹⁶⁶ *ibid* Article 1(3). See also, ILO, *ILO Standards on Forced Labour: The New Protocol and Recommendation at a Glance* (ILO 2016) 9; ILO, *Ending Forced Labour by 2030: A Review of Policies and Programmes* (ILO 2018) ii.

¹⁶⁷ ILO, *Ending Forced Labour by 2030: A Review of Policies and Programmes* (ILO 2018) 26.

‘while forced labour requires coercion or threat of punishment, in the context of trafficking in persons, victims can be trafficked by other means, including abuse of power or a position of vulnerability’.¹⁶⁸

Notably, as of December 2024, the Forced Labour Protocol has been ratified by 60 countries.¹⁶⁹ Of the 46 Council of Europe Member states, only 24 have ratified this Protocol.¹⁷⁰ Bulgaria, for example, has not ratified the Forced Labour Protocol because of concerns regarding the ‘possibility of compensating all victims of forced labour’ as this ‘is not regulated in the Bulgarian legislation’.¹⁷¹

In sum, the Forced Labour Convention, 1957 Convention and Forced Labour Protocol are among the fundamental instruments of the ILO.¹⁷² These legal instruments collectively have provided and confirmed a longstanding definition of forced labour. Whilst the original forced labour Conventions stipulated the requirement for states to suppress forced or compulsory labour, further clarity has been provided to states on the actions necessary to achieve this goal with the more recent additions to the ILO framework. The ILO forced labour framework encourages a labour law approach to severely exploitative practices, and similarly at regional level, there has been a recognition of the need to move away from a stringent criminal justice approach to THB-LE. This is evident in the European region with the introduction of the Trafficking Convention which expressly encompasses elements of a human rights-based approach to THB.¹⁷³

Lastly, it is important to note that there are issues encountered with the enforcement of compliance with international treaties. The ILO has been praised for standard setting and monitoring state compliance through the Committee of Experts on the Application of Conventions and Recommendations, and the Committee on the Application of

¹⁶⁸ UNODC, *Global Report on Trafficking in Persons* (United Nations 2016) 15-16.

¹⁶⁹ The studied States in this thesis include non-ratifying nations such as Bulgaria, Greece, Hungary, Slovenia and Ukraine.

¹⁷⁰ Austria, Belgium, Bosnia and Herzegovina, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Iceland, Ireland, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, and the United Kingdom.

¹⁷¹ ILO, *Country Baseline Under the ILO Declaration Annual Review: Bulgaria* (ILO 2022) 3.

¹⁷² ILO, *ILO Declaration on Fundamental Principles and Rights at Work* (adopted 1998, as amended in 2022).

¹⁷³ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Preamble.

Standards.¹⁷⁴ On the other hand, it has been subjected to criticism on several grounds relating to, for example, low ratification rates by states,¹⁷⁵ the ILO's governance structure,¹⁷⁶ its lack of effective enforcement,¹⁷⁷ the limited imposition of material sanctions,¹⁷⁸ and a reliance on "shaming".¹⁷⁹ This emphasises the critical role that can be played by monitoring bodies attached to international legal instruments, most notably the monitoring mechanism attached to the Trafficking Convention as discussed in section 2.2.3.

2.2. Regional Human Rights Law: The Council of Europe Convention on Action against Trafficking in Human Beings

On 1 February 2008 the Trafficking Convention entered into force. It was adopted in 2005, following the approval of a proposal based on Recommendation No. 1545 of the Council of Europe Parliamentary Assembly.¹⁸⁰ As of December 2024, 48 states have ratified the Trafficking Convention.¹⁸¹ Through ratification states have demonstrated a commitment to combat THB, and GRETA has deemed this as essential 'to ensure a pan-European response to the challenges posed by human trafficking'.¹⁸²

¹⁷⁴ Gerry Rogers, Eddy Lee, Lee Swepston, and Jasmien Van Daele, *The International Labour Organization and the Quest for Social Justice, 1919-2009* (ILO 2009) 19.

¹⁷⁵ Lucio Baccaro and Valentina Mele, 'Pathology of Path Dependency? The ILO and the Challenge of New Governance' (2012) 65(2) *Industrial and Labor Relations Review* 195-224, 198.

¹⁷⁶ Guy Standing, 'The International Labour Organization' (2010) 15(2) *New Political Economy* 307-318.

¹⁷⁷ William A. Douglas, John-Paul Ferguson and Erin Klett, 'An Effective Confluence of Forces in Support of Workers' Rights: ILO Standards, US Trade Laws, Unions, and NGOs' (2004) 26(2) *Human Rights Quarterly* 273-299, 276; Gilles Carbonnier and Christophe Gironde, 'The ILO @ 100: In Search of Renewed Relevance' in Christophe Gironde and Gilles Carbonnier (eds), *The ILO @ 100: Addressing the Past and Future of Work and Social Protection* (Brill Nijhoff 2019) 4.

¹⁷⁸ Mark Anner and Teri Caraway, 'International Institutions and Workers' Rights: Between Labor Standards and Market Flexibility' (2010) 45(2) *Studies in Comparative International Development* 151-169, 156.

¹⁷⁹ Faradj Koliev and James H. Lebovic, 'Shaming Into Compliance? Country Reporting of Convention Adherence to the International Labour Organization' (2022) 48(2) *International Interactions* 258-291, 260.

¹⁸⁰ Parliamentary Assembly of the Council of Europe, 'Campaign Against Trafficking in Women' (21 January 2002) Rec 1545; Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 33; Vladislava Stoyanova, *Human Trafficking and Slavery Reconsidered: Conceptual Limits and States' Positive Obligations in European Law* (Cambridge University Press 2017) 28.

¹⁸¹ Belarus became the first non-Council of Europe Member state to accede to the Trafficking Convention on 26 November 2013 and Israel became the first non-European state to ratify it in May 2021.

¹⁸² GRETA, *6th General Report on GRETA's Activities covering the period from 1 January to 31 December 2016* (Council of Europe 2017) 15.

Scholars have posited that the Trafficking Convention further develops the standards laid down in the Palermo Protocol¹⁸³ and Piotrowicz considers that it is the ‘most advanced regional system in the world’.¹⁸⁴ In fact, both Article 39¹⁸⁵ and the Preamble to the Trafficking Convention¹⁸⁶ state that it takes due account of the UNTOC and Palermo Protocol with the aim of improving and developing their standards. Thus, the Trafficking Convention builds upon the Palermo Protocol requirements rather than superseding them.¹⁸⁷ While these instruments have different geographical scope, their purposes are quite closely aligned. They encompass the protection, prosecution and prevention aspects of an anti-trafficking response, while also highlighting the importance of international co-operation. Similar to the ILO forced labour conventions, the Trafficking Convention is gender-neutral in its statement.¹⁸⁸ Furthermore, the Trafficking Convention adopts a more human rights-based approach to THB,¹⁸⁹ when compared with the emphasis on criminalising and punishing offenders under the Palermo Protocol.¹⁹⁰ The Preamble to the Trafficking Convention states that ‘respect for victims’ rights, protection of victims

¹⁸³ Ana Isabel Pérez Cepeda and Demelsa Benito Sánchez, *Trafficking in Human Beings: A Comparative Study of the International Legal Documents* (Europa Law Publishing 2014) 9; Julia Planitzer and Helmut Sax, ‘Introduction’ in Julia Planitzer and Helmut Sax (eds), *A Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings* (Elgar Publishing 2020) 2. As reiterated in the Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 6; GRETA, *1st General Report on GRETA’s activities covering the period from February 2009 to July 2011* (Council of Europe 2011) 6.

¹⁸⁴ Ryszard Piotrowicz, ‘The European Legal Regime on Trafficking in Human Beings’ in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 49-50.

¹⁸⁵ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 39.

¹⁸⁶ *ibid* Preamble.

¹⁸⁷ Petya Nestorova, ‘Combating Trafficking in Human Beings: The Council of Europe Response’ in Belachew Gebrewold, Johanna Kostenzer and Andreas Th. Müller (eds), *Human Trafficking and Exploitation: Lessons From Europe* (Routledge 2018) 181. Notably, this complementary approach is utilised in a number of Council of Europe legal instruments. It has also arisen, for example, under the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (adopted 25 October 2007, entered into force 1 July 2010) CETS 201 wherein Article 42 provides for the relationship with the United Nations Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (adopted 25 May 2000, entered into force 18 January 2002) 2171 UNTS 227.

¹⁸⁸ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 1.

¹⁸⁹ The EU Directive likewise adopted an integrated, holistic, and human rights approach to address THB. 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 [2011] OJ L 101 Recital 7.

¹⁹⁰ Anne T. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010) 114; Marija Jovanović, *Comparison of Anti-Trafficking Legal Regimes and Actions in the Council of Europe and ASEAN: Realities, Frameworks and Possibilities for Collaboration* (Council of Europe 2018) 28; Shahrzad Fouladvand, ‘Decentering the Prosecution-Oriented Approach: Tackling Both Supply and Demand in the Struggle against Human Trafficking’ (2018) 52 *International Journal of Law, Crime and Justice* 129-143, 134.

and action to combat trafficking in human beings must be the paramount objectives’ and that THB ‘constitutes a violation of human rights and an offence to the dignity and the integrity of the human being’.¹⁹¹ As the UN Office of the High Commissioner for Human Rights has stated, this human rights-based approach, of which there is ‘widespread acceptance’, ‘identifies *rights holders*, their entitlements and the corresponding *duty bearers* and their obligations’.¹⁹² For Wylie and McRedmond, the approach adopted by the Trafficking Convention is more concerned with victim protection than its predecessor.¹⁹³ This is clearly stated in the Explanatory Report as its ‘main added value’.¹⁹⁴ However, that is not to infer that an emphasis on criminal justice measures does not remain a central aspect of the Trafficking Convention.¹⁹⁵ In fact, Gallagher has criticised the victim protection measures for their dual purpose and use in achieving prosecutorial aims.¹⁹⁶

The Trafficking Convention addresses some ambiguities and questions that arose following the Palermo Protocol. It expressly clarifies in Article 2, for example, that its provisions extend to both internal and transnational THB, and to instances whereby THB does not involve organised criminal groups.¹⁹⁷ The ‘extremely broad scope of the convention’ was ‘wholeheartedly’ welcomed by the Parliamentary Assembly of the

¹⁹¹ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Preamble.

¹⁹² UN OHCHR, *Human Rights and Human Trafficking* (United Nations 2014) 8.

¹⁹³ Gillian Wylie and Penelope McRedmond, ‘Introduction: Human Trafficking and Europe’ in Gillian Wylie and Penelope McRedmond (eds), *Human Trafficking in Europe: Character, Causes and Consequences* (Palgrave Macmillan 2010) 5. See also, Natalia Ollus and Matti Joutsen, ‘International Policies to Combat Human Trafficking’ in Rochelle L. Dalla and Donna Sabella (eds), *Routledge International Handbook of Human Trafficking: A Multi-Disciplinary and Applied Approach* (Routledge 2020) 75.

¹⁹⁴ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 49.

¹⁹⁵ Alex Balch, ‘Understanding and Evaluating UK Efforts to Tackle Forced Labour’ in Louise Waite, Gary Craig, Hannah Lewis and Klara Skrivankova (eds), *Vulnerability, Exploitation and Migrants: Insecure Work in a Globalised Economy* (Palgrave Macmillan 2015) 90.

¹⁹⁶ Anne T. Gallagher, ‘Recent Legal Developments in the Field of Human Trafficking: A Critical Review of the 2005 European Convention and Related Instruments’ (2006) 8(2) *European Journal of Migration and Law* 163-189, 181-182.

¹⁹⁷ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 2. See also, Marta C. Johansson, ‘State (In)capacity to Prevent Human Trafficking: Adequate Responses to the Market for Servitude and Forced Labour, *et al*’ in Joakim Nergelius and Eleonor Kristoffersson (eds), *Human Rights in Contemporary European Law* (Hart Publishing 2015) 121; Nora Katona and Helmut Sax, ‘Article 2: Scope’ in Julia Planitzer and Helmut Sax (eds), *A Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings* (Elgar Publishing 2020) 37.

Council of Europe.¹⁹⁸ This broad scope was reaffirmed by the ECtHR in *SM v Croatia*¹⁹⁹ wherein the Court stated:

‘the concept of human trafficking covers trafficking in human beings, whether national or transnational, whether or not connected with organised crime, in so far as the constituent elements of the international definition of trafficking, under the Anti-Trafficking Convention and the Palermo Protocol, are present’.²⁰⁰

The Explanatory Report elucidates that ‘the Convention applies to both victims who legally entered or are legally present in the territory of the receiving Party and those who entered or are present illegally’.²⁰¹ This delineated scope captures state nationals who have been subjected to THB internally within state borders. Moreover, Article 3 of the Trafficking Convention clarifies that the provisions pertain to *all* trafficked individuals irrespective of and without discrimination on a non-exhaustive number of grounds.²⁰² This is an important provision, particularly in relation to THB-LE, as it may skew the realities of the phenomenon and the overall understanding of the offence,²⁰³ and thus hamper the identification of THB-LE and VoTs.

¹⁹⁸ Parliamentary Assembly, ‘Draft Council of Europe Convention on Action against Trafficking in Human Beings’ (26 January 2005) Opinion No. 253.

¹⁹⁹ *SM v Croatia* App no 60561/14 (ECtHR, 25 June 2020).

²⁰⁰ *ibid* para 296; *VCL and AN v The United Kingdom* App nos 77587/12 and 74603/12 (ECtHR, 16 February 2021) para 148; *FM and Others v Russia* App nos 71671/16 and 40190/18 (ECtHR, 10 December 2024) para 240.

²⁰¹ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 62, with exceptions under Article 13 and Article 14 which ‘apply only to victims illegally present’.

²⁰² Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 3. This includes ‘sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status’. This reinforces the principle of non-discrimination addressed in several international human rights instruments. For example, but not limited to, Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) Article 7; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 Article 26; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 Article 2(2); Convention for the Protection of Human Rights and Fundamental Freedoms, as amended (adopted 4 November 1950, entered in force 3 September 1953) 213 UNTS 222 Article 14.

²⁰³ See Holly Cullen, ‘The EU and Human Trafficking: Framing a Regional Response to a Global Emergency’ in Antonis Antoniadis, Robert Schütze and Eleanor Spaventa (eds), *The European Union and Global Emergencies: A Law and Policy Analysis* (Hart Publishing 2011) 231; Jason Haynes, *Caribbean Anti-Trafficking Law and Practice* (Hart Publishing 2019) 133.

2.2.1. The Definition of Trafficking in Human Beings (for the Purpose of Labour Exploitation)

The Trafficking Convention, unlike other international legal instruments, provides a definition of a VoT under Article 4(e) as ‘any natural person who is subject to trafficking in human beings as defined in this article’.²⁰⁴ Thus, the determination of the definitional scope of THB(-LE) is necessary for clarifying who qualifies as a VoT during the identification procedure.

The Trafficking Convention defines THB in Article 4(a) as consisting of three core elements, namely, action, means and purpose,²⁰⁵ as shown in Figure C. This is identical to the ‘trafficking in persons’ definition under Article 3(a) of the Palermo Protocol.²⁰⁶

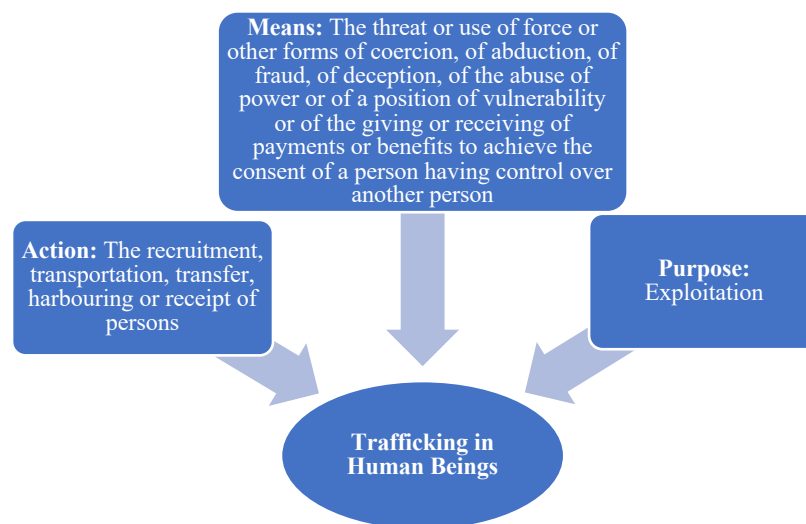


Figure C – Core Elements of the Definition of Trafficking in Human Beings

This definition of THB requires that at least one aspect of each element is present before it is applicable.²⁰⁷ This is reiterated by the ECtHR which has stated that:

²⁰⁴ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 4(e).

²⁰⁵ *ibid* Article 4(a).

²⁰⁶ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 3(a).

²⁰⁷ Alexis A. Aronowitz, ‘The Smuggling-Trafficking Nexus and the Myths Surrounding Human Trafficking’ (2009) 13 *Sociology of Crime, Law and Deviance* 107-128, 109.

‘it is not possible to characterise conduct or a situation as an issue of human trafficking unless it fulfils the criteria established for that phenomenon in international law’.²⁰⁸

In terms of introducing this offence within the domestic legal framework, the Explanatory Report clarifies that:

‘it was understood by the drafters that, under the Convention, Parties would not be obliged to copy *verbatim* into their domestic law the concepts in Article 4, provided that domestic law covered the concepts in a manner consistent with the principles of the Convention and offered an equivalent framework for implementing it’.²⁰⁹

However, states including Belgium,²¹⁰ Bulgaria,²¹¹ and Switzerland,²¹² do not include the ‘means’ element in their national definition of THB. It is more often listed as an aggravating factor.²¹³ In this regard, GRETA has stated:

‘While acknowledging that this may contribute to making the prosecution of traffickers easier in terms of evidential requirements, GRETA has noted potential risks, such as confusion with other criminal offences, difficulties regarding mutual legal assistance with countries which have incorporated the means in their national definition of THB, and the interpretation of Article 4(b) of the Convention concerning victim’s consent’.²¹⁴

The definition of THB determines that if any of the ‘means’ are present, the consent of an adult VoT to the intended exploitation is irrelevant.²¹⁵ While this is clearly stated in

²⁰⁸ *SM and Croatia* App no 60561/14 (ECtHR, 25 June 2020) para 290; *Zoletic and Others v Azerbaijan* App no 20116/12 (ECtHR, 7 October 2021) para 155. See also, *Krachunova v Bulgaria* App no 18269/18 (ECtHR, 28 November 2023) para 145.

²⁰⁹ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 70.

²¹⁰ Article 433quinquies of the Criminal Code (*Code Pénal*). GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belgium: First Evaluation Round* (Council of Europe 25 September 2013) 20.

²¹¹ Article 159a, Section 1 of the Criminal Code (*Наказателен кодекс*). GRETA, *Evaluation Report: Bulgaria – Third Evaluation Round* (Council of Europe 29 April 2021) 34.

²¹² Article 182 of the Criminal Code (*Strafgesetzbuch*). GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Switzerland: First Evaluation Round* (Council of Europe 14 October 2015) 17.

²¹³ For example, Article 433septies of the Belgian Criminal Code (*Code Pénal*).

²¹⁴ GRETA, *4th General Report on GRETA’s Activities covering the period from 1 August 2013 to 30 September 2014* (Council of Europe 2015) 36. This was a concern reiterated in GRETA, *9th General Report on GRETA’s Activities covering the period from 1 January to 31 December 2019* (Council of Europe 2020) 39.

²¹⁵ UNODC, *Model Law Against Trafficking in Persons* (United Nations 2009) 26; Jessica Elliott, *The Role of Consent in Human Trafficking* (Routledge 2015) 54; *Chowdury and Others v Greece* App no 21884/15 (ECtHR, 30 March 2017) para 96; *TV v Spain* App no 22512/21 (ECtHR, 10 October 2024) para 93. Also to note, the consent of a child VoT is always irrelevant in determining an instance of THB.

the international legal framework, GRETA has repeatedly called on states to express the irrelevance of a VoT's consent in their national legal provisions.²¹⁶ Other states such as Belgium, Bulgaria, Ireland, Portugal, Spain and the United Kingdom (UK), have explicitly included the irrelevance of a VoTs consent to the intended exploitation within their legal provisions.²¹⁷ GRETA has observed that this definitive statement on the irrelevance of any consent given by a VoT is particularly pertinent for situations of THB-LE as:

‘Victims of labour exploitation in particular may willingly accept the exploitation because they have no alternative to make a living or because they do not perceive it as exploitation’.²¹⁸

²¹⁶ GRETA, *7th General Report on GRETA's Activities covering the period from 1 January to 31 December 2017* (Council of Europe 2018) 37. For example, GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden: First Evaluation Round* (Council of Europe 27 May 2014) 55. In response, the Swedish Government stated that:

‘the criminal provision on THB requires only a purpose to exploit, and consequently the consent of the victim to exploitation is irrelevant. Furthermore, as a rule when it comes to serious crimes as for example THB, consent of the victim does not exclude liability for the act with regard to the injury, violation or danger that it involves (Penal Code Chapter 24 Section 7)’.

Committee of the Parties, *Report Submitted by the Swedish Authorities on Measures Taken to Comply with Committee of the Parties Recommendation CP(2014)12 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings: First Evaluation Round* (Council of Europe 23 June 2016) 4. See also calls for this explicit inclusion in: GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Finland: First Evaluation Round* (Council of Europe 4 June 2015) 20; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria: Second Evaluation Round* (Council of Europe 12 October 2015) 49; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ukraine: Second Evaluation Round* (Council of Europe 22 November 2018) 43; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Switzerland: Second Evaluation Round* (Council of Europe 9 October 2019) 64; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Czech Republic: First Evaluation Round* (Council of Europe 11 February 2020) 61; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece: Second Evaluation Round* (Council of Europe 23 March 2023) 47; Committee of the Parties, *Recommendation CP/Rec(2023)01 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Estonia: Second Evaluation Round* (Council of Europe 16 June 2023) 3; Committee of the Parties, *Recommendation CP/Rec(2023)09 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Iceland: Third Evaluation Round* (Council of Europe 15 December 2023) 2; GRETA, *Evaluation Report: Hungary – Third Evaluation Round* (Council of Europe 26 February 2024) 25.

²¹⁷ See, for example, Article 433quinquies paragraph 1 of the Belgian Criminal Code (*Code Pénal*); Article 160, Paragraph 8 of the Portuguese Criminal Code (*Código Penal*); Article 159a, Section 1 of the Bulgarian Criminal Code (*Наказателен кодекс*); Article 177bis paragraph 3 of the Spanish Criminal Code (*Código Penal*); Section 1(5) and Section 2(2) of the UK Modern Slavery Act 2015 provide for the irrelevance of consent both in terms of THB and for slavery, servitude and forced or compulsory labour offences; Section 4(2) of the Irish Criminal Law (Human Trafficking) Act 2008.

²¹⁸ GRETA, *7th General Report on GRETA's Activities covering the period from 1 January to 31 December 2017* (Council of Europe 2018) 37.

The ECtHR has clarified that:

‘where an employer abuses his power or takes advantage of the vulnerability of his workers in order to exploit them, they do not offer themselves for work voluntarily. The prior consent of the victim is not sufficient to exclude the characterisation of work as forced labour’.²¹⁹

The express inclusion of the irrelevance of the consent of a VoT is a positive aspect of the THB legal framework, both at national and international levels. Yet, questions remain as to whether this is fully understood and taken into account by those operating on the frontline.²²⁰

In relation to the ‘purpose’ element of the THB definition, the requirement is based on the intention to exploit. This arises from the inclusion of the phrase ‘for the purpose of’.²²¹ As Briddick and Stoyanova argue, ‘The wrong captured by this definition is not, consequently, exploitation itself, but a process that *might* lead to it’.²²² Actual exploitation does not have to occur in order for an offence to be viewed as THB²²³ and this is clarified by the Explanatory Report which provides that:

‘under the definition, it is not necessary that someone has been exploited for there to be trafficking in human beings. It is enough that they have been subjected to one of the actions referred to in the definition and by one of the means specified “for the purpose of” exploitation. Trafficking in human beings is consequently present before the victim’s actual exploitation’.²²⁴

²¹⁹ *Chowdury and Others v Greece* App no 21884/15 (ECtHR, 30 March 2017) para 96; *Zoletic and Others v Azerbaijan* App no 20116/12 (ECtHR, 7 October 2021) para 167.

²²⁰ See Jessica Elliott, *The Role of Consent in Human Trafficking* (Routledge 2015) 8.

²²¹ Tom Obokata, *Trafficking of Human Beings from a Human Rights Perspective: Towards a Holistic Approach* (Martinus Nijhoff Publishers 2006) 20; Dominika Borg Jansson, *Modern Slavery: A Comparative Study of the Definition of Trafficking in Persons* (Brill Nijhoff 2015) 68; Jill E.B. Coster van Voorhout, ‘Combating Human Trafficking Holistically through Proactive Financial Investigations’ (2020) 18(1) *Journal of International Criminal Justice* 87-106, 92.

²²² Catherine Briddick and Vladislava Stoyanova, ‘Human Trafficking and Refugees’ in Cathryn Costello, Michelle Foster and Jane McAdam (eds), *The Oxford Handbook of International Refugee Law* (Oxford University Press 2021) 555.

²²³ UNODC, *Legislative Guide for the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (United Nations 2020) 34; Nicole J. Siller, ‘The Law of Human Trafficking: From International Law to Domestic Codification in the U.S. and Abroad’ in Rochelle L. Dalla and Donna Sabella (eds), *Routledge International Handbook of Human Trafficking: A Multi-Disciplinary and Applied Approach* (Routledge 2020) 202.

²²⁴ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 87 and 225.

For some scholars, despite the fact that an intention to exploit is a key aspect of the THB definition, it is viewed as highly subjective²²⁵ and consequently difficult to prove.²²⁶ Furthermore, whilst this understanding of the intention to exploit is important, in terms of identification processes, they are mainly based on situations in which exploitation has in fact taken place.²²⁷ In that regard, an intention to exploit may not in itself be sufficient for granting the VoT status in practice. This can be reinforced by a misunderstanding of the ‘intention to exploit’ aspect of the definition of THB(-LE) by stakeholders involved in the identification procedure.

Due to its fundamental role in the criminalisation of THB(-LE), definitional clarity of the term exploitation is critical,²²⁸ but the concept ‘remains ambiguous’.²²⁹ The definition of THB under the Palermo Protocol and Trafficking Convention departed from the previous historical focus on the white slave trade and prostitution,²³⁰ to define exploitation as including:

‘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’.²³¹

²²⁵ Ramona Vijeyarasa and José Miguel Bello Y. Villarino, ‘Modern Day Slavery? A Judicial Catchall for Trafficking, Slavery and Labour Exploitation: A Critique of Tang and Rantsev’ (2013) 9(1) *Journal of International Law & International Relations* 38-76, 50; Roger Plant, ‘Forced Labour, Slavery and Human Trafficking: When Do Definitions Matter?’ (2015) 5 *Anti-Trafficking Review* 153-157, 154.

²²⁶ Beate Andrees and Mariska N.J. van der Linden, ‘Designing Trafficking Research from a Labour Market Perspective: The ILO Experience’ (2005) 43(1-2) *International Migration* 55-73, 58.

²²⁷ Anne T. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010) 282.

²²⁸ GRETA, *Guidance Note on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2021) 6.

²²⁹ UNODC, *The Concept of “Exploitation” in the Trafficking in Persons Protocol* (Issue Paper, United Nations 2015) 21.

²³⁰ For example, International Agreement for the Suppression of the White Slave Traffic (adopted 18 May 1904, entered into force 18 July 1905) 1 LNTS 83; International Convention for the Suppression of the White Slave Traffic (adopted 4 May 1910, entered into force 8 August 1912) 3 LNTS 278; International Convention for the Suppression of the Traffic in Women and Children (adopted 30 September 1921, entered into force 15 June 1922) 9 LNTS 415; International Convention for the Suppression of the Traffic in Women of Full Age (adopted 11 October 1933, entered into force 24 August 1934) 150 LNTS 431; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (adopted 2 December 1949, entered into force 25 July 1951) 96 UNTS 271.

²³¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 3(a); Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 4(a).

The term exploitation under the THB legal framework is a non-exhaustive concept.²³² Through the inclusion of the phrase ‘at a minimum’, it means that other forms of exploitation beyond those captured in the THB definition may fall within the scope of the offence and be targeted by national legislation.²³³ This broad and flexible approach is a positive contribution to the field, as it enables states to target other forms of exploitation that they deem pertinent to their national contexts.²³⁴ Some European states have taken advantage of this non-exhaustive scope to outwardly encompass other forms of exploitation within their national THB legal framework, *inter alia*, forced marriage,²³⁵ forced begging,²³⁶ forced criminal activities,²³⁷ and service in armed forces/conflicts.²³⁸ Notably, Article 2(3) of the 2011 European Union (EU) Trafficking Directive included begging and forced criminal activities within the exploitative purposes,²³⁹ while Article 1 of the recent EU Trafficking Directive of 2024 further amends the definition of

²³² Nicole J. Siller, ‘The Law of Human Trafficking: From International Law to Domestic Codification in the U.S. and Abroad’ in Rochelle L. Dalla and Donna Sabella (eds), *Routledge International Handbook of Human Trafficking: A Multi-Disciplinary and Applied Approach* (Routledge 2020) 198.

²³³ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 85. The UNODC Model Law against Trafficking in Persons (Model Law) provides a list of other forms of exploitation that may also be considered for inclusion in national criminal laws. UNODC, *Model Law Against Trafficking in Persons* (United Nations 2009) 28.

²³⁴ GRETA, *4th General Report on GRETA’s Activities covering the period from 1 August 2013 to 30 September 2014* (Council of Europe 2015) 37.

²³⁵ For example, Section 133(1) of the Estonian Criminal Code (*Karistusseadustik*); Article 323A of the Greek Criminal Code (*Ποινικός κώδικας*); Article 177bis paragraph 1 of the Spanish Criminal Code (*Código Penal*); Article 149, note 1 of the Ukrainian Criminal Code (Кримінальний кодекс України). Notably, forced marriage is contained within other national provisions outside of the human trafficking framework, for example, Section 38 of the Irish Domestic Violence Act 2018; Section 237 of the German Criminal Code (*Strafgesetzbuch*); Article 154-B of the Portuguese Criminal Code (*Código Penal*).

²³⁶ For instance, Article 433quinquies of the Belgian Criminal Code (*Code Pénal*); Section 104a(3) of the Austrian Criminal Code (*Strafgesetzbuch*); Section 133(1) of the Estonian Criminal Code (*Karistusseadustik*); Article 323A, paragraph 1 of the Greek Criminal Code (*Ποινικός κώδικας*); Section 1 of the Irish Criminal Law (Human Trafficking)(Amendment) Act 2013; Section 232(1) of the German Criminal Code (*Strafgesetzbuch*); Article 159a(1) of the Bulgarian Criminal Code (*Наказателен кодекс*); Section 257 of the Norwegian Criminal Code (*Lov om straff*); Article 160(1) of the Portuguese Criminal Code (*Código Penal*); Article 273f of the Dutch Criminal Code (*Wetboek van Strafrecht*); Article 149, note 1 of the Ukrainian Criminal Code (Кримінальний кодекс України).

²³⁷ For example, Section 104a(3) of the Austrian Criminal Code (*Strafgesetzbuch*); Section 133(1) of the Estonian Criminal Code (*Karistusseadustik*); Article 323A, paragraph 1 of the Greek Criminal Code (*Ποινικός κώδικας*); Article 177bis paragraph 3 of the Spanish Criminal Code (*Código Penal*); Section 1 of the Irish Criminal Law (Human Trafficking)(Amendment) Act 2013; Article 433quinquies of the Belgian Criminal Code (*Code Pénal*); Section 232(1) of the German Criminal Code (*Strafgesetzbuch*); Article 160(1) of the Portuguese Criminal Code (*Código Penal*); Article 273f of the Dutch Criminal Code (*Wetboek van Strafrecht*); Article 113, paragraph 1 of the Slovenian Criminal Code (*Kazenski zakonik*); Article 149, note 1 of the Ukrainian Criminal Code (Кримінальний кодекс України).

²³⁸ For instance, Section 168 of the Czech Criminal Code (*Trestní zákoník*); Section 257 of the Norwegian Criminal Code (*Lov om straff*); Chapter 4, Section 1a of the Swedish Criminal Code (*Brottsbalk*); Article 149, note 1 of the Ukrainian Criminal Code (Кримінальний кодекс України).

²³⁹ 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 [2011] OJ L 101 Article 2(3).

exploitation within the THB definition to extend to ‘... the exploitation of surrogacy, or forced marriage, or of illegal adoption’.²⁴⁰

Despite listing a number of forms of exploitation, the THB definition does not define the term exploitation itself, nor is the term defined in international legal instruments more broadly.²⁴¹ However, this stance has been referred to by Allain²⁴² and Kotiswaran²⁴³ as ill-defined in terms of its meaning and remit. The absence of a standard measure of what constitutes exploitation is a major cause of definitional fluidity²⁴⁴ and subsequently, its meaning varies between states.²⁴⁵ Some attempts have been made by scholars to address this lacuna from a theoretical and conceptual standpoint. Notably, in the context of the human rights prohibition of offences of severe labour exploitation, Jovanović has identified three ‘necessary and sufficient’ conditions of exploitation to frame the legal parameters of the concept, including the abuse of vulnerability of an exploitee, excessive gain acquired through the actions of an exploitee, and sustained action (i.e. that the practice takes place over a period of time).²⁴⁶

²⁴⁰ Directive 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Article 2 of 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 Article 1(1)(a).

²⁴¹ Nicola Jägers and Conny Rijken, ‘Prevention of Human Trafficking for Labor Exploitation: The Role of Corporations’ (2014) 12(1) *Northwestern Journal of International Human Rights* 47-73, 49.

²⁴² Jean Allain, ‘No Effective Trafficking Definition Exists: Domestic Implementation of the Palermo Protocol’ (2014) 7(1) *Albany Government Law Review* 111-142, 120 and 129; Jean Allain, *The Law and Slavery: Prohibiting Human Exploitation* (Brill Nijhoff 2015) 281-282.

²⁴³ Prabha Kotiswaran, ‘Protocol at the Crossroads: Rethinking Anti-Trafficking Law from an Indian Labour Law Perspective’ (2015) 4 *Anti-Trafficking Review* 33-55, 41.

²⁴⁴ Anne T. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010) 49.

²⁴⁵ Vincent Chetail, *International Migration Law* (Oxford University Press 2019) 254.

²⁴⁶ Marija Jovanović, ‘The Essence of Slavery: Exploitation in Human Rights Law’ (2020) 20(4) *Human Rights Law Review* 674-703, 693.

2.2.1.1. The Difficulty in Defining Trafficking in Human Beings for the Purpose of Labour Exploitation

While there is general agreement regarding the definition of THB as set out in international law,²⁴⁷ this is not entirely the case for THB-LE,²⁴⁸ which is subject to a ‘conceptual quagmire’ as identified by Paz-Fuchs in the context of modern slavery.²⁴⁹ Resultantly, due to the fact that the concept of THB-LE itself is not expressly included within the international legal framework and in line with GRETA’s approach,²⁵⁰ THB-LE is considered in this thesis as encompassing forced labour or services,²⁵¹ slavery,²⁵² slavery-like practices,²⁵³ or servitude,²⁵⁴ as each of these concepts is defined in international law.²⁵⁵ This is necessary because neither the Palermo Protocol nor the Trafficking Convention define these concepts and the Explanatory Report directs attention to other international legal instruments for guidance.²⁵⁶ Therefore, these concepts deemed to fall within the scope of THB-LE are succinctly defined in this subsection.

²⁴⁷ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 3(a) and Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 4(a).

²⁴⁸ Ella Cockbain, Kate Bowers and Galina Dimitrova, ‘Human Trafficking for Labour Exploitation: The Results of a Two-Phase Systematic Review Mapping the European Evidence Base and Synthesising Key Scientific Research Evidence’ (2018) 14(3) *Journal of Experimental Criminology* 319-360, 322.

²⁴⁹ Amir Paz-Fuchs, ‘Badges of Modern Slavery’ (2016) 79(5) *Modern Law Review* 757-785, 760.

²⁵⁰ GRETA, *Compendium of Good Practices in Addressing Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2020) 5; GRETA, *Guidance Note on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2021) 6.

²⁵¹ Convention concerning Forced or Compulsory Labour (No. 29) (adopted 28 June 1930, entered into force 1 May 1932) 39 UNTS 55 Article 2(1).

²⁵² Convention to Suppress the Slave Trade and Slavery (adopted 25 September 1926, entered into force 9 March 1927) 60 LNTS 253 Article 1(1).

²⁵³ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (adopted 7 September 1956, entered into force 30 April 1957) 226 UNTS 3.

²⁵⁴ UNODC, *Model Law Against Trafficking in Persons* (United Nations 2009) Article 5(r).

²⁵⁵ GRETA, *7th General Report on GRETA’s Activities covering the period from 1 January to 31 December 2017* (Council of Europe 2018) 34.

²⁵⁶ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 89, 90 and 93, including the Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) Article 4, International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 Article 8, Convention concerning Forced or Compulsory Labour (No. 29) (adopted 28 June 1930, entered into force 1 May 1932) 39 UNTS 55, Convention concerning the Abolition of Forced Labour (No. 105) (adopted 25 June 1957, entered into force 17 January 1959) 320 UNTS 291, Convention to Suppress the Slave Trade and Slavery (adopted 25 September 1926, entered into force 9 March 1927) 60 LNTS 253, and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (adopted 7 September 1956, entered into force 30 April 1957) 226 UNTS 3.

As outlined in section 2.1.2., Article 2(1) of the ILO Forced Labour Convention defines forced labour as:

‘all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily’.²⁵⁷

The prohibition on forced labour is contained within the ECHR²⁵⁸ under Article 4, and the ECtHR has interpreted this concept in line with the ILO definition.²⁵⁹ The ECtHR has clarified that:

‘any work demanded from an individual under the threat of a “punishment” does not necessarily constitute “forced or compulsory labour” prohibited by that provision [Article 4(2) ECHR]. It is necessary to take into account, in particular, the nature and volume of the activity in question’.²⁶⁰

Moreover, Article 1(1) of the Convention to Suppress the Slave Trade and Slavery defines slavery as:

‘the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised’.²⁶¹

In *Siliadin v France*,²⁶² the ECtHR referred to this definition as corresponding ‘to the “classic” meaning of slavery as it was practised for centuries’.²⁶³ Despite this “classic” legal definition, scholars have critically debated the interpretation of the concept grounded in either possession²⁶⁴ and/or the exercise of control over a person.²⁶⁵ The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions

²⁵⁷ Convention concerning Forced or Compulsory Labour (No. 29) (adopted 28 June 1930, entered into force 1 May 1932) 39 UNTS 55 Article 2(1).

²⁵⁸ Convention for the Protection of Human Rights and Fundamental Freedoms, as amended (adopted 4 November 1950, entered in force 3 September 1953) 213 UNTS 222.

²⁵⁹ *Van Der Mussele v Belgium* App no 8919/80 (ECtHR, 23 November 1983) para 32 and 34; *Siliadin v France* App no 73316/01 (ECtHR, 26 July 2005) para 117; *Chowdury and Others v Greece* App no 21884/15 (ECtHR, 30 March 2017) para 90-91.

²⁶⁰ *Zoletic and Others v Azerbaijan* App no 20116/12 (ECtHR, 7 October 2021) para 150. See also, *CN and V v France* App no 67724/09 (ECtHR, 11 October 2012) para 74.

²⁶¹ Convention to Suppress the Slave Trade and Slavery (adopted 25 September 1926, entered into force 9 March 1927) 60 LNTS 253 Article 1(1).

²⁶² *Siliadin v France* App no 73316/01 (ECtHR, 26 July 2005).

²⁶³ *ibid* para 122.

²⁶⁴ Orlando Patterson, ‘Trafficking, Gender and Slavery: Past and Present’ in Jean Allain (ed), *The Legal Understanding of Slavery: From the Historical to the Contemporary* (Oxford University Press 2012) 329.

²⁶⁵ Jean Allain and Robin Hickey, ‘Property and the Definition of Slavery’ (2012) 61(4) *International and Comparative Law Quarterly* 915-938, 932; Kevin Bales, ‘Professor Kevin Bale’s Response to Professor Orlando Patterson’ in Jean Allain (ed), *The Legal Understanding of Slavery: From the Historical to the Contemporary* (Oxford University Press 2012) 370.

and Practices Similar to Slavery of 1956 added to the definition of slavery by introducing the concept of “institutions and practices similar to slavery” to include debt bondage, serfdom, institutions of practices within marital relationships, or child exploitation.²⁶⁶

While servitude is prohibited by the Universal Declaration of Human Rights,²⁶⁷ the International Covenant on Civil and Political Rights,²⁶⁸ and the ECHR,²⁶⁹ these instruments do not contain an explicit definition of servitude. Article 5(r) of the UNODC Model Law Against Trafficking in Persons provides a practical definition of servitude as meaning:

‘the labour conditions and/or the obligation to work or to render services from which the person in question cannot escape and which he or she cannot change’.²⁷⁰

In addition, the Explanatory Report outlines that servitude is ‘to be regarded as a particular form of slavery, differing from it less in character than in degree’ and continued to outline that:

‘although it constitutes a state or condition, and is a “particularly serious form of denial of freedom”, it does not have the ownership features characteristic of slavery’.²⁷¹

Finally, the ECtHR has likewise discussed servitude in its jurisprudence under Article 4 of the ECHR.²⁷² In differentiating between forced or compulsory labour and servitude, the ECtHR in *CN and V v France*²⁷³ outlined that:

‘servitude corresponds to a special type of forced or compulsory labour or, in other words “aggravated” forced or compulsory labour. As a matter of fact, the fundamental distinguishing feature between servitude and forced or compulsory labour within the meaning of Article 4 of the Convention lies in the victim’s

²⁶⁶ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956 (adopted 7 September 1956, entered into force 30 April 1957) 226 UNTS 3 Article 1.

²⁶⁷ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) Article 4.

²⁶⁸ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 Article 8(2).

²⁶⁹ Convention for the Protection of Human Rights and Fundamental Freedoms, as amended (adopted 4 November 1950, entered in force 3 September 1953) 213 UNTS 222 Article 4(1).

²⁷⁰ UNODC, *Model Law Against Trafficking in Persons* (United Nations 2009) 18.

²⁷¹ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 95.

²⁷² Convention for the Protection of Human Rights and Fundamental Freedoms, as amended (adopted 4 November 1950, entered in force 3 September 1953) 213 UNTS 222 Article 4(1).

²⁷³ *CN and V v France* App no 67724/09 (ECtHR, 11 October 2012).

feeling that their condition is permanent and that the situation is unlikely to change’.²⁷⁴

As such, THB-LE encompasses a broad range of practices within the THB context and resultantly, it is not surprising that considerable confusion remains in distinguishing between (labour) exploitation, severe forms of labour exploitation, and THB-LE in practice. This is further discussed drawing on the study participants views in section 2.4. Such confusion has persisted despite the three elements of action, means and purpose contained within the definition of THB under international law. Thus, whilst forced labour, servitude, slavery or practices similar to slavery are forms of exploitation, THB requires the presence of both action and means elements in addition to the intention to exploit.

2.2.1.2. Continuum of Exploitation

Legal instruments have not been ‘explicit regarding the division line between forced labour, labour exploitation and trafficking for labour exploitation’.²⁷⁵ Recently, the Explanatory Memorandum to the Recommendation on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation (Explanatory Memorandum) provided an indication of labour exploitation entailing:

‘the taking of unfair advantage of another person’s vulnerability or state of need, and coercion, consisting of a combination of labour law and criminal law violations and/or other abuses’.²⁷⁶

This explanation has some similarities to Weatherburn’s proposed definition of labour exploitation in the context of THB as:

‘the provision of work or services wherein A knowingly takes unfair advantage of B’s position of vulnerability by means of the exercise of control in order to gain a benefit and shows a lack of respect for B’s human dignity’.²⁷⁷

²⁷⁴ *ibid* para 91.

²⁷⁵ Mariyana Radeva Berket, ‘Labour Exploitation and Trafficking for Labour Exploitation – Trends and Challenges for Policy-Making’ (2015) 16 ERA Forum 359-377, 370.

²⁷⁶ Council of Europe, ‘Explanatory Memorandum to Recommendation CM/Rec(2022)21 of the Committee of Ministers to Member States on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation’ (27 September 2022) CM(2022)141-add5final para 40. Demetriou endorses a similar understanding. Daphne Demetriou, ‘The *Mens Rea* of Human Trafficking: The Case of Migrant Domestic Workers’ (2019) 29(3) International Criminal Justice Review 262-283, 264.

²⁷⁷ Amy Weatherburn, *Labour Exploitation in Human Trafficking Law* (Intersentia 2021) 259.

The brief comparison between these proposed definitions demonstrates that taking unfair advantage of a position of vulnerability and exercising a degree of control or coercion over an individual are two key elements of labour exploitation. Whilst there is certain benefit to identifying these elements, at the same time it may result in further confusion for those operating on the frontline on the basis that these are expressly contained within the ‘means’ element of the THB definition.

The Explanatory Memorandum proceeds to recommend that Council of Europe Member states:

‘adopt country-specific guidelines on the interpretation and application of labour exploitation in the context of trafficking in human beings, which explain how failures to tackle labour law breaches can facilitate labour exploitation offences, and set out the continuum ranging from decent work to trafficking for labour exploitation’.²⁷⁸

Relatedly, in attempts to understand these distinctions, scholars have proposed the concept of a continuum of exploitation (continuum) to capture the fluidity of exploitative practices that traverse both civil and criminal law provisions.²⁷⁹ A thorough understanding of the concept of a continuum is most pertinent to fully understand that an individual’s experience of exploitation may change over time²⁸⁰ and those who are in situations outside of “decent work”²⁸¹ require different interventions.²⁸² From this perspective, for Ollus the difference between ‘simple’ exploitation and THB-LE may be viewed as ‘a matter of degree and not of kind’.²⁸³ A continuum allows for THB-LE to be

²⁷⁸ Council of Europe, ‘Explanatory Memorandum to Recommendation CM/Rec(2022)21 of the Committee of Ministers to Member States on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation’ (27 September 2022) CM(2022)141-add5final para 40.

²⁷⁹ For example, see Klara Skrivankova, *Between Decent Work and Forced Labour: Examining the Continuum of Exploitation* (Joseph Rowntree Foundation 2010); Sam Scott, *Labour Exploitation and Work-Based Harm* (Policy Press 2017) 7.

²⁸⁰ Klara Skrivankova, ‘Defining Exploitation in the Context of Trafficking – What is a Crime and What is Not’ in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 109. As recognised by the ECtHR in *Chowdury and Others v Greece* App no 21884/15 (ECtHR, 30 March 2017) para 97.

²⁸¹ Joachim Renzikowski, ‘Trafficking in Human Beings as a Crime and as a Human Rights Violation’ in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 14.

²⁸² UN Special Rapporteur on Trafficking in Persons, especially Women and Children, ‘Due Diligence and Trafficking in Persons’ (3 August 2015) A/70/260 para 27.

²⁸³ Natalia Ollus, ‘Regulating Forced Labour and Combating Human Trafficking: The Relevance of Historical Definitions in a Contemporary Perspective’ (2015) 63(5) *Crime, Law and Social Change* 221-246, 241.

assessed by means of a broader understanding of exploitation, coercion and consent,²⁸⁴ and captures a range of situations beyond decent work. The ILO has defined decent work as:

‘productive work in which rights are protected, which generates an adequate income, with adequate social protection. It also means sufficient work, in the sense that all should have full access to income-earning opportunities. It marks the high road to economic and social development, a road in which employment, income and social protection can be achieved without compromising workers' rights and social standards’.²⁸⁵

The proposed continuum outlines that individuals experience exploitation, abuse and powerlessness along a scale,²⁸⁶ ranging from decent work on one end, to slavery, THB-LE, forced labour, and other forms of severe labour exploitation on the other end, as shown in Figure D.²⁸⁷ These latter severe forms of labour exploitation have been referred to as the ‘antithesis of decent work’ by Kagan et al.²⁸⁸



Figure D – Points on the Continuum of Exploitation

This continuum is beneficial as it can facilitate the evaluation of cases that ‘are not so clear’ among different exploitative practices.²⁸⁹ From a legal perspective it may be

²⁸⁴ Ella Cockbain and Kate Bowers, ‘Human Trafficking for Sex, Labour and Domestic Servitude: How Do Key Trafficking Types Compare and What Are Their Predictors?’ (2019) 72(1) *Crime, Law and Social Change* 9-34, 12.

²⁸⁵ ILO, *Report of the Director-General: Decent Work* (ILO 1999).

²⁸⁶ Julia O’Connell Davidson, ‘New Slavery, Old Binaries: Human Trafficking and the Borders of “Freedom”’ (2010) 10(2) *Global Networks* 244-261, 250.

²⁸⁷ Klara Skrivankova, *Between Decent Work and Forced Labour: Examining the Continuum of Exploitation* (Joseph Rowntree Foundation 2010) 4; Beate Andrees, ‘Defending Rights, Securing Justice: The International Labour Organization’s Work on Forced Labour’ (2016) 14(2) *Journal of International Criminal Justice* 343-362, 345.

²⁸⁸ Carolyn Kagan, Sandy Lo, Lisa Mok, Rebecca Lawthom, Sylvia Sham, Mark Greenwood and Sue Baines, *Experiences of Forced Labour among Chinese Migrant Workers* (Joseph Rowntree Foundation 2011) 6. See also, ILO Director-General, *Stopping Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* (ILO 2001) 1.

²⁸⁹ Denise Brennan, ‘Trafficking, Scandal and Abuse of Migrant Workers in Argentina and the United States’ (2014) 653(1) *The Annals of the American Academy of Political and Social Science* 107-123, 117.

‘particularly useful because points on that continuum can be set with reference to the legal regime they fall within’.²⁹⁰ By viewing severe exploitative practices along this continuum, it is clear that labour exploitation ‘is a dynamic process requiring different responses in the various stages of the whole process’.²⁹¹ Davies, for instance, adopts this concept in a different context, namely, routine everyday labour exploitation, stating that it captures ‘banal’ exploitation which ‘tends to become embedded and normalized as part of legitimate business and supply chain practices’.²⁹² This is similar to Stoyanova’s observation that ‘the continuum model could be illuminating since it reminds us that we should not focus only on the worst forms of abuses’.²⁹³ Nevertheless, ambiguity remains regarding the point on the continuum at which a situation will be recognised as THB-LE, and this thesis makes a contribution to the scholarly body by highlighting the stakeholder perspectives on this point in section 2.4.

Although encompassing the generally accepted definition of THB as provided for under the Palermo Protocol,²⁹⁴ the Trafficking Convention failed to provide much needed conceptual clarity, maintaining the persistent definitional ambiguities, for example, surrounding the scope of THB-LE. This is an enduring concern for the identification of victims of THB-LE wherein the threshold between labour law violations and the criminal law offence of THB-LE can be unclear at national level. Stakeholders operating on the frontline may not be fully equipped to engage with these conceptual complexities in practice, for instance, problems in recognising what conduct is ‘forced’, how to identify the presence of a ‘menace of penalty’, or the issue of voluntariness. This has potentially acute consequences for (potential) victims of THB-LE and may result in a failure to recognise individuals as VoTs and provide them with the associated rights and supports.

²⁹⁰ UNODC, *The Concept of “Exploitation” in the Trafficking in Persons Protocol* (Issue Paper, United Nations 2015) 23.

²⁹¹ Conny Rijken, ‘Trafficking in Human Beings for Labour Exploitation: Cooperation in an Integrated Approach’ (2013) 21(1) *European Journal of Crime, Criminal Law and Criminal Justice* 9-35, 35.

²⁹² Jon Davies, ‘From Severe to Routine Labour Exploitation: The Case of Migrant Workers in the UK Food Industry’ (2019) 19(3) *Criminology & Criminal Justice* 294-310, 295.

²⁹³ Vladislava Stoyanova, *Human Trafficking and Slavery Reconsidered: Conceptual Limits and States’ Positive Obligations in European Law* (Cambridge University Press 2017) 69. This was also reiterated by Christien van den Anker and Ilse van Liempt, ‘Conclusion’ in Christien van den Anker and Ilse van Liempt (eds), *Human Rights and Migration: Trafficking for Forced Labour* (Palgrave Macmillan 2012) 247 and Ada Volodko, Ella Cockbain and Bennett Kleinberg, “Spotting the Signs” of Trafficking Recruitment Online: Exploring the Characteristics of Advertisements Targeted at Migrant Job-Seekers’ (2020) 23(3) *Trends in Organized Crime* 7-35, 27.

²⁹⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 3(a).

Beyond affirming the definition as laid out in the Palermo Protocol, the Trafficking Convention made a number of improvements to the anti-trafficking apparatus. These developments which provide a comprehensive structure to, and standard for, state anti-trafficking efforts are discussed in the next section.

2.2.2. Structuring the Anti-Trafficking Response

Legal instruments and policy initiatives have generally engaged a 3P approach to tackle the issue of THB consisting of protection, prevention and prosecution measures.²⁹⁵ The Palermo Protocol Preamble, for example, declares that effective action to combat THB requires a comprehensive approach that ‘includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking ...’.²⁹⁶ Prevention and protection measures are more victim-centred in nature²⁹⁷ and as Guinn proposes they promise ‘greater rewards’ when compared to efforts solely focused on the prosecution of perpetrators.²⁹⁸ Some scholars have observed that these two aspects are largely neglected in national implementation while the prosecution element is more prominent in state efforts.²⁹⁹ These elements are not stand-alone and regularly overlap in practice. For McAdam, ‘the question is not which of them should take priority, but how they can be pursued in a way that is mutually reinforcing’.³⁰⁰ The Trafficking Convention follows a similar structure. It is composed of ten Chapters, with Chapters II to VI focusing on substantive aspects of anti-trafficking responses including prevention,³⁰¹ protection,³⁰²

²⁹⁵ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 4.

²⁹⁶ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Preamble.

²⁹⁷ Jo Goodey, ‘Human Trafficking: Sketchy Data and Policy Responses’ (2008) 8(4) *Criminology & Criminal Justice* 421-442, 431.

²⁹⁸ David E. Guinn, ‘Defining the Problem of Trafficking: The Interplay of US Law, Donor, and NGO Engagement and the Local Context in Latin America’ (2008) 30(1) *Human Rights Quarterly* 119-145, 141.

²⁹⁹ Janie Chuang, ‘Beyond a Snapshot: Preventing Human Trafficking in the Global Economy’ (2006) 13(1) *Indiana Journal of Global Legal Studies* 137-163, 137; Penelope McRedmond and Gillian Wylie, ‘Conclusion’ in Gillian Wylie and Penelope McRedmond (eds), *Human Trafficking in Europe: Character, Causes and Consequences* (Palgrave Macmillan 2010) 221; Anette Brunovskis and May-Len Skilbrei, ‘Two Birds with One Stone? Implications of Conditional Assistance in Victim Protection and Prosecution of Traffickers’ (2016) 6 *Anti-Trafficking Review* 13-30, 17; Carolina Villacampa, M. Jesús Gómez and Clàudia Torres, ‘Trafficking in Human Beings in Spain: What Do the Data on Detected Victims Tell Us?’ (2023) 20(1) *European Journal of Criminology* 161-184, 163.

³⁰⁰ Marika McAdam, ‘Not All Prosecutions are Created Equal: Less Counting Prosecutions, More Making Prosecutions Count’ (2016) 6 *Anti-Trafficking Review* 123-125, 123.

³⁰¹ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Chapter II.

³⁰² *ibid* Chapter III.

criminalisation,³⁰³ prosecutorial measures³⁰⁴ and co-operation.³⁰⁵ It encompasses an extensive range of obligations and measures. In this regard, not *all* the provisions contained within the Trafficking Convention are analysed in-depth in this thesis.

The previous sections have considered the historical context of the Trafficking Convention and the key definition of THB(-LE). The next section builds on that analysis by examining specific provisions. There is a focus on provisions that relate to the core research questions of this thesis on victim identification as well as those which emerged as the most pressing in the qualitative data.

2.2.2.1. Chapter II – Prevention of Trafficking in Human Beings

Chapter II of the Trafficking Convention addresses prevention efforts and consists of five Articles. The Explanatory Report outlines that Article 5 and Article 6³⁰⁶ relate to prevention measures in the strictest sense of the term, whilst Articles 7 to 9 comprise specific measures for preventing and combating THB.³⁰⁷ Chapter Five³⁰⁸ of this thesis draws on Article 5 in analysing measures to equip stakeholders on the frontline to identify VoTs and therefore, the focus in this section is placed on that provision.

³⁰³ *ibid* Chapter IV.

³⁰⁴ *ibid* Chapter V.

³⁰⁵ *ibid* Chapter VI.

³⁰⁶ The purpose for the inclusion of a specific provision obliging states to discourage the demand driving THB was to ‘underline the importance of tackling demand in order to prevent and combat the trafficking itself’. Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 108. This has been likewise called for and expanded on by scholars, including, *inter alia*, Elizabeth M. Wheaton, Edward J. Schauer and Thomas V. Galli, ‘Economics of Human Trafficking’ (2010) 48(4) *International Migration* 114-141; Sidharth Kara, ‘Supply and Demand: Human Trafficking in the Global Economy’ (2011) 33(2) *Harvard International Review* 66-71; Katalin Kelemen and Märta C. Johansson, ‘Still Neglecting the Demand that Fuels Human Trafficking: A Study Comparing the Criminal Laws and Practice of Five European States on Human Trafficking, Purchasing Sex from Trafficked Adults and from Minors’ (2013) 21(3-4) *European Journal of Crime, Criminal Law and Criminal Justice* 247-289.

³⁰⁷ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 101. The latter Articles relate to border measures (Article 7), security and control of documents (Article 8), and legitimacy and validity of documents (Article 9). Articles 7 to 9 closely correspond to Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Articles 11 to 13 respectively.

³⁰⁸ Including in section 5.2. of Chapter Five.

Article 5 includes a number of prevention obligations. These include strengthening national co-ordination,³⁰⁹ establishing effective policies and programmes³¹⁰ which promote a human rights-based approach,³¹¹ enabling migration to take place legally by providing relevant information,³¹² and involving non-governmental organisations (NGOs) and civil society organisations in these efforts.³¹³ Accordingly, Article 5 of the Trafficking Convention is quite similar to Article 9 of the Palermo Protocol which requires states to establish policies and other measures to prevent and combat THB and to protect VoTs from re-victimisation.³¹⁴ In designing and implementing these preventative measures, Article 5(1) of the Trafficking Convention requires states to promote a multidisciplinary co-ordinated approach by taking:

‘measures to establish or strengthen national co-ordination between the various bodies responsible for preventing and combating trafficking in human beings’.³¹⁵

The Explanatory Report clarifies that the term ‘various bodies’ can be understood to include:

‘agencies with social, police, migration, customs, judicial or administrative responsibilities, non-governmental organisations, other organisations with relevant responsibilities and other elements of civil society’.³¹⁶

The non-exhaustive nature of this list of relevant stakeholders is beneficial in enabling states to draw on and include various agencies and organisations who are active in preventing and combating THB. The Trafficking Convention acknowledges the important role that can be played by NGOs and civil society organisations in an anti-trafficking response. Article 5(6), for example, states that the prevention measures

³⁰⁹ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 5(1).

³¹⁰ *ibid* Article 5(2).

³¹¹ *ibid* Article 5(3).

³¹² *ibid* Article 5(4).

³¹³ *ibid* Article 5(6).

³¹⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 9.

³¹⁵ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 5(1).

³¹⁶ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 102.

contained within this article should, in appropriate circumstances, involve stakeholders such as NGOs, other relevant organisations, and civil society members.³¹⁷

As illustrated above, the Trafficking Convention prevention measures mirror and reaffirm those set out in the Palermo Protocol to a large extent.

2.2.2.2. Chapter III – Measures to Protect and Promote the Rights of Victims, Guaranteeing Gender Equality

The Explanatory Report describes Chapter III of the Trafficking Convention as ‘an essential part of the Convention’ as it centres on ‘protecting the rights of trafficking victims’.³¹⁸ In contrast to the protection obligations contained within the Palermo Protocol, the language of the Trafficking Convention is more stringent and affirmative, including that states ‘shall adopt’³¹⁹ and ‘shall provide’³²⁰ compared to ‘shall endeavour’³²¹ or ‘shall consider’.³²² This exemplifies that the Trafficking Convention places the victim protection aspect of an anti-trafficking response as a priority on the list of obligations for states.

Articles 10 to 17 of Chapter III encompass eight provisions on victim protection. These include provisions regarding victim identification,³²³ protection of private life,³²⁴ assistance measures,³²⁵ reflection and recovery periods,³²⁶ residence permits,³²⁷ access to

³¹⁷ This is in line with Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 9(3).

³¹⁸ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 125. As influenced by the UN OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (United Nations 2002).

³¹⁹ For example, but not limited to, Article 10(2), Article 11(2), Article 16(5) of the Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197.

³²⁰ Including, among others, *ibid* Article 12(3), Article 13(1), Articles 15(2) and 15(3).

³²¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 6(5).

³²² *ibid* Article 6(3) and Article 7(1).

³²³ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10.

³²⁴ *ibid* Article 11.

³²⁵ *ibid* Article 12.

³²⁶ *ibid* Article 13.

³²⁷ *ibid* Article 14.

compensation and legal redress,³²⁸ repatriation and return of victims,³²⁹ and the promotion of gender equality in executing these Chapter III measures.³³⁰ A selection of these provisions are succinctly discussed below based on their links with the identification processes.

The Trafficking Convention was the first international treaty to include a specific identification obligation, that contrasted considerably with the approach under the Palermo Protocol.³³¹ Article 10(1) of the Trafficking Convention, for example, requires states to provide competent authorities with trained and qualified personnel in order to assist and identify VoTs, but they do not necessarily have to be a specialist in THB. A competent authority is envisaged to include public authorities, for example, the police, labour inspectorate, customs, immigration authorities and embassies or consulates, who may come into contact with VoTs.³³² Article 10 is a core provision of the Trafficking Convention because the identification of VoTs is ‘essential if they are to be given the benefit of the rights laid down in the Convention’.³³³ The ECtHR has drawn on this provision in placing positive obligations on states under Article 4 of the ECHR to identify potential VoTs.³³⁴ Article 10(1) and Article 10(2) state that:

‘Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims and, in appropriate

³²⁸ *ibid* Article 15.

³²⁹ *ibid* Article 16.

³³⁰ *ibid* Article 17.

³³¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319. See KOK (German NGO Network against Trafficking in Human Beings), *Defining the Gap: Data Collection on Trafficking in Human Beings and Exploitation in Germany – The Civil Society Approach of the KOK* (KOK 2020) 7.

³³² Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 129.

³³³ *ibid* para 126.

³³⁴ For example, in *Chowdury and Others v Greece* App no 21884/15 (ECtHR, 30 March 2017) para 110; *VCL and AN v The United Kingdom* App nos 77587/12 and 74603/12 (ECtHR, 16 February 2021) para 153; *FM and Others v Russia* App nos 71671/16 and 40190/18 (ECtHR, 10 December 2024) para 280. See also GRETA, *Guidance Note on the Entitlement of Victims of Trafficking, and Persons At Risk of Being Trafficked, to International Protection* (Council of Europe 2020) 12; Vladislava Stoyanova, ‘Article 10: Identification of the Victims’ in Julia Planitzer and Helmut Sax (eds), *A Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings* (Elgar Publishing 2020) 143; GRETA, *10th General Report on GRETA’s Activities covering the period from 1 January to 31 December 2020* (Council of Europe 2021) 36.

cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention.

Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations. Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2.³³⁵

For formal identification purposes, Article 10(2) of the Trafficking Convention outlines a two-stage victim identification procedure, as explored further in Chapter Three.³³⁶ First, a ‘reasonable grounds to believe’ stage and secondly, a ‘final conclusive decision’.³³⁷ During these stages, a potential VoT should not be removed from the territory.³³⁸ Potential VoTs should receive the assistance listed under Article 12 to facilitate their recovery and enable them to make informed decisions about their future and interaction with public authorities.³³⁹ Article 10(1) and Article 10(2) necessitates collaboration between authorities and relevant support organisations³⁴⁰ to identify VoTs through the adoption of necessary legislative or other measures. Similar to the emphasis placed on co-ordinated and collaborative efforts in relation to prevention measures, Article 10 reinforces the benefit of ensuring that public authorities work together with support organisations, as examined in-depth in Chapter Four. The text of Article 10 also requires Contracting States to put in place individuals who are ‘trained and qualified’ to identify VoTs.³⁴¹ This thesis uses Article 10(1) and Article 10(2) as the starting point in the

³³⁵ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10(1) and (2). This was a more comprehensive statement of the obligation on states than that previously contained within the EU Trafficking Directive. 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 [2011] OJ L 101 Article 11(4). Article 11(4) has subsequently been amended by Directive 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

³³⁶ See section 3.3.1. of Chapter Three.

³³⁷ Vladislava Stoyanova, *Human Trafficking and Slavery Reconsidered: Conceptual Limits and States’ Positive Obligations in European Law* (Cambridge University Press 2017) 102.

³³⁸ This is particularly vital for VoTs who are not residing in the state legally or may be legally present on a short-term residence permit.

³³⁹ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 12.

³⁴⁰ Relevant support organisations may include, for instance, non-governmental organisations.

³⁴¹ The training of relevant stakeholders is assessed in section 5.3.2. of Chapter Five in this dissertation. The EU Trafficking Directive likewise stresses the importance of training officials likely to come into contact with (potential) VoTs. Directive 2011/36/EU of the European Parliament and of the Council of 5

substantive chapters and for the analysis of the qualitative data.³⁴² It further engages in a critical analysis of the limitations of Article 10 in Chapter Three of this thesis,³⁴³ most notably, in relation to the fact that it is only relevant in the formal identification process and does not cover the detection stage of the procedure.

Despite the Parliamentary Assembly recommending the inclusion of a ‘right to appeal to an independent and impartial body’ against decisions made on the granting of victim status, this was not inserted into the final text of the Trafficking Convention.³⁴⁴ It is a significant gap in Article 10 which could have afforded increased transparency to the procedure of granting VoT status and enabling the correction of potential errors in the assessment of each case. In practical terms, this means that states are not obliged to provide such an avenue for potential VoTs to appeal decisions on their victim status.³⁴⁵

Although not stated explicitly in the text of Article 10, the Explanatory Report outlines that identification is independent from criminal proceedings against potential perpetrators, and that there is no requirement to obtain a conviction in order to begin or complete the process.³⁴⁶ In its country evaluation reports, GRETA has referenced the 1985 United Nations Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power which provides that a person may be considered a victim ‘regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted’.³⁴⁷ Yet, in practice, a link between the criminal justice process and victim identification can arise in

April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims [2011] OJ L 101 Article 18(3) and Recital 25. This is reinforced by Directive 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims Article 18b.

³⁴² Article 10(3) recognises that it may be difficult to determine the age of a VoT at the outset, but as child trafficking is beyond the scope of this doctoral study, further engagement with this provision will not be undertaken.

³⁴³ More specifically, in section 3.2.3 of Chapter Three.

³⁴⁴ Parliamentary Assembly, ‘Draft Council of Europe Convention on Action against Trafficking in Human Beings’ (26 January 2005) Opinion No. 253; Parliamentary Assembly, ‘Draft Council of Europe Convention on Action against Trafficking in Human Beings’ (18 March 2005) Rec 1695.

³⁴⁵ However, Ireland, for example, in its most recent legislation on THB, has provided for the ‘reconsideration’ of an application under Section 29(10) of the Criminal Law (Sexual Offences and Human Trafficking) Act 2024.

³⁴⁶ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 134.

³⁴⁷ For example, GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Slovenia: First Evaluation Round* (Council of Europe 17 January 2014) 16.

certain states, particularly in relation to requiring victims to co-operate with authorities.³⁴⁸ This calls into question whether states are fully engaging in the human rights victim-centred approach called for by the Trafficking Convention or whether they are continuing to place an emphasis on a criminal justice response to tackle THB.

Relatedly, the victim support measures contained within Article 12 are reliant upon an initial reasonable grounds decision under Article 10 in order to access certain measures,³⁴⁹ whilst the formal conclusive grounds decision is necessary for the continued access to such measures, but also the provision of additional services and supports.³⁵⁰ Article 12 requires states to adopt assistance measures encompassing among others, physical, psychological and social recovery needs,³⁵¹ and safety and protection needs³⁵² of identified VoTs.³⁵³ This must be on an informed and consensual basis.³⁵⁴ Article 12(1) provides examples of such assistance measures including, among others, appropriate and secure accommodation³⁵⁵ and, translation and interpretation services,³⁵⁶ with states free to grant additional assistance measures.³⁵⁷

In the provision of victim assistance measures, Article 12(5) pronounces the need for co-operation between public authorities and civil society organisations in the provision of this assistance, but this is accompanied by the caveat ‘where appropriate and under the conditions provided for by its internal law’.³⁵⁸ Although the Trafficking Convention

³⁴⁸ Gema Fernández Rodríguez de Liévana and Viviana Waisman, “‘Lost in Translation’: Assessment of the (Non)-Implementation of the Trafficking Directive from a Gender Perspective in Spain” (2017) 9(3) *Journal of Human Rights Practice* 504-525, 518.

³⁴⁹ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 12(1) and Article 12(2). The EU Trafficking Directive adopts a similar approach. 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 [2011] OJ L 101 Article 11(2).

³⁵⁰ In other words, a conclusive decision as to VoT status enables access to all the measures contained under Article 12.

³⁵¹ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 12(1).

³⁵² *ibid* Article 12(2).

³⁵³ For instance, medical assistance or access to the labour market, vocational training and education, as provided for under *ibid* Articles 12(3) and 12(4).

³⁵⁴ *ibid* Article 12(7); GRETA, *8th General Report on GRETA’s Activities covering the period from 1 January to 31 December 2018* (Council of Europe 2019) 37.

³⁵⁵ *ibid* Article 12(1)(a).

³⁵⁶ *ibid* Article 12(1)(c).

³⁵⁷ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 151.

³⁵⁸ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 12(5).

requires co-operation with civil society organisations, the Explanatory Report outlines that ultimately the responsibility remains with states to meet the obligations and they ‘have to take the steps necessary to ensure that victims receive the assistance they are entitled to’.³⁵⁹ Furthermore, GRETA has clarified that:

‘when the provision of assistance to victims is delegated to NGOs as service providers, the state had an obligation to provide adequate financing and ensure the quality of the services delivered by the NGOs’.³⁶⁰

Article 12(6) outlines that measures, legislative or otherwise, should be adopted ‘to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness’³⁶¹ in criminal investigations or proceedings.³⁶² This is in contrast to a state’s ability under Article 14 to grant residence permits only to victims who co-operate with authorities.³⁶³ A link between co-operation and access to assistance measures has been described by George et al. as ‘disempowering and counterproductive to healing, and one of the largest impediments to effective service provision’.³⁶⁴ In fact, Renzikowski argues that a practice of only providing victim support for the duration required for the purpose of criminal justice aims is insufficient.³⁶⁵ In committing to a human rights-based victim-centred approach in the implementation of state obligations, there is a need to assess the extent to which victims are required to play an active role in the criminal justice process. Despite this, in practice, VoTs are regularly viewed as the primary evidential source in THB criminal proceedings.³⁶⁶

³⁵⁹ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 149.

³⁶⁰ GRETA, *3rd General Report on GRETA’s Activities covering the period from 1 August 2012 to 31 July 2013* (Council of Europe 2013) 29.

³⁶¹ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 12(6).

³⁶² This is similarly reiterated in the Forced Labour (Supplementary Measures) Recommendation 2014 (No. 203) (adopted 11 June 2014) but the ILO notes that in practice, this conditionality ‘is mixed’. ILO, *Ending Forced Labour by 2030: A Review of Policies and Programmes* (ILO 2018) 13.

³⁶³ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 169.

³⁶⁴ Emma George, George Tsourtos and Darlene McNaughton, “‘It’s Just about the Crime, Not the Victim’: Critical Insights from Australian Service Providers Working with People Who Have Been Trafficked” (2018) 30(1) *Current Issues in Criminal Justice* 1-18, 4.

³⁶⁵ Joachim Renzikowski, ‘Trafficking in Human Beings as a Crime and as a Human Rights Violation’ in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 18.

³⁶⁶ Olga Pyschulina, ‘An Evaluation of Ukrainian Legislation to Counter and Criminalize Human Trafficking’ (2003) 11(3) *Demokratyzatsiya* 403-411, 407; Yvon Dandurand, ‘Human Trafficking and Police Governance’ (2017) 18(3) *Police Practice and Research* 322-336, 325; Tony Ward and Shahrzad Fouladvand, ‘Human Trafficking, Victims’ Rights and Fair Trials’ (2018) 82(2) *The Journal of Criminal Law* 138-155, 139; Amy Farrell, Meredith Dank, Ieke de Vries, Matthew Kafafian, Andrea Hughes and

Under Article 13 of the Trafficking Convention, states are required to provide a recovery and reflection period in circumstances where there are reasonable grounds to believe the individual is a VoT and thus it is inherently linked to Article 10.³⁶⁷ In contrast to the Palermo Protocol in which Article 7 places an obligation on states ‘to consider’ allowing VoTs to remain in the state ‘in appropriate cases’,³⁶⁸ the Trafficking Convention is quite clear on state obligations in this regard.³⁶⁹ This must be a minimum of 30 days and expulsion from the state is not permissible during this time.³⁷⁰ The benefit of imposing a minimum period is that this must be ensured, whilst states may provide for longer durations if they deem it appropriate.

Country	Duration
Austria, Bulgaria, England and Wales, Hungary, Sweden, Switzerland, Ukraine	30 days
Estonia, Portugal	30 to 60 days
Finland	Minimum of 30 days up to a maximum of 6 months
Belgium	45 days
Czech Republic, Ireland.	60 days
Germany, Greece, Slovenia, Spain, The Netherlands	3 months (90 days)
Norway	6 months
Iceland	9 months

Table 4 – Duration of Reflection and Recovery Periods

While there is evidently a benefit from and need for the granting of a reflection period, a 30 day provision is too short to adequately protect potential VoTs who have just left their severely exploitative situation.³⁷¹ States are progressively recognising this and granting longer periods to potential VoTs. As illustrated in Table 4, certain states have elected to meet the minimum 30 day requirement, but others such as Iceland, provide for a considerably longer nine month reflection and recovery period.

