Trafficking in Human Beings: The Positive Obligations of States under Article 4 of the European Convention on Human Rights and Fundamental Freedoms

The Obligation for Protective Measures in Cyprus

Source: Cyprus Expat Blog

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Tilburg, December 2011
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<tr>
<td>AIS</td>
<td>Police Aliens and Immigration Service (Cyprus)</td>
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<td>CEDAW</td>
<td>Convention on the Elimination of all Forms of Discrimination against Women</td>
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<td>CoE</td>
<td>Council of Europe</td>
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<td>ECHR</td>
<td>European Convention on Human Rights and Fundamental Freedoms</td>
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<td>EctHR</td>
<td>European Court on Human Rights, Strasbourg</td>
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<td>EU</td>
<td>European Union</td>
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<td>GRETA</td>
<td>Group of Experts on Action against Trafficking in Human Beings</td>
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<td>ICJ</td>
<td>International Court of Justice</td>
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<td>ICTY</td>
<td>International Criminal Tribunal for the former Yugoslavia</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<tr>
<td>NAP</td>
<td>National Action Plan against Trafficking in Human Beings (Cyprus)</td>
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<tr>
<td>NGO</td>
<td>Non-governmental organization</td>
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<td>NRM</td>
<td>National Referral Mechanism</td>
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<td>ODIHR</td>
<td>Office for Democratic Institutions and Human Rights</td>
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<td>OHCHR</td>
<td>Office of the United Nations High Commissioner for Human Rights</td>
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<td>OSCE</td>
<td>Organization for Security and Cooperation in Europe</td>
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<td>THB</td>
<td>Trafficking in Human Beings</td>
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<tr>
<td>TRM</td>
<td>Transnational Referral Mechanism</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNODC</td>
<td>United Nations Office on Drugs and Crime</td>
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<td>UNTOC</td>
<td>United Nations Convention against Transnational Organized Crime</td>
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<tr>
<td>VAPP</td>
<td>Victims Assistance and Protection Package</td>
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<tr>
<td>3 Ds</td>
<td>Denial, Detention, Deportation</td>
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<tr>
<td>3 Ps</td>
<td>Prevent, Protect and Prosecute</td>
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**Introduction**

*The Rantsev Case and Trafficking in Human Beings*

Trafficking in Human Beings (THB) for sexual and labour exploitation is a severe violation of Human Rights. Yet, while efforts both on a European as well as international level, aim to combat and eradicate this heinous crime, reality depicts a worldwide rise in THB.\(^1\) Trafficking in Human Beings is a truly lucrative business for the perpetrators of organized crime, whilst predominantly targeting the most vulnerable groups in society.\(^2\) The European and international discourse on Trafficking in Human Beings has recognized that the previous criminal law approach to THB in some countries is ineffective in combating this crime.\(^3\) This is evident in the global rise of THB. The criminal law approach, with a narrow focus on the prosecution of perpetrators, disregarded the plight of the victims of THB and their highly vulnerable position.\(^4\) Thus an increased focus has been given to a comprehensive approach to trafficking in human beings, which must implement a human rights based approach, in order to place the victims at the center of focus, whilst aiming to strengthen their position and protection.\(^5\) The 2010 judgment of *Rantsev v Cyprus and Russia* at the European Court of Human Rights (ECtHR) reflects the discourse on a more comprehensive approach to Trafficking in Human Beings\(^6\) and was a watershed as regards the positive obligations of state parties, in combating THB.

In its landmark judgment in *Rantsev*, the European Court of Human Rights broadly extended’ the positive obligations of states, party to the European Convention on Human Rights and Fundamental Freedoms (ECHR) under its Article 4.\(^8\) Article 4 provides safeguards against slavery, servitude and forced or compulsory labour.\(^9\) Article 4 does not mention Trafficking in Human Beings but was established to fall within the scope of Article 4 ECHR for the first time in *Rantsev*.\(^10\) The 2005 *Siliadin* judgment considered the plight of an underage Togolese girl to qualify as servitude, forced or compulsory labour, whilst falling short of slavery under Article 4 ECHR.\(^11\) In *Siliadin*, the term Trafficking in Human Beings was not employed but the modern

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2 Ibid
4 Ibid
5 Ibid
6 Rantsev v Cyprus and Russia (App. No. 25965/04)
8 Rantsev
9 Ibid
10 Ibid
11 Siliadin v France (App. No. 73316/01)
forms of slavery and servitude as identified by both the United Nations (UN) and the Council of Europe (CoE), recognize the close link of these concepts to Trafficking in Human Beings.\textsuperscript{12}

In \textit{Rantsev}, the Court confirmed this view, whilst establishing THB to fall under Article 4.\textsuperscript{13} \textit{Rantsev} elaborated on and extended the positive obligations of state parties under Article 4 ECHR, as regards Trafficking in Human Beings.\textsuperscript{14} The three positive obligations of States confirmed or established in \textit{Rantsev} under Article 4 are (1) to put in place an appropriate legal – administrative framework to combat THB (\textit{Siliadin}),\textsuperscript{15} (2) to provide for protective measures for THB victims and (3) the procedural obligation to investigate trafficking.\textsuperscript{16} The Court held in \textit{Rantsev} that states have a positive obligation for mutual co-operation to investigate cross-border trafficking, as part of the procedural obligation to investigate THB.\textsuperscript{17}

Clearly, the judgment of the Court had consequences for Cyprus and Russia, as well as all states, party to the European Convention on Human Rights and Fundamental Freedoms.\textsuperscript{18} The main consequence was the duty to implement these positive obligations into the national systems of state parties.\textsuperscript{19} An examination of how Cyprus has implemented the positive obligations flowing from \textit{Rantsev} is particularly interesting, as it was the scene of the crime, in which a young Russian girl found her early death under tragic circumstances,\textsuperscript{20} highlighting the tremendous importance of national protective measures for THB victims. Also, the implementation by Cyprus of the positive obligations regarding THB established under Article 4 ECHR, exemplify some of the issues raised in recent regional and international discourse on THB, whilst providing an indication of the problems faced by states in dealing with Trafficking in Human Beings. Therefore the formulation of the research question is as follows:

\textit{What is the scope of the positive obligations of states under Article 4 ECHR regarding Trafficking in Human Beings and how has the establishment of the obligation for protective measures under this Article advanced the protection of victims of trafficking and sexual exploitation in Cyprus?}

Thus the aim of the research is an analysis of the scope of the three positive obligations of states under Article 4 ECHR, as regards THB, with particular focus on the implementation of protective measures in Cyprus. In order to find answers to my research question I will discuss the scope of the three positive obligations under Article 4 ECHR regarding THB in chapter one, whilst introducing the concepts of the comprehensive approach and the 3 Ps against Trafficking in

\begin{itemize}
\item \textsuperscript{12} Ibid, p. 28, § 91
\item \textsuperscript{13} \textit{Rantsev}
\item \textsuperscript{14} Ibid
\item \textsuperscript{15} Ibid
\item \textsuperscript{16} Ibid
\item \textsuperscript{17} Ibid, § 288, p. 62
\item \textsuperscript{18} Hol
\item \textsuperscript{19} \textit{Rantsev}
\item \textsuperscript{20} Ibid
\end{itemize}
Human Beings, which are prevention, protection and prosecution of Trafficking.\textsuperscript{21} I will highlight the essentials of the \textit{Siliadin} case as regards THB and discuss the significance of the \textit{Rantsev} case in combating THB, its link to the comprehensive approach and the three Ps, its principal facts, general principles and judgment. One of the central arguments in my thesis is that only a combination of and addressing of all three aspects of the 3 Ps (prevention, protection, prosecution) will proof effective in combating THB effectively.\textsuperscript{22}

The focus of chapter two is the examination of the implementation of Cyprus of its positive obligations under Article 4, supplemented by the 2005 Council of Europe Anti-Trafficking Convention (Anti-Trafficking Convention). I supplement the discussion of Cyprus’s implementation of its obligations under Article 4 ECHR with the Anti-Trafficking Convention because the \textit{Rantsev} judgment is based on and relies upon provisions in the Anti-Trafficking Convention.\textsuperscript{23} Thus, although the Anti-Trafficking Convention has a much broader focus on THB, the obligations under Article 4 in \textit{Rantsev} and the obligations of states, party to the Anti-Trafficking Convention, are similar in nature. Examining the implementation by Cyprus of its obligations flowing from Article 4 regarding THB, will aid our understanding of the general policy changes in Cyprus, and Cyprus’s current situation as regards Trafficking in Human Beings. Such an understanding is essential for zooming in on obligation for protective measures, as done in chapter three.

Thus in chapter three, I focus on the obligation for protective measures under Article 4 ECHR as established in \textit{Rantsev}. The Court in the \textit{Rantsev} judgment based the obligation for protective measures to protect victims of Trafficking on provisions in the Palermo Protocol and the Anti-Trafficking Convention, as well as two of the Ps, which are first prosecution and then protection.\textsuperscript{24} The \textit{Rantsev} judgment reflects a human rights based approach to Trafficking in Human Beings\textsuperscript{25} and re-emphasizes the importance of protective measures. The human rights based approach to THB takes the position of the victims, the violations of their rights, as well as their vulnerable position as a starting point.\textsuperscript{26} As such, the protection of the human rights of victims’ acts as the guiding principle for adopting measures, policy and legislation related to THB.\textsuperscript{27}

\textsuperscript{23} \textit{Rantsev}
\textsuperscript{24} Ibid
\textsuperscript{25} Ibid
\textsuperscript{26} Rijken & Koster, p. 9
\textsuperscript{27} Ibid, p. 9
The focus of the research in this thesis is on the obligation for protective measures because of the continuing global rise in THB, whilst prosecution of this inhumane crime remains scarce.28 The three Ps highlight that prevention, protection and prosecution of THB are an interconnected concept, which must be realized in conjunction, in order to eliminate or reduce the occurrence of Trafficking in Human Beings. Thus, taking a human rights based approach to THB, meaning that the protections offered to THB victims are strengthened and the three Ps are addressed equally, may ultimately alleviate the disjunction29 between the world wide rise in THB30 and the scarce prosecution of trafficking related cases.31 This is so because offering greater and more comprehensive protection to victims of trafficking presumably enhances the likelihood of their co-operation in criminal proceedings32 against the perpetrators of this heinous crime. Thus the obligation for protective measures is a matter of urgent social and international responsibility, whilst pertinent in protecting vulnerable THB victims, and in preventing them from being re-victimised by the respective system.33

Central focus of chapter four is the National Reporting/Referral Mechanism in Cyprus because of its vital importance as an institutionalized legal mechanism to protect victims’ rights,34 to set standards, and to identify and refer THB victims to appropriate services.35 Chapter five draws some conclusions and offers some recommendations. The essence of the conclusion in chapter five is that in order to effectively combat THB in the long term, all three themes of prevention, protection and prosecution must be addressed with equal effort and in a manner that is mutually reinforcing.36 A theme throughout the thesis is the important role played by state parties in implementing adequate and victims focused approaches to THB. Implementation of regional and international standards in individual member states, which are backed by academic and legal scholarly opinion are a vital stepping stone to combat THB effectively.

In terms of my research methodology, literature and desk study have been the pre-dominant methods employed in answering my research question. I supplemented these methods with personal communications with the Secretariat of the Group of Experts on Action against Trafficking in Human Beings (GRETA), a body established by the Council of Europe Anti-

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27 September 2011.
29 Rijken & Koster
30 US Department of State, 'Moving Towards a decade of delivery and protection'
31 Giammarinaro
32 Rijken & Koster
34 Ibid
36 Sychov
The Trafficking Convention to monitor the implementation of the Convention in member states. The main sources used for analyzing the implementation of Cyprus of its positive obligations under Article 4 ECHR were the GRETA report on Cyprus, released in early September 2011 and titled *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Cyprus*, as well as the *Communication from the delegation of Cyprus to the Council of Europe Committee of Ministers*. The Committee of Ministers is responsible for the supervision of the execution of ECtHR judgments.

The main sources for gathering information on and for analyzing the National Referral Mechanism, were a 2009 Report by various NGOs making up the European Network Against Trafficking in Human Beings, a 2011 report titled *Trafficking for Labour*, prepared by authors from the Greek re-integration center for migrant workers, as well as the OSCE/ODIHR (Organization for Security and Co-operation in Europe & Office for Democratic Institutions and Human Rights) Handbook on National Referral Mechanisms. This handbook, in conjunction with the UN Office on Drugs and Crime’s (UNODC) *International Framework for Action*, released in 2009, provide the current regional and international standards, against which Cyprus’ National Report/Referral Mechanism will be analyzed.

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40 NGOs are: On the Road, ACCEM, ALC and La Strada International.


42 OSCE/ODIHR Handbook

Chapter One

The Scope of the three Positive Obligations of States under Article 4 of the European Convention on Human Rights in Cyprus and their link to the Comprehensive Approach against Trafficking in Human Beings

Article 4 ECHR:

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.\(^44\)

The Rantsev case confirmed the positive obligation of states to criminalize trafficking under national criminal law frameworks as first established in the EtCHR judgment Siliadin v France in 2005 and to provide an adequate legal – administrative framework to combat THB.\(^45\) In Rantsev two additional positive obligations of states party to the ECHR were recognized and established under Article 4.\(^46\) These are the obligation to provide protective measures for THB victims or potential victims and the procedural obligation to investigate trafficking, including the obligation for mutual co-operation between state parties in investigation of cross-border trafficking.\(^47\)

1. The significance of Rantsev regarding Trafficking in Human Beings:

Trafficking in human beings is a heinous crime against the dignity and integrity of the human being.\(^48\) Combating this crime against the body, spirit and soul of the victim, in addition to protecting the victim, should and must be central to global, regional and national efforts of fostering human rights standards. Trafficking in Human Beings is increasing in global scale, with approximately ‘27 million men, women and children,’\(^49\) being trafficked worldwide, as of 2011. As noted by the European Court of Human Rights in Strasbourg, the settlement of the Palermo Protocol in 2000 and the Anti-Trafficking Convention in 2005, exemplify both the increasing recognition at international level of the prevalence of THB and the need for measures to combat it.\(^50\) The Rantsev case, as well as the above mentioned human rights documents and legal – academic literature emphasize the importance of a human rights focused perspective - which takes the central vulnerable position of the victim as a starting point - because of its potential

\(^{45}\) Siliadin
\(^{46}\) Rantsev
\(^{47}\) Ibid
\(^{50}\) Rantsev, p. 59, §277
benefits for increasing prosecution of THB cases, and punishment of perpetrators, and its likelihood of decreasing the occurrence of THB as the ultimate goal.\textsuperscript{51}

The ECtHR case of \textit{Rantsev v Cyprus and Russia} is significant for combating THB in Europe and in the Courts member states for a number of reasons, one being that it established THB to fall within the scope of Article 4 of the European Convention on Human Rights and Fundamental Freedoms.\textsuperscript{52} Article 4 stipulates freedom from slavery, servitude and forced labour. In the prior judgment of \textit{Siliadin v France} in 2005, the Court held that treatment of a Togolese child domestic worker amounted to a form of servitude under Article 4,\textsuperscript{53} whilst the \textit{Rantsev} case for the first time established that trafficking in human beings fell under Article 4, regardless of which of the three types of conduct under this article's provision is engaged (slavery, servitude or forced or compulsory labour).\textsuperscript{54}

In Essence, the \textit{Rantsev} case is significant on four main counts: the recognition that human trafficking falls within the ambit of Article 4 ECHR; the holding that states have positive obligations under this Article to combat THB; the expansion of measures States must take to fulfill these obligations\textsuperscript{55} and the fact that the \textit{Rantsev} judgment reflects a human rights based approach to THB.\textsuperscript{56} As regards, the recognition of human trafficking to fall under the scope of Article 4, the establishment of this general principle in \textit{Rantsev} is particularly important in the light of the extremely scarce consideration and application of Article 4 as regards THB.\textsuperscript{57} The 2005 \textit{Siliadin} case was in fact the first instance at the Strasbourg Court in which slavery in its modern form, which qualifies as Trafficking in Human Beings, was considered under this Article.\textsuperscript{58} The disjunction between the worldwide increase of the crime of THB and the scarce case law at the European Court of Human Rights\textsuperscript{59} makes these two cases landmark judgments and substantial for setting standards in the fight against THB.

\textsuperscript{51} Rijken & Koster
\textsuperscript{52} Rantsev
\textsuperscript{53} Siliadin, p. 43, § 289
\textsuperscript{54} Rantsev
\textsuperscript{57} Rantsev, p. 59, §278
\textsuperscript{58} Siliadin
\textsuperscript{59} Rantsev
2. Methods to combat THB: The Comprehensive Approach and the 3 Ps

A number of methods exist to combat Trafficking in Human Beings. The method, which has been emerging as the most significant in recent years is called the Comprehensive Approach.\(^{60}\) Despite being a process, the formulation of the Comprehensive Approach can at least in part be found in for example the Palermo Protocol,\(^{61}\) the Anti-Trafficking Convention\(^{62}\) or the EU Directive 2011/36/EU.\(^{63}\) As its name prescribes, this method requires a multi-disciplinary approach to THB and requires implementation of comprehensive national frameworks to combat THB.\(^{64}\) It integrates and adjusts for example human rights law, with criminal and migration law, whilst addressing THB prevention, protection and prosecution and root causes of THB.\(^{65}\) The Comprehensive Approaches’ main focus and aim, as I am employing this term in this thesis, is to examine and combat THB in a comprehensive manner, with a view to protecting the victim, incorporating all relevant fields and necessary methods.

The notion and formulation of the Comprehensive Approach against THB is an ongoing international and regional process, both on a theoretical as well as practical level, requiring further development and implementation, in particular at national level. As noted in Article 5(3) of the Anti-Trafficking Convention and highlighted in the *UN Recommended Principles and Guidelines on Human Rights and Human Trafficking*, a human rights based approach,\(^{66}\) also called a victims centered-approach\(^{67}\) must be part of the Comprehensive Approach in national applications. The main reason being that at its core, the human rights based approach starts from the central position of the victim.\(^{68}\) It takes the violations of the victims’ rights along with their vulnerable position\(^{69}\) as the starting point for any strategy. As such the Comprehensive Approach aims to shift the discourse on THB from the utter invisibility of the victims to visibility with the aim to protect, re-integrate and empower victims of trafficking.\(^{70}\)

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\(^{60}\) The Comprehensive Approach or its emergence is evident in for example: the Palermo Protocol, the CoE Anti-Trafficking Convention, EU Directive 2011/36/EU, as well as in US Tipp reports and academic literature.

