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**Damned either way:**  
the situation for victims of human trafficking in  
Sweden and the legal measures to assist them

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# Contents

<b>SUMMARY</b>	<b>1</b>
<b>SAMMANFATTNING</b>	<b>2</b>
<b>PREFACE</b>	<b>3</b>
<b>ABBREVIATIONS</b>	<b>4</b>
<b>1. INTRODUCTION</b>	<b>5</b>
1.1. Purpose and Research Questions	6
1.2. Disposition	7
1.3. Theory	8
1.3.1. <i>Victimology</i>	9
1.3.2. <i>Deportability</i>	11
1.4. Method	14
1.5. Limitations	14
1.6. Existing research	15
1.7. Disclaimer	16
<b>2. HISTORICAL OVERVIEW OF HUMAN TRAFFICKING</b>	<b>17</b>
2.1. Early Developments	17
2.2. Modern Developments	20
2.3. European Developments	23
<b>3. INTERNATIONAL DEFINITION OF HUMAN TRAFFICKING</b>	<b>27</b>
3.1. Action	27
3.2. Means	28
3.3. Purpose	32
3.4. Exploitation and sexual exploitation	32
<b>4. EU MEASURES FOR ASSISTANCE AND PROTECTION</b>	<b>34</b>
4.1. Council of Europe Trafficking Convention	34
4.2. The Residence Permit Directive 2004/81/EC	39
4.3. The Trafficking Directive 2011/36/EU	40
4.4. Article Four in the European Convention on Human Rights	41
4.4.1. <i>Rantsev v. Cyprus and Russia</i>	42
4.4.2. <i>J and Others v. Austria</i>	44
<b>5. SWEDISH DEFINITION ON HUMAN TRAFFICKING</b>	<b>47</b>

5.1. Current Definition in Swedish Law	47
5.2. SOU 2016:70 - Ett starkt straffrättsligt skydd mot människohandel och annat utnyttjande av utsatta personer	50
<b>6. SWEDISH MEASURES FOR ASSISTANCE AND PROTECTION</b>	<b>53</b>
6.1. Legislation	53
6.2. Jurisprudence	55
<b>7. ANALYSIS</b>	<b>57</b>
<b>8. CONCLUSION</b>	<b>61</b>
<b>BIBLIOGRAPHY</b>	<b>64</b>
International Conventions and Legal Acts	64
National Legislation	65
Literature	65
Articles	66
Publications and Reports	66
Cases	70
<i>International</i>	70
<i>Swedish</i>	70

# Summary

Human trafficking consists of a sequence of smaller events taking place over a large span of time and perhaps even over multiple borders. Perpetrators of the crime take people away from their homes and their origins, either through coercion or threat of force, and place them in frightful new environments where their survival and human dignity is at risk. Legal measures to fight human trafficking target these sequences of criminal acts in order to apprehend the perpetrators.

However, such measures only address half of the issue. On the other end of the crime we find its victims, people who for one reason or another end up in such desperate circumstances that they can be exploited for human trafficking. Such strategies need to consider not only the crime itself, but also the implications and consequences for the victims. Measures to fight human trafficking must also include measures targeting the underlying vulnerabilities that can be exploited.

This thesis will depict and discuss these assisting measures in further detail, specifically in Sweden. The thesis discusses the crime of human trafficking into its three base elements of actions, means and purpose and examine both their historical context and their contemporary definitions. By doing so, the thesis depicts how the public perception of human trafficking has developed and how it affects its victims. It will show which considerations have been made when drafting assisting measures, which problems have been recognised and how the assistance will aim towards resolving them.

For this thesis I have chosen to focus on the victims migratory status in particular. Those victims of human trafficking that are forced to cross borders as a part of the crime find themselves in a particularly vulnerable position, as fear of deportation makes continued exploitation possible. I will argue that in order for any assistance of the victim to work effectively, the measures must consider this vulnerability and how it in turn can lead to further exploitation.

# Sammanfattning

Människohandel består av ett antal mindre åtgärder som åger rum över en lång tidsperiod och kanske rent av över gränser. Brottets förövare tvingar eller hotar människor bort från sina hem och deras ursprung, och placerar dem i farliga miljöer där deras överlevnad och värdighet sätts på spel. Rättsliga åtgärder för att bekämpa människohandel riktar sig således mot dessa sekvenser av kriminella gärningar i syfte att gripa gärningsmännen.