Sarah Lockwood, ‘Failing Victims? Challenges of the Police Response to Human Trafficking’ (2019) 18(3) *Criminology & Public Policy* 649-673, 650.

³⁶⁷ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 13.

³⁶⁸ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 7.

³⁶⁹ May Ikeora, *Bilateral Cooperation and Human Trafficking: Eradicating Modern Slavery Between the United Kingdom and Nigeria* (Palgrave Macmillan 2018) 81.

³⁷⁰ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 13.

³⁷¹ Anette Brunovskis, *Balancing Protection and Prosecution in Anti-Trafficking Policies: A Comparative Analysis of Reflection Periods and Related Temporary Residence Permits for Victims of Trafficking in the Nordic Countries, Belgium and Italy* (Nordic Council of Ministers 2012) 65.

There is a dual purpose to this period, namely, to allow VoTs to recover beyond the reach of the perpetrators, and to enable VoTs to decide whether or not they wish to co-operate with public authorities on an informed basis. Jovanović has criticised recovery and reflection periods arguing that they are not entirely victim-centred, but rather ‘a means to advance the criminal control agenda’ by contributing to a successful prosecution.³⁷² The Explanatory Report notes that ‘the period is likely to make the victim a better witness’³⁷³ but also states that ‘the period, in itself, is not conditional on their co-operating with the investigative or prosecution authorities’.³⁷⁴ A Spanish study by Rodríguez-López³⁷⁵ and research by Wintermayr and Weatherburn³⁷⁶ on the Netherlands and Belgium has shown that this is not always the case in practice. In theory this period is victim-centred and offers a short duration of protection and assistance before decisions have to be made, but in reality the emerging practice requiring this co-operation is more criminal justice focused than victim-centred.³⁷⁷

Overall, the provisions contained within Chapter III build on those of the Palermo Protocol and previous THB legal instruments. Yet, the Trafficking Convention lays down stronger obligations on states in meeting these protection measures.³⁷⁸ Two key developments are the introduction of express obligations under Article 10 and Article 13 regarding the identification of VoTs and the provision of a recovery and reflection period

³⁷² Marija Jovanović, ‘International Law and Regional Norm Smuggling: How the EU and ASEAN Redefined the Global Regime on Human Trafficking’ (2020) 68(4) *The American Journal of Comparative Law* 801-835, 835.

³⁷³ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 174.

³⁷⁴ *ibid* para 175.

³⁷⁵ Silvia Rodríguez-López, ‘An Attempt to Control Human Trafficking from a Human Rights-Based Approach: The Case of Spain’ in John Winterdyk and Jackie Jones (eds), *The Palgrave International Handbook of Human Trafficking* (Palgrave Macmillan 2020) 1025.

³⁷⁶ Irene Wintermayr and Amy Weatherburn, *Access to Protection and Remedy for Victims of Human Trafficking for the Purpose of Labour Exploitation in Belgium and the Netherlands* (ILO 2021) 8.

³⁷⁷ In addition, it is worth noting that Article 13(3) of the Trafficking Convention provides for two exceptions to the observation of this period on the grounds of public order or the improper claiming of victim status. The Explanatory Report outlines that the intention behind the inclusion of this provision is to ‘guarantee that victims’ status will not be illegitimately used’. Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 173.

³⁷⁸ For example, the Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 15 requires States to provide for the ‘right of victims to compensation’, while Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 6(6) requires states to ensure measures to offer VoT’s ‘the possibility of obtaining compensation’.

respectively.³⁷⁹ These provisions are essential parts of a victim-centred approach to THB and their inclusion ensures a solid commitment to the fulfilment of a human rights-based approach.

The obligation to identify under Article 10 provides the frame for the analysis in the subsequent chapters of this thesis which illustrate that a solely criminal justice approach is insufficient to identify victims of THB-LE. Instead, a comprehensive approach to identification in this context demands input from a range of stakeholders across a variety of legal spheres, and requires recognition by states of the need to utilise labour law to effectively protect workers subjected to severely exploitative conditions and uphold their rights.

2.2.2.3. Chapters IV and V – Substantive Criminal Law, Investigation, Prosecution and Procedural Law

Notwithstanding that the Trafficking Convention is heralded for its enhanced emphasis on victim protection measures, it also maintains investigative and prosecutorial aims in Chapters IV and V. The provisions within these chapters that are most relevant and linked to the identification of VoTs are distilled below. This analysis proposes that it is not possible to address THB-LE without utilising some aspects of the criminal justice approach. In this regard, Mantouvalou has argued that criminalisation:

‘should be welcomed: it is important symbolically because criminal law stigmatises conduct and individuals, and sends a strong message that the activity in question is a serious wrong that must not be committed’.³⁸⁰

The explicit criminalisation of these offences is a critical component of a comprehensive approach to address this illicit enterprise. Thus, the Trafficking Convention strikes a balance between upholding the rights of VoTs and recognising the necessity for criminal justice intervention. It is unclear if this balance fully translates into national implementation efforts and realities.

³⁷⁹ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10 and Article 13.

³⁸⁰ Virginia Mantouvalou, ‘The UK Modern Slavery Act 2015 Three Years On’ (2018) 81(6) *Modern Law Review* 1017-1045, 1045.

The provisions within Chapter IV include obligations relating to the criminalisation of THB,³⁸¹ offences related to travel or identity documents,³⁸² attempting to commit a THB-related offence,³⁸³ aiding or abetting the commission of a THB-related offence,³⁸⁴ and corporate liability.³⁸⁵ Chapter IV also requires states to consider the criminalisation of the use of services of a VoT.³⁸⁶ Furthermore, it contains provisions on the adoption of ‘effective, proportionate and dissuasive sanctions’,³⁸⁷ lists aggravating circumstances in determining the appropriate penalty,³⁸⁸ and includes a provision on taking into account previous convictions.³⁸⁹ Finally, Chapter IV provides for a non-punishment provision which can be viewed as a criminal justice measure, but if applied in a victim-centred manner, it may also be considered as a victim protection measure.³⁹⁰

³⁸¹ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 18.

³⁸² *ibid* Article 20.

³⁸³ *ibid* Article 21(2).

³⁸⁴ *ibid* Article 21(1).

³⁸⁵ *ibid* Article 22. Corporate liability in this context has received attention in the scholarly literature. See, *inter alia*, Julia Planitzer and Nora Katona, ‘Criminal Liability of Corporations for Trafficking in Human Beings for Labour Exploitation’ (2017) 8(4) *Global Policy* 505-511; Kadriye Bakirci and Graham Ritchie, ‘Corporate Liability for Modern Slavery’ (2022) 29(2) *Journal of Financial Crime* 576-588.

³⁸⁶ *ibid* Article 19. GRETA, based on its second country evaluation round, gave an account of state practice in this regard noting that seventeen states had established the use of services of a VoT with the knowledge that the person is a victim as a separate criminal offence. A further six states had criminalised this in relation to the use of sexual services. In addition, fifteen states outlined that they had other legal provisions that could be used to punish the users of services of VoTs. GRETA, *9th General Report on GRETA’s Activities covering the period from 1 January to 31 December 2019* (Council of Europe 2020) 48. In practical terms, proving this ‘knowledge’ element may be difficult and the Explanatory Report stipulates that a person ‘cannot be penalised if unaware of it’, but it does offer some guidance as to the potential inference on the basis of factual circumstances, Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 234-235.

³⁸⁷ *ibid* Article 23. Article 23(3) provides for the confiscation and deprivation of the proceeds of THB offences, which may be in the form of property and Article 23(4) enables the closure of establishments where THB has occurred. In this regard, there is an increasing trend towards the acknowledgement that there is a need for States to engage in financial investigations. See, for example, OSCE, *Leveraging Anti-Money Laundering Regimes to Combat Trafficking in Human Beings* (OSCE 2014); Jason Haynes, ‘Northern Ireland’s Human Trafficking and Exploitation Act (2015): A Preliminary Assessment’ (2016) 42(2) *Commonwealth Law Bulletin* 181-221, 191; GRETA, *6th General Report on GRETA’s Activities covering the period from 1 January to 31 December 2016* (Council of Europe 2017) 7; Þorbjörg Sveinsdóttir, ‘Assessing the Effectiveness of the EU AML Regime: Detecting and Investigating Cases of Trafficking in Human Beings’ (2018) 9(4) *New Journal of European Criminal Law* 464-485; Rosemary Broad and Julia Muraszkievicz, ‘The Investigation and Prosecution of Traffickers: Challenges and Opportunities’ in John Winterdyk and Jackie Jones (eds), *The Palgrave International Handbook of Human Trafficking* (Palgrave Macmillan 2020) 719; Jill E.B. Coster van Voorhout, ‘Combating Human Trafficking Holistically through Proactive Financial Investigations’ (2020) 18(1) *Journal of International Criminal Justice* 87-106, 88.

³⁸⁸ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 24. For example, the offence was committed by a public official in the performance of her/his duties or within the framework of a criminal organisation

³⁸⁹ *ibid* Article 25.

³⁹⁰ *ibid* Article 26.

All of the states in this doctoral study have captured the offence of THB within their national legal framework as required under Article 18 of the Trafficking Convention,³⁹¹ as shown in Table 5.

State	Legal Provision Governing Trafficking in Human Beings	Base Imprisonment (offences involving adults)
Austria	Article 104a of the Criminal Code (<i>Strafgesetzbuch</i>)	Imprisonment of up to 5 years.
Belgium	Article 433quinquies of the Criminal Code (<i>Code Pénal</i>)	Imprisonment between 1 and 5 years.
Bulgaria	Article 159a of the Criminal Code (<i>Наказателен кодекс</i>)	Imprisonment between 2 and 8 years.
Czech Republic	Article 168 of the Criminal Code (<i>Trestní zákoník</i>)	Imprisonment between 2 and 10 years.
Estonia	Article 133 of the Criminal Code (<i>Karistusseadustik</i>)	Imprisonment between 1 and 7 years.
Finland	Chapter 25 Section 3 of the Criminal Code (<i>Rikoslaki</i>)	Imprisonment between 4 months and 6 years.
Germany	Article 232 of the Criminal Code (<i>Strafgesetzbuch</i>)	Imprisonment between 6 months and 5 years.
Greece	Article 323A of the Criminal Code (<i>Ποινικός κώδικας</i>)	Imprisonment between 5 and 10 years.
Hungary	Article 192 of the Criminal Code (<i>Büntető Törvénykönyv</i>)	Imprisonment between 2 and 8 years.
Iceland	Article 227a of the Criminal Code (<i>Almenn hegningarlög</i>)	Imprisonment of up to 12 years.
Ireland	Section 4 of the Criminal Law (Human Trafficking) Act 2008	Imprisonment of up to life.
Norway	Section 257 of the Criminal Code (<i>Lov om straff</i>)	Imprisonment of up to 6 years.
Portugal	Article 160 of the Criminal Code (<i>Código Penal</i>)	Imprisonment between 3 and 10 years.
Slovenia	Article 113 of the Criminal Code (<i>Kazenski zakonik</i>)	Imprisonment between 1 and 10 years.
Spain	Article 177bis of the Criminal Code (<i>Código Penal</i>)	Imprisonment between 5 and 8 years.
Sweden	Chapter 4 Section (1)(a) of the Criminal Code (<i>Brottsbalk</i>)	Imprisonment between 2 and 10 years.
Switzerland	Article 182 of the Criminal Code (<i>Strafgesetzbuch</i>)	Imprisonment between 1 and 20 years.
The Netherlands	Article 273f of the Criminal Code (<i>Wetboek van Strafrecht</i>)	Imprisonment of up to 12 years.
The United Kingdom	Section 5 of the Modern Slavery Act 2015.	Imprisonment of up to life.
Ukraine	Article 149 of the Criminal Code (<i>Кримінальний кодекс України</i>).	Imprisonment between 3 and 8 years.

Table 5 – National Legal Provisions and Penalties

The penalties illustrated in Table 5 demonstrates the regard given to the seriousness of THB. However, as captured in the United States Trafficking in Persons Reports, there is concern that in certain states many sentences are suspended. This includes 45 per cent in Belgium in 2022,³⁹² 68 per cent in Bulgaria in 2022,³⁹³ and 37 per cent in Greece in 2023.³⁹⁴ Moreover, in Portugal 71.4 per cent of perpetrators received a fine or a suspended

³⁹¹ The UNODC reported that in 2016, 158 countries had criminalised THB in line with the Palermo Protocol, while in 2020 it reported that over 90 per cent of countries did so. UNODC, *Global Report on Trafficking in Persons* (United Nations 2016) 12; UNODC, *Global Report on Trafficking in Persons* (United Nations 2020) 16.

³⁹² 48 sentences were (partially) suspended out of a total of 107 convictions in 2022. This decreased from 56 per cent suspended cases in 2021. United States Department of State, *Trafficking in Persons Report* (USDS 2024) ‘Belgium’; United States Department of State, *Trafficking in Persons Report* (USDS 2023) ‘Belgium’.

³⁹³ United States Department of State, *Trafficking in Persons Report* (USDS 2023) ‘Bulgaria’.

³⁹⁴ United States Department of State, *Trafficking in Persons Report* (USDS 2024) ‘Greece’. This 2023 statistic illustrates a decrease in such suspended sentences from 42 percent in 2022.

sentence.³⁹⁵ This casts doubt on the usefulness of a criminal justice approach in deterring THB and highlights serious deficiencies in current sentencing practices. This is of particular concern based on the estimated profits accumulated from the use of exploitative labour.³⁹⁶ This deficiency in prosecutorial efforts should act as a catalyst for states to more forcefully engage with the provision and fulfilment of protection measures.

Notably, one of the key provisions within Chapter IV of the Trafficking Convention, which is dependent upon the application of the requirements under Article 10,³⁹⁷ is the non-punishment principle contained within Article 26.³⁹⁸ The Trafficking Convention was the first THB treaty³⁹⁹ that established a provision encompassing the principle of non-punishment of VoTs.⁴⁰⁰ Article 26 requires states to arrange for the possibility of the non-imposition of penalties on VoTs for involvement in compelled unlawful activity. There are two important qualifications to such a provision, namely that the VoT must have been compelled to commit the illegal activity and that national authorities are entitled, but not obliged, to decide not to prosecute.⁴⁰¹ This may take the form of a criminal law provision or any other measure, in accordance with the principles of national law.⁴⁰² Several rationales have been put forward for the implementation of this principle,

³⁹⁵ United States Department of State, *Trafficking in Persons Report* (USDS 2023) 'Portugal'.

³⁹⁶ As an example, in 2010 the UNODC estimated that there were '140,000 trafficking victims in Europe, generating a gross annual income of US\$3 billion for their exploiters', UNODC, *The Globalization of Crime: A Transnational Organized Crime Threat Assessment* (United Nations 2010) 4.

³⁹⁷ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10.

³⁹⁸ *ibid* Article 26.

³⁹⁹ The EU Directive subsequently adopted a similar position. 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 [2011] OJ L 101 Article 8 and Recital 14. Further to this, the recent Recast Directive extended the possible scope of the application of this principle. Directive 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims Recital 14 and the amended Article 8.

⁴⁰⁰ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 26. Notably, however, human rights advocates unsuccessfully lobbied to include a similar provision in the Palermo Protocol. See Janie Chuang, 'Beyond a Snapshot: Preventing Human Trafficking in the Global Economy' (2006) 13(1) *Indiana Journal of Global Legal Studies* 137-163, 149.

⁴⁰¹ *VCL and AN v The United Kingdom* App nos 77587/12 and 74603/12 (ECtHR, 16 February 2021) para 158.

⁴⁰² Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 274. There remains considerable variation across European states as to whether they have an explicit legal provision in place for the purpose of non-punishment and the implication of this is that its application across European states lacks uniformity, Ryszard Piotrowicz and Liliana Sorrentino, 'The Non-Punishment Provision with Regard to Victims of Trafficking: A Human Rights Approach' in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 177. Some States do not believe that

for example, that VoTs are not autonomous individuals and in fact act under duress.⁴⁰³ On the other hand, a benefit for the wider criminal justice process, in the efficient employment of this principle, is that VoTs may feel empowered to report crimes and act

it is necessary to introduce a THB specific non-punishment provision into their national legal framework, on the basis that they believe existing provisions relating to necessity or duress are sufficient to meet the Article 26 requirement. This includes Hungary, where the government has explicitly declared that Section 19 of the Criminal Code ‘in our opinion, is fully in line with Article 26’, Committee of the Parties, *Report Submitted by the Hungarian Authorities on Measures Taken to Comply with Committee of the Parties Recommendation CP(2015)3 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings: First Evaluation Round* (Council of Europe 23 June 2017) 13. Similarly, Estonia, Iceland, Portugal, Slovenia, Switzerland and Ukraine referred to the application of more general provisions. In contrast, other States such as Belgium, Bulgaria, Germany, Greece and Spain, have specific non-punishment provisions relating to THB. GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ukraine: Second Evaluation Round* (Council of Europe 22 November 2018) 44; Committee of the Parties, *Report Submitted by the Authorities of Estonia on Measures Taken to Comply with Committee of the Parties Recommendation CP(2018)23 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings: First Evaluation Round* (Council of Europe 13 November 2020) 27; GRETA, *Reply from Slovenia to the Questionnaire for the Evaluation of the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties: Third Evaluation Round* (Council of Europe 11 November 2021) 13; GRETA, *Evaluation Report: Portugal – Third Evaluation Round* (Council of Europe 13 June 2022) 28 and 55; GRETA, *Reply from Iceland to the Questionnaire for the Evaluation of the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties: Third Evaluation Round* (Council of Europe 29 September 2022) 18; GRETA, *Evaluation Report: Switzerland – Third Evaluation Round* (Council of Europe 20 June 2024) 33; Article 33 quinquies paragraph 5 of the Belgian Criminal Code (*Code Pénal*) as introduced by The Law of 22 May 2019 on trafficking in human organs and on the non-punishment principle for victims of human trafficking, Belgian Official Gazette, 21 June 2019. Kingdom of Belgium, *The Fight against Trafficking and Smuggling in Human Beings: Policy and Approach* (Kingdom of Belgium 2021) 10; GRETA, *Evaluation Report: Belgium – Third Evaluation Round* (Council of Europe 20 October 2022) 10; Article 16(a) of the Bulgarian Criminal Code (*Наказателен кодекс*). Committee of the Parties, *Report Submitted by the Bulgarian Authorities on Measures Taken to Comply with Committee of the Parties Recommendation CP(2012)2 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings: First Evaluation Round* (Council of Europe 27 January 2014) 61; Article 154(c)(2) of the German Code of Criminal Procedure. GRETA, *Reply from Germany to the Questionnaire for the Evaluation of the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties: Third Evaluation Round* (Council of Europe 28 February 2023) 20; Article 323A paragraph 8 of the Greek Criminal Code (*Ποινικός κώδικας*). GRETA, *Reply from Greece to the Questionnaire for the Evaluation of the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties: Second Evaluation Round* (Council of Europe 5 July 2021) 45; Article 177 bis paragraph 11 of the Spanish Criminal Code (*Código Penal*). GRETA, *Reply from Spain to the Questionnaire for the Evaluation of the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties: Third Evaluation Round* (Council of Europe 5 October 2021) 30.

⁴⁰³ Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Policy and Legislative Recommendations Towards the Effective Implementation of the Non-Punishment Provision with regard to Victims of Trafficking* (OSCE 2013) 10; Ryszard Wilson Piotrowicz and Liliana Sorrentino, ‘Human Trafficking and the Emergence of the Non-Punishment Principle’ (2016) 16(4) *Human Rights Law Review* 669-699, 670; Marija Jovanović, ‘The Principle of Non-Punishment of Victims of Trafficking in Human Beings: A Quest for Rationale and Practical Guidance’ (2017) 1(1) *Journal of Trafficking and Human Exploitation* 41-76, 42; Ryszard Piotrowicz, ‘Article 26: Non-Punishment Provision’ in Julia Planitzer and Helmut Sax (eds), *A Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings* (Elgar Publishing 2020) 310.

as witnesses without fear for their own safety and well-being.⁴⁰⁴ This is a key principle in moving towards a more victim-centred approach to address THB-LE,⁴⁰⁵ and as Jovanović and Niezna posit, ‘it is meant to strengthen the victim protection responsibilities of states’.⁴⁰⁶ The identification as a VoT under Article 10 is imperative because an individual must be identified as a VoT in order to avail of the application of this principle in practice. Its significance for the identification of victims of THB-LE is further explored in Chapter Three of this thesis.⁴⁰⁷

Chapter V encompasses obligations relating to the protection of individuals such as VoTs, witnesses or family members⁴⁰⁸ (during court proceedings),⁴⁰⁹ ensuring specialism in the fight against THB and the protection of VoTs,⁴¹⁰ the provision of training,⁴¹¹ co-ordination measures,⁴¹² the consideration of the appointment of a National Rapporteur or other monitoring mechanism,⁴¹³ and issues of jurisdiction.⁴¹⁴ An important provision requiring proactive work⁴¹⁵ on the part of stakeholders is contained in Article 27 which requires states to:

‘ensure that investigations into or prosecution of offences established in accordance with this Convention shall not be dependent upon the report or accusation made by a victim, ...’.⁴¹⁶

⁴⁰⁴ GRETA, *4th General Report on GRETA’s Activities covering the period from 1 August 2013 to 30 September 2014* (Council of Europe 2015) 52; The Inter-Agency Coordination Group against Trafficking in Persons, *Non-Punishment of Victims of Trafficking* (Issue Brief 8, ICAT 2020) 1.

⁴⁰⁵ UNODC, *Model Legislative Provisions Against Trafficking in Persons* (United Nations 2020) 45.

⁴⁰⁶ Marija Jovanović and Maayan Niezna, *Non-Punishment of Victims/Survivors of Human Trafficking in Practice: A Case Study of the United Kingdom* (Council of Europe 2023) 16.

⁴⁰⁷ More specifically, in section 3.4.3.1.1. of Chapter Three.

⁴⁰⁸ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 28(1). Furthermore, Article 28(2) provides that forms of protection ‘may include physical protection, relocation, identity change and assistance in obtaining jobs’.

⁴⁰⁹ *ibid* Article 30.

⁴¹⁰ *ibid* Article 29(1).

⁴¹¹ *ibid* Article 29(3). The requirements under Article 29(3) are discussed further in section 5.2. of Chapter Five.

⁴¹² *ibid* Article 29(2).

⁴¹³ *ibid* Article 29(4). In contrast, the EU Trafficking Directive requires Member states to take the necessary measures to establish national rapporteurs or equivalent mechanisms. 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 [2011] OJ L 101 Article 19.

⁴¹⁴ *ibid* Article 31(1).

⁴¹⁵ Ryszard Piotrowicz, ‘The European Legal Regime on Trafficking in Human Beings’ in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 45.

⁴¹⁶ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 27(1).

This is important in circumstances whereby VoTs rarely come forward to authorities and where self-declaration as a VoT is low,⁴¹⁷ as discussed in Chapter Three of this thesis.⁴¹⁸ In the context of THB-LE, this is compounded by (potential) VoTs who may be reluctant to declare as such and have a preference to remain working in poor or unfavourable conditions rather than return to their country of origin.⁴¹⁹

For identification purposes, Article 10 of the Trafficking Convention requires public authorities and relevant support organisations to collaborate. Relatedly, in facilitating successful partnerships and collaborative initiatives targeting THB, it is necessary that stakeholders are equipped to actively partake in anti-trafficking efforts, as investigated in Chapter Five. Article 29 entails the adoption of measures to ensure that personnel and entities are specialised and independent in order to fulfil their functions effectively. This requires ample training⁴²⁰ of relevant officials⁴²¹ and adequate financial resourcing.⁴²² The Explanatory Report provides a more detailed account of the requirements indicating that there must ‘be sufficient numbers’ of specialists and that as far as possible there are both male and female staff.⁴²³ It places a restriction on the application of the specialism required outlining that it:

⁴¹⁷ Carolina Villacampa and Nuria Torres, ‘Human Trafficking for Criminal Exploitation: The Failure to Identify Victims’ (2017) 23(3) *European Journal on Criminal Policy and Research* 393-408, 405; Joachim Renzikowski, ‘Trafficking in Human Beings as a Crime and as a Human Rights Violation’ in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 16.

⁴¹⁸ In particular, see sections 3.4.3.1. on fear of state authorities and 3.4.3.2. on self-declaration as a VoT in Chapter Three.

⁴¹⁹ Matej Blazek, ‘Migration, Vulnerability and the Complexity of Violence: Experiences of Documented Non-EU Migrants in Slovakia’ (2014) 56 *Geoforum* 101-112, 108; GRETA, *7th General Report on GRETA’s Activities covering the period from 1 January to 31 December 2017* (Council of Europe 2018) 37.

⁴²⁰ *ibid* Article 29(3) outlines that this may be agency-specific. This closely follows Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 10(2).

⁴²¹ The Explanatory Report provides the authorities and individuals intended to be captured by the term “relevant officials” as including:

‘persons and services liable to have contact with trafficking victims, such as law-enforcement officials, immigration and social services, embassy or consulate staff, staff of border checkpoints and soldiers or police on international peacekeeping missions’.

Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 297.

⁴²² Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 29(1).

⁴²³ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 292.

‘does not mean, however, that there has to be specialisation at all levels of implementing the legislation. In particular, it does not mean that each prosecution service or police station has to have a specialist unit or an expert in trafficking in human beings’.⁴²⁴

More specifically, Article 29(2) provides that states may set up co-ordination bodies to facilitate the harmonisation of actions and policies between government departments and public agencies.⁴²⁵ However, the Trafficking Convention and Explanatory Report fail to define a co-ordination body. Relatedly, some states have put in place National Anti-Trafficking Co-ordinators, generally placed within a government ministry or department.⁴²⁶ This is necessary for organising actions amongst different government ministries. Yet, this placement within government structures should not preclude the interaction and co-ordination of co-operative efforts between public authority and civil society stakeholders.

Finally, Article 29 provides for the consideration of the establishment of a National Rapporteur⁴²⁷ or alternate mechanism⁴²⁸ to monitor state anti-trafficking efforts and the

⁴²⁴ *ibid.*

⁴²⁵ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 29(2).

⁴²⁶ In certain States, such as Ireland and Finland, the co-ordination efforts are the responsibility of the Ministry or Department of Justice. In other States, for example, Hungary, Slovenia and the Czech Republic, the National Co-ordinator is placed within the Ministry of the Interior. GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Czech Republic: First Evaluation Round* (Council of Europe 11 February 2020) 14; GRETA, *Reply from Ireland to the Questionnaire for the Evaluation of the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties: Third Evaluation Round* (Council of Europe 11 June 2021) 38; Ministry of Justice, *Finland Fights Human Trafficking: Action Plan against Trafficking in Human Beings* (Government of Finland 2021) 14; GRETA, *Reply from Hungary to the Questionnaire for the Evaluation of the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties: Third Evaluation Round* (Council of Europe 28 October 2022) 41; GRETA, *Reply from Finland to the Questionnaire for the Evaluation of the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties: Third Evaluation Round* (Council of Europe 24 November 2022) 42; GRETA, *Evaluation Report: Slovenia – Third Evaluation Round* (Council of Europe 15 June 2023) 2.

⁴²⁷ To take two examples, in Sweden, the role of National Rapporteur is carried out by an official within the Swedish Police Authority, GRETA, *Evaluation Report: Sweden – Third Evaluation Round* (Council of Europe 19 October 2023) 10. On the other hand, this function is performed by the Irish Human Rights and Equality Commission since October 2020, GRETA, *Evaluation Report: Ireland – Third Evaluation Round* (Council of Europe 28 September 2022) 11. Moreover, Germany introduced an independent monitoring mechanism on THB at the German Institute for Human Rights. GRETA, *Reply from Germany to the Questionnaire for the Evaluation of the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties: Third Evaluation Round* (Council of Europe 28 February 2023) 38.

⁴²⁸ Austria, for instance, does not have a National Rapporteur, instead the Task Force against THB fulfils the tasks as an ‘equivalent mechanism’, GRETA, *Reply from Austria to the Questionnaire for the Evaluation of the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings: Fourth Evaluation Round* (Council of Europe 13 November 2023) 41. Likewise, the

implementation of national legislation.⁴²⁹ Yet, certain states have not complied with this provision.⁴³⁰ The Explanatory Report offers little guidance as to the application of this provision beyond providing an example of the National Rapporteur established in the Netherlands.⁴³¹ It can be inferred from the description of the Dutch National Rapporteur that independence,⁴³² adequate staffing, investigative powers, and the ability to make recommendations are core aspects of this mechanism.

Chapter V stresses the importance of equipping individuals and entities in order to effectively respond to THB. It recognises the need for proactivity on the part of organisations and professionals bestowed with investigative and prosecutorial mandates. Novel and worthwhile additions for identification purposes as introduced by the Trafficking Convention include the establishment of co-ordination bodies.

2.2.2.4. Chapter VI – International Co-operation and Co-operation with Civil Society

Chapter VI is primarily concerned with international co-operation,⁴³³ endangered or missing persons,⁴³⁴ and the provision of requested information.⁴³⁵ Yet, most pertinent for the purpose of the analysis in this doctoral study, in particular Chapter Four,⁴³⁶ it recognises the importance of civil society organisations. This is emphasised in Article 35

National Commission for Combating Trafficking in Human Beings in Bulgaria operates as an equivalent mechanism under Article 29(4), GRETA, *Evaluation Report: Bulgaria – Third Evaluation Round* (Council of Europe 29 April 2021) 11.

⁴²⁹ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 29(4).

⁴³⁰ This includes, for example, Hungary, Slovenia, and Switzerland. GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Switzerland: Second Evaluation Round* (Council of Europe 9 October 2019) 61; GRETA, *Evaluation Report: Slovenia – Third Evaluation Round* (Council of Europe 15 June 2023) 13; GRETA, *Evaluation Report: Hungary – Third Evaluation Round* (Council of Europe 26 February 2024) 10. Notably, GRETA has reported that the Hungarian authorities:

‘maintain the view that external evaluations, such as those carried out by GRETA, are the most efficient tools for assessing the government efforts and making recommendations in the field of combating THB’.

⁴³¹ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 298.

⁴³² Notably, the independence of a National Rapporteur renders their role critical in anti-trafficking responses because they hold governments accountable in the execution of anti-trafficking policies, UNODC, *Model Law Against Trafficking in Persons* (United Nations 2009) 87; UNODC, *Model Legislative Provisions Against Trafficking in Persons* (United Nations 2020) 92.

⁴³³ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 32.

⁴³⁴ *ibid* Article 33.

⁴³⁵ *ibid* Article 34.

⁴³⁶ As analysed further in section 4.2. of Chapter Four.

of the Trafficking Convention which delineates a broad and explicit requirement for state stakeholders to co-operate with NGOs and civil society organisations to achieve the purpose of the Convention:

‘Each Party shall encourage state authorities and public officials, to co-operate with non-governmental organisations, other relevant organisations and members of civil society, in establishing strategic partnerships with the aim of achieving the purpose of this Convention’.⁴³⁷

Strategic partnerships between state authorities and civil society organisations are defined as ‘the setting up of co-operative frameworks through which State actors fulfil their obligations under the Convention, by coordinating their efforts with civil society’.⁴³⁸ The practical implementation of strategic partnerships may be formalised via the conclusion of memoranda of understanding or the establishment of roundtables.⁴³⁹ By explicitly stipulating certain forms of co-operation, states would afford transparency and certainty to these efforts. Regarding the identification obligation under Article 10, NGOs and other members of civil society have a key contribution to make, as will be elucidated in the subsequent chapters of this thesis. They should receive increased recognition and be integrated effectively into these identification processes.

To encourage compliance and development in this area, an important feature of the Trafficking Convention is the monitoring mechanism provided for under Article 36 and Article 37.⁴⁴⁰

2.2.3. The Functionality of the Monitoring Mechanism

One of the ‘major added values’ of the Trafficking Convention is its monitoring mechanism⁴⁴¹ as outlined in Chapter VII. The value of this monitoring mechanism is described by the Council of Europe as being threefold:

⁴³⁷ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 35.

⁴³⁸ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 352.

⁴³⁹ *ibid* para 353.

⁴⁴⁰ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 36 and Article 37.

⁴⁴¹ Nicolas Le Coz, ‘Foreword’ in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) xxii. See also, Jan Van Dijk and Fanny Klerx-Van Mierlo, ‘Quantitative Indices for Anti-Human Trafficking Policies: Based on Reports of the U.S. State Department and the Council of Europe’ (2014) 61(2) *Crime, Law and Social Change* 229-250, 232; Ryszard

- it assesses and stimulates compliance with the far-reaching obligations under the convention;
- it provides tailor-made guidance for each country on how to overcome obstacles; and
- it constitutes a forum for international co-operation where information and good practices can be shared and the international community alerted to any new trends, thus stimulating joint action to prevent and address problems.⁴⁴²

It is composed of two distinct bodies,⁴⁴³ GRETA⁴⁴⁴ and the Committee of the Parties.⁴⁴⁵ GRETA was established under Article 36 of the Trafficking Convention and consists of a multidisciplinary panel of approximately 15 independent experts⁴⁴⁶ who must be geographically and vocationally diverse.⁴⁴⁷

To date GRETA has published thirteen annual General Reports⁴⁴⁸ and a number of guidance notes on important issues and principles relevant to THB,⁴⁴⁹ including a specific guidance note on THB-LE.⁴⁵⁰ These guidance notes are useful in highlighting pressing issues and are even more pertinent in dealing with timely matters, such as the conflict in

Piotrowicz, 'The European Legal Regime on Trafficking in Human Beings' in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 41.

⁴⁴² Council of Europe, *Council of Europe Convention on Action against Trafficking in Human Beings: Monitoring Mechanism* (Council of Europe 2013) 6.

⁴⁴³ Julia Planitzer and Helmut Sax, 'Introduction' in Julia Planitzer and Helmut Sax (eds), *A Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings* (Elgar Publishing 2020) 2.

⁴⁴⁴ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 36.

⁴⁴⁵ *ibid* Article 37.

⁴⁴⁶ GRETA, *1st General Report on GRETA's Activities covering the period from February 2009 to July 2011* (Council of Europe 2011) 4. These experts must meet the requirements of the Rules on the Election Procedure and conform to the Internal Rules of Procedure. Council of Europe Committee of Ministers, 'Rules on the Election Procedure of the Members of the Group of Experts on Action against Trafficking in Human Beings' (24 October 2013) CM/Res(2013)28, Rules 2 to 5; GRETA, *Internal Rules of Procedure of the Group of Experts on Action against Trafficking in Human Beings* (Council of Europe 2009) Rules 2 and 3.

⁴⁴⁷ As required under Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 36(2). At present, the president, 1st vice-president and 2nd vice-president of GRETA are Ms Helga Gayer (of Germany), Ms Antoaneta Vassileva (of Bulgaria) and Sergey Ghazinyan (of Armenia) respectively. The other expert members include representatives from Austria, Belgium, Croatia, Georgia, Germany, Greece, Iceland, Italy, Macedonia, Malta, Moldova, Portugal, Sweden, and the Netherlands.

⁴⁴⁸ Beginning with GRETA, *1st General Report on GRETA's Activities covering the period from February 2009 to July 2011* (Council of Europe 2011) through to the most recent report of GRETA, *13th General Report covering the period from 1 January to 31 December 2023* (Council of Europe 2024).

⁴⁴⁹ GRETA is currently developing a guidance note on the recovery and reflection period. Committee of the Parties Council of Europe Convention on Action against Trafficking in Human Beings, '34th Meeting of the Committee of the Parties: Meeting Report' (21 June 2024) THB-CP(2024)RAP34, 22.

⁴⁵⁰ See for example GRETA, *Guidance Note on the Entitlement of Victims of Trafficking, and Persons At Risk of Being Trafficked, to International Protection* (Council of Europe 2020); GRETA, *Guidance Note on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2021).

Ukraine.⁴⁵¹ It issues individual country evaluation reports, published on a four-year cyclical basis,⁴⁵² and the timelines for these evaluations are publicly available.⁴⁵³ GRETA outlines that the country evaluation reports ‘provide a source of information and analysis for all the players involved in the fight against trafficking in human beings’.⁴⁵⁴ It is a transparent process and states are afforded opportunities to provide relevant information and commentary on the conclusions and recommendations contained in the evaluation report. This opportunity for dialogue with GRETA is a considerable added benefit in monitoring state compliance with the Trafficking Convention provisions, and a number of states avail of this option.⁴⁵⁵

On the basis of its country evaluation rounds, GRETA issues a list of urges, considerations and invitations to states based on the obligations arising under the Trafficking Convention.⁴⁵⁶ At the conclusion of each evaluation round, three General Reports (to date) have provided a comprehensive overview of the most pressing issues

⁴⁵¹ GRETA, *Guidance Note on Addressing the Risks of Trafficking in Human Beings Related to the War in Ukraine and the Ensuing Humanitarian Crisis* (Council of Europe 2022).

⁴⁵² Council of Europe, *Rules of Procedure for Evaluating Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties* (Council of Europe 17 June 2009, as amended 21 November 2014) Rule 1.

⁴⁵³ GRETA is currently finalising its third evaluation round and beginning its fourth evaluation round. The first country evaluation reports in relation to the latter round relating to Austria, Cyprus and Slovakia were expected to be published in November 2024. These rounds are conducted in a uniform manner entailing the issuance of a questionnaire to states (Rule 5), evaluation visits (Rule 9), and the drafting and final publication of evaluation reports (Rules 14 and 15). Each state receives an identical questionnaire and they are assessed on the basis of the Trafficking Convention provisions. Council of Europe, *Rules of Procedure for Evaluating Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties* (Council of Europe 17 June 2009, as amended 21 November 2014).

⁴⁵⁴ GRETA, *1st General Report on GRETA’s Activities covering the period from February 2009 to July 2011* (Council of Europe 2011) 4.

⁴⁵⁵ For example, certain States have been particularly resistant to introducing a specific THB non-punishment legal provision. Committee of the Parties, *Report Submitted by the Hungarian Authorities on Measures Taken to Comply with Committee of the Parties Recommendation CP(2015)3 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings: First Evaluation Round* (Council of Europe 23 June 2017) 13. Recently, the Committee of Parties have reiterated the call to Hungary to adopt a specific legal provision in this regard, Committee of the Parties, *Recommendation CP/Rec(2024)04 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Hungary: Third Evaluation Round* (Council of Europe 21 June 2024) 3.

⁴⁵⁶ GRETA has clarified what each of these terms relate to as follows:

‘GRETA uses the verb “urge” when it assesses that current legislation or policies are not in compliance with the Convention, or when it finds that despite the existence of legal provisions and other measures, the implementation of a key obligation of the Convention is lacking. In other situations GRETA “considers” that it is necessary to make further improvements in order to fully comply with an obligation of the Convention. By “inviting” a country to pursue its efforts in a given area, GRETA acknowledges that the authorities are already on the right track’,

GRETA, *4th General Report on GRETA’s activities covering the period from 1 August 2013 to 30 September 2014* (Council of Europe 2015) 31.

for, and gaps in, state compliance with the Trafficking Convention obligations as captured in Table 6.⁴⁵⁷

Implementation Gaps (4th General Report)	Total Urges	Implementation Gaps (9th General Report)	Total Urges	Implementation Gaps (13th General Report)	Total Urges
Recovery and Reflection Period	30	Victim Assistance Measures	29	Compensation	31
Victim Assistance Measures	28	Recovery and Reflection Period	28	Investigation, Prosecution and Sanctions	28
Identification of Victims	27	Identification of Victims	27	Legal Assistance and Free Legal Aid	19
State Compensation	22	State Compensation	25	Protection of Victims	12
Compensation from Perpetrator	20	Compensation from Perpetrators	24	Non-Punishment Principle	12
Provision of Support Delinked from Co-operation with Law Enforcement	18	Non-Punishment Provision	16	Access to Work and Education	1
Legal Assistance and Free Legal Aid	17	Convictions	16	Right to Information	1
Investigation, Prosecution and Convictions	16	Prosecution	16	Gender Sensitive Proceedings	1
Non-Punishment Provision	16	Investigation	16	Specialised Authorities and Coordination	1
		Legal Assistance and Free Legal Aid	15		

Table 6 – GRETA’s ‘Urges’ to States Parties

Table 6 demonstrates that the primary areas in need of improvement from GRETA’s findings in the first and second evaluation rounds consistently related to victim protection requirements, while three related to investigative and prosecutorial actions. This reveals that despite adopting a human rights-based approach to tackle THB, states fall short in their fulfilment of the protective measures contained within the Trafficking Convention.⁴⁵⁸

⁴⁵⁷ *ibid* 33 (including 35 country evaluation reports); GRETA, *9th General Report on GRETA’s Activities covering the period from 1 January to 31 December 2019* (Council of Europe 2020) 68 (including 42 country evaluation reports); GRETA, *13th General Report on GRETA’s Activities covering the period from 1 January to 31 December 2023* (Council of Europe 2024) (including 35 country evaluation reports).

⁴⁵⁸ The urges in the latest report are not as comparable due to its specific focus on provisions relating to victims’ access to justice and effective remedies. As such, there is no clear data presented on the number of urges in relation to the identification of victims as in past evaluation rounds. GRETA, *Questionnaire for the Evaluation of the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties – Third Evaluation Round: Thematic Focus: Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings* (Council of Europe 2018).

The second part of the Trafficking Convention monitoring mechanism is the ‘political’ aspect in the form of the Committee of the Parties.⁴⁵⁹ The rationale underlying the setting up of the Committee of the Parties is that it:

‘will ensure equal participation of all the Parties alike in the decision-making process and in the monitoring procedure of the Convention and will also strengthen cooperation between the Parties and between them and GRETA to ensure proper and effective implementation of the Convention’.⁴⁶⁰

As outlined in Article 38(7),⁴⁶¹ the Committee of the Parties may adopt recommendations on the basis of GRETA’s reports and conclusions.⁴⁶² It has been outlined that ‘the letter and spirit of this provision of the Convention is to strengthen the implementation of GRETA’s conclusions’.⁴⁶³ To date, a recommendation by the Committee of the Parties has followed the publication of GRETA’s country evaluation report. States are subsequently given an opportunity to respond to these recommendations and indicate any developments undertaken to address highlighted deficiencies in their anti-trafficking response.

In relation to GRETA’s reports, Piotrowicz articulates that they provide credible and reliable information on national anti-trafficking efforts⁴⁶⁴ and GRETA states that they are ‘used by the national authorities, civil society and other international organisations to steer their anti-trafficking policies and projects’.⁴⁶⁵ Moreover, the impact of GRETA’s work is visible in amendments to legislation and national policies, and in references by national courts to its findings.⁴⁶⁶ The publicly available reports may pressure states into

⁴⁵⁹ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 37(1).

⁴⁶⁰ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 361.

⁴⁶¹ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 38(7).

⁴⁶² GRETA, *2nd General Report on GRETA’s Activities covering the period from 1 August 2011 to 31 July 2012* (Council of Europe 2012) 17.

⁴⁶³ GRETA, *6th General Report on GRETA’s Activities covering the period from 1 January to 31 December 2016* (Council of Europe 2017) 25; GRETA, *10th General Report on GRETA’s Activities covering the period from 1 January to 31 December 2020* (Council of Europe 2021) 24.

⁴⁶⁴ Ryszard Piotrowicz, ‘The European Legal Regime on Trafficking in Human Beings’ in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 46.

⁴⁶⁵ GRETA, *3rd General Report on GRETA’s Activities covering the period from 1 August 2012 to 31 July 2013* (Council of Europe 2013) 11.

⁴⁶⁶ GRETA, *Practical Impact of GRETA’s Monitoring Work* (Council of Europe 2019) 5; GRETA, *Practical Impact of GRETA’s Monitoring Work in Improving the Implementation of the Convention on Action Against Trafficking in Human Beings* (Council of Europe 2024) 6. See also, GRETA, *6th General*

closely examining specific aspects of their anti-trafficking response and to make necessary improvements. Gallagher notes that ‘no country likes to be publicly identified as a failure’.⁴⁶⁷ In fact, government comments contained in the GRETA evaluation reports have noted the usefulness of the recommendations in formulating new action on THB.⁴⁶⁸ The Irish Government, for example, stated that:

‘the role undertaken by GRETA in monitoring the implementation of the Convention in Ireland has been an important contribution in the development of our policies and practices to combat this most heinous human rights abuse’.⁴⁶⁹

Moreover, states have regularly cited the recommendations made by the Trafficking Convention monitoring mechanism in their policy formulation, primarily in the form of National Action Plans on THB.⁴⁷⁰ This can be viewed in a positive light, but perhaps it

Report on GRETA's Activities covering the period from 1 January to 31 December 2016 (Council of Europe 2017) 17-18, for example citing the adoption of a provision on the non-punishment of victims of trafficking in human beings by Bulgaria; GRETA, *8th General Report on GRETA's Activities covering the period from 1 January to 31 December 2018* (Council of Europe 2019) 22, for example, citing the increase of the recovery and reflection period under Spanish law from 30 to 90 days; GRETA, *12th General Report on GRETA's Activities covering period from 1 January to 31 December 2022* (Council of Europe 2023) 23, for example, citing Ireland's appointment of a National Rapporteur. The increased allocation of staff to the national coordination of action against THB in Slovenia was cited in GRETA, *13th General Report on GRETA's Activities covering period from 1 January to 31 December 2023* (Council of Europe 2024) 30.

⁴⁶⁷ Anne T. Gallagher, ‘Exploitation in Migration: Unacceptable But Inevitable’ (2015) 68(2) *Journal of International Affairs* 55-74, 64.

⁴⁶⁸ GRETA, ‘Government Comments’ in *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Slovenia: First Evaluation Round* (Council of Europe 17 January 2014) 46; GRETA, ‘Government Comments’ in *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Switzerland: Second Evaluation Round* (Council of Europe 9 October 2019) 68; Committee of the Parties, *Report Submitted by the Authorities of Iceland on Measures Taken to Comply with Committee of the Parties Recommendation CP/Rec(2019)01 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings: Second Evaluation Round* (Council of Europe 15 May 2020) 3.

⁴⁶⁹ Committee of the Parties, *Report Submitted by the Irish Authorities on Measures Taken to Comply with Committee of the Parties Recommendation CP(2017)29 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings: Second Evaluation Round* (Council of Europe 15 October 2018) 2.

⁴⁷⁰ For instance, Task Force on Combating Human Trafficking, *National Action Plan on Combating Human Trafficking for the period 2012-2014 adopted by the Austrian Government* (Federal Ministry for European and International Affairs 2012) 3-4; Ministry of Justice, *Government Emphases in Actions Against Human Trafficking and Other Types of Exploitation* (Government of Iceland 2019) 2; Ministry of Justice and Security, Ministry of Social Affairs and Employment, Ministry of Health, Welfare and Sport, Ministry of Foreign Affairs, *Together Against Human Trafficking: An Integrated Programme Approach to Tackling Sexual Exploitation, Labour Exploitation and Criminal Exploitation* (Government of The Netherlands 2019) 6; Government of Hungary, *National Anti-Trafficking Strategy for 2020-2023* (Government of Hungary Decision 1046/2020); Department of Crime Prevention, *National Strategy for Combating Trafficking in Human Beings in the Czech Republic for the period 2020-2023* (Czechia Ministry of Interior 2020) 5; Interdepartmental Coordination Unit, *Action Plan Fighting Human Trafficking 2021-2025* (Government of Belgium 2021) 4; Ministry of Justice, *Finland Fights Human Trafficking: Action Plan Against Trafficking in Human Beings* (Government of Finland 2021) 16; The National Working Group for Combating Trafficking in Human Beings, *Action Plan on Combating Trafficking in Human Beings for the*

hides potential issues with the conciliatory nature of the approach to the recommendations made to states in these reports. Likewise, the fact that there are no particular sanctions for a failure to consider or address such recommendations is an issue in realising practical change.

There are undoubtedly certain benefits to the monitoring mechanism, nevertheless the fact that a number of deficiencies persist raises certain questions regarding the overall effectiveness of this mechanism in ensuring actual compliance with the provisions under the Trafficking Convention. In fact, GRETA's current president, Ms Helga Gayer, has stated that the challenge they 'are facing is to ensure proper implementation of GRETA's findings and the Committee's recommendations. In other words, we need to ensure impact'.⁴⁷¹

Overall, the outputs from GRETA and the Committee of the Parties are critical resources for guidance on how to interpret, understand and fulfil the Trafficking Convention obligations. Taken together, the monitoring mechanism has the ability to contribute to the improvement of Contracting States' anti-trafficking efforts as it executes the critical function of assessing the implementation of the Trafficking Convention. Yet, considerable political commitment is required in order to instigate change on the basis of the recommendations of the monitoring mechanism.

In sum, section 2.2. has provided an in-depth doctrinal analysis of the core legal provisions under the Trafficking Convention, with a particular emphasis on the identification obligation and the usefulness of its monitoring mechanism. The Trafficking Convention has provided a comprehensive set of obligations for ratifying states, encompassing a range of preventative, protective and prosecutorial measures to enable states to effectively combat THB(-LE). Nevertheless, these provisions require political commitment and effective implementation. While it is evident that ratifying Council of Europe Member states are bound by the Trafficking Convention, they are also bound by the jurisprudence arising under the ECHR as handed down by the ECtHR. This growing

2021-2022 Period (Republic of Slovenia 2021) 3; Swiss Federal Council, *National Action Plan to Combat Human Trafficking 2023-2027* (Swiss Confederation 2022) 5 and 9.

⁴⁷¹ Committee of the Parties Council of Europe Convention on Action against Trafficking in Human Beings, '34th Meeting of the Committee of the Parties: Meeting Report' (21 June 2024) THB-CP(2024)RAP34, 23.

body of case law has clarified a number of obligations on states in the field of THB and this is discussed in the next section.

2.3. Positive Obligations Under the European Convention on Human Rights

The ECHR was adopted in 1950 and entered into force in 1953.⁴⁷² Scholars have commented that the ECHR and the ECtHR has been ‘at the core of the regional development of the protection of human rights’.⁴⁷³ Moreover, the ECtHR⁴⁷⁴ has been described by Føllesdal et al. as ‘without doubt one of the most successful international human rights treaty bodies’.⁴⁷⁵ It has been called upon to adjudicate on cases involving THB offences and state responses under Article 4 of the ECHR (Article 4).⁴⁷⁶ In doing so, the ECtHR has interpreted THB as falling under Article 4.⁴⁷⁷ According to the ECtHR, Article 4 enshrines one of the basic and fundamental values of democratic societies.⁴⁷⁸ Notably, the ECHR does not explicitly reference THB under Article 4, which reads:

- ‘1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.’⁴⁷⁹

⁴⁷² Convention for the Protection of Human Rights and Fundamental Freedoms, as amended (adopted 4 November 1950, entered in force 3 September 1953) 213 UNTS 222.

⁴⁷³ Basak Çali, Ledi Bianki and Iulia Motoc, ‘Migration and the European Convention on Human Rights’ in Basak Çali, Ledi Bianki and Iulia Motoc (eds), *Migration and the European Convention on Human Rights* (Oxford University Press 2021) 10.

⁴⁷⁴ The ECtHR was established as a permanent court under Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Restructuring the Control Machinery Established Thereby (adopted 11 May 1994, entered into force 1 November 1998) ETS 155, 2061 UNTS 7.

⁴⁷⁵ Andreas Føllesdal, Birgit Peters and Geir Ulfstein, ‘Introduction’ in Andreas Føllesdal, Birgit Peters and Geir Ulfstein (eds), *Constituting Europe: The European Court of Human Rights in a National, European and Global Context* (Cambridge University Press 2013) 1.

⁴⁷⁶ Convention for the Protection of Human Rights and Fundamental Freedoms, as amended (adopted 4 November 1950, entered in force 3 September 1953) 213 UNTS 222 Article 4.

⁴⁷⁷ As voiced by Allain and Stoyanova, this has raised some doctrinal issues relating to the relationship to the broader prohibitions on forced labour and slavery, for instance, and the interaction between the ECHR and the provisions of the Trafficking Convention. Jean Allain, ‘*Rantsev v Cyprus and Russia*: The European Court of Human Rights and Trafficking as Slavery’ (2010) 10(3) Human Rights Law Review 546-557; Vladislava Stoyanova, ‘Dancing on the Borders of Article 4: Human Trafficking and the European Court of Human Rights in the *Rantsev* Case’ (2012) 30(2) Netherlands Quarterly of Human Rights 163-194.

⁴⁷⁸ *Siliadin v France* App no 73316/01 (ECtHR, 26 July 2005) para 112; *CN and V v France* App no 67724/09 (ECtHR, 11 October 2012) para 68; *LE v Greece* App no 71545/12 (ECtHR, 21 January 2016) para 64; *J and Others v Austria* App no 58216/12 (ECtHR, 17 January 2017) para 103; *TI and Others v Greece* App no 40311/10 (ECtHR, 18 July 2019) para 134; *SM v Croatia* App no 60561/14 (ECtHR, 25 June 2020) para 310; *Krachunova v Bulgaria* App no 18269/18 (ECtHR, 28 November 2023) para 168.

⁴⁷⁹ Convention for the Protection of Human Rights and Fundamental Freedoms, as amended (adopted 4 November 1950, entered in force 3 September 1953) 213 UNTS 222 Article 4.

The case law arising under Article 4 since 2005 is rather limited from a quantitative standpoint.⁴⁸⁰ Nevertheless, the case law has been instructive in clarifying that THB falls within the scope of Article 4 on the basis that the ECHR is a living instrument that ought to be interpreted in light of present-day conditions.⁴⁸¹ The ECtHR further explicitly confirmed that:

‘the concept of human trafficking for the purpose of forced or compulsory labour falls within the scope of Article 4(2) of the Convention’.⁴⁸²

It has explicitly recognised instances of internal THB,⁴⁸³ and also that an exploitative situation may evolve into one of THB.⁴⁸⁴ In addition to these clarifications, the ECtHR has incrementally established a number of positive and procedural obligations on states in responding adequately to THB under Article 4.⁴⁸⁵ This has resulted in a comprehensive set of obligations which can be summarised as follows:

- (i) to take operational measures to protect (potential) VoTs where authorities are aware, or ought to have been aware, that an individual was at real or immediate risk of being subjected to THB;⁴⁸⁶
- (ii) to investigate situations of (potential) THB which is not dependent on a complaint from the VoT;⁴⁸⁷

⁴⁸⁰ Vladislava Stoyanova, ‘European Court of Human Rights and the Right Not to be Subjected to Slavery, Servitude, Forced Labor, and Human Trafficking’ in John Winterdyk and Jackie Jones (eds), *The Palgrave International Handbook of Human Trafficking* (Palgrave Macmillan 2020) 1394.

⁴⁸¹ For example, *Rantsev v Cyprus and Russia* App no 25965/04 (ECtHR, 7 January 2010) para 277; *SM v Croatia* App no 60561/14 (ECtHR, 25 June 2020) para 288.

⁴⁸² *Zoletic and Others v Azerbaijan* App no 20116/12 (ECtHR, 7 October 2021) para 154.

⁴⁸³ *SM v Croatia* App no 60561/14 (ECtHR, 25 June 2020) para 295; *VCL and AN v The United Kingdom* App no 77587/12 and 74603/12 (ECtHR, 16 February 2021) para 148.

⁴⁸⁴ *Chowdury and Others v Greece* App no 21884/15 (ECtHR, 30 March 2017) para 97.

⁴⁸⁵ On the concept of positive obligations, see Jean-Paul Costa, ‘The European Court of Human Rights: Consistency of Its Case-Law and Positive Obligations’ (2008) 26(3) *Netherlands Quarterly of Human Rights* 449-454, 454; Brice Dickson, ‘Positive Obligations and the European Court of Human Rights’ (2010) 61(3) *Northern Ireland Legal Quarterly* 203-208, 203. Such developing positive obligations more broadly have been subjected to scholarly attention, *inter alia*, Alastair R. Mowbray, *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights* (Hart Publishing 2004); Dimitris Xenos, *The Positive Obligations of the State under the European Convention of Human Rights* (Routledge 2012); Vladislava Stoyanova, *Positive Obligations under the European Convention on Human Rights: Within and Beyond Boundaries* (Oxford University Press 2023).

⁴⁸⁶ For example, *Rantsev v Cyprus and Russia* App no 25965/04 (ECtHR, 7 January 2010) para 286; *CN v The United Kingdom* App no 4239/08 (ECtHR, 13 November 2012) para 67; *J and Others v Austria* App no 58216/12 (ECtHR, 17 January 2017) para 106; *Chowdury and Others v Greece* App no 21884/15 (ECtHR, 30 March 2017) para 88; *TI and Others v Greece* App no 40311/10 (ECtHR, 18 July 2019) para 136; *SM v Croatia* App no 60561/14 (ECtHR, 25 June 2020) para 306; *VCL and AN v The United Kingdom* App nos 77587/12 and 74603/12 (ECtHR, 16 February 2021) para 152; *Zoletic and Others v Azerbaijan* App no 20116/12 (ECtHR, 7 October 2021) para 182; *Krachunova v Bulgaria* App no 18269/18 (ECtHR, 28 November 2023) para 158; *FM and Others v Russia* App nos 71671/16 and 40190/18 (ECtHR, 10 December 2024) para 245.

⁴⁸⁷ *Inter alia*, *CN v The United Kingdom* App no 4239/08 (ECtHR, 13 November 2012) para 69; *LE v Greece* App no 71545/12 (ECtHR, 21 January 2016) para 68; *J and Others v Austria* App no 58216/12

- (iii) to put in place an administrative and legal framework to prohibit and punish the offence of THB;⁴⁸⁸ and
- (iv) to enable VoTs to claim compensation from their traffickers in respect of lost earnings.⁴⁸⁹

For Piotrowicz, the jurisprudence under Article 4 has made it clear that THB is a serious crime, but also ‘raises human rights issues where states fail to take appropriate measures against THB or fail to support victims’.⁴⁹⁰

The ECtHR has increasingly made reference to the provisions of the Trafficking Convention and the reports of GRETA⁴⁹¹ in interpreting the ECHR for the purpose of ‘issuing judgments related to states’ legal obligations to prevent and combat trafficking in human beings’.⁴⁹² The Court in *SM v Croatia*⁴⁹³ outlined reasons why the approach of the Trafficking Convention should be followed in cases concerning Article 4.⁴⁹⁴ First, the approach of the Trafficking Convention is favourable on the basis that it recognises internal THB and also THB without the involvement of an organised criminal group. Secondly, the ECtHR reiterated its previous pronouncement that positive obligations under Article 4 must be construed in light of the Trafficking Convention.⁴⁹⁵ The value of

(ECtHR, 17 January 2017) para 107; *Chowdury and Others v Greece* App no 21884/15 (ECtHR, 30 March 2017) para 89; *TI and Others v Greece* App no 40311/10 (ECtHR, 18 July 2019) para 138; *SM v Croatia* App no 60561/14 (ECtHR, 25 June 2020) para 306; *VCL and AN v The United Kingdom* App nos 77587/12 and 74603/12 (ECtHR, 16 February 2021) para 155; *Zoletic and Others v Azerbaijan* App no 20116/12 (ECtHR, 7 October 2021) para 182; *Krachunova v Bulgaria* App no 18269/18 (ECtHR, 28 November 2023) para 158; *TV v Spain* App no 22512/21 (ECtHR, 10 October 2024) para 118; *BB v Slovakia* App no 48587/21 (ECtHR, 24 October 2024) para 78.

⁴⁸⁸ For instance, *Ransteve v Cyprus and Russia* App no 25965/04 (ECtHR, 7 January 2010) para 285; *LE v Greece* App no 71545/12 (ECtHR, 21 January 2016) para 65; *J and Others v Austria* App no 58216/12 (ECtHR, 17 January 2017) para 106; *Chowdury and Others v Greece* App no 21884/15 (ECtHR, 30 March 2017) para 87 and 105; *SM v Croatia* App no 60561/14 (ECtHR, 25 June 2020) para 306; *VCL and AN v The United Kingdom* App nos 77587/12 and 74603/12 (ECtHR, 16 February 2021) para 151; *Zoletic and Others v Azerbaijan* App no 20116/12 (ECtHR, 7 October 2021) para 182; *Krachunova v Bulgaria* App no 18269/18 (ECtHR, 28 November 2023) para 158.

⁴⁸⁹ *Krachunova v Bulgaria* App no 18269/18 (ECtHR, 28 November 2023) para 177.

⁴⁹⁰ Ryszard Piotrowicz, ‘The European Legal Regime on Trafficking in Human Beings’ in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 49.

⁴⁹¹ *J and Others v Austria* App no 58216/12 (ECtHR, 17 January 2017) para 61; *Chowdury and Others v Greece* App no 21884/15 (ECtHR, 30 March 2017) para 104; *SM v Croatia* App no 60561/14 (ECtHR, 25 June 2020) para 344; *VCL and AN v The United Kingdom* App nos 77587/12 and 74603/12 (ECtHR, 16 February 2021) para 148. See also, GRETA, *1st General Report on GRETA’s Activities covering the period from February 2009 to July 2011* (Council of Europe 2011) 5.

⁴⁹² GRETA, *11th General Report on GRETA’s Activities covering the period from 1 January to 31 December 2021* (Council of Europe 2022) 6.

⁴⁹³ *SM v Croatia* App no 60561/14 (ECtHR, 25 June 2020).

⁴⁹⁴ *ibid* para 295.

⁴⁹⁵ This was reaffirmed in the recent case of *Krachunova v Bulgaria* App no 18269/18 (ECtHR, 28 November 2023) para 164.

the monitoring mechanism is likewise recognised. In *Zoletic and Others v Azerbaijan*,⁴⁹⁶ for example, the ECtHR directly referenced eight extracts from GRETA's report on the situation regarding migrant workers and THB in Azerbaijan.⁴⁹⁷ In *Chowdury and Others v Greece*,⁴⁹⁸ the ECtHR outlined that:

‘member States’ positive obligations under Article 4 of the Convention must be construed in light of the Council of Europe’s Anti-Trafficking Convention ... The Court is guided by that convention and the manner in which it has been interpreted by GRETA’.⁴⁹⁹

For Pati, the connection between GRETA and the judgments of the ECtHR is:

‘very significant, because GRETA utilizes a comprehensive methodology which will enable assessment and monitoring of state action towards prevention and addressing of root causes of human trafficking – mostly responsibilities of human rights law – and not merely the state’s efforts in suppressing human trafficking through crime and immigration control’.⁵⁰⁰

More recently, GRETA has provided written submissions⁵⁰¹ as a third-party intervener to the ECtHR pursuant to Rule 44(3) of the Rules of Court.⁵⁰²

The implementation of the judgments is monitored by the Committee of Ministers⁵⁰³ and it has issued resolutions based on the execution by states of the ECtHR judgments. Stemming from these judgments, the states directly involved in these cases subsequently made a number of amendments. This included introducing new instruments to their legal landscape to tackle THB and institutional reform. In relation to *Rantsev v Cyprus and Russia*,⁵⁰⁴ developments occurred in Cyprus, for example, criminalising THB, abolishing

⁴⁹⁶ *Zoletic and Others v Azerbaijan* App no 20116/12 (ECtHR, 7 October 2021).

⁴⁹⁷ *ibid* para 118.

⁴⁹⁸ *Chowdury and Others v Greece* App no 21884/15 (ECtHR, 30 March 2017).

⁴⁹⁹ *ibid* para 104.

⁵⁰⁰ Roza Pati, ‘Trafficking in Human Beings: The Convergence of Criminal Law and Human Rights’ in Jennifer Bryson Clark and Sasha Poucki (eds), *The Sage Handbook of Human Trafficking and Modern Day Slavery* (Sage Publications 2019) 288.

⁵⁰¹ *SM v Croatia* App no 60561/14 (ECtHR, 25 June 2020) para 260-265; *VCL and AN v The United Kingdom* App nos 77587/12 and 74603/12 (ECtHR, 16 February 2021) para 142-143; *Krachunova v Bulgaria* App no 18269/18 (ECtHR, 28 November 2023) para 142-144; *TV v Spain* App no 22512/21 (ECtHR, 10 October 2024) para 88.

⁵⁰² Rule 44(3) European Court of Human Rights, *Rules of Court* (Council of Europe 2024) 23.

⁵⁰³ As provided for under Convention for the Protection of Human Rights and Fundamental Freedoms, as amended (adopted 4 November 1950, entered in force 3 September 1953) 213 UNTS 222 Article 46(2).

⁵⁰⁴ *Rantsev v Cyprus and Russia* App no 25965/04 (ECtHR, 7 January 2010).

the “artiste” visa regime,⁵⁰⁵ and requiring collaboration between Cypriot and Russian authorities for the purpose of further investigations into the case.⁵⁰⁶ Moreover, in Greece the Criminal Code was amended in 2019 to illustrate efforts made to execute the judgments of *Chowdury and Others v Greece*,⁵⁰⁷ *LE v Greece*⁵⁰⁸ and *TI and Others v Greece*.⁵⁰⁹ In this regard, the Greek Government reported that:

‘Greece has taken indeed effective measures to tackle trafficking in human beings and particularly for labour exploitation purpose, by adapting and enhancing its legislation framework, providing law enforcement agents with the necessary resources and tools to detect and investigate THB cases, developing the specialization of prosecutors and judges to deal with THB cases with a view to ensuring an expeditious trial and effective, proportionate and dissuasive convictions, enhancing training of all the actors in the field and awareness raising in civil society’.⁵¹⁰

Whilst this is a small body of jurisprudence, the case law must not be overlooked for its contribution to anti-trafficking state responses and developments in Europe. The ECtHR has provided some clarity to Contracting States regarding the application of Article 4 to instances of THB. It has placed a number of obligations on states giving some level of certainty and providing, as Skrivankova terms, ‘benchmarks’ on state duties in this context.⁵¹¹ This jurisprudence has been influential in shaping states’ responses to THB and in particular requiring states to show due diligence and to effectively criminalise, investigate and prosecute perpetrators.⁵¹² It has resulted in legal reforms in states and as

⁵⁰⁵ On the “artiste” regime, see Commissioner for Human Rights of the Council of Europe, ‘Report by Thomas Hammarber Commissioner for Human Rights of the Council of Europe Following his visit to the Republic of Cyprus on 7-10 July 2008’ (December 2008) CommDH(2008)36 para 45.

⁵⁰⁶ Council of Europe Committee of Ministers, ‘Execution of the Judgement of the European Court of Human Rights: Rantsev against Cyprus and Russian Federation’ (10 March 2017) CM/ResDH(2017)95; Council of Europe Committee of Ministers, ‘Communication from Cyprus Concerning the Case of Rantsev against Cyprus and the Russian Federation (Application No. 25965/04): Updated Consolidated Action Report’ (December 2014) DH-DD(2014)1373.

⁵⁰⁷ Council of Europe Committee of Ministers, ‘Execution of the Judgement of the European Court of Human Rights: Chowdury and Others against Greece’ (3 September 2020) CM/ResDH(2020)179; *Chowdury and Others v Greece* App no 21884/15 (ECtHR, 30 March 2017).

⁵⁰⁸ *LE v Greece* App No 71545/12 (ECtHR, 21 January 2016).

⁵⁰⁹ Council of Europe Committee of Ministers, ‘Execution of the Judgement of the European Court of Human Rights: Two Cases against Greece (8 December 2020) CM/ResDH(2020)314; *TI and Others v Greece* App No 40311/10 (ECtHR, 18 July 2019).

⁵¹⁰ Council of Europe Committee of Ministers, ‘Communication from Greece Concerning the Case of Chowdury and Others v Greece (Application No. 21884/15): Updated Action Report’ (June 2020) DH-DD(2020)275.

⁵¹¹ Klara Skrivankova, ‘The UK’s Approach to Tackling Modern Slavery in a European Context’ in Gary Craig, Alex Balch, Hannah Lewis and Louise Waite (eds), *The Modern Slavery Agenda: Policy, Politics and Practice in the UK* (Policy Press 2019) 252.

⁵¹² Marta C. Johansson, ‘State (In)capacity to Prevent Human Trafficking: Adequate Responses to the Market for Servitude and Forced Labour, *et al*’ in Joakim Nergelius and Eleonor Kristoffersson (eds), *Human Rights in Contemporary European Law* (Hart Publishing 2015) 115.

observed by Lemmens, its harmonising effect means that the judgments are ‘not only *res judicata*, that is binding upon the respondent State, but also constitute *res interpretata* for all other States parties’.⁵¹³ There is room for further clarification as to how best to achieve the positive and procedural obligations laid down by the ECtHR,⁵¹⁴ but the emerging jurisprudence continues to clarify the offence of THB and expand on the obligations expected of states, including a positive obligation to identify VoTs, as will be discussed in the subsequent substantive chapters of this doctoral study.

Section 2.3. concludes the doctrinal analysis of the international legal framework on THB(-LE) meeting the first stated purpose of this chapter. The next section addresses the second purpose of this chapter, namely, to examine the ambiguity surrounding the definition of THB-LE and highlighting some of the tensions in practice in differentiating between labour law violations and criminal law offences.

2.4. Bottom-Up Stakeholder Perspectives on Trafficking in Human Beings for the Purpose of Labour Exploitation: Alleviating Definitional Ambiguity?

Delineating the scope of legal concepts is important, yet it must be recognised that such terminology may encounter practical difficulties in attempting to capture all the complexities and particular contexts of THB-LE in reality.⁵¹⁵ More precisely, Barrick et al. list a number of reasons for the under-identification of THB-LE⁵¹⁶ but conclude that the primary issue for identification purposes is ‘confusion over its definition’.⁵¹⁷ An exploration of the legal concept of THB-LE, and the challenges in its interpretation, is crucial because without a clear definition of the offence, identification of VoTs would not be feasible. In line with the socio-legal approach of this thesis, this section presents the

⁵¹³ Paul Lemmens, ‘The European Court of Human Rights – Can There Be Too Much Success?’ (2022) 14(1) *Journal of Human Rights Practice* 169-190, 175.

⁵¹⁴ Maria Eriksson, ‘The Prevention of Human Trafficking – Regulating Domestic Criminal Legislation through the European Convention on Human Rights’ (2013) 82(3) *Nordic Journal of International Law* 339-368, 357; Helen Duffy, ‘Litigating Modern Day Slavery in Regional Courts: A Nascent Contribution’ (2016) 14(2) *Journal of International Criminal Justice* 375-403, 403.

⁵¹⁵ Kanchana N. Ruwanpura and Pallavi Rai, *Forced Labour: Definitions, Indicators and Measurement* (Working Paper No. 18, ILO 2004) 3; Luz Estella Nagle, ‘Selling Souls: The Effect of Globalization on Human Trafficking and Forced Servitude’ (2008) 26(1) *Wisconsin International Law Journal* 131-162, 137.

⁵¹⁶ Including confusing THB with smuggling and illegal immigration, a lack of awareness or denial among law enforcement agencies about the problem, victim non-reporting, and the lack of routine contact between potential victims and law enforcement.

⁵¹⁷ Kelle Barrick, Pamela K. Lattimore, Wayne J. Pitts and Sheldon X. Zhang, ‘When Farmworkers and Advocates See Trafficking But Law Enforcement Does Not: Challenges in Identifying Labor Trafficking in North Carolina’ (2014) 61(2) *Crime, Law and Social Change* 205-214, 206.

findings from the qualitative data regarding the legal concept of THB-LE. A key issue raised by participants was distinguishing between instances of labour exploitation which amount to labour law violations, and those falling within the criminal law scope of THB-LE.⁵¹⁸ This section proposes some clarity on the point on the continuum of exploitation⁵¹⁹ at which a labour law violation becomes a severely exploitative THB-LE criminal offence.

In response to the persistent lack of definitional certainty regarding the scope of the concept of (labour) exploitation, it can be useful to ascertain exploitative characteristics that may lead to a more concrete understanding of this concept. To this end, indicators of THB-LE, including those developed by the ILO⁵²⁰ and UNODC,⁵²¹ are a valuable tool to equip frontline stakeholders in the detection of VoTs, as discussed further in Chapter Five.⁵²² Exploitative labour may materialise in terms of the conditions endured by individuals and it has been observed by Ollus that the poorer the working conditions, the greater the risk of serious forms of exploitation.⁵²³ These poor working conditions, especially in informal sectors, allow for the ‘exploitation and strict control of victims’.⁵²⁴ Lewis et al. consider the term exploitation as encompassing instances of low or no pay, long hours, insufficient breaks, broken promises, bullying, or the contravention of labour rights.⁵²⁵ Similarly, a criminal law enforcement official from Hungary stated that ‘They have a contract but they didn't get their salaries and the condition of their work were very poor’.⁵²⁶ Study participants also referred to ‘bottomless working hours’,⁵²⁷ false promises,⁵²⁸ poor undignified living conditions,⁵²⁹ and the absence of a contract⁵³⁰ as

⁵¹⁸ Interview 1; 3; 4; 5; 6; 8; 9; 11; 12; 13; 15; 16; 17; 18; 19; 20; 21; 24; 25; 26; 27; 32; 33; 34; 35; 37; 39; 41; 42.

⁵¹⁹ As set out in section 2.2.1.

⁵²⁰ ILO, *Indicators of Forced Labour* (ILO 2012).

⁵²¹ UNODC, *Toolkit to Combat Trafficking in Persons* (United Nations 2008) 261-262.

⁵²² See section 5.3.3. of Chapter Five.

⁵²³ Natalia Ollus, ‘Regulating Forced Labour and Combating Human Trafficking: The Relevance of Historical Definitions in a Contemporary Perspective’ (2015) 63(5) *Crime, Law and Social Change* 221-246, 225.

⁵²⁴ Diego Hernandez and Alexandra Rudolph, ‘Modern Day Slavery: What Drives Human Trafficking in Europe?’ (2015) 38 *European Journal of Political Economy* 118-139, 121.

⁵²⁵ Hannah Lewis, Peter Dwyer, Stuart Hodgkinson and Louise Waite, *Precarious Lives: Forced Labour, Exploitation and Asylum* (Policy Press 2015) ix.

⁵²⁶ Interview 42 (an Inspector).

⁵²⁷ Interview 1.

⁵²⁸ Interview 13 (a NGO supporting migrant workers).

⁵²⁹ Interview 17 (a THB-LE focused NGO).