\(^{61}\) Palermo Protocol, In its preamble the PP calls for a comprehensive international approach in the countries of origin, transit and destination, which includes measures to prevent, protect and prosecute cases of THB.

\(^{62}\) CoE Anti Trafficking Convention

\(^{63}\) EU Directive 2011/36/EU

\(^{64}\) GRETA Report, p. 14, §3

\(^{65}\) Rijken & Koster

\(^{66}\) See Article 5(3) Anti-Trafficking Convention & UN Recommended Principles on Human Rights and Human Trafficking & EU Directive 2011/36/EU


\(^{68}\) Rijken & Koster, p. 8 &9

\(^{69}\) Ibid, p. 9

\(^{70}\) See the various Treaties & Conventions
3. The 3 Ps: Prevention, Protection, Prosecution

Another important method aimed at eradicating THB, which forms part of, or at least overlaps with the Comprehensive Approach against THB, are the three obligations upon states to prevent trafficking, protect victims and prosecute perpetrators, correspondingly called the 3Ps. The notion of the 3Ps can, partially be found in the Palermo Protocol and the Anti-Trafficking Convention and are three agreed upon international themes. The 3Ps are important obligations in the fight against trafficking, as they aim to address the main areas, as are, prevention, protection and prosecution, with prosecution being inclusive of punishment of the perpetrators. In terms of the global fight against THB, it is important to note that implementation of anti-trafficking measures and policies on national domestic levels is a vital stepping stone to stopping the modern international slave trade. This is the case because the more states effectively combat THB, the greater the chances of creating a world free from this atrocious crime. In addition, each state that effectively implements adequate anti-trafficking responses, adds a layer to the prevention, protection and prosecution of THB regionally. Just like with other international human rights issues and efforts, implementation of measures and policies at domestic level, remains one of the major challenges and prospects for a world free from modern day slavery.

4. Rantsev and its link to the Comprehensive Approach and the 3Ps:

The three positive obligations under Article 4 ECHR in the Rantsev case, one confirmed, two established are significant because they strengthen the normative and legal obligations of state parties in implementing a human rights focused and more Comprehensive Approach against THB. In addition, the three obligations under Article 4 fortify the three themes of prevention, protection and prosecution. The court’s ruling in Rantsev, whilst more narrow in focus than the Palermo Protocol and the Anti-Trafficking Convention, refers to these documents, and draws on some of their provisions in reaching its conclusions. Ultimately, the Comprehensive Approach, the 3 Ps and the Rantsev judgment are linked and mutually re-enforcing concepts, as all three embody the acknowledgment of approaching THB in a more comprehensive manner, and reflect the trend towards integration of a human rights focused perspective to THB. The Rantsev decision obliges state parties to the European Convention on Human Rights to implement and translate the obligations established into practice. The implementation of the Rantsev decision in

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72 Palermo Protocol, In its preamble the PP calls for a comprehensive international approach in the countries of origin, transit and destination, which includes measures to prevent, protect and prosecute cases of THB.
73 CoE Anti-Trafficking Convention
74 Sychov
76 Farrier, Introductory Note
Cyprus and Russia, which is the Rantsev judgment’s completion, is currently under execution by the Committee of Ministers of the Council of Europe.\textsuperscript{77}

To sum up, the 3Ps and the positive obligations under Article 4 ECHR established in Rantsev are mutually re-enforcing and ultimately feed into the development of the Comprehensive Approach. More importantly however, the interpretation of Article 4 ECHR in Rantsev has increased the scope of this Article’s provisions, essentially raising the anti-trafficking standards and policies in the member states, because of the duty of state parties to implement the judgment.\textsuperscript{78} In my view, the Court’s decision embodies the efforts of the European as well as the international community to foster a civil society, in which human trafficking is more effectively prevented and potential victim protections are more efficiently met, whilst perpetrators are increasingly prosecuted. The practical dimension of the implementation of the positive obligations under the Anti-Trafficking Convention, as well as under Article 4 ECHR, will be explored in chapter two at hand of the example of Cyprus.

5. The increasing responsibility of states, the erga omnes status of the prohibition of slavery in international law, and the significance of the three obligations under Article 4 ECHR:

The tragedy of human trafficking for sexual and labour exploitation has been interwoven with history since the beginning of time.\textsuperscript{79} The 21\textsuperscript{st} century however, saw the emergence of a body of international and regional human rights standards and protections, which continue to gain in depth and increase a state’s responsibility towards the individual.\textsuperscript{80} International Human Rights treaties create both negative and positive obligations upon states.\textsuperscript{81} A negative obligation denotes the non-interference of the state with a given right of the individual,\textsuperscript{82} whilst a positive obligation stipulates that a state actively protects and fulfills particular rights.\textsuperscript{83} According to UN human rights treaty bodies, states are expected to adopt a tripartite typology ‘to respect, protect and fulfill human rights.’\textsuperscript{84} The increasing responsibility, duty or positive obligation of a state towards the prevention of trafficking, the protection of victims and the prosecution of its perpetrators, is advanced by the Rantsev Judgment.\textsuperscript{85}

\textsuperscript{77} Private Communication with the Secretariat of the Council of Europe Convention on Action against Trafficking in Human Beings (GRETA and Committee of the Parties), Directorate General of Human Rights and Legal Affairs, 07 September 2011
\textsuperscript{78} Rantsev
\textsuperscript{79} Sychov
\textsuperscript{80} Moeckli
\textsuperscript{81} Ibid
\textsuperscript{82} Moeckli, p. 130
\textsuperscript{83} Ibid, pp. 130-131
\textsuperscript{84} Ibid, p. 130
\textsuperscript{85} Rantsev
It is important to emphasize that the three positive obligations of States under Article 4 ECHR belong to an area of international human rights law understood as special in nature because Trafficking in Human Beings is generally recognized as a contemporary form of slavery. The prohibition of slavery in international law, is not only a peremptory norm of *jus cogens*, but also has *erga omnes* status thus, is an *erga omnes* norm. The prohibition of slavery, as a norm of *jus cogens* is recognized by the international community of states as a whole as an 'intransgressible principle of customary international law' and no derogation of this norm is permitted under international law. The International Court of Justice (ICJ) famously emphasized the special character of certain human rights obligations, including the prohibition of slavery by advocating that certain human rights obligations have *erga omnes* status, proposing that these obligations are owed 'towards the international community as a whole.' In addition, with regard to the European Convention on Human Rights, the safeguard provisions under Article 4 ECHR epitomize some of the most fundamental values of the European community of states.

Article 1 of the European Convention stipulates that 'the high contracting parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.' Section I of the ECHR includes Article 4 and thus the rights established and protected under Article 4 must be complied with. In addition, the three positive obligations under Article 4 ECHR as regards Trafficking in Human Beings have now been established in express rather than implied terms, thereby increasing state parties' duty to comply. Also, this Article regulates the adoption of the Convention into the national law of the contracting states, which is regulated by the subsidiarity principle. Contracting parties differ in their implementation of the guarantees codified in the Convention into national law and are allowed a margin of appreciation in their enactment. The subsidiarity principle essentially means that states are the ones responsible for formulation of national legislation and protection

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86 Moeckli
87 Rantsev
88 Moeckli
90 Moeckli, p. 113
91 Ibid, p. 129
92 The ICJ Opinion in the Barcelona Traction case, identified four clear examples of *erga omnes* norms which are the prohibition of aggression, genocide, slavery and racial discrimination
94 Moeckli, p. 129
95 Rantsev
96 Article 1 ECHR
97 ECHR
98 Hol
99 Jacobs, White & Ovey, p.84
100 Ibid
101 Ibid, p. 85
102 Jacobs, White & Ovey
mechanisms, which reflect and guarantee the rights and freedoms assured in the Convention.\textsuperscript{103} Thus the European Court only has a supervisory role.

The subsidiary relationship\textsuperscript{104} between the Convention and the national laws of contracting states, mediates democratic pluralism with the common good\textsuperscript{105} as embodied in international and regional human rights standards. One of the reasons why it is so important that comprehensive anti-trafficking measures are implemented on national level is because national law is the first point of contact\textsuperscript{106} with or protections offered to THB victims. It is therefore of vital importance to have judgments like \textit{Rantsev}, which increase contracting states obligation to adjust their national legislation in accordance with the minimum standards inaugurated. The subsidiary nature of engagement between the Convention and national legislation is a significant reason why implementation of comprehensive anti-trafficking mechanisms at national level is a fundamental stepping stone to better combat Trafficking in Human Beings.\textsuperscript{107} The Convention and its case law raise the general standards of human rights protections\textsuperscript{108} through the creation of positive obligations for contracting states. The Convention is a living and evolving instrument,\textsuperscript{109} which creates boundaries for state parties, thereby counter acting potential human rights limitations in the national laws of contracting states.\textsuperscript{110}

\section*{6. Discussion of \textit{Rantsev}:}

\subsection*{The principal facts/judgment:}

In a unanimous judgment on 7 January 2010, the European Court of Human Rights ruled that Human Trafficking is a violation by states of Article 4 of the European Convention on Human Rights.\textsuperscript{111} The \textit{Rantsev} case originated in May 2004\textsuperscript{112} by the applicant, Mr Nikolay Mikhaylovich Rantsev, a Russian national, whose daughter, Ms Oxana Rantseva, died aged 21, in ambiguous and unexplained circumstances,\textsuperscript{113} when she fell from a window from the sixth floor of a private home in Cyprus in March 2001.\textsuperscript{114} Ms Rantseva, a Russian national born in 1980, had arrived in Cyprus in March 2001 on an “artiste visa” to work in a cabaret in Limassol, owned by X.A\textsuperscript{115} and

\begin{flushright}
\textsuperscript{103}Moeckli\textsuperscript{104} Jacobs, White & Ovey\textsuperscript{105} Carozza, Paolo, ‘Subsidiarity as a structural principle of international human rights law,’ \url{http://www.asil.org/ajil/Carozza.pdf} 11 November 2011.\textsuperscript{106} Moeckli\textsuperscript{107} Jacobs, White & Ovey\textsuperscript{108} \textit{Rantsev}, p. 40, §196\textsuperscript{109} Jacobs, White & Ovey\textsuperscript{110} \textit{Ibid}\textsuperscript{111} \textit{Rantsev}\textsuperscript{112} \textit{Ibid}, p.2\textsuperscript{113} \textit{Ibid}, p. 49, §233\textsuperscript{114} Netherlands Institute of Human Rights, ‘ECHR: \textit{Rantsev} v Cyprus and Russia: Press release,’ Utrecht School of Law, \url{http://sim.law.uu.nl/SIM/Caselaw/hof.nsf/0/1a62063f2c1e2dcd12576a10039ac3670openDocument} 20 May 2011.\textsuperscript{115} \textit{Rantsev}, §14
\end{flushright}
managed by his brother Marios Athanasiou, or M.A. Three days after starting work, Ms Rantseva abandoned the Cabaret and her residence there, leaving a note stating that she was tired and returning to Russia.

Ten days later, Ms Rantseva was spotted in a discotheque in Limassol and M.A, along with one of his security guards took her to the police station, asking the police to detain her, with the view to expel her as illegal, so that he could replace her with a new girl to work in his cabaret. After checking the databases and speaking to the Police Aliens and Immigration Service (AIS), the officer on duty concluded that Ms Rantseva did not appear to be an illegal, declined to detain her, asked M.A. to pick her up, as the AIS assumed M.A. to be responsible for her as her employer. M.A. was asked to take Ms Rantseva to the Limassol Police station the next morning to further investigate her immigration status.

Ms Rantseva was taken to the lodging of M.P, an employee at M.A.s cabaret and about an hour and a half later, at around 6.30 am in the morning was found dead on the street below the apartment. A local court decided that Ms Rantseva died in strange circumstances resembling an accident, in an attempt to escape from the apartment, but did not propose criminal liability for her death. In contrast to the judgment of the Strasbourg Court which later held and established that the obligation to protect Ms Rantseva’s right to life under Article 2 (right to life) ECHR, includes a procedural obligation to conduct an effective investigation where death occurs under suspicious circumstances,

The circumstances in Ms Rantseva’s case were indeed highly suspicious and contradictory as has been emphasized by her father Mr Rantsev and by an autopsy conducted in Russia (Chelyabinsk) in May 2001, which concluded ‘without doubt’ the injuries sustained ‘happened while she was alive’ and transpired ‘within a very short time period, one after another,’ just before she died. The circumstances of the Rantsev case exemplify the great suffering of the victim and their relatives implicit in trafficking and emphasize the utter importance of victim focused responses to its occurrence. The interpretation of the Strasbourg Court is particularly beneficial in terms of a victims focused approach, because the obligation under Article 2 ECHR may

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117 Rantsev, §15
118 Ibid, §16
119 Ibid
120 Ibid
121 Ibid
122 Ibid
123 Ibid
124 Farrior, Introductory Note
125 Rantsev
126 Allain, p. 549
127 Ibid, p. 549
128 Ibid, p. 549
129 Ibid, p. 549
prevent states in the future from turning a blind eye to trafficking for sexual exploitation. The case has highlighted the prevalence of THB in Cyprus and drawn considerable media attention thus acting as a catalyst for change on the islands.

The Cypriot Ombudsman, the Council of Europe’s Human Rights Commissioner and the United States State Department have highlighted the prevalence of Trafficking in Human Beings for sexual and labour exploitation in Cyprus, predominantly in the form of the cabaret industry and facilitated by these so-called “artiste visas.” The applicant, relying on Article 2,3,4,5 and 8 of the European Convention on Human Rights, complaint about the lack of investigation into the circumstances of his daughter's death, the lack of protection provided to his daughter by the Cypriot police while she was still alive, and the failure of the Cypriot authorities to take steps to punish those responsible for Ms Rantseva's death and ill-treatment. He further complained under Articles 2 and 4 about the failure of the Russian authorities to investigate his daughter's alleged trafficking and subsequent death.

In summary, the Strasbourg court held that there had been a procedural violation of Article 2 of the Convention by Cyprus because of its failure to conduct an effective investigation into Ms Rantseva's death. A violation of Article 4 by Cyprus for not affording Ms Rantseva practical and effective protection against trafficking and exploitation and not taking necessary and specific measures to protect her. In other, words for failing to protect the victim from being trafficked, and failing to adequately investigate her death and a violation of Article 5 (arbitrary detention). It held that there was no need to examine separately the alleged breach of Article 4 concerning the continuing failure of the Cypriot authorities to conduct an effective investigation because this violation was examined and established under the procedural obligation to conduct an effective investigation under Article 2 of the Convention. As regards the Russian Federation, the Court found a violation of Article 4 for failing to investigate how and where she had been trafficked, and who was involved in recruiting her. The judgment takes a Comprehensive Approach to tackling THB and inaugurates the obligation to examine the whole chain of trafficking.

The ratification average of a treaty, convention or protocol, gives a general indication as to whether a form of consensus exists regarding its content. The Anti-Trafficking Convention has to

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130 Rantsev, § 2
131 Ibid
132 Ibid, p. 74
133 Ibid, p. 75
134 Ibid
135 Ibid
136 Ibid
137 Farrier Introductory note
138 Rantsev
139 Ibid
date 34 ratifications and 9 signatories, bringing the number to 43, whilst the Council of Europe has 47 member states.\textsuperscript{140} The Palermo Protocol has 117 signatories and 147 parties.\textsuperscript{141} Based on the ratification average of these two anti-trafficking documents, the European Court of Human Rights argued in \textit{Rantsev} that almost all member states of the Council of Europe agree to the view that only a combination of measures, addressing all three Ps are effective in the fight against THB.\textsuperscript{142} The extent or scope of the positive obligations arising under Article 4 must therefore be considered within this broader context,\textsuperscript{143} thus giving them additional weight or authority. Such statements by the Court highlight the Comprehensive Approach applied in the \textit{Rantsev} judgment.

7. **What is the scope of the positive obligation to ensure a legislative – administrative national framework to fight Trafficking in Human Beings?**

The \textit{Siliadin} case was significant for establishing the obligation to inaugurate a legislative-administrative framework to prevent 'living conditions incompatible with human dignity.'\textsuperscript{144} The Court's ruling in this case symbolizes the link between 'historical concepts of forced labour, servitude and slavery to the modern'\textsuperscript{145} occurrence and phenomenon of human trafficking.\textsuperscript{146} Despite not mentioning the term THB itself, the \textit{Siliadin} case held the promise for a much more explicit interpretation of Article 4\textsuperscript{147} to encompass the terminology of Trafficking in Human Beings in the future and found its promise fulfilled in \textit{Rantsev}.

The obligation of states party to the European Convention on Human Rights, to guarantee a legislative – administrative national framework to fight slavery, servitude, forced or compulsory labour was first established in the case \textit{Siliadin v France}. This obligation inaugurated under Article 4 ECHR was a first and fundamental building block to aid more effective THB prevention, protection and prosecution in the future. Although the term THB was not employed by the Court in \textit{Siliadin}, it is internationally recognized, and evident in \textit{Rantsev}, that slavery, servitude and forced or compulsory labour in the modern day and age, qualify as Trafficking in Human

\addcontentsline{toc}{section}{References}

\begin{thebibliography}{99}
\bibitem{142} Rantsev, p. 61, §284
\bibitem{143} Ibid, p. 61, §284
\bibitem{144} Netherlands Institute of Human Rights
\bibitem{145} \textit{Siliadin}
\bibitem{146} \textit{Rantsev}
\bibitem{147} Ibid
\end{thebibliography}
Beings. In *Siliadin* the Court considered the scope of Article 4 in regards to slavery, servitude and forced or compulsory labour. The Court referred to the classic and narrow definition of slavery in the 1926 Slavery Convention, which limits slavery to the parameters of an exercise of a genuine right of ownership over the individual and a reduction of the person’s status to an “object.” This stands in contrast to the ICTY judgment in *Prosecutor v Kunarac*, which adopted a much broader definition of what entails modern day slavery. The *Siliadin* judgment found that the treatment of the applicant, a young Togolese girl at the hands of Mr. and Mrs. B, ‘amounted to servitude, forced and compulsory labor’ but fell short of slavery due to its narrow traditional definition. The reasoning of the Court was that despite the applicants deprivation of personal autonomy, evidence did not suggest that Mr and Mrs B had exercised a genuine right of ownership over her, meaning her reduction to a mere object.