Sådana åtgärder bemöter emellertid endast hälften av problemet. I andra änden av brottet finner vi dess offer, människor som av en eller annan anledning befinner sig i sådana desperata omständigheter att de kan utnyttjas som brottsoffer i människohandel. För att en strategi mot människohandel ska vara framgångsrik måste den inte bara bemöta själva brottet, utan även dess konsekvenser för offren. Åtgärder för att bekämpa människohandel måste även omfatta åtgärder som riktar sig mot de underliggande sårbarheter som kan utnyttjas.

Detta examensarbete beskriver och diskuterar dessa stödåtgärder i detalj, specifikt i Sverige. Uppsatsen delar upp brottet människohandel i dess tre grundläggande beståndsdelar av handlingar, medel och syfte och undersöka såväl dess historiska sammanhang och dess nutida definition. Genom att göra på det viset kommer arbetet att skildra hur den allmänna uppfattningen av brottet har utvecklats och hur det påverkar sina offer. Det kommer att visa vilka överväganden som har gjorts vid utarbetandet av biståndsåtgärder, vilka problem som har identifierat och hur stödåtgärder försöker att lösa dem.

För det här arbetet har jag valt att fokusera på brottsoffrens migrationsstatus i synnerhet. De brottsoffer som tvingas över gränser som en del av människohandeln finner sig i en särskilt utsatt position, eftersom deras rädsla för utvisning möjliggör en fortsatt exploatering. För att en eventuell stödåtgärd ska fungera effektivt argumenterar jag för att stödåtgärder måste ta hänsyn till denna sårbarhet och hur den i sin tur kan leda till ytterligare exploatering.

# Preface

This thesis marks the end of almost six years of legal studies both in Sweden and abroad. While not all of it has been equally exciting, I have found that my fascination for the law and the legal profession has increased over the years. Despite its grim subject matter, the topic of this thesis in particular has held a great deal of personal interest to me over the past years and it delights me to finally present some of my thoughts on the issue. I would like to take this opportunity to thank the people who have made it possible.

First of all, allow me to thank Maria Ahlin for her advice and contacts. She is the president of Freethem, a youth organisation that works tirelessly to educate the public about human trafficking. Thanks also to Ninna Mörner at Södertörn University who showed me just how complicated the issue was and also helped me formulate a research question.

Thanks as well to Maria Green at the Raoul Wallenberg Institute and Vladislava Stoyanova at the Faculty of Law in Lund for agreeing to meet with me at multiple occasions to discuss my thesis and give me advice. Not only did they help me with my writing, but they also allowed me to put my research topic in a greater context and have given me plenty of ideas of where to go in the future.

Many thanks to my dear friends and loved ones who have shown both patience and interest during the more stressful moments of my education. Thanks in particular to Sanna, Sofia, Hannes, Emelie and Julia for helping me with proofreading and feedback.

Last but not least, my sincerest gratitude to my supervisor Amin Parsa at the Faculty of Law in Lund. Through a combination of general encouragement and concrete comments he helped me to shape the thesis from the very start and to remain excited about the writing process. Despite showing up to our meetings a bit nervous, I always left with a renewed interest in my research. By showing a genuine interest for my subject matter and by providing clear advice and deadlines, Amin has made this semester among the most memorable of my legal education.

The findings and arguments in this thesis are in no way conclusive of any real solution to the crime of human trafficking. It will take more than a few research papers to solve this horrible crime. However, I do hope that this thesis will provide some base to build on in the future.

# Abbreviations

BrB	Brottsbalk (1962:700) (Criminal code).
BRÅ	Brottsförebyggande rådet (Swedish National Council for Crime Prevention).
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women.
Crime Victim Declaration	Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.
ECHR	European Convention on Human Rights.
ECtHR	European Court of Human Rights.
Palermo Protocol	Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.
Residence Permit Directive	Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.
RB	Rättegångsbalk (1942:740) (Code of Judicial Procedure).
Trafficking Convention	Convention on Action against Trafficking in Human Beings.
Trafficking Directive	Directive on preventing and combating trafficking in human beings and protecting its victims.
UNCCPCJ	United Nations Commission on Crime Prevention and Criminal Justice.
Util	Utlänningslag (2005:716) (Aliens code).