⁵³⁰ Interview 10.

characteristics of exploitative conditions. An Icelandic trade unionist noted the complexity and cyclical nature of the exploitative working practices as follows:

‘[you are] rather isolated, you work really long hours and then the employer actually get back almost all of your money because of lodging and food. So you’re basically just working for lodging and food and nothing else’.⁵³¹

The main challenge therefore is unpacking these exploitative characteristics in order to equip stakeholders to categorise exploitative situations as labour law violations or as the criminal law offence of THB-LE.⁵³² A Spanish labour inspector interviewee described this difficulty and the necessity to assess instances on a case-by-case basis:

‘in some cases, it’s more easy because the conditions are so terrible that it’s almost obvious that [it] is a criminal case. But in some other cases, of course, it’s more difficult to define the limit between labour exploitation maybe or trafficking in human beings. So it depends on the case’.⁵³³

This illustrates that a concrete understanding of the precise composition of THB-LE is vital for the prompt and accurate identification of VoTs,⁵³⁴ but also reveals a complexity for stakeholders in making the judgement between a situation being deemed as a labour law violation or as a criminal law offence in practice.

2.4.1. Unravelling the Material Scope of Trafficking in Human Beings for the Purpose of Labour Exploitation: The Point at which an Exploitative Situation Becomes a Criminal Law Offence

In drawing a line between labour law violations and the criminal law offence of THB-LE, a certain threshold is necessary to meet the standard required under criminal law. An overarching difficulty encountered by stakeholders in identifying victims of THB-LE related to the uncertainty surrounding the applicable threshold of the offence.⁵³⁵ As a Belgian NGO interviewee stated ‘it’s easy enough to prove or show exploitation. It’s

⁵³¹ Interview 1.

⁵³² Council of Europe, ‘Explanatory Memorandum to Recommendation CM/Rec(2022)21 of the Committee of Ministers to Member States on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation’ (27 September 2022) CM(2022)141-add5final para 40.

⁵³³ Interview 26.

⁵³⁴ Venla Roth, *Defining Human Trafficking and Identifying its Victims: A Study on the Impact and Future Challenges of International, European and Finnish Legal Responses to Prostitution Related-Trafficking in Human Beings* (Martinus Nijhoff Publishers 2012) 286.

⁵³⁵ Interview 7.

harder to show or prove human trafficking'.⁵³⁶ They continued to outline a scenario to explain this:

'he worked in that restaurant? Yes. He worked 16 hours. Okay, all that was proven, he's definitely been exploited, but is that person the victim of trafficking? Was he forced to stay there physically? No. Okay, were his papers taken away from him? No. Okay, was there any form of coercion? Why did he stay? The final question is if he had the means to leave. Okay, then it's not trafficking. Unfortunately, people then don't talk about the psychological pressure and obviously also, the impact of trauma'.⁵³⁷

Likewise a Dutch NGO participant stated that 'we're still all searching a little bit for people to fulfil the right criteria'⁵³⁸ but this is challenging when there is no "perfect" VoT. They continued to outline that:

'the threshold is really too high when we talk about human trafficking for labour exploitation. So that means that there are few cases investigated, and then of these investigated cases, there are even fewer that in which the exploiters are punished somehow, the judge is speaking against them. So the threshold is very high and I wouldn't be against the high threshold if there would be something else for the group a little bit less exploited. But if there is not so much for them, then it's difficult for this group of people to claim their rights, because they should be either very severely exploited, then they get all the procedures there are. Or if you are a little bit exploited, then you don't get anything and I think that's very problematic'.⁵³⁹

In some cases, due to the setting of a high threshold,⁵⁴⁰ there may be a tendency to conclude cases on the basis of a violation of labour law rather than as a criminal offence of THB-LE.⁵⁴¹ This was likewise pointed out by a Bulgarian labour inspector participant who noted that:

'they do not resolve "this is a case of human trafficking", usually it is just the violation of labour rights that is finally proved, because proving human trafficking for labour exploitation is quite difficult'.⁵⁴²

⁵³⁶ Interview 20 (a THB focused NGO).

⁵³⁷ *ibid.*

⁵³⁸ Interview 37 (a NGO working in the area of labour exploitation).

⁵³⁹ *ibid.*

⁵⁴⁰ Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Survey Report 2021 of Efforts to Implement OSCE Commitments and Recommended Actions to Combat Trafficking in Human Beings* (OSCE 2022) 74.

⁵⁴¹ Gillian Wylie, *The International Politics of Human Trafficking* (Palgrave Macmillan 2016) 6.

⁵⁴² Interview 32.

Furthermore, a Swiss trade unionist outlined a consequence of this approach in that there is ‘almost no case law on these issues’ regarding THB-LE in their jurisdiction, instead the existing body of case law primarily concerns ‘serious labour law violations’.⁵⁴³ This can impact on the recorded instances of THB-LE within the state, and access to support and assistance measures for (potential) VoTs which are contingent on the identification procedure and a positive decision as to VoT status.

Study participants, including an Austrian NGO interviewee, highlighted a further issue relating to concerns that in practice it is not necessary to ‘prove sexual exploitation as much as you have to prove labour exploitation’, articulating that the standards applied are ‘different’.⁵⁴⁴ This was expanded on by a Dutch trade unionist who explained that:

‘because of the fact that these are combined, you could have a, your average day in court would be that judges have eight cases of sexual exploitation and two, for example, for labour exploitation. And if you have had eight cases of sexual exploitation, these labour exploitation cases don’t seem to be so severe’.⁵⁴⁵

Stemming from the above complexities, participants in the qualitative data were concerned about the “grey area”, whereby exploited individuals who do not reach the threshold of a criminal offence do not receive support,⁵⁴⁶ and this is similarly raised as a concern in the scholarly literature.⁵⁴⁷ The implication of not reaching the requisite level to meet the THB-LE threshold was captured by a NGO interviewee from Norway who stated that this grey area ‘just outside of the legal definition of a trafficking victim’ can cause difficulty, in that:

‘we see that the exploitation is very much the same. It’s just that they don’t access support, and they don’t have the legal rights as if they were potential victims. So I think that is possibly the biggest challenge that we have’.⁵⁴⁸

In addition, a Norwegian trade unionist, referring to the existence of a ‘big gap’ in the approach to assistance provision between instances of labour exploitation and THB-LE,

⁵⁴³ Interview 3.

⁵⁴⁴ Interview 6 (a NGO focused on assisting migrant women).

⁵⁴⁵ Interview 41.

⁵⁴⁶ Interview 4; 19; 35; 37.

⁵⁴⁷ Dina Francesca Haynes, ‘Exploitation Nation: The Thin and Grey Legal Lines between Trafficked Persons and Abused Migrant Laborers’ (2009) 23(1) *Notre Dame Journal of Law, Ethics & Public Policy* 1-72; Amy Weatherburn, ‘What is Labour Exploitation? The Belgian and British Experience’ (2021) 43(1) *Archives of Criminology* 47-73, 48.

⁵⁴⁸ Interview 19 (a NGO supporting vulnerable populations).

stated ‘that’s something that needs to be dealt with’.⁵⁴⁹ There is an argument for the provision of supports and assistance for individuals in the grey area who do not meet the threshold of THB-LE, but whose situation clearly indicates that they have been severely exploited. As a Dutch NGO participant recommended:

‘if the threshold is so high, then organise something for the other group as well now, or make the threshold a little bit lower, or organise something for other people with serious labour problem. I find it just a little bit strange. If it’s a real crime then you get everything you need, and if it’s a little bit less then just sort it out yourself’.⁵⁵⁰

This was likewise called for by a Belgian NGO interviewee who stated that:

‘I think what’s in place for human trafficking is very good, but we would, you should put something in place for cases where [it is] not human trafficking and sometimes they’re on the brink’.⁵⁵¹

This underscores the importance of the VoT status for accessing the associated rights,⁵⁵² as discussed in section 2.2.2.2. This designation process is a particular challenge for THB-LE as exploited individuals may not identify with that victim label,⁵⁵³ yet the consequences of not obtaining this status are considerable. As a result, these individuals who do not meet the criminal law threshold may remain in this grey area and subjected to exploitative conditions, may not receive sufficient support or assistance, and potentially face additional challenges in terms of possible deportation.⁵⁵⁴ It is through the recognition and intolerance of all forms of labour exploitation that concrete change may be achieved, as pronounced by Giammarinaro:

‘it is essential to understand that a broader area of exploitation must be addressed, as the protection of the rights of all vulnerable persons, including migrants, is key to preventing trafficking and exploitation, and to detecting trafficking situations’.⁵⁵⁵

⁵⁴⁹ Interview 4.

⁵⁵⁰ Interview 37 (a NGO working in the area of labour exploitation).

⁵⁵¹ Interview 36 (a NGO specialising in assisting undocumented migrants).

⁵⁵² Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 12.

⁵⁵³ This has likewise received attention in the scholarly body on a broader account regarding victims of crime, *inter alia*, Basia Spalek, *Crime Victims: Theory, Policy and Practice* (Palgrave Macmillan 2006) 9.

⁵⁵⁴ Maggy Lee, *Trafficking and Global Crime Control* (Sage Publications 2011) 19.

⁵⁵⁵ Maria Grazia Giammarinaro, ‘The Role of the UN Special Rapporteur on Trafficking in Persons, Especially Women and Children’ in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 441.

In recognising the broader occurrence of exploitation, a clear need to address structural inadequacies emerges,⁵⁵⁶ especially those which create vulnerability to exploitation,⁵⁵⁷ including for example restrictive immigration regimes.⁵⁵⁸

From a practical standpoint, O’Connell Davidson observes that:

‘People’s experience of exploitation, abuse, powerlessness and restriction ranges along a continuum. This means that those seeking to operationalize the concept of “trafficking” have to make a judgment about the point on that spectrum at which “appropriate” exploitation/force ends and “inappropriate” exploitation/force begins’.⁵⁵⁹

This is a major challenge in reality, with an Irish NGO interviewee articulating that:

‘the reason for the numbers being low, I think, is primarily because the trafficking and exploitation are on a continuum really. So people will be exploited, but it’s just when did that exploitation become trafficking. It’s very very subjective. It’s very difficult to measure’.⁵⁶⁰

This was also a concern for a Dutch NGO participant who commented that while the concept of a continuum may be helpful, it is not always clear-cut, and noted that ‘if we talk about labour exploitation, it’s very difficult still to draw the line where trafficking stops, where we talk only about labour exploitation’.⁵⁶¹ This concurs with Chuang’s conclusion that:

‘the point along the continuum where lesser exploitation ends and trafficking begins is significant in that it marks a division of labor between labor/employment law and criminal law regimes. But precisely *where* that point lies has never been clear’.⁵⁶²

⁵⁵⁶ Kate Roberts, ‘Human Trafficking: Addressing the Symptom, Not the Cause’ in Gary Craig, Alex Balch, Hannah Lewis and Louise Waite (eds), *The Modern Slavery Agenda: Policy, Politics and Practice in the UK* (Policy Press 2019) 153; Jon Davies and Natalia Ollus, ‘Labour Exploitation as Corporate Crime and Harm: Outsourcing Responsibility in Food Production and Cleaning Services Supply Chains’ (2019) 72(1) *Crime, Law and Social Change* 87-106, 88.

⁵⁵⁷ Virginia Mantouvalou, ‘The UK Modern Slavery Act 2015 Three Years On’ (2018) 81(6) *Modern Law Review* 1017-1045, 1045; Virginia Mantouvalou, ‘Structural Injustice and the Human Rights of Workers’ (2020) 73(1) *Current Legal Problems* 59-87, 63.

⁵⁵⁸ Julia O’Connell Davidson, ‘Will the Real Sex Slave Please Stand Up?’ (2006) 83(1) *Feminist Review* 4-22, 20.

⁵⁵⁹ Julia O’Connell Davidson, ‘New Slavery, Old Binaries: Human Trafficking and the Borders of “Freedom”’ (2010) 10(2) *Global Networks* 244-261, 250.

⁵⁶⁰ Interview 21 (a NGO supporting migrant workers).

⁵⁶¹ Interview 18 (a THB focused NGO).

⁵⁶² Janie A. Chuang, ‘Contemporary Debt Bondage, “Self-Exploitation,” and the Limits of the Trafficking Definition’ in Prabha Kotiswaran (ed), *Revisiting the Law and Governance of Trafficking, Forced Labor and Modern Slavery* (Cambridge University Press 2017) 126.

This is similarly acknowledged by GRETA who state that the exact point on this continuum whereby labour exploitation ‘changes from being considered a problem of labour law to becoming an issue under criminal law’ is unclear.⁵⁶³ It is a concern that has been reiterated by scholars in the literature,⁵⁶⁴ who note that there is no consensus as to the point on the continuum where the acceptable becomes the unacceptable and a problem of labour law becomes a problem of criminal law.⁵⁶⁵ This was also borne out in the qualitative interviews,⁵⁶⁶ with a Bulgarian labour inspector and a Finnish trade unionist articulating respectively that ‘the line is too tight between violation of labour rights and human trafficking’,⁵⁶⁷ and that the law ‘could be clearer on the grey area’.⁵⁶⁸ Due to this uncertainty, a Swedish trade unionist stressed the need for co-operation amongst all relevant stakeholders and recommended that:

‘the authorities has to work together on this, and they have to make up a divide, so to speak, between the severe exploitation and exploitation. So when it comes to severe exploitation, there shouldn’t be a blurred line’.⁵⁶⁹

Some indication regarding when exploitation becomes a criminal offence was expressed by certain interviewees in the qualitative data. A UK NGO participant posited that the point on the continuum whereby a situation becomes one of THB-LE is ascertained by determining whether ‘that person is free to leave that situation without fear of retribution

⁵⁶³ GRETA, *Compendium of Good Practices in Addressing Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2020) 5; GRETA, *Guidance Note on Preventing and Combatting Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2021) 6.

⁵⁶⁴ Anne T. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010) 49; Julie Kaye, John Winterdyk and Lara Quarterman, ‘Beyond Criminal Justice: A Case Study of Responding to Human Trafficking in Canada’ (2014) 56(1) *Canadian Journal of Criminology and Criminal Justice* 23-48, 32; Amy Farrell and Rebecca Pfeffer, ‘Policing Human Trafficking: Cultural Blindness and Organizational Barriers’ (2014) 653(1) *The Annals of the American Academy of Political and Social Science* 46-64, 50; John Winterdyk, ‘Combating Human Trafficking at the Local Level: Better Informing (Inter)national Action Plans’ (2017) 55(2) *International Annals of Criminology* 220-236, 227.

⁵⁶⁵ Deirdre Coghlan and Gillian Wylie, ‘Defining Trafficking/Denying Justice? Forced Labour in Ireland and the Consequences of Trafficking Discourse’ (2011) 37(9) *Journal of Ethnic and Migration Studies* 1513-1526, 1522; Conny Rijken, ‘Trafficking in Human Beings for Labour Exploitation: Cooperation in an Integrated Approach’ (2013) 21(1) *European Journal of Crime, Criminal Law and Criminal Justice* 9-35, 12; Vladislava Stoyanova, *Human Trafficking and Slavery Reconsidered: Conceptual Limits and States’ Positive Obligations in European Law* (Cambridge University Press 2017) 66.

⁵⁶⁶ A Swedish NGO representative (Interview 27, a THB focused NGO) stated:

‘I think that not many people are aware ... where do you go from just not being granted your labour rights or, and when is it actually exploitation and criminal in a whole other sense’.

⁵⁶⁷ Interview 32.

⁵⁶⁸ Interview 39.

⁵⁶⁹ Interview 24.

of violence or control.’⁵⁷⁰ A Belgian NGO interviewee offered a different perspective on this demarcation as follows:

‘we often think that there are clear signs of exploitation and in the law, it’s also written that, for example, when a client of a person is very vulnerable and [the] employer is making abuse of this vulnerability, it’s already a sign of exploitation. But of course, you can interpret this in many different ways, and usually the authorities, well first it’s us, we see a relatively big group of people that we think they are possible victims of exploitation. Then we send them to the inspectors or to the police. I mean we discuss with them whether they also think they have, they see signs of exploitation. Then the group already becomes smaller. So they say about some people “well, this is not really exploitation, it’s bad employership. There’s no force”. Or under this, usually the issue [is] that there’s not enough force and the person did have a choice to leave. But the choice to leave is also very subject to interpretation because if you have no documents, if you don’t speak the language, if you are coming from a very poor family in Brazil, then what real choice do you have to leave the house where you are working?’⁵⁷¹

A similar comment was made by a labour inspector from Bulgaria discussing the requirement of control or coercion in the context of a criminal investigation who outlined that:

‘they have a need to find the coercion factor regarding trafficking in human beings and in terms of labour exploitation, it is quite difficult to point to where this factor is final. Because when you’re going by your own will to work somewhere, so yes, the salary is not okay, the living environment, the working environment is not okay. But since you’re free to go and to leave this place, this might not be a human trafficking and it is quite difficult to make the difference’.⁵⁷²

In addition, a German trade union participant captured this complexity stating ‘I think the line is fluid’ and explained that:

‘The criminal law draws a line basically when there’s coercion. So when the person cannot decide on their own about the use of their labour force more or less because they are coerced in one way or another. So, but this coercion is obviously also fluid and is not always very easy to prove’.⁵⁷³

As demonstrated by these particular participant accounts, there is an emphasis placed on coercion and force in differentiating between labour law violations and THB-LE. It also

⁵⁷⁰ Interview 8 (a THB focused NGO). This was reiterated by Interview 16 (a THB focused NGO).

⁵⁷¹ Interview 37 (a NGO working in the area of labour exploitation).

⁵⁷² Interview 32.

⁵⁷³ Interview 34.

underlines the weight placed by stakeholders operating on the frontline on the (in)ability of (potential) VoTs to physically leave the exploitative situation. While the former aspects are part of the listed ‘means’ element within the THB definition, there is a risk with the understanding of this demarcation through these aspects only, as it does not fully capture the various ‘means’ contained within the THB definition,⁵⁷⁴ nor does it coincide with existing indicators of THB-LE.⁵⁷⁵ A possible implication is that only those cases with clear signs of the use of force or coercion,⁵⁷⁶ or a physical inability to leave a location, will be recognised and classified as THB-LE. Resultantly, the consequence is considerable for (potential) VoTs whose situations do not conform to these particular characteristics. This may limit the identification of VoTs of THB-LE to those situations demonstrating physical restraint and an application of force. Instead, a more comprehensive understanding of subtle forms of control on the part of stakeholders operating on the frontline is required.

In sum, this analysis highlights the difficulty in applying the concept of THB-LE on the ground and underlines the importance of equipping stakeholders with indicators of THB-LE which provide a more comprehensive understanding of the illicit practice, as discussed further in Chapter Five.⁵⁷⁷ In addition, co-operation between labour law and criminal law stakeholders would enable a more thorough analysis and understanding of the individual circumstances of each instance of THB-LE, as discussed in Chapter Four.

Conclusion

This chapter presented a doctrinal analysis of the international THB legal framework from 1904 to present. The analysis revealed that international law instruments initially had a particular focus on the sexual exploitation of women and girls and the criminalisation of

⁵⁷⁴ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 4(a); Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 3(a).

⁵⁷⁵ UNODC, *Toolkit to Combat Trafficking in Persons* (United Nations 2008); ILO, *Indicators of Forced Labour* (ILO 2012).

⁵⁷⁶ The ILO has identified common forms of coercion in the context of forced labour, demonstrating the broad nature of this concept, to include: physical or sexual violence; abuse of isolation; restrictions on workers’ movement; retention of cash, assets, or identity documents; withholding of wages; abuse or manipulation of debt; abuse of vulnerability; induced addiction; abuse of state authority, ILO, *Hard to See, Harder to Count: Handbook on Forced Labour Surveys* (ILO 2024) 16-18.

⁵⁷⁷ See section 5.3.3. of Chapter Five.

perpetrators. There has been a considerable shift in the legal response to THB over the last twenty years and state obligations continue to evolve. The Palermo Protocol was a significant addition to the legal apparatus and positive developments relate to the express expansion of the definition of THB to include forms of exploitation beyond the focus on sexual exploitation under the League of Nations treaties.⁵⁷⁸ The provisions of the Trafficking Convention are a notable complement to, and enhancement of, those provided for in the Palermo Protocol.⁵⁷⁹ In particular, the Trafficking Convention was the first legal instrument to expressly place an obligation on Contracting States to identify VoTs.⁵⁸⁰

An important contribution of the Trafficking Convention to the field of THB is its explicit adoption of a human rights-based approach to tackle the phenomenon, shifting towards the primacy of victim protection measures over the punishment of perpetrators. This chapter demonstrates that the Trafficking Convention has provided a comprehensive set of obligations for Contracting States, encompassing a range of preventative, protective and prosecutorial measures to enable states to effectively combat THB(-LE). The examination in this chapter reveals the tensions in balancing criminal justice objectives and the protection of victims' rights. Another significant aspect of the Trafficking Convention is its monitoring mechanism. GRETA has, to a large extent, provided helpful guidance regarding the application and interpretation of the provisions under the Trafficking Convention. However, this chapter questions the overall effectiveness of this monitoring mechanism in prompting states to develop their anti-trafficking response, particularly in terms of the absence of sanctions for a failure to adhere to the recommendations made.

The human rights-based approach is bolstered by the emerging jurisprudence on Article 4 of the ECHR.⁵⁸¹ The ECtHR has pronounced several positive obligations on states, including to identify and support potential VoTs.⁵⁸² Notwithstanding the criticisms levelled at the THB legal framework in this chapter, the requirements on and benchmarks

⁵⁷⁸ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319.

⁵⁷⁹ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10.

⁵⁸⁰ *ibid.*

⁵⁸¹ Convention for the Protection of Human Rights and Fundamental Freedoms, as amended (adopted 4 November 1950, entered in force 3 September 1953) 213 UNTS 222 Article 4.

⁵⁸² See for example, *J and Others v Austria* App no 58216/12 (ECtHR, 17 January 2017) para 109.

for Contracting States are clear, but the realisation of these obligations, through effective implementation, remains a core challenge. This collective framework provides a means through which an integrated approach to THB-LE may be achieved, rather than solely utilising criminal justice as the lens to address this phenomenon.

By examining the legal concept of THB-LE, this chapter underlines inherent challenges in its practical application. Despite reaching a general consensus on a definition of THB under Article 3(a) of the Palermo Protocol⁵⁸³ and Article 4(a) of the Trafficking Convention,⁵⁸⁴ this does not hold true for THB-LE and there is significant ambiguity regarding its scope. To this end, a continuum of exploitation offers some insight as to the distinction between labour law violations and criminal law offences. Yet, the precise point of differentiation on this continuum remains unclear and subject to debate. Grounded in the qualitative data, this chapter reveals certain factors which could illuminate this threshold, namely, coercion and the control of movement. An issue however is that stakeholders may only look for these specific factors in determining instances of THB-LE. Further to this, the analysis draws attention to the lack of support for those in the grey area who have endured exploitation, but who do not meet the (high) threshold of THB-LE.

Chapter Two has thus explored the existing legal framework on THB(-LE), key legal concepts and the definitional issues surrounding the legal concept of THB-LE. Subsequent chapters expand upon the specific aspects of the identification obligation on states drawing on the relevant provisions of the Trafficking Convention in that analysis. Chapter Three intensively engages with an analysis of the requirements under Article 10 of the Trafficking Convention and highlights the limitations to the scope of Article 10. It investigates the approaches adopted by states in Europe in terms of the designation of competent authorities and the existence of a National Referral Mechanism as part of the identification procedure.

⁵⁸³ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 3(a).

⁵⁸⁴ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 4(a).

Chapter Three – A Critical Examination of Core Aspects of the Identification Procedure

Introduction

This chapter examines the procedure for identifying victims of trafficking in human beings (VoTs), with a particular focus on barriers to creating a comprehensive identification procedure for victims of trafficking in human beings for the purpose of labour exploitation (THB-LE). It does so from both a legal and operational standpoint, and focuses on two important aspects in the identification procedure: the designated competent authorities (CAs) and the National Referral Mechanism (NRM). For the purpose of this chapter, a CA is the authority with the mandate to make decisions on the allocation of the victim status, and the NRM is a co-operation structure for referring potential instances of THB-LE for identification and support. It is necessary to investigate CAs and NRMs due to their key roles in the identification procedure, and as Hoyle et al. assert:

‘the status as victim is determined, not only by the experiences of those harmed, but also by the perceptions of those who come into contact with them and have the power to affix or reject such a label’.¹

As discussed in Chapter Two,² Article 10 of the Council of Europe Convention on Action against Trafficking in Human Beings (Trafficking Convention) places obligations on Contracting States in relation to the identification of VoTs.³ This chapter combines a legal analysis of the Article 10 obligation with the insights of study participants in the qualitative data to facilitate a critical assessment of the realities of the identification procedure in practice and the limitations to the scope of Article 10 of the Trafficking Convention.

¹ Carolyn Hoyle, Mary Bosworth and Michelle Dempsey, ‘Labelling the Victims of Sex Trafficking: Exploring the Borderland Between Rhetoric and Reality’ (2011) 20(3) *Social & Legal Studies* 313-329, 315.

² See section 2.2.2.2. of Chapter Two.

³ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10.

The small body of scholarship investigating the identification of VoTs, as outlined in Chapter One,⁴ generally focuses on the challenges of identifying victims,⁵ rather than analysing the formal legal procedure itself and the structures in place in states to give effect to that legal procedure.⁶ In this vein, Brunovskis and Surtees have concluded that there are both institutional and personal barriers to identification, including *inter alia*, privileging VoTs who fit a stereotypical victim image and previous negative experiences with assistance provision.⁷ Moreover, academic literature has not fully engaged with an evaluation of designated CAs for identification purposes and although there are a number of policy documents developed by international organisations regarding the establishment of NRMs,⁸ scholarly studies centring on NRMs are limited.⁹ Roberts, for example, has been highly critical of the NRM in place in the United Kingdom (UK) on the basis that it is ‘a blunt system and misses opportunities to prevent abuse and rebuild lives’, but also due to the fact that adequate data on VoTs who journey through the mechanism is scarce.¹⁰ This chapter contributes to the scholarly literature by analysing the legal obligation to

⁴ See section 1.3.2. of Chapter One.

⁵ See, *inter alia*, Jane Nady Sigmon, ‘Combating Modern-Day Slavery: Issues in Identifying and Assisting Victims of Human Trafficking Worldwide’ (2008) 3(2-3) *Victims & Offenders* 245-257; Amy Farrell, Jack McDevitt and Stephanie Fahy, ‘Where Are All the Victims? Understanding the Determinants of Official Identification of Human Trafficking Incidents’ (2010) 9(2) *Criminology & Public Policy* 201-233; Frances H. Recknor, ‘Health-care Provider Challenges to the Identification of Human Trafficking in Health-Care Settings: A Qualitative Study’ (2018) 4(3) *Journal of Human Trafficking* 213-230; Veronica M. Herrera and Lidia E. Nuño, ‘Challenges to Identifying Labor Trafficking at the Local Level: A Qualitative Study of Service Providers and Stakeholders in California’ (2024) *Journal of Human Trafficking* <https://doi.org/10.1080/23322705.2023.2301216>.

⁶ With limited exception, see Vladislava Stoyanova, ‘Article 10: Identification of the Victims’ in Julia Planitzer and Helmut Sax (eds), *A Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings* (Elgar Publishing 2020); Noemi Magugliani, Jean-Pierre Gauci and John Trajer, *Identification of Adults with Lived Experience of Modern Slavery in the UK* (Modern Slavery & Human Rights Policy & Evidence Centre 2024).

⁷ Anette Brunovskis and Rebecca Surtees, ‘Identification of Trafficking Victims in Europe and the Former Soviet Union’ in Jennifer Bryson Clark and Sasha Poucki (eds), *The Sage Handbook of Human Trafficking and Modern Day Slavery* (Sage Publications 2019) 349.

⁸ Perhaps most notably, the OSCE and ODIHR, *National Referral Mechanisms – Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook* (OSCE 2004); OSCE and ODIHR, *National Referral Mechanisms – Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook* (2nd edn, OSCE 2022).

⁹ Jyothi Kanics, ‘National Referral Mechanisms’ in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018); Astrid Winkler, ‘Identification and Protection of Trafficked Children – Mechanisms of Coordination and Cooperation’ in Belachew Gebrewold, Johanna Kostenzer and Andreas Th. Müller (eds), *Human Trafficking and Exploitation: Lessons From Europe* (Routledge 2018); Joshua Findlay, ‘Modern Slavery, Victim Identification and the “Victimized State”’ (2024) *British Journal of Criminology* <https://doi.org/10.1093/bjc/azae061>.

¹⁰ Kate Roberts, ‘Human Trafficking: Addressing the Symptom, Not the Cause’ in Gary Craig, Alex Balch, Hannah Lewis and Louise Waite (eds), *The Modern Slavery Agenda: Policy, Politics and Practice in the UK* (Policy Press 2019) 153 and 156.

identify VoTs under international law and using the on the ground stakeholder perspectives to reveal the core barriers to structural change.

The findings in this chapter reveal that states are meeting the basic requirements of Article 10 of the Trafficking Convention,¹¹ for example, by putting in place a designated CA for the formal identification of VoTs. However, these CAs are overwhelmingly criminal justice stakeholders, despite numerous calls by monitoring bodies to expand the scope of professionals engaged in this role. This indicates that notwithstanding an increased emphasis on a human rights-based approach to address trafficking in human beings (THB),¹² and increasing scholarship proposing a labour law approach,¹³ a strong criminal justice approach remains in practice. However, the qualitative data demonstrates that expanding the formal identification mandate to include other relevant stakeholders, such as labour inspectors, is a complex undertaking. There are conflicting agendas for those stakeholders who have the dual role of monitoring immigration-related issues and identifying victims of THB-LE. It further highlights a concern with overburdening authorities who are already faced with a broad mandate and struggle with capacity due to inadequate resourcing. NRMs in most European states, whether on a formal or informal basis, must be structured in order to take into account the broad range of individuals who may encounter instances of THB-LE, providing a streamlined referral process to enable the identification of VoTs. The data shows the diverse ways in which VoTs are encountered, indicating the avenues which should be facilitated by the NRM, for example, through establishing a THB hotline linked to the NRM. This chapter also reveals practical barriers to VoTs reporting, relating to the fear and distrust of public authorities and low levels of self-declaration¹⁴ as a VoT. Most notably, these were the most frequently cited barriers by study participants in response to the questions posed on identification. A striking finding is that stakeholders place a considerable emphasis on

¹¹ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10.

¹² This is clearly demonstrated in the approach of the Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 through the inclusion of protecting the human rights of victims of trafficking as one of its purposes.

¹³ For example, Anniina Jokinen, Natalia Ollus and Kauko Aromaa (eds), *Trafficking for Forced Labour and Labour Exploitation in Finland, Poland and Estonia* (HEUNI 2011); Hila Shamir, 'A Labor Paradigm for Human Trafficking' (2012) 60(1) *UCLA Law Review* 76-136.

¹⁴ As further elucidated in section 3.4.3.2. of this Chapter, this thesis utilises the term 'self-declaration' rather than the scholarly terminology of self-identification. This is based on the conceptualisation of the identification procedure adopted, as detailed in section 3.2.3.

the VoTs themselves in their discussion on barriers, rather than on the structures in place. This is a concerning finding on the basis that the onus of identification is placed on the VoTs to self-declare. In addition, this chapter asserts, on the basis of the stakeholder perspectives, the necessity to conceptualise the identification procedure as involving a detection process and a formal identification process. This extends beyond the scope of the Article 10 obligation which is limited to formal identification.

The chapter is structured in four sections. First, it outlines the importance of the identification obligation, drawing on scholarly literature, publications by international organisations, and the stakeholder perspectives. Secondly, it clarifies the terms used throughout this chapter (and the subsequent chapters). This includes the distinction between the two processes within the identification procedure, namely detection and formal identification. Thirdly, the chapter examines the legal obligation to identify under international law, focusing on the requirements contained within Article 10 of the Trafficking Convention and the ‘reasonable grounds’ and ‘conclusive decision’ assessments. The final section appraises practical barriers relating to current identification practices in place across European states as voiced by the study participants. In doing so, it assesses the designation of CAs by states in relation to the formal identification of victims of THB-LE and analyses the challenge in expanding the formal identification mandate to other relevant stakeholders. It discusses the development of a NRM in structuring the identification procedure and highlights diverse avenues through which (potential) victims of THB-LE may be encountered. It examines barriers to victim reporting, concentrating on the fear of authorities and self-declaration as a VoT. This chapter draws on the qualitative data throughout, with a particular emphasis on the stakeholder critical insights in section 3.4.

3.1. The Importance of Identification as a Victim of Trafficking in Human Beings for the Purpose of Labour Exploitation

Prior to investigating the structural and operational complexities of the identification procedure, it is important to encapsulate the significance of identification as a VoT. This is an essential aspect that lies ‘at the heart’ of an anti-trafficking response¹⁵ due to the

¹⁵ Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Survey Report 2021 of Efforts to Implement OSCE Commitments and Recommended Actions to Combat Trafficking in Human Beings* (OSCE 2022) 74.

‘legal significance’ of the status of VoT.¹⁶ Accurate and timely identification is necessary to ensure that victims, who may have been subjected to traumatic physical and/or psychological experiences, receive the assistance and support to which they are entitled to under international¹⁷ and national law.¹⁸ The Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings (Explanatory Report), for instance, outlines that:

‘to protect and assist trafficking victims it is of paramount importance to identify them correctly. Article 10 seeks to allow such identification so that victims can be given the benefit of measures provided for in Chapter III’.¹⁹

As the Group of Experts on Action against Trafficking in Human Beings (GRETA) has stated:

‘Unless victims of trafficking are recognised in a manner entitling them to all the protection and assistance measures set out in the Convention, it would be impossible to remove them from the traffickers, re-integrate them into society and restore their violated rights and dignity’.²⁰

Further to this, as Skilbrei concludes, uncovering instances of THB-LE and improving identification rates may result in relevant stakeholders becoming ‘more accustomed’ to THB and its many exploitative forms.²¹

¹⁶ GRETA, *Guidance Note on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2021) 20.

¹⁷ For example, under Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 6 and Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 12.

¹⁸ UN Special Rapporteur on Trafficking in Persons, especially Women and Children, ‘Identification, Protection of and Assistance to Victims of Trafficking’ (12 August 2009) A/64/290, para 34; Vladislava Stoyanova, *Human Trafficking and Slavery Reconsidered: Conceptual Limits and States’ Positive Obligations in European Law* (Cambridge University Press 2017) 91; Silvia Rodríguez-López, ‘The Invisibility of Labour Trafficking in Spain. A Critical Analysis of Cases and Policies’ (2020) 18(2) *Revista Española de Investigación Criminológica* 1-25, 8; Vladislava Stoyanova, ‘Article 10: Identification of the Victims’ in Julia Planitzer and Helmut Sax (eds), *A Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings* (Elgar Publishing 2020) 133; Sallie Yea, ‘Human Trafficking and Jurisdictional Exceptionalism in the Global Fishing Industry: A Case Study of Singapore’ (2022) 27(1) *Geopolitics* 238-259, 239.

¹⁹ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 127.

²⁰ GRETA, *2nd General Report on GRETA’s Activities covering the period from 1 August 2011 to 31 July 2012* (Council of Europe 2012) 12.

²¹ May-Len Skilbrei, ‘Taking Trafficking to Court’ (2010) 20(1-2) *Women & Criminal Justice* 40-56, 51.

Notwithstanding its importance, Gallagher has referred to identification as ‘notoriously complex and time-consuming’.²² In practice, it is one of the most difficult aspects of anti-trafficking efforts²³ and it is acknowledged that the allocation of victim status is ‘not a simple question to answer’.²⁴ Cryer et al. have stated that:

‘the question of who formally qualifies as a “victim” is important because the number of eligible victims, and hence the pressures and resource demands on the criminal justice system, depend on whether a broader or a more restrictive definition is adopted’.²⁵

As examined in Chapter Two,²⁶ such definitional ambiguity is particularly evident in the context of THB-LE, which can compound challenges for the identification of victims of this exploitative purpose.

The identification of (potential) VoTs is described in the scholarly literature as a considerable and persistent challenge faced by frontline stakeholders.²⁷ This was echoed by study participants, with a Dutch non-governmental organisation (NGO) interviewee articulating that the identification procedure remains an area of concern as it currently ‘lags behind’ other THB actions.²⁸ Similarly, an Estonian labour inspector expressed that they ‘always struggle with the issue of identification’,²⁹ while a German NGO participant viewed the ‘problem of identification’ as ‘quite a dominant factor’.³⁰ Furthermore, upon the conclusion of both its first and second country evaluation rounds, GRETA considered identification as a core implementation gap for 27 states.³¹

²² Anne T. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010) 277.

²³ Irene Wintermayr and Amy Weatherburn, *Access to Protection and Remedy for Victims of Human Trafficking for the Purpose of Labour Exploitation in Belgium and the Netherlands* (ILO 2021) 7.

²⁴ Oguzhan Omer Demir and James O. Finckenaue, ‘Victims of Sex Trafficking in Turkey: Characteristics, Motivations, and Dynamics’ (2010) 20(1-2) *Women & Criminal Justice* 57-88, 58.

²⁵ Robert Cryer, Darryl Robinson and Sergey Vasiliev, *An Introduction to International Criminal Law and Procedure* (4th edn, Cambridge University Press 2019) 447.

²⁶ In particular, see section 2.4. of Chapter Two.

²⁷ Marie Segrave, Sanja Milivojevic and Sharon Pickering, *Sex Trafficking and Modern Slavery: The Absence of Evidence* (2nd edn, Routledge 2018) 25; Marija Jovanović, ‘International Law and Regional Norm Smuggling: How the EU and ASEAN Redefined the Global Regime on Human Trafficking’ (2020) 68(4) *The American Journal of Comparative Law* 801-835, 824.

²⁸ Interview 18 (a THB focused NGO).

²⁹ Interview 10.

³⁰ Interview 14 (a NGO focused on assisting migrant women).

³¹ GRETA, *4th General Report on GRETA’s Activities covering the period from 1 August 2013 to 30 September 2014* (Council of Europe 2015) 33; GRETA, *9th General Report on GRETA’s Activities covering the period from 1 January to 31 December 2019* (Council of Europe 2020) 68.

Due to this implementation gap, it has been claimed that VoTs are under-identified, and as a result ‘are simply invisible’.³² A survey by the Organization for Security and Co-operation in Europe (OSCE) of Member states³³ revealed that although states broadly know how to respond to THB, ‘a significant number of victims remain unidentified’.³⁴ When compared to the regional and global estimates of VoTs,³⁵ the reported and recorded figures of identified VoTs are considerably lower. This is even more apparent when looking at recorded THB-LE victims, as shown in Table 7. This was borne out in the qualitative data with a Bulgarian labour inspector describing identification as a ‘complex problem, especially regarding the trafficking in human beings for the purpose of labour exploitation’.³⁶

Year	Total Victims Identified in Europe (THB-LE specifically)
2023	32,996 (4,448)
2022	24,528 (2,497)
2021	21,347 (2,124)
2020	18,173 (1,082)
2019	17,383 (1,369)
2018	16,838 (2,675)
2017	12,750 (3,330)
2016	13,349 (3,192)
2015	11,112 (3,733)
2014	11,910 (3,531)

Table 7 – Number of Identified Victims in Europe³⁷

An analysis of these figures demonstrates an increase in the total number of VoTs identified in Europe but shows a general stagnation regarding the proportion of THB-LE victims. In 2015, THB-LE victims comprised approximately 34 per cent of all VoTs identified in Europe.³⁸ This decreased to eight per cent in 2019.³⁹ These low rates may impact on the perception of the true scale of THB-LE in each state. It is this discrepancy in recorded instances of VoTs that raises important questions regarding the detection and

³² Anne T. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010) 278; UN OHCHR, *Human Rights and Human Trafficking* (United Nations 2014) 12.

³³ Of which 49 of 57 states responded to the survey request.

³⁴ Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Survey Report 2021 of Efforts to Implement OSCE Commitments and Recommended Actions to Combat Trafficking in Human Beings* (OSCE 2022) 16.

³⁵ For example those published by IOM, *Global Trafficking Trends in Focus: IOM Victims of Trafficking Data, 2006-2016* (IOM 2017) and ILO, Walk Free and IOM, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (ILO, Walk Free and IOM 2022).

³⁶ Interview 32.

³⁷ Based on the United States Department of State, *Trafficking in Persons Report* (USDS 2024).

³⁸ United States Department of State, *Trafficking in Persons Report* (USDS 2016) 59.

³⁹ United States Department of State, *Trafficking in Persons Report* (USDS 2020) 58.

identification of instances of THB-LE.⁴⁰ This is one reason behind the impetus for examining the identification procedure in the context of THB-LE in this doctoral study. Participants stressed that there is a need for stakeholders to be proactive in their approach to uncovering situations of THB-LE.⁴¹ A UK NGO interviewee recalled that ‘we realised if we are to identify the victims as well as the suspects and the offenders, we needed to go and look for them’.⁴² This need to “look for” situations of THB-LE was expressed by other NGO and trade union interviewees.⁴³ The benefit of this proactive fieldwork was captured by an Icelandic trade unionist who stated that:

‘we go out on the field and see the victims. We try to get the information to them, give them phone numbers they can call to etc., and often that results to them contacting us later’.⁴⁴

As part of the monitoring mechanism attached to the Trafficking Convention, the Committee of the Parties has called on Iceland, in the context of THB-LE, to encourage:

‘law enforcement officials, labour inspectors, NGOs and other relevant actors to increase their outreach work to identify victims of human trafficking for the purpose of labour exploitation, paying particular attention to at-risk sectors’.⁴⁵

Barrick et al. recognise that a proactive approach on the part of criminal law enforcement officials is important in detecting instances of THB.⁴⁶ However, a Swedish trade unionist articulated that criminal law enforcement personnel within their jurisdiction are proactive but only in relation to trafficking in human beings for the purpose of sexual exploitation (THB-SE)⁴⁷ explaining that:

⁴⁰ These distinct processes are defined in section 3.2.

⁴¹ Interview 8 (a THB focused NGO).

⁴² Interview 16 (a THB focused NGO).

⁴³ Interview 18 (a THB focused NGO); 20 (a THB focused NGO); 34.

⁴⁴ Interview 1.

⁴⁵ Committee of the Parties, *Recommendation CP/Rec(2023)09 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Iceland: Third Evaluation Round* (Council of Europe 15 December 2023) 3. A related recommendation was made to Sweden, Committee of the Parties, *Recommendation CP/Rec(2023)11 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden: Third Evaluation Round* (Council of Europe 15 December 2023) 3.

⁴⁶ Kelle Barrick, Meg Panichelli, Barrot Lambdin, Minh Dang and Alexandra Lutnick, ‘Law Enforcement Identification of Potential Trafficking Victims’ (2021) 44(5) *Journal of Crime and Justice* 579-594, 580.

⁴⁷ Such targeted police operations on this type of exploitation resulting in a predominance of THB-SE in reporting data was found by Carly Lightowlers, Rose Broad and David Gadd, ‘Temporal Measures of Modern Slavery Victimisation’ (2024) 24(1) *Criminology & Criminal Justice* 79-97, 88.

‘The police do not focus on that kind of crime like severe work exploitation of slavery in work so much ... so the police is doing a lot of things there but more or less it’s based on prostitution’.⁴⁸

Relatedly, a Ukrainian NGO interviewee outlined that criminal law enforcement responses to THB-LE tend to be more reactive in nature and noted that:

‘those cases of labour exploitation specifically, I believe it’s, in most situations, it’s either NGOs again, or some I don’t know kind of bystanders, when somebody informs because we also have the case that somebody informs that there are, they know that a certain farmed has the field, that there are people working there, and we know that there is a condition or something. I mean it’s sometimes very often it goes from somewhere not from the side of the police’.⁴⁹

Irwin has determined that poor victim identification can occur in different circumstances and for various reasons.⁵⁰ In the context of THB-LE specifically, this may be compounded by the fact that exploitative practices often exist in legitimate employment situations and this complicates the identification procedure for stakeholders operating on the frontline.⁵¹ Such a failure to identify victims may result in individuals remaining in situations of severe exploitation,⁵² placing these individuals at risk of re-victimisation,⁵³ being prosecuted as an offender on the basis of criminal offences or immigration violations,⁵⁴ or possibly deportation from the state.⁵⁵

⁴⁸ Interview 24.

⁴⁹ Interview 9 (a NGO assisting victims of violence). This was also articulated by Interview 35 (a THB focused NGO).

⁵⁰ Nathan Irwin, ‘Police Officer Understandings of Human Trafficking and Awareness of Anti-Trafficking Measures’ (2017) 40(2) *Policing: An International Journal* 291-305, 293.

⁵¹ Kelle Barrick, Pamela K. Lattimore, Wayne J. Pitts and Sheldon X. Zhang, ‘When Farmworkers and Advocates See Trafficking But Law Enforcement Does Not: Challenges in Identifying Labor Trafficking in North Carolina’ (2014) 61(2) *Crime, Law and Social Change* 205-214, 213.

⁵² Matthew Sands, ‘UDHR and Modern Slavery: Exploring the Challenges of Fulfilling the Universal Promise to End Slavery in All Its Forms’ (2019) 90(3) *The Political Quarterly* 430-438.

⁵³ ILO, *Ending Forced Labour by 2030: A Review of Policies and Programmes* (ILO 2018) 10; GRETA, *Guidance Note on the Entitlement of Victims of Trafficking, and Persons At Risk of Being Trafficked, to International Protection* (Council of Europe 2020) 12.

⁵⁴ GRETA, *1st General Report on GRETA’s Activities covering the period from February 2009 to July 2011* (Council of Europe 2011) 6.

⁵⁵ Alexis A. Aronowitz, ‘The Smuggling-Trafficking Nexus and the Myths Surrounding Human Trafficking’ (2009) 13 *Sociology of Crime, Law and Deviance* 107-128, 115; Ryszard Piotrowicz, ‘The European Legal Regime on Trafficking in Human Beings’ in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 42; UN Special Rapporteur on the Human Rights of Migrants, ‘Human Rights of Migrants’ (25 September 2018) A/73/178/Rev.1, 14.

Prompt identification encourages VoTs to make statements to authorities and participate in the criminal justice process.⁵⁶ On the other hand, if victims are not identified, crucial information will be unavailable to criminal law enforcement officials in bringing about a prosecution.⁵⁷ Thus, inadequate identification procedures may result in continued impunity for traffickers.⁵⁸ Yet, it is important to note that the monitoring mechanism of the Trafficking Convention, GRETA and the Committee of the Parties, have repeatedly called upon states to improve the identification of VoTs by adopting a proactive approach.⁵⁹ It entails reducing the dependence on victim statements⁶⁰ or their co-operation with criminal investigation proceedings.⁶¹ A German NGO interviewee explained that this was necessary because ‘a lot of people cannot testify, or do not want to testify because, I mean there are different reasons for that’.⁶² Further to this, a Hungarian criminal law enforcement official outlined that:

⁵⁶ Cornelia Helfferich, Barbara Kavemann and Heike Rabe, ‘Determinants of the Willingness to Make a Statement of Victims of Human Trafficking for the Purpose of Sexual Exploitation in the Triangle Offender-Police-Victim’ (2011) 14(2) *Trends in Organized Crime* 125-147, 126.

⁵⁷ Sallie Yea, ‘Trafficked Enough? Missing Bodies, Migrant Labour Exploitation, and the Classification of Trafficking Victims in Singapore’ (2015) 47(4) *Antipode* 1080-1100, 1086; Alice Bosma and Conny Rijken, ‘Key Challenges in the Combat of Human Trafficking: Evaluating the EU Trafficking Strategy and EU Trafficking Directive’ (2016) 7(3) *New Journal of European Criminal Law* 315-330, 329; Ana Cunha, Mariana Gonçalves and Marlene Matos, ‘Knowledge of Trafficking in Human Beings among Portuguese Social Services and Justice Professionals’ (2019) 25(3) *European Journal on Criminal Policy and Research* 469-488, 470; Emma Fitzsimons and Michelle Brewer, ‘Determination of Trafficking Status’ in Philippa Southwell, Michelle Brewer and Ben Douglas-Jones (eds), *Human Trafficking and Modern Slavery Law and Practice* (2nd edn, Bloomsbury Professional 2020) 21; Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Survey Report 2021 of Efforts to Implement OSCE Commitments and Recommended Actions to Combat Trafficking in Human Beings* (OSCE 2022) 74.

⁵⁸ Kelle Barrick, Meg Panichelli, Barrot Lambdin, Minh Dang and Alexandra Lutnick, ‘Law Enforcement Identification of Potential Trafficking Victims’ (2021) 44(5) *Journal of Crime and Justice* 579-594, 589.

⁵⁹ GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Hungary: First Evaluation Round* (Council of Europe 29 May 2015) 46; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece: First Evaluation Round* (Council of Europe 18 October 2017) 55; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Czech Republic: First Evaluation Round* (Council of Europe 11 February 2020) 60; Committee of the Parties, *Recommendation CP/Rec(2021)01 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bulgaria: Third Evaluation Round* (Council of Europe 4 June 2021) 3.

⁶⁰ For instance, the use of special investigation techniques to gather material, documentary, financial and digital evidence. GRETA, *Evaluation Report: Hungary – Third Evaluation Round* (Council of Europe 26 February 2024) 61.

⁶¹ For example, Committee of the Parties, *Recommendation CP/Rec(2023)11 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden: Third Evaluation Round* (Council of Europe 15 December 2023) 3.

⁶² Interview 14 (a NGO focused on assisting migrant women). These reasons include that:

‘they can be mistrust of the authorities, but it’s also a danger for their families, for example, back home if they testify against the perpetrators and also danger for themselves’.

‘it is very important to train the investigators that the victims have the most information about the case, but they are in some cases, are not able to talk about the offences which are committed against them ... so that’s why [we] organise the lot of trainings, how to find different ways of investigation to have other evidences beside the statement of victims, but it is a very big challenge to find these ways because these crimes [are] committed among the walls’.⁶³

This is a positive recognition of alternative means of evidence and is necessary due to the European Court of Human Rights (ECtHR) indicating that an over-reliance on victim testimony can be taken into consideration in reviewing a state’s procedural obligation in criminal proceedings. In *SM v Croatia*,⁶⁴ the ECtHR concluded that the prosecuting authorities:

‘did not effectively investigate all relevant circumstances of the case or follow some of the obvious lines of inquiry in order to gather the available evidence, in accordance with their procedural obligation under Article 4. Instead, they relied heavily on the applicant’s statement and thus, in essence, created a situation in the subsequent court proceedings where her allegations simply had to be pitted against the denial of T.M., without much further evidence being presented’.⁶⁵

Finally, the identification procedure is influenced by a number of factors including, *inter alia*, the criteria (or indicators) adopted to designate an individual as a VoT, as examined in Chapter Five.⁶⁶ It is also impacted by the priority setting of different organisations and the overall capacity of stakeholders.⁶⁷ This underscores the necessity of political commitment⁶⁸ to ensure effective identification structures are in place and sufficient resourcing⁶⁹ is allocated to make this fully operational in order to fulfil the identification obligation on states under international law.

3.2. Clarification of Terminology

This section provides clarity on the terms used in relation to the identification procedure. First, it defines the two core aspects of the identification procedure, namely the designated CA and the NRM. Secondly, it clarifies the processes involved in the identification procedure by outlining the detection process and the formal identification process, whilst

⁶³ Interview 42 (an Inspector).

⁶⁴ *S.M. and Croatia* App no. 60561/14 (ECtHR, 25 June 2020).

⁶⁵ *ibid* para 343.

⁶⁶ See section 5.3.3. of Chapter Five.

⁶⁷ Anne T. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010) 278.

⁶⁸ Interview 1; 3; 4; 7; 11; 14; 17; 19; 20; 23; 25; 33; 35; 37; 41.

⁶⁹ Interview 4; 16; 19; 20; 23; 24; 33; 41.

the legal concepts of reasonable grounds and conclusive decision are discussed in section 3.3. as part of the doctrinal analysis of Article 10 of the Trafficking Convention.

3.2.1. Competent Authority

A CA is the designated authority to make decisions on the allocation of the status of VoT during the identification procedure.⁷⁰ The Explanatory Report defines a CA as encompassing public authorities, such as the police, the labour inspectorate, customs, the immigration authorities and embassies or consulates, which may come in contact with VoTs.⁷¹ This is not an exhaustive list and other stakeholders could be designated as such if states have a preference to do so. Notably, in Hungary a wide range of stakeholders are entitled to identify VoTs.⁷² Since 2018, these stakeholders include health care providers, health administration bodies, personal care providers, public educational establishments, the police, the labour inspectorate, consulates, border guards, the Office for Immigration and Nationality, victim support services, probation services, and legal aid services.⁷³ However, as Stoyanova outlines, under the Trafficking Convention it is entirely at the discretion of each state to designate which authority may identify VoTs.⁷⁴ It is not a stipulation that states designate all possible public authorities outlined in the Explanatory Report as CA's. Instead, they may elect to select one authority to act as the CA to comply with the duty to identify VoTs under Article 10 of the Trafficking Convention.⁷⁵

3.2.2. National Referral Mechanism

A NRM is defined by the OSCE as:

⁷⁰ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 131. See also, Vladislava Stoyanova, *Human Trafficking and Slavery Reconsidered: Conceptual Limits and States' Positive Obligations in European Law* (Cambridge University Press 2017) 91.

⁷¹ *ibid* para 129.

⁷² Government Decree No. 354/2012 (XII.13) on the identification order of victims of trafficking in human beings.

⁷³ GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Hungary: Second Evaluation Round* (Council of Europe 27 September 2019) 21.

⁷⁴ Vladislava Stoyanova, 'Article 10: Identification of the Victims' in Julia Planitzer and Helmut Sax (eds), *A Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings* (Elgar Publishing 2020) 142.

⁷⁵ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10.

‘a co-operative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons, co-ordinating their efforts in a strategic partnership with civil society’.⁷⁶

This explanation places an emphasis on the protection aspect of the anti-trafficking response and envisages that states place the human rights of (potential) VoTs at the centre of this framework. It attaches considerable weight to the need for co-operation and co-ordination of efforts amongst public authorities and civil society.⁷⁷ This latter point is fully in line with the requirement under Article 10 of the Trafficking Convention to ensure collaboration between these stakeholders in fulfilling this obligation.⁷⁸ It is worth mentioning at the outset, however, that the Trafficking Convention and its Explanatory Report make no specific reference to the development of a NRM. In contrast, within the European Union, the recently amended Article 11(4) of the Trafficking Directive expressly outlines that:

‘Member States shall take the necessary measures to establish by laws, regulations or administrative provisions one or several mechanisms aimed at the early detection and identification of, assistance to and support for identified and presumed victims, in cooperation with relevant support organisations, and to appoint a focal point for the cross-border referral of victims’.⁷⁹

While GRETA has not provided a definitive definition of a NRM, it has outlined that such a mechanism is necessary to meet the victim-centred approach of the Trafficking Convention⁸⁰ and should ensure:

‘that there is co-ordination between those involved in identifying trafficked persons, that all relevant professionals are trained to carry out their tasks effectively, and that all identified victims were provided the assistance and protection measures they needed’.⁸¹

⁷⁶ OSCE and ODIHR, *National Referral Mechanisms – Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook* (OSCE 2004) 15. See also, OSCE and ODIHR, *National Referral Mechanisms – Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook* (2nd edn, OSCE 2022) 14.

⁷⁷ As explored in-depth in Chapter Four of this thesis.

⁷⁸ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10.

⁷⁹ Directive 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

⁸⁰ GRETA, *8th General Report on GRETA’s Activities covering the period from 1 January to 31 December 2018* (Council of Europe 2019) 38.

⁸¹ GRETA, *2nd General Report on GRETA’s Activities covering the period from 1 August 2011 to 31 July 2012* (Council of Europe 2012) 14.

As such, the NRM provides a structure whereby the obligation under Article 10 of the Trafficking Convention⁸² and the interrelated requirement to provide access to assistance measures under Article 12 can be fulfilled.⁸³

The OSCE has indicated that the creation and implementation of a NRM should be governed by certain principles,⁸⁴ as presented in Table 8.

1. A human-rights based approach	5. Recovery and reflection	9. Partnership and co-operation
2. A victim-centred, gender-sensitive and trauma-informed approach	6. Non-punishment	10. Transparency and accountability
3. The best interests of children	7. Non-detention	11. Effectiveness
4. Non-conditionality	8. Social inclusion	12. Prevention of human trafficking

Table 8 – Principles Governing a National Referral Mechanism

Overall, a NRM provides a transparent referral process for both VoTs and relevant stakeholders. It provides a means through which the detection process and assessment on reasonable grounds can lead to a referral, triggering certain supports and a subsequent conclusive decision on the VoT status.

3.2.3. Processes within the Identification Procedure

For the purpose of this thesis, the identification procedure is conceptualised as consisting of a detection process, triggering referral on the basis of a reasonable grounds assessment, and a formal identification process, ending with a conclusive decision by the relevant CA. This understanding of the identification procedure is illustrated in Figure E.

⁸² Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10.

⁸³ *ibid* Article 12.

⁸⁴ OSCE and ODIHR, *National Referral Mechanisms – Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook* (2nd edn, OSCE 2022) 20-23. These principles are closely aligned with the purposes of the Trafficking Convention and the obligations it places on ratified states. For example, Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 1(1)(a). See also, Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 54. In addition it corresponds to the requirements under Article 5 concerning prevention measures, Article 13 mandating the imposition of a recovery and reflection period, Article 26 regarding the non-punishment principle, and Article 35 requiring co-operation with civil society organisations.

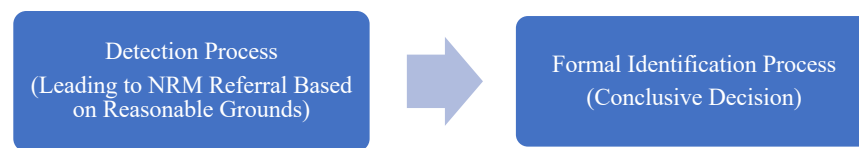


Figure E – The Identification Procedure

This thesis establishes that the identification procedure should be viewed as more than just the formal allocation of VoT status. Although the Trafficking Convention and its Explanatory Report regulate the formal identification process,⁸⁵ the stakeholder bottom-up insights demonstrate that in order to understand the whole identification procedure, the examination must go beyond the limited scope of the Article 10 obligation. There are in fact two distinct processes leading to the identification of victims of THB-LE. These have been described as informal identification and formal identification⁸⁶ and this distinction was specified by study participants.⁸⁷ Therefore, this thesis adopted the terminology employed by the participants, and as such, the informal identification process is referred to as “detection”. A Ukrainian NGO participant elaborated on these terms stating that one is about ‘finding the case’, while the other concerns the ‘legal status of human trafficking’.⁸⁸

As outlined in section 3.1., the recorded data on victims of THB-LE is low and Wintermayr and Weatherburn have proposed that the number of formally identified VoTs is ‘significantly less than those who are initially detected’.⁸⁹ A clear example of the stark contrast between detected individuals and those formally identified was captured by GRETA in its most recent evaluation report on Estonia.⁹⁰ Therein, between 2018 and 2021, 27 VoTs were formally identified, none of which related to THB-LE. Yet, the number of presumed victims amounted to 264, of which 171 were related to THB-LE. Consequently, GRETA noted that this formal identification data:

⁸⁵ Vladislava Stoyanova, ‘Article 10: Identification of the Victims’ in Julia Plantizer and Helmut Sax (eds), *A Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings* (Elgar Publishing 2020) 133.

⁸⁶ *ibid.*

⁸⁷ Interview 6; 9; 11; 18; 23; 25.

⁸⁸ Interview 9 (a NGO assisting victims of violence).

⁸⁹ Irene Wintermayr and Amy Weatherburn, *Access to Protection and Remedy for Victims of Human Trafficking for the Purpose of Labour Exploitation in Belgium and the Netherlands* (ILO 2021) 49.

⁹⁰ GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Estonia: Second Evaluation Round* (Council of Europe 7 June 2023).

‘does not reflect the real scale of the phenomenon of THB in Estonia due to gaps in the identification procedure, especially concerning the identification of foreign victims of trafficking for the purpose of labour exploitation’.⁹¹

This highlights a major drawback to states’ current understanding of THB-LE and carries with it considerable consequences for victims of this specific form of THB. It indicates that a considerable number of potential VoTs do not seem to reach the required threshold to obtain VoT status and this means that these individuals subjected to severe forms of labour exploitation may not receive assistance and support. This issue was discussed in Chapter Two,⁹² which pointed towards the potential usefulness of the concept of a continuum of exploitation in further analysing the understanding of the threshold between a labour law violation and a criminal law offence of THB-LE, and called for the provision of assistance to those individuals in the grey area.

The two distinct processes in the identification procedure determine the level of stakeholder input. As detailed below in section 3.4.1., formal identification is largely placed within the remit of criminal law enforcement officials. The designated CA is primarily a public authority, although this is most commonly realised in the form of a criminal justice stakeholder. Relevant support organisations, such as NGOs, do not generally have that mandate. In contrast, the detection of THB-LE is multifaceted, less structured in nature and may involve a considerable number of relevant stakeholders, with a Bulgarian NGO outlining that ‘everyone can identify a victim informally’.⁹³ Thus, a broad range of individuals may initially interact with potential VoTs beyond public authorities.⁹⁴ In the context of detecting and identifying victims of THB-LE, it is necessary to engage with those operating in the labour law sphere who are likely to interact with potential victims, including public authorities and civil society actors, such as labour inspectors and trade unionists.

The analysis in this chapter is not confined strictly to formal identification as a VoT. Instead, it encompasses both of these processes because of the significance of the initial detection phase, as without the detection phase, the formal identification process cannot proceed. Some sections in this chapter focus solely on the formal identification stage, for

⁹¹ *ibid* 6.

⁹² See section 2.4. of Chapter Two.

⁹³ Interview 25 (a NGO supporting vulnerable populations).

⁹⁴ As explored further in section 3.4.2.1.

example, the discussion of designated CAs, while other sections engage with both stages of the identification procedure, for instance, the examination of a NRM. A NRM is considered as a key mechanism linking the two processes within the broader identification procedure.

3.3. The Obligation on States to Identify under International Law

Following the outline of the importance of identifying VoTs and the clarification of the key terms of the identification procedure, this section conducts a legal analysis of the identification obligation under international law. The main focus of the analysis is on Article 10(1) and Article 10(2) of the Trafficking Convention which state that:

‘Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention.

Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations. Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2’.⁹⁵

As the Explanatory Report states:

‘even though there are already other international instruments in this field, the Convention benefits from the more limited and uniform context of the Council of Europe, contains more precise provisions and may go beyond minimum standards agreed upon in other international instruments’.⁹⁶

This is evident in relation to the obligation to identify VoTs. The Trafficking Convention builds on international soft law and hard law instruments,⁹⁷ such as the United Nations

⁹⁵ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10.

⁹⁶ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 30.

⁹⁷ As specified in Chapter Two.

Office of the High Commissioner for Human Rights Recommended Principles and Guidelines on Human Rights and Human Trafficking (UN OHCHR Recommended Principles and Guidelines)⁹⁸ and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol),⁹⁹ which outline and place a number of obligations on states in relation to addressing and preventing THB. The UN OHCHR Recommended Principles and Guidelines outline that states are ‘under an obligation to ensure that such identification can and does take place’.¹⁰⁰ Moreover, in the context of forced labour offences, the International Labour Organization Protocol of 2014 to the Forced Labour Convention, 1930 requires states to:

‘take effective measures for the identification, release, protection, recovery and rehabilitation of all victims of forced or compulsory labour, as well as the provisions of other forms of assistance and support’.¹⁰¹

Likewise the United Nations Office on Drugs and Crime Model Law Against Trafficking in Persons, although non-binding, fills this gap to a certain extent by stating that:

‘(1)The national coordinating body [...] shall establish national guidelines/procedures for identification of victims of trafficking.

(2)The national coordinating body shall develop and disseminate to professionals who are likely to encounter victims of trafficking information and materials concerning trafficking in persons, including, but not limited to, a procedural manual on the identification and referral of victims of trafficking in persons.

(3)With a view to the proper identification of victims of trafficking in persons, the [competent authorities] shall collaborate with relevant state and non-state victim assistance organizations’.¹⁰²

Thus, following the failure of the Palermo Protocol in terms of identification, more recent legal instruments have expressly reinforced this requirement.¹⁰³ However, the Trafficking

⁹⁸ UN OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (United Nations 2002).

⁹⁹ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319.

¹⁰⁰ UN OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (United Nations 2002) Guideline 2.

¹⁰¹ The Protocol of 2014 to the Forced Labour Convention, 1930 (adopted 11 June 2014, entered into force 9 November 2016) 103rd ILC Session Article 3.

¹⁰² UNODC, *Model Law Against Trafficking in Persons* (United Nations 2009) Article 18.

¹⁰³ For example, in the European Union, 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 [2011] OJ L 101; Directive 2024/1712 of the European Parliament and of the Council of 13 June

Convention was the first legally binding international treaty explicitly requiring states to formally identify VoTs under Article 10.¹⁰⁴

As stated in Chapter Two of this thesis,¹⁰⁵ the ECtHR has drawn on the provisions of the Trafficking Convention in its jurisprudence under Article 4 of the European Convention on Human Rights (ECHR)¹⁰⁶ in developing positive obligations for states.¹⁰⁷ In *J and Others v Austria*¹⁰⁸ the ECtHR outlined the positive obligation to identify and support potential VoTs,¹⁰⁹ concluding that this duty was sufficiently complied with by the Austrian authorities on the basis that:

‘from the point when the applicants turned to the police, they were immediately treated as (potential) victims of human trafficking. They were interviewed by specially trained police officers, were granted residence and work permits in order to regularise their stay in Austria, and a personal data disclosure ban was imposed on the Central Register so their whereabouts were untraceable by the general public. During the domestic proceedings, the applicants were supported by the NGO LEFÖ, which is funded by the Government especially to provide assistance to victims of human trafficking’.¹¹⁰

As a result, the onus is on each state to identify VoTs and more broadly, they are obligated to exercise due diligence in their actions to prevent THB and protect VoTs when they become aware of, or ought to be aware of, the possibility of THB arising.¹¹¹ This

2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

¹⁰⁴ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10.

¹⁰⁵ See section 2.3. of Chapter Two.

¹⁰⁶ Convention for the Protection of Human Rights and Fundamental Freedoms, as amended (adopted 4 November 1950, entered in force 3 September 1953) 213 UNTS Article 4.

¹⁰⁷ For example, *LE v Greece* App no 71545/12 (ECtHR, 21 January 2016) para 77-78; *Chowdury and Others v Greece* App No 21884/15 (ECtHR, 30 March 2017) para 110; *TI and Others v Greece* App no 40311/10 (ECtHR, 18 July 2019) para 151-152; *VCL and AN v The United Kingdom* App Nos 77587/12 and 74603/12 (ECtHR, 16 February 2021) para 153. See also, GRETA, *Guidance Note on the Entitlement of Victims of Trafficking, and Persons At Risk of Being Trafficked, to International Protection* (Council of Europe 2020) 12; Vladislava Stoyanova, ‘Article 10: Identification of the Victims’ in Julia Planitzer and Helmut Sax (eds), *A Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings* (Elgar Publishing 2020) 143; GRETA, *10th General Report on GRETA’s Activities covering the period from 1 January to 31 December 2020* (Council of Europe 2021) 36.

¹⁰⁸ *J and Others v Austria* App no 58216/12 (ECtHR, 17 January 2017).

¹⁰⁹ *ibid* para 109.

¹¹⁰ *ibid* para 110-111.

¹¹¹ *Inter alia, Ranstev v Cyprus and Russia* App no 25965/04 (ECtHR, 7 January 2010) para 286; *Chowdury and Others v Greece* App no 21884/15 (ECtHR, 30 March 2017) para 88; *SM v Croatia* App no 60561/14 (ECtHR, 25 June 2020) para 306; *Zoletic and Others v Azerbaijan* App no 20116/12 (ECtHR, 7 October 2021) para 182; *Krachunova v Bulgaria* App no 18269/18 (ECtHR, 28 November 2023) para 158.

reinforcement by the ECtHR of the obligation on states to identify VoTs bolsters the requirement of the Trafficking Convention for Contracting States.

State practice in respect of identification is far from consistent. This may be explained to a certain extent by the inclusion of the phrase ‘legislative or other measures’ contained within Article 10(2) of the Trafficking Convention.¹¹² This means that states may fulfil the requirements under Article 10 without providing a statutory basis for the identification procedure. Nonetheless, European states have complied with this requirement under Article 10(2) by establishing either a statutory basis for the identification of VoTs,¹¹³ policy documents or guidance outlining the identification procedure.¹¹⁴

3.3.1. Reasonable Grounds and Conclusive Decision

The formal identification procedure under Article 10(2) of the Trafficking Convention consists of an initial decision on the basis of reasonable grounds and a final conclusive decision. The designated CAs of the national legal system make these decisions and grant the (presumed) VoT status.¹¹⁵ Where there are reasonable grounds to believe that the person is a victim, they shall not be removed from the state until the identification procedure is complete, and conclusively establishes that they are VoTs. In relation to the initial reasonable grounds stage of the identification procedure, the Explanatory Report provides that:

‘The Convention does not require absolute certainty – by definition impossible before the identification process has been completed – for not removing the person concerned from the Party’s territory. Under the Convention, if there are “reasonable” grounds for believing someone to be a victim, then that is sufficient

¹¹² Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10(2).

¹¹³ For example, in Ireland, The Criminal Law (Sexual Offences and Human Trafficking) Act 2024 and in Hungary, Government Decree No. 354/2012 (XII.13) on the identification order of victims of trafficking in human beings.

¹¹⁴ To take one example, in Spain, the Government of Spain, *Framework Protocol for Protection of Victims of Human Trafficking* (Government of Spain 2011); Swedish Gender Equality Agency, *National Referral Mechanism: A Support and Protection Process for Victims of Trafficking in Human Beings in Sweden* (2nd edn, Swedish Gender Equality Agency 2019).

¹¹⁵ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 127 and 131. See also, Vladislava Stoyanova, *Human Trafficking and Slavery Reconsidered: Conceptual Limits and States’ Positive Obligations in European Law* (Cambridge University Press 2017) 91.

reason not to remove them until completion of the identification process establishes conclusively whether or not they are victims of trafficking’.¹¹⁶

The reasonable grounds stage is a significant part of the identification procedure. It has implications for the granting of a recovery and reflection period under Article 13(1) of the Trafficking Convention.¹¹⁷ This period may be granted for at least 30 days ‘when there are reasonable grounds to believe that the person concerned is a victim’.¹¹⁸ This reasonable grounds stage has been criticised by Bosma and Rijken, especially in relation to instances of THB-LE, on the basis that:

‘the CoE Convention nor its explanatory report explicate when such grounds are present, and thus do not clarify when a person must be seen as a possible victim and be given access to assistance and support. The reasonable grounds indication leaves a large margin of appreciation to the Member States and professionals’.¹¹⁹

GRETA has not comprehensively engaged with the term ‘reasonable grounds’ or with what it entails in its Guidance Notes or Annual Reports.¹²⁰ However, in relation to Iceland, GRETA outlined that for the purpose of the identification of VoTs:

‘It is sufficient for persons to present reasonable grounds that they have been subjected to a combination of the three key elements of the definition of THB (action, means and purpose) in order to be considered as victims of trafficking. This does not imply that they must provide proof that they have been injured or financially damaged, but it may involve providing some measure of independent evidence supporting their claim’.¹²¹

For Belgian authorities, the fact that ‘workers’ salaries were apparently so low’, led them to have reasonable grounds to believe a case to be one of THB-LE.¹²² The Irish Government also provided some detail as to this initial reasonable grounds stage in its

¹¹⁶ *ibid* para 132.

¹¹⁷ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 13(1).

¹¹⁸ *ibid*. State practice in this regard is further detailed in section 2.2.2.2. of Chapter Two.

¹¹⁹ Alice Bosma and Conny Rijken, ‘Key Challenges in the Combat of Human Trafficking: Evaluating the EU Trafficking Strategy and EU Trafficking Directive’ (2016) 7(3) *New Journal of European Criminal Law* 315-330, 323.

¹²⁰ Nor is it referenced or clarified in the Council of Europe Committee of Ministers, ‘Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation’ (27 September 2022) CM/Rec(2022)21.

¹²¹ GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Iceland: First Evaluation Round* (Council of Europe 23 September 2014) 18.

¹²² GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belgium: Second Evaluation Round* (Council of Europe 16 November 2017) 17.

First National Action Plan to Prevent and Combat Trafficking of Human Beings, stating the following:

‘While “reasonable grounds” are not the same as evidence, in the context of contemplation of any criminal offence, to arrive at a state of mind that a person is a suspected victim of human trafficking the Garda Superintendent must be in possession of sufficient information to afford reasonable grounds for that belief. The test of reasonable is whether or not a reasonable person, acting without passion or prejudice, believes what he/she is being told’.¹²³

The second part of the formal identification procedure under Article 10 of the Trafficking Convention relates to the conclusive decision on VoT status. Article 10 does not indicate what standard should be followed in reaching a conclusive decision. The interpretation of this stage by states is unclear and information as to the standard applied is not readily accessible. The conclusive decision ought to be made on the basis of the criteria for the definition of THB as defined under international law,¹²⁴ taking into account the particular circumstances of each individual case. Yet, Chapter Two of this thesis¹²⁵ established the ambiguity surrounding the definition of THB-LE which may pose a challenge for stakeholders making a conclusive decision as to VoT status in that context.

Article 10 is silent regarding the imposition of a timeline within which states must make a conclusive decision on a potential VoT’s status. In this regard, the ECtHR has offered some guidance on the requirement in terms of timeliness. In *LE v Greece*,¹²⁶ the Court found that a nine month delay in formally identifying and recognising the applicant as a VoT was a substantial deficiency in the operational measures that authorities could take to protect the applicant.¹²⁷ On the other hand, in *TI and Others v Greece*¹²⁸ the Court concluded that the operational measures undertaken by the authorities were deemed sufficient on the basis that there was a speedy 10 day recognition of the applicants as VoTs.¹²⁹ At present, the timelines can be onerous and lengthy, with a significant lapse of

¹²³ Department of Justice, Equality and Law Reform, *National Action Plan To Prevent and Combat Trafficking of Human Beings in Ireland 2009-2012* (Government of Ireland 2009) 136.