In this case, the Court ‘confirmed the principle that Article 4 entails a specific positive obligation to penalize and prosecute any act aimed at maintaining a person in a situation of slavery, servitude or forced and compulsory labour.’ In contrast, the *Rantsev* judgment ruled that trafficking itself ran counter to the spirit and purpose of the Convention and would therefore fall within the ambit of the guarantees offered by Article 4 without the requirement to assess which of the three types of conduct was engaged. It is important to highlight that the prohibitions of slavery and servitude under Article 4 ECHR are absolute, with no derogation under Article 15 ECHR permissible, with exemptions to the prohibition of forced and compulsory labour.

The fundamental nature of Article 4 ECHR is about the prohibition of human exploitation. Article 4 in combination with Articles 2 and 3 ECHR ‘enshrine the basic values of democratic societies making up the Council of Europe’ member states, so they contain powerful guarantees and aspirations. The view that slavery is prohibited is now widely recognized under customary international law, governed by various international treaties and Conventions.

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148 Ibid
149 Ibid, § 276
150 Ibid, § 276
151 Ibid, § 276
153 *Rantsev*, § 279
154 Ibid
155 Netherlands Institute of Human Rights
156 *Rantsev*, § 285
157 Ibid § 279
158 Ibid
159 Jacobs, White & Ovey, p. 195
160 Ibid, p. 195
161 Ibid, p. 195
162 *Rantsev*, §283
163 Jacobs, White & Ovey, p. 196
164 Ibid, p. 196
and a peremptory norms of *jus cogens*, whilst having *erga omnes* status.\textsuperscript{165} The interpretation that THB falls under Article 4 ECHR regardless of which type of conduct is engaged, widens the scope of Article 4, whilst increasing the positive obligations for contracting states to combat trafficking in human beings comprehensively.

The general principle under Article 4 regarding THB in relation to the legal and regulatory national frameworks of contracting states denotes that ‘the spectrum of safeguards set out in national legislation must be adequate to ensure the practical and effective protection of the rights of the victims or potential victims of THB.’\textsuperscript{166} The general principle under Article 4 therefore requires, in addition to criminal law measures to punish perpetrators, the putting in place of adequate measures regulating businesses used as cover up for THB.\textsuperscript{167} Authorities are also under an obligation to ensure that their state’s immigration rules do not facilitate nor tolerate THB.\textsuperscript{168}

The Court concluded in *Rantsev* that there was a violation of Article 4 by Cyprus, regarding the obligation to put in place an appropriate administrative – legislative framework, because of the regime of the “artiste visa” in Cyprus, which did not afford Ms Rantseva practical and effective protection against trafficking and exploitation.\textsuperscript{169} The Court highlighted that the absence of an immigration policy in Cyprus, and the shortcomings of the legislative framework, facilitated dependencies between the “artiste” and the employer.\textsuperscript{170} This acknowledgement by the Court points to the importance of establishing migration policies, which are adjusted to criminal law in order to prevent the creation of dependencies\textsuperscript{171} in the legislative-administrative framework. It also indicates the need for a human rights based approach, which takes the vulnerability of THB victims as a starting point.\textsuperscript{172} A human rights based approach is so important because of the nature of recruitment of THB victims,\textsuperscript{173} in which dependencies of victims upon their employer,\textsuperscript{174} or procurer are created purposely. Since the aim of recruitment is profit through exploitation, dependencies are created on purpose to render the victim unable or unwilling to self-identify\textsuperscript{175} or seek help out of fear of reprisals, physical and psychological harm to themselves and their immediate relatives.\textsuperscript{176}

\textsuperscript{165} Moeckli
\textsuperscript{166} Rantsev, p. 60, §283
\textsuperscript{167} Farrior, Introductory note
\textsuperscript{168} Rantsev, p. 60, §283
\textsuperscript{169} Ibid, p. 63,§292
\textsuperscript{170} Ibid, p. 63, §290
\textsuperscript{171} Rijken & Koster
\textsuperscript{172} Ibid
\textsuperscript{173} Palermo Protocl Article 3
\textsuperscript{174} Rijken & Koster
\textsuperscript{175} US Department of State, "Towards a decade of Protection and Delivery"
\textsuperscript{176} Rijken & Koster
The Court noted its concern over the unexplained supposition of the Police Aliens Immigration Service that M.A. was seen as responsible for Ms Rantseva, rather than allowing her to leave freely as she was not an illegal immigrant, demonstrating another facet of dependency of THB victims, as facilitated by the Cypriot legislative – administrative framework at the time. This issue is particularly important against allegations by critics such as Jean Allain, a legal scholar, who argued that Cypriot authorities were either directly involved in the systematic sexual and labour exploitation of young foreign women in Cyprus or that the state at minimum provided structural assistance to such exploitation. Such criticisms indicate the utter importance of implementation of coherent and transparent anti-trafficking responses.

The Rantsev judgment highlights the need to advance and foster a human rights approach to THB. Cyprus adopted legislation prohibiting trafficking and sexual exploitation in 2000 which the Court considered to be effective in itself, however lacked effective practical implementation. Criticisms from the Cypriot Ombudsman highlighted the fact that Cypriot authorities were well aware of the situation since the 1970s, where a significant number of young girls, in particular from the former Soviet bloc’s, entered the country on artiste visas, only to be sexually exploited by cabaret owners and managers. This official awareness not only implies a positive obligation for the state to prevent THB and protect THB victims, instead of condoning, or at minimum ignoring its occurrence - but also demonstrates the importance of educating society and public officials of the tragedy of trafficking for sexual and labour exploitation. Education and awareness raising forms a significant part of nurturing a human rights culture and may counter-balance potentially state condoned, or at minimum ignored human rights abuses. Globalization has highlighted that society does not exist in a vacuum, instead is interrelated, therefore any solution and approach to THB must be fostered nationally, regionally and internationally.

177 Rantsev, p. 63, §292
178 Allain, p. 547
179 GRETA Report
180 Rantsev, § 293
181 Ibid, §293
183 Sychov
8. What is the scope of the positive obligation to provide protective measures for THB victims?

The positive obligation of contracting states to provide protective measures for THB victims was established under Article 4 ECHR in *Rantsev*. The general principle under Article 4 ECHR is that a contracting state may be required to take operational measures to protect victims or potential victims of trafficking if the State authorities were aware, or ought to have been aware of suspicious circumstances, where an individual was at real and immediate risk of being trafficked or exploited within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention. In such a case, Article 4 would require authorities to take appropriate operational protective measures to remove the individual from the situation of risk.

In determining the scope of the positive obligation for protective measures under Article 4 ECHR the Court referred to provisions of the Palermo Protocol and the equivalent provisions in the Anti-Trafficking Convention. However, the Court noted that the obligation to take operational measures to protect must not impose an impossible and disproportionate burden upon the authorities, as it is aware of ‘the difficulties faced by states in today’s modern societies and the operational choices that need to be made in terms of priorities and resources.’ So in determining the question of when a state is obliged to take operational measures and taking into consideration the principle of proportionality, the Court considered Articles 6, 9, and 10 of the Palermo Protocol and their equivalent in the Anti-Trafficking Convention. The Court concluded that the obligation for protective measures under Article 4 ECHR entails three elements.

The three elements are the obligation to provide for the physical safety of THB victims while in the state’s territory, to establish comprehensive policies and programs to prevent THB and to provide training to law enforcement and immigration officers. Therefore, the Court delineates the scope of the obligation for protective measures under Article 4 ECHR in terms of these three aspects of protection. Regarding the physical safety of victims, the Court referred to Article 6 of the Palermo Protocol on the Assistance to and protection of THB Victims, which stipulates a number of protective measures including an adequate legal-administrative

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184 *Rantsev*, p. 61, §285
185 *Mutatis mutandis Osman & Mahmut Kaya in Rantsev*
186 *Rantsev*
187 Ibid, p. 61, § 286
188 *Hol*
189 Ibid
190 Palermo Protocol, Article 6(5)
191 Ibid, Article 9 (1)
192 Ibid, Article 10
193 *Hol*
physical, psychological and social recovery, as well as the special needs of victims. The Court however did not give any specific indication of how to fulfill the obligation to provide for the physical safety of THB victims but I will examine its practical realization in chapters three and four.

As regards the obligation to adopt comprehensive policies and programs to prevent THB, the Court refers to Article 9 of the Palermo Protocol on the prevention of THB. It gave no explicit explanation on this obligation and merely emphasized the steps taken by Russia to warn citizens of the risk of THB as positive. Regarding, the obligation to provide adequate training to law enforcement and immigration officials, the Court was more specific in its discussion, due to the factual circumstance in Cyprus. It partly based its decision on Article 10 of the Palermo Protocol on the Information Exchange and Training of personnel. In addition, the judgment of the Court under Article 4 ECHR established both general and specific obligations for protective measures. The general obligation refers to the lack of an adequate legislative–administrative framework, which in the case of Cyprus did not afford Ms Rantseva practical and effective protection against trafficking and exploitation. The specific protective measure particularly referred to the training of law enforcement and other relevant officials.

As regards the situation in Cyprus, the Court highlighted the serious state of affairs in Cyprus since the 1970s of young women being exploited and forced to work in the sex industry, based on the 2003 report of the Cypriot Ombudsman. This report also emphasized that ‘trafficking was able to flourish in Cyprus due to the tolerance of the immigration authorities.’ In addition, the 2006 report of the Council of Europe’s Commissioner for Human Rights, noted that the Cypriot authorities were aware of the fact that many girls entering on “artiste visas” would work in prostitution. The Court noted the multiple failures of the Cypriot police authorities as regards Ms Rantseva and the deficiencies in circumstance.

Such as the fact that the police did not question Ms Rantseva, did not take a statement from her, made no further inquiries into her background, did not release her despite not appearing as an

194 Palermo Protocol, Article 6 (2)
195 Ibid, Article 6(3)
196 Ibid, Article 6 (4)
197 Hol
198 Palermo Protocol, Article 9
199 Rantsev, p. 66, §304
200 Hol
201 Ibid
202 Rantsev
203 Hol
204 Rantsev
205 Ibid
206 Ibid, p. 63, §293
207 Ibid, p. 64, §293
208 Ibid, p. 64, §295
209 Ibid, p. 64, §297
210 Ibid, p. 65, §297
illegal and instead released her into the custody of M.A. In addition, the Court highlighted the obligations undertaken by Cyprus in the context of the Palermo Protocol and subsequently the Anti-Trafficking Convention, to provide adequate training to and strengthen training for law enforcement, immigration and other relevant officials, in particular under Article 10 of the Palermo Protocol. The Court argued that sufficient indicators were available to police authorities to be aware of the fact that Ms Rantseva was at real and immediate risk of being a victim of THB, therefore the positive obligations to investigate, as well as the obligation to take necessary protective measures, arose. The implementation of the Rantsev judgment in Cyprus is up to the Cypriot authorities. However, the execution of the judgment is monitored by the Committee of Ministers of the Council of Europe.

9. What is the scope of the positive obligations to investigate human trafficking?

The general principle under Article 4 ECHR entails a specific obligation to investigate situations of potential trafficking. The Court’s requirements for an effective investigation are that it has to be independent and should lead to the identification and punishment of the perpetrators. The Court emphasizes the fact that THB is not confined to the domestic arena, but instead generally involves a state of origin, transit and destination. The Palermo Protocol is silent on the issue of jurisdiction, in contrast to the Anti-Trafficking Convention, which obliges contracting states to ‘establish jurisdiction over any trafficking offence committed in its territory.’

The court reaffirmed the view taken by the Anti-Trafficking Convention and therefore established that Article 4 ECHR entails the obligation to investigate alleged THB offences. The Court extends the obligation under Article 4 regarding investigation of THB to cross-border cases and established that state parties are under an obligation to co-operate with the relevant authorities of the respective state involved. The establishment of this obligation under Article 4 is in line with international agreements, such as the agreement on mutual legal assistance which Cyprus and Russia concluded in 1984. The fact that the Rantsev judgment obliges state parties to investigate THB and to co-operate with respective states of origin, transit and destination under Article 4 ECHR, essentially implies that State parties are under an obligation to examine the whole chain of trafficking.

211 Ibid
212 Palermo Protocol, Article 10
213 Rantsev, p. 61, §287
214 Hol
215 Rantsev p. 62, §288
216 Ibid
217 Ibid
218 Ibid, p. 62, §288
219 Ibid, p. 35
As regards Cyprus, the Court felt no need to examine the issue of the procedural obligation to investigate THB under Article 4 separately, as it was subsumed by the obligation under Article 2 to conduct an effective investigation into Ms Rantseva's death, under which Cyprus was found in violation. The Russian Federation in contrast was found in violation of Article 4 of their procedural obligation to investigate alleged THB, as the authorities undertook no investigation into how and where Ms Rantseva was recruited. The Court interpreted the obligation to investigate trafficking based on the definition of THB adopted in the Palermo Protocol and the Anti-Trafficking Convention, which expressly include the recruitment of victims. This explicit mention obliges contracting states, like Russia and Cyprus to investigate cases of THB, or in other words to investigate the whole chain of trafficking, including identification of those involved in recruitment and the methods of recruitment employed. Essentially, that is the scope of the positive obligation to investigate THB established under Article 4 in *Rantsev*.

10. Criticism on the Court’s interpretation of Article 4:

Jean Allain, an expert on the 1926 Slavery Convention, raised the criticism that the interpretation in *Rantsev* did not provide for legal clarity on the substance and content of Article 4 ECHR. However, this criticism is rendered irrelevant by his own concession that the very fact that Article 4 was interpreted as the vehicle for considering issues of trafficking ‘expanded its scope far beyond its textual boundaries of slavery, servitude and forced labour.’ It may be true that the Court in interpreting trafficking as slavery under Article 4, employed a non-traditional or contradictory manner, but in the light of the ECHR as an adaptive vehicle to respond to modern day societies atrocities, it has defined Trafficking in Human Beings as a modern form of slavery.

Slavery in all of its form, including its modern forms, equals by its very nature, human exploitation. Thus Allain’s argument that the Court did not adequately address or engage with the fundamental nature of Article 4, which is human exploitation, does not render true, given that - despite the traditional legal distinctions between slavery and Trafficking in Human Beings – both are a form of human exploitation. As he himself conceded the fact that the interpretation of Article 4 in the *Rantsev* case extends the scope of that Article to include issues beyond slavery, servitude and forced labour, such as trafficking for the purpose of removal of organs, highlight the inclusiveness of interpretation. Allain even acknowledges the importance

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220 Ibid, p. 65, §299
221 Ibid
222 Ibid, p. 66, §306
223 Ibid, p. 66, §307
224 Allain
225 Ibid
226 Ibid
of the *Rantsev* case for the advocates of human rights and the protection of human dignity and worth.227

**11. Analysis:**

In conclusion, the scope of a positive obligation depends on its interpretation and definition. The positive obligation to ensure a legislative-administrative framework was inaugurated in *Siliadin* and elaborated and confirmed in *Rantsev*. *Rantsev* highlighted that implementation of a legislative–administrative framework to combat trafficking must include practical and effective protections,228 that are supported by the well-functioning inter-play of national legislation and national administrative measures. The *Rantsev* judgment broadly extends the scope of Article 4 ECHR, whilst the three positive obligations under this Article have aided to foster a human rights approach in Cyprus, at least to the degree that the judgment increased awareness of the issue locally, regionally and internationally; that Cyprus implemented its obligations under Article 4, and although translation of measures from theory to practice remains at issue, it was a first step in the process of implementing a more humane approach to Trafficking in Human Beings. Fostering a human rights culture within countries like Cyprus and the Russian Federation may pose a challenge - due in part to cultural perceptions - and will be a long-term project, however, the changes and impetus for progress, already brought about by the *Rantsev* judgment, exemplify the significance of advancing human rights and human dignity and a human rights based approach to THB with the victim and her/his needs at the center of focus.

Each one of the three obligations under Article 4 ECHR compliments enhances and strengthens the obligations of the three Ps and the Comprehensive Approach. The positive obligations under all three methods - that is the Comprehensive Approach, the three Ps and the case law of the European Court of Human Rights mutually re-enforce each other and are the materialized evidence of international and regional efforts and discourse, recognizing the nexus between comprehensive anti-trafficking responses and protection of human dignity. It is assumed that protecting human dignity will aid more effective prosecution in the long term and as such would likely deter perpetrators and reduce the occurrence of THB. Insofar these are only assumptions, for which evidence lies in the future, but what we can say for sure is that the methods employed to combat THB are distinct yet interrelated processes and that their development remains open to advancement, whilst their effectiveness remains something to be evaluated over time.