# 1. Introduction

All throughout the world today, women flee a life of physical and sexual abuse to instead find themselves in a new life of non-stop threats and acts of violence as victims of human trafficking for sexual purposes.<sup>1</sup> Once caught up in criminal activities, the victims find themselves in even worse conditions, facing further violence at the hands of their perpetrators. They are robbed of their freedom and threatened with death or the deaths of their family if they attempt to escape.<sup>2</sup> All these crimes leave victims of human trafficking traumatised and vulnerable, suffering from a wide range of physical and/or mental conditions including infections, HIV and PTSD.<sup>3</sup>

In order for public authorities to address human trafficking head-on, they must consider these effects on the victims and not just the criminal measures against the perpetrators. As such, an effective strategy against the crime must aim for properly identifying victims,<sup>4</sup> establishing a framework of social, financial, legal and medical aid<sup>5</sup> and provide access to these measures through residence permits.<sup>6</sup>

Sweden has been criticised in the past for their measures and to what extent they manage to assist the victims. Investigations of the Swedish legal system have indicated that victims in the country faced obstacles when making contact with authorities in hopes of receiving protection.<sup>7</sup> The investigations seems to suggest that the full extent of issues faced by victims of human trafficking were not taken into consideration, and as such the assistance provided by the Swedish state fell short.<sup>8</sup>

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<sup>1</sup> Zimmerman, Cathy et al. *Stolen Smiles: A Summary Report On The Physical And Psychological Health Consequences Of Women And Adolescents Trafficked In Europe*. London: The London School of Hygiene & Tropical Medicine, 2006, pg. 9.

<sup>2</sup> Ibid, pg. 10-11.

<sup>3</sup> Ibid, pg. 15, 19.

<sup>4</sup> GRETA. *4th General Report on GRETA's activities covering the period from 1 August 2013 to 30 September 2014*. Strasbourg: Council of Europe, 2015, pg. 40.

<sup>5</sup> Ibid, pg. 42.

<sup>6</sup> Ibid, pg. 49.

<sup>7</sup> GRETA. *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden First evaluation round*. Strasbourg: Council of Europe, 2014, pg. 7.

<sup>8</sup> Ibid, pg. 8.



In this thesis I look closer at the crime of human trafficking, how it affects the victims and how states go about in assisting them. I will look at what elements make out the crime, what the corresponding exploitation of the victims is and what forms of assistance may be necessary. I will then compare that to the available measures in Sweden to see if the criticism is justified. Specifically, I will look at obstacles and issues that victims of human trafficking face due to their migratory status and how provisions governing residence permits have been formed to address that.

## **1.1. Purpose and Research Questions**

This thesis analyses the specific rules and regulations that govern the legal protection of and assistance to victims of human trafficking in Sweden as it relates to their migratory status. The overall purpose of the thesis is to determine whether or not the Swedish legal system targets the underlying vulnerabilities of the victims of human trafficking and whether it provides the victims with the assistance they require to escape further exploitation.

Therefore, the central research questions for this thesis are:

- What forms of assistance does the Swedish legal system provide for victims of human trafficking? How do these measures affect the victims underlying vulnerabilities that lead to their exploitation?

In order to answer these questions the thesis examines what creates a victims vulnerable position and how the victim is exploited. Some types of exploitation can be detected through examining what types of conduct that defines the crime and as such also defines the types of exploitation. Additionally, the thesis presents further thoughts regarding the situation of the victims of human trafficking in the theory section of the first chapter.

By mapping out the full extent of actions taken against victims of human trafficking, the thesis provides a general overview of what these people face today. The thesis will establish what challenges the victims face, what needs they may have and what assistance they require.

The legal development of the crime will be examined both on the international and domestic level, both its historical background and contemporary definition. By placing human trafficking in its historical context, I intend to show how considerations made in the past have

shaped the perception of the crime and its victims today. It will show how the issues and obstacles faced by the victims of human trafficking have been elaborated since the beginning of the 20th century, and how some of the same problems persist to this day.

The aim of this thesis is to view and value the merits of existing measures to provide assistance for victims of human trafficking in Sweden, to see if they manage to resolve some of the underlying conditions that contribute to the existence of the crime in the first place. By providing an extensive depiction of the many challenges facing the victims, the thesis can provide a form of litmus test for existing legislation and proposed legal developments to be measured against.

## **1.2. Disposition**

As mentioned in the earlier section, this thesis will define human trafficking in order to identify the victims' vulnerabilities and how these are exploited. In order to provide an examination as thorough as possible, the thesis will depict and discuss how both the crime is defined and what considerations are made when drafting assisting measures for the victims. In order to achieve this properly, the following chapters will be structured as follows.

Chapter two of the thesis begins by looking at the historical context for the current legal definition of the crime. It will identify some of the key features that have been considered from early 20th century to today.