¹²⁴ Most notably, the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 3; Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 4(a).

¹²⁵ See sections 2.2.1.1. and 2.4. of Chapter Two.

¹²⁶ *LE v Greece* App no 71545/12 (ECtHR, 21 January 2016).

¹²⁷ *ibid* para 77-78.

¹²⁸ *TI and Others v Greece* App no 40311/10 (ECtHR, 18 July 2019).

¹²⁹ *ibid* para 151-152.

time between initial referral on the basis of reasonable grounds and the conclusive grounds decision. In the UK, for example, during 2023, the median time from referral to conclusive grounds decisions was 526 days.¹³⁰ Most recently, this period increased significantly to 1,039 days.¹³¹

The reasonable grounds assessment and conclusive decisions have implications in terms of access to assistance measures. In this regard, Stoyanova has defined two levels of assistance, namely minimum level which applies to individuals to whom there are reasonable grounds to believe that they are a VoT, and a higher level of assistance applicable to those who have been conclusively determined as a VoT.¹³² Where there are reasonable grounds, the individual is entitled to measures contained within Article 12(1)¹³³ and Article 12(2)¹³⁴ of the Trafficking Convention.¹³⁵ In contrast, following the completion of the identification procedure and establishment of conclusive grounds, VoTs are entitled to all of the measures as set out in Article 12.¹³⁶ For instance, Article 12(4) of the Trafficking Convention outlines that:

‘Each Party shall adopt the rules under which victims lawfully resident within its territory shall be authorised to have access to the labour market, to vocational training and education’.¹³⁷

In sum, there are clear legal obligations placed on states under Article 10 of the Trafficking Convention which provide the most detailed statement of the requirements for formally identifying VoTs. Nevertheless, the analysis indicates that the Trafficking Convention does not prescribe the standard or expectations for the reasonable grounds stage or conclusive decision. No guidance is provided by the Explanatory Report in this

¹³⁰ Home Office (UK), *Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, End of Year Summary 2023* (Home Office 2024).

¹³¹ Home Office (UK), *Modern Slavery: National Referral Mechanism and Duty to Notify Statistics UK, Quarter 3 2024 – July to September* (Home Office 2024).

¹³² Vladislava Stoyanova, ‘Article 10: Identification of the Victims’ in Julia Planitzer and Helmut Sax (eds), *A Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings* (Elgar Publishing 2020) 140.

¹³³ In relation to a victim’s physical, psychological and social recovery, for example but not limited to, medical treatment, counselling, interpretation services, secure accommodation.

¹³⁴ Regarding victim’s safety and protection needs.

¹³⁵ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 12.

¹³⁶ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 147.

¹³⁷ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 12(4).

regard. Resultantly, there remains a certain level of ambiguity for the application of these stages by states. Limited clarity is offered in GRETA's country evaluation reports or National Action Plans (NAPs). Separately, the jurisprudence of the ECtHR under Article 4 of the ECHR provides an indication of the timeliness required for these identification stages, yet, as illustrated above, in practice these durations can be extensive.

Overall, the international legal framework on THB outlines a concrete basis for European states in relation to the obligation to formally identify VoTs. Yet, challenges remain in implementing these legal provisions in practice. Further to this, the analysis undertaken to this point has also demonstrated the importance of understanding and considering the identification procedure as consisting of both detection and formal identification processes, which is not fully captured within the current international legal framework. Resultantly, the following analysis considers barriers to the identification procedure in line with this broader understanding.

3.4. On the Ground Perspectives on the Barriers to Identification

This section presents and analyses three key issues for the identification of victims of THB-LE raised by stakeholders on the ground. First, it examines current state practice in designating CAs and the challenges to expanding the CA mandate to include stakeholders beyond criminal law enforcement officials, specifically labour inspectors and NGOs. Secondly, it evaluates the NRM structure and points towards diverse avenues for encountering (potential) VoTs. Thirdly, it explores the barriers to reporting by (potential) VoTs as most frequently voiced by study participants, namely, a VoT's fear of authorities and low levels of self-declaration. An analysis of these barriers reveals a number of concerns in achieving a comprehensive structure encompassing a multi-stakeholder approach for the identification procedure in the context of THB-LE. It points towards issues that must be resolved relating to, for example, tensions pertaining to labour inspector duties and the availability of safe-reporting mechanisms.

3.4.1. Competent Authorities for Formal Identification and the Focus on Criminal Justice Stakeholders

This section details current practices on the designation of CAs prior to the consideration of the feasibility of extending the formal identification mandate to non-criminal justice

stakeholders as called for by international bodies. It investigates the barriers to engage other stakeholders in this process.

As outlined in section 3.2., a CA is the authority designated to make decisions on the allocation of the VoT status during the identification procedure. The designated CA can be a public authority such as, the police, the labour inspectorate, customs, the immigration authorities and embassies or consulates.¹³⁸ Despite this range of potential authorities listed in the Explanatory Report, the OSCE reported that the formal designation of the status of VoT across Europe is ‘almost exclusively’ performed by criminal law enforcement officials.¹³⁹ While initial detection may be made by any authority or person, currently in states such as Austria¹⁴⁰ and Spain,¹⁴¹ the police are the sole authority competent to identify a VoT. In Greece¹⁴² and Belgium,¹⁴³ formal identification is carried out by the public prosecutor. Similarly, in Estonia, formal identification is linked to criminal investigation and can only be carried out by criminal law enforcement authorities or the prosecutor’s office.¹⁴⁴ This was borne out in the qualitative data with interviewees from Austria, Belgium, Bulgaria, Greece, Ireland, Slovenia, Spain and the Netherlands reporting that the formal identification process is conducted by either the police or by the prosecutor.¹⁴⁵ Notably, in Portugal, there are two routes for formal identification as a VoT, namely, criminal law enforcement agencies and the National Rapporteur,¹⁴⁶ but

¹³⁸ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 129.

¹³⁹ Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Survey Report 2021 of Efforts to Implement OSCE Commitments and Recommended Actions to Combat Trafficking in Human Beings* (OSCE 2022) 66.

¹⁴⁰ GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria: First Evaluation Round* (Council of Europe 15 September 2011) 21.

¹⁴¹ GRETA, *Reply from Spain to the Questionnaire for the Evaluation of the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties: Second Evaluation Round* (Council of Europe 27 October 2016) 55 and 92; GRETA, *Evaluation Report: Spain – Third Evaluation Round* (Council of Europe 12 June 2023) 9.

¹⁴² Interview 23 (a THB focused NGO); GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece: Second Evaluation Round* (Council of Europe 23 March 2023) 34.

¹⁴³ GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belgium: Second Evaluation Round* (Council of Europe 16 November 2017) 23.

¹⁴⁴ GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Estonia: Second Evaluation Round* (Council of Europe 7 June 2023) 19.

¹⁴⁵ Interview 6; 11; 18; 20; 21; 23; 25; 26; 30; 35.

¹⁴⁶ GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Portugal: First Evaluation Round* (Council of Europe 12 February 2013) 29.

GRETA has observed that the latter route is rarely implemented in practice.¹⁴⁷ Thus, while there is the possibility of formal identification separate from the criminal justice sphere, in practice, the criminal justice approach and remit largely remain.¹⁴⁸

These practices indicate the strong criminal justice approach adopted by states in the determination of VoT status. As Plant argues, this may be explained to a certain extent by the fact that THB-LE ‘is generally seen as a serious crime, needing a strong criminal law enforcement response’.¹⁴⁹ Yet a core concern with this approach is its focus on investigations and prosecutions of perpetrators¹⁵⁰ rather than on victim protection measures.¹⁵¹ However, it has been increasingly argued that addressing THB is not solely a criminal justice issue¹⁵² and thus should not be considered only from this perspective. As Costello¹⁵³ and Skrivankova¹⁵⁴ point out, criminal law approaches alone cannot adequately account for worker exploitation and vulnerability to severe forms of labour exploitation.

Furthermore, the sole designation of criminal law enforcement officials as the CA is problematic in separating the identification procedure from the wider criminal justice process and investigation of THB-LE. As Rijken proposes, this approach may limit the

¹⁴⁷ GRETA, *Evaluation Report: Portugal – Third Evaluation Round* (Council of Europe 13 June 2022) 38.

¹⁴⁸ A notable exception is Finland wherein since 2022, following amendments to the Act 746/2011 on the Reception of Persons Applying for International Protection and on the Identification of and Assistance to Victims of Trafficking in Human Beings, the Assistance System for Victims of Trafficking in Human Beings has been allocated the exclusive competence to formally identify VoTs. GRETA, *Evaluation Report: Finland – Third Evaluation Round* (Council of Europe 10 June 2024) 9-10.

¹⁴⁹ Roger Plant, ‘Trafficking for Labour Exploitation: Getting the Responses Right’ in Ato Quayson and Antonela Arhin (eds), *Labour Migration, Human Trafficking and Multinational Corporations: The Commodification of Illicit Flows* (Routledge 2012) 22.

¹⁵⁰ Marlene Matos, Mariana Gonçalves and Ângela Maia, ‘Human Trafficking and Criminal Proceedings in Portugal: Discourses of Professionals in the Justice System’ (2018) 21(4) *Trends in Organized Crime* 370-400, 372.

¹⁵¹ Maria Eriksson, ‘The Prevention of Human Trafficking – Regulating Domestic Criminal Legislation through the European Convention on Human Rights’ (2013) 82(3) *Nordic Journal of International Law* 339-368, 340.

¹⁵² Julie Kaye, John Winterdyk and Lara Quarterman, ‘Beyond Criminal Justice: A Case Study of Responding to Human Trafficking in Canada’ (2014) 56(1) *Canadian Journal of Criminology and Criminal Justice* 23-48, 35; Alex Kreidenweis and Natalie F. Hudson, ‘More Than a Crime: Human Trafficking as Human (In)Security’ (2015) 16(1) *International Studies Perspectives* 67-85, 68; Ella Cockbain, Kate Bowers and Galina Dimitrova, ‘Human Trafficking for Labour Exploitation: The Results of a Two-Phase Systematic Review Mapping the European Evidence Base and Synthesising Key Scientific Research Evidence’ (2018) 14(3) *Journal of Experimental Criminology* 319-360, 354.

¹⁵³ Cathryn Costello, ‘Migrants and Forced Labour: A Labour Law Response’ in Alan Bogg, Cathryn Costello, ACL Davies and Jeremias Prassl (eds), *The Autonomy of Labour Law* (Hart Publishing 2015) 217.

¹⁵⁴ Klara Skrivankova, ‘The UK’s Approach to Tackling Modern Slavery in a European Context’ in Gary Craig, Alex Balch, Hannah Lewis and Louise Waite (eds), *The Modern Slavery Agenda: Policy, Politics and Practice in the UK* (Policy Press 2019) 257.

number of assisted persons because of the potential requirements placed on VoTs to co-operate and contribute to the criminal justice process.¹⁵⁵ This is clearly demonstrated in the Swedish context because, despite the fact that the identification of VoTs is not formally assigned to any particular authority,¹⁵⁶ the identification of VoTs continues to chiefly involve criminal law enforcement officials and thus:

‘the assessment of whether there are “reasonable grounds” to consider a person a victim of trafficking follows the criteria for launching a criminal investigation’.¹⁵⁷

It may result in setting a high threshold for designating an individual as a presumed VoT. The requirement under the Trafficking Convention is that the identification procedure:

‘is independent of any criminal proceedings against those responsible for the trafficking. A criminal conviction is therefore unnecessary for either starting or completing the identification process’.¹⁵⁸

Yet, as Stoyanova outlines, ‘the text of the CoE Trafficking Convention does not preclude formal identification of victims of human trafficking linked with crime investigation and prosecution’,¹⁵⁹ and therefore she views the convergence between victim identification and the requirement for co-operation with the authorities as a persistent problem.¹⁶⁰ The reality of the link between a victim protection obligation and a prosecutorial measure was captured by one Belgian NGO interviewee who explained the following:

‘let’s say all the criteria are there. There is enough elements there for the police to start an investigation, then the magistrate will give that person what we call the official status of victim [of] trafficking in Belgium ... The problem is obviously that because of the fact that the victim must be able to present or give

¹⁵⁵ Conny Rijken, ‘Trafficking in Persons: A Victim’s Perspective’ in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 248. See also, Vladislava Stoyanova, *Human Trafficking and Slavery Reconsidered: Conceptual Limits and States’ Positive Obligations in European Law* (Cambridge University Press 2017) 94.

¹⁵⁶ GRETA, *Evaluation Report: Sweden – Third Evaluation Round* (Council of Europe 19 October 2023) 39.

¹⁵⁷ GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden: Second Evaluation Round* (Council of Europe 8 June 2018) 24. There is also a concern raised in the Spanish context, GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain: First Evaluation Round* (Council of Europe 27 September 2013) 40; GRETA, *Evaluation Report: Spain – Third Evaluation Round* (Council of Europe 12 June 2023) 60.

¹⁵⁸ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 134.

¹⁵⁹ Vladislava Stoyanova, *Human Trafficking and Slavery Reconsidered: Conceptual Limits and States’ Positive Obligations in European Law* (Cambridge University Press 2017) 88-89.

¹⁶⁰ *ibid* 90.

elements upon which, or with which, the police can start an investigation. We've had cases that we acknowledged them as victims, that we know, okay, this is a victim, that the police acknowledged in their search and then even the magistrate acknowledged in their search, and if we cannot find enough to start investigation, the status cannot be granted. The status is always intertwined with a police investigation'.¹⁶¹

This practice is not unique to Belgium. An Austrian NGO interviewee stated that:

'to have rights as, officially as a victim of human trafficking, there has to be a statement made by the police station'.¹⁶²

Furthermore, a Bulgarian NGO interviewee commented that in practice individuals are formally identified as VoTs if they engage in the criminal investigation and this engagement:

'gives her a possibility for more stay in shelter, or gives her a special status for non-punishment, for the reflection period etc. Otherwise, victims just have access to everything that other victims of violence can access'.¹⁶³

The potential implication of this approach may mean that individuals will not be formally identified as VoTs without co-operating in criminal investigations. This is even more problematic in situations whereby some VoTs may be unwilling or unable to provide such input. This may mean that those individuals are not identified or provided with the supports attached to that status under Article 12 of the Trafficking Convention.¹⁶⁴ It can have the added effect of distorting reported and recorded data on THB-LE, on the basis that certain states only record the formal identification data on persons who take part in criminal proceedings.¹⁶⁵ Despite these criticisms of the current criminal justice approach to identification, expanding the mandate to other stakeholders may be challenging.

¹⁶¹ Interview 20 (a THB focused NGO).

¹⁶² Interview 6 (a NGO focused on assisting migrant women).

¹⁶³ Interview 25 (a NGO supporting vulnerable populations).

¹⁶⁴ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 12.

¹⁶⁵ GRETA, *2nd General Report on GRETA's Activities covering the period from 1 August 2011 to 31 July 2012* (Council of Europe 2012) 14.

3.4.1.1. *Rethinking Formal Identification by Stakeholders Beyond the Criminal Justice Sphere*

For the formal identification of THB-LE, there has been an increased recognition of the need to move beyond limiting the designation of CAs to criminal law enforcement officials and to encompass other authorities, such as labour inspectors.¹⁶⁶ In fact, GRETA and the Committee of the Parties have called upon a number of states to increase multi-agency involvement in the identification of VoTs.¹⁶⁷ The Committee of the Parties, for example, called on Sweden to strengthen:

‘multi-agency involvement in the identification of victims of trafficking by formally recognising the role of specialised NGOs in the decision-making process leading to identification’.¹⁶⁸

In this regard, a Swedish NGO interviewee called for clarification on which stakeholders, beyond criminal law enforcement officials, can formally identify VoTs and desired ‘a broader system where other actors and not just the police are able to identify victims and grant these rights’.¹⁶⁹ However, in practice the operationalisation of these calls remains

¹⁶⁶ Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Survey Report 2021 of Efforts to Implement OSCE Commitments and Recommended Actions to Combat Trafficking in Human Beings* (OSCE 2022) 18 and 23.

¹⁶⁷ *Inter alia*, Committee of the Parties, *Recommendation CP(2013)9 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: First Evaluation Round* (Council of Europe 7 October 2013) 2; Committee of the Parties, *Recommendation CP(2015)1 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Finland: First Evaluation Round* (Council of Europe 15 June 2015) 2; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria: Second Evaluation Round* (Council of Europe 12 October 2015) 48; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Portugal: Second Evaluation Round* (Council of Europe 17 March 2017) 45; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belgium: Second Evaluation Round* (Council of Europe 16 November 2017) 49; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Netherlands: Second Evaluation Round* (Council of Europe 19 October 2018) 51; Committee of the Parties, *Recommendation CP(2018)27 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain: Second Evaluation Round* (Council of Europe 9 November 2018) 3; Committee of the Parties, *Recommendation CP/Rec(2019)06 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany: Second Evaluation Round* (Council of Europe 18 October 2019) 2; Committee of the Parties, *Recommendation CP/Rec(2019)10 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Switzerland: Second Evaluation Round* (Council of Europe 18 October 2019) 2.

¹⁶⁸ Committee of the Parties, *Recommendation CP/Rec(2023)11 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden: Third Evaluation Round* (Council of Europe 15 December 2023) 2.

¹⁶⁹ Interview 27 (a THB focused NGO).

hampered across European states. This may be due to, *inter alia*, priority setting by states, resource allocation and the capacity of organisations.¹⁷⁰

One specific concern regarding a multi-stakeholder approach was raised in the qualitative data relating to the role of the labour inspection service in THB-LE identification efforts. Belgium, for instance, in its most recent NAP expressly recognised the importance of giving ‘new meaning and priority to the work of the inspection services in identifying cases’ of THB-LE.¹⁷¹ However, it is unclear if the intention is to further recognise their role in the detection process rather than in relation to formal identification and the granting of VoT status. Moreover, the Slovenian NAP outlines that:

‘The Labour Inspectorate will continue to carry out regular and extraordinary inspections, while labour inspectors will be alert to identification of indicators of trafficking in human beings and will inform the competent authorities and cooperate with them. The Labour Inspectorate will also continue to be involved in the activities of other state bodies with regard to the identification of victims of trafficking in human beings at national and international level’.¹⁷²

Notwithstanding the recognised and important role that can and should be played by labour inspection services in detecting and identifying THB-LE, the OSCE has reported that they generally do not have the authority or mandate to formally identify individuals as VoTs.¹⁷³ In Finland, for example, a Finnish labour inspector participant stated that ‘if we talk about discovering trafficking then of course our powers are limited. We are not the police’.¹⁷⁴ Rather, they are obliged to refer any potential instances of THB-LE to the relevant criminal law enforcement CA. This is despite their explicit inclusion on the list of potential CA’s in the Explanatory Report.¹⁷⁵ As a result, labour inspector participants generally regarded their role as enforcing labour laws rather than engaging substantively

¹⁷⁰ Michael C. Payne, ‘The Half-Fought Battle: A Call for Comprehensive State Anti-Human Trafficking Legislation and a Discussion of How States Should Construct Such Legislation’ (2006) 16(1) *Kansas Journal of Law & Public Policy* 48-66, 63; Laura A. Dean, *Diffusing Human Trafficking Policy in Eurasia* (Policy Press 2020) 123.

¹⁷¹ Interdepartmental Coordination Unit, *Action Plan Fighting Human Trafficking 2021-2025* (Government of Belgium 2021) 6.

¹⁷² The National Working Group for Combating Trafficking in Human Beings, *Action Plan on Combating Trafficking in Human Beings for the 2023-2024 Period* (Republic of Slovenia 2023) 18.

¹⁷³ Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Survey Report 2021 of Efforts to Implement OSCE Commitments and Recommended Actions to Combat Trafficking in Human Beings* (OSCE 2022) 75.

¹⁷⁴ Interview 12 (Senior Officer).

¹⁷⁵ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 129.

with cases of THB-LE. A labour inspector from the Czech Republic stated that their role is to ‘take care about the labour code and keeping the rules of labour code’.¹⁷⁶ Likewise a Bulgarian labour inspector articulated that their organisation ‘is not an investigation body. It’s a controlling body’.¹⁷⁷ Some participants deemed their role to be supportive in terms of making referrals of potential THB-LE offences to the relevant criminal law enforcement officials.¹⁷⁸ Moreover, an Estonian labour inspector viewed their contribution to anti-trafficking efforts as a ‘supporting or assisting role and information exchange role’.¹⁷⁹ These accounts reveal that labour inspectors have a core part to play in identification efforts. Yet, beyond this monitoring of labour law and communication of information, their role is restricted. In fact, an Irish labour inspector described their role as being ‘fairly peripheral to the process’.¹⁸⁰

GRETA and the Committee of the Parties have made recommendations to a number of states to expand the mandate and enhance the role of labour inspectors in the identification of THB-LE, particularly in terms of adequate resource allocation.¹⁸¹ However, a concern was raised about the additional duties placed on labour inspection services in the qualitative data. As highlighted by an Irish labour inspector, ‘our inspectors are doing their core job as well and so there’s only so much expectation we can make on them’.¹⁸² Similarly a Czech labour inspector detailed the following hesitation:

¹⁷⁶ Interview 38 (Senior Officer).

¹⁷⁷ Interview 32.

¹⁷⁸ Interview 26; 30; 38.

¹⁷⁹ Interview 10.

¹⁸⁰ Interview 30 (Senior Officer).

¹⁸¹ For example, GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ukraine: First Evaluation Round* (Council of Europe 19 September 2014) 54; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bulgaria: Second Evaluation Round* (Council of Europe 28 January 2016) 51; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Norway: Second Evaluation Round* (Council of Europe 21 June 2017) 44; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belgium: Second Evaluation Round* (Council of Europe 16 November 2017) 48; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Estonia: First Evaluation Round* (Council of Europe 12 June 2018) 49; Committee of the Parties, *Recommendation CP(2018)27 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain: Second Evaluation Round* (Council of Europe 9 November 2018) 2; Committee of the Parties, *Recommendation CP/Rec(2019)10 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Switzerland: Second Evaluation Round* (Council of Europe 18 October 2019) 2; GRETA, *Evaluation Report: Austria – Third Evaluation Round* (Council of Europe 10 June 2020) 57; GRETA, *Evaluation Report: Iceland – Third Evaluation Round* (Council of Europe 26 October 2023) 6.

¹⁸² Interview 30 (Senior Officer).

‘As for responsibility of our office, labour exploitation is of course very important part of our cooperation with police because police is responsible for that. But we do let’s say 95 per cent other activities. So maybe it is too wide fields of activities for us to do because we have to do safety and occupational, we have to do wages inspection, we have to do non-legal work, we have to do working hours, etc. So it’s a very wide range ... So I think it could be some challenge to reassess or give responsibilities to some institutions, to somebody who’s responsible for labour exploitation because it’s a part, it’s a little part of, very important of course, but we have a lot of other important things to do’.¹⁸³

This coincides with Radeva Berket’s finding that there is a risk that stakeholders may exhibit a ‘reluctance to take on new responsibilities’.¹⁸⁴

Despite calls for an expanded mandate for labour inspectors, practical considerations remain in relation to the duty of inspecting compliance with both labour law and immigration law. A German NGO participant was particularly concerned about the interaction between labour inspections targeting labour exploitation and THB-LE within their state, and actions targeted at undocumented labour noting:

‘since 2019¹⁸⁵ the Custom Service have a special mandate in Germany. They were always allowed to look without saying beforehand to go into the different enterprises, the building sites, and to control for non-documented labour, and now they have also at the same time the mandate to look for labour exploitation and human trafficking, which on the one hand is very good. On the other hand, it’s also complicated because they are two different aspects they have to look at the same time which are contradicting because on the one hand you see the people as victims of labour exploitation and human trafficking, on the other hand, you see them as illegal workers and the only interest is to get them out of the country. So they are very contradicting aspects’.¹⁸⁶

A Norwegian NGO interviewee similarly emphasised the importance of raising awareness among labour inspection authorities of the possible existence of THB-LE:

‘This is often what happens is that when the labour inspection go in, they find the workers and the workers have been charged for working with black money and with no permits. So they’re often being sent out of the country and so we’ve seen with the slight change, as awareness within these authorities has grown, and they do ask a couple of questions before they send them out of the country’.¹⁸⁷

¹⁸³ Interview 38 (Senior Officer).

¹⁸⁴ Mariyana Radeva Berket, ‘Labour Exploitation and Trafficking for Labour Exploitation – Trends and Challenges for Policy-Making’ (2015) 16 ERA Forum 359-377, 371.

¹⁸⁵ The 2019 Act to Combat Unlawful Employment and Benefit Fraud.

¹⁸⁶ Interview 17 (a THB-LE focused NGO). This was likewise noted by GRETA as creating a risk of ‘undocumented or irregular foreign workers being treated as offenders rather than as possible victims of THB’, GRETA, *Evaluation Report: Germany – Third Evaluation Round* (Council of Europe 7 June 2024) 41.

¹⁸⁷ Interview 19 (a NGO supporting vulnerable populations).

Ascertaining these experiences in Germany and Norway is useful in highlighting that such practices may have the effect of limiting the identification of severe labour exploitation in the workplace due to the potential emphasis placed on detecting illegal employment. It may undermine the trust of workers, ‘especially those with an irregular status, who are at risk of deportation or sanctions’.¹⁸⁸ As O’Connell Davidson articulates this fear of deportation serves as a ‘powerful motive not to complain about ill-treatment or abuse’.¹⁸⁹ Similar comments were made by a German criminal law enforcement participant who outlined that ‘often it’s better for them to stay here and hope they will not be found but make their luck in other workplace[s]’.¹⁹⁰

GRETA has expressly called on certain states to separate the immigration enforcement function from the labour inspection role.¹⁹¹ The Explanatory Memorandum to the Recommendation on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation (Explanatory Memorandum) notes that:

‘distinguishing between labour inspection and immigration control is crucial to protect undocumented migrants at risk of exploitation, and for the purpose of enforcing labour standards, detection of labour exploitation and the identification of potential victims of trafficking’.¹⁹²

Study participants called for a clear distinction between these conflicting duties, with a NGO interviewee from the Netherlands articulating that:

¹⁸⁸ GRETA, *Guidance Note on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2021) 12.

¹⁸⁹ Julia O’Connell Davidson, ‘New Slavery, Old Binaries: Human Trafficking and the Borders of “Freedom”’ (2010) 10(2) *Global Networks* 244-261, 253. See also, Madeleine Hulting, ‘Hidden Labour: Knowledge Production of Trafficking Illustrated by a Swedish Case Study’ in Christien van den Anker and Ilse van Liempt (eds), *Human Rights and Migration: Trafficking for Forced Labour* (Palgrave Macmillan 2012) 155; GRETA, *7th General Report on GRETA’s Activities covering the period from 1 January to 31 December 2017* (Council of Europe 2018) 59; Marie Segrave and Shih Joo Tan, ‘Women Migrant Workers and Counter-Trafficking Responses in Association of Southeast Asian Nations: The Enduring Challenge of Safety and Security’ (2021) 54(4) *Journal of Criminology* 466-481, 472.

¹⁹⁰ Interview 5 (Representative from the Federal Police THB Unit).

¹⁹¹ GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Hungary: Second Evaluation Round* (Council of Europe 27 September 2019) 56; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Czech Republic: First Evaluation Round* (Council of Europe 11 February 2020) 63; GRETA, *Evaluation Report: Bulgaria – Third Evaluation Round* (Council of Europe 29 April 2021) 71; GRETA, *Evaluation Report: Norway – Third Evaluation Round* (Council of Europe 8 June 2022) 56.

¹⁹² Council of Europe, ‘Explanatory Memorandum to Recommendation CM/Rec(2022)21 of the Committee of Ministers to Member States on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation’ (27 September 2022) CM(2022)141-add5final para 43.

‘there should be really no relation between the Labour Inspectorate. So there should be a clear division between the organisations that are protecting the labour rights of workers and also probably identifying cases of labour exploitation, and the people that are controlling on residence permits and forming a risk for the same potential victim ... I think this link is very complicated because then people just don’t trust authorities and they just don’t want to talk if it also can possibly be a risk for them’.¹⁹³

Moreover, a UK NGO participant was adamant that there is a need to prioritise uncovering situations of THB-LE rather than breaches of labour or immigration laws. They stressed that ‘if you have a victim of trafficking, first and foremost deal with the trafficking issue versus the immigration issue, that should be secondary’.¹⁹⁴ A complexity in practice was raised by a Finnish labour inspector participant who explained that part of their role involves detecting “illegal work” and that:

‘it’s the duty of Labour Inspectorate to monitor that all the employers obligation to make sure that you only use these workers who have the right to work in Finland and also in the Aliens Act we have got the absolute duty to report all cases of illegal working both from employer side and the employees side to the police’.¹⁹⁵

They conceded that in theory the obligation may ‘very well hinder them [victims] from contacting us, especially if they are staying in Finland illegally’.¹⁹⁶ In this regard, the Explanatory Memorandum recommends that:

‘member States should take measures aimed at increasing the propensity amongst trafficked persons to self-identify, including establishing safe reporting and effective complaint mechanisms, ...’.¹⁹⁷

This development is required across European states, with an Irish NGO interviewee stating that the current approach in Ireland means that they ‘feel like the system doesn’t necessarily encourage people to come forward. It might mean well, but there’s a lot of barriers’.¹⁹⁸ In particular, a main barrier for this participant was the low recognition of the offence occurring within the state, as explored further in Chapter Five.¹⁹⁹

¹⁹³ Interview 37 (a NGO working in the area of labour exploitation).

¹⁹⁴ Interview 8 (a THB focused NGO).

¹⁹⁵ Interview 12 (Senior Officer).

¹⁹⁶ *ibid.*

¹⁹⁷ Council of Europe, ‘Explanatory Memorandum to Recommendation CM/Rec(2022)21 of the Committee of Ministers to Member States on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation’ (27 September 2022) CM(2022)141-add5final para 20.

¹⁹⁸ Interview 21 (a NGO supporting migrant workers).

¹⁹⁹ See section 5.3.1.1. of Chapter Five.

In addition to calls for the increased integration of labour inspectors within the identification procedure, civil society organisations, in particular NGOs, are also important in the context of THB-LE. An Irish NGO interviewee voiced their discontent with the placement of formal identification within the remit of the police²⁰⁰ and called for NGOs ‘to be part of a multi-agency or multi-disciplinary identification body’ in this process.²⁰¹ Hulting has remarked that potential VoTs have little trust in public authorities²⁰² and because of this they may instead turn to NGOs and victim support services for assistance. Enabling NGOs to play a role in the identification procedure is necessary,²⁰³ but perhaps their involvement in the formal granting of the legal status of VoTs would bring about unintended consequences in practice. There is a danger that if this role changes to one of granting VoT status, victims may not view NGOs in the same way. This may have cascading implications on potential VoTs coming forward for assistance, the number of VoTs assisted, and thus, runs the risk of individuals remaining in severely exploitative situations. A NGO interviewee from the Netherlands was hesitant in allocating a formal role to NGOs in the identification procedure stating that:

‘Some NGOs asked for more role in deciding and things. At the same time, some NGOs say we should not because then you are seen by the victims as the ones that decide on their status and I also think we have to be very careful there’.²⁰⁴

A related hesitancy was expressed by other civil society organisations, such as an Icelandic trade unionist who stated that ‘we do not want to take on the role of the police to identify the scale of the human trafficking or labour exploitation’.²⁰⁵

These study participant accounts highlight some resistance on the part of civil society organisations to undertake this formal role. This poses a certain level of difficulty for

²⁰⁰ Interview 21 (a NGO supporting migrant workers).

²⁰¹ *ibid.*

²⁰² Madeleine Hulting, ‘Hidden Labour: Knowledge Production of Trafficking Illustrated by a Swedish Case Study’ in Christien van den Anker and Ilse van Liempt (eds), *Human Rights and Migration: Trafficking for Forced Labour* (Palgrave Macmillan 2012) 148.

²⁰³ Interview 6; 11; 33. A Portuguese NGO participant (Interview 33, a NGO working with victims of crime) explained as follows:

‘we are helping the victim directly, we will go with the victim to the first interviews or to be questioned by the authorities, we help them understand what their rights are, if they need translation, because they don’t speak Portuguese, we can help them with that, if they need a lawyer, we can help them to have free legal aid, we can go with them to different I don’t know if they will need to have a medical exam, we can go with them if and so we will accompany them in every stage of the process’.

²⁰⁴ Interview 18 (a THB focused NGO).

²⁰⁵ Interview 1.

states who seek to address calls by international monitoring bodies to include these civil society organisations more prominently in the identification procedure. Thus, there is a balance to be achieved between the priority of their role in victim support and the more formal role of allocating VoT status. Taking these concerns into account, there are grounds for including NGOs in the formal identification decision-making procedure to consult on each individual case. This may be more fitting than formally designating them as a CA. It would give them a voice in this formal process whilst averting the potential conflict raised above.

In sum, whilst the study participants were critical of a tendency to retain a criminal justice emphasis for formal identification purposes and in the designation of CAs, evidently any existing role that incorporates an identification function will lead to conflict unless the current limitations and mandate overlaps are resolved. There are broader concerns as to the integration of labour inspectors into the anti-trafficking response due to the overarching criminal justice approach adopted by most states in combating this phenomenon. Furthermore, a core challenge is to achieve a balance between the competing interests of victim protection measures, criminal law enforcement objectives, and immigration controls. Each of these actions call for, and require, different and often conflicting responses. As such, any proposed expansion of the remit of formal identification to other relevant stakeholders must appraise these tensions.

3.4.2. Devising a National Referral Mechanism to Capture Diverse Encounters with (Potential) Victims

Following the concerns and complexities highlighted in relation to (the expansion of the mandate of) designated CAs, this section focuses on the establishment of a NRM and the scope required to be fully comprehensive and effective in reality.

As defined in section 3.2., a NRM provides a framework of referral for both VoTs and relevant stakeholders. Following the detection of a potential VoT, with their consent, they may be entered into the referral mechanism which leads to a conclusive decision as to the formal VoT status. If properly executed and adequately resourced, it contributes towards fulfilling the obligations of the Trafficking Convention by ensuring prompt

identification²⁰⁶ and the efficient provision of victim support measures.²⁰⁷ An Irish NGO interviewee explained that this would ensure that ‘we have an identification system that is fair and balanced and isn’t overly onerous’.²⁰⁸ This framework can retain the designated CA for the purpose of the formal identification of VoTs, but it also provides a structure whereby protection measures can be streamlined. Moreover, referrals from other pertinent stakeholders, who may have detected potential VoTs, can be made in a transparent manner. The certainty afforded by the mechanism for VoTs is vital and it is also beneficial for stakeholder referrals. This latter point is particularly pertinent as an Icelandic trade unionist outlined that in their jurisdiction certain stakeholders ‘do not feel good moving forward with a case if they do not know what happens to the victim’.²⁰⁹

The OSCE has indicated that NRMs are flexible in that they must ‘fit’ each country’s social, political, economic and legal environments.²¹⁰ States have considerable discretion in devising a NRM with Kanics observing that the existence and formulation of such a mechanism varies considerably amongst European states.²¹¹ The result of this discretion was borne out in the qualitative findings, relating to its (non-)existence in their jurisdiction and its formality within the legal framework.²¹² Relatedly, GRETA and the Committee of Parties have observed that in some states there is no formal NRM in place.²¹³ Four interviewees pointed to an absence of a NRM as an issue hampering

²⁰⁶ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10.

²⁰⁷ *ibid* Article 12.

²⁰⁸ Interview 21 (a NGO supporting migrant workers).

²⁰⁹ Interview 1.

²¹⁰ OSCE and ODIHR, *National Referral Mechanisms – Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook* (OSCE 2004) 16.

²¹¹ Jyothi Kanics, ‘National Referral Mechanisms’ in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 312. See also, GRETA, *9th General Report on GRETA’s Activities covering the period from 1 January to 31 December 2019* (Council of Europe 2020) 50.

²¹² Interview 8; 21; 22; 29; 33.

²¹³ Committee of the Parties, *Recommendation CP(2018)23 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Estonia: First Evaluation Round* (Council of Europe 9 November 2018) 2; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Finland: Second Evaluation Round* (Council of Europe 5 June 2019) 46; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany: Second Evaluation Round* (Council of Europe 20 June 2019) 26; GRETA, *Evaluation Report: Norway – Third Evaluation Round* (Council of Europe 8 June 2022) 12 and 42; Committee of the Parties, *Recommendation CP/Rec(2023)08 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain: Third Evaluation Round* (Council of Europe 16 June 2023) 3; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Czech Republic: Second Evaluation Round* (Council of Europe 11 October 2024) 28.

effective referrals between organisations,²¹⁴ with one Icelandic trade unionist proposing that it ‘needs to be introduced, we have to organise this better’.²¹⁵ From a NGO standpoint, a Norwegian NGO interviewee delineated that ‘We don't have a national referral mechanism’ and outlined that they:

‘have a voice, but we think that we could have a stronger voice if there was a better coordination of the response in Norway as a whole’.²¹⁶

This underlines the utility of a NRM in integrating different perspectives into the identification procedure, and illustrates the drawback to the non-inclusion of civil society organisations within this structure. As such the NRM is a crucial component of an anti-trafficking response by enabling a co-ordinated approach to the identification procedure and the corresponding provision of assistance and supports as required under Article 10 of the Trafficking Convention.²¹⁷

A Portuguese NGO interviewee articulated that the NRM in place ‘is working well, although as I would say [with] everything, it could be working better. So of course, it still has flaws’ as some situations are not identified as THB-LE, despite the NGO believing the circumstances satisfied the criteria of the offence.²¹⁸ Moreover, although a NRM was described as ‘a great plan’ accompanied by ‘very thorough’ guidelines, a Greek NGO participant stressed that:

‘if the government could support this plan, it would work perfectly. However, the government is not there yet. We don’t have adequate capacity in shelters. We don’t have adequately trained professionals’.²¹⁹

These accounts underscore the importance of resourcing any referral mechanism proposed or currently in place in European states. This is crucial to fully achieve the purpose of a NRM and enable streamlined identification. It is one particular example of an area where there is a need to address the gap between political rhetoric and political

²¹⁴ Interview 1; 5; 13; 19.

²¹⁵ Interview 1.

²¹⁶ Interview 19 (a NGO supporting vulnerable populations).

²¹⁷ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10.

²¹⁸ Interview 33 (a NGO working with victims of crime).

²¹⁹ Interview 23 (a THB focused NGO).

practice.²²⁰ One way to strengthen a NRM is to incorporate it as part of a NAP, ensuring state accountability and transparency through open publication and dissemination.²²¹ This perspective was adopted by a trade union interviewee from Iceland who commented that ‘it all comes down to the National Action Plan, which we think that these processes should be written into’.²²²

3.4.2.1. *Capturing Diverse Ways of Encountering Victims*

There is discretion on the part of states as to which stakeholders are involved in the national referral structure. This discretion can be a hindrance for the identification of THB-LE and GRETA has noted that ‘many countries do not sufficiently involve agencies specialised in detecting’ these cases.²²³ This difficulty coincides with limiting the designation of CAs to criminal justice stakeholders only. GRETA has called for the inclusion of labour inspectors, NGOs and trade unions in NRMs.²²⁴ Certain states, such as Belgium, Bulgaria, Spain and the Ukraine have adhered to this call in relation to labour inspectors.²²⁵ Nonetheless, such inclusion has not fully extended to civil society organisations. This is a concern because the qualitative analysis highlights that the designated CAs may not be the first stakeholder to encounter situations of THB-LE and potential VoTs. The need for streamlining referrals and integrating non-criminal justice stakeholders in this mechanism was further illustrated by a Norwegian NGO interviewee who explained that:

‘they [the police] are proactive up to a certain point but they are often acting on tips, either from us or from someone else’.²²⁶

²²⁰ Joel Quirk, ‘Injection: Modern Slavery and Political Strategy’ in Damian A. Pargas and Julianne Schiel (eds), *The Palgrave Handbook of Global Slavery Throughout History* (Palgrave Macmillan 2023) 693.

²²¹ Luis C.deBaca, ‘What We Talk About When We Talk About Trafficking: A Reflection on the First 20 Years of the Modern Anti-Slavery Fight’ in Rochelle L. Dalla and Donna Sabella (eds), *Routledge International Handbook of Human Trafficking: A Multi-Disciplinary and Applied Approach* (Routledge 2020) 55.

²²² Interview 1.

²²³ GRETA, *7th General Report on GRETA’s Activities covering the period from 1 January to 31 December 2017* (Council of Europe 2018) 59.

²²⁴ GRETA, *9th General Report on GRETA’s Activities covering the period from 1 January to 31 December 2019* (Council of Europe 2020) 16.

²²⁵ See GRETA, *Compendium of Good Practices in Addressing Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2020) 12, 15 and 17.

²²⁶ Interview 19 (a NGO supporting vulnerable populations).

Likewise, a Slovenian NGO interviewee outlined that:

‘in most cases, they [the police] do tend to get information either from us or from some other, for Labour exploitation for labour unions, or some other institutions that come into contact, direct contact with workers and they tell them what is happening. So they give the information to the police and police then starts with the investigation’.²²⁷

As a result of this dependence on referrals from labour inspectors and relevant support organisations in certain jurisdictions, the ability to inform criminal law enforcement officials of possible instances of THB-LE is crucial and further demonstrates the importance of a fully functioning NRM to allow for such referrals and information sharing.

The data reinforces the importance of multi-stakeholder engagement and the need for a comprehensive referral process so that various avenues of initial contact can lead to an assessment on reasonable grounds and further consideration during the formal identification process. In developing the identification procedure and accompanying structures, diverse points of contact must be acknowledged and integrated into a comprehensive approach because of their potential contribution to the identification of victims of THB-LE.²²⁸ The study participant perspectives provide an evidence-base for a comprehensive NRM in capturing and facilitating these different situations to ensure that all (potential) VoTs are provided with assistance and support, and to enable the formal identification process to occur in a streamlined manner. It is key that a broad range of stakeholders can make such referrals into a NRM because VoTs and stakeholders interconnect in a number of ways.²²⁹ A UK NGO interviewee delineated three core avenues wherein initial contact is made stating that:

‘It’s probably a mixture of things. So I think that there is definitely proactive work that will look at vulnerable sectors or sites, where there are suspicions of exploitation taking place, and that could be whether it’s policing, or [labour inspection], a number of different sort of government arms, agencies around that. Then you’ve also got tip offs that we receive on the helpline or that policing receive directly, that can inform either an ongoing investigation or spark a new investigation. You then also have the victims that self-present’.²³⁰

²²⁷ Interview 35 (a THB focused NGO).

²²⁸ Interview 1; 4; 7; 8; 9; 11; 13; 14; 15; 16; 17; 18; 19; 20; 21; 23; 24; 25; 26; 27; 32; 33; 35; 38.

²²⁹ Anette Brunovskis and Rebecca Surtees, ‘Identification of Trafficking Victims in Europe and the Former Soviet Union’ in Jennifer Bryson Clark and Sasha Poucki (eds), *The Sage Handbook of Human Trafficking and Modern Day Slavery* (Sage Publications 2019) 339.

²³⁰ Interview 8 (a THB focused NGO).

Other study participants highlighted the critical role played by members of the public in exposing potential situations of THB-LE.²³¹ A Finnish law enforcement participant outlined that the police receives ‘some hints from the public for instance, from restaurants or from friends of victims or anything’.²³² Furthermore, a UK NGO interviewee detailed that:

‘it might be a customer who’s at a car wash and they report that actually “I think I’ve seen somewhere that if I see these indicators present that something is not right”’.²³³

This finding has broader implications for future policy formation in terms of awareness raising campaigns and the importance of indicators of THB-LE.²³⁴ It also underscores the importance of establishing clear contact points for members of the public to report such instances. In this regard, the importance of a THB hotline²³⁵ was stressed by some interviewees for its usefulness as a first point of contact and subsequent referral to support services,²³⁶ but it is also beneficial in instigating a criminal investigation.²³⁷ The establishment of such a service has been listed as part of successful initiatives to counter THB-LE.²³⁸ Hotlines provide anonymity for those contacting them and facilitate a safe means through which instances of THB-LE can be reported and potential VoTs identified. A Greek NGO participant described the variety of individuals contacting such helplines as follows:

‘it’s usually through the hotline and very rarely will the victims call us because they didn’t have access to a phone. They don’t know where to call. So we had a few cases but they were very few. It is usually a witness, a citizen or somebody else who has seen something suspicious, or the victim has gone to them to ask

²³¹ Interview 1; 7; 8; 9; 11; 15; 16; 23.

²³² Interview 15 (Chief Superintendent).

²³³ Interview 16 (a THB focused NGO).

²³⁴ As discussed in-depth in Chapter Five.

²³⁵ In other contexts, such hotlines have increasingly been recognised as a core service for victims of serious offences. See for example, the obligation under Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (adopted 11 May 2011, entered into force 1 August 2014) CETS 210 Article 24.

²³⁶ Interview 8; 15; 18; 23; 25; 32.

²³⁷ In Austria, for example, the Federal Crimes Office operated a 24-hour trafficking hotline and received approximately 750 phone calls and emails in 2022, with the government reporting that ‘these calls led to numerous investigations and the identification and referral of victims’. Furthermore, in Spain, a government-funded NGO hotline received 316 calls in 2022, of which 151 included trafficking indicators and 28 resulted in official identification of victims by law enforcement. United States Department of State, *Trafficking in Persons Report* (USDS 2023) ‘Spain’ and ‘Austria’.

²³⁸ ILO, *Ending Forced Labour by 2030: A Review of Policies and Programmes* (ILO 2018) 93.

for help, or very often it is organisations like social service providers and medical professionals, or even the police’.²³⁹

This participant account is quite similar to the UK study by Cockbain and Tompson which found, in the context of THB-SE, that the most common direct contacts to the helpline were community members, NGOs, medical or mental health professionals, police, a friend or local authority.²⁴⁰

Further to this, a Bulgarian labour inspector described the importance of this service in the context of potential cases of nationals being exploited abroad:

‘we have a special telephone line, it’s here with me, for persons, Bulgarian persons who work abroad. It could be dialled all over the world with the Bulgarian code, telephone code, and here we give consultations to all possible problems related to working abroad, no matter if the workers are posted or they are directly involved in employment with foreign employer, and we receive quite a variety of questions and problems’.²⁴¹

Notably, not all states operate a THB specific hotline. Hotlines which are targeted at violence more broadly can be useful, but they may lack the specialised knowledge to recognise a situation as one of THB-LE. A Dutch NGO participant captured the core role of NGOs in the early stages of the identification procedure as a result of operating such hotlines, stating:

‘So what you see that if we talk about informal identification, police calling a helpline or police informing an NGO, people calling an NGO, very often you see that our members are there at the beginning. That might be the ones that identify, speaking with someone calling their helpline, and describing their work situation that you can hear the bells are ringing, “this is definitely human trafficking”, can also be labour exploitation. So you see that very often NGOs are there in the beginning’.²⁴²

²³⁹ Interview 23 (a THB focused NGO). This range of individuals contacting such hotlines was reflected in the Greek A21 Hotline data, which reported that 46.2 per cent of calls derived from the general public and just 6.2 per cent from a potential VoT. A21, *Greece Annual Hotline Report 2023* (A21 2024) 2. A similar trend was captured by the A21 Bulgarian National Human Trafficking Hotline in 2023, which reported that 48.9 per cent of calls were from the general public, including friends, family members or witnesses, and 11.7 per cent were direct contact from a potential VoT. A21, *National Human Trafficking Hotline Report 2023: Bulgaria* (A21 2024) 2.

²⁴⁰ Ella Cockbain and Lisa Tompson, ‘The Role of Helplines in the Anti-Trafficking Space: Examining Contacts to a Major “Modern Slavery” Hotline’ (2024) 82(2) *Crime, Law and Social Change* 463-492, 480.

²⁴¹ Interview 32.

²⁴² Interview 18 (a THB focused NGO).

A specialised THB hotline, operating 24/7, should be put in place by states and linked to the NRM structure to enable referrals and trigger the assessment on the basis of reasonable grounds, leading to a conclusive decision for formal identification purposes.²⁴³ It has been reported that it is less common for victims to come forward and make a complaint directly to stakeholders, particularly public authorities.²⁴⁴ A Czech labour inspector, for example, stated that:

‘it’s only very few cases the people came to labour inspectors, and then they did a complaint and they said what is wrong, and we could go precisely on the target that we knew that there is something wrong. But let’s say it’s only in those cases that the people are brave, and they have information’.²⁴⁵

In this regard, the Federal Criminal Police Office of Germany outlined that because victims of THB-LE infrequently come forward and as it is only detected through controls, ‘a large number of unreported and unrecorded crime must be assumed’.²⁴⁶ More often, NGO participants reported that it is ‘word of mouth among migrant workers themselves’²⁴⁷ that spreads information regarding available services and results in initial contact being made.²⁴⁸ This avenue was succinctly summarised by a Swedish NGO participant who stated:

‘It could be just like a personal referral, for example, previous clients referring friends or people they’ve met to us. Sometimes they also bring someone along for an appointment like this “yeah, this person is in the same situation as I am in and also wants to contact”’.²⁴⁹

²⁴³ This service requires adequate financial resourcing, and more specifically, resourcing of multilingual staff who have been trained with a broad knowledge of THB. It is vital that staff do not operate only on the basis of a stereotypical understanding of THB more broadly, and are equipped to recognise different exploitative forms, including THB-LE. The details of the hotline should be well-advertised in the public domain to increase the reporting of potential cases of THB-LE.

²⁴⁴ David M. Doyle, Clíodhna Murphy, Muiread Murphy, Pablo Rojas Coppari and Rachel J. Wechsler, “‘I Felt Like She Owns Me’: Exploitation and Uncertainty in the Lives of Labour Trafficking Victims in Ireland’ (2019) 59(1) British Journal of Criminology 231-251, 241. This was also borne out in the qualitative data: Interview 4; 8; 9; 15; 17; 26; 27; 38.

²⁴⁵ Interview 38 (Senior Officer).

²⁴⁶ Federal Criminal Police (Bundeskriminalamt), *Human Trafficking and Exploitation – National Situation Report 2019* (Federal Government of Germany 2020) 20. This was reiterated in its most recent report which stated that ‘A high number of unreported cases still has to be assumed in the area of human trafficking and exploitation’, Federal Criminal Police (Bundeskriminalamt), *Human Trafficking and Exploitation – National Situation Report 2022* (Federal Government of Germany 2023) 27.

²⁴⁷ Interview 13 (a NGO supporting migrant workers).

²⁴⁸ Interview 11; 13; 14; 21; 27.

²⁴⁹ Interview 27 (a THB focused NGO).

The importance of support organisations at this initial stage of contact is particularly evident on the basis of the knowledge that victims of THB-LE are hesitant to approach public authorities for different reasons. In this regard a Norwegian trade unionist commented that it is ‘never police officers I would say or quite rarely at least. I would say that most of them come through the different civil society organisations and trade unions’.²⁵⁰ This points towards the need to fully integrate civil society stakeholders within the NRM structure.

In conclusion, a NRM is a key part of a comprehensive identification procedure. However, as illustrated there remains considerable scope for improvement in this area across European states and NRMs must be sufficiently resourced in order to operate effectively. Most evidently, states should continue to strive to shift the focus from the designated criminal justice CA towards the more concrete integration of non-criminal justice stakeholders within the NRM structure. This analysis has pointed towards the need to fully integrate civil society organisations, especially in instances whereby both public contact and (potential) VoT contact is initially made with these stakeholder cohorts. It further highlights the utility of establishing a THB-specific hotline as part of the NRM structure. This all-encompassing approach is essential in capturing the various ways in which VoTs may be detected and to adequately enable referrals from a diverse range of stakeholders. It would address some of the gaps in victim identification and ensure that (potential) VoTs are recognised as such in a streamlined and consistent manner.

3.4.3. Barriers to Victims’ Reporting

In addition to concerns regarding designated CAs and the NRM, there are other issues that pose difficulties for the identification of victims of THB-LE. This section focuses on two core barriers to victims reporting as understood by the study participants: a fear or distrust of public authorities and low levels of self-declaration.

3.4.3.1. Due Consideration to Fear or Distrust of Public Authorities

Fear or distrust of authorities was cited by several participants as posing a complication to the identification procedure by limiting direct reporting by VoTs which can contribute

²⁵⁰ Interview 4. As also iterated by Interview 20 (a THB focused NGO).

to low detection and identification of instances of THB-LE by stakeholders.²⁵¹ As an Icelandic NGO participant indicated, VoTs are ‘really scared and not trusting the Icelandic authorities’.²⁵² Such fear extends to criminal law enforcement officials,²⁵³ with a German NGO interviewee articulating the practical drawbacks to this, stating that:

‘people don’t trust the police usually. So, with reason, I mean, so they do not tell as the way how they get there, how did they work, how much money did they have, if they’re afraid of the employer, if they are under pressure, if there was kind of violence’.²⁵⁴

This fear of criminal law enforcement officials is a pressing issue because, as demonstrated in section 3.4.1., criminal law enforcement are generally the designated CA mandated with the duty to formally identify VoTs. A similar fear of labour inspectors is a concern as they are a key stakeholder with the ability to monitor working conditions.²⁵⁵ A Spanish labour inspector explained that:

‘I have not personally heard about so many cases where the victim approached the inspector because normally they are afraid of the inspectors, mainly police forces also, but also the inspectors. So there are not many cases in which we have a confession. That’s one of the challenges or barriers that we have in the detection of cases’.²⁵⁶

While stakeholders should be regularly encouraged to gather all pertinent information and potential evidence, including documentary evidence,²⁵⁷ the direct interaction with exploited individuals can be the most fruitful avenue through which exploitative practices can be uncovered.²⁵⁸ However, Shelley has observed that direct contact with VoTs can be a rare occurrence due to the nature of the offence of THB-LE.²⁵⁹ A Swiss trade unionist

²⁵¹ Interview 2; 5; 8; 13; 17; 20; 22; 23; 26; 29; 32; 33; 37; 41. This was more frequently raised within the qualitative data than the impact of a fear of the perpetrators, Interview 2; 3; 5; 9; 33; 37.

²⁵² Interview 29 (a NGO assisting victims of violence).

²⁵³ Guri Tyldum and Anette Brunovskis, ‘Describing the Unobserved: Methodological Challenges in Empirical Studies on Human Trafficking’ (2005) 43(1-2) *International Migration* 17-34, 25; Venla Roth, *Defining Human Trafficking and Identifying its Victims: A Study on the Impact and Future Challenges of International, European and Finnish Legal Responses to Prostitution-Related Trafficking in Human Beings* (Martinus Nijhoff Publishers 2012) 7; UN Special Rapporteur on the Human Rights of Migrants, ‘Human Rights of Migrants’ (25 September 2018) A/73/178/Rev.1, 13-14.

²⁵⁴ Interview 17 (a THB-LE focused NGO).

²⁵⁵ ILO, *Labour Inspection: What It Is and What It Does?* (ILO 2019).

²⁵⁶ Interview 26. Also stated by Interview 28.

²⁵⁷ UNODC, *Evidential Issues in Trafficking in Persons Cases: Case Digest* (United Nations 2017) 39.

²⁵⁸ Interview 32.

²⁵⁹ Louise Shelley, ‘The Commodification of Human Smuggling and Trafficking’ in Ato Quayson and Antonela Arhin (eds), *Labour Migration, Human Trafficking and Multinational Corporations: The Commodification of Illicit Flows* (Routledge 2012) 43; Marie Segrave, Sanja Milivojevic and Sharon Pickering, *Sex Trafficking and Modern Slavery: The Absence of Evidence* (2nd edn, Routledge 2018) 37.

demonstrated the necessity for integrating trade unions within the anti-trafficking response on this basis, explaining that:

‘the employers say to the youngest people they’ve got, they came to Switzerland, “don’t talk to them, they are against us” and so on and on, but because we know the language, people understand very fast that we are not their enemies. We are not playing the police role, but we are colleagues trying to figure out what working conditions are, are they paid correctly. We inform them and then wait until they come to us to ask more questions. So when they ask questions in these processes, we can understand, okay something is wrong in this field’.²⁶⁰

In the context of the designation of CAs, section 3.4.1.1. revealed the tensions arising for labour inspection services that stem from the dual duties of detecting immigration-related violations and victims of THB-LE. A related observation arose in this context whereby a fear of deportation was highlighted by participant stakeholders as reinforcing the reluctance of individuals to report situations of THB-LE to authorities.²⁶¹ A Greek NGO representative viewed this fear as impacting on the detection of VoTs in that:

‘they know that they are illegal and even if they are exploited, they won’t go to the police because they think that the government will not protect them since they’re illegal’.²⁶²

This was similarly acknowledged by a German law enforcement official who explained that:

‘as long as they can expect that their situation improve in being in Germany, they will not talk to the police because if they are illegal here, they just fear to be pushed back in their home country’.²⁶³

Contrastingly, establishing trust between VoTs and civil society stakeholders is more achievable. A Bulgarian labour inspector outlined that:

‘they have to trust somebody, they are not trusting institutions because institutions are not something respectable for them, or they’re scared because they have the idea that they are doing something wrong usually’.²⁶⁴

²⁶⁰ Interview 3.

²⁶¹ Interview 5; 8; 20; 33; 37.

²⁶² Interview 23 (a THB focused NGO).

²⁶³ Interview 5 (Representative from the Federal Police THB Unit).

²⁶⁴ Interview 32.

This is one additional rationale for the increased integration of civil society organisations, including NGOs and trade unions, in anti-trafficking measures. Potential VoTs may be more willing to report to civil society organisations when compared to the anticipated risks of reporting exploitative situations to public authorities. In this regard, an Austrian NGO participant stated that ‘talking about the experience is the first challenge I guess and it takes a certain amount of trust in the person asking you about it’.²⁶⁵ In fact, a Swiss trade unionist outlined that in attempting to assist exploited individuals ‘what’s important is that they don’t see us as part of the police’.²⁶⁶

It is acknowledged that there are other fears for (potential) VoTs in addition to a fear of authorities. This may be due to threats made by perpetrators,²⁶⁷ both against the VoTs themselves and their family members.²⁶⁸ As a Portuguese NGO interviewee outlined, VoTs may be afraid to come forward to report their severely exploitative situation for a number of reasons, including:

‘because they’re threatened, because their families are threatened, because they’re not really sure of what their rights are, and what we will think of the situation and if we will actually help them’.²⁶⁹

To counteract some of these fears, Gallagher and Holmes have proposed that states should put victim-centred “incentives” in place to encourage VoTs to make contact with authorities and to report instances of THB-LE.²⁷⁰ This is echoed by the UN OHCHR Recommended Principles and Guidelines which require that criminal justice personnel training ‘should acknowledge the practical value of providing incentives for trafficked persons and others to come forward to report traffickers’.²⁷¹ Examples of such initiatives are the implementation of the non-punishment principle and the establishment of safe-reporting mechanisms.

²⁶⁵ Interview 6 (a NGO focused on assisting migrant women).

²⁶⁶ Interview 3.

²⁶⁷ Interview 5; 27; 37.

²⁶⁸ Jo Goodey, ‘Human Trafficking: Sketchy Data and Policy Responses’ (2008) 8(4) *Criminology & Criminal Justice* 421-442, 425; Maria Ravlik, *The Fight against Human Trafficking: Drivers and Spoilers* (Palgrave Macmillan 2020) 2.

²⁶⁹ Interview 33 (a NGO working with victims of crime).

²⁷⁰ Anne Gallagher and Paul Holmes, ‘Developing an Effective Criminal Justice Response to Human Trafficking: Lessons from the Front Line’ (2008) 18(3) *International Criminal Justice Review* 318-343, 332 and 334.

²⁷¹ UN OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (United Nations 2002) Guideline 5(2).

3.4.3.1.1. Non-Punishment Principle

The application of the non-punishment principle²⁷² may contribute towards alleviating some of the inherent fears experienced by (potential) VoTs and increase their ability to report situations of THB-LE.²⁷³ The importance of this principle was captured by an Icelandic trade unionist who stated that ‘often it is part of the exploitation to make the victims vulnerable against the legislation, police, etc’. They further acknowledged that there may be circumstances whereby a victim has not ‘obeyed the laws’ but stressed that it is important to recognise ‘that there is no such thing that’s called the perfect victim’.²⁷⁴ As outlined in Chapter Two of this thesis,²⁷⁵ the Trafficking Convention under Article 26²⁷⁶ was the first binding treaty²⁷⁷ to require states to provide for the possibility of the non-imposition of penalties for VoT involvement in an unlawful activity that they were compelled to perform.²⁷⁸ The ECtHR has outlined two important qualifications to this principle, namely that:

‘the victim of trafficking must have been compelled to commit the criminal activity; and, where that is the case, the national authorities should be entitled, but not obliged, to decide not to prosecute’.²⁷⁹

Jovanović and Niezna propose that:

²⁷² Occasionally referred to as the principle of non-liability. See Julia Maria Muraszkievicz, *Protecting Victims of Human Trafficking from Liability: The European Approach* (Palgrave Macmillan 2019). Muraszkievicz favours the phrase non-liability ‘because of its breadth and applicability beyond the criminal law sphere’, Julia Muraszkievicz, ‘Protecting Victims of Human Trafficking from Liability: An Evaluation of Section 45 of the Modern Slavery Act’ (2019) 83(5) *The Journal of Criminal Law* 394-405, 396.

²⁷³ GRETA, *2nd General Report on GRETA’s Activities covering the period from 1 August 2011 to 31 July 2012* (Council of Europe 2012) 16; UN Working Group on Trafficking in Persons, ‘Guidance on the Issue of Appropriate Criminal Justice Responses to Victims Who Have Been Compelled to Commit Offences as a Result of Their Being Trafficked’ (29-30 June 2022) CTOC/COP/WG.4/2022/2 para 4.

²⁷⁴ Interview 1.

²⁷⁵ See section 2.2.2.3. of Chapter Two.

²⁷⁶ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 26.

²⁷⁷ This is in contrast to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children which does not contain a provision for a non-punishment principle.

²⁷⁸ This is also expressly contained within Protocol of 2014 to the Forced Labour Convention 1930 (adopted 11 June 2014, entered into force 9 November 2016) 103rd ILC Session Article 4(2). The UN OHCHR Recommended Principles and Guidelines frames this principle in relation to outcomes that are a ‘direct consequence of their situation as trafficked persons’, UN OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (United Nations 2002) Principle 7, Guidelines 2(5) and 4(5). See also, UNODC, *Model Law Against Trafficking in Persons* (United Nations 2009) Article 10.

²⁷⁹ *VCL and AN v The United Kingdom* App nos 77587/12 and 74603/12 (ECtHR, 16 February 2021) para 158.

‘what matters is not the type of unlawful activity committed by a victim of human trafficking but the *relationship* between the crime of human trafficking and the victim’s offence’.²⁸⁰

In the context of THB-LE, the non-punishment principle may be relevant where VoTs have committed a criminal offence but also in situations where they are in violation of labour and/or immigration law.²⁸¹ A Portuguese NGO participant explained the practice in their jurisdiction in this regard, stating that:

‘we’ve had situations of people that were in an illegal situation considering their documents, but the law in Portugal says that they cannot be penalised for that if they are a human trafficking victim. So even if they have any sort of problem with their documents, nothing bad will happen to them’.²⁸²

As such, the Explanatory Memorandum declares that the principle ‘should be capable of being applied to all types of offences, ... and should be seen in light of the victim’s individual circumstances’.²⁸³ Therefore, it is critical that states do not limit the scope of this principle to criminal offences *only*. Such protection is essential, with a Belgian NGO interviewee highlighting that they:

‘have not yet met one victim that did not commit a crime at some point in time and they’re afraid of that ... If you can from the very beginning make it clear to, “look, you’re a victim of trafficking, as soon as that is established, you will not be prosecuted or punished for whatever crime is committed”’.²⁸⁴

If states uphold this principle of non-punishment, it may act as an “incentive” for victims to come forward and disclose their exploitative experiences. Yet, Piotrowicz argues that the identification procedure is vital in order for the non-punishment principle to be applied, as only those who are formally identified as a VoT may benefit from the

²⁸⁰ Marija Jovanović and Maayan Niezna, *Non-Punishment of Victims/Survivors of Human Trafficking in Practice: A Case Study of the United Kingdom* (Council of Europe 2023) 20.

²⁸¹ Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Policy and Legislative Recommendations Towards the Effective Implementation of the Non-Punishment Provision with regard to Victims of Trafficking* (OSCE 2013) 7; UN OHCHR, *Human Rights and Human Trafficking* (United Nations 2014) 17; UN Special Rapporteur on Trafficking in Persons, especially Women and Children, *The Importance of Implementing the Non-Punishment Provision: The Obligation to Protect Victims* (United Nations 2020) 3; UN Special Rapporteur on Trafficking in Human Beings, especially Women and Children, ‘Implementation of the Non-Punishment Principle’ (17 May 2021) A/HRC/47/34 para 25; GRETA, *Guidance Note on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2021) 28.

²⁸² Interview 33 (a NGO working with victims of crime).

²⁸³ Council of Europe, ‘Explanatory Memorandum to Recommendation CM/Rec(2022)21 of the Committee of Ministers to Member States on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation’ (27 September 2022) CM(2022)141-add5final para 35.

²⁸⁴ Interview 20.

application of this principle.²⁸⁵ This has likewise been pronounced by the ECtHR which stated that early identification is of ‘paramount importance’.²⁸⁶ In practice, there are issues with the implementation of this principle. A NGO participant from Germany highlighted that ‘it’s not easy because there, as well, is the tendency to first criminalise actual victims of trafficking and not see them as victims’.²⁸⁷ Likewise, a Swiss trade unionist stated that the ‘Swiss protection isn’t adequate’ on the basis that:

‘many people are fined, many people are arrested for an illegal permit existence and everything ... we consider this practice as contrary to the legal protection and the principle of non-punishment’.²⁸⁸

On the other hand, a UK NGO interviewee articulated that:

‘I am seeing a shift from seeing someone as an offender and [to] identify where there are actually vulnerabilities and something more serious behind what they have done’.²⁸⁹

This indicates that the increased application of this principle may lead to greater understanding of the complex experiences of victims of THB-LE on the part of stakeholders. These developments would be more in line with a victim-centred, human rights-based approach.²⁹⁰ State stakeholders must be instructed to view potential VoTs as victims from the outset, rather than focusing on possible infringements. It is, however, paramount that the operation of this principle can be communicated to (potential) VoTs in order to encourage them to report their experience of THB-LE.

²⁸⁵ Ryszard Piotrowicz, ‘Article 26: Non-Punishment Provision’ in Julia Planitzer and Helmut Sax (eds), *A Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings* (Elgar Publishing 2020) 319. See also, Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Policy and Legislative Recommendations Towards the Effective Implementation of the Non-Punishment Provision with regard to Victims of Trafficking* (OSCE 2013) 15-16; Vladislava Stoyanova, *Human Trafficking and Slavery Reconsidered: Conceptual Limits and States’ Positive Obligations in European Law* (Cambridge University Press 2017) 144.

²⁸⁶ *VCL and AN v The United Kingdom* App nos 77587/12 and 74603/12 (ECtHR, 16 February 2021) para 160-162.

²⁸⁷ Interview 14 (a NGO focused on assisting migrant women).

²⁸⁸ Interview 3.

²⁸⁹ Interview 16 (a THB focused NGO).

²⁹⁰ Simon Massey and Glynn Rankin, *Exploring People for Profit: Trafficking in Human Beings* (Palgrave Macmillan 2020) 88.

3.4.3.1.2. Safe Reporting Mechanisms

The second initiative in alleviating fears on the part of (potential) VoTs which emerged from the qualitative data related to the establishment of safe-reporting mechanisms, and specifically the concept of a firewall. The Platform for International Cooperation on Undocumented Migrants, as cited by GRETA,²⁹¹ explains the concept of a firewall as follows:

‘The firewall is a clear separation in law and practice between putting forward a complaint to the relevant national body and any proceedings related to immigration. Coming forward with a complaint should not lead to any reprisals for the undocumented worker in relation to their immigration status. This includes protection from fines and other administrative sanctions, prosecution for immigration-related criminal offences, arrest, detention and deportation’.²⁹²

A German NGO participant advocated for the introduction of such a ‘firewall’ in order to safely report THB-LE offences. This was on the basis that it is necessary to ensure that individuals:

‘who are reporting a crime are not in danger of being prosecuted for other reasons, for example, if you go to the labour court to testify, and that you’ve been a victim of exploitation, actually until now, the court has this obligation to inform the immigration authorities, so you might actually lose your possibility to stay. There is no firewall. So victims of trafficking of exploitation that go to court might also be in danger of being prosecuted for other reasons, for illegal entry, illegal work, or fake marriage’.²⁹³

A Belgian NGO interviewee proposed introducing an initiative or process to increase identification rates of THB-LE and encourage VoTs to approach labour inspectors which would mean that:

‘if you go to the inspection and you file your complaint yourself, there is no risk at all for your residence stay. The migration officials will never be aware of it’.²⁹⁴

²⁹¹ GRETA, *Guidance Note on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2021) 12.

²⁹² Platform for International Cooperation on Undocumented Migrants (PICUM), *Undocumented Migrant Workers: Guidelines for Developing an Effective Complaints Mechanism in Cases of Labour Exploitation or Abuse* (PICUM 2017) 3. See, for example, Ministry of Justice, *Finland Fights Human Trafficking: Action Plan against Trafficking in Human Beings* (Government of Finland 2021) 36.

²⁹³ Interview 14 (a NGO focused on assisting migrant women).

²⁹⁴ Interview 36 (a NGO specialising in assisting undocumented migrants).

Similar calls for the introduction of such a mechanism have been made by scholars,²⁹⁵ the UN General Assembly,²⁹⁶ and international monitoring bodies such as GRETA.²⁹⁷ The provision of a safe reporting system, without the risk of referral to (im)migration services, may play a part in increasing the number of individuals reporting severely exploitative situations. Thus, it could increase detection and identification rates of THB-LE by providing the authorities with key information to instigate an investigation or inspection of workplaces.

3.4.3.2. *Reflecting on Self-Declaration as a Barrier to Victims' Reporting*

As a result of the conceptualisation of the identification procedure outlined above in section 3.2.3., whilst the term self-identification has been employed in the scholarly literature,²⁹⁸ this thesis adopts the term self-declaration as a VoT on the basis that a (potential) VoT cannot formally identify as such. Instead, self-declaration is a more appropriate term to capture the VoTs understanding of their situation as one of THB-LE and the possible impact this has on victim reporting.

Recently, the Austrian Government explicitly characterised such self-declaration as a significant challenge in the fight against THB.²⁹⁹ This was similarly raised in the qualitative data as the most common barrier to the identification of victims of THB-LE.³⁰⁰ A Spanish criminal law enforcement official, for example, described this as a 'huge

²⁹⁵ François Crépeau and Idil Atak, 'Global Migration Governance: Avoiding Commitments on Human Rights, Yet Tracing a Course for Cooperation' (2016) 34(2) *Netherlands Quarterly of Human Rights* 113-146, 143-144; Clíodhna Murphy, David M. Doyle and Muiread Murphy, "'Still Waiting" for Justice: Migrant Workers' Perspectives on Labour Exploitation in Ireland' (2020) 49(3) *Industrial Law Journal* 318-351, 342.

²⁹⁶ UN General Assembly, '2021 Political Declaration on the Implementation of the United Nations Global Plan of Action to Combat Trafficking in Persons' (23 November 2021) A/RES/76/7, 8.

²⁹⁷ GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Switzerland: Second Evaluation Round* (Council of Europe 9 October 2019) 62; GRETA, *Guidance Note on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2021) 12.

²⁹⁸ To take one example, Amy Erbe Healy, "'They Never Self-Identify": Victims of Human Trafficking for Sexual Exploitation, the Island of Ireland' in Barbara Górnicka and Mark Doyle (eds), *Sex and Sexualities in Ireland: Interdisciplinary Perspectives* (Palgrave Macmillan 2023).

²⁹⁹ 'Significant challenges in the fight against human trafficking and identifying victims are the self-identification of trafficked persons and access to trafficked persons', Committee of the Parties, *Report Submitted by the Authorities of Austria on Measures Taken to Comply with Committee of the Parties Recommendation CP/Rec(2020)03 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings: Third Evaluation Round* (Council of Europe 15 June 2022) 29.

³⁰⁰ Interview 5; 7; 8; 9; 13; 16; 17; 20; 22; 25; 32; 33; 35; 37; 41.

challenge’.³⁰¹ VoTs may not consider themselves as such³⁰² or agree with the affixation of the VoT label.³⁰³ As a result, a potential VoT may not report their experience or consent to enter the NRM for formal identification purposes. Stolz asserts that there may be several reasons why VoTs do not, or cannot, declare as a VoT.³⁰⁴ An understanding of this is vital to ensure that stakeholders who encounter instances of THB-LE, and make subsequent formal identification decisions, do not place too much emphasis on the fact that VoTs themselves may not expressly declare that they are such. First, VoTs may experience feelings of guilt or shame regarding the exploitation endured,³⁰⁵ for example, a Ukrainian NGO interviewee outlined that ‘they might think it was their fault, they were not very wise or didn’t check properly [the documents]’.³⁰⁶ Moreover, a trade union participant from Spain pointed out that there can be a ‘shame culture’, as VoTs may leave home in the hope of earning money to send back, which may mean that they are ‘willing to accept any condition they [exploiters] offer’.³⁰⁷ This was also captured by a UK NGO interviewee who stated:

³⁰¹ Interview 22 (Head of Unit).

³⁰² John R. Barner, David Okech and Meghan A. Camp, ‘Socio-Economic Inequality, Human Trafficking, and the Global Slave Trade’ (2014) 4(2) *Societies* 148-160, 152; Amy Farrell and Rebecca Pfeffer, ‘Policing Human Trafficking: Cultural Blinders and Organizational Barriers’ (2014) 653(1) *The Annals of the American Academy of Political and Social Science* 46-64, 50; Carolina Villacampa and Nuria Torres, ‘Human Trafficking for Criminal Exploitation: The Failure to Identify Victims’ (2017) 23(3) *European Journal on Criminal Policy and Research* 393-408, 405; Joachim Renzikowski, ‘Trafficking in Human Beings as a Crime and as a Human Rights Violation’ in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 16.