The Next chapter will examine the practical implementation by Cyprus of the positive obligations based on both the obligations under the Anti-Trafficking Convention and the *Rantsev*

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227 Ibid
228 *Rantsev*, § 302 & § 289
judgment. This is done to provide a comprehensive background to the discussion on protective measures in Cyprus in chapter three.
Chapter Two

1. Cyprus: policy changes as a consequence of the implementation of the Rantsev Judgment and the Anti-Trafficking Convention

This chapter will analyze the major policy changes in Cyprus as a consequence of the implementation of the Rantsev judgment and the 2005 Anti-Trafficking Convention. The Rantsev judgment was based on provisions of the Anti-Trafficking Convention and the Palermo Protocol and thus the obligations under Article 4 ECHR, despite being narrower in focus are akin to the obligations under the broader obligations of the Convention and the Protocol. Cyprus was under an obligation to implement the Rantsev decision, as well as the obligations under the Anti-Trafficking Convention because it is a party to the Convention. An examination of the respective documents, that is the Communication from the delegation of Cyprus in the Rantsev case to the Committee of Ministers (DH-DD(2010)376E) of the Council of Europe, which deals with the implementation of the obligations under Rantsev and the first evaluation report on Cyprus by GRETA, dealing with the obligations under the Anti-Trafficking Convention, exhibit that practical implementation was essentially the same for both. The importance of implementation of these positive obligations rests in their value of shaping anti-trafficking responses in terms of the central and vulnerable position of the THB victim.\(^{229}\)

As we will discover in this chapter and the next, the harmonization of trafficking responses as well as the adjustment of migration and criminal law\(^ {230}\) are absolutely impertinent to the creation of a fully functioning Comprehensive Approach. Co-operation and transparency between relevant authorities with each other and with civil society organizations\(^ {231}\) in conjunction with the disconnection of migration and criminal law\(^ {232}\) are vital building blocks towards this approach, and are some of the current barriers that exist in states as regards THB.\(^ {233}\) The disconnection of migration from criminal law means that they do not work in a contradictory manner to each other,\(^ {234}\) thus leading to re-victimization of the victim by way of expulsion for example.\(^ {235}\) In this context the significance of the resident permit will be explored in chapter three.

The Rantsev judgment and the GRETA evaluation are two distinct yet interrelated processes. I would argue that the Rantsev judgment provided fresh impetus to the cause of implementing the positive obligations under the Anti-Trafficking Convention in Cyprus due to its high media

\(^{229}\) Rijken & Koster

\(^{230}\) Ibid

\(^{231}\) GRETA Report

\(^{232}\) Rijken & Koster

\(^{233}\) Ibid

\(^{234}\) Ibid

\(^{235}\) Ibid
coverage. Of course the judgment did not become legally binding until January 2010, however the process was set in motion in May 2004 originating in the application of Mr Rantsev.236

The Anti-Trafficking Convention recognizes the fundamental principle that trafficking in human beings ‘constitutes a violation of human rights and is an offence to the dignity and integrity of the human being’ in its Preamble in Paragraph 5.237 The main aim of the Convention is to protect the dignity and honour of human beings and offer support and protection to THB victims.238 The Rantsev judgment confirmed this perspective. The first evaluation report on Cyprus by GRETA was released on 12 September 2011.239 It is interesting to note, that Cyprus was actually the tenth state to ratify the Anti-Trafficking Convention, thereby triggering its entry into force on the 1 February 2008.240

The purpose of this chapter is to provide a general and policy background into the current situation regarding THB in Cyprus. Such a background is required to facilitate understanding of the Cypriot context in chapter three, where I delve into the examination of the obligation for protective measures under Article 4 and its implementation in Cyprus. This is important as the obligation for protective measures under Article 4 ECHR does not exist in a vacuum and is connected to the other positive obligations under Article 4. Only in conjunction with the provisions of prevention and prosecution from a victims focused perspective,241 can these positive obligations be a powerful guarantee against THB. It is therefore vital to give a general and policy background of the current situation in Cyprus in order to zoom in on the obligation for protective measures in chapter three.

1. Overview regarding the situation of THB in Cyprus:

According to reports by the US Department of State, Cyprus is pre-dominantly a country of destination for men, women and children subjected to forced labour, forced prostitution and other forms of labour and sexual exploitation.242 THB victims originate from Russia, Moldova, Ukraine, Hungary, Bulgaria, Romania, Belarus, the Philippines, Morocco, China, Vietnam, Uzbekistan, Greece, the United Kingdom, Colombia and the Dominican Republic.243 THB for sexual exploitation occurs within the commercial sex industry outlets, such as cabarets, bars, pubs and disguised massage parlors.244 According to Susan Pavlou of the Mediterranean

236 Rantsev
237 Ibid
238 Wurm, Gisela (Austria, SOC), PACE rapporteur on action against trafficking, Council of Europe, ‘Trafficking in Human Beings: Victim’s father speaks,’ http://assembly.coe.int/communication/campaign/notforsale/notforsale.htm 16 October 2011
239 GRETA Report
241 Rijken & Koster,
242 US Department of State, ‘Moving Toward a Decade of Delivery –Protection’
243 Ibid
244 Ibid
Institute for Gender Studies, ‘most of the clients are married Greek Cypriot men,’ who she believes need to be prosecuted. An increase in street prostitution has been noted by local authorities and NGOs in 2010, involving women from Romania, China, Vietnam and the Philippines, who are selling themselves for just a few Euros. NGOs reported that the increase in street prostitution is a consequence of these women having to pay back immigration networks. Roma children, children of migrants and asylum seekers remain amongst the most vulnerable to prostitution and other forms of trafficking. Cyprus became a member of the European Union in 2004.

2. Rantsev v Cyprus and Russia:

The Court’s findings regarding Cyprus in respect to Article 4 ECHR:

The Court found Cyprus in violation of Article 4 because the regime of artiste visas in Cyprus did not afford Ms Rantseva with practical and effective protection against trafficking and exploitation in general. In addition, the Court found Cypriot authorities in violation of Article 4 for failing to take the necessary specific measures to protect her.

3. Summary of changes in Cyprus as a consequence of the Rantsev judgment and the Anti-Trafficking Convention:

In 2007, Cyprus adopted a new and comprehensive anti-trafficking law (LAW 87(I)/2007), revising the legal framework governing the special protection of persons who are victims of trafficking and exploitation. Law 87(I)/2007 established a Multi-disciplinary Co-ordinating Group for Combating THB, charged with the task to review the 2005 National Action Plan on Combating Trafficking in Human Beings and Sexual Exploitation of Children. The new National Action Plan against Trafficking in Human Beings (“the NAP against THB”) valid for 2010-2012, was adopted in April 2010. In 2008, the Council of Ministers introduced a new immigration
policy, abolishing the regime of the artiste visas.\textsuperscript{257} I will begin the analysis of the policy changes in Cyprus with an examination of the new immigration policy and the abolition of the artiste visas, continue with an analysis of Law 87, an overview of the institutional framework, the Multi-disciplinary Group, the NAP 2010-2012, and conclude with developments in law enforcement.

4. The new immigration policy in Cyprus:

In 2008 the Council of Ministers introduced a new policy to govern entry and stay in Cyprus of third country nationals for employment in the “entertainment” industry, based on decision no. 67.893, which was implemented as of February 2009.\textsuperscript{258} This new immigration policy was adopted to remedy the shortcomings highlighted under Article 4 ECHR,\textsuperscript{259} whereby the administrative-legislative framework did not provide Ms Rantseva with practical and effective protection against trafficking and exploitation. Additionally, international criticism had highlighted and condoned Cyprus’ regime of “artiste” or “entertainment” visas, which was well known as a cover for trafficking women to Cyprus for the purpose of sexual exploitation.\textsuperscript{260} The new Cypriot immigration policy abolished the “artiste visa” regime.\textsuperscript{261} Instead, third country nationals wishing to work in cabarets, and other entertainment establishments as performing artistes,\textsuperscript{262} are now under the regime of all “performing artists” and a number of protective measures were implemented.\textsuperscript{263}

In the first instance, immigration procedures for all third country nationals, including performing artistes, seeking employment in Cyprus are now uniform,\textsuperscript{264} arguably providing enhanced transparency and coherency. The performing artist must possess relevant qualifications and experience in a particular field, which in 2001 was not a requirement employers had to demonstrate to the authorities.\textsuperscript{265} In addition, they are only granted work permits if they come in a group of a minimum of four performers.\textsuperscript{266} According to the Cypriot Ministry of Interior, more than half the applications for work permits are refused as a consequence of the requirement to prove the artistes skills and the group factor.\textsuperscript{267} However, the group requirement cannot really be perceived as an improvement to the old policy because, in

\footnotesize{257 DH-DD(2010)376E
258 Ibid, p. 1, §1.1
259 DH-DD(2010)376E
260 GRETA Report, § 17
261 Ibid
262 Ibid, §19
263 Ibid
265 Ibid
266 Ibid
267 EU Business}
fact the group factor may facilitate trafficking for sexual and labour exploitation because the procurers’ can now traffic groups rather than individuals.

The number of operating cabarets in Cyprus went from about one hundred in 2007, when Cyprus abolished the “artiste visa” to about forty-four in 2010. Bars are no longer permitted to employ non-European waitresses. The employment contract, previously arranged by the Civil Registry and Migration Department, is now prepared by the Department of Labour Relations of the Ministry of Labour and Social Securities. The employment contract is more detailed and aims to decrease any elements of dependence of the employee upon the employer, thus in theory diminishing the possibilities of debt bondage for travel and other expenses. Criticisms have been raised by the Mediterranean Institute for Gender Studies, who argued that changing the name of the visa or the contract does not change the situation, that in fact, “the women are still there, and the risk of trafficking (and dependency) also.”

Dependency upon the employer was a major issue highlighted by the Court in Rantsev under Article 4 ECHR, where it noted that the practice of requiring cabaret owners to lodge bank guarantees to cover for any other potential future costs associated with the artistes was particularly troubling. It held that the separate bond signed by X.A. (cabaret owner) in Ms Rantseva’s case to the Minister of the Interior of the Republic of Cyprus for potential expenses in case of repatriation of the immigrant from Cyprus, was of equal concern. The practice in Cyprus and the Court’s judgment demonstrate that transparent immigration procedures and protective measures, such as an employment contract which decreases the possibility of debt bondage, are essential.

This practice has been reformed, whereby now the bank guarantee deposited by the employer only covers repatriation costs and no longer any other potential future cost. In addition, this practice of guarantees applies to all employers in all employment sectors. Prospective employers also have to apply for employment permits for the respective employee with the Ministry of Labour and Social Security, in contrast to the previous procedure of getting approval from the Civil Registry and Migration Department. The Ministry of Labour and Social Security

268 Ibid
269 Ibid
270 DH-DD(2010)376E, p. 8
271 Ibid
272 Ibid
273 Ibid
274 Ibid
275 Ibid
276 Ibid
277 Ibid
278 Ibid
279 Ibid
established a special committee to review applications, which potentially offers increased protection through screening.

The new immigration policy in Cyprus aims to more effectively implement the positive obligation under Article 4 ECHR to provide practical and effective protection against trafficking and exploitation in its general administrative – legislative framework. The policy changes implemented are certainly to be welcomed, constitute a small progress, whilst the major challenge remains to translate law and policy into practice. Statistical data provided by the Cypriot Ministry of Interior, demonstrates the decrease in number of third-country nationals working in cabarets, from an estimated 1200 at any particular time to 331 in February 2010.

The changes regarding the immigration procedures for third country nationals seeking employment in the “entertainment industry” and their respective employers are welcome, in particular because of the review committee established within the Ministry of Labour and Social Security. However, such institutional protective mechanisms can only function effectively, when sincere and transparent co-operation with other relevant bodies exist, in particular with law enforcement. In addition, it is vital that migration policies for third country nationals are protective of their status as potentially vulnerable victims of THB and that they work in conjunction with criminal law as regards protection.

Three main issues must be raised relating to the new immigration policy, one is the abuse by traffickers and “employers” of other or new migration rules, the second regards the issue public officials complicity in trafficking and the third relates to the theme of awareness-raising amongst the clientele of prostitution in Cyprus. To begin with the abuse of the new immigration policy: it was noted by The Council of Europe Human Rights Commissioner, Thomas Hammarberg, that the previous loophole for traffickers and cabaret owners of the “artiste” visa could be replaced with other types of work permits to circumvent this new policy. In a letter to Interior Minister Neoklis Syliliotis, Mr Hammarberg urged the Cypriot authorities to ascertain “that no type of visa or work permit can be abused for unlawful purposes such as trafficking in human beings.” An example of such a loophole is the emerging trend of “marriages of convenience” in Cyprus. Cypriot authorities informed GRETA of this emerging trend in Cyprus in 2010, where 10 victims of THB were identified to have entered Cyprus for the purpose of “marriage.”

280 GRETA Report, § 19
281 DH-DD(2010)376E
282 Ibid
283 GRETA Report
285 Ibid
286 GRETA Report
287 Ibid
It was pointed out by NGOs that awareness-raising of the clientele of prostitution is of vital significance in combatting trafficking in Cyprus because of societal-cultural factors. According to NGOs it is pre-dominantly married Greek-Cypriot men seeking the services of prostitutes, without care or awareness of whether this girls and women are prostituting themselves ‘freely’ or against their will and under coercion, as a result of being trafficked and made physically and psychologically dependent. Addressing the societal-cultural barriers in Cyprus, awareness-raising and education are important so that those seeking the services of prostitutes know and thus hopefully care about the difference of consensual and forced prostitution. That is why the work of NGOs and their input in anti-trafficking responses is vital, insofar little progress has been made in this regard, due to the Cypriot governments relative inertia or at minimum lack of effective strategy.

The third issue is the alleged trafficking complicity of public officials. According to the 2011 Trafficking Report of the US Department of State, the Cypriot government has failed in its obligation to prosecute, convict and sentence trafficking offenders, despite initial efforts. Public officials complicit in THB in Cyprus were not convicted. In fact, the former assistance chief of the AIS, despite being arrested in March 2011 for his alleged involvement in trafficking, was released on bail shortly after. The AIS, is responsible for the control and inspection of all commercial sex establishments on Cyprus. An NGO highlighted the “inter-connections, corruption and participation of members of the police in trafficking,” and called for an extensive investigation into the scope and breadth of police involvement in this crime, in particular within the Civil Registry and Migration Department. Against this backdrop it is not astonishing that Ms Rantseva was not ‘recognized’ as a THB victim. The issue of widespread corruption and alleged involvement in THB of public officials raises questions as to the usefulness of the new immigration policy, because effective implementation can only occur, if political willingness to do so exists.

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288 Pavlou, Susan in EU Business
289 Ibid
290 Ibid
291 Ibid
292 EU Business
293 US Department of State, ‘Moving Towards a decade of delivery- Protection’
294 Ibid
295 Ibid
296 Ibid
297 Ibid
298 Ibid
299 US Department of State
5. Law 87(I)/2007

In 2007, Cyprus adopted a comprehensive anti-trafficking law [Law 87(1)/2007], revising the legal framework regulating the special protections of persons who are victims of trafficking and exploitation.\(^{300}\) It replaced previous law no. 3(I)/2000\(^{301}\) and aims to harmonize domestic legislation with the European Union aquis,\(^{302}\) as well as to better implement the Anti-Trafficking Convention and the Palermo protocol.\(^{303}\) The Palermo Protocol was adopted by General Assembly resolution 55/25 with entry into force on 25 December 2003.\(^{304}\)

The significance of the Palermo Protocol is that it is the first legally binding instrument worldwide with an agreed upon definition of what constitutes trafficking in persons.\(^{305}\) Cyprus signed the Palermo Protocol on 12 December 2000 and ratified it on 6 August 2003.\(^{306}\) Law 87 provides a comprehensive approach to THB, including measures for prevention, protection and prosecution.\(^{307}\) It provides special protection to victims, covers all aspects of trafficking, including exploitation and, forced labour, slavery, slavery like practices, exploitation of children, child pornography and removal of organs.\(^{308}\) It specifically prohibits the retention of personal documents such as passports and all documents issued under the Aliens and Immigration Laws, like residence permits (section 13(1)) and provides for measures regarding investigation of the crime of THB.\(^{309}\) Essentially, in theory it provides for a multi-disciplinary and cooperative approach to THB with the potential to tune migration procedures with criminal law.

Law 87 established a Multi-Disciplinary Co-ordinating Group, with the task to combat the crimes referred to in the law, to protect THB victims and take necessary measures to combat trafficking and exploitation.\(^{310}\) The Group is composed of representatives of the Office of the Attorney General, the Chief of Police, the Ministries of Justice, Foreign Affairs, Labour, Health, Education, the Departments of Civil Registry and Migration, Social Welfare, the Asylum Service, the National Institution for the Protection of Women, and the representatives of two NGOs.\(^{311}\) This Multi-Disciplinary Team was also commissioned to review and amend the 2005 National Action Plan.

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300 DH-DD(2010)376E, p. 9 §4.1
301 Ibid, p. 9
302 GRETA Report highlights Law 87(1)/2007 implements EU Council Framework Decision of 19 July 2002 on combating THB; EU Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography; and EU Council Directive 2004/81/EC of 29 April 2004 on the resident permit issued to third–country nationals who are victims of THB or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, GRETA Report, p. 10
303 GRETA Report, p. 10, §4.4
305 Ibid
307 GRETA Report
308 DH-DD(2010)376E
309 Ibid, p. 10, §4.2
310 DH-DD(2010)376E, p. 10, §4.4
311 Ibid, p. 10, §4.4
on Combating Trafficking in Human Beings and Sexual Exploitation of Children. Subsequently, the group drafted a new NAP for the period of 2010-2012, which was adopted by the Council of Ministers in April 2010. The new NAP has nine chapters and considers the following issues: co-ordination, prevention, identification and recognition of victims, protection and support of victims, suppression and prosecution, data collection, training, international co-operation, and evaluation.

Law 87 is comprehensive, whilst the definition of THB victim contained in Article 2 of Law 87, may require that ‘the person concerned has sustained damage or financial loss directly caused by the offence of THB.’ This means that the definition of “victim of THB” contained in Law 87 is not in conformity with Article 4(a) of the Anti – Trafficking Convention, as the latter requires neither damage nor actual exploitation. It is enough for an individual to be subjected to the actions (recruitment, transportation, transfer, harbouring or receipt of person) and means (threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power ...) specified in the Convention, coupled with the purpose of exploitation to be considered a THB victim. According to the Cypriot Attorney General’s Office, this definition in Law 87 is interpreted broadly, this statement is rendered irrelevant however, as no case law on the issue exists as of yet and no convictions for THB as based on Law 87 have been made as of yet. GRETA has urged Cyprus to make sure that ‘no conditions of damage or loss are required for a person to qualify as a THB victim.’ An important step for Cyprus as such is the translation of the law into practice, or in other words to actually apply this law before a court.