Chapter three will build from the historical context and focus on the international legal definition of human trafficking. It provides an in-depth look at international tools and instruments dealing with the crime and what international legal standards are in place. Chapter four of the thesis looks at international standards of protection and assistance granted to victims of human trafficking. This chapter presents EU-directives that provide measures for assisting victims, both their background and purpose.

Chapter five and six of the thesis will provide a similar examination of the situation in Sweden. First, chapter five looks at the considerations and international standards that have guided the Swedish legal definition of human trafficking today. Chapter six then looks at the situation in Sweden as it concerns legal assistance and protection for victims of human trafficking. This chapter presents Swedish

legislation providing this assistance, the background and purpose of this legislation as well as the interpretation and application by the courts.

Chapter seven of the thesis provides the final summary and analysis of my findings throughout the thesis. It will repeat some of the most important points brought up in the previous chapters and tie them into the central research questions. This chapter looks at the legislation on human trafficking, legislation on migration law and the practice in court when dealing with legal protection of the victims.

Chapter eight then provides the final conclusions based on my findings. Through the scope of the theoretical approaches presented in the introduction, the existing measures by the Swedish state to protect and assist victims of human trafficking will be valued on their merits. The central research questions presented in the earlier section will be approached and concluded.

### 1.3. Theory

This thesis uses two conceptualisation of the situation for victims of human trafficking in order create a basic theoretical perspective to understand how the current legal situation affects the victims and what they require. The measures and assistance that have been presented throughout the thesis can then be valued against this theoretical background to determine if they manage to properly adress the exploitations and underlying vulnerability arising from the crime of human trafficking. The first theoretical conceptualisation is the *victimological approach* provided by Karin Åström in her book *Rättsliga Åtgärder mot Människohandel*<sup>9</sup> which looks at the harmful environment victims of human trafficking experience and the numerous offences they suffer. The second theoretical conceptualisation is the *deportability approach* provided by Nicholas De Genova in his book *The Deportability regime: Sovereignty, Space, and the Freedom of Movement*<sup>10</sup> which specifically looks at how a migrant status and a fear of being deported creates a vulnerability among victims of human trafficking that can be exploited.

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<sup>9</sup> Åström, Karin. *Rättsliga åtgärder mot människohandel: att skydda offer eller möta hot*. Uppsala: lustus Förlag AB, 2014.

<sup>10</sup> De Genova, Nicholas and Peutz, Nathalie. (editors). *The Deportability regime: Sovereignty, space and the freedom of movement*. London: Duke University Press, 2010.

### 1.3.1. Victimology

The basic tenet of the victimology perspective presented by Åström is that victims of human trafficking have certain fundamental needs, regardless of the legal definition that must be met by the legislative authorities in states in order to properly assist them. The theory aims to highlight existing perceptions of victims and discrediting stigmas and stereotypes. Thereby it shows where states may be insufficient in providing protection due to a misconception about what it means to be a victim of a certain crime.<sup>11</sup>

In order to achieve these goals, victimology defines victims of for instance human trafficking according to social, economical, physical and mental characteristics. These proposed characteristics are not intended to indicate that victims are a homogenous group, but rather that victimology can help identify victims, the specific crimes against them and what their specific needs might be.<sup>12</sup> Victimology is based on the definition proposed in the UN *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* from 1985<sup>13</sup> (Crime Victim Declaration). The declaration refers to victims as people who have *suffered harm, emotional suffering, economic loss or substantial impairment of their fundamental rights*.<sup>14</sup> Furthermore, the Crime Victim Declaration does not require for there to be a perpetrator in order to identify a victim, and it allows for family members of other who are dependant on the victim to be counted as victims as well.<sup>15</sup>

In other words, victimology seeks to define victims of crime according to certain fundamental criteria, regardless of the legal definition in legislation. For example, the legal definition for *plaintiff* in Sweden can be found in Code of Judicial Procedure<sup>16</sup>. A plaintiff according to Swedish law is defined as someone who is directly affected by a crime, or otherwise suffer offence or injury from it.<sup>17</sup> A victimological

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<sup>11</sup> Åström 2014, pg. 26.

<sup>12</sup> Ibid, pg. 27.

<sup>13</sup> UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, A/RES/40/34, 29 Nov. 1985.

<sup>14</sup> Ibid, art. 1.

<sup>15</sup> Ibid, art. 2.

<sup>16</sup> Rättegångsbalken.