³⁰³ Scholarly literature on victimology more broadly has revealed, for example, that:

‘the fear of being labelled [as a victim] may cause individuals to delay or avoid seeking help or reporting altogether, while those already labelled may still attempt to distance themselves, foregoing justice and available support’.

Stephanie Fohring, ‘What’s in a Word? Victims on “Victim”’ (2018) 24(2) *International Review of Victimology* 151-164, 160.

³⁰⁴ Barbara Ann Stolz, ‘Human Trafficking: Policy’ (2010) 9(2) *Criminology & Public Policy* 267-274, 268.

³⁰⁵ Kathy Richards, ‘The Trafficking of Migrant Workers: What are the Links Between Labour Trafficking and Corruption?’ (2004) 42(5) *International Migration* 147-168, 154; Andrea Lange, ‘Research Note: Challenges of Identifying Female Human Trafficking Victims Using a National 1-800 Call Center’ (2011) 14(1) *Trends in Organized Crime* 47-55, 49; Christien van den Anker and Ilse van Liempt, ‘Introduction: The Wider Context of Trafficking for Forced Labour’ in Christien van den Anker and Ilse van Liempt (eds), *Human Rights and Migration: Trafficking for Forced Labour* (Palgrave Macmillan 2012) 2; Lauren A. McCarthy, ‘Human Trafficking and the New Slavery’ (2014) 10(1) *Annual Review of Law and Social Science* 221-242, 229.

³⁰⁶ Interview 9 (a NGO assisting victims of violence).

³⁰⁷ Interview 7. See also, Erlend Paasche, May-Len Skillbrei and Sine Plambech, ‘Vulnerable Here or There? Examining the Vulnerability of Victims of Human Trafficking Before and After Return’ (2018) 10 *Anti-Trafficking Review* 34-51, 49.

‘So they don’t see it as “this is a crime that is happening to me”. Secondly, because of the need to make money, their resilience and position keeps them in that place, so makes them acceptant of what’s happening to them’.³⁰⁸

A second reason for non-reporting may relate to a belief that the conditions in the country of destination, although most likely poor and sub-standard, are preferable to those in their country of origin.³⁰⁹ A UK NGO interviewee, for instance, noted that ‘even then, when found in situations of exploitation, they would say “well, this situation is better than the one that I came from”’.³¹⁰ Prior experiences of poor working conditions can carry consequences for exploited individuals’ perceptions of their current situation. This was captured by a NGO participant from Bulgaria who outlined that:

‘they’re quite tolerant to abusive rules...so they don’t consider them[selves] as exploited. They just consider it something bad happened to them’.³¹¹

This may hamper an association of their experience in the country of destination with that of THB-LE.

A third explanation for low self-declaration and reporting relates to the actuality that often individuals subjected to severely exploitative conditions view themselves as migrants working in difficult labour circumstances rather than a victim of a criminal offence.³¹² As a NGO interviewee from Hungary stated, sometimes VoTs do not ‘really consider themselves as a victim of trafficking, but some victim of injustice that happened to them’.³¹³ This was similarly outlined by a Portuguese NGO interviewee who stated that:

³⁰⁸ Interview 16 (a THB focused NGO).

³⁰⁹ ILO, *Human Trafficking and Forced Labour Exploitation: Guidelines for Legislation and Law Enforcement* (ILO 2005) 18; Kelle Barrick, Pamela K. Lattimore, Wayne J. Pitts and Sheldon X. Zhang, ‘When Farmworkers and Advocates See Trafficking But Law Enforcement Does Not: Challenges in Identifying Labor Trafficking in North Carolina’ (2014) 61(2) *Crime, Law and Social Change* 205-214, 206; Matej Blazek, ‘Migration, Vulnerability and the Complexity of Violence: Experiences of Documented Non-EU Migrants in Slovakia’ (2014) 56 *Geoforum* 101-112, 108; Victoria A. Greenfield, Letizia Paoli and Andries Zoutendijk, ‘The Harms of Human Trafficking: Demonstrating the Applicability and Value of a New Framework for Systematic, Empirical Analysis’ (2016) 17(2) *Global Crime* 152-180, 161; GRETA, *7th General Report on GRETA’s Activities covering the period from 1 January to 31 December 2017* (Council of Europe 2018) 37.

³¹⁰ Interview 8 (a THB focused NGO). See also, Monika Smit, ‘Trafficking in Human Beings for Labour Exploitation. The Case of the Netherlands’ (2011) 14(2) *Trends in Organized Crime* 184-197, 187.

³¹¹ Interview 25 (a NGO supporting vulnerable populations).

³¹² Interview 8 (a THB focused NGO); 13; 16; 17; 25; 32; 33; 41. See also, Masja van Meeteren and Jing Hiah, ‘Self-Identification of Victimization of Labor Trafficking’ in John Winterdyk and Jackie Jones (eds), *The Palgrave International Handbook of Human Trafficking* (Palgrave Macmillan 2020) 1616.

³¹³ Interview 13 (a NGO supporting migrant workers).

‘They may identify that there is a situation where their rights are not being respected, and that they are working in conditions that they shouldn’t be or they weren’t paid and they want to be paid.’³¹⁴ Or they were, somebody treat them bad, somebody beat them, something like this. But they don’t come to us saying “I am a human trafficking victim”’.³¹⁵

In addition, low self-reporting rates may result from a lack of knowledge on the part of (potential) VoTs regarding their rights and entitlements.³¹⁶ This correlates with a victim’s unfamiliarity with the laws of the country of destination.³¹⁷ A Dutch NGO interviewee outlined that:

‘I think often people, the victims themselves, they don’t know that they are, that they have certain rights, because they are a victim of a crime ... So somebody should tell you and somebody that you trust should explain to you that actually you are a victim of a crime and you do have rights, and there is a way out, and it will hopefully not, hopefully it’ll somehow improve your situation’.³¹⁸

This lack of awareness is compounded by the clandestine nature of THB-LE and a corresponding isolation³¹⁹ from wider society.³²⁰ For a German NGO representative, this is a ‘primary challenge’ and they explained that:

³¹⁴ Although not the core focus of this research, this account highlights the importance of providing access to compensation from exploiters under Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 15(3) and Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 6(6). Recently the ECtHR in *Krachunova v Bulgaria* has articulated that there is a positive obligation under Article 4 of the ECHR to enable VoTs to seek compensation in respect of lost earnings from their traffickers. *Krachunova v Bulgaria* App no 18269/18 (ECtHR, 28 November 2023) para 171.

³¹⁵ Interview 33 (a NGO working with victims of crime). This was likewise iterated by Interview 41.

³¹⁶ Interview 7; 16; 17; 33; 37; 38. See also, Klara Skrivankova, ‘Defining Exploitation in the Context of Trafficking – What is a Crime and What is Not’ in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 111; Silvia Rodríguez-López, ‘The Invisibility of Labour Trafficking in Spain. A Critical Analysis of Cases and Policies’ (2020) 18(2) *Revista Española de Investigación Criminológica* 1-25, 4.

³¹⁷ For example, a study of THB-LE in Ireland found that exploited individuals ‘had little or no knowledge of employment rights or the immigration system in Ireland on arrival’, David M. Doyle, Clíodhna Murphy, Muiread Murphy, Pablo Rojas Coppari and Rachel J. Wechsler, “‘I Felt Like She Owns Me’: Exploitation and Uncertainty in the Lives of Labour Trafficking Victims in Ireland’ (2019) 59(1) *British Journal of Criminology* 231-251, 237.

³¹⁸ Interview 37 (a NGO working in the area of labour exploitation).

³¹⁹ Some scholars have identified two forms of isolation, structural isolation and functional isolation. Whilst the first form relates to physical deprivation and restriction of liberty, functional isolation is used to ‘describe instances where the victim feels unable to seek help, despite appearing to have access to public spaces of the support of others’, Elizabeth Hagan, Chitra Raghavan and Kendra Doychak, ‘Functional Isolation: Understanding Isolation in Trafficking Survivors’ (2021) 33(2) *Sexual Abuse* 176-199, 179.

³²⁰ Gijsbert Van Liemt, *Human Trafficking in Europe: An Economic Perspective* (Working Paper No. 31, ILO 2004) 14; Jane Nady Sigmon, ‘Combating Modern-Day Slavery: Issues in Identifying and Assisting Victims of Human Trafficking Worldwide’ (2008) 3(2-3) *Victims & Offenders* 245-257, 253; Amy Farrell, Jack McDevitt, Rebecca Pfeffer, Stephanie Fahy, Colleen Owens, Meredith Dank and William Adams, *Identifying Challenges to Improve the Investigation and Prosecution of State and Local Human Trafficking*

‘the people are isolated usually, and this is used to get the pressure even more higher. So they are isolated. They don’t have money. They don’t have any kind of knowledge of the structure’.³²¹

Recognising this lack of awareness, the provision of information to all workers³²² about their labour rights and available support mechanisms was viewed by participants as essential.³²³ A German NGO interviewee, for example, articulated that:

‘the most important thing is to inform the people of their labour rights and that there are possibilities where they can go where its anonymous, it doesn’t cost and to say “okay, even if you are informal, even if you have no work contract, you have rights”’.³²⁴

Relatedly, a UK NGO participant indicated that there is a need to engage in ‘awareness raising in the workers and instilling a sense of fairness and not accepting sub-standard’ working conditions.³²⁵ These qualitative accounts reveal that during inspections of worksites, or investigations of exploitative conditions, it would be useful for stakeholders to provide potentially exploited individuals with information. This may in fact contribute towards increasing identification rates, as a VoT’s understanding of their exploitative situation and knowledge of the supports available to them, may enable them to be more comfortable and confident engaging with stakeholders in future interactions. This is a necessary step to encourage (potential) VoTs to report their severely exploitative situation.

Participants further regarded linguistic abilities as an inherent barrier to reporting THB-LE by hindering access to information on various rights.³²⁶ A Czech labour inspector stated that:

Cases (Final Report submitted to the National Institute of Justice, Office of Justice Programs U.S. Department of Justice 2012) 81; ILO, *Ending Forced Labour by 2030: A Review of Policies and Programmes* (ILO 2018) 10.

³²¹ Interview 17 (a THB-LE focused NGO).

³²² Such information delivery is captured under Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 12(1)(d).

³²³ Interview 38 (Senior Officer).

³²⁴ Interview 17 (a THB-LE focused NGO).

³²⁵ Interview 16 (a THB focused NGO).

³²⁶ Interview 2; 3; 4; 12; 17; 26; 32; 38. See also, Hannah Lewis, Peter Dwyer, Stuart Hodgkinson and Louise Waite, *Precarious Lives: Forced Labour, Exploitation and Asylum* (Policy Press 2015) 119; Beatriz Camargo Magalhaes, ‘Mind the Protection (Policy) Gap: Trafficking and Labor Exploitation in Migrant Domestic Work in Belgium’ (2017) 15(2) *Journal of Immigrant & Refugee Studies* 122-139, 122; Masja van Meeteren and Ellen Wiering, ‘Labour Trafficking in Chinese Restaurants in the Netherlands and the Role of Dutch Immigration Policies. A Qualitative Analysis of Investigative Case Files’ (2019) 72(1)

‘Of course, there is a barrier, language barrier between these foreign workers and Czech rules and Czech labour code but it’s written in Czech. Of course, there are some English version of labour code but if you are Ukrainian, you usually don’t understand Czech, you don’t understand English, so you are addicted to information of your employer. So I think the most important thing of challenge is to provide information to all the workers to know their rights’.³²⁷

To tackle this particular challenge stakeholders emphasised the importance of multilingualism within their organisations, for example, a Swiss trade unionist outlined that:

‘it’s very important that we can address them in the mother tongue they understand and it opens also the possibility for us to get more information, to be trustful’.³²⁸

Citing a positive development to address this barrier in their jurisdictions, a Finnish labour inspector pointed to an increased use of interpreters during inspections,³²⁹ while in terms of victim support, an Austrian NGO interviewee pointed towards the fact that they have:

‘a very diverse team and speak, I think we have 28-29 languages that we speak. We find it very important to speak, to have the counselling sessions in the native language’.³³⁰

In situations where interpreters are unavailable, it would be useful to print and disseminate leaflets in different languages. This would enable (potential) VoTs to have a more thorough understanding of their own rights and the assistance measures available to them. By communicating with (potential) VoTs in their own language, they may become more trusting in their interaction with frontline stakeholders and in the identification procedure, ultimately leading to increased self-reporting.

Crime, Law and Social Change 107-124, 110; Simon Massey and Glynn Rankin, *Exploiting People for Profit: Trafficking in Human Beings* (Palgrave Macmillan 2020) 20.

³²⁷ Interview 38 (Senior Officer).

³²⁸ Interview 3. A similar wish for broader linguistic abilities was expressed by Interview 4. Likewise the Committee of the Parties recommended that Slovenia recruit and engage ‘a sufficient number of trained interpreters’ in order to interact effectively with potential VoTs and improve identification rates, Committee of the Parties, *Recommendation CP/Rec(2023)07 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Slovenia: Third Evaluation Round* (Council of Europe 16 June 2023) 4.

³²⁹ Interview 12 (Senior Officer). Relatedly, GRETA has called on Germany to recruit sufficient personnel, to include interpreters and provide them with training on THB, Committee of the Parties, *Recommendation CP/Rec(2024)03 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany: Third Evaluation Round* (Council of Europe 21 June 2024) 3.

³³⁰ Interview 6 (a NGO focused on assisting migrant women).

In sum, a potential trepidation emerging from the qualitative data is that the stakeholders collectively identified low levels of victim reporting on the basis of fear of authorities and self-declaration as a VoT as the main barriers to identification. It reveals a tendency to place an onus on potential VoTs to be active in their own identification. It shifts the burden from the stakeholder, who encounters these individuals, to the exploited individual. This does not fully conform to a victim-centred approach,³³¹ nor is it acceptable to dilute the obligation placed on states and their authorities to proactively identify VoTs by taking into account different evidential factors. It is the duty of the state to identify victims under Article 10 of the Trafficking Convention,³³² therefore an emphasis should not be placed on whether a VoT expressly declares themselves as such. In order to do so, stakeholders must have ample knowledge of THB-LE and of the different circumstances that it may capture in reality.

Conclusion

From a conceptual and legal standpoint, Article 10 of the Trafficking Convention fails to acknowledge that the identification procedure actually consists of two distinct processes. By combining legal analysis with the qualitative data, this chapter establishes that the identification procedure should be conceptualised beyond the formal identification as captured by Article 10 of the Trafficking Convention. The qualitative findings show that the identification procedure must be understood as encompassing two distinct processes entailing a detection process and formal identification process. Furthermore, while Article 10 of the Trafficking Convention places an express obligation on states to formally identify VoTs, ambiguity surrounds certain concepts including, for example, the reasonable grounds or conclusive decision standards. The doctrinal analysis reveals that this is not detailed in the Trafficking Convention nor its Explanatory Report, and GRETA has likewise refrained from comprehensively engaging with these terms.

A designated CA is central to the formal identification process and a conclusive decision as to VoT status. States have adhered to the requirement to put in place a designated CA

³³¹ Which ‘emphasises protection of the victims and respect for their rights’, Carolina Villacampa and Núria Torres, ‘Human Trafficking for Criminal Exploitation: Effects Suffered By Victims in their Passage through the Criminal Justice System’ (2019) 25(1) *International Review of Victimology* 3-18, 16.

³³² As further obligated by the ECtHR in *VCL and AN v The United Kingdom* App Nos 77587/12 and 74603/12 (ECtHR, 16 February 2021) para 153; *J and Others v Austria* App no 58216/12 (ECtHR, 17 January 2017) para 109.

under Article 10 of the Trafficking Convention. However, the discretion under Article 10 of the Trafficking Convention has enabled states to retain a strong criminal justice emphasis within the procedure by placing the formal identification of VoTs within the sole remit of criminal law enforcement officials. This is despite the Explanatory Report providing a considerable non-exhaustive list of potential authorities who may be designated as such.³³³ Thus, notwithstanding an increased emphasis on a human rights-based approach in addressing THB³³⁴ and recent scholarship proposing a labour law approach,³³⁵ a strong criminal justice approach remains in practice. As borne out in the qualitative data, altering the current approach to the designated CA is not a seamless action and there are difficulties in expanding the role to non-criminal justice stakeholders. For labour inspectors mandated to monitor immigration compliance, there are considerable tensions in practice regarding their ability to correspondingly identify victims of THB-LE. These are two conflicting agendas posing a challenge for stakeholders in actively fulfilling their role. Likewise, NGO study participants voiced a hesitancy to take on the formal identification role. Taken together, these findings demonstrate that states aiming to expand this mandate to include a broader range of stakeholders, as called for by international monitoring bodies, must address tensions between victim protection, criminal justice objectives and immigration-related duties.

Equally, the assessment in this chapter stressed the usefulness of the establishment of a NRM in streamlining the reasonable grounds and conclusive decision stages, despite the fact that neither the Trafficking Convention nor its Explanatory Report make any reference to the NRM. The NRM provides a structure to encompass the two processes involved in the identification procedure of detection and formal identification. The increased detection of victims necessitates a coherent framework through which referrals, subsequent formal identification as a VoT, and access to relevant supports are possible. The qualitative data highlights diverse avenues through which initial contact may be made with (potential) VoTs and the findings underscore the broad range of stakeholders that are involved in the detection of THB-LE. Most notably it reveals that the criminal justice

³³³ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 129.

³³⁴ UN OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (United Nations 2002).

³³⁵ To take one example, Hila Shamir, 'A Labor Paradigm for Human Trafficking' (2012) 60(1) *UCLA Law Review* 76-136.

designated CA is not always the stakeholder who initially encounters (potential) VoTs. As part of this analysis, the need for integrating a broad range of stakeholders into the identification procedure was affirmed.

In addition to structural issues, study participants articulated a range of practical barriers to victim reporting, including a fear of authorities and self-declaration. The primary finding of this analysis centres on the onus of identification shifting from the stakeholders to the victims of THB-LE. This is a concern on the basis that the initial response of the majority of stakeholders related to what VoTs must do, whilst amending the structures in place to address or remedy these difficulties was a secondary concern.

This chapter has critically examined aspects of the identification procedure, with an emphasis on assessing the structures in place and certain practical barriers encountered by stakeholders on the frontline. Overall, the combination of structural complexities, conflicting agendas, and the reluctance of VoTs to report hampers detection and identification efforts. The chapter shows that there are clear issues with the formal identification process and also that the detection process is subject to considerable challenges on the ground. It has stressed the need for increased integration of relevant stakeholders in the broader conceptualisation of the identification procedure, and their engagement in a comprehensive multi-stakeholder approach. Chapter Four builds on this particular aspect of the identification obligation by investigating co-operation between relevant stakeholders.

Chapter Four – Multi-stakeholder Co-operation in the Identification Procedure

Introduction

This chapter builds on the findings in Chapter Three¹ on the necessity to integrate a range of stakeholders into the identification procedure by exploring multi-stakeholder co-operation at national level. Multi-stakeholder co-operation involves a number of relevant stakeholders working together to achieve an agreed objective.² It is essential to examine the implementation of multi-stakeholder co-operation due to the crucial impact such joint efforts have on the identification procedure. This in-depth examination is achieved by focusing on the interactions between and amongst public authorities and civil society organisations in detecting trafficking in human beings for the purpose of labour exploitation (THB-LE). The analysis in this chapter draws on the perspectives of criminal law enforcement officials, labour inspectors, trade unionists and representatives from non-governmental organisations (NGOs).

The Council of Europe Convention on Action against Trafficking in Human Beings (Trafficking Convention) recognises the importance of co-operation amongst different stakeholders in a number of its provisions including under Article 5(6), Article 10, Article 12(5) and Article 35,³ as outlined in Chapter Two.⁴ This chapter contributes to scholarly literature by combining a doctrinal analysis of these obligations with the bottom-up perspectives of the study participants on the realities of this co-operation. Notably, empirical research exploring multi-stakeholder co-operation in Europe is limited,⁵ and it is striking for the lack of focus on THB-LE in comparison to trafficking in human beings

¹ See in particular section 3.4.1.1. of Chapter Three.

² Sarah Elliott and Megan Denise Smith, 'Simulating a Multi-agency Approach for the Protection of Trafficked Persons in Migration and Displacement Settings' (2020) 6(2) *Journal of Human Trafficking* 168-181, 169.

³ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Articles 5(6), 10, 12(5) and 35.

⁴ See section 2.2.2. of Chapter Two.

⁵ There are limited exceptions to this, including UK studies by Ruth Van Dyke, 'Monitoring and Evaluation of Human Trafficking Partnerships in England and Wales' (2017) 8 *Anti-Trafficking Review* 131-146; Alison Gardner, 'An Idea Whose Time Has Come? Modern Slavery, Multiple Streams Approach and Multilayer Policy Implementation' (2018) 10(3) *Journal of Human Rights Practice* 461-481. Some have focused on collaboration in the context of the criminal investigation, see for example, Laura Pajón and Dave Walsh, 'The Importance of Multi-Agency Collaborations During Human Trafficking Criminal Investigations' (2023) 33(3) *Policing and Society: An International Journal of Research and Policy* 296-314.

for the purpose of sexual exploitation (THB-SE).⁶ More remarkable is the absence of doctrinal scholarship examining co-operation in the context of fulfilling the legal obligation to identify victims of trafficking in human beings (VoTs). Aronowitz previously has stressed the value of strengthening international co-operation but asserts that ‘just as important, however, is the development and nurturing of partnerships within a country’.⁷ The existing literature has asserted the importance of local level partnerships⁸ and concluded that despite engaging in a co-operative approach, tensions exist regarding stakeholder perceptions of each other and their roles in anti-trafficking responses.⁹ Jones and Lutze identified the lack of forward planning for multi-stakeholder co-operation as a core hindrance in practice,¹⁰ while resourcing was a key problem identified by Gerassi et al.¹¹ In a more recent study, Jones highlighted a further barrier to joint efforts on the basis of inadequate problem framing.¹² This chapter expands on these scholarly findings to explore the complexities of the reality of multi-stakeholder co-operation in European states from the perspective of a diverse range of stakeholders in the context of THB-LE relating to, for example, issues with information-sharing and recognising labour law stakeholders.

The doctrinal analysis in this chapter shows that the Trafficking Convention places an emphasis on co-operation amongst public authorities, and between these authorities and civil society organisations. Therefore, Contracting States have specific legal obligations in this regard. However, the Trafficking Convention does not prescribe what this co-operation resembles in practice, although some limited information can be gleaned from

⁶ See, for example, Jennifer Musto, *Control and Protect: Collaboration, Carceral Protection, and Domestic Sex Trafficking in the United States* (University of California Press 2016); Lara Gerassi, Andrea Nichols and Erica Michelson, ‘Lessons Learned: Benefits and Challenges in Interagency Coalitions Addressing Sex Trafficking and Commercial Sexual Exploitation’ (2017) 3(4) *Journal of Human Trafficking* 285-302.

⁷ Alexis A. Aronowitz, *Human Trafficking, Human Misery: The Global Trade in Human Beings* (Praeger 2009) 161.

⁸ Alison Gardner, ‘An Idea Whose Time Has Come? Modern Slavery, Multiple Streams Approach and Multilayer Policy Implementation’ (2018) 10(3) *Journal of Human Rights Practice* 461-481, 476-477.

⁹ Ann De Shalit and Katrin Roots, ‘The Anti-trafficking Security Assemblage: Examining Police and NGO Cooperation, Negotiation, and Knowledge Production in Ontario, Canada’ (2024) 32(3) *Feminist Legal Studies* 309-329, 324.

¹⁰ Tonisha R. Jones and Faith E. Lutze, ‘Anti-human Trafficking Interagency Collaboration in the State of Michigan: An Exploratory Study’ (2016) 2(2) *Journal of Human Trafficking* 156-174, 165.

¹¹ Lara Gerassi, Andrea Nichols and Erica Michelson, ‘Lessons Learned: Benefits and Challenges in Interagency Coalitions Addressing Sex Trafficking and Commercial Sexual Exploitation’ (2017) 3(4) *Journal of Human Trafficking* 285-302, 295.

¹² Tonisha Jones, ‘Perceptions of the Benefits and Barriers to Anti-Human Trafficking Interagency Collaboration: An Exploratory Factor Analysis Study’ (2023) 13(2) *Societies* 38.

the Group of Experts on Action against Trafficking in Human Beings (GRETA) reports and other sources.¹³ This doctoral study captures, for the first time, important insights offered by the stakeholders on the practical realities of multi-stakeholder co-operation in the identification procedure. Consistent with calls by international bodies, the participant accounts demonstrate a broad recognition of the utility of multi-stakeholder co-operation. However, the qualitative data reveals that co-operation tends to take the form of dual partnerships rather than multi-stakeholder initiatives encompassing a broader range of relevant stakeholders. These dual partnerships are largely between public authorities, for example, criminal law enforcement officials and labour inspectors. Whilst study participants noted the usefulness of integrating different stakeholders in the detection of THB-LE, a complication for the identification procedure and joint efforts relate to conflicting agendas amongst the different stakeholders and the limitations to their role for formal identification purposes. Study participants were concerned that current co-operation is more structured in relation to THB-SE, when compared to efforts to detect and identify THB-LE. The qualitative data indicates a pressing need for the formalisation of multi-stakeholder co-operative efforts to ensure active and sustained engagement in relation to THB-LE. The essence of the stakeholder perspectives is that multi-stakeholder initiatives are not by themselves the solution, rather states must focus on bringing together the most relevant stakeholders at the opportune time and in the most effective manner in meeting the objective of identifying THB-LE.

The chapter is structured in three sections. First, it outlines the importance of multi-stakeholder co-operation in the identification procedure, as emphasised by international organisations and monitoring bodies, and national policymakers. Secondly, it analyses international legal provisions requiring states to encourage and ensure co-operation between and amongst public authorities and civil society organisations, with a particular focus on the obligations arising under Article 5(6), Article 10, Article 12(5) and Article 35 of the Trafficking Convention. The third section draws on the qualitative data to present a detailed critical examination of stakeholder views and practical experiences of multi-stakeholder co-operation in efforts to identify victims of THB-LE. It begins by outlining two overarching issues as voiced by the study participants, which relate to

¹³ To take one example, UN OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (United Nations 2002).

information sharing and trust building. The subsequent analysis in section three is structured in two parts based on the interaction between different stakeholder cohorts. The first sub-section explores the interaction between public authorities, namely, criminal law enforcement officials and labour inspectors, and points to a specific practice demonstrating this interaction in the form of joint inspections. The second sub-section assesses the co-operation amongst public authorities and civil society organisations, pointing towards gaps that exist particularly in relation to engagement with trade unions.

4.1. The Recognised Importance of Multi-stakeholder Co-operation

As explained by Elliott and Smith, a multi-stakeholder approach ‘recognizes the multifaceted nature of trafficking in persons and the scope of expertise and cooperation required’ to respond to the phenomenon.¹⁴ International organisations and monitoring bodies have emphasised the need to provide for the integration of diverse relevant stakeholders in anti-trafficking efforts by expressly calling on European states to make improvements in this regard. GRETA, for instance, has regularly called on states to strengthen co-operation between various stakeholders including government departments/ministries, labour inspectors, criminal law enforcement officials, tax authorities, and civil society organisations in addressing trafficking in human beings (THB).¹⁵ GRETA has more precisely called on some states to strengthen action to combat THB-LE by further involving a diverse range of stakeholders in policy development, implementation and evaluation.¹⁶ These calls have also been echoed in the United States

¹⁴ Sarah Elliott and Megan Denise Smith, ‘Simulating a Multi-agency Approach for the Protection of Trafficked Persons in Migration and Displacement Settings’ (2020) 6(2) *Journal of Human Trafficking* 168-181, 169.

¹⁵ GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Portugal: First Evaluation Round* (Council of Europe 12 February 2013) 63; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Norway: First Evaluation Round* (Council of Europe 7 May 2013) 57; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Finland: First Evaluation Round* (Council of Europe 4 June 2015) 51; GRETA, *Evaluation Report: Austria – Third Evaluation Round* (Council of Europe 10 June 2020) 60; GRETA, *Evaluation Report: Bulgaria – Third Evaluation Round* (Council of Europe 29 April 2021) 71; GRETA, *Evaluation Report: Ireland – Third Evaluation Round* (Council of Europe 28 September 2022) 56; GRETA, *Evaluation Report: Slovenia – Third Evaluation Round* (Council of Europe 15 June 2023) 36.

¹⁶ GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: First Evaluation Round* (Council of Europe 26 September 2013) 63; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany: First Evaluation Round* (Council of Europe 3 June 2015) 54; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Netherlands: Second Evaluation Round* (Council of Europe 19 October 2018) 52; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Finland: Second Evaluation Round* (Council of Europe 5 June

Department of State Annual Trafficking in Persons Report which underlines the need for a comprehensive approach to tackle THB and has asserted that:

‘Human trafficking is a multi-dimensional crime requiring multidisciplinary approaches. No single anti-trafficking actor can eradicate human trafficking on its own. All stakeholders should commit to partnerships, though governments at all levels have a unique responsibility to initiate collaboration across sectors and foster an environment where partnerships can thrive’.¹⁷

Other international bodies have similarly advocated for the development of a multi-stakeholder approach to anti-trafficking efforts.¹⁸ As the Organization for Security and Co-operation in Europe (OSCE) has articulated:

‘In order to improve the identification and protection of victims exploited in economic sectors, it is necessary to broaden the multidisciplinary approach and create partnerships’.¹⁹

Likewise, international soft law instruments have called for national co-operation for the purposes of enabling effective measures against THB²⁰ and strengthening prevention and protection policies and programmes.²¹ More specifically, the United Nations Office of the High Commissioner for Human Rights Recommended Principles and Guidelines on Human Rights and Human Trafficking call on states to ensure:

‘cooperation between relevant authorities, officials and non-governmental organizations to facilitate the identification and provision of assistance to trafficked persons. The organization and implementation of such cooperation should be formalized in order to maximize its effectiveness’.²²

2019) 50; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Hungary: Second Evaluation Round* (Council of Europe 27 September 2019) 55.

¹⁷ United States Department of State, *Trafficking in Persons Report* (USDS 2023) 34.

¹⁸ Including, for example, the International Labour Organization (ILO), the Organization for Security and Co-operation in Europe (OSCE), the United Nations on Drugs and Crime (UNODC). OSCE and ODIHR, *National Referral Mechanisms – Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook* (OSCE 2004) 64; UNODC, *International Framework for Action to Implement the Trafficking in Persons Protocol* (United Nations 2009) 12; ILO, *Ending Forced Labour by 2030: A Review of Policies and Programmes* (ILO 2018) 95; Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *The Critical Role of Civil Society in Combating Trafficking in Human Beings* (Occasional Paper No. 8, OSCE 2018) 11.

¹⁹ Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Combating Trafficking As Modern-Day Slavery: A Matter of Rights, Freedoms and Security* (OSCE 2010) 11.

²⁰ UNODC, *Model Law Against Trafficking in Persons* (United Nations 2009) Preamble.

²¹ UN General Assembly, ‘United Nations Global Plan of Action to Combat Trafficking in Persons’ (12 August 2010) A/RES/64/293 para 53.

²² UN OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (United Nations 2002) Guideline 2(3).

In attempting to address forced labour, one of the listed exploitative purposes of THB-LE,²³ the International Labour Organization Forced Labour (Supplementary Measures) Recommendation of 2014 states that:

‘Members should take action to strengthen the enforcement of national laws and regulations and other measures, including by:

- (a) Giving to the relevant authorities, such as labour inspection services, the necessary mandate, resources and training to allow them to effectively enforce the law and cooperate with other organizations concerned for the prevention and protection of victims of forced or compulsory labour’.²⁴

Co-operation and partnership have been explicitly incorporated in an expanded 4P approach in anti-trafficking legal responses.²⁵ For Ollus and Joutsen, this is a clear acknowledgement of the importance of co-operation and partnership in anti-trafficking efforts.²⁶ This partnership approach is necessary to ‘advance the protection of the rights’ of VoTs,²⁷ to punish perpetrators, and to ensure effective identification of VoTs.²⁸ Arguably, it has been an implicit aspect of the previous 3P approach encompassing prevention, protection and prosecution, as detailed in Chapter Two.²⁹ This approach is evident in the Explanatory Report to the Convention on Action against Trafficking in Human Beings (Explanatory Report) which provides that:

‘To be effective, a strategy for combating trafficking in human beings must adopt a multidisciplinary approach incorporating prevention, protection of human rights of victims and prosecution of traffickers...’.³⁰

²³ As outlined in the list of exploitative purposes under Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 3(a) and Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 4(a).

²⁴ Forced Labour (Supplementary Measures) Recommendation 2014 (No. 203) (adopted 11 June 2014) para 13.

²⁵ Mark P. Lagon, ‘Traits of Transformative Anti-Trafficking Partnerships’ (2015) 1(1) *Journal of Human Trafficking* 21-38, 21.

²⁶ Natalia Ollus and Matti Joutsen, ‘International Policies to Combat Human Trafficking’ in Rochelle L. Dalla and Donna Sabella (eds), *Routledge International Handbook of Human Trafficking: A Multi-Disciplinary and Applied Approach* (Routledge 2020) 71.

²⁷ Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Survey Report 2021 of Efforts to Implement OSCE Commitments and Recommended Actions to Combat Trafficking in Human Beings* (OSCE 2022) 74.

²⁸ Tatyana A. Denisova, ‘Trafficking in Women and Children for Purposes of Sexual Exploitation: The Criminological Aspect’ (2001) 6(3-4) *Trends in Organized Crime* 30-36, 35; GRETA, *7th General Report on GRETA’s Activities covering the period from 1 January to 31 December 2017* (Council of Europe 2018) 61.

²⁹ See section 2.2.2. of Chapter Two.

³⁰ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 4. This is similarly captured in the Preamble

At national level, some states have explicitly accepted this as a key action within their National Action Plans (NAPs). The Irish NAP, for example, provides that ‘a multi-agency, multi-faceted response is key to ensuring the best outcomes for victims of trafficking’.³¹ Likewise, the Czech Republic in its most recent National Strategy for Combating Trafficking in Human Beings has iterated that the fight against THB requires a comprehensive approach and therefore close co-operation between all stakeholders ‘who deal with or may encounter trafficking in human beings within their activities is crucial’.³² A similar recognition is evident in the Finnish NAP which lists that one of its key actions is to ‘systematically develop multi-authority cooperation’.³³ Switzerland, for example, in its current NAP to Combat Human Trafficking declares that ‘Co-operation between government agencies and NGOs is particularly encouraged because their experience and knowledge are central to combating human trafficking’.³⁴ Whilst this recognition by European states is welcome, it must be acknowledged that recognition within these policy documents does not necessarily amount to practical implementation and the reality can differ quite markedly.

The analysis in Chapter Two established that the boundary between instances of labour exploitation and situations of THB-LE is difficult to precisely pinpoint in practice, resulting in certain individuals remaining in the grey area without sufficient supports.³⁵ Thus, by bringing these stakeholders together, a more comprehensive understanding of the exploitative circumstances and breaches of rights can be ascertained. This can be particularly useful in determining whether the threshold of the THB-LE offence has been met. It is essential, however, that this multi-stakeholder co-operation is appropriate for the fulfilment of the intended objective.

to the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319.

³¹ Government of Ireland, *National Action Plan to Prevent and Combat Human Trafficking 2023-2027* (Government of Ireland 2023) 21.

³² Department of Crime Prevention, *National Strategy for Combating Trafficking in Human Beings in the Czech Republic for the Period 2020-2023* (Czechia Ministry of Interior 2020) 3.

³³ Ministry of Justice, *Finland Fights Human Trafficking: Action Plan against Trafficking in Human Beings* (Government of Finland 2021) 61.

³⁴ Swiss Federal Council, *National Action Plan to Combat Human Trafficking 2023-2027* (Swiss Confederation 2022) 11.

³⁵ See sections 2.2.1.1. and 2.4.1. of Chapter Two.

In ascertaining a comprehensive understanding of the realities of multi-stakeholder co-operation and the implementation of state obligations, the next section analyses the legal obligations under the Trafficking Convention regarding co-operation. The benefit of, and current hinderances to, multi-stakeholder co-operation as derived from the qualitative data is further delineated in-depth in section 4.3.

4.2. Legal Obligations Under the Council of Europe Convention on Action against Trafficking in Human Beings Regarding Co-operation

Stakeholder co-operation occupies a prominent position in the Trafficking Convention which is more comprehensive in its approach than the requirements on European Union Member states under the Trafficking Directive.³⁶ It is expressly referenced in Article 5(6) on prevention measures,³⁷ in Article 10 in relation to the identification procedure,³⁸ in Article 12(5) regarding victim assistance,³⁹ and in Article 35 concerning overall anti-trafficking efforts.⁴⁰ This section begins with an analysis of Article 10 of the Trafficking Convention which is the core focus of this dissertation, and draws on the other relevant provisions to bolster the doctrinal analysis of the co-operation requirements on Contracting States.

In terms of the formal identification process, Article 10(1) and Article 10(2) of the Trafficking Convention state:

‘Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention.

Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant

³⁶ 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 [2011] OJ L 101 as referenced in Article 11(4) and Article 18(2), as amended by Directive 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

³⁷ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 5(6).

³⁸ *ibid* Article 10.

³⁹ *ibid* Article 12(5).

⁴⁰ *ibid* Article 35.

support organisations. Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2'.⁴¹

To reiterate the clarification provided at the outset, this chapter focuses on national level stakeholder co-operation. Therefore, the doctrinal analysis does not centre on co-operation required with other Contracting States as captured under Article 10(2) of the Trafficking Convention.⁴² The intention of this section is not to provide an exhaustive account of the entire set of requirements under Article 10, but rather to draw on the most pertinent obligations for internal co-operation amongst relevant stakeholders.

Article 10 implicitly acknowledges that the prompt and effective identification and support of VoTs necessitates interaction between relevant stakeholders. The importance of this legal provision is that it provides the most comprehensive delineation of the requirement on European states to ensure collaboration amongst diverse stakeholders for identification purposes. First, it requires collaboration between public authorities and some clarification of these authorities is offered in the Explanatory Report which details a non-exhaustive list including the police, labour inspectorate, custom officials, immigration authorities, and embassies or consulates.⁴³ However, there is further scope for the inclusion of other authorities due to the non-exhaustive nature of the Explanatory Report description. Increasingly, for example, healthcare professionals are recognised for their role in the detection of THB⁴⁴ and are trained for this purpose.⁴⁵ Secondly, Article 10 requires collaboration between public authorities and relevant support organisations, which are broadly defined in the Explanatory Report as organisations with a 'support-

⁴¹ *ibid* Article 10(1) and Article 10(2).

⁴² *ibid* Article 10(2).

⁴³ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 129.

⁴⁴ See, *inter alia*, Risha Sinha, Elahe Tashakor and Casey Pinto, 'Identifying Victims of Human Trafficking in Central Pennsylvania: A Survey of Health-Care Professionals and Students' (2019) 5(2) *Journal of Human Trafficking* 165-175; Carly M. Charron, Brianna E. Valenzuela, Elizabeth A. Donnelly and Karen Oehme, 'What Do EMS Professionals Know about Human Trafficking? Assessing the Impact of Training' (2022) 8(4) *Journal of Human Trafficking* 451-462.

⁴⁵ See for example, GRETA, *12th General Report on GRETA's Activities covering period from 1 January to 31 December 2022* (Council of Europe 2023) 27-28, in which Bosnia and Herzegovina, North Macedonia, and Serbia were explicitly highlighted for such developments.

providing role’.⁴⁶ The Explanatory Report does not offer any further guidance on this collaboration requirement under Article 10 beyond reiterating that states are required to ensure that authorities collaborate with each other as well as with relevant support organisations.⁴⁷ Notwithstanding the fact that Article 10 of the Trafficking Convention is not framed as a discretionary provision, it is unclear when states fulfil this aspect of Article 10 and what level of co-operation is in fact required in practice.⁴⁸

Article 10 is the sole legal provision within the Trafficking Convention explicitly requiring states to ensure collaboration between the different public authorities themselves but also with relevant support organisations. Other provisions under the Trafficking Convention, in particular Article 12(5), Article 5(6) and Article 35 are mainly centred on encouraging and requiring states to facilitate co-operation with civil society organisations, acknowledging the important contributions of this cohort and the need for their recognition by states.⁴⁹ Article 12(5) of the Trafficking Convention obligates states to take measures to co-operate with NGOs and other civil society organisations in the context of providing assistance to VoTs, and reads as follows:

‘Each Party shall take measures, where appropriate and under the conditions provided for by its internal law, to co-operate with non-governmental organisations, other relevant organisations or other elements of civil society engaged in assistance to victims’.⁵⁰

⁴⁶ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 130. In Belgium, for instance, specialised reception centres must be informed when a potential VoT is detected, GRETA, *Evaluation Report: Belgium – Third Evaluation Round* (Council of Europe 20 October 2022) 44. In other States, specialised NGOs or victim support organisations are recognised for this purpose. See, for example, GRETA, *Evaluation Report: The United Kingdom – Third Evaluation Round* (Council of Europe 20 October 2021) 65; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece: Second Evaluation Round* (Council of Europe 23 March 2023) 32; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Estonia: Second Evaluation Round* (Council of Europe 7 June 2023) 19; GRETA, *Evaluation Report: Slovenia – Third Evaluation Round* (Council of Europe 15 June 2023) 37; GRETA, *Evaluation Report: Iceland – Third Evaluation Round* (Council of Europe 26 October 2023) 37.

⁴⁷ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 128 and 130.

⁴⁸ It fails to provide guidance on the expectations in this regard, for example, it does not offer suggestions as to what collaboration should occur, what it may entail in practical terms or how frequent it ought to be.

⁴⁹ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 12(5), Article 5(6) and Article 35.

⁵⁰ *ibid* Article 12(5).

It contains stronger language than the consideration of measures required under Article 6(3) of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) which states that:

‘Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, ...’.⁵¹

A similar approach is adopted regarding prevention measures under Article 5(6) of the Trafficking Convention which ‘shall involve, where appropriate’ this cohort of stakeholders.⁵² Article 5(6) states that:

‘Measures established in accordance with this article shall involve, where appropriate, non-governmental organisations, other relevant organisations and other elements of civil society committed to the prevention of trafficking in human beings and victim protection or assistance’.⁵³

This very closely mirrors Article 9(3) of the Palermo Protocol which provides that:

‘Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society’.⁵⁴

Further to this, Article 35 is explicitly titled ‘Co-operation with civil society’,⁵⁵ thus emphasising the importance of this cohort for anti-trafficking efforts. It outlines the need for public authorities to work with these organisations in achieving the purposes of the Trafficking Convention as laid out in Article 1 including, *inter alia*, prevention and protection.⁵⁶ However, the wording of the Article 35 provision is weaker than that of Article 10, Article 12(5) and Article 5(6). This is because it simply requires states to:

⁵¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 6(3).

⁵² Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 5(6).

⁵³ *ibid*.

⁵⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 9(3).

⁵⁵ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 35.

⁵⁶ *ibid* Article 1. See section 2.2. of Chapter Two.

‘encourage state authorities and public officials, to co-operate with non-governmental organisations, other relevant organisations and members of civil society, in establishing strategic partnerships with the aim of achieving the purpose of this Convention’.⁵⁷

While there is a duty to encourage such co-operation as stressed by Planitzer,⁵⁸ it does not go beyond that in terms of requiring states to ensure this occurs in reality. Despite this more discretionary framing of Article 35, it can be useful in guiding the collaboration required under Article 10 and may, to a certain extent, address some of the criticisms levelled against the Article 10 formulation and the lack of guidance from the Explanatory Report in that regard. A harmonious interpretation of the Trafficking Convention means that Article 35 sheds some light on the requirements of Article 10. A particular benefit of Article 35 is that it includes the establishment of ‘strategic partnerships’ in order to fulfil the obligations under the Trafficking Convention through the co-ordination of efforts between public authorities and civil society organisations.⁵⁹ The Explanatory Report defines a strategic partnership as meaning:

‘the setting up of co-operative frameworks through which State actors fulfil their obligations under the Convention, by coordinating their efforts with civil society’.⁶⁰

More specifically, the Explanatory Report details that this partnership may be achieved by *inter alia*, establishing roundtable discussions or concluding memoranda of understanding between public authorities and NGOs.⁶¹ Such roundtables could be facilitated to include the designated competent authorities (CAs), other public authorities who may encounter situations of THB-LE, relevant support organisations and THB survivors. In particular, input on the labour market and working conditions from labour inspectors and trade unionists would be appropriate.⁶² This would enable an exchange of information to facilitate a thorough understanding of THB-LE by stakeholders, which is

⁵⁷ *ibid* Article 35.

⁵⁸ Julia Planitzer, ‘Article 35: Co-operation with Civil Society’ in Julia Planitzer and Helmut Sax (eds), *A Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings* (Elgar Publishing 2020) 403.

⁵⁹ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 35.

⁶⁰ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 352.

⁶¹ *ibid* para 353.

⁶² Alexandra Ricard-Guay and Jill Hanley, ‘The Challenge of Addressing Both Forced Labor and Sexual Exploitation’ in John Winterdyk and Jackie Jones (eds), *The Palgrave International Handbook of Human Trafficking* (Palgrave Macmillan 2020) 289.

beneficial based on the definitional difficulties explored in Chapter Two.⁶³ Similarly, the formal conclusion of memoranda of understanding between and amongst public authorities and civil society organisations could provide a level of transparency, certainty and consistency for the identification procedure. Relatedly, GRETA has called on a number of states to build strategic partnerships with civil society stakeholders and further involve them in the development and implementation of anti-trafficking measures.⁶⁴

Therefore, these are some of the most developed and comprehensive legal obligations on states under the international legal framework, including the Palermo Protocol.⁶⁵ Yet, the Trafficking Convention fails to prescribe the form this co-operation should take. Moreover, the provisions contained within the Trafficking Convention, which explicitly refer to the need for interaction amongst and between public authorities and civil society organisations, do not stipulate what is meant by collaboration or co-operation. No clarity is provided in the accompanying Explanatory Report. Thus, there is a certain level of ambiguity surrounding what exactly is expected of Contracting States. As the legal

⁶³ See sections 2.2.1.1. and 2.4.1. of Chapter Two.

⁶⁴ GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden: First Evaluation Round* (Council of Europe 27 May 2014) 53; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Hungary: First Evaluation Round* (Council of Europe 29 May 2015) 54; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Finland: First Evaluation Round* (Council of Europe 4 June 2015) 51; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria: Second Evaluation Round* (Council of Europe 12 October 2015) 50; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bulgaria: Second Evaluation Round* (Council of Europe 28 January 2016) 53; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Norway: Second Evaluation Round* (Council of Europe 21 June 2017) 47; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: Second Evaluation Round* (Council of Europe 20 September 2017) 64; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Slovenia: Second Evaluation Round* (Council of Europe 15 February 2018) 47; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain: Second Evaluation Round* (Council of Europe 20 June 2018) 70; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Iceland: Second Evaluation Round* (Council of Europe 15 March 2019) 46; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany: Second Evaluation Round* (Council of Europe 20 June 2019) 67; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Switzerland: Second Evaluation Round* (Council of Europe 9 October 2019) 65.

⁶⁵ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319.

framework does not define the meaning of co-operation, Hale's definition is a useful guide:

‘the process of working or acting together to the same end, creating greater-than-the-sum-of-its-parts outcomes and results; it entails assistance and ready compliance with requests.’⁶⁶

Overall, the international THB legal framework provides a firm foundation for states in facilitating a co-operative multi-stakeholder approach to anti-trafficking efforts. Nonetheless, the practical implementation of these legal provisions under the Trafficking Convention remains underdeveloped in the context of identifying THB-LE, as examined in depth in section 4.3.

4.3. Stakeholder Insights into the Practical Realities of Co-operation

The previous section demonstrates the clear requirements on states under international law regarding co-operation. Building on the doctrinal analysis, this section presents the stakeholder perspectives on the realities of multi-stakeholder co-operation, grounded in the qualitative data. The first section explores overarching issues as voiced by the study participants, namely, the importance of adequate information exchange and the necessity for alleviating tensions between relevant stakeholders. Secondly, it investigates stakeholder experiences of specific issues relating to co-operation. This involves an examination of the interaction between criminal law enforcement officials and labour inspectors, and the interaction between public authorities and civil society organisations. The structure mirrors the obligations on states under Article 10 of the Trafficking Convention to ensure co-operation between relevant authorities and also amongst relevant support organisations.⁶⁷

As outlined in section 4.1., a multi-stakeholder approach amongst national stakeholders should be encouraged in the identification of victims of THB-LE⁶⁸ and this was also borne

⁶⁶ Judy Hale, ‘Addressing the Problem: Community-Based Responses and Coordination’ in Mary C. Burke (ed), *Human Trafficking: Interdisciplinary Perspectives* (3rd edn, Routledge 2022) 407.

⁶⁷ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10.

⁶⁸ Kristof Van Impe, ‘People for Sale: The Need for a Multidisciplinary Approach towards Human Trafficking’ (2000) 38(3) *International Migration* 113-131; Kirsten Foot, *Collaborating Against Human Trafficking: Cross-Sector Challenges and Practices* (Rowman & Littlefield Publishers 2016) 15; June Kane, ‘Making Money Out of Misery: Trafficking for Labor Exploitation’ in Mary C. Burke (ed), *Human Trafficking: Interdisciplinary Perspectives* (3rd edn, Routledge 2022) 55; Juliana Rinaldi-Semione and Ben

out in the qualitative data. Participants viewed the multi-stakeholder approach as key and as one Bulgarian NGO interviewee outlined, ‘there are many stakeholders in the picture ... It’s a big group and they’re very important’.⁶⁹ Further to this, an Icelandic NGO interviewee noted that to adequately address and unearth THB-LE ‘we definitely need more players, that’s for sure and more focus on the subject’ because they felt that current efforts are ‘just scratching the surface’ of the problem.⁷⁰ This may be explained to a certain extent by the relatively recent recognition of, and actions on, THB-LE within some jurisdictions. This was voiced by a German law enforcement official who commented that:

‘all these authorities have to work together and this is just in the beginning. We see that this crime on labour exploitation is really a new phenomenon’.⁷¹

It is imperative that the interaction and co-operation between these different stakeholders is fully facilitated by states as required under international law.⁷² The importance of multi-stakeholder co-operation, combining criminal justice stakeholders with other relevant stakeholders, such as labour inspectors operating in the labour law sphere, but also with civil society organisations, was captured by the qualitative data. A Slovenian NGO participant, commenting on progress in their jurisdiction, articulated that ‘I believe that there are the changes because we do co-operate’.⁷³ For a Ukrainian NGO participant:

‘It’s not only the problem of migration. It’s not only the problem of women. It’s not only the problem, so it’s more complex problem and I think that involving multi-agency institutions and actors in the work, both in addressing in general and also in providing assistance is important and improving but more control over the labour like labour conditions’.⁷⁴

An Icelandic trade unionist recognised the advantage of engaging in multi-stakeholder efforts and called for the utilisation of both criminal and labour law approaches to address THB-LE stating that:

Brewster, ‘Galvanizing Local Anti-Trafficking Partnership Work Using Intelligence: Profiling the Problem and Building Resilience’ (2023) 13(3) *Societies* 61.

⁶⁹ Interview 25 (a NGO supporting vulnerable populations).

⁷⁰ Interview 29 (a NGO assisting victims of violence).

⁷¹ Interview 5 (Representative from the Federal Police THB Unit).

⁷² As analysed in section 4.2., this relates particularly to Article 5(6), Article 10, Article 12(5) and Article 35 of the Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197.

⁷³ Interview 35 (a THB focused NGO).

⁷⁴ Interview 9 (a NGO assisting victims of violence). A similar observation was made by Interview 15 (Chief Superintendent).

‘They both have to be in function and, of course, it’s a question of degree. There is two things. When we get a trafficking case or labour exploitation case, we as union collect the wages that you should have earned and then the police goes into seeing if it’s something that should be raised as a criminal case’.⁷⁵

The usefulness of this integrated legal approach was similarly captured by a United Kingdom (UK) NGO interviewee who outlined that:

‘one is targeting employment, under civil employment law and failure to pay minimum wage and failure to pay to respect the workers’ rights and give them what they’re entitled to, and at the same time, they’re investigating obviously for criminal activity in terms of fraud, in terms of slavery offences and using and exploiting human beings for profit. I think they are both very powerful’.⁷⁶

The intention behind multi-stakeholder co-operation should be to ensure a common understanding of the problem of THB-LE, to align priorities where possible, and to clearly delineate the duties of each stakeholder.⁷⁷ It is necessary in attempting to increase the number of VoTs identified and supported. This is particularly important in the context of THB-LE whereby, as outlined in Chapter Three,⁷⁸ the recorded statistics on identified victims of THB-LE are low in comparison to the data on THB-SE.⁷⁹ As such, the study participants’ insights are essential to understand the realities of the multi-stakeholder co-operative efforts in European states on the identification of THB-LE. The analysis reveals that multi-stakeholder co-operation is not by itself the solution. Instead, it is imperative that each stakeholder is utilised in an effective manner based on their individual skills and specific expertise. They should be integrated at the most appropriate stage of the identification procedure. Certain stakeholder cohorts may make a significant contribution to the detection process, for example, trade unions. Other stakeholders, such as labour inspectors, may be better equipped to engage in the formal identification of victims of THB-LE.

⁷⁵ Interview 1.

⁷⁶ Interview 16 (a THB focused NGO).

⁷⁷ Amy Farrell, Meredith Dank, Ieke de Vries, Matthew Kafafian, Andrea Hughes and Sarah Lockwood, ‘Failing Victims? Challenges of the Police Response to Human Trafficking’ (2019) 18(3) *Criminology & Public Policy* 649-673, 667.

⁷⁸ See section 3.1. of Chapter Three.

⁷⁹ For instance, United States Department of State, *Trafficking in Persons Report* (USDS 2024).

4.3.1. The Need to Share Information and Alleviate Tensions

Despite stakeholder recognition of the importance of multi-stakeholder co-operation, two pertinent issues emerged from the qualitative data relating to information sharing and the need to alleviate tensions and build trust.

4.3.1.1. Information Sharing

Co-operation between different authorities and agencies involved in addressing THB-LE must be facilitated and clarified on the basis that ‘sharing information is indispensable’.⁸⁰ This is not restricted to information regarding potential VoTs, but can also relate to, *inter alia*, sectors of interest, complaints received from exploited individuals or wider society, and financial investigations. The Explanatory Memorandum to the Recommendation on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation outlines that:

‘a multi-disciplinary, integrated approach involving all relevant organisations enables the sharing of information and intelligence, as well as making it possible for them to complement each other while respecting their different roles and mandates, data protection standards and safeguards’.⁸¹

A Belgian NGO interviewee stressed the importance of operative dialogue to facilitate information exchange between the various stakeholders bestowed with different THB-LE mandates, and highlighted a consequence of the failure to do so:

‘if you do not have very short lines of communication between police, the prosecutor’s office and the shelters for the people in the field, if you do not have good communication, very short communication there, it’s not going to work ... and that’s what you need. If you don’t have that, you’re not working within a system that is victim orientated’.⁸²

⁸⁰ Ministry of Justice and Security, Ministry of Social Affairs and Employment, Ministry of Health, Welfare and Sport, Ministry of Foreign Affairs, *Together Against Human Trafficking: An Integrated Programme Approach to Tackling Sexual Exploitation, Labour Exploitation and Criminal Exploitation* (Government of The Netherlands 2019) 36.

⁸¹ Council of Europe, ‘Explanatory Memorandum to Recommendation CM/Rec(2022)21 of the Committee of Ministers to Member States on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation’ (27 September 2022) CM(2022)141-add5final para 48.

⁸² Interview 20.

In particular, a Swedish trade unionist stressed that ‘the secrecy ruling between and inside governmental authorities needs to change’ and that they should share information between themselves in order to:

‘follow individuals who can be exploited ... so you can say ok, here we have this person again, or this organisation again and they are exploiting people, severely exploiting people’.⁸³

GRETA likewise called for further enhancement of co-operation between relevant organisations in Finland ‘despite the existing confidentiality rules’.⁸⁴ A similar call for development in this context was made by a Bulgarian labour inspector who outlined that ‘when more than one institution is competent to work on the particular case, to provide information to the rest, not to take their own piece of work, and to leave it only within one institution’.⁸⁵ This is essential in order to obtain a complete understanding of the exploitative situation. Yet, at the same time, a Belgian NGO participant explained that there ‘is a lot of exchange and a lot of contact’ between the relevant partners, but clarified that:

‘we have our secrets, our professional secrecy, which has to be respected. Of course, we can’t do anything without the victim knowing what is going on with the agreement, and the prosecutors, police officers, they have the secrecy of the investigation, but in between, you can have a lot of exchange of information which might be useful to get in the right direction and not to make too many mistakes’.⁸⁶

Thus, it is evident from these specific participant accounts that a clear delineation of the co-operative procedure is required in practice. This should be explicitly formalised between relevant authorities and organisations in written agreements setting out the requirements of each stakeholder, the restrictions placed on the data (if any), and the purposes for which the data may be used.⁸⁷ This must be accompanied by guidelines on how to transfer the appropriate information between each stakeholder in line with data

⁸³ Interview 24. See also, European Migration Network, *Detection, Identification and Protection of Third-Country National Victims of Trafficking in Human Beings – National Report Sweden* (EMN 2021) 41.

⁸⁴ GRETA, *Evaluation Report: Finland – Third Evaluation Round* (Council of Europe 10 June 2024) 41.

⁸⁵ Interview 32.

⁸⁶ Interview 11 (a THB focused NGO).

⁸⁷ Council of Europe, ‘Explanatory Memorandum to Recommendation CM/Rec(2022)21 of the Committee of Ministers to Member States on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation’ (27 September 2022) CM(2022)141-add5final para 21.

protection requirements.⁸⁸ It would also be beneficial to designate a person to assume responsibility for this information exchange and to act as a point of contact for co-operation on THB-LE efforts between different authorities and organisations.

4.3.1.2. Alleviating Tensions and Building Trust

In practice, there may be tensions in achieving this multi-stakeholder approach to identification because THB ‘has always been framed by actors with different agendas in different ways’.⁸⁹ As a representative of the German Federal Police commented:

‘it’s a very big challenge to put all the partners together and be multi-disciplinary, so that we are not only [operating] from police perspective, but also from labour or from tax authorities, or also from NGOs’.⁹⁰

Criminal law enforcement officials are primarily concerned with prosecutorial and investigative objectives, whilst labour inspectors and trade unionists are focused on labour law violations. As such, stakeholders approach THB-LE from different standpoints with distinctive aims and potentially conflicting agendas. The consequence of diverging priorities can be illustrated in the identification procedure where it may mean that ‘a trafficking situation identified by one party might not be considered as such by another’.⁹¹ Yet, recognising these potential tensions, the OSCE has provided that although these stakeholders:

‘have different interests and roles that can sometimes lead to tensions, there is a clear continuity in their efforts. Moreover, they are expected to have the same

⁸⁸ Within the European Union legal context, the Law Enforcement Directive is a key instrument dealing with the processing of personal data for law enforcement purposes. Directive 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data [2016] OJ L 119. See also, Felicity Gerry, Julia Muraszkievicz and Niovi Vavoula, ‘The Role of Technology in the Fight Against Human Trafficking: Reflections on Privacy and Data Protection Concerns’ (2016) 32(2) *Computer Law & Security Review* 205-217, 212-214.

⁸⁹ Deirdre Coghlan and Gillian Wylie, ‘Speaking with a Forked Tongue: Contrary Political Discourses and the Irish State’s Construction of Human Trafficking’ in Christien van den Anker and Ilse van Liempt (eds), *Human Rights and Migration: Trafficking for Forced Labour* (Palgrave Macmillan 2012) 133; Rita Haverkamp, ‘Victims of Human Trafficking: Considerations from a Crime Prevention Perspective’ in Rita Haverkamp, Ester Herlin-Karnell and Claes Lernerstedt (eds), *What is Wrong with Human Trafficking? Critical Perspectives on the Law* (Hart Publishing 2019) 68.

⁹⁰ Interview 5 (Representative from the Federal Police THB Unit).

⁹¹ Suzanne L.J. Kragten-Heerdink, Corinne E. Dettmeijer-Vermeulen and Dirk J. Korf, ‘More Than Just “Pushing and Pulling”: Conceptualizing Identified Human Trafficking in the Netherlands’ (2018) 64(13) *Crime & Delinquency* 1765-1789, 1773.

ultimate goal, namely, fighting the crime of human trafficking, assisting its victims and improving the overall situation'.⁹²

In spite of the advantage of a multi-stakeholder approach, study participants stressed the need to improve current co-operation between public authorities and civil society organisations in order to more effectively utilise their strengths.⁹³ A Greek NGO participant noted that 'all these professionals should be working together, but in reality very often they are not' and this stresses the importance of convening roundtables and training opportunities in order for these organisations to network, exchange information and build trust.⁹⁴ This is significant and an Irish labour inspector voiced a concern that 'we are probably not working together enough from different areas to build that trust to that level'.⁹⁵ Moreover, in this regard, a Norwegian NGO participant outlined the benefits of convening such roundtables, noting that 'we've managed to build up quite a lot of trust and a good relationship with police and other authorities and other organisations'.⁹⁶ Likewise a German NGO interviewee explained that in cantons where such roundtables on THB exist, 'the people know each other quite well. So they talk about it, and they know that they trust each other. Trust is a very important issue'.⁹⁷ The necessity of trust building between such stakeholders cannot be underestimated. It can lead to improved detection and identification rates through the establishment of sustainable working partnerships⁹⁸ and the streamlined exchange of information. However, such trust can only be achieved through co-operation and by understanding each stakeholder's capacity and their contribution to the processes of detecting and identifying THB-LE. Trust building may lead to the alleviation of some of the existing tensions caused by conflicting agendas on the part of different stakeholders.

In sum, this analysis points towards two overarching issues – information exchange and alleviating tensions – which must be addressed by states in developing the identification

⁹² Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *The Critical Role of Civil Society in Combating Trafficking in Human Beings* (Occasional Paper No. 8, OSCE 2018) 17.

⁹³ Interview 11; 13; 17; 22; 24; 26.

⁹⁴ Interview 23 (a THB focused NGO).

⁹⁵ Interview 30 (Senior Officer).

⁹⁶ Interview 19 (a NGO supporting vulnerable populations).

⁹⁷ Interview 17 (a THB-LE focused NGO).

⁹⁸ Annie Miller, Julie Laser, Annjanette Alejano-Steele, Kara Napolitano, Nevita George, Natcha Connot and Amanda Finger, 'Lessons Learned from the Colorado Project to Comprehensively Combat Human Trafficking' (2023) 13(3) *Societies* 51.

procedure to ensure effective and efficient multi-stakeholder co-operation in practice. As such, it is evident that the on the ground realities of multi-stakeholder co-operation in the context of identification is not without its challenges. The following sections draw on the qualitative data to further illustrate these challenges. In analysing multi-stakeholder co-operation in the context of identifying victims of THB-LE, the following sub-sections are structured in terms of specific stakeholder experiences of co-operation. This mirrors the obligation on states under Article 10 of the Trafficking Convention to ensure co-operation between relevant public authorities and also amongst relevant support organisations.⁹⁹ As such, the following sections investigate the co-operation and interaction between criminal law enforcement officials and labour inspectors, and public authorities and civil society organisations.

4.3.2. Structured Partnership Between Criminal Law Enforcement Officials and Labour Inspectors

This section examines co-operation between criminal law enforcement officials and labour inspectors drawing on the practice of joint inspections to illustrate the realities of this co-operation. The labour inspector and criminal law enforcement official interviewees noted the importance of engaging in a co-operative relationship, but their views as to its practical implementation varied. A Spanish criminal law enforcement official, for instance, perceived the co-operation as ‘really good’ because during on the ground actions labour inspectors ‘collaborate shoulder by shoulder with the police forces’.¹⁰⁰ This signifies a constructive approach to co-operation whereby each stakeholder is equally contributing to, and active in, the endeavours to detect and identify victims of THB-LE. In contrast, a Finnish labour inspector described this partnership in their jurisdiction as one where ‘sometimes it works and sometimes it doesn’t’.¹⁰¹ Some factors that may explain this discrepancy include complications regarding the designated mandate and agenda of each stakeholder, their individual capacities, the trust between authorities, and the resources allocated for the purpose of detecting THB-LE.¹⁰² The Finnish labour inspector interviewee also noted in respect of their own capacity that:

⁹⁹ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10.

¹⁰⁰ Interview 22 (Head of Unit).

¹⁰¹ Interview 12 (Senior Officer).

¹⁰² Hea-Won Kim, Taekyung Park, Stephanie Quiring and Diana Barrett, ‘The Anti-Human Trafficking Collaboration Model and Serving Victims: Providers’ Perspectives on the Impact and Experience’ (2018) 15(2) *Journal of Evidence-Informed Social Work* 186-203.

‘it’s very limited how much I can find out during an inspection. It’s only one particular time of day. I can, of course, see that working hours [on] this shift list, does it correspond to my findings at that particular time. But that’s only a very very limited observation. So it would really demand police surveillance and we don’t have the capabilities or resources or even the mandate to do any surveillance. So I think the co-operation is a key factor’.¹⁰³

In drawing on the expertise and powers of both criminal law and labour law stakeholders, a more comprehensive approach to address and uncover THB-LE may be achieved. Joint inspections are a concrete example of a co-operative effort to tackle THB-LE involving both criminal law enforcement officials and labour inspectors. However, it is essential that this is comprehensively structured and regulated to allow it to be fully operative in reality. For the purpose of this thesis, and due to the absence of an accepted or proposed definition in the scholarly body, a joint inspection is deemed to be a simultaneous assessment of a worksite conducted by representatives from more than one public authority. Relatedly, GRETA and the Committee of the Parties have called on states to pursue a proactive approach to the detection process through the encouragement of regular co-ordinated multi-agency inspections in sectors deemed most at risk.¹⁰⁴ The most frequently discussed sectors by participants included agriculture,¹⁰⁵ construction¹⁰⁶ and HoReCa (hotels, restaurants and catering).¹⁰⁷ Although scholars have viewed THB-LE as

¹⁰³ Interview 12 (Senior Officer).

¹⁰⁴ For example, Committee of the Parties, *Recommendation CP/Rec(2019)01 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Iceland: Second Evaluation Round* (Council of Europe 5 April 2019) 3; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Hungary: Second Evaluation Round* (Council of Europe 27 September 2019) 51; Committee of the Parties, *Recommendation CP/Rec(2019)07 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Hungary: Second Evaluation Round* (Council of Europe 18 October 2019) 2.

¹⁰⁵ Interview 5; 7; 8; 9; 10; 11; 12; 15; 16; 18; 20; 21; 22; 24; 25; 26; 34; 35; 41; 42. This sector has also been identified as a sector of concern in the scholarly literature, see for example, Kelle Barrick, Pamela K. Lattimore, Wayne J. Pitts and Sheldon X. Zhang, ‘When Farmworkers and Advocates See Trafficking But Law Enforcement Does Not: Challenges in Identifying Labor Trafficking in North Carolina’ (2014) 61(2) *Crime, Law and Social Change* 205-214; Greg Asbed and Steve Hitov, ‘Preventing Forced Labor in Corporate Supply Chains: The Fair Food Program and Worker-Driven Social Responsibility’ (2017) 52(2) *Wake Forest Law Review* 497-531, 520.

¹⁰⁶ Interview 1; 4; 5; 8; 9; 10; 11; 12; 14; 17; 18; 19; 20; 21; 22; 24; 25; 27; 28; 35; 36; 37; 38; 39; 41; 42. This sector has been pinpointed as one in which exploitative labour commonly arises, for instance, see ILO, *Preventing Forced Labour Exploitation and Promoting Good Labour Practices in the Russian Construction Industry* (ILO 2009) 12; The Chartered Institute of Building, *Construction and the Modern Slavery Act: Tackling Exploitation in the UK* (CIOB 2018) 3.

¹⁰⁷ Interview 1; 2; 4; 10; 11; 12; 14; 15; 19; 20; 24; 27; 35; 36; 38; 39; 42. The hospitality sector is likewise recognised in the scholarly body, for example, see Joanna Ewart-James and Neill Wilkins, ‘The Staff Wanted Initiative: Preventing Exploitation, Forced Labour and Trafficking in the UK Hospitality Industry’ in Louise Waite, Gary Craig, Hannah Lewis and Klara Skrivankova (eds), *Vulnerability, Exploitation and Migrants: Insecure Work in a Globalised Economy* (Palgrave Macmillan 2015); Masja van Meeteren and Ellen Wiering, ‘Labour Trafficking in Chinese Restaurants in the Netherlands and the Role of Dutch

something which can potentially ‘happen in virtually any industry’,¹⁰⁸ both regular¹⁰⁹ and shadow economies,¹¹⁰ Villacampa’s study of professionals in Spain asserted that there was a biased sectoral view of THB-LE as limited to agriculture and domestic work.¹¹¹ In contrast to Villacampa’s findings, the qualitative data in this thesis affirms the findings of the former cohort of scholars. A labour inspector from Finland, for example, stated that they ‘would rather say that there is no sector that is somehow safe from exploitation’.¹¹² For Bulgarian¹¹³ and UK¹¹⁴ NGO participants, individuals are generally exploited in sectors of low skilled work, low pay, high workforce numbers, and in those sectors where a professional qualification is not required. Other NGO interviewees from Ukraine and Germany respectively expressed that THB-LE occurs in sectors involving ‘various types of hard labour’¹¹⁵ and in those which largely depend on migrant labour.¹¹⁶ In this regard, a Finnish labour inspector participant stated that instead ‘it’s more a question of how much monitoring is concentrated on those sectors and how efficient inspections are’.¹¹⁷ Combining these issues to some degree, an Irish labour inspector outlined that:

‘we concentrate our work where we know the sectors where people are low paid, where they work long hours, their jobs might be precarious, a high proportion of foreign nationals. So we certainly know places where we are going to encounter issues’.¹¹⁸

Signalling sectors of concern can be useful in the co-ordination of inspections. In jurisdictions with limited resources and capacity, the identification of these exploitative industries is an expedient method for uncovering THB-LE in a targeted manner. It is important to note that this will vary based on the composition of a national labour market

Immigration Policies: A Qualitative Analysis of Investigative Case Files’ (2019) 72(1) *Crime, Law and Social Change* 107-124.

¹⁰⁸ Annalisa Enrile (ed), *Ending Human Trafficking & Modern-Day Slavery: Freedom’s Journey* (Sage Publications 2018) 21; Laura A. Dean, *Diffusing Human Trafficking Policy in Eurasia* (Policy Press 2020) 8.

¹⁰⁹ Ieke De Vries, ‘Connected to Crime: An Exploration of the Nesting of Labour Trafficking and Exploitation in Legitimate Markets’ (2019) 59(1) *British Journal of Criminology* 209-230, 209.

¹¹⁰ Klara Skrivankova, ‘Defining Exploitation in the Context of Trafficking – What is a Crime and What is Not’ in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 118.

¹¹¹ Carolina Villacampa, ‘Labour Trafficking Prosecution: What is Not Working in Spain?’ (2023) 26(1) *Contemporary Justice Review* 1-27, 18.

¹¹² Interview 12 (Senior Officer).

¹¹³ Interview 25 (a NGO supporting vulnerable populations).

¹¹⁴ Interview 8 (a THB focused NGO).

¹¹⁵ Interview 9 (a NGO assisting victims of violence).

¹¹⁶ Interview 17 (a THB-LE focused NGO).

¹¹⁷ Interview 12 (Senior Officer).

¹¹⁸ Interview 30 (Senior Officer).

or economy at a given point in time, and therefore, strategies must be devised with this in mind. Established co-operative initiatives arising from such targeted actions can subsequently be adjusted and applied to other sectors of interest for identification purposes.

The instigation of joint inspections varies with a Spanish labour inspector identifying two possible avenues:

‘the police forces have some information on companies or workplaces and they share it with the regional inspectorate and then they decide to go together, or the inspectorate has information about the companies and the inspectorate thinks that they need support of the police forces’.¹¹⁹

This example in the context of Spain highlights the importance of the establishment of trusting relationships between these authorities, to open two-way communication channels and enable information exchange to comprehensively detect and identify THB-LE. A Czech labour inspector detailed another avenue for this instigation that underlines the importance of potential VoTs or exploited workers furnishing information on exploitative practices, stating that:

‘the most common situation is that there is some complaint from, let’s say some person who is working somewhere and when we recognise that there is something connected with the potential of let’s say labour exploitation or other things that could be solved by police, we immediately ask the Czech police and we organise together action with the police. So our inspectors and police are going to the place together and do their job’.¹²⁰

Based on these participant accounts, joint inspections can be both proactive and reactive in nature.¹²¹ Whilst being proactive is regularly encouraged and should remain a primary focus for public authorities, a strong and swift co-ordinated response to complaints lodged is likewise essential to uncover instances of THB-LE. The importance of having a clear point of contact within public authorities and disseminating information to a range of

¹¹⁹ Interview 26.

¹²⁰ Interview 38 (Senior Officer).

¹²¹ Writing in 1986, Hutter defined these concepts as follows:

‘Proactive enforcement is essentially law enforcement through agency initiative, so it involves officials going and seeking out offences. This is in contrast to reactive enforcement, where the agency response is prompted by an outside person or event, typically through lodging a complaint or reporting an accident’,

Bridget M. Hutter, ‘An Inspector Calls: The Importance of Proactive Enforcement in the Regulatory Context’ (1986) 26(2) British Journal of Criminology 114-128, 114.

individuals and organisations should not be understated.¹²² A Finnish labour inspector proposed that:

‘we should have a clear contact, either contact person or contact email at every police department, whom we could contact if we come across signs of labour exploitation’.¹²³

This would allow for more streamlined information sharing regarding potential exploitative conduct, as raised above in section 4.3.1.1.