The direct cause requirement of damage or financial loss contained in Article 2 of Law 87 is according to Cypriot authorities not employed by police in the identification of victims of trafficking. In Cyprus, the Police are the only entity authorized to identify THB victims. Yet, while authorities claim that police do not employ the direct cause requirement in the identification of victims of trafficking, actual practice paints an even darker picture; with some sources claiming that police employ a handbook containing minimum standards for victim identification, whilst others allege no particular standards or procedures at all. In fact,
information regarding victim identification by police in Cyprus are quite vague and indicate room for arbitrary decision – making by police.

Thus I would argue that a gap exists between the law (Law 87) and the practice of victim identification in Cyprus,325 preventing a clear and coherent administrative-legislative framework against THB, whilst leading to ambiguities in the identification process.326 Second, the definition itself may have negative implications due to the direct cause requirement and the fact that no case law on the issue exists, since it raises the question of what happens to those victims who fall outside the framework of protection. GRETA has noted that the definition of THB victim contained in Law 87 can have negative implications for the identification process and the associated assistance and protection measures.327 The direct cause requirement, if applied in practice, would leave victims in which direct damage and loss could not be proven, without protection, as they would fall through the legislative – administrative system.

GRETA has called this gap between legal definition and what happens in practice, the ‘co-existence of two separate approaches.’328 It is not really the co-existence of two different approaches however, rather the lack of one coherent approach to identification of THB victims, or confusion over what approach actually does exist. The gap between the law and practice is reflective of the vagueness and ambiguity of the wider process of victim identification and referral, as well the haziness of actual police practice329 in the identification of THB victims in Cyprus. No real clarity on the procedure of victim identification by police exists and information regarding the practice of police identification of THB victims in Cyprus330 seems contradictory and slightly nebulous.

The gap between law and practice has negative implications for victim identification, allowing for arbitrary decision making by the police,331 as well as in fact, those victims unwilling to cooperate with the prosecuting authorities, are ignored rather than identified as has been reported by NGOs.332 This is another example of the gap between law and practical reality since Article 28(b) of Law 87 explicitly states that protective measures are applied irrespective of victims’ cooperation.333 The gap between theory and practice exemplifies that no coherent anti-trafficking mechanism regarding identification, referral and prosecution exists, despite attempts by Cyprus to implement a coherent administrative-legislative framework to combat THB. Thus

325 GRETA Report
326 Ibid
327 GRETA Report
328 GRETA Report, p. 16, §44
329 Christodoulou et al
330 I tried to get information from various sources in Cyprus, including Ministries, and the special police office to combat THB in Cyprus, unfortunately with no results
331 GRETA Report
332 European Network against Trafficking in Human Beings & GRETA Report
333 GRETA Report, p. 26, §111
the ideas and theory of the Comprehensive Approach implemented by Cyprus require further translation into practice and as such more attention and increased financial, as well as human resources. It demonstrates that implementation at national level - which is the translation of theory into practice of obligations - remains a major challenge. The GRETA Report has pointed out that the discord in definition between Law 87 and the Anti-Trafficking Convention must be addressed to promote legal clarity for THB victims. The situation further demonstrates that the obligation under Article 4 ECHR to provide effective and practical protection against trafficking and exploitation has not yet been achieved.

6. Overview of the institutional framework against THB in Cyprus:

The institutional framework against THB in Cyprus consists of a National Co-ordinator, the Multi-disciplinary Co-ordinating Group, the Police Office for the Prevention and Combating of THB and a current minimum of six NGOs active regarding THB in Cyprus. Article 47 of Law 87 designates the Minister of the Interior as the National Co-ordinator of action against Trafficking in Human Beings. The Permanent Secretary of the Ministry of Interior is in charge of all issues concerning THB and has a team of three staff. The Multi-Disciplinary Group is discussed below. The Police Office for the Prevention and Combating of THB was set up in 2004, and welcomed in the 2006 follow-up report on Cyprus by the CoE Human Rights Commissioner, which was referred to in Paragraph 99 of the Rantsev judgment. This special unit is in charge of victim identification, as well as gathering, processing, analyzing and employing intelligence on THB. However, the office currently consists of only five members, whilst responsible for intelligence on THB, co-ordination of police departments, plus maintaining direct contact to THB victims. In other words, the huge mandate of this special police unit stands in stark contrast to its human and financial resources.
7. Multi-Disciplinary Co-ordinating Group

The Multi-Disciplinary Co-ordinating Group involves all relevant national bodies and two NGO representatives.\textsuperscript{341} Its purpose is to monitor the implementation of Law 87 and the NAP against THB.\textsuperscript{342} One issue raised by the GRETA Report, was the implication that the Multi-Disciplinary Group operates without internal rules and thus one of the actions in the new NAP (2010-2012) is to prepare the internal regulation for the operation of this special group.\textsuperscript{343} The Multi-Disciplinary Group meets every three months.\textsuperscript{344} Despite issues over the effectiveness of measures employed by this body, benefits are gained through the composition of this Group. The fact that all relevant socio-political actors are incorporated, with an increase of domestic NGO input,\textsuperscript{345} reflects the fostering of a socio-political culture of human rights protections, which enhances transparency and increases political accountability in the long term. This issue of political transparency and accountability is of particular importance against the backdrop of partly state-condoned or at minimum state ‘ignored’ occurrences of THB in Cyprus prior to ratification of the Anti-Trafficking Convention and the \textit{Rantsev} judgment.

8. The NAP 2010-2012

"THB is a heinous form of violation of human rights that undermines human dignity, corrupts public life, subverts personal safety and produces huge profits."\textsuperscript{346}

The NAP 2010 -2012 was prepared by the Multi-Disciplinary Group with the goal of inaugurating a comprehensive framework to address THB.\textsuperscript{347} A comprehensive framework is a fundamental requirement of a human rights based approach to combat THB as required under the Anti-Trafficking Convention and the \textit{Rantsev} judgment. Vital for the implementation of a comprehensive framework, are the establishment of pragmatic objectives, as well as promoting concrete actions and more constructive co-ordination.\textsuperscript{348} Additional measures to combat THB include the dissemination of information leaflets at airports, indicating forms of exploitation, as well as key rights under Law 87 and provide a range of contact details, translation services and a 24-hour help hotline to the police.\textsuperscript{349}

\begin{footnotesize}
341 GRETA Report, Executive Summary
342 GRETA Report, § 24
343 Ibid, p.13, §26
344 Ibid, p. 13, §25
345 Ibid
346 Ibid, p 15, §35
347 Ibid
348 Ibid,p.17, §49
\end{footnotesize}
The new NAP whilst being comprehensive on paper, and adding some additional information measures, lacks clear strategies to effectively and practically protect THB victims from trafficking and exploitation.\(^{350}\) Also, the trafficking of children has been omitted in the new NAP.\(^{351}\) As highlighted by the CoE Human Rights Commissioner, Thomas Hammarberg in 2008, neither the 2005 NAP, nor the new NAP were evaluated for their effectiveness in combating THB.\(^{352}\) However, according to the final chapter of the NAP 2010-2012, Cyprus plans an annual internal evaluation of its implementation and an overall evaluation of the plan in 2012.\(^{353}\) The GRETA Group has emphasized the need for a specific National Action Plan on child victims of THB,\(^{354}\) as well as that annual and \textit{ex post} evaluations of the implementation of the NAP are undertaken and incorporated into future policies.\(^{355}\) In addition, GRETA recommends the commissioning of an independent external assessment of the new NAP.\(^{356}\)

9. \textbf{Developments in Law Enforcement:}

The \textit{Rantsev} judgment found violations of Articles 2, 4 and 5, also attributable to the lack of adequate training by police officers and their subsequent failure to recognize and identify Ms Rantseva as a victim of THB.\(^{357}\) Both Law 87 and the new NAP against THB include provisions and measures for adequate training of all government officials, the judiciary and law enforcement in Cyprus.\(^{358}\) Some developments in this respect began in 2001, as highlighted in the \textit{Rantsev} judgment paragraph 98, with the training of 150 police officers on the identification of victims and referral of victims.\(^{359}\)

Cypriot authorities indicated the training of several senior police officers on THB issues in each district.\(^{360}\) Additionally, the Police Academy provides THB-related training seminars, which have been criticized by local NGOs for its limited scope, consisting of only three-hour seminars, covering a number of human rights and discrimination topics.\(^{361}\) NGOs also highlighted the prevailing culture amongst local police, in which women are perceived to ‘consent’ to their predicament.\(^{362}\) As emphasized by GRETA, training of law enforcement must be more specialized and systematic and aim to overcome negative perceptions of and prejudices against THB

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350 GRETA Report
351 Ibid, p. 17, §49
352 Ibid
353 Ibid
354 Ibid, p. 17, §51
355 Ibid
356 Ibid, p. 18, §57
357 DH-DD(2010)376E
358 GRETA Report
359 DH-DD(2010)376E, p. 11, §5.2
360 GRETA Report, p. 19, §59
361 Ibid, p. 19, §59
362 Rantsev, p. 19, §98
victims. Training must also include the new and emerging forms of THB in Cyprus. Training of law enforcement with a view to a victim centered approach is impertinent in Cyprus, in order to develop a human rights culture, which overcomes negative perceptions of women and which counter-balances corruption amongst public officials.

10. Summary of major GRETA Recommendations:

In regards to Law 87 adopted in Cyprus in 2007 the GRETA report urges the Cypriot authorities to ensure that ‘no additional conditions of damage or loss are required from a person to qualify as a victim of THB in order to benefit from the protection measures provided in this law.’ In addition, Cypriot authorities should ‘encourage the Office of the Attorney General to use Law 87 to pursue convictions for the offence of THB.’ GRETA invites the Cypriot authorities to consider an increase of the human and financial resources directed to the Police Office for the Prevention and Combatting of Human Trafficking. GRETA recommends that Cyprus should increase their efforts to ‘provide specialized and systematic training to all relevant professionals’ and relevant bodies. In terms of prevention, GRETA suggests for the Cypriot authorities to improve information’s provided to potential migrant workers, to closely monitor applications of visa regimes for the entertainment industry and set up police controls at suspicious entertainment venues. International co-operation, an obligation established under Article 4 ECHR is emphasized as well. In regards to victim identification, GRETA supports the establishment of a National Referral Mechanism to ensure co-ordination between all actors.

11. Analysis

First I would like to emphasize, that the implementation by Cyprus of the Anti-Trafficking obligations is a continuing process. The report by GRETA is the result of the first evaluation round on the implementation of the Convention. It is only the beginning of a journey for Cyprus as well as other state parties to either the Anti-Trafficking Convention or the European

363 GRETA Report, p. 19, §65 & §66
364 Ibid, p. 19, §65
365 Ibid, p. 42
366 Ibid, p. 45
367 Ibid, p. 42
368 Ibid, p. 42
369 Ibid, p. 43
370 Ibid, p. 43
371 Ibid, p. 43
372 Ibid
373 Ibid, p. 44
Convention on Human Rights, or as such the European Community of States, as well as the international community, towards a world free from THB.

The measures implemented by Cyprus embody the difficulties of manifesting the world we aspire to, free from the scourges of Trafficking in Human Beings. Implementation by Cyprus reflects the discord between the various actions and multiple aims of state actors. Implementation is hinged upon the willingness of a state to establish a Comprehensive Approach against THB, whilst also highlighting issues with practical implementation and societal-cultural barriers to THB. Therefore, these issues range from widespread corruption, state agents complicity in THB and the adequateness of measures established, such as the fact that no charges have been invoked under law 87 to date regarding Trafficking in Human Beings. Education and awareness – raising amongst, public officials, society at large, ‘frontliners,’ such as law enforcement and migration officers and clientele is of utter significance in Cyprus and for the nurturing of a human rights culture in general. Cyprus should also aim for progress in adjusting migration law with criminal and human rights law. Nonetheless, the single fact that state parties consent to implement the obligations under the Anti-Trafficking Convention and the case law of the European Court of Human Rights - that they establish bodies, laws and institutions to combat Trafficking – embodies the hope for a world free from this crime against the integrity and dignity of the human being.

12. Conclusion:

It is my sincere hope that the implementation of the positive obligations flowing from both Article 4 ECHR and the Anti-Trafficking Convention, advance the application of a human rights culture in individual member states, thus adding a layer of protection to the regional and international fight against THB. I would assume that the implementation of specific THB related human rights guarantees, foster awareness and over time entrench values, whilst enhancing political transparency, accountability and responsibility towards protecting victims of trafficking and exploitation. Essentially, implementation of these obligations, even if far from perfect and bullet proof, the fact that they are applied gives rise to the hope that they will strengthen and fortify the protections offered to THB victims over time and aid the empowerment of THB victims in the long term.
Chapter Three

1. Cyprus: Implementation of Protective Measures against THB

Under Article 4 ECHR, following the *Rantsev* judgment, state parties are now under an obligation to implement general and specific protective measures to provide practical and effective protection against trafficking and exploitation to THB victims or potential victims. In other words, state parties to the European Convention on Human Rights are now positively obliged to provide for the physical safety of THB victims, establish comprehensive policies and programs to prevent and combat THB and to adequately train law enforcement, immigration, and government personnel. The obligation for protective measures is the focus of my research because a discrepancy exists between the global rise in THB and inadequate international, regional and in particular national protection mechanisms. The shift towards a human rights based approach, with the victim at the center of focus and protection, is a relative recent development, aimed at improving the previous criminal law approach to THB cases in some states, in which victim protection was linked to their willingness to co-operate with authorities in criminal proceedings against the perpetrators.

This chapter begins with a recap of the scope of the obligation for protective measures under Article 4 ECHR in Cyprus. It will then zoom in on the implementation of protective measures in Cyprus and focus on the following issues: the identification of THB victims, information provided to THB victims, the Reflection Period and Residence Permit, the Non-criminalization of THB victims, and introduce the National Referral Mechanism, because they help us understand the context of the National Referral Mechanism, which is the central focus of the following chapter. The analysis of the implementation of protective measures in Cyprus will be supplemented by the general obligations of Cyprus under the Palermo Protocol, and the Anti-Trafficking Convention. The obligations for protective measures under these two legal documents are discussed because of four factors: the fact that the obligations under Article 4 ECHR are mainly based on the obligations under the Palermo Protocol and the Anti-Trafficking Convention; that the Court in determining the scope of the positive obligations arising under Article 4 ECHR relied upon various provisions of both the Palermo Protocol and the Anti-Trafficking Convention; that Cyprus is bound by these THB documents and because it demonstrates the development of a human rights based and Comprehensive Approach to THB.

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374 *Rantsev*, p. 75
375 Ibid
376 Ibid
378 Rijken & Koster
As regards the human rights based approach to THB, the positive obligation for protective measures established in *Rantsev* under Article 4 ECHR reflects and emphasizes the human rights based and victims focused approach aspired to in the 2005 Council of Europe Anti-Trafficking Convention. David Dolidze, administrator and lawyer at the Secretariat of the CoE Convention on Action against Trafficking in Human Beings, has emphasized the significance of the *Rantsev* judgment for the implementation of the human rights based approach in contracting states. He stated that *Rantsev* was momentous as it was the first time that THB fell within the scope of a human rights Convention and contains the hope that this will accelerate the shift to a human rights based approach to protection.

2. The scope of the positive obligation for protective measures under Article 4 in Cyprus recapped:

The judgment of the Court established that Article 4 entails both general and specific positive obligations on part of the state to take measures to protect THB victims or potential victims. The Court demarcated the scope of the positive obligation for protective measures under Article 4 ECHR, to include the following three elements: a) to provide for physical safety of THB victims within their territory b) to establish comprehensive policies and programs to prevent THB c) to provide for training of law enforcement and immigration personnel. Essentially, Article 4 entails the obligation to approach the protection of THB victims from a human rights approach, shifting the victim and her/his needs to the center of attention.

3. Identification of THB Victims in Cyprus:

The Court, by referring to the obligations undertaken by Cyprus in the context of the Palermo Protocol and the Anti-Trafficking Convention, concluded that Cyprus was under a positive obligation to ensure adequate training to relevant authorities to enable them to identify potential THB victims. Identification of victims of THB falls both under the obligation to prevent THB, as well as to protect THB victims under the three Ps, as these two obligations are interrelated. In addition, the identification of victims also forms a significant part of the National Referral Mechanism, which will be discussed in detail in chapter four. The US State Department has highlighted that protection of THB victims must be proactive, because THB remains one of the ‘world’s most hidden crimes.’