A number of participants reported that joint inspections take place, and in the main, this partnership approach between criminal law enforcement officials and labour inspectors functions well.¹²⁴ As a Bulgarian labour inspector noted:

‘When we are the first contact with some possible victims of labour exploitation and we can ask the right questions in order to identify such possible victims, but after that we can only direct these cases to the appropriate institutions which are the police authorities, for example, and very important is that we also make joint inspections with the police authorities’.¹²⁵

This participant account reveals the importance of input from labour inspectors in terms of initial detection of potential victims of THB-LE, but also the limitations to their role in the overall identification procedure in reality. Despite this restrictive role, this interviewee also recognised the value of working together with criminal law enforcement officials. Furthermore, a labour inspector in the Czech Republic reported that:

‘there is a tight co-operation between labour inspection and Czech police forces. So we are obliged to, if we recognise some signs of labour exploitation during our inspections, we are obliged to contact Czech police immediately, and fortunately, we have very good co-operation with the Czech police. So during the year we do, let’s say, more than 1000 inspections together with the Czech police. I can say that we do more than let’s say, 30,000 inspections during the year but with the police targeted to the potential labour exploitation, it could be more than 1,000. Of course, [the] decision if it is or it is not labour exploitation or suspicion for labour exploitation, it depends on police’.¹²⁶

¹²² The importance of which is captured under Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 5(2).

¹²³ Interview 12 (Senior Officer).

¹²⁴ Interview 15; 23; 30.

¹²⁵ Interview 32.

¹²⁶ Interview 38 (Senior Officer).

This highlights the impact of formalising the requirement for labour inspectors to interact with criminal law enforcement officials in ensuring that this information exchange occurs in practice. Relatedly in its NAP, Hungary outlined that a key action¹²⁷ is to sign ‘cooperation agreements for the purpose of regular and coordinated labor inspections with the involvement of the competent department of the Ministry of Finance, the police and other partner bodies’.¹²⁸ Placing requirements on these authorities to meet and co-operate, but also setting minimum targets for joint inspections would ensure that such partnerships are maintained throughout the year and that each authority would become more familiar with the elements of this co-operative interaction. It would build trust and improve the efficacy of joint actions for the purpose of identifying instances and victims of THB-LE. This would provide scope for policy development without a strict need for change in the legal framework.

This analysis reveals one of the impacts of designating criminal law enforcement officials as the sole CA for identification purposes. It has the effect of limiting the extent of the contribution that can be made by labour inspectors to the identification procedure. While they are involved in inspecting sectors at risk, they cannot formally identify a victim of THB-LE in all European states. Yet, the participant accounts capture the necessity for this partnership in referring suspected instances of THB-LE to the CA under current state identification structures. This view was echoed by a Spanish labour inspector who noted that they ‘try to co-operate with police forces because they are the ones that can identify the victim. We can only detect the victim’,¹²⁹ thus, differentiating clearly between stakeholders who can detect potential VoTs and those who can formally identify individuals as a VoT. It further reinforces the necessity of this dual engagement in connecting the two processes of the identification procedure, namely detection and formal identification as set out in Chapter Three.¹³⁰ A promising practice in Norway was reported by GRETA whereby:

‘seven inter-agency centres against work-related crime (A-Krim centres), which include the Norwegian Labour Inspection Authority, were set up and collaborate

¹²⁷ The success of this measure is based on the number of joint inspections carried out.

¹²⁸ Government of Hungary, *National Anti-Trafficking Strategy for 2020-2023* (Government of Hungary Decision 1046/2020) Action II.1.7.

¹²⁹ Interview 26.

¹³⁰ See section 3.2.3. of Chapter Three.

with the 12 anti-trafficking police units on the detection of cases of trafficking for the purpose of labour exploitation’.¹³¹

The benefit of interactions between these public authorities is the ability to draw on and utilise their different organisational powers and to combine their specialist knowledge. This was succinctly captured by a NGO participant from Greece who asserted that in their jurisdiction joint inspections are:

‘crucial because the labour inspectors have the in-depth knowledge of the labour law and all the conditions but they don’t have the right to prosecute a case. So even if they visited an industry alone and there’s so extreme, extreme exploitation, all they could do was to write down what they saw and call the police and whenever the police were free, they would visit, and during this time, then employers would have time to conceal the evidence. Then, on the other hand, the police officers have the right to prosecute somebody immediately, but they don’t have the in-depth knowledge to see what constitutes human trafficking. So it would work well if somebody that knows all the conditions and all the law could be with somebody who can prosecute immediately’.¹³²

Identifying THB-LE demands knowledge of (un)acceptable labour conditions which can only be fully understood by those operating in the labour law field. Thus, labour inspectors are an indispensable resource and collaborator in order for criminal law enforcement officials to completely grasp the extent of the exploitation which may meet the threshold of THB-LE. A Finnish criminal law enforcement official, for example, stated that ‘we go side by side because we have slightly different sort of rights’. They expressed that the positive outcome of a joint enterprise which draws on their distinctive powers is that ‘we get better results when we are co-operating’.¹³³ Furthermore, active co-operation between labour inspectors and the police was viewed as critical by a Spanish interviewee in addressing the limitations faced by labour inspectors in practice. This participant articulated that:

‘our powers are enough for our work, let’s say in the way that we are in the administrative field, not the criminal field, but with crimes, what I think is always better is to co-ordinate our actions from the beginning with the police forces and with the prosecutor office’.¹³⁴

¹³¹ GRETA, *12th General Report on GRETA’s Activities covering period from 1 January to 31 December 2022* (Council of Europe 2023) 24.

¹³² Interview 23 (a THB focused NGO).

¹³³ Interview 15 (Chief Superintendent).

¹³⁴ Interview 26.

As a result, it emerged that these cohorts recognise both their individual strengths and the utility of working together, leading to improved outcomes. These participant accounts demonstrate the need for the adoption of an integrated legal approach to the phenomenon. THB-LE is a recognised serious criminal offence which requires a robust criminal justice response,¹³⁵ but this in itself is insufficient.¹³⁶ Generally, it is an offence that occurs within a workplace and therefore, a criminal justice approach must be combined with elements of a labour law approach¹³⁷ drawing on the abilities of labour inspectors whose labour field duties may uncover severe situations of exploitation. A Belgian NGO interviewee expressed that these authorities ‘both have good elements in what they can do as authorities and we should put them together’ but outlined that in reality this can be hindered due to lower levels of experience regarding collaborative actions targeting THB-LE.¹³⁸ In addition, Payne¹³⁹ and Gallagher¹⁴⁰ articulate that adequate resourcing is key in progressing anti-trafficking responses, and as a Slovenian labour inspector stated, ‘I believe if you want to be more successful, we should have more people, we should work with police more often’.¹⁴¹ Consequently, to detect and identify THB-LE through effective co-operation between labour inspectors and criminal law enforcement officials, sufficient personnel and financial resources are required.

Chapter Three highlighted a concern regarding the designation of labour inspectors as a CA for formal identification purposes on the basis of conflicting duties to identify THB-LE and uncover ‘illegal’ labour.¹⁴² A similar issue was raised by some participants in the

¹³⁵ Roger Plant, ‘Trafficking for Labour Exploitation: Getting the Responses Right’ in Ato Quayson and Antonela Arhin (eds), *Labour Migration, Human Trafficking and Multinational Corporations: The Commodification of Illicit Flows* (Routledge 2012) 22.

¹³⁶ Alex Kreidenweis and Natalie F. Hudson, ‘More Than a Crime: Human Trafficking as Human (In)Security’ (2015) 16(1) *International Studies Perspectives* 67-85, 68; Ella Cockbain, Kate Bowers and Galina Dimitrova, ‘Human Trafficking for Labour Exploitation: The Results of a Two-Phase Systematic Review Mapping the European Evidence Base and Synthesising Key Scientific Research Evidence’ (2018) 14(3) *Journal of Experimental Criminology* 319-360, 354; Klara Skrivanekova, ‘The UK’s Approach to Tackling Modern Slavery in a European Context’ in Gary Craig, Alex Balch, Hannah Lewis and Louise Waite (eds), *The Modern Slavery Agenda: Policy, Politics and Practice in the UK* (Policy Press 2019) 257.

¹³⁷ Cathryn Costello, ‘Migrants and Forced Labour: A Labour Law Response’ in Alan Bogg, Cathryn Costello, ACL Davies and Jeremias Prassl (eds), *The Autonomy of Labour Law* (Hart Publishing 2015) 217.

¹³⁸ Interview 11 (a THB focused NGO).

¹³⁹ Michael C. Payne, ‘The Half-Fought Battle: A Call for Comprehensive State Anti-Human Trafficking Legislation and a Discussion of How States Should Construct Such Legislation’ (2006) 16(1) *Kansas Journal of Law & Public Policy* 48-66, 63.

¹⁴⁰ Anne T. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010) 278.

¹⁴¹ Interview 28.

¹⁴² See section 3.4.1.1. of Chapter Three.

qualitative data in relation to the duty to detect “illegal” work during joint inspections¹⁴³ and noted some implications for potential VoTs. A Finnish labour inspector articulated that most joint inspections ‘concentrate on finding illegal workers ... so, discovering labour exploitation is not the key focus’.¹⁴⁴ Furthermore, an Irish NGO interviewee commented that joint inspections in their current form are not victim-centred and noted persistent recommendations to combine criminal law enforcement and labour inspector efforts. However, their position was that ‘it tends to have the wrong, the negative, the opposite effect’ as it can compound fears of deportation regarding immigration status, which can be reinforced by threats made by the exploiters.¹⁴⁵ In their experience:

‘It makes it very difficult for a victim of trafficking to disclose if a guard [Irish police officer] is there, because even if the guard doesn’t go on the immigration angle, because that will often have been what is used to coerce or threaten the victim, the threat of the police. They will see the police, they will think “I know I can’t say anything”’.¹⁴⁶

These accounts reveal the need for clarity as to the mandate of labour inspectors and criminal law enforcement officials. There is a need to elucidate that detecting “illegal” labour should not be the primary goal of such efforts. Instead, potential VoTs must be first assessed for any exploitation endured and assistive measures provided.¹⁴⁷ Yet, this requires considerable development, particularly where labour inspectors have an obligation to detect “illegal” labour under national law. Furthermore, educating and training stakeholders who may encounter severely exploitative situations is crucial to counteract any potential prejudices or misconceptions regarding THB-LE,¹⁴⁸ as will be discussed in Chapter Five.¹⁴⁹ A fear of negative outcomes on the part of (potential) VoTs upon engagement with public authorities¹⁵⁰ must be considered in the formulation of

¹⁴³ Blanka Hancilova and Petra Burčíková, ‘Anti-Trafficking and Human Rights: Uncomfortable Bedfellows?’ in Christien van den Anker and Ilse van Liempt (eds), *Human Rights and Migration: Trafficking for Forced Labour* (Palgrave and Macmillan 2012) 224.

¹⁴⁴ Interview 12 (Senior Officer).

¹⁴⁵ Interview 21 (a NGO supporting migrant workers). This stance reaffirms the related finding of Samantha Arnold, Susan Whelan and Emma Quinn, *Illegal Employment of Non-EU Nationals in Ireland* (Economic and Social Research Institute 2017) 33.

¹⁴⁶ Interview 21 (a NGO supporting migrant workers).

¹⁴⁷ Council of Europe, ‘Explanatory Memorandum to Recommendation CM/Rec(2022)21 of the Committee of Ministers to Member States on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation’ (27 September 2022) CM(2022)141-add5final para 43.

¹⁴⁸ Jayashri Srikantiah, ‘Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law’ (2007) 87(1) Boston University Law Review 157-211; Annie Hill, ‘How to Stage a Raid: Police, Media and the Master Narrative of Trafficking’ (2016) 7 Anti-Trafficking Review 39-55.

¹⁴⁹ See section 5.3.1.2. of Chapter Five.

¹⁵⁰ See section 3.4.3.1. of Chapter Three.

these joint enterprises. Both labour inspectors and criminal law enforcement officials, particularly in the context of THB-LE, must be cognisant of this fact in their interactions with VoTs.

In sum, this section has pointed towards promising practices in European states in facilitating engagement between criminal law enforcement officials and labour inspectors, specifically via joint inspections. Nonetheless, it correspondingly reveals that current conflicting duties must be addressed to further enhance this co-operative effort in the identification procedure. In particular, it highlights the necessity to clarify the mandate of labour inspectors and their role for identification purposes. While the data demonstrates the core contribution of labour inspectors for detection purposes, it also points towards current limitations in terms of formal identification. In that regard, joint partnerships with criminal law enforcement officials are even more pressing.

4.3.3. Revealing the Gaps in Interaction Between Public Authorities and Civil Society Organisations

In addition to the importance of co-operation amongst public authorities, it is also necessary to ensure co-operation between public authorities and civil society organisations for identification purposes.¹⁵¹ Relatedly, Lagon has asserted that integrating ‘actors outside the public sector’ is required in order to extend the capacity of criminal law enforcement officials.¹⁵² The significance of effective interaction between all relevant stakeholders for the purpose of detection and subsequent formal identification of VoTs was evident from the qualitative data, with a NGO interviewee from the Netherlands stating:

‘we are doing quite an effort to have a good relationship with some of these organisations because it’s very often a matter of knowing each other a little bit and trusting each other and knowing that you can build on each other’.¹⁵³

¹⁵¹ As expressly recognised in Article 10 of the Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197.

¹⁵² Mark P. Lagon, ‘Traits of Transformative Anti-Trafficking Partnerships’ (2015) 1(1) *Journal of Human Trafficking* 21-38, 27.

¹⁵³ Interview 37 (a NGO working in the area of labour exploitation).

This section explores the co-operation between civil society organisations – NGOs and trade unions – and public authorities, and captures current gaps in these co-operative engagements.

4.3.3.1. Co-operation with Non-Governmental Organisations

NGOs have been increasingly recognised for the valuable role they play in anti-trafficking efforts.¹⁵⁴ In particular, a Bulgarian NGO interviewee pointed towards the role of NGOs as being crucial ‘to create things, to fill the gaps’ in Bulgarian state efforts.¹⁵⁵ As such, they must be central to co-operative efforts because they offer a vital perspective which acts as a counterbalance to a strict criminal justice approach to THB-LE. This was conveyed by an Austrian NGO interviewee as follows:

‘the legal framework provides the necessary support, I think, especially focused on the criminal proceedings, which in itself it’s important sure, because justice is a good goal. But then I think it’s kind of limited and I think that’s why it’s also important and valuable that somehow the state recognise that it’s not enough for the police or for authorities to deal with trafficked women and men. But we need this co-operation with NGOs, because we can try to cover the rest and try to deal with the process and be there’.¹⁵⁶

NGO participants generally provided positive accounts regarding their interaction with criminal law enforcement officials. A Slovenian NGO interviewee, for example, stated that:

‘I cannot be critical of our co-operation with the police because it’s really extremely good. Especially because I know how other NGOs in other countries they, it’s impossible to co-operate with government officials. In Slovenia this is

¹⁵⁴ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Articles 5(6) and 12(5). See also, Marina Tzvetkova, ‘NGO Responses to Trafficking in Women’ (2002) 10(1) *Gender & Development* 60-68, 61; Louise Shelley, *Human Trafficking: A Global Perspective* (Cambridge University Press 2010) 316; Christien van den Anker and Ilse van Liempt, ‘Introduction: The Wider Context of Trafficking for Forced Labour’ in Christien van den Anker and Ilse van Liempt (eds), *Human Rights and Migration: Trafficking for Forced Labour* (Palgrave Macmillan 2012) 2; GRETA, *5th General Report on GRETA’s Activities covering the period from 1 October 2014 to 31 December 2015* (Council of Europe 2016) 5; Stephanie A. Limoncelli, ‘What in the World Are Anti-Trafficking NGOs Doing? Findings from a Global Study’ (2016) 2(4) *Journal of Human Trafficking* 316-328, 320; Ryszard Piotrowicz, ‘The European Legal Regime on Trafficking in Human Beings’ in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 45; Albina Balidemaj, ‘Human Rights Legislation in Albania: The Case of Human Trafficking’ (2019) 23(8) *The International Journal of Human Rights* 1300-1316, 1312; Mary C. Burke, Tina Krolikowski, Shannon White and Nour Alabase, ‘Introduction to Human Trafficking’ in Mary C. Burke (ed), *Human Trafficking: Interdisciplinary Perspectives* (3rd edn, Routledge 2022) 22.

¹⁵⁵ Interview 25 (a NGO supporting vulnerable populations).

¹⁵⁶ Interview 6 (a NGO focused on assisting migrant women).

not. We get angry sometimes, there must be of course some friction among us, but usually we reach agreements. They are in the best interest of the victims in most of the cases'.¹⁵⁷

This illustrates an example of positive conflict which occurs in situations whereby constructive dialogue can be exchanged between stakeholders with different agendas or standpoints. It can lead to problem-solving and the development of innovative solutions to shared issues.¹⁵⁸ It further highlights the need to facilitate opportunities for these conversations to air tensions in a productive manner. The Slovenian NGO participant also commented that their co-operation with criminal law enforcement officials 'is better because it's formalised. We have this memorandum of co-operation where we signed it, police signed it'.¹⁵⁹ It reinforces the potential benefit of and the need for the formalisation of these civil society and public authority engagements to ensure their longevity and implementation in practice, which was also raised in relation to co-operation between labour inspectors and criminal law enforcement officials in section 4.3.2.

The value of co-operation with NGOs was correspondingly emphasised by criminal law enforcement official participants. A German Federal Police representative outlined that:

'we try to work very close together with the NGOs in Germany, and because they have a lot of knowledge about the victims, and sometimes they also get information and work very close together with the victim, and so we as the police see that co-operation, like I said, it's very very good and very necessary to see it as an aim to work together'.¹⁶⁰

Comparably, a Spanish criminal law enforcement official stressed a benefit to this co-operation regarding access to information from VoTs:

'They [VoTs] are very reluctant to co-operate with police forces and they are reluctant because they come from countries where the police forces are involved in corruption. Also the criminal networks say [to] the victims how to or what they have to say to police forces and how the behaviour should be with the police forces. The collaboration with NGOs make us very, very easy, easier to obtain information from victims and improving the collaboration, for us, for police forces is really, really important'.¹⁶¹

¹⁵⁷ Interview 35 (a THB focused NGO).

¹⁵⁸ Morton Deutsch, 'Conflicts: Productive and Destructive' (1969) 25(1) *Journal of Social Issues* 7-42.

¹⁵⁹ Interview 35 (a THB focused NGO).

¹⁶⁰ Interview 5 (Representative from the Federal Police THB Unit).

¹⁶¹ Interview 22 (Head of Unit).

A primary concern that arises from these accounts is that there remains a core focus on the utility of this co-operation for the purpose of obtaining information from VoTs for prosecutorial purposes.¹⁶² This can be one potential benefit of these co-operative partnerships,¹⁶³ but it should not be their inherent objective nor the determining factor of their success. As argued by Matos et al., this focus detracts from a victim-centred approach and skews in favour of criminal justice aims.¹⁶⁴ This may lead to certain tensions in practice between NGOs who seek to protect (potential) VoTs, and criminal law enforcement officials whose primary objective is obtaining a victim statement for investigative purposes.

Finally, a Greek NGO interviewee differentiated between ‘very good’ co-operation with anti-trafficking police and less favourable co-operation with local criminal law enforcement officials within their jurisdiction, commenting that ‘our collaboration with [the] local police station is not as good because they’re not really aware of human trafficking’.¹⁶⁵ Local criminal law enforcement officers limited knowledge of THB(-LE) has been raised as a concern in the scholarly literature.¹⁶⁶ This emphasises the need to ensure that all criminal law enforcement officials have an awareness of THB-LE and are trained to recognise the phenomenon, including those operating at local level who may not necessarily be a specialist.¹⁶⁷ It may be achieved to a certain extent by the provision of recurrent training and awareness raising initiatives,¹⁶⁸ as discussed further in Chapter

¹⁶² Cornelia Helfferich, Barbara Kavemann and Heike Rabe, ‘Determinants of the Willingness to Make a Statement of Victims of Human Trafficking for the Purpose of Sexual Exploitation in the Triangle Offender-Police-Victim’ (2011) 14(2) *Trends in Organized Crime* 125-147, 126.

¹⁶³ Committee of the Parties, *Recommendation CP/Rec(2023)09 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Iceland: Third Evaluation Round* (Council of Europe 15 December 2023) 2.

¹⁶⁴ Marlene Matos, Mariana Gonçalves and Ângela Maia, ‘Human Trafficking and Criminal Proceedings in Portugal: Discourses of Professionals in the Justice System’ (2018) 21(4) *Trends in Organized Crime* 370-400, 372.

¹⁶⁵ Interview 23 (a THB focused NGO).

¹⁶⁶ See, for example, Deborah G. Wilson, William F. Walsh and Sherilyn Kleuber, ‘Trafficking in Human Beings: Training and Services among US Law Enforcement Agencies’ (2006) 7(2) *Police Practice and Research* 149-160, 154; Julie Kaye, John Winterdyk and Lara Quarterman, ‘Beyond Criminal Justice: A Case Study of Responding to Human Trafficking in Canada’ (2014) 56(1) *Canadian Journal of Criminology and Criminal Justice* 23-48, 35; Yvon Dandurand, ‘Human Trafficking and Police Governance’ (2017) 18(3) *Police Practice and Research* 322-336, 326; Ana Cunha, Mariana Gonçalves and Marlene Matos, ‘Exploring Perceptions of Portuguese Police about Human Trafficking Victims and Perpetrators’ (2022) 77(2) *Crime, Law and Social Change* 253-273, 268.

¹⁶⁷ The implementation of such training requirements by States is obligated under several provisions of the Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197, including, *inter alia*, Article 5, Article 10 and Article 29.

¹⁶⁸ ILO, *Ending Forced Labour by 2030: A Review of Policies and Programmes* (ILO 2018) 44.

Five.¹⁶⁹ This would enable them to engage more actively and effectively in co-operative partnerships at local level.

In addition to the benefits of co-operation with criminal law enforcement officials, labour inspector participants likewise stated that co-operation between public authorities and civil society is a vital component of an anti-trafficking response, but that this requires continuous investment and commitment.¹⁷⁰ A Czech labour inspector, for instance, pointed towards informal communication with NGOs. These interactions were deemed useful as NGOs can ask ‘questions for those people [(potential) VoTs] to help to solve their problem’ without the exploited individual necessarily needing to be in direct contact with the labour inspection service.¹⁷¹ It may have the effect of alleviating some of the initial fears of (potential) VoTs regarding public authorities and of possible deportation from the state,¹⁷² as discussed in Chapter Three.¹⁷³ This was viewed as beneficial by the Czech labour inspector interviewee because ‘not everyone understands Czech and not everyone is brave to go there, to our institution’.¹⁷⁴ In addition, a Finnish labour inspector described their dissemination of leaflets produced by NGOs in different languages when inspecting worksites:

‘So I normally give out all those and that gives the employees the chance to think things over and contact whomever they want to contact when it's a good time for them because some people or some employees, they don't even want to contact authorities, their first choice is an NGO. So I think that's why it's very important to give those details and actually at the moment, I see as my, maybe the, main role as far as employees are concerned is giving out information to them, because I think it's very understandable even if there would be, even if it were an inspection of my own workplace and some stranger came to ask me question, “do you have any problems with your boss?” I think very few of even us would start talking really then’.¹⁷⁵

¹⁶⁹ See sections 5.3.1.2. and 5.3.2. of Chapter Five.

¹⁷⁰ Interview 10; 12; 32.

¹⁷¹ Interview 38 (Senior Officer).

¹⁷² Such fears have been reported in the scholarly literature, for example, Guri Tyldum and Anette Brunovskis, ‘Describing the Unobserved: Methodological Challenges in Empirical Studies on Human Trafficking’ (2005) 43(1-2) *International Migration* 17-34, 25; Madeleine Hulting, ‘Hidden Labour: Knowledge Production of Trafficking Illustrated by a Swedish Case Study’ in Christien van den Anker and Ilse van Liempt (eds), *Human Rights and Migration: Trafficking for Forced Labour* (Palgrave Macmillan 2012) 155.

¹⁷³ See section 3.4.3.1. of Chapter Three.

¹⁷⁴ Interview 38 (Senior Officer).

¹⁷⁵ Interview 12 (Senior Officer).

Likewise, if a victim is identified during an inspection by the Unit for the Financial Control of Undeclared Work in Germany, the officers provide information created and supplied by NGOs.¹⁷⁶ This highlights a self-awareness on the part of labour inspectors in relation to VoT hesitancy to speak with public authorities, but also illustrates proactive efforts made by labour inspectors to counteract this by providing NGO contact details. Such practices are welcome and may in fact lead to increased contact by (potential) VoTs and result in their subsequent identification.

Notwithstanding these positive efforts, other study participants acknowledged that there is scope for improving this interaction with civil society organisations. A Spanish labour inspector commented that in relation to specific cases of THB-LE or labour exploitation ‘maybe we can go a little bit further [with] this general co-operation’.¹⁷⁷ This was equally reinforced by an Irish labour inspector who stated that ‘we on the labour inspectors side probably could do more to actually to tie in more with them’.¹⁷⁸

Moreover, despite this recognition by labour inspector participants regarding the importance of this co-operative partnership, generally NGO interviewees did not discuss labour inspectors when questioned about co-operation in practice.¹⁷⁹ A Hungarian NGO interviewee noted an absence of this interaction:

‘there is a labour inspection system and its, we hear that they are operating and in some cases, in bigger cases, what we saw is they were detecting labour exploitation in the construction area or in the restaurants business. But unfortunately, although we try to approach them, they resist, so we don’t really have contact with them’.¹⁸⁰

By and large, there is a gap in European anti-trafficking responses regarding the interaction between labour inspectors and NGOs. Both cohorts, for the most part, liaise with criminal law enforcement officials but a lack of more concrete engagement amongst these stakeholders is a concern. It raises questions regarding the referral for support and

¹⁷⁶ GRETA, *Reply from Germany to the Questionnaire for the Evaluation of the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties: Third Evaluation Round* (Council of Europe 28 February 2023) 5.

¹⁷⁷ Interview 26.

¹⁷⁸ Interview 30 (Senior Officer).

¹⁷⁹ An exception to this was a Norwegian NGO interviewee (Interview 19, a NGO supporting vulnerable populations) who, commenting on recent developments, briefly stated that there have been efforts to ‘work closely with both labour inspection, police and others’.

¹⁸⁰ Interview 13 (a NGO supporting migrant workers).

assistance for potential victims of THB-LE upon detection by labour inspectors. To improve relations between these stakeholder cohorts, it would be useful to ensure that labour inspection services are aware of the services and role of NGOs.

The importance of formalising the interaction between NGOs and public authorities is vital. This was captured by a Hungarian NGO interviewee as follows:

‘there should be a kind of a co-operation framework. So that it would be kind of an automatization that if authorities learn about exploitation, or we learn about exploitation, there would be a kind of protocol or something like that. Then you know whom to turn to and who does what’.¹⁸¹

In addition, NGO interviewees from Germany and Slovenia proposed actions to improve co-operation, including putting memoranda of co-operation in place,¹⁸² or creating a clear co-ordination framework.¹⁸³ This is necessary in order to address concerns with low levels of personnel working on THB-LE, and as the German NGO interviewee outlined, there are:

‘some people who say “this is an important issue for me and that’s why I now take the responsibility to go on”, and which is good that there are these people then at the right place. Which is bad because if these people are going for whatever reason, usually then like roundtable do not work anymore and some other formal things that they had for the structures, for networking and exchanging information ... But it’s depending on individuals so far and we want to depend on structure and not on individuals’.¹⁸⁴

Yet, for this to happen, it requires proactivity on the part of public authorities and a willingness to open a channel of communication. This may be achieved by including NGOs within the National Referral Mechanism (NRM)¹⁸⁵ and streamlining referrals from public authorities, such as the labour inspectors, to NGOs that are recognised as relevant support organisations.

¹⁸¹ Interview 13 (a NGO supporting migrant workers).

¹⁸² Interview 35 (a THB focused NGO).

¹⁸³ Interview 17 (a THB-LE focused NGO).

¹⁸⁴ Interview 17 (a THB-LE focused NGO). This was also raised by Interview 27 (a THB focused NGO).

¹⁸⁵ See section 3.4.2. of Chapter Three.

4.3.3.2. Recognising Trade Unions as a Partner

The OSCE has explicitly called upon European states to strengthen co-operation with trade unions in the identification of THB-LE.¹⁸⁶ The core role that can be played by trade unions in anti-trafficking efforts has been explicitly recognised by some states. In Ireland's second NAP, for example, a key action was to 'strengthen the role of trade unions and employers' representative bodies in preventing trafficking for labour exploitation'.¹⁸⁷ It has been proposed by Muskat-Gorska that a labour law approach can address THB-LE positively by 'protecting all rights necessary to provide workers with power to avoid un-free labour',¹⁸⁸ and engagement with trade unions in this regard is key.¹⁸⁹ A Spanish trade unionist described them as 'the watchdogs of labour exploitation'¹⁹⁰ as due to their direct access to workers, they are ideally positioned to communicate with migrant workers who are particularly at risk of, and vulnerable to, exploitation. GRETA has stated that:

'trade unions have the capacity to promote the prevention of trafficking for the purpose of labour exploitation and should be encouraged to participate in anti-trafficking co-ordination'.¹⁹¹

By monitoring working conditions and engaging with workers they can contribute meaningfully to detection efforts. This was recognised by a Slovenian labour inspector who, although noting the limitations of a trade union's remit, also underscored their role in uncovering potential instances of THB-LE:

¹⁸⁶ Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Survey Report 2021 of Efforts to Implement OSCE Commitments and Recommended Actions to Combat Trafficking in Human Beings* (OSCE 2022) 23.

¹⁸⁷ Department of Justice and Equality, *Second National Action Plan to Prevent and Combat Human Trafficking in Ireland* (Government of Ireland 2016) 57.

¹⁸⁸ Zuzanna Muskat-Gorska, 'Can Labour Make an Effective Contribution to Legal Strategies Against Human Trafficking?' in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 465.

¹⁸⁹ Steve Kwok-Leung Chan, 'Deprivation of Citizenship, Undocumented Labor and Human Trafficking: Myanmar Migrant Workers in Thailand' (2018) 8(2) *Regions & Cohesion* 82-106, 89. See also, International Trade Union Confederation, *Never Work Alone: Trade Unions and NGOs Joining Forces to Combat Forced Labour and Trafficking in Europe* (ITUC 2011) 22; Johanna Kuhlmann and Colette S. Vogeler, 'United Against Precarious Working Conditions? Explaining the Role of Trade Unions in Improving Migrants' Working Conditions in the British and German Meat-Processing Industries' (2021) 41(3) *Journal of Public Policy* 515-531, 527; Maarten Keune, 'Inequality Between Capital and Labour and Among Wage-Earners: The Role of Collective Bargaining and Trade Unions' (2021) 27(1) *Transfer: European Review of Labour and Research* 29-46.

¹⁹⁰ Interview 7.

¹⁹¹ GRETA, *7th General Report on GRETA's Activities covering the period from 1 January to 31 December 2017* (Council of Europe 2018) 43.

‘we always work with unions. They may not investigate, but they talk. Unions are talking to workers and already know what THB is and so on’.¹⁹²

Yet, a Finnish trade unionist explained a limitation to trade unions working on THB-LE without co-operation with other stakeholders as follows:

‘We do have a problem that where there are severe cases, usually these people are not even in a position where they could be organised or could join the trade union. So we’re not the primary, basically, actor that would recognise these cases. But we are obviously, as we are present in the workplaces, we are part of it ... so we are part of the solution, but we’re not the only, we’re not the solution ... but it actually takes co-operation with other NGOs, civil society, with the authorities, with the police, with inspection’.¹⁹³

This participant account highlights the need to engage in multi-stakeholder co-operation involving a diverse range of stakeholders to include civil society organisations and public authorities.

Marks and Olsen are critical of the fact that trade unions had not been considered key stakeholders in the fight against THB-LE until recently, which they viewed as being to the ‘detriment of holistic and effective interventions’.¹⁹⁴ This is in line with GRETA’s concern that ‘in some countries, trade unions are not yet recognised as a partner in anti-trafficking work’.¹⁹⁵ Likewise this was borne out in the qualitative data. A German trade union interviewee opined that ‘I’m not sure if trade unions are recognised by them [other stakeholders] as important players’ or ‘partners’ in the anti-trafficking response to THB-LE.¹⁹⁶ Equally, a Swedish trade unionist stressed that ‘it’s time for us to be part of this work’ because they ‘know the labour market’.¹⁹⁷

¹⁹² Interview 28.

¹⁹³ Interview 39.

¹⁹⁴ Eliza Marks and Anna Olsen, ‘The Role of Trade Unions in Reducing Migrant Workers’ Vulnerability to Forced Labour and Human Trafficking in the Greater Mekong Subregion’ (2015) 5 *Anti-Trafficking Review* 111-128, 112.

¹⁹⁵ GRETA, *7th General Report on GRETA’s Activities covering the period from 1 January to 31 December 2017* (Council of Europe 2018) 43; GRETA, *Evaluation Report: Switzerland – Third Evaluation Round* (Council of Europe 20 June 2024) 46.

¹⁹⁶ Interview 34.

¹⁹⁷ Interview 24.

In contrast, trade unions have ‘been at the forefront of the fight against THB’ in Iceland.¹⁹⁸ Likewise, a Czech labour inspector explained that:

‘trade union[s] are our same usual partner. So if we have some information from trade unions about the situations, so one of the sources for our inspections. Even during the control, we are obliged to contact trade union in the company’.¹⁹⁹

A similar exchange of information was outlined by a Spanish trade union participant who stated that ‘the first step is to complain at the labour inspection’.²⁰⁰ This demonstrates that facilitating engagement between public authorities and trade unions can be fruitful and a worthwhile endeavour, particularly in terms of information sharing and the exposure of unacceptable working conditions that may also reveal criminal law offences of severe labour exploitation.²⁰¹ However, it is important to acknowledge that varying trade union practices and/or structures across European states as reported by Cronert and Forsén,²⁰² can impact on the effectiveness of their response to THB-LE but also on their engagement with other anti-trafficking stakeholders.

Operationalising co-operative initiatives between trade unions and public authorities is a challenge in practice, with a German trade unionist expressing that in addressing THB-LE ‘the hardest thing is the co-ordination and the co-operation’.²⁰³ Study participants provided examples of practical challenges to co-operation, which reaffirm the overarching issues discussed in section 4.3.1. First, a trade unionist from Sweden was concerned that each organisation may have a different agenda.²⁰⁴ Tensions between trade unionists seeking to protect and uphold workers’ rights and seeking compensation for work performed, may come into conflict with criminal law enforcement or labour

¹⁹⁸ GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Iceland: Second Evaluation Round* (Council of Europe 15 March 2019) 40.

¹⁹⁹ Interview 38 (Senior Officer).

²⁰⁰ Interview 7.

²⁰¹ SLE is a term defined by the European Union Agency for Fundamental Rights (EUFRA) that accounts for:

‘all forms of labour exploitation that are criminal under the legislation of the European Union Member State where the exploitation occurs’.

EUFRA, *Severe Labour Exploitation: Workers Moving Within or Into the European Union – States’ Obligations and Victims’ Rights* (Publications Office of the EU 2015) 11.

²⁰² Axel Cronert and Richard Forsén, ‘Like Worker, Like Union? Labor Market Risk Exposure, White-Collar Predominance and Trade Unions’ Policy Advocacy’ (2023) 21(1) *Socio-Economic Review* 367-395, 391.

²⁰³ Interview 34.

²⁰⁴ Interview 24.

inspection mandates to detect “illegal labour”. Secondly, trade union study participants were concerned about the lack of trust between the stakeholders.²⁰⁵ The consequence of this lack of trust was also outlined by a Spanish criminal law enforcement official who reported that ‘we have not a very good relationship with trade unions in this regard. We are not collaborate too much’.²⁰⁶ A potential reason for this situation was proposed by this participant on the basis that there is a tendency to focus efforts on THB-SE.²⁰⁷ This concern regarding an emphasis on THB-SE was also voiced by German interviewees. A NGO participant outlined that collaboration is ‘a lot better’ and more structured and formalised when tackling THB-SE,²⁰⁸ while a trade unionist noted that:

‘In some federal states there are some kind of official co-operation like roundtables or something with regard to human trafficking towards sexual exploitation ... but regarding labour exploitation, there’s no such thing to my knowledge’.²⁰⁹

Similarly, a representative of the German Federal Police who, focusing on THB-LE specifically, observed that:

‘It’s not really new, but for our authorities it’s new to work together in this field and we know from other European countries that they are quite far, more far in co-ordination and co-operation within the authorities. So we have a lot to do in this field’.²¹⁰

A consequence of an emphasis on THB-SE may mean that labour law stakeholders, including trade unionists and labour inspectors, are not fully integrated into joint efforts or multidisciplinary meetings on THB. This can impede effective engagement between all relevant stakeholders and resultantly, co-operative measures may be limited in practice. It may also skew resource allocation and victim assistance services towards one form of THB, hindering a more comprehensive approach to the phenomenon. The upshot of this may lead to lower detection of victims of THB-LE and subsequently lower levels of support and assistance to that cohort.

²⁰⁵ Interview 1; 41.

²⁰⁶ Interview 22 (Head of Unit).

²⁰⁷ *ibid.*

²⁰⁸ Interview 17 (a THB-LE focused NGO).

²⁰⁹ Interview 34.

²¹⁰ Interview 5 (Representative from the Federal Police THB Unit).

Although an Icelandic trade unionist considered co-operation with criminal law enforcement officials in a positive manner, they noted another practical hindrance as follows:

‘They have been rather open. Of course, it depends what police. It depends on people. It depends on where in Iceland. If they have the knowledge, if they have the interest, if they have the understanding. But we have had in many cases, very good co-operation with the police’.²¹¹

This echoes the concern raised by the NGO participant cohort in section 4.3.3.1. regarding the need for awareness raising amongst all criminal law enforcement officials to counteract any inconsistencies arising in practice when approached by civil society organisations.

Finally, GRETA has stated that ‘co-operation with trade unions and NGOs is essential in order to tackle cases of trafficking for labour exploitation successfully, and needs to be organised in a structured way’.²¹² In the qualitative data, trade union participants were the cohort who most frequently stressed the need to adopt a more structured co-operative approach in tackling and uncovering instances of THB-LE.²¹³ A Norwegian trade unionist, for example, emphasised that they are ‘convinced that this is a problem which is so big and uncontrollable, that you cannot really only control yourself ... So you need to have structural change’.²¹⁴ Likewise a Swiss trade union participant outlined that:

‘what we have is sort of lots of experience, but nothing is really structured ... we have so many people who work on the field. They have kind of indicators how to find out. Some of them have the notes for that, some of them have the experience. Some of us know how these organisations think, but it’s everything related to experience and it’s very, very individual’.²¹⁵

There are two facets that arise from this analysis. First, trade unions must be appropriately recognised by states for their potential contribution to the detection of instances of THB-LE. This may entail integrating trade unions into existing roundtables and involving them in the initial planning stages in formulating anti-trafficking objectives, for example,

²¹¹ Interview 1.

²¹² GRETA, *7th General Report on GRETA’s Activities covering the period from 1 January to 31 December 2017* (Council of Europe 2018) 54.

²¹³ Interview 1; 34; 41.

²¹⁴ Interview 4.

²¹⁵ Interview 3.

ascertaining their views for the purpose of developing a NAP. One example of this integration is in Slovenia, whereby representatives of the Slovenian Association of Free Trade Unions have been included in the Inter-ministerial Working Group for Combating Trafficking in Human Beings.²¹⁶ Secondly, it would be beneficial to engage with trade unions during the joint inspection process between labour inspectors and criminal law enforcement officials. Yet, it is unclear at what stage trade unions could be feasibly integrated in order for partnerships to operate most effectively. In reaching that point, therefore, further engagement and exchange of views between trade unions and public authorities is required to determine opportunities for successful co-operation leading to the ultimate goal of eradicating THB-LE.

To conclude, this analysis on the co-operation with civil society organisations reveals very different outcomes. The usefulness of public authority interactions with NGOs are largely acknowledged, whilst little or no engagement occurs with trade unions. The examination of these interactions also points towards gaps relating to the low level of engagement between NGOs and labour inspectors. Yet, it further uncovers possible tensions wherein criminal law enforcement officials co-operate with NGOs but primarily from a prosecutorial standpoint. On the basis of the identification procedure, conceptualised as encompassing the two distinct processes of detection and formal identification,²¹⁷ states must, at a minimum, recognise that NGOs and trade unions have a key role to play in the detection of victims of THB-LE. By encouraging states to consider their obligation to identify as encompassing this broader understanding of the identification procedure, the contributions of these civil society organisations may be more fully understood and incorporated within relevant referral mechanisms.

Conclusion

The Trafficking Convention places clear obligations on states in relation to engaging different stakeholders in a co-operative manner in anti-trafficking efforts, for example, for preventative purposes under Article 5(6)²¹⁸ and the provision of assistance measures

²¹⁶ GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Slovenia: Second Evaluation Round* (Council of Europe 15 February 2018) 14.

²¹⁷ See section 3.2.3. of Chapter Three.

²¹⁸ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 5(6).

under Article 12(5).²¹⁹ Article 35 of the Trafficking Convention reinforces the important role of, and the need to engage with, civil society organisations.²²⁰ In relation to the obligation to formally identify VoTs under Article 10, there are clear requirements to ensure collaboration between public authorities and with relevant support organisations.²²¹ Although the language of these provisions is stronger than that contained within the Palermo Protocol,²²² states retain considerable discretion regarding the implementation of this co-operation because the Trafficking Convention does not prescribe how this co-operation should manifest in practice. This chapter establishes that resultantly there is a certain level of ambiguity surrounding what precisely is expected of states.

Multi-stakeholder co-operation is regularly encouraged and called for by international organisations and monitoring bodies such as GRETA, however, this chapter demonstrates that in practice approaches to co-operation for identification purposes are largely based on partnerships between two public authorities, or between a public authority and a NGO. A consequence of this approach to co-operation is that it forgoes other relevant voices with experience of uncovering instances of THB-LE, with the qualitative data highlighting the lack of co-operation with trade unions across European states. A further aspect of co-operative efforts that was referenced by study participants related to the minimal interaction between labour inspectors and NGOs. The drawback of this is the failure to fully engage with stakeholders active in the labour law field who may regularly encounter (potential) victims of THB-LE. Additionally, while it is well-rehearsed that there is a dominant criminal justice approach in addressing THB-LE, there are some promising indications of interactions between the criminal justice stakeholders and other public authorities operating in labour law fields and victim support. Most notably, the analysis reinforced the significance of two-way communication channels between criminal law enforcement officials and labour inspectors to enable referrals and to instigate joint inspections. This facilitation of referral is crucial in situations whereby the mandate of labour inspectors is limited to detection.

²¹⁹ *ibid* Article 12(5).

²²⁰ *ibid* Article 35.

²²¹ *ibid* Article 10.

²²² Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319.

Although the findings in this chapter discerned interactions between criminal law enforcement officials and NGOs, it established that there can be complications in this regard whereby such co-operation is primarily pursued to obtain information for prosecutorial purposes. The issue here is that it tends towards criminal justice objectives rather than operating from a victim-centred perspective. A subsequent consequence of this is that it may lead to certain tensions arising between NGOs and criminal law enforcement officials who have considerably different priorities. Moreover, study participants commented on positive partnerships with criminal law enforcement officials, yet one specific area in need of improvement related to local police officers. This cohort were deemed to lack sufficient knowledge of THB-LE in order to contribute effectively to the detection process and this limited co-operation with other stakeholders at local level.

A further point that was cited by the study participants related to the absence of a formal structure for co-operation, with certain participants raising a particular concern with the ad hoc manner of THB-LE joint efforts when compared to the more structured approach to THB-SE. Implementing such a formal structure through memoranda of understanding, for example, would enable and require a range of stakeholders to take part in co-operative efforts and guarantee a certain level of engagement between criminal justice and labour law stakeholders, for instance, by setting minimum targets for joint inspections or clearly setting out the requirement of each stakeholder cohort. It would facilitate streamlined information sharing and build levels of trust which are both imperative for efficient multi-stakeholder co-operation. To alleviate tensions arising from conflicting agendas and diverging priorities, it would be useful to establish roundtables, stakeholder forums²²³ or multi-disciplinary working groups²²⁴ targeting THB-LE, that would meet at specific and regular times throughout the year. To a certain extent, the current challenges could be remedied by establishing a comprehensive multi-stakeholder NRM at national level, as discussed in Chapter Three.²²⁵ This should be accompanied by guidelines for joint efforts. By developing a structure for national level co-operation, the different priorities of the various relevant stakeholders may be more concisely aligned by adopting a common

²²³ Alex Balch, 'Defeating "Modern Slavery", Reducing Exploitation? The Organisational and Regulatory Challenge' in Gary Craig, Alex Balch, Hannah Lewis and Louise Waite (eds), *The Modern Slavery Agenda: Policy, Politics and Practice in the UK* (Policy Press 2019) 75.

²²⁴ Claudia Vorheyer, 'Knowledge Production on Human Trafficking and Everyday Governance Practices' in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 404.

²²⁵ See section 3.4.2. of Chapter Three.

understanding of THB-LE and utilising the same indicators of THB-LE²²⁶ during the identification procedure. It would demonstrate a clear commitment by states to ensure that this multi-stakeholder co-operation occurs in practice on a consistent and long-term basis.

Overall, there is scope for development in this context to achieve a multi-stakeholder integrated approach to co-operative efforts on identification. European states must endeavour to draw these stakeholders together and to structure the approach to identify THB-LE more rigorously. Low levels of interaction and co-operation between certain stakeholders means that crucial channels of communication for uncovering instances of THB-LE are not fully utilised. Yet, the stakeholder accounts from the qualitative data reveal a recognition of the usefulness of these interactions and a willingness to do so, although in practice this is hampered for several reasons, including a focus on THB-SE or limited capacity. In conjunction with the importance of co-operative initiatives and in order to actively facilitate such integrated multi-stakeholder practices, it is imperative that anti-trafficking efforts are co-ordinated in a structured manner, as required under Article 5(1) of the Trafficking Convention.²²⁷ Although not explicitly provided for under the Trafficking Convention, in encouraging such multi-stakeholder efforts, their co-ordination should be overseen by a National Anti-Trafficking Co-ordinator or similar mechanism. The appropriate co-ordination of actions is necessary to avoid unhelpful duplication of efforts and the depletion of already limited resources. It is critical to eliminate ambiguity regarding each stakeholders' tasks and duties.

This doctoral study has to this point analysed identification structures and co-operation amongst relevant stakeholders in light of the legal obligations under international law, providing critical insights into the practical implementation of victim identification by European states. This chapter stresses the importance of co-operation and views effective multi-stakeholder co-operation as a way forward to improve the detection and identification of victims of THB-LE. Chapter Five builds on this analysis by exploring three measures to equip stakeholders operating on the ground in attempting to increase the identification of victims of THB-LE.

²²⁶ See section 5.3.3. of Chapter Five.

²²⁷ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 5(1).

Chapter Five – Equipping Stakeholders to Identify Trafficking in Human Beings for the Purpose of Labour Exploitation

Introduction

This chapter investigates how relevant stakeholders are, and should be, equipped to identify victims of trafficking in human beings for the purpose of labour exploitation (THB-LE). Thus far, Chapter Three and Chapter Four examined how the identification procedure for THB-LE operates across European states by focusing on designating a competent authority (CA), establishing a national referral mechanism (NRM), and multi-stakeholder co-operation. They revealed a number of barriers for the identification procedure including, *inter alia*, the emphasis on victim reporting¹ and limited multi-stakeholder interactions.² These findings establish that while there is a clear necessity to integrate additional relevant stakeholders beyond criminal justice officials into the identification procedure, it is even more pressing that an integrated multi-stakeholder approach is employed in the most effective manner. Building on these findings, this chapter centres on three interrelated issues of stakeholder awareness of THB-LE, training of relevant stakeholders, and the use of indicators to identify (potential) victims of trafficking in human beings (VoTs), which this chapter establishes as key to a comprehensive approach in equipping stakeholders for identification purposes (hereafter referred to as the three-pronged approach).

The chapter is guided by the obligations contained within the Council of Europe Convention on Action against Trafficking in Human Beings (Trafficking Convention). Article 5 on preventing trafficking in human beings (THB) calls on states to raise awareness among vulnerable persons and professionals.³ Moreover, Article 10 requires states to equip CAs with trained and qualified personnel for the formal identification of VoTs.⁴ In addition, Article 29 obliges states to provide or strengthen training of relevant officials to prevent and combat THB.⁵ The three-pronged approach analysed in this chapter is therefore based on a combination of the measures expressly provided for in the

¹ See section 3.4.3. of Chapter Three.

² See section 4.3.3. of Chapter Four.

³ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 5(2).

⁴ *ibid* Article 10(1).

⁵ *ibid* Article 29(3).

Trafficking Convention, regarding awareness raising and training, and emerging effective practical measures, in the case of indicators of THB-LE.

Some research has been conducted in Europe⁶ into stakeholder perceptions and awareness of THB,⁷ placing a particular emphasis on the criminal justice sphere.⁸ Cunha et al., for example, found that Portuguese police perceptions of THB lead to an understanding of a VoT as ‘young women who are extremely vulnerable because of individual and socio-economic factors’.⁹ Further to this, Hoyle et al.¹⁰ and O’Brien¹¹ have identified the risks of awareness raising campaigns only presenting a specific victim or offender narrative, while Rodríguez-López¹² and Houston-Kolnik et al.¹³ have raised similar concerns regarding media representations. In this regard, other scholars have argued that these

⁶ Tatyana A. Denisova, ‘Trafficking in Women and Children for Purposes of Sexual Exploitation: The Criminological Aspect’ (2001) 6(3-4) *Trends in Organized Crime* 30-36; Ana Cunha, Mariana Gonçalves and Marlene Matos, ‘Knowledge of Trafficking in Human Beings among Portuguese Social Services and Justice Professionals’ (2019) 25(3) *European Journal on Criminal Policy and Research* 469-488; Kiril Sharapov, ‘Public Understanding of Trafficking in Human Beings in Great Britain, Hungary and Ukraine’ (2019) 13 *Anti-Trafficking Review* 30-49; Ludmila Bogdan, ‘Human Trafficking, Information Campaigns and Public Awareness in Moldova: Why Do Anti-Trafficking Organizations Operate Under Inaccurate Assumptions?’ (2022) 60(5) *International Migration* 165-182.

⁷ Relatedly, there is considerable scholarly literature examining North America in this regard. See, *inter alia*, Kelle Barrick, Pamela K. Lattimore, Wayne J. Pitts and Sheldon X. Zhang, ‘When Farmworkers and Advocates See Trafficking But Law Enforcement Does Not: Challenges in Identifying Labor Trafficking in North Carolina’ (2014) 61(2) *Crime, Law and Social Change* 205-214; Jessica Reichert, Jaclyn Houston-Kolnik, Amanda L. Vasquez and Emma Peterson, ‘News Reporting on Human Trafficking: Exploratory Qualitative Interviews with Illinois News Journalists’ (2018) 4(1) *Journal of Human Trafficking* 6-20; Risha Sinha, Elahe Tashakor and Casey Pinto, ‘Identifying Victims of Human Trafficking in Central Pennsylvania: A Survey of Health-Care Professionals and Students’ (2019) 5(2) *Journal of Human Trafficking* 165-175; Hyunjung Cheon, Charles M. Katz and Vincent J. Webb, ‘Information Sources Used by Local Police to Estimate the Scope and Nature of Sex Trafficking’ (2019) 42(6) *Policing: An International Journal* 976-991; Corinne Schwarz, Chong Xing, Ryan Daugherty, Sierra Watt and Hannah E. Britton, ‘Frontline Workers’ Perceptions of Human Trafficking: Warning Signs and Risks in the Midwest’ (2020) 6(1) *Journal of Human Trafficking* 61-78.

⁸ Eliana Lourenço, Mariana Gonçalves and Marlene Matos, ‘Trafficking in Human Beings: Portuguese Magistrates’ Perceptions’ (2019) 5(3) *Journal of Human Trafficking* 238-254; Szandra Windt, ‘Attitudes of Law Enforcement Towards Trafficking in Human Beings in Hungary’ (2023) 45(1) *Archives of Criminology* 5-24.

⁹ Ana Cunha, Mariana Gonçalves and Marlene Matos, ‘Exploring Perceptions of Portuguese Police about Human Trafficking Victims and Perpetrators’ (2022) 77(2) *Crime, Law and Social Change* 253-273, 261.

¹⁰ Caroline Hoyle, Mary Bosworth and Michelle Dempsey, ‘Labelling the Victims of Sex Trafficking: Exploring the Borderland Between Rhetoric and Reality’ (2011) 20(3) *Social & Legal Studies* 313-329.

¹¹ Erin O’Brien, ‘Human Trafficking Heroes and Villains: Representing the Problem in Anti-Trafficking Awareness Campaigns’ (2016) 25(2) *Social & Legal Studies* 205-224, 219.

¹² Silvia Rodríguez-López, ‘(De)Constructing Stereotypes: Media Representations, Social Perceptions and Legal Responses to Human Trafficking’ (2018) 4(1) *Journal of Human Trafficking* 61-72.

¹³ Jaclyn D. Houston-Kolnik, Christina Soibatian and Mona M. Shattell, ‘Advocates’ Experiences With Media and the Impact of Media on Human Trafficking Advocacy’ (2020) 35(5-6) *Journal of Interpersonal Violence* 1108-1132.

stereotypes become an obstacle for the identification of VoTs.¹⁴ In addition to ascertaining the understanding and awareness of THB-LE on the part of stakeholders, the analysis in this chapter contributes to the scholarly literature on training of relevant stakeholders,¹⁵ and European research¹⁶ on indicators of THB-LE.¹⁷ To date, scholars such as Cunha et al.,¹⁸ Reis et al.¹⁹ and Hounmenou²⁰ have reported that training is a key variable influencing greater knowledge on THB. Despite its importance, Villacampa is critical of the training provided to criminal justice stakeholders in Spain due to its focus on trafficking in human beings for the purpose of sexual exploitation (THB-SE) and concludes that professional training on THB-LE is not a priority in Spain.²¹ The analysis in this chapter builds on these scholarly observations to focus on stakeholders' (mis)understanding of THB-LE and the interaction between awareness raising, training and indicators of THB-LE in practice. The three-pronged approach encompasses key measures necessary to ensure that any integrated multi-stakeholder approach operates at optimum level.

¹⁴ Gema Fernández Rodríguez de Liévana and Viviana Waisman, “‘Lost in Translation’: Assessment of the (Non)-Implementation of the Trafficking Directive from a Gender Perspective in Spain” (2017) 9(3) *Journal of Human Rights Practice* 504-525, 509.

¹⁵ There has been a particular tendency to focus on the training afforded to healthcare professionals, for example, Kristina L. Borham, Chelsea Eret, Blaire Bernstein and Shea Rhodes, ‘Legislative Perspectives on Human Trafficking Training for Physicians’ (2024) 10(1) *Journal of Human Trafficking* 174-192. Some research on the impact of training for law enforcement officials has emerged in the U.S. (to take one example, Deborah Grubb and Katherine Bennett, ‘The Readiness of Local Law Enforcement to Engage in US Anti-Trafficking Efforts: An Assessment of Human Trafficking Training and Awareness of Local, County, and State Law Enforcement Agencies in the State of Georgia’ (2012) 13(6) *Police Practice and Research* 487-500). But European (empirical) scholarly literature is largely absent, with the notable exception, albeit in the context of THB-SE, of Lisa R. Muftić, ‘Securing the Border in Bosnia and Herzegovina: An Exploratory Analysis of the Impact of Training on Officers’ Knowledge and Experiences Related to Sex Trafficking’ (2014) 20(2) *European Journal on Criminal Policy and Research* 225-241.

¹⁶ Indicators of THB are discussed in the context of online recruitment in a study of advertisements relating to THB-LE by Ada Volodko, Ella Cockbain and Bennett Kleinberg, “‘Spotting the Signs’ of Trafficking Recruitment Online: Exploring the Characteristics of Advertisements Targeted at Migrant Job-seekers’ (2020) 23(3) *Trends in Organized Crime* 7-35.

¹⁷ It has been briefly touched upon in the US context. See, for example, Jeremy S. Norwood, ‘Labor Exploitation of Migrant Farmworkers: Risks for Human Trafficking’ (2020) 6(2) *Journal of Human Trafficking* 209-220; Lara B. Gerassi, Andrea J. Nichols, Ashley Cox, Kei K. Goldberg and Cliff Tang, ‘Examining Commonly Reported Sex Trafficking Indicators From Practitioners’ Perspectives: Findings From a Pilot Study’ (2021) 36(11-12) *Journal of Interpersonal Violence* 6281-6303.

¹⁸ Ana Cunha, Mariana Gonçalves and Marlene Matos, ‘Knowledge of Trafficking in Human Beings among Portuguese Social Services and Justice Professionals’ (2019) 25(3) *European Journal on Criminal Policy* 469-488, 483.

¹⁹ Tara A. Reis, Jennifer C. Gibbs, Daniel Howard and Emily R. Strohacker, ‘Prostitute or Human Trafficking Victim? Police Discernment of Human Trafficking’ (2022) 45(2) *Policing: An International Journal* 334-345, 340.

²⁰ Charles Hounmenou, ‘Human Service Professionals’ Awareness of Human Trafficking’ (2012) 11(3) *Journal of Policy Practice* 192-206.

²¹ Carolina Villacampa, ‘Labour Trafficking Prosecution: What is Not Working in Spain?’ (2023) 26(1) *Contemporary Justice Review* 1-27, 9.

This chapter reveals that there are deficiencies in current state approaches to the implementation of awareness and training requirements under the Trafficking Convention, confirming the criticism voiced by the Group of Experts on Action against Trafficking in Human Beings (GRETA).²² Although some efforts are being made, there is considerable scope for improvement in the context of THB-LE. The analysis uncovers that stakeholders' overall understanding of THB continues to be shaped by discussions focusing on THB-SE. The stakeholder perspectives demonstrate that in practice there is a denial (of the extent) that THB-LE occurs within their jurisdiction. The narrow interpretation by stakeholders of THB leads to a failure to recognise the existence of a continuum of exploitation within a range of economic sectors, and it may mean that detection beyond instances of THB-SE is limited and that certain victims are not provided with the support and assistance that they are entitled to. This chapter also reveals that study participants presented stakeholder training as mainly institution specific, with multi-stakeholder training infrequently reported by interviewees despite recommendations to do so by GRETA.²³ The training is primarily targeted at criminal law enforcement officials and the judiciary, and the concern is the reinforcement of a strong criminal justice approach as discussed in previous chapters.²⁴ Therefore, the omission of relevant stakeholders from such training programmes hinders the achievement of an integrated legal approach to combat the phenomenon. The qualitative data also shows that there is a need to construct a fieldwork version of indicators of THB-LE for the purpose of initial detection, and a more comprehensive version for the formal identification process. The practical employment of these tools during the identification procedure is imperative to ameliorate the misunderstandings of the offence and the difficulties in distinguishing between labour law violations and THB-LE.²⁵

The chapter is structured in three sections. First, it outlines the importance of a three-pronged approach to equip stakeholders for the identification of VoTs encompassing awareness measures, training, and indicators of THB-LE. Secondly, it analyses the legal provisions under the Trafficking Convention requiring states to put in place stakeholders

²² GRETA, *7th General Report on GRETA's Activities covering the period from 1 January to 31 December 2017* (Council of Europe 2018) 45.

²³ GRETA, *Compendium of Good Practices in Addressing Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2020) 16; GRETA, *Guidance Note on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2021) 14.

²⁴ See, for instance, sections 3.4.1. of Chapter Three and section 4.3.3.1. of Chapter Four.

²⁵ See section 2.4.1. of Chapter Two.

who are aware of and trained on THB, focusing on Article 5, Article 10 and Article 29. The bottom-up stakeholder perspectives on the three issues explored in this chapter are presented throughout the third section. The structure of this section mirrors the Trafficking Convention by beginning with an analysis of stakeholder awareness drawing on Article 5, and moving to the specificity required under Article 10 and Article 29 on stakeholder training. On this basis, it investigates the awareness of THB(-LE) on the part of stakeholders, examines stakeholder training on THB-LE, and assesses the use of indicators of THB-LE.

5.1. The Importance of Awareness, Training and Indicators for the Purpose of Identification

Throughout the preceding chapters, an emphasis has been placed on the importance of informed stakeholders who may be the first point of contact for (potential) VoTs which requires adequate knowledge of THB-LE and of the varied experiences of VoTs.²⁶ To comprehensively equip stakeholders to identify victims of THB-LE, this chapter presents a three-pronged approach to include a broader awareness of THB-LE, stakeholder training, and instruction on the application of indicators of THB-LE. The need for combining these measures was borne out in the qualitative data. Certain interviewees stressed the importance of providing training programmes but also carrying out awareness raising initiatives to support the identification of a situation as one of THB-LE.²⁷ A criminal law enforcement official from Spain explained this as follows:

‘One thing is that you are very well trained and another thing is that you are aware of the situation. It is not the same. Maybe I’m very well trained but I don’t believe in the situation. I see that “oh that is not really [a] problem”. It’s not only important training, but also to the awareness, to raise the awareness in stakeholders’.²⁸

This is likewise recognised in the Explanatory Memorandum to the Committee of Ministers Recommendation on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation which outlined that ‘awareness raising on trafficking for the purpose of labour exploitation should be integrated into the training

²⁶ See, for example, section 4.3.1.2. of Chapter Four.

²⁷ Interview 7; 11; 22; 23.

²⁸ Interview 22 (Head of Unit).

curricula of relevant professionals'.²⁹ This necessity was recognised by the Irish Government in its most recent National Action Plan wherein it stated that 'we believe the actions on training and awareness raising will allow for the identification of more victims no matter who they interact with'.³⁰ This section outlines the significance of the measures under this three-pronged approach.

It is imperative that stakeholders fully understand the definition and corresponding scope of THB(-LE) and the existence of a continuum of exploitative practices. This awareness of THB-LE as distinct from other forms of labour exploitation is critical to its detection and the subsequent formal identification of VoTs.³¹ In this regard, GRETA and the Committee of the Parties of the Council of Europe have repeatedly called on states to target THB-LE in awareness raising measures.³² Awareness raising is more commonly framed in terms of prevention measures,³³ but it equally is 'an effective tool'³⁴ for the purpose of fully complying with protection measures,³⁵ including the identification obligation.³⁶ A Bulgarian labour inspector indicated that there is a need for:

²⁹ Council of Europe, 'Explanatory Memorandum to Recommendation CM/Rec(2022)21 of the Committee of Ministers to Member States on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation' (27 September 2022) CM(2022)141-add5final para 6.

³⁰ Government of Ireland, *National Action Plan to Prevent and Combat Human Trafficking 2023-2027* (Government of Ireland 2023) 3.

³¹ Kelle Barrick, Pamela K. Lattimore, Wayne J. Pitts and Sheldon X. Zhang, 'When Farmworkers and Advocates See Trafficking But Law Enforcement Does Not: Challenges in Identifying Labor Trafficking in North Carolina' (2014) 61(2) *Crime, Law and Social Change* 205-214, 206.

³² GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Norway: First Evaluation Round* (Council of Europe 7 May 2013) 58; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: First Evaluation Round* (Council of Europe 26 September 2013) 64; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden: First Evaluation Round* (Council of Europe 27 May 2014) 53; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Finland: First Evaluation Round* (Council of Europe 4 June 2015) 52; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Switzerland: First Evaluation Round* (Council of Europe 14 October 2015) 51; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bulgaria: Second Evaluation Round* (Council of Europe 28 January 2016) 51; Committee of the Parties, *Recommendation CP/Rec(2023)09 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Iceland: Third Evaluation Round* (Council of Europe 15 December 2023) 3.

³³ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 5.

³⁴ Monika Smit, 'Trafficking in Human Beings for Labour Exploitation. The Case of the Netherlands' (2011) 14(2) *Trends in Organized Crime* 184-197, 195.

³⁵ UNODC, *Model Law Against Trafficking in Persons* (United Nations 2009) 5.

³⁶ GRETA, *Compendium of Good Practices in Addressing Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2020) 4.

‘more awareness raising campaigns to get information all around you, not to search for it, the information to pop up to you and not to leave you not informed. In today’s information world, we cannot afford to say that we don’t have information about something’.³⁷

For a German non-governmental organisation (NGO) participant a combination of factors is necessary in the identification procedure, and they stated that there is a need for ‘better awareness but not just that, but the resources, that more people are working there who are aware of that and who can also take the time’.³⁸

In equipping stakeholders operating on the ground, it is also essential that they partake in targeted training programmes on THB-LE. Across the European region and amongst stakeholders, perceptions of THB, THB-LE and a victim’s vulnerability can vary considerably.³⁹ Training, therefore, to harmonise these perceptions is necessary to enable the prompt and effective identification of VoTs and the fulfilment of protection obligations.⁴⁰ The Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings (Explanatory Report) outlines that this is particularly important for the formal identification process in order to enable:

‘competent authorities seek and evaluate different circumstances, according to which they can consider a person to be a victim of trafficking’.⁴¹

This is vital for both the reasonable grounds assessment and conclusive decision by CAs, as discussed in Chapter Three.⁴² A Portuguese NGO representative stressed that adequate training is imperative for the identification of VoTs to ensure that stakeholders take into account the inherent fears and vulnerabilities of this cohort ‘because their stories don’t make sense a lot of times or they seem very extreme’.⁴³ In this regard, GRETA and the Committee of the Parties have called on a number of states to focus training specifically

³⁷ Interview 32. A similar sentiment was expressed by a Finnish trade unionist (Interview 39) who outlined that ‘awareness raising is something that is absolutely key’.

³⁸ Interview 14 (a NGO focused on assisting migrant women).

³⁹ Yvon Dandurand, ‘Human Trafficking and Police Governance’ (2017) 18(3) *Police Practice and Research* 322-336, 323.

⁴⁰ The Inter-Agency Coordination Group against Trafficking in Persons, *Non-Punishment of Victims of Trafficking* (Issue Brief 8, ICAT 2020) 5.

⁴¹ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 127.

⁴² See section 3.3.1. of Chapter Three.

⁴³ Interview 33 (a NGO working with victims of crime).

on THB-LE.⁴⁴ Further to this, the necessity for training was outlined by a Hungarian criminal law enforcement official who considered it to be key in supporting stakeholders ‘to be proactive’ and to reduce the reliance on victims directly reporting cases of THB-LE.⁴⁵ This is pressing as low levels of self-declaration as a VoT and a fear of authorities were identified as barriers to reporting THB-LE in Chapter Three.⁴⁶

There is a need to ensure that training of relevant stakeholders is not a one-off occurrence,⁴⁷ instead programmes should be designed to be rolled out over a period of time with regular upskilling. However, it is equally important that training converts into practice, as a Slovenian labour inspector outlined:

‘So in Slovenia, these are the beginnings. We still have a lot to do. We are learning, learning, learning. We educate inspectors, we train them but in real life, it’s a different story’.⁴⁸

On this basis, GRETA states that:

‘training is essential in order to raise awareness about the specificities of trafficking for labour exploitation and its modalities, and to equip relevant practitioners with the right tools to prevent, identify and combat the phenomenon’.⁴⁹

⁴⁴ Committee of the Parties, *Recommendation CP(2018)27 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain: Second Evaluation Round* (Council of Europe 9 November 2018) 2; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Finland: Second Evaluation Round* (Council of Europe 5 June 2019) 48; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Hungary: Second Evaluation Round* (Council of Europe 27 September 2019) 56; Committee of the Parties, *Recommendation CP/Rec(2019)10 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Switzerland: Second Evaluation Round* (Council of Europe 18 October 2019) 2; Committee of the Parties, *Recommendation CP/Rec(2019)06 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany: Second Evaluation Round* (Council of Europe 18 October 2019) 2; GRETA, *Evaluation Report: Austria – Third Evaluation Round* (Council of Europe 10 June 2020) 60; GRETA, *Evaluation Report: Bulgaria – Third Evaluation Round* (Council of Europe 29 April 2021) 71; GRETA, *Evaluation Report: Norway – Third Evaluation Round* (Council of Europe 8 June 2022) 55; Committee of the Parties, *Recommendation CP/Rec(2023)07 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Slovenia: Third Evaluation Round* (Council of Europe 16 June 2023) 3.

⁴⁵ Interview 42 (an Inspector). From an investigative perspective, this is required under Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 27.

⁴⁶ See section 3.4.3. of Chapter Three.

⁴⁷ Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Survey Report 2021 of Efforts to Implement OSCE Commitments and Recommended Actions to Combat Trafficking in Human Beings* (OSCE 2022) 20.

⁴⁸ Interview 28.

⁴⁹ GRETA, *Guidance Note on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2021) 14.

One of these tools for the identification procedure, and the final measure of the three-pronged approach, is the indicators of THB-LE and forced labour.⁵⁰ They have been recognised as important from an operational perspective in ascertaining the three core elements of the THB definition under international law, namely, action, means and purpose.⁵¹ For the purpose of this thesis, indicators are considered as the signs that may indicate the presence of severely exploitative practices. They are useful for assisting frontline stakeholders to recognise the difference between a situation of labour law violations and a situation of severe labour exploitation that amounts to THB-LE. A Belgian NGO interviewee expressed the importance of these indicators in enabling stakeholders to recognise ‘the signs’ and further commented that:

‘all of us see a lot of victims but we don’t see that they are victims. There is not like a number on their heads, telling them “oh, this is a potential victim of trafficking”. You need to see the signs and that’s not that easy’.⁵²

There is a clear need to conduct training with relevant stakeholders to provide them with the list of THB-LE indicators and to educate these stakeholders on the application of these lists in the field. Sufficient training on such indicators may enable frontline stakeholders to have a deeper appreciation of the continuum of exploitative practices and experiences. The indicators provide a guide to identify victims of THB-LE in a consistent manner when employed by diverse stakeholder cohorts.

Having outlined the importance of stakeholder awareness, training and the indicators of THB-LE, the following section will examine these three measures in light of the obligations under the Trafficking Convention.

5.2. The Legal Obligations on States Regarding Awareness and Training

There are certain legal provisions under the Trafficking Convention requiring Contracting States to put in place a combination of measures to ensure the development of awareness raising initiatives and the provision of training to relevant stakeholders. Most pertinent

⁵⁰ Klara Skrivankova, *Between Decent Work and Forced Labour: Examining the Continuum of Exploitation* (Joseph Rowntree Foundation 2010) 7; Andrea J. Nichols and Ashley Cox, ‘A Pilot Study Comparing Sex Trafficking Indicators Exhibited by Adult and Minor Service Populations’ (2023) 9(2) *Journal of Human Trafficking* 194-211, 194.

⁵¹ GRETA, *2nd General Report on GRETA’s Activities covering the period from 1 August 2011 to 31 July 2012* (Council of Europe 2012) 13.

⁵² Interview 11 (a THB focused NGO).

for this analysis are the obligations under Article 5(2) on prevention measures,⁵³ Article 10(1) in relation to identification specifically,⁵⁴ and Article 29(3) on training for relevant officials in the prevention of and fight against THB.⁵⁵

As outlined in section 5.1., awareness raising initiatives are a factor ensuring informed stakeholders. In this regard, Article 5 of the Trafficking Convention⁵⁶ requires states to establish policies and other measures to prevent and combat THB and to protect VoTs from re-victimisation.⁵⁷ This is similar to Article 9(1) of the United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) which states that:

‘States Parties shall establish comprehensive policies, programmes and other measures:
(a) To prevent and combat trafficking in persons; and
(b) To protect victims of trafficking in persons, especially women and children, from revictimization’.⁵⁸

More specifically, Article 5(2) of the Trafficking Convention states that:

‘Each Party shall establish and/or strengthen effective policies and programmes to prevent trafficking in human beings, by such means as: research, information, awareness raising and education campaigns, social and economic initiatives and training programmes, in particular for persons vulnerable to trafficking and for professionals concerned with trafficking in human beings’.⁵⁹

It stipulates that prevention initiatives may involve a number of activities, including awareness raising, relevant campaigns, and training programmes. As such, it recognises that these are complementary measures that can lead to a clearer understanding of THB. Furthermore, it explicitly points towards the need to target these efforts at relevant stakeholders in their capacity as THB professionals. The Explanatory Report outlines that

⁵³ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 5(2).

⁵⁴ *ibid* Article 10(1).

⁵⁵ *ibid* Article 29(3).

⁵⁶ *ibid* Article 5.

⁵⁷ Moreover, in the context of reducing demand, Article 6 likewise draws on the usefulness of ‘information campaigns targeting relevant groups’. Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 110.

⁵⁸ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 9(1).

⁵⁹ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 5(2).

these efforts may be short, medium or long-term in nature.⁶⁰ These provisions are sufficiently broad to enable states to adopt the most appropriate and achievable measures in their national contexts. Nonetheless, it raises questions regarding how best to evaluate the impact of such efforts.

Notably, the Council of Europe has regularly cited the need for trained persons in combating diverse trafficking and exploitation offences including, *inter alia*, the investigation of instances of trafficking of cultural property,⁶¹ combating the sexual exploitation and sexual abuse of children,⁶² and in preventing or combating trafficking in human organs.⁶³ This requirement holds true for THB as laid out under the Trafficking Convention.⁶⁴ Article 10(1) states that:

‘Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention’.⁶⁵

A rationale behind the provision of trained and qualified persons under Article 10 of the Trafficking Convention is to address:

‘the fact that national authorities are often insufficiently aware of the problem of trafficking in human beings. Victims frequently have their passports or identity documents taken away from them or destroyed by the traffickers. In such cases they risk being treated primarily as illegal immigrants, prostitutes or illegal workers and being punished or returned to their countries without being given any help’.⁶⁶

⁶⁰ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 103.

⁶¹ Council of Europe Convention on Offences relating to Cultural Property (adopted 3 May 2017, entered into force 1 April 2022) CETS 221 Article 18.

⁶² Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (adopted 25 October 2007, entered into force 1 July 2010) CETS 201 Article 34(1). See also, Council of Europe, *Explanatory Report to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* (Council of Europe 2007) para 233.

⁶³ Council of Europe Convention against Trafficking in Human Organs (adopted 25 March 2015, entered into force 1 March 2018) CETS 216 Article 21(2)(a).

⁶⁴ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10 and Article 29.

⁶⁵ *ibid* Article 10(1).

⁶⁶ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 128.