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380 Ibid
381 Ibid
382 Ibid
383 Rijken & Koster
384 *Rantsev*, p. 64, §295
385 OSCE/ODIHR, ‘National Referral Mechanism – Handbook’
386 US Department of State, ‘Moving Towards a Decade of Delivery’

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psychological as well as physical trauma and fear experienced by victims, prevents them from self-identification.\textsuperscript{387} Reality is that instead of being identified THB victims are both knowingly and unknowingly arrested and deported\textsuperscript{388} and this applies globally not just to Cyprus. Since identification is a first step to prevention and protection of THB victims, a victim’s focused approach to THB is impertinent, in particular against the backdrop of the regime of the 3Ds of denial, detention, and deportation, the antithesis of the 3Ps approach.\textsuperscript{389}

Article 10 of the Anti-Trafficking Convention stipulates the requirement to implement measures\textsuperscript{390} for the identification of victims. Article 10 holds that parties need to provide competent authorities, with trained and qualified personnel, who can identify and help victims.\textsuperscript{391} In depth information on the Cypriot system of victim identification is quite difficult to get, but the official process as evident from a number of reports is as follows. Firstly, the process of victim identification is governed by the new Law 87, under which Civil servants and NGOs must report potential victims to the Social Welfare Services (Article 29 (1), which is officially responsible for informing the potential victims of their rights and facilities available to them.\textsuperscript{392} I say potential victims, because then the Social Welfare Services must report and refer the cases to the Police, who pursuant to Article 29\textsuperscript{393} of Law 87 are the only official authority to identify and recognize THB victims and possible victims as such. To be precise, it is the Police Office for the Prevention and Combating of Human Trafficking which has been operational since 2004, which is in practice responsible for the identification of THB victims.\textsuperscript{394} Together, these agents and agencies involved form part of the National Reporting Mechanism as established under Article 45 of Law 87.\textsuperscript{395} Many issues exist with this victim identification process, as I will discuss below:

First, the order of identification and recognition could be reversed. To me it would make more sense to have official police identification and recognition of THB victims as a first step, as generally police officers, are the first point of contact with THB victims, once victims have actually entered the country. I assume that Law 87 includes the term civil servants to also mean migration officials, who are also a major first point of contact with THB victims. Also, the process, in which possible victims are sent from Social Welfare Services to Police to be officially identified as THB victims and only if identified as such, able to claim the assistance measures and protections associated with it (housing, counseling, residence permit, reflection period and so on),\textsuperscript{396} seems to be slightly convoluted. A lack of clear and coherent communication between

\textsuperscript{387} US Department of State, ‘Moving Towards a decade of Protection’
\textsuperscript{388} Ibid
\textsuperscript{389} Ibid
\textsuperscript{390} Council of Europe, Anti Trafficking Convention, Article 10
\textsuperscript{391} Ibid
\textsuperscript{392} GRETA Report, p. 25, §106
\textsuperscript{393} Ibid, p. 25, §106
\textsuperscript{394} GRETA Report & European Network against Trafficking in Human Beings
\textsuperscript{395} GRETA Report
\textsuperscript{396} European Network against Trafficking in Human Beings
the agents and agencies involved in referring and reporting the cases to police for official identification appears to exist.\textsuperscript{397} According to Cypriot police and authorities, a manual for the identification of THB victims has been released offering a wide range of practical guidance,\textsuperscript{398} whilst other sources claim that no such handbook is used in practice.\textsuperscript{399} In essence, the overall system is complicated, goes around too many corners, lacks effective co-operation between all actors involved and as such lacks communication, coherency, transparency and a coordinated approach.\textsuperscript{400} In addition it does not facilitate identification of victims independent of their willingness to cooperate with the authorities.\textsuperscript{401}

GRETA has rightly emphasized the need for a more coherent National Referral Mechanism with more co-ordinated communication between all actors involved\textsuperscript{402} and clearer instructions provided to all relevant officials to prevent any ‘de facto link between the identification of victims and their willingness to co-operate.’\textsuperscript{403} Despite the provisions in Law 87 that protective measures for THB victims are applied irrespective of victims’ co-operation in criminal proceedings (Article 28(b)\textsuperscript{404} and that victim identification is not ‘conditional upon their willingness to co-operate with authorities,’\textsuperscript{405} NGOs have reported a different reality, noting a de facto link between identification and willingness to co-operate.\textsuperscript{406} Thus, migration and criminal law are not in tune and instead the process of victim identification in Cyprus lacks clarity and transparency, whilst victims may not even be granted either their status as a victim, nor access to the respective assistance and protection measures, such as a residence permit, access to a reflection period, shelter, medical aid or physical and psychological safety and so on.\textsuperscript{407}

As discussed in chapter two, a disjunction between the legal definition of THB victim contained in Law 87 and victim identification in practice exists and may prevent identification of those victims who do not directly suffer from sustained physical, psychological or financial loss, as a result of being trafficked.\textsuperscript{408} The Cypriot authorities indicated that no such link exists in practice\textsuperscript{409} and that the police employ the so-called “Delphi indicators” to identify THB victims.\textsuperscript{410} The Delphi indicators were developed by an ILO project of the European Commission in 2008 and comprise 67 indicators, covering recruitment, the means included in the definition of THB, the conditions of exploitation and coercion in the place of destination and the

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\textsuperscript{397} Christodoulou et al \textsuperscript{398} Greta Report, p. 26, §108 \textsuperscript{399} Christodoulou et al \textsuperscript{400} Greta Report, chapter 3, point 3 \textsuperscript{401} Ibid, p. 27, §118 \textsuperscript{402} Ibid, p. 27, §118 \textsuperscript{403} Ibid, p. 27, § 118 \textsuperscript{404} Ibid, p. 26, §111 \textsuperscript{405} Ibid, p. 26, §111 \textsuperscript{406} Ibid, p. 26, §112 \textsuperscript{407} Ibid \textsuperscript{408} Ibid, p. 25, §107 \textsuperscript{409} Ibid, p. 25, §107 \textsuperscript{410} Ibid, p. 25, §107
\end{flushleft}
vulnerability of potential victims. As regards the claims, that Cypriot police do not employ a handbook or guidelines in the identification of victims, it is possible that the special Police Office for Combating THB has recently began to employ it, unfortunately I did not receive a response from this special police unit to confirm this issue.

Essentially, the disjunction between the Cypriot national law and practical application prevents coherency and effective application of a victims focused approach required under the positive obligation for protective measures. In terms of victim identification, GRETA has further emphasized the vital significance of employing independent translators when Social Services Officers use interpreters. GRETA has urged the Cypriot authorities to ‘review the identification system for victims of THB and its application’ as it is not sufficiently effective in regards to those victims reluctant to come forward as THB victims and those who do not wish to co-operate with the authorities.

In response to the report on the first evaluation round by GRETA, Cyprus submitted a number of final comments regarding the recognition and protection of THB victims, which do not form part of the analysis by GRETA for the first evaluation round. The Cypriot Office of the Attorney General argued that recognition and protection of victims can be separated into three distinct stages, which are (1) Victims not yet identified, but considered as possible victims (2) Identified victims currently in the reflection period granted to them, whilst assessing whether they will cooperate with prosecuting authorities and (3) Victims who have decided to co-operate with authorities. What this statement by the Office of the Attorney General omits however, is what happens to those victims who do not co-operate, or possible victims not identified as such. Essentially, the legal framework provided for in Law 87, in conjunction with the gap between the law and the separate practice of victim identification, does not provide effective protections to those groups of victims, who do not wish to co-operate, or who are possible victims but not identified as such. Thus the legal framework for protection is missing out these groups unwilling or unable to co-operate, or not officially recognized as THB victims. In conjunction with the gap between the law and practice this results in a narrow and limited approach to THB protection in Cyprus.

The Office of the Attorney General stated that section 28 of Law 87 ‘provides the applicable basic principles governing the protection of victims belonging to all three stages,’ whilst section 29

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411 GRETA Report, p. 25, §107
412 Ibid, p. 26, §109
413 Ibid, p. 27, §117
414 Ibid, p. 27, §116
415 Ibid, pp. 47 & 51
416 Ibid, p.51
417 Ibid, p. 51
418 Ibid, p. 51
of Law 87 regulates the first stage,\(^{419}\) section 30 the second stage and sections 40-44 the third stage.\(^{420}\) The argument in regards to the first stage is that Article 29 (1) of Law 87 provides for the referral of potential victims by NGOs to the Social Welfare Services, which will then afford the potential victim with relevant information.\(^{421}\)

This paper rejects the underlying assumption of the Cypriot Office of the Attorney General that Article 29 of Law 87 provides sufficient protection to potential victims regarding their recognition and identification as THB victims or potential victims. It rejects this argument on the basis that the recognition of the individual in question as a potential THB victim by the relevant NGO and the Social Welfare Services is not equivalent to official identification of the potential THB victim by the Police, which is the competent authority under Article 29 of Law 87 to identify THB victims. Thus whole groups of victims, such as the ones mentioned above, are likely to fall through the legal and practical fabric of protective measures. The disparate disjunction between recognition of and referral by NGOs or the Social Welfare Services and official identification by Cypriot law enforcement leaves in reality and in practice too many loopholes for arbitrary deviation. It was evident in the case of Ms Rantseva, that arbitrary decision-making and corruption must be addressed, in order to implement effective legal protections, which are not only a mere paper tiger, but legislation and policies that are also employed in practice.\(^{422}\)

In regards to the second stage, in which the victim was identified as a THB victim and is in her/his reflection period of 30 days, considering whether she/he will co-operate with prosecuting authorities, Section 30 of Law 87 does provide for rights and protective measures independent of co-operation.\(^{423}\) However, the lack of a clear system of identification and lack of a coherent referral mechanism do not bode well for the disjunction previously mentioned between unofficial recognition and official identification. Who monitors, the conduct of police officers identifying victims? Who ensures that relevant law enforcement officers do not only officially recognize and identify victims willing to co-operate in prosecution proceedings?

The Cyprus Police Office for the Prevention and Combating of Human Trafficking is by far lacking human and financial capacity to safeguard that identification of THB victims ensures the protection of THB victims.\(^{424}\) The reality in Cyprus of instances of public officials’ involvement in trafficking and the lack of prosecuting and punishing the perpetrators for this heinous crime does not bode well for those subscribing to realpolitik. The existence of the gap between law and practice in the identification of victims is real, and the counter-arguments of the Office of the

\(^{419}\) GRETA Report, p. 51
\(^{420}\) GRETA Report, p. 52
\(^{421}\) Ibid
\(^{422}\) OSCE/ODIHR, ‘Handbook: National Referral Mechanism’
\(^{423}\) GRETA Report, p. 52
\(^{424}\) Ibid
Attorney General invalid. Despite the fact that the law provides for a separation of the procedure of identification of THB victims as distinct from their willingness to co-operate, the gap between law and reality, renders the counter arguments of the Cypriot authority non-beneficial to the development of a coherent mechanism for victim identification, as stipulated by the obligation for protective measures under Article 4 ECHR. It is hoped regardless, that the process initiated by Rantsev and the Anti-Trafficking Convention does advance a human rights based approach to THB in Cyprus in the long-term.

4. Information provided to THB victims:

The Cypriot authorities noted that they began disseminating information leaflets setting out the rights of women migrant workers and the responsibility of their employers, including procedures for work permits and contact phone numbers for instances of exploitation and labour disputes.\textsuperscript{425} The Rantsev judgment refers to these leaflets in paragraph 96 of the judgment, quoting the CoE Human Rights Commissioners follow-up report.\textsuperscript{426} The leaflets, available in four languages, are disseminated at Cypriot airports and sent to the consulates of Russia, Bulgaria, Ukraine and Romania.\textsuperscript{427} In addition, the police provide an anonymous toll-free hotline providing information regarding THB assistance.\textsuperscript{428} The new NAP provides for the revision of the information leaflet, to cover a wider range of information and key provisions, currently under amendment.\textsuperscript{429}

The dissemination of information leaflets may aid the protection of THB victims, but other forms of awareness raising and education are urgently required.\textsuperscript{430} Fact is that THB victims often come from poverty ridden socio-economic backgrounds, with little access to education and opportunity.\textsuperscript{431} Often THB victims belong to vulnerable populations.\textsuperscript{432} It is questionable if the information leaflet provided to them at the airport or at their respective countries consulate, even falls into their hands or reaches them. Even if they are made aware at the airport in Cyprus, by then it is likely too late for them to raise their voice out of fear of their respective employer or fear of deportation back into desperate conditions at home. Also, receiving information about one’s rights, especially in a highly vulnerable situation, does not equal input and response. On the other hand, maybe if Oxana Rantseva had had available to her an overview of her rights and information where to find assistance in 2001, maybe she would not be dead now. Maybe she

\textsuperscript{425} DH-DD(2010)376E, p. 5
\textsuperscript{426} Rantsev
\textsuperscript{427} DH-DD(2010)376E, p. 5
\textsuperscript{428} Ibid, p. 6
\textsuperscript{429} GRETA Report
\textsuperscript{430} Christodoulou et al & EU Business
\textsuperscript{431} US Department of State, ‘Moving Towards a decade of Delivery’
\textsuperscript{432} Ibid
could have had the possibility to refuse to sign her new contract as a dancer, rather than as an interpreter as originally promised to her.\(^{433}\)

5. **Recovery and reflection period and residence permits:**

The recovery and reflection period and the granting of a residence permit falls under the obligation to provide for the physical safety of THB victims within a state’s territory under Article 4’s obligation for protective measures, based on Article 6 of the Palermo Protocol.\(^{434}\) Since the Court does not indicate nor prescribe any specific ways to fulfill this obligation,\(^{435}\) I will refer to Articles 13 and 14 of the Anti-Trafficking Convention. Article 13 provides for a recovery and reflection period of at least 30 days, during which the victim is authorized to reside in the state’s territory without fear of expulsion.\(^{436}\) Article 14 provides for a renewable residence permit and the choice between granting the victims stay based on a) the victims personal situation or b) in exchange\(^{437}\) for the victims co-operation in criminal proceedings. Cyprus, in line with the EU Council Directive 2004/81 follows the second option, in exchange for co-operation in criminal proceedings, as is reflected in Article 32 of Law 87.\(^{438}\) Articles 32 and 33 of Law 87 stipulate co-operation in criminal proceedings as a requirement for the grant of a residence permit, following the 30 days reflection period in Cyprus.\(^{439}\) This exemplifies that Law 87 aims to adjust migration law with criminal law.

6. **The Non-Criminalization of THB victims:**

"Far too often, still, the defenceless victims of cynical traffickers are regarded as the perpetrators, and are criminalized and deported before the true circumstances are investigated, with no care or support and with no regard to the severe traumas these persons frequently suffer. Very often health care, and the basic right to counsel, the services of translator or the opportunity to sue their employers for damages, is denied."\(^{440}\)

Non-criminalization is a vital aspect of providing for protection of victims of trafficking in general and from preventing re-victimization by the respective system in particular.\(^{441}\) It falls

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\(^{434}\) Rantsev

\(^{435}\) Hol

\(^{436}\) CoE, Anti-Trafficking Convention Article 13, p.9

\(^{437}\) Hol, p.44

\(^{438}\) Greta Report, p. 27

\(^{439}\) Ibid, p. 28

\(^{440}\) Barbara Limanowska, in ODIHR Handbook, p. 21, 2002

\(^{441}\) Rijken & Koster
under the obligation for providing for the physical safety of victims whilst in a state's territory under Article 4 ECHR. Article 26 of the Anti-Trafficking Convention prohibits the imposition of penalties on THB victims on account of their involvement in unlawful activities such as a result of their illegal entry, stay or employment in the respective state. Article 42 of law 87 stipulates that individuals will not be criminally prosecuted if violence, coercion or abuse of power were employed in their victimhood. Insofar, 'no victim of THB has been prosecuted for illegal stay in Cyprus or other offence to the extent that it was a direct consequence of her/his situation as a trafficked person.' Out of 52 THB victims identified in Cyprus in 2010, only four were irregular migrants, however none were prosecuted on account of their irregular entry or stay in Cyprus. The non-criminalization of victims of THB is positive for the development of a victims focused approach to THB and it demonstrates the importance of adjusting migration with criminal law.

7. The National Referral Mechanism:

The obligation for protective measures under Article 4 ECHR, demarcated by its three elements of physical safety, comprehensive programs and training of relevant officials, requires the implementation of a National Referral Mechanism (NRM) for THB victims. A National Referral Mechanism is a co-operative framework aimed at protecting and promoting the rights of trafficked persons, in co-ordinated efforts and in strategic partnerships with civil society. The instrument of a National Referral Mechanism for THB victims is vital for the protection of victims in the sense that their rights are being respected, upheld and that they are effectively provided with the relevant information and referred to the respective services. Article 45 of Law 87 inaugurated a National Reporting Mechanism for THB victims in Cyprus, which is not the same as a National Referral Mechanism because it focuses on reporting and monitoring rather than referring the victims of trafficking. According to the Office of the Commissioner for Administration (Cypriot Ombudsman: in this instance, Mrs. Eliza Savvidou) Cyprus does not officially have a National Referral Mechanism as such, however its main features and institutional framework exist in Cyprus. Thus, I will focus on the shape of the existing structures.

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442 Rantsev
443 CoE Anti-Trafficking Convention, p. 13
444 GRETA Report, p. 35
445 Ibid, §180, p. 36
446 Ibid, p. 36
447 OSCE/ODIHR, 'National Referral Mechanism' p. 15
448 Ibid, p. 15
449 Ibid, p. 15
450 GRETA Report, p. 25, §106
451 Office of the Cypriot Ombudsman, Personal Communications, information received 14 November 2011.
8. Summary:

The discussion in this chapter on the need for a human rights based approach and its implementation by Cyprus has highlighted that clear and coherent legislation, co-operation and responses are required to more humanely combat THB. Shifting the focus of attention to the vulnerable position of the THB victim as the starting point, the tremendous human cost of THB may be prevented. In addition, such measures are aimed at increasing protection of THB victims, which in turn is aimed at their increased feeling of security to co-operate in criminal prosecution of perpetrators. The idea is that if the rights of THB victims to personal freedom, security, safety and non-discrimination are upheld, then these individuals will be increasingly secure to come forward with information. In other words, by adjusting migration law with criminal law and making the grant of residence permits more accessible to THB victims, more testimonies and as such prosecutions may be undertaken. This is of utter importance in Cyprus, which to date has no criminal proceedings as regards THB under its new law. One success of implementation in Cyprus so far has been the non-criminalization practice, as stipulated by the new law.