Article 10(1) of the Trafficking Convention requires states to provide CAs with trained and qualified individuals to identify and assist VoTs.⁶⁷ Beyond this statement, the provision does not provide any further guidance as to the standard that must be met in order for individuals to be considered as suitably trained and qualified. A similar gap is left by the Explanatory Report which fails to build upon this training requirement beyond outlining that the Trafficking Convention does not place any requirement on states to ensure that their CAs are specialists.⁶⁸ Some clarification has been provided by GRETA who cited as best practice the training of labour inspectors at the police academy in the Netherlands in order to become certified human trafficking investigators.⁶⁹

Adopting a harmonious interpretation, clarity can be ascertained from Article 29(3) of the Trafficking Convention which provides some general guidance regarding the content of training. It states as follows:

‘Each Party shall provide or strengthen training for relevant officials in the prevention of and fight against trafficking in human beings, including Human Rights training. The training may be agency-specific and shall, as appropriate, focus on: methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers.’⁷⁰

It requires that training programmes encompass information relating to prevention, protection and prosecution efforts. The Explanatory Report outlines that this training ‘must also deal with human rights’ and emphasise victims’ needs.⁷¹ This approach is similar to the requirement contained in Article 10(2) of the Palermo Protocol that ‘training should also take into account the need to consider human rights and child- and gender-sensitive issues’.⁷² It demonstrates the need to ensure that training is not conducted solely

⁶⁷ This was explicitly recognised by the ECtHR in, for example, *Chowdury and Others v Greece* App no 21884/15 (ECtHR, 30 March 2017) para 110.

⁶⁸ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 130, as referenced by the ECtHR in *SM v Croatia* App no 60561/14 (ECtHR, 25 June 2020) para 164.

⁶⁹ GRETA, *Compendium of Good Practices in Addressing Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2020) 16.

⁷⁰ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 29(3).

⁷¹ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 296.

⁷² Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 10(2).

with criminal justice objectives at the forefront. Rather these programmes should be inclusive of all relevant stakeholders and be victim-centred in nature. The Explanatory Report further outlines that the aim is ‘to take in the people likeliest to be faced with victims of trafficking in human beings’.⁷³ This requirement has also been reiterated by the European Court of Human Rights (ECtHR), with a particular emphasis on law enforcement and immigration officials.⁷⁴

While the Trafficking Convention is generally silent as to what exactly this training or qualification ought to involve, other legal instruments provide helpful guidance as to what states should achieve through such initiatives. This includes the UN Office on Drugs and Crime Model Law against Trafficking in Persons (UNODC Model Law)⁷⁵ and the UN Office of the High Commissioner for Human Rights Recommended Principles and Guidelines on Human Rights and Human Trafficking (UN OHCHR Recommended Principles and Guidelines).⁷⁶ These instruments indicate that training programmes should prepare relevant stakeholders in relation to, *inter alia*, the identification of potential VoTs,⁷⁷ the investigation and prosecution of cases of THB,⁷⁸ and victim protection measures.⁷⁹ The UNODC Model Law also outlines that one of the objectives of these trainings should be ‘to encourage multidisciplinary and multi-agency cooperation’,⁸⁰ the importance of which was highlighted in Chapter Four of this thesis.

Beyond the offence of THB, the Explanatory Report to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence⁸¹ provides detailed guidance as to what exactly training should entail:

⁷³ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 297. The EU Trafficking Directive likewise outlines a comprehensive list of stakeholders who should receive training. 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 [2011] OJ L 101 Recital 25.

⁷⁴ *Ranste v Cyprus and Russia* App no 25965/04 (ECtHR, 7 January 2010) para 287 and 296; *J and Others v Austria* App no 58216/12 (ECtHR, 17 January 2017) para 106.

⁷⁵ UNODC, *Model Law Against Trafficking in Persons* (United Nations 2009).

⁷⁶ UN OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (United Nations 2002).

⁷⁷ *ibid* Guidelines 2(2) and 2(5).

⁷⁸ *ibid* Guideline 5(2).

⁷⁹ *ibid* Guideline 2(5).

⁸⁰ UNODC, *Model Law Against Trafficking in Persons* (United Nations 2009) 71.

⁸¹ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (adopted 11 May 2011, entered into force 1 August 2014) CETS 210.

‘Initial vocational training and in-service training should enable the relevant professionals to acquire the appropriate tools for identifying and managing cases of violence, at an early stage, and to take preventive measures accordingly, by fostering the sensitivity and skills required to respond appropriately and effectively on the job. The drafters felt it best to leave to the Parties how to organise the training of relevant professionals. However, it is important to ensure that relevant training be on-going and sustained with appropriate follow-up to ensure that newly acquired skills are adequately applied. Finally, it is important that relevant training should be supported and reinforced by clear protocols and guidelines that set the standards staff are expected to follow in their respective fields. The effectiveness of these protocols where relevant, should be regularly monitored, reviewed and, where necessary, improved’.⁸²

While this is absent from the Trafficking Convention and its Explanatory Report, it has been encouraged and recommended by its monitoring body, GRETA. For instance, in its Guidance Note on THB-LE, GRETA has emphasised that ‘training should be systematically integrated in the regular training curricula of different professional groups, and an impact assessment should be carried out at regular intervals’.⁸³

In addition, both GRETA⁸⁴ and the UN OHCHR Recommended Principles and Guidelines⁸⁵ recommend that training should include information on guidance documents, toolkits and operational indicators to improve detection and identification for all stakeholders. Thus, although the development of indicators is not an express obligation within the Trafficking Convention, they are a specific element of a comprehensive training programme. On this basis, GRETA has called for the provision of harmonised and up-to-date indicators for all relevant stakeholders in order to identify VoTs.⁸⁶ Equally,

⁸² Council of Europe, *Explanatory Report to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence* (Council of Europe 2011) para 99.

⁸³ GRETA, *Guidance Note on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2021) 14.

⁸⁴ GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Iceland: First Evaluation Round* (Council of Europe 23 September 2014) 42; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Iceland: Second Evaluation Round* (Council of Europe 15 March 2019) 44.

⁸⁵ UN OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (United Nations 2002) Guideline 2(2).

⁸⁶ GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ukraine: First Evaluation Round* (Council of Europe 19 September 2014) 54; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Germany: First Evaluation Round* (Council of Europe 3 June 2015) 56; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Finland: First Evaluation Round* (Council of Europe 4 June 2015) 53; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Slovenia: Second Evaluation Round* (Council of Europe 15 February 2018) 43.

international soft law instruments have recommended the development of such guidelines for relevant authorities in order to ‘permit the rapid and accurate identification of trafficked persons’.⁸⁷ They further recommend that states should ensure that these indicators can ‘be reviewed and updated as needed at regular intervals’.⁸⁸

In sum, the Trafficking Convention and other soft law instruments clearly emphasise the need for states to provide for the three-pronged approach to equip stakeholders to identify victims of THB-LE relating to awareness raising measures, training programmes and the application of indicators of THB-LE. Despite these requirements, their implementation varies across European states regarding THB-LE. The following sections draw on the qualitative data to delve into the practical application of these measures in the context of identifying VoTs.

5.3. Stakeholder Perceptions of Awareness of Trafficking in Human Beings, Training and the Use of Indicators

The doctrinal analysis has demonstrated that there are obligations on Contracting States under the Trafficking Convention to facilitate awareness raising measures and to ensure that there are trained stakeholders in place to enable prompt and effective identification of VoTs.⁸⁹ However, these legal provisions lack specificity as to the exact nature of the requirements placed on states. Building on the legal analysis in section 5.2., this section draws on the qualitative data to provide important stakeholder insights into the benefit of, and hindrances to, a comprehensive three-pronged approach in equipping stakeholders for identification purposes. It is structured in three parts. First, it evaluates current stakeholder awareness of THB(-LE). Secondly, it examines the stakeholder cohorts trained to identify VoTs. Thirdly, it analyses the employment of indicators of THB-LE as a tool for identification in practice.

⁸⁷ UN OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (United Nations 2002) Guideline 2(1).

⁸⁸ UNODC, *Model Law Against Trafficking in Persons* (United Nations 2009) 42.

⁸⁹ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 5(2), Article 10(1) and Article 29(3).

5.3.1. Stakeholder Awareness of Trafficking in Human Beings (for the Purpose of Labour Exploitation)

Article 5(2) of the Trafficking Convention necessitates awareness raising among professional stakeholders,⁹⁰ but despite this clear legal obligation, there are knowledge gaps in practice. This section highlights two issues impacting on stakeholder awareness of THB-LE as grounded in the qualitative data, namely, that there is limited understanding or a denial on the part of relevant stakeholders regarding the prevalence of THB-LE in their jurisdiction, and that there is an undue focus on THB-SE in awareness raising initiatives.

5.3.1.1. Limited Awareness or Denial of (the Extent of) Trafficking in Human Beings for the Purpose of Labour Exploitation at National Level

As detailed in section 5.1., adequate awareness of the offence of THB-LE and its prevalence at national level is critical to its detection and the subsequent formal identification of VoTs.⁹¹ However, the qualitative data uncovered a broad concern by participants that certain stakeholders in some European states lack an awareness of the offence of THB generally and this concern extended to a limited knowledge of what THB-LE entails.

⁹⁰ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 5(2).

⁹¹ Ana Cunha, Mariana Gonçalves and Marlene Matos, 'Knowledge of Trafficking in Human Beings among Portuguese Social Services and Justice Professionals' (2019) 25(3) European Journal on Criminal Policy and Research 469-488, 481.

On the one hand, in states such as Belgium,⁹² Finland,⁹³ and Ukraine,⁹⁴ THB-LE was reported as the main form of exploitation in all the country evaluation rounds as conducted by GRETA. In contrast to this, within the literature and policy documents, Germany,⁹⁵ Hungary,⁹⁶ Slovenia⁹⁷ and Sweden,⁹⁸ have been identified as jurisdictions where knowledge of, and attention to THB-LE is minimal. A Greek NGO representative stated that:

‘it’s actually very surprising that people are not aware of trafficking so often, and not just citizens, but even professionals ... we are shocked that we have to convince people that human trafficking is real’.⁹⁹

A particular concern may be drawn from the account of a Slovenian labour inspector who stated:

‘Well, I’m lucky that Slovenia is not one of those countries where THB is something normal because in Slovenia, this is not normal. We don’t accept things like this. I mean, this doesn’t mean that it doesn’t happen. It does, but not that much’.¹⁰⁰

⁹² GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belgium: First Evaluation Round* (Council of Europe 25 September 2013) 10; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belgium: Second Evaluation Round* (Council of Europe 16 November 2017) 7; GRETA, *Evaluation Report: Belgium – Third Evaluation Round* (Council of Europe 20 October 2022) 9.

⁹³ GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Finland: First Evaluation Round* (Council of Europe 4 June 2015) 11; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Finland: Second Evaluation Round* (Council of Europe 5 June 2019) 22; GRETA, *Reply from Finland to the Questionnaire for the Evaluation of the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties: Third Evaluation Round* (Council of Europe 24 November 2022) 40; GRETA, *Evaluation Report: Finland – Third Evaluation Round* (Council of Europe 10 June 2024) 9.

⁹⁴ GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ukraine: First Evaluation Round* (Council of Europe 19 September 2014) 11; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ukraine: Second Evaluation Round* (Council of Europe 22 November 2018) 7 and 17.

⁹⁵ Rita Haverkamp, ‘Day Labourers in Munich’s Train Station District – From Exploitation to Human Trafficking and Forced Labour?’ (2021) 43(1) *Archives of Criminology* 97-118, 111.

⁹⁶ Szandra Windt, ‘The Unspoken Phenomenon: Forced labour in Hungary’ (2021) 43(1) *Archives of Criminology* 119-141, 136.

⁹⁷ The National Working Group for Combating Trafficking in Human Beings, *The 2019 Report of the Inter-Ministerial Working Group for Combating Trafficking in Human Beings* (Republic of Slovenia 2020) 15.

⁹⁸ Anita Heber, ‘The Hunt for an Elusive Crime – An Analysis of Swedish Measures to Combat Sex Trafficking’ (2018) 19(1) *Journal of Scandinavian Studies in Criminology and Crime Prevention* 3-21, 4.

⁹⁹ Interview 23 (a THB focused NGO).

¹⁰⁰ Interview 28.

A further concern voiced by the study participants related to situations where stakeholders may have some level of awareness of the offence of THB-LE, but issues surround the practical application of this acquired knowledge. As a United Kingdom (UK) NGO interviewee stated:

‘in terms of professionals, the awareness is there. It’s whether that awareness makes sense and whether they can apply it in their day-to-day jobs’.¹⁰¹

Similarly, an Estonian labour inspector outlined that some stakeholders ‘understand that it [THB-LE] is an issue, but if in the practical, in the real life, it would come to them, then they would still be confused, and they don’t know how to react’.¹⁰² This confusion in recognising exploitative instances as one of THB-LE was further captured by a Portuguese NGO interviewee as follows:

‘so some people may be aware that those particular groups and particular areas, even if it’s more isolated areas where the society is not that aware of the reality of trafficking, but they may identify those people as people that are not working in good conditions, which doesn’t necessarily mean that they identified that as a possible human trafficking situation’.¹⁰³

Moreover, a Slovenian NGO participant was concerned about the lack of awareness on the part of local level criminal law enforcement officials who may encounter situations of THB-LE in their frontline work, stating that ‘there are a lot of them who didn’t even hear about trafficking unfortunately’.¹⁰⁴ This further exacerbates the issue raised in Chapter Four relating to the limited co-operation between relevant stakeholders and local criminal law enforcement officials.¹⁰⁵

A more pressing concern emerging from the qualitative data relates to a denial of the occurrence of instances of THB-LE at national level. A German NGO interviewee pointed to the problematic perception of “‘ah, we’re in Germany, it doesn’t happen here” and we’re like “yes it does and quite [an] amount””.¹⁰⁶ Therefore, there is the risk that there are not only issues with low awareness of the prevalence of the phenomenon, but more concerningly, there is a resistance to recognising that it arises in the first place. In

¹⁰¹ Interview 16 (a THB focused NGO).

¹⁰² Interview 10.

¹⁰³ Interview 33 (a NGO working with victims of crime).

¹⁰⁴ Interview 35 (a THB focused NGO).

¹⁰⁵ See section 4.3.3.1. of Chapter Four.

¹⁰⁶ Interview 17 (a THB-LE focused NGO).

this regard, a Swiss trade unionist and an Irish NGO representative, reported that ‘there is huge denial’¹⁰⁷ that THB-LE is occurring within their jurisdictions and that individuals ‘don’t want to believe it can happen here’.¹⁰⁸ A denial that it is happening in their state is based on the belief that THB occurs more frequently in non-European states,¹⁰⁹ and as articulated by a UK NGO participant this understanding extends to ‘India, Pakistan, Bangladesh, factories, textile, maybe food industry in some African countries.’¹¹⁰ A similar finding in relation to THB-SE was reported by Rajaram and Tidball who found that survivors ‘felt that the general public thought that sex trafficking only occurred in other countries and not in the United States’.¹¹¹ Such denial of the existence of THB-LE is a concern which may hinder the mobilisation of anti-trafficking responses and it also raises considerable issues for the identification procedure.¹¹² The implication of these perceptions is that stakeholders may not be alert to these severely exploitative practices, fail to actively engage in pursuing such conduct, and recognise victims of the phenomenon. This underscores the importance of placing the detection of THB-LE clearly within the remit of relevant stakeholders and requiring them to undergo relevant training programmes in order to address some of these gaps in stakeholder knowledge.

In contrast to these accounts, other participants reported more promising developments in terms of THB-LE awareness.¹¹³ A Ukrainian NGO participant noted that:

‘1997, 1998, in 2000, the most cases we received were cases of trafficking for sexual exploitation. But with the years definitely there are much more understand[ing] that the human trafficking is much wider than only the trafficking of women in trafficking for sexual exploitation’.¹¹⁴

Relatedly, a Norwegian NGO participant stressed that:

¹⁰⁷ Interview 3.

¹⁰⁸ Interview 21 (a NGO supporting migrant workers). As also stated by Interview 4.

¹⁰⁹ Interview 35 (a THB focused NGO).

¹¹⁰ Interview 16 (a THB focused NGO).

¹¹¹ Shireen S. Rajaram and Sriyani Tidball, ‘Survivors’ Voices – Complex Needs of Sex Trafficking Survivors in the Midwest’ (2018) 44(3) *Behavioral Medicine* 189-198, 191. See also, Felicity Schaeffer-Grabiell, ‘Sex Trafficking as the “New Slave Trade”?’ (2010) 13(2) *Sexualities* 153-160, 153.

¹¹² For example, see Jeremy M. Wilson and Erin Dalton, ‘Human Trafficking in the Heartland: Variation in Law Enforcement Awareness and Response’ (2008) 24(3) *Journal of Contemporary Criminal Justice* 296-313; Amy Farrell, Jack McDevitt and Stephanie Fahy, ‘Where are All the Victims? Understanding the Determinants of Official Identification of Human Trafficking Incidents’ (2010) 9(2) *Criminology & Public Policy* 201-233.

¹¹³ Interview 9; 16; 26; 29; 37; 41.

¹¹⁴ Interview 9 (a NGO assisting victims of violence).

‘I think that people get quite shocked when they realise under what kind of circumstances people are working. So awareness in general is quite low, however, it’s coming, it’s getting better’.¹¹⁵

Therefore, as Sharapov et al. have argued, awareness ‘should be recognised and treated as a process, or a continuum, rather than a binary state of being fully aware or fully unaware’.¹¹⁶

In sum, the qualitative analysis uncovers hindrances to the recognition of instances of THB-LE based on limited knowledge or a resistance to acknowledging its prevalence within the stakeholder’s jurisdiction. Resultantly, this means that certain frontline stakeholders will not be fully equipped to detect victims of THB-LE and further to this, they may fail to engage in upskilling in order to acquire the requisite knowledge on the phenomenon. This raises questions about the response of stakeholders when they encounter (potential) VoTs in practice and whether they view victims of THB-LE as individuals subjected to labour law violations, but not specifically individuals who have been subjected to a criminal law offence. It is particularly pertinent for stakeholders active in the labour law field, for example, labour inspectors.

5.3.1.2. Undue Focus on Trafficking in Human Beings for the Purpose of Sexual Exploitation

The second issue highlighted in the qualitative data relates to a greater awareness of THB-SE and the subsequent attention afforded to it by stakeholders.¹¹⁷ This echoes scholarly literature which has regularly reported that THB-LE is not viewed as a pressing concern when compared to THB-SE¹¹⁸ and ‘resonates more weakly than trafficking for

¹¹⁵ Interview 19 (a NGO supporting vulnerable populations).

¹¹⁶ Kiril Sharapov, Suzanna Hoff and Borislav Gerasimov, ‘Editorial: Knowledge is Power, Ignorance is Bliss: Public Perceptions and Responses to Human Trafficking’ (2019) 13 *Anti-Trafficking Review* 1-11, 4.

¹¹⁷ Interview 3; 6; 8; 14; 15; 16; 17; 18; 19; 22; 24; 27; 28; 34; 35; 41.

¹¹⁸ Alexis A. Aronowitz, ‘The Smuggling-Trafficking Nexus and the Myths Surrounding Human Trafficking’ (2009) 13 *Sociology of Crime, Law and Deviance* 107-128, 116; UNODC, *Global Report on Trafficking in Persons* (United Nations 2009) 51; Madeleine Hulting, ‘Hidden Labour: Knowledge Production of Trafficking Illustrated by a Swedish Case Study’ in Christien van den Anker and Ilse van Liempt (eds), *Human Rights and Migration: Trafficking for Forced Labour* (Palgrave Macmillan 2012) 145; Suzanne L.J. Kragten-Heerdink, Corinne E. Dettmeijer-Vermeulen and Dirk J. Korff, ‘More Than Just “Pushing and Pulling”: Conceptualizing Identified Human Trafficking in the Netherlands’ (2018) 64(13) *Crime & Delinquency* 1765-1789, 1772; Ella Cockbain and Helen Brayley-Morris, ‘Human Trafficking and Labour Exploitation in the Casual Construction Industry: An Analysis of Three Major Investigations

prostitution’,¹¹⁹ both in terms of state responses and the general perception of the phenomenon of THB.¹²⁰ A German NGO interviewee proposed that this is a result of ‘a long history’ of THB-SE within their jurisdiction which means that it is ‘well-known and accepted whereas labour exploitation, I would say, is not seen as such a problem still’.¹²¹ A policy congruence between prostitution and exploitation in some states may partially explain this,¹²² leading to a risk of fewer policies being developed to focus on other exploitative purposes. It could lead to a ‘generalized perception that other forms of human trafficking are not taking place’.¹²³ A Dutch NGO participant outlined:

‘In general, we see awareness for human trafficking. It’s an issue that people would be able, would be willing to address ... but with a narrow-minded view. They really, they want to address especially sexual exploitation, especially when it’s forced sexual exploitation’.¹²⁴

An Austrian NGO participant stated that ‘the police has a much better understanding for human trafficking when it’s about sexual exploitation’ and viewed this as a core challenge for THB-LE identification purposes.¹²⁵ Further to this, a Swedish NGO participant commented that:

‘So I think the connection between prostitution and, or the potential connection between prostitution and human trafficking is quite, there’s quite a general awareness now around that. But on the labour side, I would say it’s almost non-existent’.¹²⁶

in the UK Involving Irish Traveller Offending Groups’ (2018) 12(2) *Policing: A Journal of Policy and Practice* 129-149, 130; Amy Farrell, Katherine Bright, Ieke de Vries, Rebecca Pfeffer and Meredith Dank, ‘Policing Labor Trafficking in the United States’ (2020) 23(1) *Trends in Organized Crime* 36-56, 37; Colin Atkinson and Niall Hamilton-Smith, ‘Still an “Invisible Crime”? Exploring Developments in the Awareness and Control of Human Trafficking in Scotland’ (2022) 19(5) *European Journal of Criminology* 911-931, 911.

¹¹⁹ Asif Efrat, ‘Global Efforts against Human Trafficking: The Misguided Conflation of Sex, Labor, and Organ Trafficking’ (2016) 17(1) *International Studies Perspectives* 34-54, 41.

¹²⁰ Julia Planitzer and Helmut Sax, ‘Introduction’ in Julia Planitzer and Helmut Sax (eds), *A Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings* (Elgar Publishing 2020) 7.

¹²¹ Interview 17 (a THB-LE focused NGO).

¹²² For example, Government of Sweden, *Gender Equality Policy in Sweden* (Government of Sweden 2016).

¹²³ Gema Fernández Rodríguez de Liévana and Viviana Waisman, ‘“Lost in Translation”: Assessment of the (Non)-Implementation of the Trafficking Directive from a Gender Perspective in Spain’ (2017) 9(3) *Journal of Human Rights Practice* 504-525, 510.

¹²⁴ Interview 18 (a THB focused NGO).

¹²⁵ Interview 6 (a NGO focused on assisting migrant women).

¹²⁶ Interview 27 (a THB focused NGO).

A Portuguese NGO interviewee detailed a discrepancy in practice between the victims assisted by support organisations and the recorded identified instances of THB by the police as follows:

‘from the data that we have ... the number of male victims of trafficking a number of labour exploitation, comparing to women and sexual exploitation, is much higher ... but if you look at the figures of the police, they have more cases, identified cases and the majority of the cases it’s about sexual exploitation and definitely this is women’.¹²⁷

This participant account provides a practical national level example of the potential negative impact of a lack of awareness and narrow perception of THB on the part of those stakeholders involved in the formal identification process, primarily criminal law enforcement officials who are mandated as the CA, as outlined in Chapter Three.¹²⁸ It raises a significant concern for the identification and recognition of male victims of THB-LE.¹²⁹

This partial awareness may be related to the predominant forms of THB recorded in each state. GRETA has recorded the typology of THB across ratified states in its country evaluation reports, and it reveals that THB-SE is the main exploitative form in several European states.¹³⁰ In recent times, while certain states continue to report THB-SE as the most common exploitative form, recorded instances of THB-LE are increasing.¹³¹

¹²⁷ Interview 9 (a NGO assisting victims of violence).

¹²⁸ See section 3.4.1. of Chapter Three.

¹²⁹ UNODC, *Global Report on Trafficking in Persons* (United Nations 2022) 36.

¹³⁰ GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Slovenia: Second Evaluation Round* (Council of Europe 15 February 2018) 7; GRETA, *Evaluation Report: Austria – Third Evaluation Round* (Council of Europe 10 June 2020) 9; GRETA, *Evaluation Report: Ireland – Third Evaluation Round* (Council of Europe 28 September 2022) 9; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece: Second Evaluation Round* (Council of Europe 23 March 2023) 6; GRETA, *Evaluation Report: Sweden – Third Evaluation Round* (Council of Europe 19 October 2023) 5; GRETA, *Evaluation Report: The Netherlands – Third Evaluation Round* (Council of Europe 9 November 2023) 11; GRETA, *Evaluation Report: Switzerland – Third Evaluation Round* (Council of Europe 20 June 2024) 9.

¹³¹ Committee of the Parties, *Report Submitted by the Authorities of Iceland on Measures Taken to Comply with Committee of the Parties Recommendation CP(2014)15 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings: First Evaluation Round* (Council of Europe 17 February 2017) 2; GRETA, *Reply from Germany to the Questionnaire for the Evaluation of the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties: Second Evaluation Round* (Council of Europe 5 February 2018) 5; GRETA, *Reply from Bulgaria to the Questionnaire for the Evaluation of the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties: Third Evaluation Round* (Council of Europe 21 June 2019) 45; GRETA, *Reply from Spain to the Questionnaire for the Evaluation of the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties: Third Evaluation Round* (Council of Europe 5 October 2021) 51; GRETA, *Evaluation*

Interestingly, THB-SE had been the most common form of exploitation in Estonia,¹³² Portugal¹³³ and the UK,¹³⁴ but recently THB-LE has emerged as the predominant typology. It is unclear whether such developments can be attributed to an increase of THB-LE offences, or improved knowledge and recognition of potential VoTs. It could be explained partially by the increased focus given to THB-LE in state policy responses, or by an expanded mandate for labour inspectors.¹³⁵

Despite the increased recognition of the prevalence of THB-LE in certain states, a concern remains that a persistent focus on THB-SE may result in low identification rates of THB-LE.¹³⁶ A German trade unionist expressed the view that:

‘I think I would make a differentiation between sexual exploitation and labour exploitation. So I think police is more proactive regarding sexual exploitation. They have it more on their radars ... So I think that if you would ask them, they would say this is the problem or the case of the labour inspection, or this type of labour inspection that we have’.¹³⁷

Report: Norway – Third Evaluation Round (Council of Europe 8 June 2022) 9; GRETA, *Reply from Hungary to the Questionnaire for the Evaluation of the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties: Third Evaluation Round* (Council of Europe 28 October 2022) 38; GRETA, *Evaluation Report: Germany – Third Evaluation Round* (Council of Europe 7 June 2024) 11.

¹³² GRETA, *Reply from Estonia to the Questionnaire for the Evaluation of the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties: Second Evaluation Round* (Council of Europe 3 June 2022) 4; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Estonia: Second Evaluation Round* (Council of Europe 7 June 2023) 6.

¹³³ GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Portugal: Second Evaluation Round* (Council of Europe 17 March 2017) 7; GRETA, *Evaluation Report: Portugal – Third Evaluation Round* (Council of Europe 13 June 2022) 9.

¹³⁴ GRETA, *Evaluation Report: The United Kingdom – Third Evaluation Round* (Council of Europe 20 October 2021) 12.

¹³⁵ See for example, Interdepartmental Coordination Unit, *Action Plan Fighting Human Trafficking 2021-2025* (Government of Belgium 2021) 5; Ministry of Justice, *Finland Fights Human Trafficking: Action Plan against Trafficking in Human Beings* (Government of Finland 2021); United States Department of State, *Trafficking in Persons Report* (USDS 2022) 233; Government of Ireland, *National Action Plan to Prevent and Combat Human Trafficking 2023-2027* (Government of Ireland 2023) 29.

¹³⁶ GRETA, *Guidance Note on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2021) 5.

¹³⁷ Interview 34.

This coincides with scholarly literature which has found that criminal law enforcement officials may not recognise instances of THB-LE which ‘may fail to interest’ them¹³⁸ or is ‘off the radar’.¹³⁹ Furthermore, a Norwegian trade unionist commented that:

‘we saw that the police couldn’t really recognise what was going on in the labour market as a crime. Everybody knew it was illegal, it was often very illegal, it often broke laws on many areas at the same time. But it sort of, it wasn’t a crime, it was labour inspections. It was not regarded like very attractive police work. I still think that’s a problem in most police districts, not all, but most of them’.¹⁴⁰

These participant accounts point towards the reality of a continuum of exploitation and the difficulties in understanding the range of exploitative conduct in practice, as discussed in Chapter Two.¹⁴¹ An observation emerging from this analysis is the realisation that criminal law enforcement officials are unable to recognise when a situation of routine labour exploitation¹⁴² becomes an instance of THB-LE. It demonstrates an understanding that labour law violations and practices occurring within the labour market are solely to be dealt with by labour law stakeholders, primarily labour inspectors. However, the problem with this approach is that labour inspectors generally lack the powers to prosecute severe labour exploitation offences. Nevertheless, for identification purposes, it would be sufficient for labour inspectors to be a recognised stakeholder within the NRM in order to refer potential victims of THB-LE into this identification mechanism, as discussed in Chapter Three.¹⁴³

Scholars, van Meeteren and Hiah, assert that THB-LE may remain undetected to a certain extent because ‘both the general public and professionals believe that labor trafficking is less severe than sex trafficking’.¹⁴⁴ A recognition that THB-LE is not subjected to the same focus as THB-SE should be the catalyst for state investment and engagement with this phenomenon. It coincides with the stakeholders’ concern that efforts to address THB-

¹³⁸ Jayashri Srikantiah, ‘Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law’ (2007) 87(1) Boston University Law Review 157-211, 186.

¹³⁹ Alexandra Ricard-Guay and Jill Hanley, ‘The Challenge of Addressing Both Forced Labour and Sexual Exploitation’ in John Winterdyk and Jackie Jones (eds), *The Palgrave International Handbook of Human Trafficking* (Palgrave Macmillan 2020) 292.

¹⁴⁰ Interview 4.

¹⁴¹ See sections 2.2.1.2. and 2.4.1. of Chapter Two.

¹⁴² Jon Davies, ‘From Severe to Routine Labour Exploitation: The Case of Migrant Workers in the UK Food Industry’ (2019) 19(3) Criminology & Criminal Justice 294-310.

¹⁴³ See section 3.4.2. of Chapter Three.

¹⁴⁴ Masja van Meeteren and Jing Hiah, ‘Self-Identification of Victimization of Labor Trafficking’ in John Winterdyk and Jackie Jones (eds), *The Palgrave International Handbook of Human Trafficking* (Palgrave Macmillan 2020) 1607.

LE are not structured in the same manner as those for THB-SE, as discussed in Chapter Four.¹⁴⁵ A challenge for states is how best to translate the importance of tackling all forms of THB, including THB-LE, and to build upon awareness levels. This is particularly significant and GRETA observed in its report on the Czech Republic that:

‘it is acknowledged by the authorities that the relatively low number of identified victims of THB for the purpose of labour exploitation is only “the tip of the iceberg”’.¹⁴⁶

Therefore, state commitment to address all forms of THB must be translated into concrete actions to move away from this prevailing narrow perception of THB as THB-SE. One example of a concrete action is informative awareness raising campaigns, as required under Article 5(2) of the Trafficking Convention.¹⁴⁷

To address the low levels of understanding regarding THB-LE and the narrow perception of THB as a synonym for THB-SE,¹⁴⁸ awareness raising initiatives are a key measure through which important information can be disseminated and communicated.¹⁴⁹ Whilst awareness raising campaigns¹⁵⁰ are generally targeted at the public, they are of equal importance for stakeholders and should be extended to target these cohorts¹⁵¹ or target

¹⁴⁵ See section 4.3.3.2. of Chapter Four.

¹⁴⁶ GRETA, *Report Concerning the Implementing of the Council of Europe Convention on Action against Trafficking in Human Beings by the Czech Republic: First Evaluation Round* (Council of Europe 11 February 2020) 11.

¹⁴⁷ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 5(2).

¹⁴⁸ To take one example, Silvia Rodríguez-López, ‘(De)Constructing Stereotypes: Media Representations, Social Perceptions, and Legal Responses to Human Trafficking’ (2018) 4(1) *Journal of Human Trafficking* 61-72, 62.

¹⁴⁹ UNODC, *Toolkit to Combat Trafficking in Persons* (United Nations 2008) 471. An Estonian labour inspector (Interview 10) likewise identified the need to ‘spread information and increase the knowledge’.

¹⁵⁰ Cyrus and Vogel define a campaign as ‘a series of coordinated communication activities seeking to influence what individuals think and do’. Norbert Cyrus and Dita Vogel, ‘Evaluation as Knowledge Generator and Project Improver. Learning from Demand-Side Campaigns against Trafficking in Human Beings’ (2018) 10(1) *Contemporary Readings in Law and Social Justice* 57-93, 59.

¹⁵¹ See *inter alia*, GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belgium: First Evaluation Round* (Council of Europe 25 September 2013) 59; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: First Evaluation Round* (Council of Europe 26 September 2013) 64; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Netherlands: First Evaluation Round* (Council of Europe 18 June 2014) 58; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bulgaria: Second Evaluation Round* (Council of Europe 28 January 2016) 51; Committee of the Parties, *Recommendation CP(2018)29 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ukraine: Second Evaluation Round* (Council of Europe 9 November 2018) 2; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Switzerland: Second Evaluation Round* (Council of Europe 9 October 2019) 62.

specific at-risk economic sectors¹⁵² such as those outlined in Chapter Four.¹⁵³ It is crucial that any awareness raising campaign targeting relevant stakeholders should avoid stereotypical depictions of THB and VoTs,¹⁵⁴ in particular the emphasis placed on THB-SE, female and child VoTs, and physical coercion.¹⁵⁵ This is important and as Rosenberg argues, ‘people find what they look for, and as efforts have been primarily focused on trafficked women and children, they are the victims who have been found’.¹⁵⁶ The need to avoid “ideal”¹⁵⁷ depictions is pressing in relation to THB-LE as this may not conform to the frequent representation of THB¹⁵⁸ as being associated with the sexual exploitation of women and children only. As an Austrian NGO participant noted:

‘I think we also have this strong, like when you hear human trafficking you think a woman is locked in a basement and sexually exploited. Which is, of course, it exists but still, there’s not this broad understanding of human trafficking’.¹⁵⁹

Avoiding these narrow depictions is necessary because it can hamper THB-LE detection efforts¹⁶⁰ and VoTs may be classed as irregular migrants or smuggled migrants,¹⁶¹ thus

¹⁵² Interview 41.

¹⁵³ See section 4.3.2. of Chapter Four.

¹⁵⁴ Erin O’Brien, ‘Human Trafficking Heroes and Villains: Representing the Problem in Anti-Trafficking Awareness Campaigns’ (2016) 25(2) *Social & Legal Studies* 205-224, 208; Johanna Schönhöfer, ‘Political Determinants of Efforts to Protect Victims of Human Trafficking’ (2017) 67(2) *Crime, Law and Social Change* 153-185, 155.

¹⁵⁵ Although, to note, Ollus and Joutsen have recognised the inherent difficulties in preparing inclusive THB campaigns. Natalia Ollus and Matti Joutsen, ‘International Policies to Combat Human Trafficking’ in Rochelle L. Dalla and Donna Sabella (eds), *Routledge International Handbook of Human Trafficking: A Multi-Disciplinary and Applied Approach* (Routledge 2020) 81.

¹⁵⁶ Ruth Rosenberg, *Trafficking in Adult Men in the Europe and Eurasia Region: Final Report* (USAID 2010) 6.

¹⁵⁷ For Srikantiah an ‘iconic victim’ of THB has four central characteristics: (i) the victim is a woman or girl trafficked for sex; (ii) law enforcement assesses her to be a good witness; (iii) she cooperates fully with law enforcement investigations; and (iv) she is rescued instead of escaping from the trafficking enterprise. Jayashri Srikantiah, ‘Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law’ (2007) 87(1) *Boston University Law Review* 157–211, 187.

¹⁵⁸ Maggy Lee, *Trafficking and Global Crime Control* (Sage Publications 2011) 69. See also, Michael Wilson and Erin O’Brien, ‘Constructing the Ideal Victim in the United States of America’s Annual Trafficking in Persons Reports’ (2016) 65(1) *Crime, Law and Social Change* 29-45, 41.

¹⁵⁹ Interview 6 (a NGO focused on assisting migrant women).

¹⁶⁰ Julie Kaye, John Winterdyk and Lara Quarterman, ‘Beyond Criminal Justice: A Case Study of Responding to Human Trafficking in Canada’ (2014) 56(1) *Canadian Journal of Criminology and Criminal Justice* 23-48, 32; Lauren A. McCarthy, ‘Human Trafficking and the New Slavery’ (2014) 10(1) *Annual Review of Law and Social Science* 221-242, 233.

¹⁶¹ Anne T. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010) 278; OSCE, *Trafficking in Human Beings: Identification of Potential and Presumed Victims – A Community Policing Approach* (OSCE 2011) 45.

hindering the fulfilment of the requirement under Article 10 of the Trafficking Convention in the context of THB-LE.¹⁶²

Scholars have found that the majority of general THB campaigns tend to emphasise THB-SE,¹⁶³ and this was reiterated in the qualitative data by a Spanish labour inspector who noted that ‘awareness raising campaigns have been developed mainly regarding THB for sexual exploitation’.¹⁶⁴ Certain participants, including a UK NGO interviewee, referred to the need to engage in ‘myth busting those conceptions’ which centre on THB-SE and transnational movement.¹⁶⁵ Some of these enduring myths¹⁶⁶ surrounding THB can impact on and hinder detection, investigation and prosecution efforts¹⁶⁷ and Segrave et al. note that the identification procedure continues ‘to reflect broader myths and assumptions about what victims “look like”, what accounts for “real” exploitation, and where victims can be found’.¹⁶⁸ Stakeholders operating on the frontline must ensure that they broaden their awareness and understanding of victim characteristics and experiences beyond the “traditional” view of THB.

The importance of avoiding such stereotypical depictions in awareness raising initiatives is equally pertinent when conducting training activities with relevant stakeholders.¹⁶⁹ The

¹⁶² Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10.

¹⁶³ Laura A. Herbert, ‘Always Victimizers, Never Victims: Engaging Men and Boys in Human Trafficking Scholarship’ (2016) 2(4) *Journal of Human Trafficking* 281-296, 287; Marieke van Doorninck, ‘Changing the System from Within: The Role of NGOs in the Flawed Anti-trafficking Framework’ in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 423.

¹⁶⁴ Interview 26.

¹⁶⁵ Interview 8 (a THB focused NGO).

¹⁶⁶ Aronowitz, for example, outlines five core myths as follows: (i) THB occurs only for commercial sexual exploitation; (ii) THB affects only women and children; (iii) THB is a trans-border phenomenon; (iv) Trafficking organisations are highly sophisticated; (v) Traffickers are males luring female victims with false promises of employment. Alexis A. Aronowitz, ‘The Smuggling-Trafficking Nexus and the Myths Surrounding Human Trafficking’ (2009) 13 *Sociology of Crime, Law and Deviance* 107-128, 116-121.

¹⁶⁷ Luis C.deBaca, ‘What We Talk About When We Talk About Trafficking: A Reflection on the First 20 Years of the Modern Anti-Slavery Fight’ in Rochelle L. Dalla and Donna Sabella (eds), *Routledge International Handbook of Human Trafficking: A Multi-Disciplinary and Applied Approach* (Routledge 2020) 60; Jack Murphy, ‘Combating the “Myth of Physical Restraint” in Human Trafficking and Modern Slavery Trials Heard in the Crown Court’ (2022) 26(1) *The International Journal of Evidence & Proof* 3-19, 4.

¹⁶⁸ Marie Segrave, Sanja Milivojevic and Sharon Pickering, *Sex Trafficking and Modern Slavery: The Absence of Evidence* (2nd edn, Routledge 2018) 26.

¹⁶⁹ Nadine M. Connell, Wesley G. Jennings, Nina Barbieri and Jennifer M. Reingle Gonzalez, ‘Arrest as a Way Out: Understanding the Needs of Women Sex Trafficking Victims Identified by Law Enforcement’ (2015) 38(3) *Journal of Crime and Justice* 351-360, 356.

importance of training to move beyond a narrow understanding of THB was stressed by a Greek NGO interviewee as follows:

‘one of their [police] reasons for not believing this was a trafficking case is that the survivor was not locked up. And they said, “well since he doesn’t have chains, he is not locked in a room, how can we say he’s a victim of trafficking?” So this is why I’m saying that the training is so important’.¹⁷⁰

There are considerable consequences for the response to THB-LE at national level in instances whereby the main focus is placed on tackling THB-SE. Implications of this narrow perception of THB include the gendered approach to anti-trafficking responses and the potential failure to recognise male victims of THB-LE. The awareness of the characteristics of an ‘ideal’ VoT raises considerable concerns for identifying victims of THB-LE who do not necessarily meet those stakeholder expectations.

In addition to these specific concerns, it is also vital that these measures are not one-off efforts and are complementary in equipping relevant stakeholders. As highlighted in the qualitative data, there is a ‘need to have it ongoing’.¹⁷¹ A Bulgarian NGO, for example, noted that although there was:

‘a very nice prevention campaign a few years ago, especially targeting trafficking for labour exploitation, but the project finished now. We don’t have a next one’.¹⁷²

Moreover, while the launch of broader national THB campaigns on World Day against Trafficking in Persons¹⁷³ or on the European Union Anti-Trafficking Day¹⁷⁴ was viewed as positive by a Portuguese NGO participant, an emphasis was placed on the need for continuity throughout the year:

‘I think it's good that the campaigns exist. I'm not sure that they have the impact that they aim to have, but also, because well, they are released at that particular time of the year, but then it's not an investment on continuing to show it is not that much’.¹⁷⁵

¹⁷⁰ Interview 23 (a THB focused NGO).

¹⁷¹ Interview 11; 29.

¹⁷² Interview 25 (a NGO supporting vulnerable populations).

¹⁷³ Which occurs on 30 July. UN General Assembly, ‘Improving the Coordination of Efforts against Trafficking in Persons’ (18 December 2013) A/RES/68/192, para 5.

¹⁷⁴ Taking place on 18 October, as established by the European Commission in 2007.

¹⁷⁵ Interview 33 (a NGO working with victims of crime).

Overall, section 5.3.1. has demonstrated that there are deficiencies in stakeholder knowledge of THB-LE. These may be ameliorated to a certain extent by ensuring that relevant stakeholders who have a role to play in detection and formal identification are adequately trained on THB-LE as part of the proposed three-pronged approach to equip stakeholders.

5.3.2. Training of Relevant Stakeholders: Multi-disciplinary or Targeted?

As outlined in section 5.2., there are express legal obligations on Contracting States under Article 10(1) and Article 29 of the Trafficking Convention to put in place trained personnel and to ensure that training is comprehensive for all relevant officials.¹⁷⁶ This section focuses on training of the relevant stakeholders and points towards two specific cohorts that were identified by the study participants as requiring training for the identification of THB-LE, namely, labour inspectors and local criminal law enforcement officials. It highlights the important role played by NGOs in conducting such trainings. Grounded in the qualitative data, this section establishes that stakeholders understand the importance of training individual stakeholder cohorts, but recognition of the necessity for a multi-stakeholder approach to training was lacking.

In achieving an integrated multi-stakeholder approach to identify instances of THB-LE, it is crucial that training involves a range of relevant stakeholders. In interpreting state obligations under the Trafficking Convention, GRETA has consistently called for a multi-stakeholder approach to training to enhance the exchange of all relevant stakeholders knowledge and practices, and to facilitate increased co-ordination in anti-trafficking efforts.¹⁷⁷ International soft law instruments have reinforced the need for engagement with public authorities in training, but also place an emphasis on integrating civil society

¹⁷⁶ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10 and Article 29.

¹⁷⁷ For example, GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland: First Evaluation Round* (Council of Europe 26 September 2013) 64; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Czech Republic: First Evaluation Round* (Council of Europe 11 February 2020) 28. See also, GRETA, *Compendium of Good Practices in Addressing Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2020) 16; GRETA, *Guidance Note on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2021) 14.

stakeholders.¹⁷⁸ In particular, the UN OHCHR Recommended Principles and Guidelines highlight the importance of facilitating interaction between public authorities and relevant support organisations by outlining that ‘the involvement of relevant non-governmental organizations in such trainings should be considered as a means of increasing its relevance and effectiveness’.¹⁷⁹ A fully multi-stakeholder approach to training would provide a platform through which stakeholders who address THB-LE as a criminal justice issue, and those who seek to combat it from a labour law or human rights perspective, could meet and exchange their experiences. It would ensure further integration in, and an enrichment of, the identification procedure by moving towards a multi-stakeholder integrated approach.

Article 29 of the Trafficking Convention provides that in order to combat THB effectively and protect victims, training must be delivered to a broad range of relevant officials.¹⁸⁰ The Explanatory Report outlines that this includes:

‘persons and services liable to have contact with trafficking victims, such as law-enforcement officials, immigration and social services, embassy or consulate staff, staff of border checkpoints and soldiers or police on international peacekeeping missions’.¹⁸¹

In this regard, GRETA and the Committee of the Parties have called on several states to provide training for relevant professionals¹⁸² and the importance of this has likewise been

¹⁷⁸ For instance, the UNODC Model Law which provides that training of, and by, civil society members should be encapsulated in any training effort. UNODC, *Model Law Against Trafficking in Persons* (United Nations 2009) 71.

¹⁷⁹ UN OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (United Nations 2002) Guideline 5(2).

¹⁸⁰ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 29.

¹⁸¹ Council of Europe, *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings* (Council of Europe 2005) para 296.

¹⁸² GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belgium: First Evaluation Round* (Council of Europe 25 September 2013) 61; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Netherlands: Second Evaluation Round* (Council of Europe 19 October 2018) 50; Committee of the Parties, *Recommendation CP(2018)28 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden: Second Evaluation Round* (Council of Europe 9 November 2018) 2; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Estonia: Second Evaluation Round* (Council of Europe 7 June 2023) 9; GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Czech Republic: Second Evaluation Round* (Council of Europe 11 October 2024) 11.

reasserted by Gallagher¹⁸³ and, Bosma and Rijken.¹⁸⁴ To take one example, GRETA reported that in Greece:

‘there is a need for more targeted training to be provided to prosecutors and judges, especially with regard to the identification of victims of trafficking, the application of the non-punishment principle, and the protection of victims and witnesses in criminal proceedings’.¹⁸⁵

However, training should be mandatory for all relevant stakeholders regardless of whether or not they are a designated CA for formal identification purposes. A Spanish criminal law enforcement official commented on the need to expand training beyond public authorities to include ‘other stakeholders that are not directly involved in human trafficking, but that they can face in a moment, in a situation with victims of human trafficking’, for example, trade unions.¹⁸⁶ This was affirmed by an Icelandic trade unionist who stated that training should be provided to and undertaken by ‘every frontline worker, whether it is someone who received people in the office or is out on the field’.¹⁸⁷ In fact, GRETA declared that one of its priority actions in its sixth general report was to improve state approaches to training, noting that ‘despite the efforts made by States, training still does not involve all relevant actors’.¹⁸⁸ In addressing THB-LE, states should therefore ensure that they do not limit training to designated CAs, which Chapter Three has established are generally criminal law enforcement officials,¹⁸⁹ instead it should encompass all relevant stakeholder cohorts including those operating in the labour field. This is especially pressing in order to facilitate active engagement in multi-stakeholder co-operation as examined in Chapter Four.¹⁹⁰

¹⁸³ Anne T. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010) 386-387.

¹⁸⁴ Alice Bosma and Conny Rijken, ‘Key Challenges in the Combat of Human Trafficking: Evaluating the EU Trafficking Strategy and EU Trafficking Directive’ (2016) 7(3) *New Journal of European Criminal Law* 315-330, 323.

¹⁸⁵ GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece: Second Evaluation Round* (Council of Europe 23 March 2023) 12.

¹⁸⁶ Interview 22 (Head of Unit).

¹⁸⁷ Interview 1.

¹⁸⁸ GRETA, *6th General Report on GRETA’s Activities covering the period from 1 January to 31 December 2016* (Council of Europe 2017) 7. GRETA continues to repeatedly stress ‘the importance of training of all relevant professional groups which should take place regularly’, GRETA, *13th General Report covering the period from 1 January to 31 December 2023* (Council of Europe 2024) 70.

¹⁸⁹ See section 3.4.1. of Chapter Three.

¹⁹⁰ See section 4.3.1.2. of Chapter Four.

Notably, a Spanish trade unionist emphasised the need ‘to sensibilise the police, not only police, also the judges and the judicial power, and also the public servants, even the labour inspection’.¹⁹¹ This participant’s narrative recognises the significance of criminal justice stakeholders in the identification procedure but it also reflects an awareness of the critical role of labour inspectors operating in the labour law field. In fact, a Spanish labour inspector noted that there has been a move towards the delivery of targeted training for labour inspectors:

‘for the Labour Inspectorate, the main challenges are improving knowledge and improving cooperation, that means a [need for] training in the inspectors. We have started in last year a plan to train at least one or two inspectors in every region of Spain, that means around 60 people on trafficking in human beings and forced labour. We have already trained, have trainings in the past seven years, but now we are training a different, a more specific approach. So we could have regional experts of trafficking in human beings in every province of Spain’.¹⁹²

This account reveals the need to implement training across the jurisdiction so that stakeholders in different regions are equipped to recognise instances of THB-LE and respond effectively. This targeted training for labour inspection services is particularly welcome in relation to detecting and identifying situations of THB-LE. A similar sentiment has been expressed by GRETA that:

‘all labour inspectors should receive training on how to detect indicators of human trafficking/forced labour. Labour inspectorates should be equipped to identify features and trends of human trafficking for the purpose of labour exploitation’.¹⁹³

This training is essential because labour inspectors are a key authority who can access worksites where vulnerable workers or potential victims of THB-LE may be uncovered.¹⁹⁴ The training should build upon the powers designated to the inspection bodies and pinpoint how they can most effectively utilise their remit to uncover and identify situations of THB-LE. Yet, at this juncture in anti-trafficking efforts, labour

¹⁹¹ Interview 7.

¹⁹² Interview 26.

¹⁹³ GRETA, *Guidance Note on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2021) 13. See also, GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Czech Republic: Second Evaluation Round* (Council of Europe 11 October 2024) 17.

¹⁹⁴ Rebecca Paraciani and Roberto Rizza, ‘When the Workplace is the Home: Labour Inspectors’ Discretionary Power in the Field of Domestic Work – An Institutional Analysis’ (2021) 41(1) *Journal of Public Policy* 1-16.

inspection services are primarily, but not solely,¹⁹⁵ active in this context through referrals of potential instances of THB-LE to criminal law enforcement officials upon detection. This was succinctly stated by an Irish labour inspector who articulated that their role ‘would be to make referrals where we believe that the indicators of human trafficking are identified’.¹⁹⁶ Similarly, a Czech labour inspector explained that:

‘As for Labour Inspectorate, as we speak with people of course, we are trying to know if all the rules according to Czech labour codes are okay, if it is not, there are some penalties from labour office, and when we recognise some signs of labour exploitation, talking with the employees or foreign employees, we share this information with the police and they do their jobs also’.¹⁹⁷

Thus, this knowledge regarding referrals into the NRM structure should be integrated into training programmes to accompany guidelines and indicators on the detection of severely exploitative practices, as discussed further in section 5.3.3.

In addition to highlighting the importance of training labour inspectors, study participants also drew attention to the specific need to train local criminal law enforcement officers. A Belgian NGO interviewee captured the need to differentiate between two facets of criminal law enforcement, namely THB specialised officials and local criminal law enforcement officials:

‘you have the specialised police who is very competent on human trafficking ... but if one of those other inspection services is confronted with the case, or certainly if a police officer who is not at all specialised [in] human trafficking is confronted with the case, we often [see] that the information is still not passed correctly to the right services and the right procedures put in place’.¹⁹⁸

Local criminal law enforcement officials have been particularly criticised by Mishra for failing to ‘play a critical role in identifying and responding to THB cases’.¹⁹⁹ This was likewise noted as one of the practical challenges hampering the identification of VoTs in the qualitative data.²⁰⁰ An Irish NGO participant noted that in cases of THB-LE, it often:

¹⁹⁵ For example, the Netherlands Labour Authority has investigative powers regarding THB-LE.

¹⁹⁶ Interview 30 (Senior Officer).

¹⁹⁷ Interview 38 (Senior Officer).

¹⁹⁸ Interview 36 (a NGO specialising in assisting undocumented migrants).

¹⁹⁹ Veerendra Mishra, ‘Combating Human Trafficking: Gaps in Law Enforcement’ in Veerendra Mishra (ed), *Human Trafficking: The Stakeholder Perspective* (Sage Publications 2013) 275.

²⁰⁰ See section 4.3.3.1. of Chapter Four.

‘comes down to the local guard [Irish police officer] and if they don’t have much experience dealing with human trafficking, it could be a difficult start...it’s just that lack of standardisation really that’s difficult’.²⁰¹

For effective policies and identification procedures, it is necessary for states to recognise that ‘although human trafficking is a growing global concern, it is ultimately a problem identified locally’²⁰² and by local criminal law enforcement officers.²⁰³ Yet, scholarship has pointed to low statistics in terms of equipping these stakeholders, for instance, a survey of 175 local criminal law enforcement officials in the United States (US) revealed that just 17 per cent of officers had received training on THB.²⁰⁴ It is recognised that there are resource constraints on criminal law enforcement officials,²⁰⁵ whose duties are extensive, yet this analysis reveals the significance of regular training for *all* criminal law enforcement officials and not solely preparing and educating specialist officers. The training of these criminal law enforcement officials is most pressing when states adopt a purely criminal justice approach to tackle THB-LE.²⁰⁶

Although the study participants iterated the importance of equipping labour inspectors and local criminal law enforcement officials with the required knowledge and skills, the analysis of the qualitative data found that participants did not comment on any training that took place with a diverse range of stakeholders. Rather, the findings pointed towards training in the context of its delivery to individual stakeholder cohorts only. While it is positive that stakeholders clearly recognise the importance of training a diverse range of stakeholders who may encounter (potential) victims of THB-LE, it is a concern that no participant referred to instances of multi-stakeholder trainings. This may be partially explained by the fact that the text of Article 29(3) of the Trafficking Convention expressly outlines that training ‘may be agency-specific’.²⁰⁷ Resultantly, it is unclear whether the benefit of bringing together a range of stakeholders when undertaking training is fully

²⁰¹ Interview 21 (a NGO supporting migrant workers).

²⁰² Jeremy M. Wilson and Erin Dalton, ‘Human Trafficking in the Heartland: Variation in Law Enforcement Awareness and Response’ (2008) 24(3) *Journal of Contemporary Criminal Justice* 296-313, 297.

²⁰³ Vladimir A. Sergevnin, ‘Law Enforcement Awareness and Training in Human Trafficking’ in Michael J. Palmiotto (ed), *Combating Human Trafficking: A Multidisciplinary Approach* (CRC Press 2015) 193.

²⁰⁴ Susan Mapp, Emily Hornung, Madeleine D’Almeida and Jessica Juhnke, ‘Local Law Enforcement Officers’ Knowledge of Human Trafficking: Ability to Define, Identify, and Assist’ (2016) 2(4) *Journal of Human Trafficking* 329-342, 333.

²⁰⁵ Interview 19 (a NGO supporting vulnerable populations).

²⁰⁶ See, for instance, Kristiina Kangaspunta, ‘Was Trafficking in Persons Really Criminalised?’ (2015) 4 *Anti-Trafficking Review* 80-97.

²⁰⁷ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 29(3).

appreciated. There is clear scope for states to encourage more collaboration between stakeholders in carrying out these training programmes. In doing so, areas of convergence on victim identification efforts would emerge. Alternatively, at a minimum, individualised training of stakeholder cohorts should follow the same curriculum.

Despite this limited reference by study participants to multi-stakeholder training, there was some indication of interaction between public authorities and civil society organisations in this context. The important role of NGOs was apparent from the qualitative data with certain NGO participants outlining that they conduct such trainings,²⁰⁸ and a Greek NGO interviewee stressed the importance of this effort in improving the detection and identification of VoTs:

‘We conduct trainings for frontline professionals on victim identification, because we realise that there’s a great need for identification efforts and we want to support them on how to identify potential victims’.²⁰⁹

In addition, the comprehensive reach of NGO information dissemination and training efforts was captured by a Swedish NGO participant as follows:

‘we have an education package that we can aim towards different areas of work. So for example, social services, we can train groups that are working in social services and then specifically, like, where do they fit into the chain of how the official system looks like. We could also talk to, for example, the specific business branches or parts of the police, and most of these actors, of course, have their own strategy to combat human trafficking, but sometimes they want, yeah, they want like a second opinion or different perspectives and sometimes we do those kind of education efforts. But also quite a lot aimed at other NGOs, and people [who] are doing volunteer work that might come into contact with victims of trafficking’.²¹⁰

This participant account illustrates the added significance of interactions between different stakeholder cohorts in exchanging views and experiences to improve the anti-trafficking response. A Belgian NGO interviewee captured the importance of the training they conduct in contributing to stakeholder awareness of THB-LE, as explored in section 5.3.1., stating that:

‘I give a lot of trainings as well and information sessions to anybody, for that matter. But if you ask, in general usually I start something like that with just

²⁰⁸ Interview 8; 13; 14; 17; 19; 20; 23; 25; 27; 35; 36; 37.

²⁰⁹ Interview 23 (a THB focused NGO).

²¹⁰ Interview 27 (a THB focused NGO).

asking “okay, if I say trafficking victims, human trafficking, what do you think about?” Okay and then you always get a young woman, no education, sexual exploitation. But then I go “hang on, do you know that 50% of the victims in Belgium are male and are being trafficked or are being exploited economically?” and they go like “oh okay”. They still have the idea that it is something far away from them and if you stay away from the red-light districts, if you stay away from, you know, everything that has anything to do with sex work or prostitution, then okay that's where it happens’.²¹¹

Finally, whilst it is vital that regular training is available to all relevant stakeholders to address previous scholarly findings which have concluded that training of criminal law enforcement officials is ‘sporadic’,²¹² it is equally pressing that stakeholders are willing to engage with these targeted trainings. In this regard, while discussing training of criminal law enforcement officials, a German NGO participant asserted that ‘I feel I have to push it. It’s not like they are “Oh yes, absolutely want the training about trafficking”. I feel we also have to insist’.²¹³ While it is very positive that NGOs encourage and conduct stakeholder training, it poses the question of whether they are filling a gap left by states in relation to their legal obligations under the Trafficking Convention.

In sum, the study participant perspectives show that there is a clear recognition of the importance to extend training to all pertinent stakeholders, including labour inspectors and local criminal law enforcement officials, to improve the identification of victims of THB-LE. However, there is a broader concern arising from the analysis in this section, namely that despite the clear calls for a multi-stakeholder approach at international level, no study participant discussed multi-stakeholder integration in training measures. This is not to say that individual targeted trainings are not useful, but rather they are insufficient to encourage multi-stakeholder co-operation among various relevant stakeholders, as examined in Chapter Four. It is a missed opportunity to foster connections and firmly ground a coherent and joint understanding of THB-LE. A common training programme, that could be adapted to the specificities of each stakeholder’s role for identification purposes, should include information on *inter alia* the definition of THB-LE, its prevalence at national level, and indicators of THB-LE for detection purposes.

²¹¹ Interview 20.

²¹² Andrea M. Bertone, ‘Transnational Activism to Combat Trafficking in Persons’ (2004) 10(2) *Brown Journal of World Affairs* 9-22, 16.

²¹³ Interview 14 (a NGO focused on assisting migrant women).

5.3.3. The Availability of Indicators of Trafficking in Human Beings for the Purpose of Labour Exploitation

Building on the discussion on the importance of (multi-stakeholder) training, this section focuses on indicators of THB-LE. As outlined in section 5.1., indicators are considered as referring to signs that may indicate the presence of severely exploitative practices. Indicators can provide elements of consistency and certainty to the detection and formal identification of VoTs, yet stakeholders tasked with using these indicators must be trained on how best to apply them. Thus, a comprehensive three-pronged approach to equip stakeholders to identify VoTs must include training on the existence and use of indicators. This is especially pressing in situations where stakeholders may not necessarily be THB-LE specialists. Lewis et al. have outlined that the consequences of a lack of sufficient understanding of these indicators by stakeholders include ‘major gaps and inconsistencies in knowledge, detection, prosecution and legal judgments’.²¹⁴ A failure to apply these indicators may result in the non-identification of VoTs. This section explores the existence of indicators of THB-LE and points towards some improvements to further streamline and improve the detection and formal identification processes from a practical standpoint.

Despite the absence of a reference to indicators of THB in the Trafficking Convention, the International Labour Organization (ILO)²¹⁵ and UNODC²¹⁶ have developed and published forced labour and THB-LE indicators respectively, as shown in Table 9.

²¹⁴ Hannah Lewis, Peter Dwyer, Stuart Hodgkinson and Louise Waite, *Precarious Lives: Forced Labour, Exploitation and Asylum* (Policy Press 2015) 148.

²¹⁵ ILO, *Indicators of Forced Labour* (ILO 2012).

²¹⁶ UNODC, *Toolkit to Combat Trafficking in Persons* (United Nations 2008) 261-262.

ILO Indicators of Forced Labour	UNODC Indicators of Trafficking in Human Beings for Labour Exploitation
<ul style="list-style-type: none"> • Abuse of vulnerability • Deception • Restriction of movement • Isolation • Physical and sexual violence • Intimidation and threats • Retention of identity documents • Withholding of wages • Debt bondage • Abusive working and living conditions • Excessive overtime 	<ul style="list-style-type: none"> • Live in groups in the same place where they work and leave those premises infrequently, if at all • Live in degraded, unsuitable places, such as in agricultural or industrial buildings • Not be dressed adequately for the work they do • Be given only leftovers to eat • Have no access to their earnings • Have no labour contract • Lack basic training and professional licences • Work excessively long hours • Depend on their employer for a number of services, including work, transportation and accommodation • Have no choice of accommodation • Be subjected to insults, abuse, threats or violence • Never leave the work premises without their employer • Be unable to move freely • Be subject to security measures designed to keep them on the work premises • Be disciplined through fines

Table 9 – ILO Indicators of Forced Labour and UNODC Indicators of Trafficking in Human Beings for the Purpose of Labour Exploitation

The ILO indicators – sometimes referred to as the Delphi indicators based on the methodology used to devise them²¹⁷ – have been referenced by the ECtHR in relation to violations of Article 4 of the European Convention on Human Rights²¹⁸ and noted as ‘a valuable benchmark in the identification of forced labour’.²¹⁹ They are similarly recognised by GRETA as important guidance for labour inspectors in detecting such offences.²²⁰ These lists of indicators are a basis upon which states may develop their own context-specific set of indicators.²²¹ This adaptability to national level contexts is critical as it has been shown that because THB ‘trends and patterns and people’s experiences are not linear, human trafficking indicators are dynamic and are likely to change over time

²¹⁷ Klara Skrivankova, ‘Defining Exploitation in the Context of Trafficking – What is a Crime and What is Not’ in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 113.

²¹⁸ Convention for the Protection of Human Rights and Fundamental Freedoms, as amended (adopted 4 November 1950, entered in force 3 September 1953) 213 UNTS 222 Article 4.

²¹⁹ For example, in *CN v The United Kingdom* App no 4239/08 (ECtHR, 13 November 2012) para 35; *J and Others v Austria* App no 58216/12 (ECtHR, 17 January 2017) para 13.

²²⁰ GRETA, *Guidance Note on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2021) 20.

²²¹ Participants from Iceland, Ireland, Portugal, Slovenia and Spain referred to the existence of indicators of THB within their State. Interview 1; 22; 28; 30; 33.

and across different geographic areas’.²²² A German NGO participant pointed towards the realisation of this, explaining that:

‘we developed indicators and which [we] would have them from the ILO mainly, but we transported them to our work and into the German context’.²²³

In addition to adapting indicators to the national level context, it is equally useful to explicitly delineate indicators applicable to each form of THB, in contrast to adopting only a broad formulation of indicators to encompass THB generally. This approach has been utilised by some states including Ireland²²⁴ and Slovenia.²²⁵ It is undoubtedly useful to have a broader guidance document on THB indicators, however, it is even more appropriate and beneficial to have exploitation specific indicators in place to ensure prompt and consistent identification of different forms of THB, including THB-LE. It is all the more important whereby the formulation of these checklists is challenging because ‘it is practically impossible to make them cover all possible forms of exploitation, abuse and control’.²²⁶

Evidently these indicators developed by the ILO and UNODC are devised for two distinct yet interrelated legal concepts, namely, forced labour and THB-LE.²²⁷ Notwithstanding, there are similarities between these lists, with the exception of deception which is absent from the UNODC indicators. It would be beneficial to explicitly outline this indicator on the basis that deception can be one of the core features of THB-LE²²⁸ and is clearly stated

²²² Natalya Timoshkina, ‘Health and Social Service-Based Human Trafficking Response Models’ in John Winterdyk and Jackie Jones (eds), *The Palgrave International Handbook of Human Trafficking* (Palgrave Macmillan 2020) 683. Table 2 in Chapter One of this thesis captures the change in country designation for THB offences which requires different approaches to address the phenomenon.

²²³ Interview 17 (a THB-LE focused NGO).

²²⁴ An Garda Síochána (Ireland’s National Police and Security Service), ‘Human Trafficking Investigation’ <<https://www.garda.ie/en/about-us/organised-serious-crime/garda-national-protective-services-bureau-gnpsb/human-trafficking/human-trafficking-investigation.html>> accessed 19 July 2023.

²²⁵ Including sexual exploitation, forced labour, forced begging and forced criminal activities, and child trafficking. Ministry of Interior Affairs, *Manual on the Identification, Assistance and Protection of Victims of Trafficking in Human Beings* (Republic of Slovenia 2016) 24-27.

²²⁶ Pekka Ylinen, Anniina Jokinen, Anna-Greta Pekkarinen, Natalia Ollus and Katja-Pia Jenu, *Uncovering Labour Trafficking: Investigation Tool for Law Enforcement and Checklist for Labour Inspectors* (HEUNI 2020) 20.

²²⁷ Natalia Ollus, ‘Regulating Forced Labour and Combating Human Trafficking: The Relevance of Historical Definitions in a Contemporary Perspective’ (2015) 63(5) *Crime, Law and Social Change* 221-246.

²²⁸ Camilla Fabbri, Heidi Stöckl, Katharine Jones, Harry Cook, Claire Galez-Davis, Naomi Grant, Yuki Lo and Cathy Zimmerman, ‘Labor Recruitment and Human Trafficking: Analysis of a Global Trafficking Survivor Database’ (2023) 57(2) *International Migration Review* 629-651.

as one of the means within the definition of THB under international law,²²⁹ as outlined in Chapter Two.²³⁰ In fact, a UK study found that the abuse of vulnerability, withholding or non-payment of wages, and deception were the three most frequent forced labour practices reported by their interviewees.²³¹ A Dutch NGO participant provided an example of this deception in practice as follows:

‘especially if you talk about labour exploitation, that a lot of people were maybe offered a job, recruited and they come into another country and then find out that that job was either not existing or was not available at the moment and then they were offered other jobs. For example, they were promised to work in the bank and then they were ending up working in restaurants which are much lower conditions and things like that’.²³²

In particular, Burke et al. assert that contractual deception is a core feature of THB-LE offences.²³³ Similarly, an Icelandic trade union interviewee viewed the fact that, where there is a contract, ‘not knowing what they are signing’ makes an individual even more vulnerable to exploitation.²³⁴

Moreover, scholars have cited the relatively rare use of physical violence to control victims of THB-LE.²³⁵ An Austrian NGO participant stated that ‘human trafficking is not always that, it’s not always that thing, it’s not always violence and beatings. Sometimes it’s a lot more subtle’ and articulated that an increased ‘understanding for that’ reality is required.²³⁶ These less physical control measures²³⁷ include, among others, psychological

²²⁹ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 3(a); Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 4(a).

²³⁰ See section 2.2.1. of Chapter Two.

²³¹ Hannah Lewis, Peter Dwyer, Stuart Hodgkinson and Louise Waite, *Precarious Lives: Forced Labour, Exploitation and Asylum* (Policy Press 2015) 57.

²³² Interview 18 (a THB focused NGO). As also stated by Interview 19 (a NGO supporting vulnerable populations).

²³³ Mary C. Burke, Tina Krolkowski, Shannon White and Nour Alabase, ‘Introduction to Human Trafficking’ in Mary C. Burke (ed), *Human Trafficking: Interdisciplinary Perspectives* (3rd edn, Routledge 2022) 22.

²³⁴ Interview 1.

²³⁵ Jill E.B. Coster van Voorhout, ‘Human Trafficking for Labour Exploitation: Interpreting the Crime’ (2007) 3(2) *Utrecht Law Review* 44-69, 50.

²³⁶ Interview 6 (a NGO focused on assisting migrant women).

²³⁷ Interview 16 (a THB focused NGO).

abuse,²³⁸ threats of no pay or deportation,²³⁹ threats against family members,²⁴⁰ and the retention of their personal documents.²⁴¹ This increased recognition that traffickers tend to use more subtle methods of control has also been cited by the ECtHR. For instance, in *Krachunova v Bulgaria*²⁴² the court stated that:

‘International law, however, reflects clearly the understanding that modern-day trafficking in human beings is sometimes carried out by subtler means, such as deception, psychological pressure, and the abuse of a vulnerability ...’.²⁴³

Furthermore, a Greek NGO interviewee, reinforcing the need for the correct implementation of the non-punishment principle as discussed in Chapter Three,²⁴⁴ outlined the threat of prosecution by authorities as a means of control exercised by exploiters:

‘it’s very true that the fear that the traffickers will instil to the victims will prevent them from talking to the police and the police already knows that and this is true for sex trafficking victims for sure, but it’s also true for labour trafficking victims because so often they have their families back home and the traffickers will tell them that “you will never be able to go home if the police knows about you”’.²⁴⁵

Markedly, a prioritised recommendation to Austria, Bulgaria, Estonia, Norway, Slovenia, Spain and the Czech Republic in the most recent US Trafficking in Persons Annual Report related to increasing efforts to identify VoTs by expanding training to all frontline

²³⁸ Georgi Petrunov, ‘Managing Money Acquired from Human Trafficking: Case Study of Sex Trafficking from Bulgaria to Western Europe’ (2011) 14(2) Trends in Organized Crime 165-183, 168; Susie B. Baldwin, Anne E. Fehrenbacher and David P. Eisenman, ‘Psychological Coercion in Human Trafficking: An Application of Biderman’s Framework’ (2015) 25(9) Qualitative Health Research 1171-1181, 1174; Victoria A. Greenfield, Letizia Paoli and Andries Zoutendijk, ‘The Harms of Human Trafficking: Demonstrating the Applicability and Value of a New Framework for Systematic, Empirical Analysis’ (2016) 17(2) Global Crime 152-180, 161.

²³⁹ Amy Farrell, Jack McDevitt and Stephanie Fahy, ‘Where are All the Victims? Understanding the Determinants of Official Identification of Human Trafficking Incidents’ (2010) 9(2) Criminology & Public Policy 201-233, 206; David M. Doyle, Clíodhna Murphy, Muiread Murphy, Pablo Rojas Coppari and Rachel J. Wechsler, ‘“I Felt Like She Owns Me”: Exploitation and Uncertainty in the Lives of Labour Trafficking Victims in Ireland’ (2019) 59(1) British Journal of Criminology 231-251, 240.

²⁴⁰ A Norwegian trade unionist (Interview 4) noted ‘employers controlling all their documents, threats against family members in the home states’ as methods used by traffickers, but also viewed them as indicators of THB-LE.

²⁴¹ Daniele Bélanger, ‘Labor Migration and Trafficking Among Vietnamese Migrants in Asia’ (2014) 653(1) The Annals of the American Academy of Political and Social Science 87-106, 96; June Kane, ‘Making Money Out of Misery: Trafficking for Labor Exploitation’ in Mary C. Burke (ed), *Human Trafficking: Interdisciplinary Perspectives* (3rd edn, Routledge 2022) 62.

²⁴² *Krachunova v Bulgaria* App no 18269/18 (ECtHR, 28 November 2023).

²⁴³ *ibid* para 148.

²⁴⁴ See section 3.4.3.1.1. of Chapter Three.

²⁴⁵ Interview 23 (a THB focused NGO).

stakeholders,²⁴⁶ to include training on subtle means of fraud or coercion. As such, it is critical that national level indicators do not place an over-emphasis on physical coercion, but that they encompass psychological coercion in assessments for identification purposes. It is imperative that these different means of control used by exploiters are fully understood by stakeholders operating on the frontline, yet as Yea warns:

‘Whilst victim identification is contingent upon the degree to which potential victims fulfil a number of criteria laid out in a range of trafficking indicators, not all indicators carry equal value’.²⁴⁷

The necessity to expressly include information on the more subtle means may be bolstered by the finding from Chapter Two which concluded that the point which differentiates a labour law violation from a criminal offence of THB-LE relates to force and control of movement.²⁴⁸ A concern raised in Chapter Two related to whether stakeholders recognise these more subtle means. Resultantly, it is imperative that lists of indicators of THB-LE include these elements to enable stakeholders to apply them on the ground.

The qualitative data, reaffirming scholarly arguments,²⁴⁹ highlights that stakeholders who are expected to employ these indicators fully understand them when making decisions on a potential situation of THB-LE. As a Belgian NGO participant outlined, although there are ‘very good guidelines’ in place, ‘the problem is they have to know that those guidelines exist and they have to read them and apply them’.²⁵⁰ Thus, training that encompasses indicators and instructs stakeholders on how best to employ them is key. In this regard, an Icelandic trade unionist stated that it is essential that frontline stakeholders ‘be alert always, always have this list beside you, what questions to ask, how to identify, etc., explain processes’.²⁵¹ Stakeholders must be able to reference a document with certainty and clarity in order to identify a situation as one of THB-LE in a consistent manner. The ILO outlines that:

²⁴⁶ United States Department of State, *Trafficking in Persons Report* (USDS 2024).

²⁴⁷ Sallie Yea, ‘Trafficked Enough? Missing Bodies, Migrant Labour Exploitation, and the Classification of Trafficking Victims in Singapore’ (2015) 47(4) *Antipode* 1080-1100, 1086.

²⁴⁸ See section 2.4.1. of Chapter Two.

²⁴⁹ Simon Massey and Glynn Rankin, *Exploiting People for Profit: Trafficking in Human Beings* (Palgrave Macmillan 2020) 42.

²⁵⁰ Interview 20.

²⁵¹ Interview 1 citing Ministry of Justice, *Human Trafficking Indicators* (Government of Iceland n.d.).

‘these indicators are intended to help “front-line” criminal law enforcement officials, labour inspectors, trade union officers, NGO workers and others to identify persons who are possibly trapped in a forced labour situation, and who may require urgent assistance’.²⁵²

Therefore, they ought to be clear, concise, operational, and not over-subscribed. Nonetheless, study participants pointed towards some practical hindrances to the application of these indicators, whereby although indicators may be in place, direct contact with potential VoTs by public authorities can be limited. This was captured by a Slovenian labour inspector who explained as follows:

‘Yes, we write indicators for inspectors. So for them it is easier on the field to see what are the signs that people show. But well usually, in real life, we work with employers, you work with papers and when we check the papers, we don’t have a lot to do with workers. This is really the problem’.²⁵³

In the application of these indicators, this participant’s narrative highlights the importance of interacting with workers while accessing worksites. This was reinforced by a Swiss trade unionist who outlined that:

‘when we demand from the companies to give us the papers, the sheets of the salary, everything is really fine. So it’s, everything is great. When you talk to people, they say “no, no we work sixteen hours but we are not allowed to write more than nine”. They say “okay, we are paid this, but we have to say we are paid like that, when we go back, they take the money away from us”’.²⁵⁴

The study participants further articulated that stakeholders utilising these indicators should adopt a comprehensive approach to consider all relevant circumstances. This is especially pertinent because indicators of THB-LE provide guidance, but ‘if they are applied rigidly, they can be rather limiting’.²⁵⁵ In this regard, an Irish labour inspector articulated that the indicators:

‘are very broad, but they are only indicators and I think they are meant to be interpreted where somebody also has a sort of a gut feeling or has a holistic view of it’.²⁵⁶

²⁵² ILO, *Indicators of Forced Labour* (ILO 2012) 2.

²⁵³ Interview 28.

²⁵⁴ Interview 3.

²⁵⁵ OSCE, *Trafficking in Human Beings: Identification of Potential and Presumed Victims – A Community Policing Approach* (OSCE 2011) 18.

²⁵⁶ Interview 30 (Senior Officer).

Moreover, adequate training on the effective use of indicators was viewed by participants as key to improving THB-LE identification rates, although it reinforces that there is an accompanying need for stakeholders to fully engage with the employment of these indicators. A German trade unionist noted that it is vital that stakeholders know ‘exactly what human trafficking is, what the indicators are, when to pay more attention, when maybe to ask one question more’.²⁵⁷ Relatedly, an Irish NGO interviewee, in discussing the training given to labour inspectors on detecting THB-LE, expressed their concern that ‘it’s more like spot the signs quick. What do I see rather than what do I listen to?’²⁵⁸

From a theoretical standpoint, a broad and extensive list of indicators of THB-LE is important to thoroughly understand this phenomenon and to recognise its core aspects. Conversely, it is necessary for all stakeholders to use these indicators in an efficient and effective manner in practice. To do so, it may prove useful to develop a list of indicators in a succinct, accessible format for the purpose of initial detection and to adopt a more comprehensive list for the purpose of the formal identification process.²⁵⁹ Relatedly, Elliott and McCartan have proposed the development of a mobile application as a useful measure in instructing ‘those who have come into contact with a putative victim as to what “indicators” to look for’.²⁶⁰

Overall, international bodies, such as the ILO²⁶¹ and UNODC,²⁶² have provided models of the key indicators of THB-LE which European states should adapt to their national context. The data points towards the necessity to make these indicators operational in practical terms for use by relevant frontline stakeholders during fieldwork. Further to this, the analysis underlines the importance of capturing not only physical indicators of THB-LE, but also enabling stakeholders to understand and recognise psychological coercion. It is evident that in order to fully realise the usefulness of these indicators for identification purposes that all relevant stakeholders must be trained to do so in a

²⁵⁷ Interview 34.

²⁵⁸ Interview 21 (a NGO supporting migrant workers).

²⁵⁹ GRETA, *6th General Report on GRETA’s Activities covering the period from 1 January to 31 December 2016* (Council of Europe 2017) 17.

²⁶⁰ Jessica Elliott and Kieran McCartan, ‘The Reality of Trafficked People’s Access to Technology’ (2013) 77(3) *Journal of Criminal Law* 255-273, 272.

²⁶¹ ILO, *Indicators of Forced Labour* (ILO 2012).

²⁶² UNODC, *Toolkit to Combat Trafficking in Persons* (United Nations 2008) 261-262.

consistent manner. Such indicators could also potentially be encompassed within awareness raising campaigns.

Conclusion

This chapter demonstrates that efforts have been made by European states to equip stakeholders operating on the frontline in terms of the requirements under the Article 5(2),²⁶³ Article 10²⁶⁴ and Article 29(3)²⁶⁵ of the Trafficking Convention. Nonetheless, to ensure a successful approach to the identification of victims of THB-LE, further improvement in state responses and more investment in these measures is required. The impact of awareness raising campaigns and trainings must be monitored and evaluated to improve future initiatives and their effectiveness by conducting impact assessments.²⁶⁶

The thesis argues that awareness raising should be a broader part of the objective of putting in place trained and qualified personnel and due to this, Article 5 is useful in clarifying the obligation on Contracting States to specifically target professional stakeholders in awareness raising measures.²⁶⁷ Nevertheless, the study participants perspectives reveal that two core challenges remain, namely, a denial of the occurrence of THB-LE within the national context and the realisation of a broader understanding of the offence of THB beyond THB-SE. A primary concern is the reliance on stereotypical depictions of THB which hinders the recognition of THB-LE, as well as affecting a thorough understanding of the continuum of exploitative practices that may arise.

The study participant perceptions captured stakeholder training as institution-specific, rather than as a truly multi-stakeholder initiative. The findings of this chapter highlight that training programmes should not be restricted to designated CAs. The potential effect of this focus is that other pertinent stakeholders will be ill-equipped to actively contribute to the identification procedure, whether as part of the detection process or during formal

²⁶³ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 5(2).

²⁶⁴ *ibid* Article 10.

²⁶⁵ *ibid* Article 29(3).

²⁶⁶ GRETA, *Compendium of Good Practices in Addressing Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2020) 21. See, for example, GRETA, *Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Czech Republic: Second Evaluation Round* (Council of Europe 11 October 2024) 14.

²⁶⁷ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 5.

identification. Within the analysis, two cohorts were emphasised as requiring training, namely, local criminal law enforcement officials and labour inspectors. While agency-specific training is captured under the Trafficking Convention,²⁶⁸ the absence of multi-stakeholder training limits the opportunity to foster connections and establish a joint understanding of the phenomenon of THB-LE. A concerning finding that emerged from the qualitative data is that one particular stakeholder cohort was noted as being under-prepared in identification efforts on the basis of low levels of awareness of THB-LE and a lack of training for this purpose. This trepidation related to local criminal law enforcement officials. It raises a number of issues particularly as the mandate to identify VoTs is largely within the remit of criminal law enforcement officials. It questions the feasibility of internal referrals within criminal law enforcement whereby those officials operating at local level, more likely to encounter instances of THB-LE, fail to recognise it as such. This clearly points towards the need to not only equip national level THB specialists within these organisations, but also to provide training to local level officials.

The analysis in this chapter demonstrates that it may prove useful to develop “general” THB indicators, but it is paramount that additional indicators are devised at national level targeting different exploitative purposes. Due to the inherent complexities in recognising situations as one of THB-LE, and differentiating between labour law violations and those reaching the criminal threshold of THB-LE, as analysed in Chapter Two,²⁶⁹ such specificity is required. In particular, this chapter illustrates that there may be a need to introduce a concise list to enable prompt detection, which could subsequently be built upon via a comprehensive list of indicators during the formal identification process. This is necessary to allow for the practical application of these indicators in a more efficient manner when conducting field work. These lists enable a comprehensive assessment of the circumstances for the purpose of deciding on the establishment of reasonable grounds and making the conclusive decision as to VoT status as required under Article 10 of the Trafficking Convention.²⁷⁰

Overall, this chapter illustrates that a comprehensive approach to equip relevant stakeholders on the identification of THB-LE consists of three core and important aspects

²⁶⁸ *ibid* Article 29(3).

²⁶⁹ See section 2.4.1. of Chapter Two.

²⁷⁰ *ibid* Article 10.

of awareness, training, and indicators. It is the combination of these factors that will ultimately increase the ability of relevant stakeholders to detect and identify VoTs and facilitate a more effective integrated multi-stakeholder approach to identification.

The final chapter of this thesis, Chapter Six, draws together the key findings, presents concrete practical recommendations, and makes suggestions for future research.

Chapter Six – Conclusion

Introduction

This thesis has examined the identification of victims of trafficking in human beings for the purpose of labour exploitation (THB-LE) in Europe. In doing so, it conducted a doctrinal analysis of the legal obligation to identify victims of trafficking in human beings (VoTs) in international law, with a particular focus on the Council of Europe Convention on Action against Trafficking in Human Beings (Trafficking Convention).¹ This doctrinal analysis was combined with an in-depth examination of stakeholder experiences of victim identification as derived from the qualitative data. As such, the doctoral study investigated the gap between law and practice by combining a top-down critical analysis with bottom-up insights based on stakeholder perceptions of how the law operates on the ground. This socio-legal doctoral study contributes to the literature on the identification of victims of THB-LE having conducted 42 semi-structured qualitative interviews with 50 European stakeholders from criminal law enforcement, labour inspection services, non-governmental organisations (NGOs) and trade unions. The socio-legal analysis demonstrates the strengths of Article 10 of the Trafficking Convention, but also captures gaps in the legal framework on identification. Some of the key findings of the thesis include the failure to incorporate the detection process within Article 10, that multi-stakeholder approaches are necessary but challenging in reality, and that stakeholders require three key tools of awareness raising, training, and the application of indicators of THB-LE for victim identification.

In achieving the aim of this research and answering the research questions,² the thesis has six substantive chapters. Chapter One detailed the importance of the chosen research topic and presented the methodological approach adopted. Chapter Two set out the international legal framework on THB-LE, including pertinent international trafficking in human beings (THB) legal instruments, the European Court of Human Rights jurisprudence under Article 4 of the European Convention on Human Rights,³ and the legal obligations under the Trafficking Convention, and as such, it primarily employed

¹ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197.

² As presented in section 1.2. of Chapter One.

³ Convention for the Protection of Human Rights and Fundamental Freedoms, as amended (adopted 4 November 1950, entered in force 3 September 1953) 213 UNTS 222 Article 4.

doctrinal analysis. Drawing on the qualitative data, Chapter Two captured difficulties on the ground in applying the concept of THB-LE in terms of differentiating between labour law violations and the criminal law offence of THB-LE. Chapters Three, Four and Five were grounded in the qualitative data. Chapter Three focused on the identification procedure and identified a gap in Article 10 of the Trafficking Convention relating to its restricted application to the formal identification process. It clarified that the identification procedure involves two distinct processes encompassing detection and formal identification. It also critically assessed the implementation of national level structures for the identification of VoTs, including designated competent authorities (CAs) and a national referral mechanism (NRM) and revealed practical barriers to the identification procedure. Chapter Four investigated multi-stakeholder co-operation in the identification procedure. It focused on the interactions between and amongst public authorities and civil society organisations. It revealed that although multi-stakeholder co-operation is regularly recommended, in practice difficulties are encountered in its operationalisation and there is a tendency towards a dual partnership approach. Chapter Five outlined a three-pronged approach to equip stakeholders to identify THB-LE in a multi-stakeholder manner that involves measures on awareness, training, and the application of indicators of THB-LE. This chapter concludes the thesis by outlining the key conclusions, presenting concrete practical recommendations, and proposing areas for future research.

6.1. Key Conclusions

This section consolidates the key conclusions of the thesis. These findings add to a growing body of empirical European literature on THB-LE,⁴ providing important new insights into the law and practice of VoT identification in states across Europe, and on stakeholder interactions, duties and awareness of THB-LE. It facilitates an understanding of how stakeholders shape the dynamic experiences of the identification procedure. This section presents the findings of the thesis and is thematically structured to address: the enduring emphasis on trafficking in human beings for the purpose of sexual exploitation

⁴ Among others see David M. Doyle, Clíodhna Murphy, Muiread Murphy, Pablo Rojas Coppari and Rachel J. Wechsler, “‘I Felt Like She Owns Me’: Exploitation and Uncertainty in the Lives of Labour Trafficking Victims in Ireland’ (2019) 59(1) *British Journal of Criminology* 231-251; Carolina Villacampa, ‘Labour Trafficking Prosecution: What is Not Working in Spain?’ (2023) 26(1) *Contemporary Justice Review* 1-27; Hanna M. Malik, Johanna Vanto, Liisa Lähteenmäki, Jalo Vajus-Anttila and Jon Davies, ‘A Critical Perspective on the Administrative Approach to Crime Prevention: The Case of Labour Trafficking’ (2023) 20(6) *European Journal of Criminology* 1784-1803.

(THB-SE); the difficulty with understanding and applying the concept of THB(-LE) as defined in law and practice, and relatedly with categorising an exploitative situation as THB-LE; the inadequacy of the formulation of the obligation to identify under the Trafficking Convention;⁵ the limitations of the criminal justice approach endorsed by European states; and multi-stakeholder engagement in achieving an integrated approach.

6.1.1. The Impact of the Enduring Emphasis on Trafficking in Human Beings for the Purpose of Sexual Exploitation

Although the scholarly body has stressed the importance of awareness of the offence of THB-LE for identification purposes,⁶ the stakeholder insights throughout this thesis indicate that THB-SE continues to be the main focus of attention on the ground. This reaffirms scholarly literature which points towards the heightened awareness of THB-SE⁷ and an emphasis on stereotypical understandings of THB victimhood.⁸ The stakeholder perspectives revealed that THB is largely interpreted as THB-SE involving foreign female victims and occurring abroad.⁹ This demonstrates that state efforts to expand the understanding of THB to other exploitative purposes has not as yet fully translated into practice. Moreover, the analysis in Chapter Five uncovered a level of denial regarding the existence of THB-LE at national level.¹⁰ As a result of these issues, study participants called for awareness raising initiatives and training programmes to avoid stereotypical depictions of THB victimisation in order to address the enduring myths of THB.¹¹

⁵ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10.

⁶ For example, Ana Cunha, Mariana Gonçalves and Marlene Matos, 'Knowledge of Trafficking in Human Beings among Portuguese Social Services and Justice Professionals' (2019) 25(3) *European Journal on Criminal Policy and Research* 469-488, 481.

⁷ Jennifer C. Gibbs and Emily R. Strohacker, 'Prostitution, Renamed? Police Perceptions of Human Trafficking' (2023) 17 *Policing: A Journal of Policy and Practice* 1-13.

⁸ Silvia Rodríguez-López, '(De)Constructing Stereotypes: Media Representations, Social Perceptions, and Legal Responses to Human Trafficking' (2018) 4(1) *Journal of Human Trafficking* 61-72; Ana Cunha, Mariana Gonçalves and Marlene Matos, 'Exploring Perceptions of Portuguese Police About Human Trafficking Victims and Perpetrators' (2022) 77(2) *Crime, Law and Social Change* 253-273, 261.

⁹ In the context of THB-SE, research has raised a similar concern with understandings of THB-SE as occurring outside of the state and only affecting developing countries. For example, Felicity Schaeffer-Grabiell, 'Sex Trafficking as the "New Slave Trade"?' (2010) 13(2) *Sexualities* 153-160, 153.

¹⁰ See section 5.3.1.1. of Chapter Five.

¹¹ For instance, Alexis A. Aronowitz, 'The Smuggling-Trafficking Nexus and the Myths Surrounding Human Trafficking' (2009) 13 *Sociology of Crime, Law and Deviance* 107-128, 116-121; Marie Segrave, Sanja Milivojevic and Sharon Pickering, *Sex Trafficking and Modern Slavery: The Absence of Evidence* (2nd edn, Routledge 2018) 26.

In addition to awareness levels and the perceptions of THB, counter-trafficking measures have been viewed in the scholarly literature as too heavily focused on THB-SE at the expense of THB-LE,¹² which Munro argues has undermined ‘the more inclusive sentiment’¹³ of the THB definition.¹⁴ Moreover, Chuang has stated that:

‘an over-emphasis on sex trafficking thus not only risks overlooking a significant portion of the trafficked population, but it diverts attention away from states’ responsibility to promote safe labor conditions’.¹⁵

The analysis in Chapter Four of this thesis adds to this strand of the literature by highlighting stakeholder dissatisfaction with the failure of states to effectively structure the approach to tackle THB-LE when compared to the attention and organisation applied to efforts on THB-SE.¹⁶ The stakeholder bottom-up perspectives illustrate that because the emphasis is placed on THB-SE, certain labour-focused stakeholders, including trade unionists and labour inspectors, may not be fully integrated into joint efforts or included in multidisciplinary meetings on THB. As a result, the qualitative data placed an emphasis on the formalisation of multi-stakeholder efforts on THB-LE to ensure active and sustained engagement. In this regard, certain participants proposed that to advance current efforts to identify THB-LE, putting in place memoranda of understanding between public authorities and civil society organisations would be useful.

In sum, the stakeholder insights demonstrate the cyclical complexity that arises whereby the dominant perception of THB as THB-SE and an absence of structured approaches to THB-LE may explain the findings relating to a denial of THB-LE or the low level of awareness on the part of stakeholders. On the other hand, the lack of structured

¹² Conny Rijken, ‘Challenges and Pitfalls in Combating Trafficking in Human Beings for Labour Exploitation’ in Conny Rijken (ed), *Combating Trafficking in Human Beings for Labour Exploitation* (Wolf Legal Publishers 2011); Anninna Jokinen and Natalia Ollus, ‘Trafficking for forced labour: Project Summary and Conclusions’ in Anninna Jokinen, Natalia Ollus and Kauko Aromaa (eds), *Trafficking for Forced Labour and Labour Exploitation in Finland, Poland and Estonia* (HEUNI 2011).

¹³ Vanessa E. Munro, ‘A Tale of Two Servitudes: Defining and Implementing a Domestic Response to Trafficking of Women for Prostitution in the UK and Australia’ (2005) 14(1) *Social & Legal Studies* 91-114, 107.

¹⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 Article 3(a). As reaffirmed by Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 4(a).

¹⁵ Janie Chuang, ‘Beyond a Snapshot: Preventing Human Trafficking in the Global Economy’ (2006) 13(1) *Indiana Journal of Global Legal Studies* 137-163, 154.

¹⁶ See section 4.3.3.2. of Chapter Four.

approaches may be rooted in this denial or lack of awareness of the phenomenon of THB-LE. Yet, the findings suggest that by developing a structure for national level multi-stakeholder co-operation, the different priorities of the various relevant stakeholders may be more concisely aligned by adopting a common understanding of THB-LE and their place in the identification procedure. This is one area in which a comprehensive and well-resourced NRM would provide a solution.

This section has shown that the emphasis placed on THB-SE can hamper VoT identification efforts, however, even with equal attention to the phenomenon of THB-LE, there are significant problems for stakeholders on the frontline in interpreting and applying the concept of THB-LE in practice as outlined in the next section.

6.1.2. The Difficulty in Categorising an Exploitative Situation as Trafficking in Human Beings for the Purpose of Labour Exploitation

Concurring with previous scholarly literature,¹⁷ the bottom-up insights explored in this thesis show that there is a clear issue in distinguishing between a situation of THB-LE and other less severe forms of (labour) exploitation, for example, low-payment of wages or excessive working hours. The analysis in Chapter Two builds on scholarly observations that the identification of THB-LE is a significant challenge due to its specific complexities and the persistent issues with the absence of an adequate understanding of the definitional scope of the offence but also due to the lack of a definition of labour exploitation.¹⁸ The crux of the matter is that without a concrete understanding of the definition of THB-LE and its application in practice, stakeholders on the ground who encounter situations of THB-LE will be unable to accurately detect these instances. In Chapter Two, the stakeholder insights pointed towards the high threshold required to categorise an exploitative situation as one of THB-LE and the challenge in establishing the elements of the THB definition, whilst noting that labour law violations are more

¹⁷ *Inter alia*, Vladislava Stoyanova, *Human Trafficking and Slavery Reconsidered: Conceptual Limits and States' Positive Obligations in European Law* (Cambridge University Press 2017) 66.

¹⁸ Kelle Barrick, Pamela K. Lattimore, Wayne J. Pitts and Sheldon X. Zhang, 'When Farmworkers and Advocates See Trafficking But Law Enforcement Does Not: Challenges in Identifying Labor Trafficking in North Carolina' (2014) 61(2) *Crime, Law and Social Change* 205-214, 206; Klara Skrivankova, 'Defining Exploitation in the Context of Trafficking – What is a Crime and What is Not' in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018); Amy Weatherburn, 'What is Labour Exploitation? The Belgian and British Experience' (2021) 43(1) *Archives of Criminology* 47-73.

readily identifiable.¹⁹ As a result, the stakeholder perspectives reveal that due to these issues the determination will be that a violation of labour law has occurred rather than a criminal law offence.

Stakeholders expressed a particular concern that as a result of this ambiguity, a considerable cohort of exploited individuals who cannot reach the criminal law threshold of THB-LE are left in a ‘grey’ area without access to supports. Stakeholders referred to this reality as problematic. As captured by O’Connell Davidson, a consequence of this may be that:

‘Migrant workers who are exploited or deceived, but have not been bodily shackled, or locked in their squalid accommodation, or raped or beaten or threatened with death, can be ignored in the design and implementation of anti-trafficking policy’.²⁰

It risks creating a hierarchy of suffering²¹ and on this basis, study participants called for the introduction of supports for these individuals existing in this grey area who are not entitled to the assistance measures provided under the anti-trafficking legal framework, yet have endured considerable exploitation. This reinforces the scholarly literature which emphasises the necessity of addressing structural inadequacies within the labour market.²²

The on the ground difficulties faced by stakeholders in identifying a victim of THB-LE suggest that the current legal concept of THB-LE is flawed, because they find it difficult to apply the definition in practice. The stakeholder insights provide a contribution to current scholarly efforts that have attempted to define exploitation²³ and conceptualise it

¹⁹ See section 2.4.1. of Chapter Two.

²⁰ Julia O’Connell Davidson, ‘Editorial: The Presence of the Past: Lessons of History for Anti-Trafficking Work’ (2017) 9 Anti-Trafficking Review 1-12, 7.

²¹ Wendy Chapkis, ‘Trafficking, Migration, and the Law: Protecting Innocents, Punishing Immigrants’ (2003) 17(6) Gender and Society 923-937, 925

²² Kate Roberts, ‘Human Trafficking: Addressing the Symptom, Not the Cause’ in Gary Craig, Alex Balch, Hannah Lewis and Louise Waite (eds), *The Modern Slavery Agenda: Policy, Politics and Practice in the UK* (Policy Press 2019) 153; Jon Davies and Natalia Ollus, ‘Labour Exploitation as Corporate Crime and Harm: Outsourcing Responsibility in Food Production and Cleaning Services Supply Chains’ (2019) 72(1) Crime, Law and Social Change 87-106, 88.

²³ Virginia Mantouvalou, ‘The Right to Non-Exploitative Work’ in Virginia Mantouvalou (ed), *The Right to Work: Legal and Philosophical Perspectives* (Hart Publishing 2015); Jean Allain, ‘Conceptualizing the Exploitation of Human Trafficking’ in Jennifer Clark and Sasha Poucki (eds), *The Sage Handbook of Human Trafficking and Modern Day Slavery* (Sage Publications 2019) 14; Marija Jovanović, ‘The Essence of Slavery: Exploitation in Human Rights Law’ (2020) 20(4) Human Rights Law Review 674-703, 688; Amy Weatherburn, *Labour Exploitation in Human Trafficking Law* (Intersentia 2021), 30-39.

along a continuum.²⁴ First, it supports the concept of a continuum in capturing the diverse experiences of exploited individuals, and stakeholders demonstrated an acute awareness of this conceptualisation of exploitation. Secondly and most pertinent, building on previous scholarly examinations noting the lack of certainty as to the point on the continuum whereby an exploitative situation becomes one of THB-LE,²⁵ the stakeholder perceptions suggest two factors which distinguish a labour law violation from a criminal law offence of THB-LE in practice: coercion and control of movement. Yet, this expectation that physical restraint is present raises concerns about the actual recognition by stakeholders on the frontline regarding the more subtle forms of control exercised by traffickers and exploiters. In addition, this understanding is problematic as it does not reflect the criteria for the definition of forced labour under the ILO Forced Labour Convention,²⁶ as discussed in Chapter Two.²⁷ Finally, Chapter Five captured a denial on the part of some stakeholders that THB-LE occurs in their jurisdiction.²⁸ This may be because potential VoTs are instead considered as individuals subjected to a labour law violation.

Due to these significant difficulties in distinguishing between labour violations and instances of THB-LE, indicators of THB-LE have a crucial role to play in victim identification. The stakeholder perspectives assessed in Chapter Five lead to the conclusion that it is essential that stakeholders on the frontline receive specialised training

²⁴ Klara Skrivankova, *Between Decent Work and Forced Labour: Examining the Continuum of Exploitation* (Joseph Rowntree Foundation 2010); Christien van den Anker and Ilse van Liempt, 'Conclusion' in Christien van den Anker and Ilse van Liempt (eds), *Human Rights and Migration: Trafficking for Forced Labour* (Palgrave Macmillan 2012) 247; Vladislava Stoyanova, *Human Trafficking and Slavery Reconsidered: Conceptual Limits and States' Positive Obligations in European Law* (Cambridge University Press 2017) 69; Sam Scott, *Labour Exploitation and Work-Based Harm* (Policy Press 2017) 230; Klara Skrivankova, 'Defining Exploitation in the Context of Trafficking – What is a Crime and What is Not' in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 111; Maria Grazia Giammarinaro, 'The Role of the UN Special Rapporteur on Trafficking in Persons, Especially Women and Children' in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 441; Jon Davies, 'From Severe to Routine Labour Exploitation: The Case of Migrant Workers in the UK Food Industry' (2019) 19(3) *Criminology & Criminal Justice* 294-310, 295; Ada Volodko, Ella Cockbain and Bennett Kleinberg, '"Spotting the Signs" of Trafficking Recruitment Online: Exploring the Characteristics of Advertisements Targeted at Migrant Job-Seekers' (2020) 23(3) *Trends in Organized Crime* 7-35, 27.

²⁵ Among others, see Anne T. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010); Amy Farrell and Rebecca Pfeffer, 'Policing Human Trafficking: Cultural Blindness and Organizational Barriers' (2014) 653(1) *The Annals of the American Academy of Political and Social Science* 46-64.

²⁶ Convention concerning Forced or Compulsory Labour (No. 29) (adopted 28 June 1930, entered into force 1 May 1932) 39 UNTS 55 Article 2.

²⁷ See section 2.1.2. of Chapter Two.

²⁸ See section 5.3.1.1. of Chapter Five.

on indicators of THB-LE and are equipped with the tools necessary to apply such indicators in carrying out their functions.²⁹ The stakeholder insights highlighted that although general indicators on THB are useful to a certain extent, the specificities of the different exploitative purposes, including labour exploitation, require a targeted approach. Whilst scholars have stressed the importance of harmonised indicators for identification purposes,³⁰ the stakeholder insights in Chapter Five reveal that it may in fact be necessary to create a shortened operable list of indicators for consistent fieldwork detection purposes across stakeholder cohorts adapted to the national context. This shortened list could focus on factors such as: an absence of a labour contract, retention of identification documents, dependence on the employer, abusive working and living conditions, and restriction of movement. A more comprehensive list may be utilised during the formal identification process. This also highlights the importance of an understanding of the procedure as involving first detection and then formal identification, an understanding of which is absent from Article 10 of the Trafficking Convention, as discussed further in the next section. This dual application of the indicators would facilitate a thorough assessment of the initial circumstances for the purpose of deciding on the establishment of reasonable grounds for referral purposes, and subsequently for making the conclusive decision on VoT status as required under Article 10 of the Trafficking Convention.³¹

6.1.3. The Inadequacy of Article 10 of the Trafficking Convention

The analysis in Chapter Two³² established that the express identification obligations placed on states under Article 10 of the Trafficking Convention³³ improved significantly on the international legal framework by remedying a core gap left by the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and

²⁹ See section 5.3.3. of Chapter Five.

³⁰ Hannah Lewis, Peter Dwyer, Stuart Hodgkinson and Louise Waite, *Precarious Lives: Forced Labour, Exploitation and Asylum* (Policy Press 2015) 148; Klara Skrivankova, 'Defining Exploitation in the Context of Trafficking – What is a Crime and What is Not' in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 117; Andrea J. Nichols and Ashley Cox, 'A Pilot Study Comparing Sex Trafficking Indicators Exhibited by Adult and Minor Service Populations' (2023) 9(2) *Journal of Human Trafficking* 194-211, 194.

³¹ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10.

³² See section 2.2.2.2. of Chapter Two.

³³ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10.

Children.³⁴ Yet, the thesis demonstrates that Article 10 of the Trafficking Convention is inadequate as it only captures the formal identification process.³⁵ In contrast, this thesis conceptualised the identification procedure more broadly as encompassing two core processes, namely detection and formal identification as detailed in-depth in Chapter Three.³⁶ This conceptualisation is grounded in the stakeholder insights which underscored the importance of the detection process within the broader identification procedure. There is significance to the detection process because this step is vital in order to reach the formal identification stage as captured under Article 10 of the Trafficking Convention.³⁷

Therefore, certain aspects of the identification procedure, namely, the designation of CAs for formal identification purposes come within the remit of the requirements under Article 10 of the Trafficking Convention, and thus place a clear obligation on states in that regard. Other central factors for the identification procedure were discussed by stakeholders primarily in the context of the detection of VoTs, particularly in terms of multi-stakeholder co-operation in Chapter Four. Likewise, the analysis in Chapter Three demonstrated the diverse ways in which VoTs are initially detected prior to being referred into the formal NRM process for subsequent identification by designated CAs on the basis of reasonable grounds and a conclusive decision.³⁸ Furthermore, stakeholder perspectives in Chapter Five stressed the importance of training and the application of indicators of THB-LE for both initial detection and formal identification processes. The analysis demonstrates that while there are aspects of the identification procedure that are in fact captured under the legal obligations of Article 10 of the Trafficking Convention, it also highlights that there are other central factors for the identification procedure which are not adequately considered within the text of the legal framework. Thus, in implementing victim identification measures, states must ensure that they recognise and apply this broader conceptualisation of the identification procedure.

³⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319.

³⁵ Vladislava Stoyanova, 'Article 10: Identification of the Victims' in Julia Planitzer and Helmut Sax (eds), *A Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings* (Elgar Publishing 2020) 133.

³⁶ See section 3.2.3. in Chapter Three.

³⁷ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10.

³⁸ See section 3.4.2.1. in Chapter Three.

This limitation of Article 10 of the Trafficking Convention is particularly worrisome in the context of the qualitative data ascertained in this thesis which clearly demonstrates that it is not possible to examine the identification of VoTs without an in-depth appreciation of the identification procedure more broadly to encompass the detection of VoTs. Although detection is an essential step in order to trigger the identification procedure, the fact that such a process is not stipulated under the Trafficking Convention is a missed opportunity. This means that as the Article 10 legal obligation relates only to the formal identification process, it will always be an ex post facto process,³⁹ rather than requiring stakeholders to proactively go out and “look for” potential VoTs.

Although the scholarly literature commonly refers to the problem of ‘self-identification’,⁴⁰ stemming from this thesis’ conceptualisation of the identification procedure as consisting of two distinct processes, it was deemed more appropriate to analyse this issue in terms of requiring a VoT to declare themselves as such, which is referred to as self-declaration. The qualitative data reaffirmed scholarly findings regarding victims’ hesitancy to come forward and report their exploitative experience.⁴¹ However, this doctoral study adds to this body of literature by highlighting a major concern regarding the weight placed by stakeholders on barriers to victim reporting. The stakeholder perspectives in Chapter Three uncover a perceived onus on exploited individuals to report their situation and declare themselves as a VoT to the authorities, rather than the onus being on state authorities to proactively identify VoTs.⁴² The concern here is that shifting the onus from stakeholders (and the state) to the victims of THB-LE is in itself a broader barrier to the effective implementation of the identification obligation. This focus on VoTs to be active in their own identification must be challenged. It does not fully conform to a victim-centred approach, nor is it acceptable to dilute the obligation placed on states and their authorities to proactively identify VoTs under Article

³⁹ Anne T. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010) 282.

⁴⁰ Such as, Masja van Meeteren and Jing Hiah, ‘Self-Identification of Victimization of Labor Trafficking’ in John Winterdyk and Jackie Jones (eds), *The Palgrave International Handbook of Human Trafficking* (Palgrave Macmillan 2020) 1607.

⁴¹ To take two examples, Conny Rijken, ‘Trafficking in Persons: A Victim’s Perspective’ in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 242; Kristen Bracy, Bandak Lul and Dominique Roe-Sepowitz, ‘A Four-year Analysis of Labor Trafficking Cases in the United States: Exploring Characteristics and Labor Trafficking Patterns’ (2021) 7(1) *Journal of Human Trafficking* 35-52, 36.

⁴² See section 3.4.3.2. of Chapter Three.

10 of the Trafficking Convention.⁴³ Scholarly literature has previously identified self-declaration as a VoT⁴⁴ and a fear of authorities⁴⁵ as issues in the prevention of THB. However, that body of literature has not yet captured the risk of frontline stakeholders relying on these barriers as an explanation for a failure to proactively identify victims of THB-LE.

Overall, the legal framework currently captures only the formal identification process. This doctoral study offers a nuanced understanding of the identification procedure to include a detection process on the basis that stakeholders on the ground consider identification as encompassing the two distinct processes. This understanding of the identification procedure must be borne in mind when states attempt to fulfil their obligations under Article 10 of the Trafficking Convention.⁴⁶

6.1.4. The Limitations of the Criminal Justice Approach

Throughout the analysis in Chapters Two, Three, Four and Five, the stakeholder insights revealed a number of limitations to a solely criminal justice-based approach to THB-LE. The stakeholder perspectives offer some support for an integrated approach to THB-LE which draws on different fields of law. Criticisms of the dominant criminal justice approach to THB have been clearly articulated by scholars,⁴⁷ nevertheless the stakeholder

⁴³ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10.

⁴⁴ Carolina Villacampa and Nuria Torres, 'Human Trafficking for Criminal Exploitation: The Failure to Identify Victims' (2017) 23(3) *European Journal on Criminal Policy and Research* 393-408, 405; Joachim Renzikowski, 'Trafficking in Human Beings as a Crime and as a Human Rights Violation' in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 16; Anette Brunovskis and Rebecca Surtees, 'Identification of Trafficking Victims in Europe and the Former Soviet Union' in Jennifer Bryson Clark and Sasha Poucki (eds), *The Sage Handbook of Human Trafficking and Modern Day Slavery* (Sage Publications 2019) 342.

⁴⁵ Guri Tyldum and Anette Brunovskis, 'Describing the Unobserved: Methodological Challenges in Empirical Studies on Human Trafficking' (2005) 43(1-2) *International Migration* 17-34, 25; Madeleine Hulting, 'Hidden Labour: Knowledge Production of Trafficking Illustrated by a Swedish Case Study' in Christien van den Anker and Ilse van Liempt (eds), *Human Rights and Migration: Trafficking for Forced Labour* (Palgrave Macmillan 2012) 155.

⁴⁶ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Article 10.

⁴⁷ Alexandra Amiel, 'Integrating a Human Rights Perspective into the European Approach to Combating the Trafficking of Women for Sexual Exploitation' (2006) 12(1-2) *Buffalo Human Rights Law Review* 5-56; Nilanjana Ray, 'Looking at Trafficking Through a New Lens' (2006) 12(3) *Cardozo Journal of Law & Gender* 909-928, 918; Maria Eriksson, 'The Prevention of Human Trafficking – Regulating Domestic Criminal Legislation through the European Convention on Human Rights' (2013) 82(3) *Nordic Journal of International Law* 339-368, 340; Daphne Demetriou, '"Tied Visas" and Inadequate Labour Protections: A Formula for Abuse and Exploitation of Migrant Domestic Workers in the United Kingdom' (2015) 5 *Anti-Trafficking Review* 69-88; Conny Rijken, Leyla Khadraoui and Marian Tankink, '(Preventing) Secondary Victimization of Trafficking Victims through Law Enforcement Interventions' (2021) 2(1) *Journal of*

perspectives indicate that a criminal justice approach continues to strongly permeate anti-trafficking responses. The pervading practice of designating criminal law enforcement officials as the competent authority for formal identification, as captured in Chapter Three,⁴⁸ is a concern. Relatedly, the stakeholder perspectives in Chapter Four reveal that the focus of joint enterprises with NGOs centres on investigative or prosecutorial priorities over the detection of VoTs.⁴⁹ In reality, therefore, the victim protection measures remain secondary to prosecutorial objectives. Participant perceptions of stakeholder training in Chapter Five, likewise revealed a deficiency in multi-stakeholder trainings and uncovered a tendency to focus on training criminal law enforcement officials.⁵⁰

More specifically, local criminal law enforcement officials were pinpointed throughout the analysis as a cohort of particular concern for identification efforts, adding to the body of scholarship that has identified this cohort as being problematic for anti-trafficking responses.⁵¹ Chapter Four largely pointed towards positive interaction between NGOs and criminal law enforcement officials, but the study participants made a clear distinction between THB-specialist officers and local criminal law enforcement officials.⁵² In this regard, criticism was levelled against local criminal law enforcement officials who were deemed to lack the required awareness of THB-LE in order to engage in co-operative efforts. Relatedly, in the examination of training for relevant stakeholders on THB-LE in Chapter Five, local criminal law enforcement officials were likewise highlighted as a concern.⁵³ The stakeholder perspectives established that this specific cohort requires adequate training in order to enable detection and identification of VoTs, with study participants perceptions illustrating a concern that this cohort of stakeholders may be ill-

Human Trafficking, Enslavement and Conflict-Related Sexual Violence 3-25; Maayan Niezna, 'Paper Chains: Tied Visas, Migration Policies, and Legal Coercion' (2022) 49(2) *Journal of Law and Society* 362-384.

⁴⁸ See section 3.4.1. of Chapter Three.

⁴⁹ See section 4.3.3.1. of Chapter Four.

⁵⁰ See section 5.3.2. of Chapter Five.

⁵¹ Veerendra Mishra, 'Combating Human Trafficking: Gaps in Law Enforcement' in Veerendra Mishra (ed), *Human Trafficking: The Stakeholder Perspective* (Sage Publications 2013) 275; Julie Kaye, John Winterdyk and Lara Quarterman, 'Beyond Criminal Justice: A Case Study of Responding to Human Trafficking in Canada' (2014) 56(1) *Canadian Journal of Criminology and Criminal Justice* 23-48, 35; Yvon Dandurand, 'Human Trafficking and Police Governance' (2017) 18(3) *Police Practice and Research* 322-336, 326.

⁵² Section 4.3.3.1. of Chapter Four.

⁵³ Section 5.3.2. of Chapter Five.

prepared to recognise instances of THB-LE. For these local level stakeholders, training on indicators of THB-LE for detection purposes is vital.

As local criminal law enforcement officials were highlighted as problematic by study participants in different contexts throughout the qualitative data, this raises questions about the feasibility of internal referrals within criminal law enforcement whereby those officials operating at local level fail to recognise instances of THB-LE. The emphasis placed on these local criminal law enforcement officials underscores the inherent recognition of the necessity for a criminal justice response to anti-trafficking efforts. In the context of THB-LE, this criminal justice focus is worrying as THB-LE generally occurs within labour sectors and this may impede criminal law enforcement proactivity whereby certain officials may view this as within the remit of labour inspection services.

Literature on legal approaches to THB(-LE) has asserted that there is ‘both the potential for the criminal law to secure justice’ but at the same time the reality is ‘its frequent failure to do so’.⁵⁴ The stakeholder insights reinforce this literature by revealing that there remains a key role for a criminal justice approach to THB-LE,⁵⁵ but underscores the need to move beyond this conceptualisation alone. Reinforcing Smit’s view that ‘enforcement of labour law can complement criminal law enforcement’,⁵⁶ study participants iterated their understanding that combining such powers is necessary and beneficial. Nonetheless, no consensus has yet been achieved on the most appropriate or effective legal approach to address THB-LE.⁵⁷

⁵⁴ Marie Bussey-Garza, Michelle M. Dempsey, Christian Martin and Shea M. Rhodes, ‘Where is the Justice in Criminal Justice?’ in Rochelle L. Dalla and Donna Sabella (eds), *Routledge International Handbook of Human Trafficking: A Multi-Disciplinary and Applied Approach* (Routledge 2020) 136.

⁵⁵ David Weissbrodt and Stephen Meili, ‘Recent Developments in the Human Rights of Trafficked Persons’ in Christien van den Anker and Ilse van Liempt (eds), *Human Rights and Migration: Trafficking for Forced Labour* (Palgrave Macmillan 2012) 194.

⁵⁶ Monika Smit, ‘Trafficking in Human Beings for Labour Exploitation. The Case of the Netherlands’ (2011) 14(2) *Trends in Organized Crime* 184-197, 195.

⁵⁷ Vanessa E. Munro, ‘A Tale of Two Servitudes: Defining and Implementing a Domestic Response to Trafficking of Women for Prostitution in the UK and Australia’ (2005) 14(1) *Social & Legal Studies* 91-114, 93.

The analysis in Chapter Three concurred with scholarly arguments⁵⁸ and international organisations' observations⁵⁹ as to the unsatisfactory placement of the formal identification mandate and designation as a CA solely within that of criminal law enforcement officials. This is especially pressing in circumstances whereby the stakeholder insights revealed that these criminal law officials are rarely the first stakeholder to encounter (potential) victims of THB-LE,⁶⁰ which differs markedly from previous studies⁶¹ reporting that they are usually the first point of contact for VoTs. However, study participant perspectives, as captured in Chapter Three, show that the expansion of this mandate to other relevant stakeholders is not a straightforward task. In fact, the stakeholder insights highlighted a resistance on the part of NGOs and labour inspectors to take on this additional formal duty.⁶² Such resistance was explained in part by lack of capacity, concerns for overburdening authorities, and most notably, due to conflicting duties for those stakeholders who may end up with a dual role of identifying VoTs and monitoring immigration-related issues. The findings in Chapter Three demonstrate that states aiming to expand this mandate to include a broader range of stakeholders will need to address tensions between victim protection, criminal justice objectives and immigration-related duties. One way through which states could achieve this would be by mapping the responsibilities of each stakeholder cohort with the intention of capturing the conflicting duties, as elucidated in section 6.1.6.

The findings of this thesis suggest that engaging with the conceptualisation of the identification procedure as consisting of two distinct processes of detection and formal identification, could facilitate the further engagement of relevant stakeholders. For instance, from the qualitative analysis it is evident that a broad range of stakeholders are

⁵⁸ Vladislava Stoyanova, *Human Trafficking and Slavery Reconsidered: Conceptual Limits and States' Positive Obligations in European Law* (Cambridge University Press 2017) 94; Conny Rijken, 'Trafficking in Persons: A Victim's Perspective' in Ryszard Piotrowicz, Conny Rijken and Baerbel Heide Uhl (eds), *Routledge Handbook of Human Trafficking* (Routledge 2018) 248.

⁵⁹ For instance, the Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Survey Report 2021 of Efforts to Implement OSCE Commitments and Recommended Actions to Combat Trafficking in Human Beings* (OSCE 2022) 66.

⁶⁰ See section 3.4.2.1. of Chapter Three.

⁶¹ Deborah Grubb and Katherine Bennett, 'The Readiness of Local Law Enforcement to Engage in US Anti-Trafficking Efforts: An Assessment of Human Trafficking Training and Awareness of Local, County, and State Law Enforcement Agencies in the State of Georgia' (2012) 13(6) *Police Practice and Research* 487-500, 489; Ana Cunha, Mariana Gonçalves and Marlene Matos, 'Exploring Perceptions of Portuguese Police About Human Trafficking Victims and Perpetrators' (2022) 77(2) *Crime, Law and Social Change* 253-273, 268.

⁶² See section 3.4.1.1. of Chapter Three.

and should be active in the detection of VoTs. Nonetheless, these factors are important and must be recognised in attempts to engage in multi-stakeholder efforts. As such, the calls for a structured approach by stakeholders in Chapter Four⁶³ and subsequent implementation should be cognisant of these issues.

6.1.5. Multi-stakeholder Engagement as Central to an Integrated Approach

Stakeholder insights demonstrated that they do not necessarily advocate stringently for one particular legal approach to THB-LE. Instead, their priority in practical terms is engaging in co-operative efforts in order to most effectively identify VoTs and this requires input from a diverse range of stakeholders at different points throughout the identification procedure. The combined stakeholder perspectives suggest that an integrated approach which draws on human rights law, labour law and criminal law, as articulated by Rijken,⁶⁴ may be the most fruitful conceptualisation for anti-trafficking efforts. The analysis in this doctoral study reveals that multi-stakeholder engagement has a crucial role to play in the achievement of such an integrated approach.

As demonstrated in Chapter Four, it is well recognised by international organisations,⁶⁵ monitoring bodies⁶⁶ and scholars⁶⁷ that a multi-agency or multi-stakeholder approach is key. Yet, the bottom-up stakeholder insights reveal hindrances to the realisation of a multi-stakeholder integrated approach to THB-LE. The findings in Chapter Four show that European states have implemented multi-stakeholder co-operation to varying degrees, but challenges persist in making these effective in the context of THB-LE. Whilst the analysis uncovered a strong commitment by stakeholders to co-operation, the qualitative data revealed that this co-operation tends to materialise in the form of dual partnerships rather than a truly multi-stakeholder approach. Despite some positive accounts of stakeholder co-operation between public authorities, the stakeholder

⁶³ See section 4.3.3.2. of Chapter Four.

⁶⁴ Conny Rijken, 'Trafficking in Human Beings for Labour Exploitation: Cooperation in an Integrated Approach' (2013) 21(1) *European Journal of Crime, Criminal Law and Criminal Justice* 9-35.

⁶⁵ For instance, the Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Combating Trafficking As Modern-Day Slavery: A Matter of Rights, Freedoms and Security* (OSCE 2010) 11.

⁶⁶ To take one example, the United States Department of State, *Trafficking in Persons Report* (USDS 2023) 34.

⁶⁷ See, *inter alia*, Sarah Elliott and Megan Denise Smith, 'Simulating a Multi-agency Approach for the Protection of Trafficked Persons in Migration and Displacement Settings' (2020) 6(2) *Journal of Human Trafficking* 168-181, 169; June Kane, 'Making Money Out of Misery: Trafficking for Labor Exploitation' in Mary C. Burke (ed), *Human Trafficking: Interdisciplinary Perspectives* (3rd edn, Routledge 2022) 55.

perspectives point towards gaps in current co-operative efforts involving civil society organisations⁶⁸ even though much emphasis is placed on the need to engage with such relevant support organisations under the Trafficking Convention.⁶⁹ Writing in 2013, Rijken criticised that ‘new stakeholders involved in combating this form of THB are still not familiar with their new roles and tasks’,⁷⁰ but the findings in this thesis contrast with this stance. Stakeholders indicated an astute awareness of their potential to contribute to efforts on THB-LE, especially in terms of the detection process. However, as captured in Chapter Four, the problem is that either they are not fully integrated in the anti-trafficking response, as in the case of trade unions,⁷¹ or they display a certain level of resistance to their further integration into the identification procedure, as shown in Chapter Three.⁷²

The stakeholder perspectives lead to the conclusion that while there is a preference for a more inclusive and comprehensive identification procedure that is not heavily dependent on criminal justice stakeholders, the achievement of this in reality is another question and a number of tensions must be addressed by states prior to achieving this more comprehensive multi-stakeholder approach to identification. In addition, while scholarly literature,⁷³ monitoring bodies⁷⁴ and international organisations⁷⁵ have persistently asserted the importance of training frontline stakeholders, the examination in Chapter Five uncovered a failure to facilitate multi-stakeholder trainings, with the stakeholder insights revealing that training is largely institution specific.⁷⁶ This runs the risk of only equipping criminal justice stakeholders, to the detriment of drawing on the experiences of stakeholders operating in the labour law field. If European states facilitate these multi-

⁶⁸ See section 4.3.3.1. of Chapter Four.

⁶⁹ Council of Europe Convention on Action against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008) CETS 197 Articles 5(6), 10, 12(5) and 35.

⁷⁰ Conny Rijken, ‘Trafficking in Human Beings for Labour Exploitation: Cooperation in an Integrated Approach’ (2013) 21(1) *European Journal of Crime, Criminal Law and Criminal Justice* 9-35, 10.

⁷¹ See section 4.3.3.2. of Chapter Four. See also, Eliza Marks and Anna Olsen, ‘The Role of Trade Unions in Reducing Migrant Workers’ Vulnerability to Forced Labour and Human Trafficking in the Greater Mekong Subregion’ (2015) 5 *Anti-Trafficking Review* 111-128, 112.

⁷² See section 3.4.1.1. of Chapter Three.

⁷³ *Inter alia*, Anne T. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010) 386; Alice Bosma and Conny Rijken, ‘Key Challenges in the Combat of Human Trafficking: Evaluating the EU Trafficking Strategy and EU Trafficking Directive’ (2016) 7(3) *New Journal of European Criminal Law* 315-330, 323.

⁷⁴ GRETA, *Guidance Note on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation* (Council of Europe 2021) 14.

⁷⁵ For example, the Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Survey Report 2021 of Efforts to Implement OSCE Commitments and Recommended Actions to Combat Trafficking in Human Beings* (OSCE 2022) 20.

⁷⁶ See section 5.3.2. of Chapter Five.

stakeholder training programmes, but also require diverse stakeholder engagement, it would have two positive implications, namely, that individual stakeholders are equipped to identify VoTs and that it can contribute towards ameliorating some of the tensions existing between different stakeholders which may enable a more collaborative approach to identification.

In addressing these issues, the findings in Chapter Four pointed towards two important factors for improving the identification procedure and multi-stakeholder engagement, namely trust building and information exchange.⁷⁷ Scholars have identified that tensions may exist between different stakeholders due to *inter alia* conflicting agendas or diverging priorities⁷⁸ and stakeholders in this doctoral study reaffirmed the existence of such lack of trust. The stakeholder perceptions indicated that, to a certain extent, this can be explained by the fact that on the ground certain stakeholder cohorts have failed to co-operate in reality. In other instances some stakeholders are not included in roundtable discussions which leads to a missed opportunity to exchange views and build trust levels. Further to this, the participant bottom-up insights show that such sharing of information is essential in advancing the anti-trafficking effort and ensuring that stakeholders are not operating individually, but rather complement and assist one another in achieving the goal of detecting, identifying and assisting victims of THB-LE. The analysis led to the recommendation of introducing formal agreements for information exchange to clearly set out the requirement of each stakeholder, the restrictions placed on the data (if any), and the purposes for which the data may be used.⁷⁹ It was further recommended that such formalised agreements be accompanied by guidelines on how to transfer the appropriate information between each stakeholder in line with data protection requirements. The analysis also points towards the potential benefit of designating a particular contact point within public authorities so as to streamline such information exchange and referral.

⁷⁷ See section 4.3.1. of Chapter Four.

⁷⁸ Such as, Suzanne L.J. Kragten-Heerdink, Corinne E. Dettmeijer-Vermeulen and Dirk J. Korf, 'More Than Just "Pushing and Pulling": Conceptualizing Identified Human Trafficking in the Netherlands' (2018) 64(13) *Crime & Delinquency* 1765-1789, 1773; Rita Haverkamp, 'Victims of Human Trafficking: Considerations from a Crime Prevention Perspective' in Rita Haverkamp, Ester Herlin-Karnell and Claes Lernerstedt (eds), *What is Wrong with Human Trafficking? Critical Perspectives on the Law* (Hart Publishing 2019) 68.

⁷⁹ Such information sharing agreements should adhere to the factors identified in the Council of Europe, 'Explanatory Memorandum to Recommendation CM/Rec(2022)21 of the Committee of Ministers to Member States on Preventing and Combating Trafficking in Human Beings for the Purpose of Labour Exploitation' (27 September 2022) CM(2022)141-add5final para 21.

6.1.6. Concluding Remarks and Key Recommendations

The findings of this thesis shed light on the potential and limitations of both the international legal framework on identification and the identification procedure at the national level. The analysis enabled a consideration of the feasibility of achieving an integrated legal approach to identification in the context of THB-LE. There are positive findings from the qualitative analysis including a commitment by stakeholders to engage in co-operative efforts, but there is also the recognition and awareness of core barriers in practice. However, overall the data suggests that European states remain a few steps away from realising a comprehensive multi-stakeholder approach to identification in reality. Ultimately, this thesis argues that to make identification of VoTs more effective, existing tensions and limited understandings of THB-LE must be addressed. It makes the case for the development of structured identification mechanisms that would better reflect the realities of THB-LE and stakeholder on the ground experiences.

Building on and complementing the recommendations made in Chapters Three, Four and Five, this section presents four concrete practical recommendations grounded in the qualitative data to enhance the identification procedure in the context of THB-LE. These are measures which could be implemented by states as a starting point without the requirement of strict legal reform.

- (a) States should ensure that policymakers set out an understanding of victim identification as encompassing two distinct processes in THB identification protocols and national policy documents. Such documents should detail the two processes of detection and formal identification in order to reflect the on the ground understanding of the identification of VoTs and provide the necessary clarification on this complex procedure.
- (b) States should map out the individual roles and duties of relevant stakeholders with the aim of identifying possible areas of convergence in victim identification. Such an exercise would reveal any conflicting duties and agendas which must be resolved for streamlined and consistent identification practices. This mapping should adopt a broad approach to capture public authorities, including labour inspectors, but also ensure that the contributions of civil society organisations are sufficiently assessed. It can be structured in line with the conceptualisation of the identification procedure

as involving two distinct processes, in others words, to include the most relevant stakeholders in both the detection and formal identification processes.

- (c) On the basis of the mapping exercise and learning from existing structures to address THB-SE, states should endeavour to develop a more formalised approach to the detection and identification of THB-LE. As part of this more structured approach, it is imperative that European states actively ensure that labour law stakeholders, in particular the under-utilised trade unions, are included in convened roundtables and multidisciplinary expert groups. Further to this, at a minimum, NGOs should have a consulting role during the formal identification process. Therefore, a structured approach to the identification of THB-LE should not be restricted only to the coordination of public authorities, rather a more holistic approach encompassing civil society organisations in the appropriate manner is required.
- (d) States should conduct a pilot project on designating a contact point within the most suitable organisation in their national context, to act as a focal point for information exchange between the relevant professional stakeholders active in the detection and identification of VoTs. This would require the development of data sharing agreements amongst all relevant stakeholders who may use this service. It would be particularly useful in the organisation of proactive fieldwork operations seeking to uncover instances of THB-LE.

6.2. Future Research

This doctoral study examined European stakeholder experiences of identifying victims of THB-LE. It presented important findings which contribute to a better understanding of the practical implementation of VoT identification by states. Concurrently, it revealed two particular areas in need of further investigation.

First, research should further assess the potential role that trade unions and employers organisations could play in anti-trafficking efforts. They have a number of advantages in terms of accessing worksites, engaging with employers and workers, and monitoring working conditions and worker rights compliance. Yet, the scholarly body has failed to fully examine these stakeholders' potential contribution.⁸⁰ As a scoping study, a survey

⁸⁰ Limited exceptions to this include Jeroen Beirnaert, 'A Trade Union Perspective on Combating Trafficking and Forced Labour in Europe' in Conny Rijken (ed), *Combating Trafficking in Human Beings for Labour Exploitation* (Wolf Legal Publishers 2011); Michele Ford, 'Trade Unions, Forced Labour and

of trade unionists to ascertain their wish to be involved (or not) in such work and the limitations faced by this cohort would be useful for future attempts to integrate trade unions within multi-stakeholder THB-LE initiatives. In advancing the discourse on the most appropriate legal approach to address THB-LE, a better understanding of the potential contribution of trade unions and employer organisations is critical. This is particularly necessary with regard to the adoption of a labour law approach.

Secondly, considerable work is needed to determine the implications of restrictions on data sharing between relevant institutions. More research on the mechanisms underlying this information dissemination process is required to develop a deeper understanding of the co-operative relationships between relevant stakeholders, both public authorities and civil society organisations. There are a number of factors impacting such interaction and exchange of information, but there is no clarity as to the exact means, methods or scope of information that is appropriate for such transmission. For EU Member states, in particular, deference must be given to the General Data Protection Regulation⁸¹ and the Law Enforcement Directive.⁸²

Human Trafficking' (2015) 5 Anti-Trafficking Review 11-29; Eliza Marks and Anna Olsen, 'The Role of Trade Unions in Reducing Migrant Workers' Vulnerability to Forced Labour and Human Trafficking in the Greater Mekong Subregion' (2015) 5 Anti-Trafficking Review 111-128.

⁸¹ Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119.

⁸² Directive 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data (Law Enforcement Directive) OJ L 119.

Appendices

Appendix A

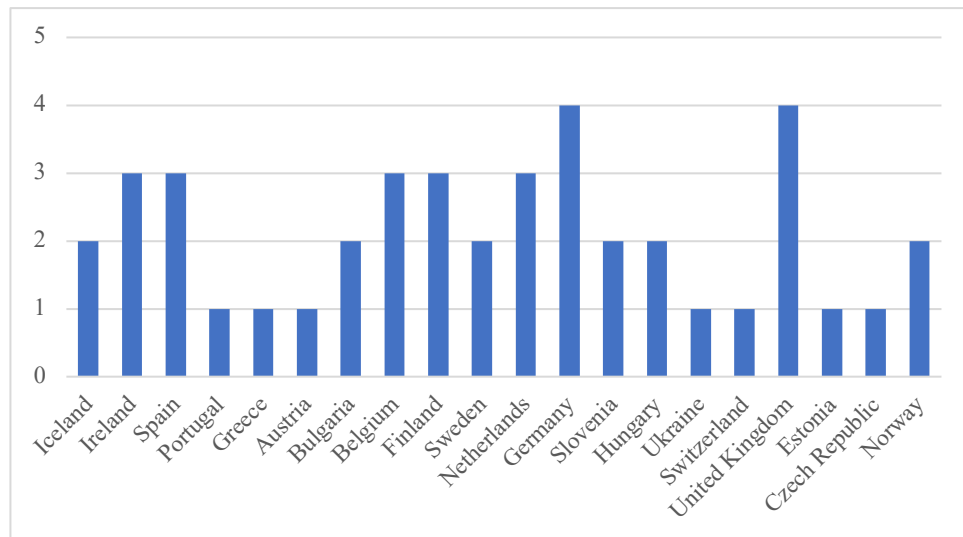
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Council of Europe Convention on Action against Trafficking in Human Beings: States Signature, Ratification and Entry Into Force

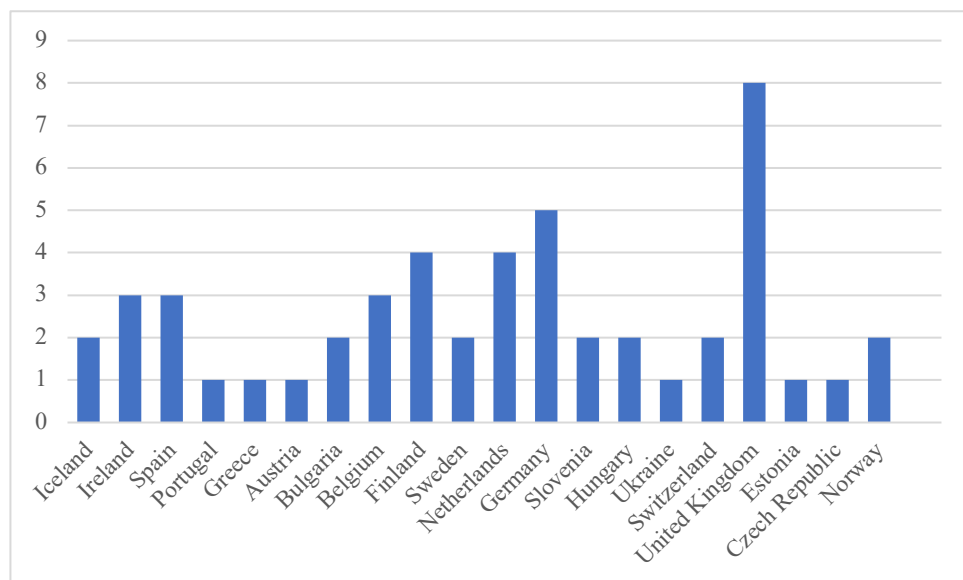
Country	Signature	Ratification	Entry Into Force
<i>Austria</i>	16 May 2005	12 October 2006	1 February 2008
<i>Belgium</i>	17 November 2005	27 April 2009	1 August 2009
<i>Bulgaria</i>	22 November 2006	17 April 2007	1 February 2008
<i>Czech Republic</i>	2 May 2016	29 March 2017	1 July 2017
<i>Estonia</i>	3 February 2010	5 February 2015	1 June 2015
<i>Finland</i>	29 August 2006	30 May 2012	1 September 2012
<i>Germany</i>	17 November 2005	19 December 2012	1 April 2013
<i>Greece</i>	17 November 2005	11 April 2014	1 August 2014
<i>Hungary</i>	10 October 2007	4 April 2013	1 August 2013
<i>Iceland</i>	16 May 2005	23 February 2012	1 June 2012
<i>Ireland</i>	13 April 2007	13 July 2010	1 November 2010
<i>Netherlands</i>	17 November 2005	22 April 2010	1 August 2010
<i>Norway</i>	16 May 2005	17 January 2008	1 May 2008
<i>Portugal</i>	16 May 2005	27 February 2008	1 June 2008
<i>Slovenia</i>	3 April 2006	3 September 2009	1 January 2010
<i>Spain</i>	9 July 2008	2 April 2009	1 August 2009
<i>Sweden</i>	16 May 2005	31 May 2010	1 September 2010
<i>Switzerland</i>	8 September 2008	17 December 2012	1 April 2013
<i>Ukraine</i>	17 November 2005	29 November 2010	1 March 2011
<i>United Kingdom</i>	23 March 2007	17 December 2008	1 April 2009

Appendix B

Geographical Location and Number of Interviews and Interviewees



Number of Interviews Conducted Across the Studied States (Total 42)



Number of Interviewees Across the Studied States (Total 50)

Appendix C

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States Instrument Ratification and Organisational Membership

Country	Palermo Protocol	Council of Europe	European Union	OSCE	ILO
<i>Austria</i>	√	√	√	√	√
<i>Belgium</i>	√	√	√	√	√
<i>Bulgaria</i>	√	√	√	√	√
<i>Czech Republic (Czechia)</i>	√	√	√	√	√
<i>Estonia</i>	√	√	√	√	√
<i>Finland</i>	√	√	√	√	√
<i>Germany</i>	√	√	√	√	√
<i>Greece</i>	√	√	√	√	√
<i>Hungary</i>	√	√	√	√	√
<i>Iceland</i>	√	√	-----	√	√
<i>Ireland</i>	√	√	√	√	√
<i>The Netherlands</i>	√	√	√	√	√
<i>Norway</i>	√	√	-----	√	√
<i>Portugal</i>	√	√	√	√	√
<i>Slovenia</i>	√	√	√	√	√
<i>Spain</i>	√	√	√	√	√
<i>Sweden</i>	√	√	√	√	√
<i>Switzerland</i>	√	√	-----	√	√
<i>Ukraine</i>	√	√	-----	√	√
<i>United Kingdom</i>	√	√	-----	√	√

Appendix D

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Indicative Topic Guide

Introductory Questions:

1. Can you tell me a little about your organisation?
2. What is the prevalence of human trafficking/forced labour in your jurisdiction?
3. Have you encountered situations of labour exploitation that may not amount to human trafficking/forced labour?

Identification:

4. Do you have indicators or a specific policy in place to guide you in identifying victims?
5. Do you identify potential victims prior, during or after exploitation has occurred?
6. What are the barriers to successful identification of these victims?
7. In what sectors are these victims most/least visible?
8. How many victims of human trafficking for the purpose of labour exploitation/forced labour have you/your organisation identified annually?
9. Do you feel confident with the current National Referral Mechanism?
10. What do you think are the consequences of non-identification?
11. Does the media have a role to play in the identification process?

Investigation/Inspection:

12. Do you think that a criminal investigation/labour inspection is important? Why?
13. Is there a profile of exploiters/traffickers in Ireland?
14. Have you been involved with/or contributed to criminal investigations/labour inspections?
15. Could you outline how the investigation/inspection operates? What techniques/strategies are used?
16. Have you encountered situations where victims have committed a criminal/labour law offence as a result of their exploitation and what was the outcome?
17. Overall, do you feel that your investigative/inspection powers/remit are sufficient?

Concluding Questions:

18. In your line of work, is there a link between the identification and investigation procedures?
19. What do you think the State could do to enable you to play a more active role in the identification and/or investigation of cases of human trafficking for labour exploitation/forced labour?
20. Have you collaborated with other agencies in these processes? What agencies? How beneficial is this?
21. Have you received specific training in identifying/investigating/inspecting cases of human trafficking for labour exploitation/forced labour?
22. What is your opinion of the current legal response to, and framework on, human trafficking? Are there changes that could be made to improve identification/investigation/inspection procedures?
23. Is your organisation sufficiently resourced?
24. What has been the impact of COVID in this regard?
25. Do you have any other final thoughts/recommendations?

Appendix E

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Description of Transcripts

Transcript Number	Jurisdiction	Stakeholder Type
1	Iceland	Trade Union
2	UK	Criminal Law Enforcement
3	Switzerland	Trade Union
4	Norway	Trade Union
5	Germany	Criminal Law Enforcement (THB Unit)
6	Austria	NGO (focused on assisting migrant women)
7	Spain	Trade Union
8	UK	NGO (THB focused)
9	Ukraine	NGO (assisting victims of violence)
10	Estonia	Labour Inspector
11	Belgium	NGO (THB focused)
12	Finland	Labour Inspector (Senior Office)
13	Hungary	NGO (supporting migrant workers)
14	Germany	NGO (focused on assisting migrant women)
15	Finland	Criminal Law Enforcement (Chief Superintendent)
16	UK	NGO (THB focused)
17	Germany	NGO (THB-LE focused)
18	The Netherlands	NGO (THB focused)
19	Norway	NGO (supporting vulnerable populations)
20	Belgium	NGO (THB focused)
21	Ireland	NGO (supporting migrant workers)
22	Spain	Criminal Law Enforcement (Head of Unit)
23	Greece	NGO (THB focused)
24	Sweden	Trade Union
25	Bulgaria	NGO (supporting vulnerable populations)
26	Spain	Labour Inspector
27	Sweden	NGO (THB focused)
28	Slovenia	Labour Inspector
29	Iceland	NGO (assisting victims of violence)
30	Ireland	Labour Inspector (Senior Officer)
31	Ireland	Trade Union
32	Bulgaria	Labour Inspector
33	Portugal	NGO (working with victims of crime)
34	Germany	Trade Union
35	Slovenia	NGO (THB focused)
36	Belgium	NGO (specialising in assisting undocumented migrants)
37	The Netherlands	NGO (working in the area of labour exploitation)
38	Czechia	Labour Inspector (Senior Officer)
39	Finland	Trade Union
40	UK	NGO (focused on Modern Slavery)
41	The Netherlands	Trade Union
42	Hungary	Criminal Law Enforcement (An inspector)

(*full interview transcripts on file with author)

Appendix F

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Ethical Approval from Maynooth University Research Ethics Committee

MAYNOOTH UNIVERSITY RESEARCH ETHICS COMMITTEE

MAYNOOTH UNIVERSITY,
MAYNOOTH, CO. KILDARE, IRELAND



Dr Carol Barrett
Secretary to Maynooth University Research Ethics Committee

22 October 2020

Muiread Murphy
Department of Law
Maynooth University

Re: Application for ethical approval for a Project entitled: The Investigation and Identification of Severe Labour Exploitation: A Comparative Study

Dear Muiread,

The above project has been evaluated under Tier 2 process, expedited review and we would like to inform you that ethical approval has been granted.

Any deviations from the project details submitted to the ethics committee will require further evaluation. This ethical approval will expire on 21/01/2022.

Kind Regards,

A handwritten signature in blue ink, appearing to read "Carol Barrett".

Dr Carol Barrett
Secretary,
Maynooth University Research Ethics Committee

C.c. Dr Clíodhna Murphy, Department of Law
Dr David Doyle, Department of Law

Appendix G

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Consent Form



Consent Form

I.....agree to participate in Muiread Murphy's research study titled 'The Investigation and Identification of Severe Labour Exploitation: A Comparative Perspective'.

Please tick each statement below:

The purpose and nature of the study has been explained to me verbally & in writing. I've been able to ask questions, which were answered satisfactorily. ☐

I am participating voluntarily. ☐

I give permission for my interview with Muiread Murphy to be audio recorded ☐

I give permission for my consent to be orally recorded in circumstances where the interview is conducted over the phone or on Microsoft Teams. ☐

I understand that I can withdraw from the study, without repercussions, at any time, whether that is before it starts or while I am participating. ☐

I understand that I can withdraw permission to use the data right up to publication. ☐

It has been explained to me how my data will be managed and that I may access it on request. ☐

I understand the limits of confidentiality as described in the information sheet ☐

I understand that my data, in an anonymous format, may be used in further research projects and any subsequent publications if I give permission below: ☐

I agree to quotation/publication of extracts from my interview ☐

I do not agree to quotation/publication of extracts from my interview ☐

I agree for my data to be used for further research projects ☐

I do not agree for my data to be used for further research projects ☐

Signed.....

Date.....

Participant Name in block capitals

I the undersigned have taken the time to fully explain to the above participant the nature and purpose of this study in a manner that they could understand. I have explained the risks involved as well as the possible benefits. I have invited them to ask questions on any aspect of the study that concerned them.

Signed.....

Date.....

Researcher Name in block capitals

If during your participation in this study you feel the information and guidelines that you were given have been neglected or disregarded in any way, or if you are unhappy about the process, please contact the Secretary of the Maynooth University Ethics Committee at research.ethics@mu.ie or +353 (0)1 708 6019. Please be assured that your concerns will be dealt with in a sensitive manner.

For your information the Data Controller for this research project is Maynooth University, Maynooth, Co. Kildare. Maynooth University Data Protection officer is Ann McKeon in Humanity house, room 17, who can be contacted at ann.mckeon@mu.ie. Maynooth University Data Privacy policies can be found at <https://www.maynoothuniversity.ie/data-protection>.

Appendix H

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Information Sheet



Information Sheet (Sample)

Purpose of the Study.

I am Muiread Murphy, a doctoral student, in the Department of Law, Maynooth University. As part of the requirements for my doctoral degree, I am undertaking a research study under the supervision of Dr. Clíodhna Murphy and Dr. David Doyle.

The study is concerned with the investigation and identification of severe labour exploitation, which encompasses the offences of human trafficking, modern slavery, servitude and forced labour.

What will the study involve? The study will involve a single semi-structured interview at a location designated by you. Due to current Covid-19 restrictions, this interview may be facilitated over the phone or through a Microsoft Teams video call.

Who has approved this study? This study has been reviewed and received ethical approval from Maynooth University Research Ethics committee. You may have a copy of this approval if you request it.

Why have you been asked to take part? You have been asked because you have practical experience in the identification and investigation of offences captured by the term severe labour exploitation.

Do you have to take part? No, you are under no obligation whatsoever to take part in this research. However, I hope that you will agree to take part and give me some of your time to participate in a one-to-one interview. If you decide to do so, you will be asked to sign a consent form and will be given a copy and the information sheet for your own records. In the case of a phone interview or a Microsoft teams interview, your consent will be orally recorded if you decide to partake in this research. If you decide to take part, you are still free to withdraw at any time without giving a reason and/or to withdraw your information up until such time as the research findings are published. A decision to withdraw at any time, or a decision not to take part, will not affect your relationships with Maynooth University.

What information will be collected? The information that will be collected focuses on issues relating to identifying and investigating cases of severe labour exploitation in your jurisdiction.

This will involve questions related to professional experience working in the area, obstacles encountered in practice and recommendations for future developments.

Will your participation in the study be kept confidential? Yes, all information that is collected about you during the course of the research will be kept confidential. No names will be identified at any time, unless you give explicit consent to allow this. All hard copy information will be held in a locked cabinet at the researchers' place of work, electronic information will be encrypted and held securely on MU PC or servers and will be accessed only by Muiread Murphy. No information will be distributed to any other unauthorised individual or third party. If you so wish, the data that you provide can also be made available to you at your own discretion.

It must be recognised that, in some circumstances, confidentiality of research data and records may be overridden by courts in the event of litigation or in the course of investigation by lawful authority. In such circumstances the University will take all reasonable steps within law to ensure that confidentiality is maintained to the greatest possible extent.

What will happen to the information which you give? All the information you provide will be kept at Maynooth University in such a way that it will not be possible to identify you. On completion of the research, the data will be retained on the MU server. After ten years, all data will be destroyed (by the PI). Manual data will be shredded confidentially and electronic data will be reformatted or overwritten by the PI in Maynooth University.

What will happen to the results? The research will be written up and presented as an integral part of a doctoral research project. It may also be presented at National and International conferences and may be published in academic journals. A copy of the research findings will be made available to you upon request.

What are the possible disadvantages of taking part? I do not envisage any negative consequences for you in taking part. Although unlikely, if any distress is caused to you during discussions of any particularly traumatic cases, contact details for services that you may access will be provided.

What if there is a problem? At the end of the interview, I will discuss with you how you found the experience. You may contact my supervisor Dr. Clíodhna Murphy (cliodhna.murphy@mu.ie) if you feel the research has not been carried out as described above.

Any further queries? If you need any further information, you can contact me: Muiread Murphy, [number removed], (muiread.murphy.2014@mumail.ie).

If you agree to take part in the study, please complete and sign the consent form overleaf.

Thank you for taking the time to read this

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