The realization that victims testimonies are indispensable for successful criminal prosecutions, are the origins of the shift towards a victims focused approach. It is evident that conflicting measures between migration and criminal law pose a barrier to combating THB that is why they need to be adjusted. In order to counter conflicting measures and interests of migration and criminal law, whilst protecting the victims vulnerable position, scholarly literature has called for a 'Victim Assistance and Protection Package,' also called VAPP, which must address at minimum the following measures: to inform the victim of her/his rights, to provide victim with a safe house, the grant of a residence permit on humanitarian grounds if no current residence permit exists regardless of co-operation in criminal proceedings, no enforced expulsion, a reflection period for first aid measures to rest and recover, an effective referral mechanism for specialized help, such as medical care, legal aid, counseling, to provide the victim with information about the process, procedure and implications of criminal proceedings, provide

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452 Rijken & Koster
453 Allain, p. 546
454 Rijken & Koster
455 Ibid
456 Ibid
457 Ibid
458 GRETA Report
459 Rijken & Koster
460 Ibid
461 Ibid
462 Proposed by Conny Rijken & Dagmar Koster
assistance to family members at risk of reprisal by the trafficker, some measures regarding leisure, training and work, a risk assessment for voluntary returns to countries of origin.\textsuperscript{463}
Chapter Four

1. National Referral Mechanism

The United Nations Office on Drugs and Crime (UNODC), as well as the Organization for Security and Co-operation in Europe (OSCE) have been working on the development of National Referral Mechanisms (NRMs) to protect the rights of victims of Trafficking for the last decade. The OSCE is the world’s largest regional security organization, with 56 member states from Europe, Central Asia and North America, including Cyprus. The OSCE defines National Referral Mechanisms as a ‘co-operative framework through which state actors fulfill their obligation to protect and promote the human rights of trafficked persons, co-ordinating their efforts in a strategic partnership with civil society.’ The handbook on the National Referral Mechanism provided by the OSCE office for Democratic Institutions and Human Rights (ODIHR) highlights that the structure of an NRM varies in each country but must have certain features to be an effective tool in the protection of the rights of THB victims. Cyprus has a National Reporting Mechanism and the main features required for a National Referral Mechanism. However, it has not established an effective NRM as of yet, as it is lacking coherent and transparent mechanisms. Thus the GRETA report called for the establishment of an effective NRM that ensures co-operation between all stakeholders.

This chapter begins with an overview of the constitutive elements of an effective NRM and the values underlying it. It outlines and analyzes the NRM features in Cyprus, gives a quick introduction of Transnational Referral Mechanisms (TRM) and concludes with international efforts towards a world free from THB. TRMs are essentially the same as NRMs, except that they are of transnational nature, thus aimed at addressing THB in countries of origin, transfer and destination.

2. Features of NRMs and values underpinning it:

The commitment of the OSCE to protect victims of Trafficking with a focus on promoting a human rights based approach and victims focused responses to THB, was formalized in the Ministerial Declaration on THB adopted in Porto in 2002. The Porto Declaration introduced the system of the National Referral Mechanism in the OSCE sphere. In the Porto Declaration,
the participating states committed themselves to ‘render assistance and protections to victims of trafficking’\textsuperscript{474} and ‘to establish effective and inclusive National Referral Mechanisms.’\textsuperscript{475} In 2003 the OSCE adopted the Action Plan to Combat trafficking in Human Beings,\textsuperscript{476} inaugurating a multidimensional and Comprehensive Approach to THB; including coverage of the 3Ps.\textsuperscript{477} In 2004 the ODIHR developed a Handbook on the concept of the NRM, which places the rights of the trafficked individuals at the center of attention.\textsuperscript{478}

On an international level, the UNODC released a document called \textit{International Framework for Action to implement the Trafficking in Persons Protocol} in 2009. This document is a technical assistance tool for implementation of the Palermo Protocol\textsuperscript{479} and emphasizes the necessity to adopt a Comprehensive Approach to THB and the importance of balancing ‘criminal justice concerns with the need to ensure the rights and protection of victims.’\textsuperscript{480} The Palermo Protocol entered into force on 25 December 2003.\textsuperscript{481} Under the second P, the obligation for protection of THB victims, it raises the issue that most countries must ‘establish or improve victim identification processes and the corresponding referral mechanisms.’\textsuperscript{482}

In combination the OSCE Action Plan and the NRM Handbook provide the highest regional standards against which Cyprus and other OSCE member states have to assess and or implement their national NRMs.\textsuperscript{483} Similar to the emphasis on the balancing act between criminal justice concerns and the protection of THB victims, in the UN document on implementation of the Trafficking in Persons Framework, the OSCE links the protection of THB victims’ rights ‘with efforts to secure criminal sanctions against the perpetrators.’\textsuperscript{484} This link is based on the premise that if victims’ rights are better protected and respected than THB victims may be more likely to cooperate with prosecuting authorities and this in turn may reduce occurrences of THB.\textsuperscript{485} Essentially, the OSCE standards require a Comprehensive Approach to THB, including prevention, protection and prosecution by ‘bringing to justice those responsible for the crime, whilst implementing effective measures to prevent THB and whilst maintaining a compassionate approach in rendering assistance to the victims.’\textsuperscript{486}

\textsuperscript{474} ODIHR Anti-Trafficking Programme, ‘Current NRM Developments in the OSCE region,’ Warsaw October 2008, \url{http://www.osce.org/odihr/36611} 15 October 2011
\textsuperscript{475} Ibid
\textsuperscript{476} Sychov, A, 2009, p. 9
\textsuperscript{478} ODIHR Anti-Trafficking Programme, p. 2
\textsuperscript{479} UNODC, ‘International Framework for Action,’ p. 3
\textsuperscript{480} Ibid, p. 4
\textsuperscript{481} Ibid, p. 4
\textsuperscript{482} Ibid, p. 10
\textsuperscript{483} ODIHR Anti-Trafficking Programme, p. 3
\textsuperscript{484} Ibid, p. 2
\textsuperscript{485} Ibid, p. 2
\textsuperscript{486} OSCE Action plan on Combating THB, p.2
The OSCE is aware of differences in national implementations and does not promote a single model of NRM, however provides a series of key components and measures aimed at protecting the rights of the THB victims. Key elements of a NRM are the process of locating and identifying THB victims, as well as co-operation amongst all stakeholders, including governmental bodies, law enforcement and civil society actors. In addition, it must include support and protection services, as well as assistance with repatriation and social inclusion. Essential measures in implementation are an adequate and harmonized institutional Anti-Trafficking Framework, as well as training of law enforcement and immigration officers and authorities. Training is aimed at capacity-building and aimed at nurturing a local culture that does not perceive women, children and men as commodities to be bought and sold. As Nicolas LeCoz, the President of the GRETA Group declared in October ‘a human being cannot be merchandise and Europe must be the guarantor of this rule of civilized society.’

The significance of a NRM is that it promotes and institutionalizes good practices in democratic-institution building in particular if good working and co-operative relationships between government and civil society are established. Ideally, a NRM includes all sectors and levels of society, which should foster good practices and in the long term entrench human right standards, such as the right of all human beings to be free from fear and exploitation. An NRM should build upon existing institutional structures within the respective country. The main stakeholders may be different in each country; however, an initial step in establishing an NRM is to identify the main actors from government and civil society, willing to take responsibility for the NRM design and development process. According to the ODIHR Handbook, stakeholders within an NRM should, include governmental bodies, such as federal and/or state ministries, in particular ministries of Interior, Foreign Affairs, Social Affairs and Health, other government offices, as well as law-enforcement bodies and civil society actors, like NGOs. I would also add that Immigration officers and bodies must form part of this group of cross-sector stakeholders, as they are a point of first contact with presumed trafficking victims.

The role of the stakeholders, who form part of the NRM, is in the first instance to design and develop the process of the NRM, to facilitate and foster good practices and coherent anti-

487 ODIHR Anti-Trafficking Programme, p. 3
488 Ibid, p. 3
489 OSCE/ODIHR Handbook, ‘National Referral mechanisms,’ p. 16
490 Ibid
491 Ibid
492 Ibid
494 Ibid
495 OSCE/ODIHR Handbook, p. 21
496 Ibid, p. 47
497 Ibid, p. 47
498 Ibid, pp. 47 & 48
trafficking responses, to facilitate effective cross-sector communications, to enable efficient dissemination of information and discuss and implement feedback and evaluation mechanisms.\footnote{499 OSCE/ODIHR Handbook, p. 48} In other words, a multi-stakeholder or cross-sector co-ordinating group is required, which facilitates a multidisciplinary and cross-sector approach, thus increasing coherency to anti-trafficking responses. Such a group should be chaired by a national co-ordinator.\footnote{500 Ibid} Two mechanisms aimed at facilitating cross-sectional communications and quick responses/reactions to address unforeseen problems arising as proposed by the ODIHR Handbook are the setting up of a roundtable for combating trafficking and bilateral meetings.\footnote{501 Ibid, p. 48} The roundtable group should include representatives of the ministries mentioned, any other relevant governmental bodies, as well as national and international NGOs and international organizations.\footnote{502 Ibid, p. 50} The bilateral meetings are proposed as a tool to respond quickly to difficulties arising as regards THB and are particularly useful when a lack of co-operation between civic actors and the police exists.\footnote{503 Ibid}

In essence, an NRM must include a multi-stakeholder, cross-sectional group, which co-ordinates anti-trafficking responses, such as the process of co-ordinating and overseeing the identification and referral of presumed victims of trafficking.\footnote{504 Ibid} This group must facilitate communications, is able to respond to difficulties arising, and incorporates review, monitoring and evaluation mechanisms.\footnote{505 Ibid} In more general terms it must incorporate the adoption of appropriate legal frameworks; the fostering of partnerships between civil society and law enforcement; guidelines to properly identify THB victims,\footnote{506 Ibid, p. 2} as well as cross-sector and multi-disciplinary teams to advance and monitor policies.\footnote{507 Ibid} It must incorporate measures, such as effective referral of THB victims to specialized agencies for assistance, shelter and protection from physical and psychological harm,\footnote{508 Ibid, p. 16} as well as a mechanism to harmonize victim assistance with investigative and THB prosecution efforts.\footnote{509 Ibid} The rights protected under the NRMs are wide ranging and include rights to legal counseling, data protection, privacy, access to housing and health care, social and medical assistance, reflection periods, and temporary residence permits amongst others.\footnote{510 Ibid} In essence, the NRM is similar to the VAPP mentioned in the previous chapter, with the same values at its center. The importance here, rest with the fact that both the VAPP and the

\footnotesize
\begin{itemize}
\item \footnote{499 OSCE/ODIHR Handbook, p. 48}
\item \footnote{500 Ibid}
\item \footnote{501 Ibid}
\item \footnote{502 Ibid, p. 48}
\item \footnote{503 Ibid, p. 50}
\item \footnote{504 Ibid}
\item \footnote{505 Ibid}
\item \footnote{506 ODIHR Anti-Trafficking Programme, p. 2}
\item \footnote{507 OSCE/ODIHR Handbook, p.16}
\item \footnote{508 Ibid p. 16}
\item \footnote{509 Ibid}
\item \footnote{510 ODIHR Anti-Trafficking Programme, p. 2}
\end{itemize}
NRMs a tools for governments to fulfill their obligation to protect persons within their jurisdiction.511

3. Summary key requirements of an NRM:

The key requirements of an NRM are:

- An institutional framework in the form or a cross-sector or multi-stakeholder group
- Formalized co-operation between government bodies and NGOs
- A national co-ordinator
- A roundtable to combat trafficking
- Ad hoc working groups for specific and specialized topics
- Bilateral meetings
- Review, monitoring and evaluation mechanisms

- The role of the cross-sector group is:
  - To co-ordinate and develop the NRM process
  - To facilitate effective co-operation and communications between governmental and non-governmental bodies, including law enforcement, migration officials, ministerial representatives, and national, as well as international NGOs
  - Capacity and democratic institution - building

Some issues that have been highlighted as remaining particularly difficult in most countries regarding NRMs are sometimes the identification of victims,512 the lack of national authorities’ cooperation with civil society organizations,513 the lack of training of ‘frontline authorities,’514 as well as corruption of local high profile authorities and or amongst local law enforcement.515 In developing and advancing the system of the NRMs, the ODIHR has highlighted the co-operation between law enforcement and civil society actors as a particular important aspect.516 The aspect of engagement with civil society actors becomes even more impertinent because of these actors role in awareness- raising. In particular, since awareness- raising continues to be of vital significance in protecting the rights of THB victims.517

511 ODIHR Handbook, p. 21
512 ODIHR Anti-Trafficking Programme, p.4
513 Ibid, p. 4
514 Ibid, p. 4
515 OSCE Action Plan on Combating Trafficking, p. 4
516 Ibid, p. 6
517 Ibid, p. 10
Matters Unit are aiming to improve training materials for dissemination amongst national law enforcement.\textsuperscript{518}

\section*{4. The NRM in Cyprus: an analysis}

The obligation for protective measures under Article 4 ECHR, demarcated by its three elements of physical safety, comprehensive programs and training of relevant officials,\textsuperscript{519} requires the implementation of a National Referral Mechanism for THB victims. The obligation for protective measures extends to the establishment of a National Referral Mechanism because the three elements obliged to under Article 4’s protection measures, are all incorporated into this Mechanism. As regards the implementation of Cyprus of this obligation, the Court referred to Article 10 of the Anti-Trafficking Convention on the identification of victims.\textsuperscript{520} In order to meet the obligations under Article 10 of the Anti-Trafficking Convention, such as the obligation for training, as well as collaboration of different authorities and societal actors in identifying THB victims and ensuring that THB victims receive assistance,\textsuperscript{521} a national referral instrument should be established.

Article 45 of Law 87 inaugurated the National Reporting Mechanism of THB victims in Cyprus in 2008.\textsuperscript{522} The Reporting Mechanism is not necessarily the same as a referral mechanism as it is more concerned with reporting and monitoring, rather than referring THB victims. However, Cyprus does have the main features of a National Referral Mechanism, whilst issues with its nature exist.\textsuperscript{523} The National Referral Mechanism in Cyprus is made up of the Multi-disciplinary Co-Ordinating Group, who is headed by the national co-ordinator, thus the requirement for the institutional framework exists and was established under Law 87. The national co-ordinator is the Minister of the Interior, who in turn has a Permanent Secretary, who is in charge of THB related issues and has a team of three staff.\textsuperscript{524} The Multi-Disciplinary Group is made up of representatives of all relevant Ministries as discussed in chapter three, including the Attorney General, the Chief of Police, as well as two civil society actors that is two local NGOs called MIGS (the Mediterranean Institute of Gender Studies) and Stigma.\textsuperscript{525} The Multi-Disciplinary Group meets every three months and may ‘convene additionally for urgent and serious reasons as decided by the national co-ordinator.’\textsuperscript{526} According to the GRETA Report, the Multi-Disciplinary

\begin{thebibliography}{526}
\bibitem{518} OSCE Action plan on Combating Trafficking, p. 7
\bibitem{519} Hol, p.24
\bibitem{520} Ibid
\bibitem{521} Anti -Trafficking Convention, Article 10 (2)
\bibitem{522} GRETA Report, p. 25
\bibitem{523} Ibid
\bibitem{524} ibid, p. 12, § 23
\bibitem{525} Ibid
\bibitem{526} Ibid, p. 13, §25
\end{thebibliography}
Co-ordinating Group insofar operated without internal rules, but the new NAP 2010-2012 is set to draft an Internal Regulation for the Operation of the Multidisciplinary Co-ordinating Group.

Sub-committees have been set up to address particular issues, including the monitoring and implementation of the NAP against THB. Thus the key requirements of an institutional framework, formalized co-operation, a national co-ordinator, a roundtable, ad hoc working groups and quick response mechanisms, are more or less fulfilled. However, issues exist with the nature of this institutionalized framework, in particular issues with the process of victim identification, the lack of training of frontline officers (both law enforcement and migration officers), issues of co-operation and effective communication between governmental bodies and the two NGOs and allegations of corruption, as will be discussed in paragraphs below.

The process of referral is as follows: NGOs and civil servants can refer potential victims of trafficking to the Social Welfare Services Department. The Cypriot Social Welfares Services Department forms part of the Ministry of Labour and Social Insurance, constituting part of the Ministry of the Interior. The Social Welfare Services are responsible for informing the victims of their rights and facilities available and for referring them to the Police. The Police is the only official authority authorized to identify THB victims. The police interview the potential THB victim and based on this interview they decide whether to officially recognize the individual as a THB victim. A report is compiled and if the individual is recognized as a THB victim, 'the case is referred to the Migration Officer (The Head of the Civil Registry and Migration Department - Ministry of Interior) responsible for granting to them a reflection period of 30 days, that can be renewed if needed, and responsible for granting the victim a provisional residence permit.'

During the reflection period, the THB victim can decide whether to collaborate with prosecuting authorities or not. Once the reflection period expires, a THB victim can apply for a temporary residence permit of a minimum of six months, if she/he is willing to cooperate with law

527 GRETA Report, p. 13, § 26
528 Ibid, p. 26, § 26
529 Ibid p. 13, § 25
530 Ibid
531 Christodoulou et al, p. 26
533 GRETA report, p. 25, §106
534 Ibid, p. 25, §106
535 GRETA Report & European Network Against Trafficking in Human Beings
536 Christodoulou et al, p. 26
537 Ibid, p. 26
538 Ibid, p. 26
539 Ibid, p. 26
enforcement. What is evident here is the interwoven connection of the police - responsible for initiating criminal proceedings - with the immigration authorities and as such migration law. If the link between the two bodies and or the link between criminal law and migration law are not adjusted, but instead in discord, victims are unlikely to be identified as such, or to gain access to assistance and protective measures, or to cooperate with prosecuting authorities for that matter. Additionally, the process of the referral itself is not clearly co-ordinated by the Multi-Disciplinary Group, which is likely GRETA’s reason for calling for the establishment of a coherent NRM and NGOs have criticized that their input and involvement in the referral process must be increased. Nonetheless, considering the statement by the Cypriot Ombudsman, Mrs Savidou, that Cyprus does not officially have an NRM, the existing structures so far are evidence of increased awareness and political willingness to implement positive change and a first, although incomplete step.

5. Issues with Police practice in identifying THB victims in Cyprus:

The special Police Office of Combating Trafficking in human beings established in 2007 is responsible for conducting the interviews with THB victims. The special units’ officers are responsible for recognizing victims as such and for the protection of the victims until a final court decision has been reached. However, until 2008, this special unit was only staffed with three officers and in 2008 one additional staff member was taken on board. Since an increasing number of cases became visible, the Head of Police decided in 2009 to appoint 19 additional police officers across all districts, responsible for investigating cases of THB and interviewing, recognizing and protecting THB victims. Each district office is accountable to the Office of Combating Trafficking in Human Beings in Nicosia.

Despite assurances from the Head of the Anti-Trafficking Unit in Cyprus Police force, Rita Theodorou Superman, that police officers were given directions as to how to conduct interviews and recognize THB victims, no guarantees for arbitrary decision making exist. The process of police interviews of potential THB victims remains vague and information is difficult to come by. It raises questions as to how many police officers are present during interviews. Is this special office catering for the vulnerability of the victims, their physical and psychological trauma and shattering? Is the interview conducted by a female police officer? Considering, the fear and

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540 Christodoulou et al, p. 26
541 Rijken & Koster
542 Christodoulou et al
543 Ibid, p. 29
544 Ibid, p. 29
545 Ibid, p. 30
546 Ibid, p. 30
547 Ibid, p. 30
trauma of trafficking victims, such victims are presumably less likely to open up to a male officer than a female officer, considering that the trauma associated with being trafficked and sexually exploited, was pre-dominantly experienced by the victim at the hands of men.

The disjunction regarding victim identification between the law and actual practice prevents coherency of the identification process, whilst providing room for arbitrary decision making by law enforcement. The training of relevant officials and officers is absolute vital\textsuperscript{548} against the backdrop of widespread allegations of corruption amongst immigration, and police force in Cyprus and should aim to build capacities. Cyprus would benefit from in depth training and education of front line officers, that is law enforcement and immigration officers.\textsuperscript{549} Education and training is of particular importance for the police officers of the special unit, who are the only official authority to identify THB victims; insofar the human and financial resources as well as police practice in identifying THB victims in Cyprus seems insufficient. Another point is that Police, should co-operate more actively with NGOs in Cyprus.\textsuperscript{550}

The definition of THB victim found in Article 2 of Law 87 requires damage or financial loss directly caused by THB, which in practice is not employed by Police in the identification process.\textsuperscript{551} Cypriot authorities noted, that in practice, a Handbook for the identification of victims is made available to police,\textsuperscript{552} including the previously mentioned Delphi Indicators,\textsuperscript{553} however no proof exists that they are actually employed in practice. This lack in clarity embodied in the gap between law and practice of victim identification, does not bode well for clear guidelines to identify THB victims. Essentially, the existence of a gap between the law and practice prevents the formulation of a singular coherent guideline as to who qualifies as a THB victim.\textsuperscript{554} It may lead to the denial of a grant of a residence permit to THB victims, along with its assistance and protection measures, thus not effectively allowing a fruitful interplay between migration and criminal law.

\textbf{6. Co-operation amongst all stakeholders:}

The Multidisciplinary Co-ordinating Group established in 2008, involves the major governmental bodies, the Chief of Police, as well as two NGOs which are selected by the Minister of the Interior and are currently MIGS and Stigma.\textsuperscript{555} Despite being part of this cross-sector and

\begin{flushright}
\textsuperscript{548} GRETA Report \\
\textsuperscript{549} Ibid \\
\textsuperscript{550} EU Business \\
\textsuperscript{551} GRETA Report, p. 16, §43 & §44 \\
\textsuperscript{552} Ibid, p. 26, §108 \\
\textsuperscript{553} Ibid, p. 25, §107 \\
\textsuperscript{554} Ibid, p. 17, §46 \\
\textsuperscript{555} Ibid, p. 13
\end{flushright}
multi-disciplinary team, the partnership between the two civil society organizations and the law enforcement authorities, as well as other governmental bodies vital for THB prevention remains at minimum level. This is evident in the concerns raised about the ‘limited participation and involvement of NGOs in policy development to combat THB in Cyprus.’ There is a minimum of six NGOs active in Cyprus regarding the fight against THB, and in December 2010, the Multi-disciplinary Group decided to increase participating NGOs in the group to four. However, to date this is not yet the case.

The acceptance of NGO input by Cypriot authority remains weak. Nonetheless, mechanisms for increased co-ordination are discussed as is evident in the deliberation of written agreements between government agencies and NGOs. Even so, effective synergies are not yet created. It is positive that Cyprus aims to increase the level of NGO input, as civil society organizations are impertinent for raising-awareness and nurturing best practices. Awareness-raising is particular important in Cyprus against the backdrop of systemic sexual exploitation of women, partially state sponsored or at minimum ignored, and perpetuated by the prevailing police culture, that these “women deserve it,” and by the local culture of married men seeking the services of prostitutes without regards to their consent or non-consent.

7. **Transnational Referral Mechanisms:**

TRMs are ‘co-operative agreements between countries in cross-border transfer and care of persons who have been victims of trafficking (VoTs).’ TRMs link the complete process of identification, to referral to assistance and return of VoTs between countries of origin, transit and destination. Cypriot authorities came into contact with the term and issues related to TRMs during April 2009 at a combined study visit organized by the International Centre for Migration Policy Development and USAID. During the study meetings, the Cypriot authorities mentioned that they were not familiar with the term Transnational Referral Mechanism, however that they were well aware of the National Referral Mechanisms and that a special

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556 In Cyprus for instance: Minister of Interior, Attorney General, Director of Department of Labour of the Ministry of Labour and Social Insurance etc
557 GRETA Report, p. 13, §28
558 Ibid
559 Ibid, p. 18, §54
560 Ibid, p. 18, §54
561 Ibid, p. 18, §54
562 EU Business
563 Ibid
565 Ibid, p. 5
567 Ibid, p. 8
manual on the NRM was employed by national stakeholders.\textsuperscript{568} I could not gain any further information on the NRM manual mentioned, despite contacting a range of public and private bodies in Cyprus. I take that as an indication and reflection of the vagueness covering the whole area of victim referral and identification in Cyprus. Cypriot authorities at the time also expressed interest in cooperation with respective countries and in particular to strengthen links to Ukraine, regarding TRM activities.\textsuperscript{569} This study visit and remarks made by Cypriot authorities demonstrate that increasingly, political willingness exists in Cyprus, to combat THB comprehensively. Regardless of the reasons why, may it be the ‘naming and shaming’ in relation to increased media coverage since Ms Oxana Ranstevas death in 2001, or a combination of many factors, it is a positive development.

8. Conclusion:

Assessed against the key requirement of a National Referral Mechanism, it can be noted that Cyprus does have a National Referral Mechanism in place since 2008, which remains lacking however in regards to the actual protections offered to trafficking victims, in particular in regards to the process of victim identification, and the lack of engagement and co-operation of public officials with NGOs. Thus the lack of an active co-operating relationship between NGOs and state authorities prevents democratic institution and capacity building from effectively taking off. This issue has however been acknowledged by state authorities and one can hope that the increase of NGOs from two to four may have an impact on increased capacity and institution building, in order to foster and advance more coherent and increasingly protective anti-trafficking mechanisms within the system of the National Referral Mechanism.

What is evident from the discussion on THB in Cyprus and elsewhere so far is that comprehensive strategies to combat THB, nationally, regionally and globally are required, in order to free the world from this appalling crime. It is also evident, that in order to effectively combat THB, all three themes of prevention, protection and prosecution must be addressed equally, comprehensively and in a manner that is mutually reinforcing. In August 2010, at the launch of the \textit{Global Plan of Action Against THB}, UN Secretary General Ban Ki-Moon expressed,
that ‘no country is immune’\textsuperscript{570} and that almost all play a part at least as a country of origin, transfer or destination in THB.\textsuperscript{571}

The awareness on the international level, evident in the launch of this Action Plan, that in order to end THB in all of its forms, a common approach is urgently required and must be coordinated consistently across the globe. Essentially, mechanisms such as the VAPP, the NRM\textsc{\textregistered}s and TRM\textsc{\textregistered}s, mirror on a national and regional level, what the Global Action Plan aspires to internationally. As I mentioned earlier, national implementation is absolutely impertinent in stopping the modern international slave trade and the human exploitation inherent to it. Maybe an upward approach, that is from national level, to regional level, to global level is the way forward in eradicating this crime against human dignity and integrity of person. Whereby all three modes in essence mirror each other, but with country or region specific applications, whilst in this way all three modes of combating THB are mutually reinforcing. Chapter five will draw conclusion and offer some recommendations.

\textsuperscript{570} General Assembly, ‘General Assembly Launches Global Plan of Action against Trafficking in Persons; Secretary-General Says Partnership Only Way to End ‘Slavery in the Modern Age.’’ 31 August 2010, \url{http://www.un.org/News/Press/docs/2010/ga10974.doc.htm} 27 October 2011

\textsuperscript{571} Ibid
Chapter Five

Conclusion:

The watershed case of Rantsev at the European Court of Human Rights in Strasbourg in 2010 broadly extended the scope of the positive obligations for state parties regarding Trafficking in Human Beings under its Article 4. Prior to this judgment, the European Convention made no explicit mention of the term of Trafficking in Human Beings. Rantsev for the first time established Trafficking in Human Beings to fall within the ambit of Article 4, thus establishing case law and binding principles to be adhered to in the future. The significance of the Rantsev judgment is that the obligations established under Article 4, are now considered inclusive of all forms of Trafficking in Human Beings, as defined in Article 3 of the Palermo Protocol. This judgment has substantiated and concretized the obligations for states parties, in the way they must combat THB. Even though, the case has gained some criticisms from scholars like Jean Allain, who was dissatisfied with the way the Court dealt with the interpretation of Article 4, its impact is wide reaching. All in all, the Rantsev judgment can be seen as a significant progress in the fight against Trafficking in Human Beings.

Its impact rests with the fact that implementation of the obligations under Article 4 ECHR in Cyprus demonstrate, that the Rantsev case in conjunction with the Anti-Trafficking Convention can and has acted as catalysts for the development and implementation of a more Comprehensive Approach to THB aspired to both on an international as well as regional level. This process of implementing a Comprehensive Approach to THB is by far not complete, it has been initiated however, and it is hoped that this will aid the eradication of THB, or at minimum, reduce the occurrence of THB, in the long term. That said the issue of the discrepancy between the worldwide rise in THB and the limited number of trafficking related prosecutions remains and may be an indication for the fact that we still have a long way to go to close the gap between theory and practice. What I mean is the gap between the theory and process of the Comprehensive Approach, which in Cyprus, for example has been implemented partially, but reality is that the theory of making the Comprehensive Approach truly comprehensive remains insofar largely in the realm of the practical process.

To answer my research question of the scope of the obligations established under Article 4 ECHR, it can be concluded that the three positive obligations have been broadly extended, to include more specific measures and as such increase the obligation upon state parties. In response to the second part of my research question, as to how the obligation for protective

572 Hol
573 Rantsev
measures established under Article 4 has advanced the protection of victims of trafficking for sexual exploitation in Cyprus, it can be concluded that Cyprus has taken legal steps, which require further practical translation however, some institutional steps, as well as attempts to divest increased human and educational resources into means and methods to implement a more Comprehensive Approach to THB. In terms of protection of victims, some small progress has been made with the non-criminalization of victims, whilst improvement of victim identification, referral and access to information, protection and shelter is required.

The process initiated by both Rantsev and the Anti-Trafficking Convention have clarified and reconfirmed the importance of addressing the 3 Ps conjunctively. The international as well as regional discourse on THB has acknowledged the need for a Comprehensive Approach to tackle and ultimately eradicate the crime of trafficking in human beings. It was realized that in order to achieve such a goal, all three themes of prevention, protection and prosecution must be addressed adequately and comprehensively,574 whilst working in harmonized conjunction with each other.575 In order to achieve such harmony, migration and criminal law must take a human rights perspective and work not in discord to each other, but as anti-trafficking responses that increase prosecution of the crime of THB through increased protection of and respect for the worth and dignity of the victims.576 In addition, on the part of prevention, the root causes of trafficking, such as social, economic and cultural cleavages and inequalities must be addressed.577 It is assumed that to achieve more effective prosecution, THB victims must be increasingly treated with respect and care for their special needs and requirements.578

No longer is there any doubt on international nor regional level that a Comprehensive Approach to THB is required and that a human rights centered perspective must form part of such an approach.579 THB is a crime on the rise, a crime so awful that it renders the observer speechless, thus mirroring the 'hidden nature'580 of this crime against the dignity and worth and the rights of its victims. Due to the nature of this crime and the dependencies created, the victims need others to voice their pain and to combat the heinous and hidden nature of this crime, thus we should not 'be afraid to speak for her'581 or for them, since they are the victims of utterly inhumane treatment.

The protective mechanisms or tools discussed in previous chapters, such as the VAPP, the NRM and the TRM all demonstrate the requirement to have multi-disciplinary and inclusive
engagement with all sectors and levels of a state, such as government, the criminal justice system, civil society as well as the private sector and the general population. This is so important because Trafficking in Human Beings and the human exploitation and suffering inherent to it occurs everywhere, and targets vulnerable populations in particular.\textsuperscript{582} The international community, as well as regional bodies and individual states, all have a responsibility to protect the weak and defenseless.

In order to effectively tackle THB, the way forward maybe, a bottoms-up approach rather than a top-down approach or at best a combination of both. This means that implementation of the obligations of the 3Ps in conjunction with the obligations under the Palermo Protocol, the Anti-Trafficking Convention, the \textit{Rantsev} case and so on, should begin at national levels, whilst anti-trafficking efforts continue on international echelons. Of course the obligations just mentioned will be implemented to the degree that a respective state is party to these documents and obligations, and it was evident from the discussion in this thesis that these obligations largely overlap, despite being distinct processes.

As President of the 64\textsuperscript{th} session of the UN General Assembly in 2009, Dr. Ali Abdussalam Treki, pointed out, eradicating THB must be ‘at the forefront of the modern agenda.’\textsuperscript{583} The regional and anti-trafficking tools mirror and reflect the \textit{Global Action Plan against Trafficking in Persons} and vice versa. In combined efforts it may be possible to eradicate the scourges of THB from this world; however history and human nature paint a rather bleak future for this possibility. It is important though to aspire towards it and to increase efforts because the aim to rid the world of human exploitation lifts society to a realm of peace and prosperity for all. Or in other words, just because something is \textit{Utopia} does not mean, we should not strive towards its promise.

So in order to strive towards a world free from THB, measures such as the VAPP, the NRM and TRM must be implemented at national and regional levels. The discrepancy between the scarce case law of THB at the European Court of Human Rights and the global rise in THB, raise on the one hand questions about the effectiveness of the ECtHR, but more significantly about the previous approach taken to THB prosecution. It is of utter significance to disconnect the previous approach of linking protection of and assistance measures to THB victims to their cooperation in criminal proceedings. Respect for the vulnerable position of the victim and safeguard provisions, such as, support and reflection periods may likely proof a more effective system of THB prosecution in the long-term.

\textsuperscript{582} Ibid
\textsuperscript{583} Treki, A in General Assembly, ‘Draft Resolution Global Plan of Action against Trafficking in Persons,’ 64\textsuperscript{th} session, agenda item 104,29th July 2010, \url{http://www.un.org/ga/president/64/letters/trafficking290710.pdf}
Renewable temporary residence permits should be independent of co-operation in prosecution. As regards the effectiveness of the ECtHR, it is well known that the Court was suffering from tremendous backlog of cases, reaching 120,000 at the end of 2009. However, Protocol 14 aimed at streamlining procedures, entered into force on June 1st 2010 and its results may yet be seen. Discussing these issues is irrelevant to the substance of this thesis, what is important to mention though is that despite the scarce case law of THB at the Court, the fact that the Court interpreted Article 4 to entail THB is a vital step forward, in protecting victims of trafficking in the Courts’ member states.

The example of Cyprus was not to point the finger at a single country, because all countries in the world are more or less involved in the modern international slave trade and human exploitation in one form or another; instead it was to analyze the scope of the positive obligations established under Article 4 in Rantsev. And whilst Cyprus is on a journey to more effectively implement the obligations under Article 4, the Anti-Trafficking Convention and the Palermo Protocol, and to improve its NRM and societal-cultural barriers through enhanced engagement with civil society organizations, it remains insofar lacking in many ways. So are many other countries as well however.

The main conclusion or recommendation to be drawn from the experience of Cyprus is the implementation of multi-disciplinary and cross-sectional engagement and co-operation of all sectors, in conjunction with effective training of frontline officials and officers, coupled with education and awareness raising to remove cultural – societal barriers. Essentially, equal engagement with and attention to all three elements of prevention, protection and prosecution must be incorporated. Whilst attention should be given to translation of the law on paper and theoretical institutional measures into practice, to prevent the changes implemented due to the Rantsev judgment and the Anti-Trafficking Convention, from being a mere paper tiger.

The huge gap between the powerful and the vulnerable, between the rich and the poor must be adequately addressed in democratic societies by way of legal justice, transparency, multi-sector engagement and inter-state as well as intra-state cooperation. Mr. Nikolay Rantsev suffered two heart attacks whilst fighting for justice for his daughter for nearly a decade. In an interview he noted that he was not pursuing the case for himself or for his own interest – in fact he had to sell his apartment and spent his life savings in the process – but instead, ‘to defend the rule of law’

584 BBC News, ‘Profile European Court of Human Rights,’ 11 December 2010
http://news.bbc.co.uk/2/hi/europe/country_profiles/4789300.stm
585 Council of Europe, ‘Factsheet – Protocol 14 The reform of the European Court of Human Rights,’
http://www.echr.coe.int/NR/rdonlyres/57211BCC-C88A-43C6-B540-AF0642B1D2C/0/CPProtocole14EN.pdf
586 Sychov
587 Mr. Rantsev in Council of Europe, ‘Trafficking in Human Beings: Victim’s father speaks’
588 Ibid
and ‘to show to the children in Russia what they risk’\textsuperscript{589} when they think they leave poverty stricken conditions for a “better life” elsewhere.\textsuperscript{590}

Mr Rantsev was not fully satisfied with the outcome of the \textit{Rantsev} case, as corruption prevailed in Russia and Cyprus and an utter lack of transparency and accountability in both states persisted.\textsuperscript{591} However, it seems that Mr Rantsev did fulfill his goal of ‘establishing a precedent with this case,’\textsuperscript{592} whilst raising awareness and public opinion of this ‘human trafficking monster’\textsuperscript{593} which helps eliminate and monitor the implementation of measures vital in preventing THB. Protecting its victims and prosecuting those responsible for this crime against human dignity and worth. The persistence and relentless efforts of Mr Rantsev in pursuing the goal of creating a world free from this heinous crime, which often destroys its victims, their families and the morality of society, can only be taken as a model for all of us aiming to do the same.

\textsuperscript{589} Ibid
\textsuperscript{590} Ibid
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