<sup>17</sup> RB 20 kap. 8§

approach allows for the recognition of victims who may otherwise not fit into the legal definition. A victimological approach disregards the purpose and politics behind legal definitions, it disregards societies conception of who is or is not a victim of a crime and instead looks at the reality of what complications victims face.<sup>18</sup>

As a theory proposing that violations faced by victims of crime are inherent and fundamental regardless of the legal definition, victimology is closely tied to universal human rights. As holders of human rights, victims of crime can be defined through violations against those rights rather than the definition proposed in legislation.<sup>19</sup> In regards to the fundamental rights of the victim, victimology once again draws from the Crime Victim Declaration, which states the importance of fair trials, access to redress and assistance to victims in order to accommodate the rights of victims.<sup>20</sup> Victimology expands on these provisions by recognising the victims universal human rights, thereby also expanding the scope of assistance that should be afforded to the victims. Universal human rights recognise certain specific groups in need of further protection, such as women and children. It recognises the state as a possible perpetrator, not only other people.<sup>21</sup>

Victimology combines both the specific rights and interests of crime victims recognised through international documents such as the Crime Victim Declaration, and universal human rights. Åström proposes the victimological approach when looking at the rights and interests of victims of human trafficking since it allows us to more fully identify the extent of what assistance is required to accommodate these victims. The approach recognises both the need for assistance and redress for crimes already committed against the victim, as well as the need for protection from further crimes to take place.<sup>22</sup>

Victimology will be used as a theoretical approach in this thesis to open up for an expansive definition of human trafficking and its victims. Through victimology, the history and definition of human

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<sup>18</sup> Åström 2014, pg. 29.

<sup>19</sup> Ibid, pg. 30.

<sup>20</sup> UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, A/RES/40/34, 29 Nov. 1985, art 4-6.

<sup>21</sup> Åström 2014, pg. 31.

<sup>22</sup> Ibid, pg. 31-2.

trafficking can be analysed with the victims interest in mind. This approach will consider all the needs of the victims and consider the merit of the Swedish system based on how Swedish legislation and measures are able to meet those needs.

### **1.3.2. Deportability**

In *Deportability regime*, Nicholas de Genova presents the theory of deportability, which explores the significance and underlying implication of deporting individuals from the territory of a state. The theory looks at how deportation not only disrupts peoples lives but also threaten their fundamental interests. The vulnerability of deportable individuals thereby places them at risk of being exploited for criminal means. As sovereign states are the actors who are deporting, they are thereby creating and perpetuating this ground for exploitation.<sup>23</sup>

Deportation solely as an expression of state sovereignty is something that, according to de Genova, has emerged in the past century.<sup>24</sup> It has today become one of many ways that states exercise their power as sovereigns and realise their obligations towards their citizens.<sup>25</sup> A form of deportability regime has therefore been established where sovereign states claim the capacity to decide who is included within their borders by labelling certain groups as deportable. Even in cases where people through tireless activism and civil disobedience are able to stave of their own deportation, their underlying status as deportable remains the same. Indeed, these exceptions where people are granted amnesty by states only help to confirm the overall rule that it is within a sovereigns power to deport individuals.<sup>26</sup>

The issue arising from deportability, apart from the direct consequences of being deported, stems from what deportation actually entails. Referencing earlier works by Agamben, de Genova identifies the bare life of people, in other words the most basic form of sustainable lifestyle that is non-contingent on aid and support by sovereign states. Bare life is what is left once a sovereign removes or denies access to the tools needed to thrive within a state, it is the bare minimum needed to exist and sustain yourself. It makes out the

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<sup>23</sup> De Genova 2010, pg. 38-9.

<sup>24</sup> Ibid, pg. 34.

<sup>25</sup> Ibid, pg. 34.

<sup>26</sup> Ibid, pg, 35-6.

core personal sovereignty of every human being, the capacity to sustain yourself through labour. Through deportability then, the sovereign targets even that barest existence by threatening an individual's existence within a physical space. Although bare life is existence outside the constructs and institutions of the state, deportability allows for state policy to affect it nonetheless.<sup>27</sup> Deportability thereby threatens not only the physical aspects of a person's sustainability, but in fact their entire self-sovereignty.<sup>28</sup>

In a deportability regime, states are able to create an inclusion within their sovereign nature through citizenship. Rather than guaranteeing fundamental and inalienable rights for all, states instead make them contingent on citizenship status. Individuals labeled as deportable are therefore having such rights removed from their bare life. Bare life then essentially becomes lawless, and sovereigns are justified in banning it entirely from their physical space. As the status of citizens or deportables are determined by criteria set by the acting politics, issues concerning bare life inevitably become a political one.<sup>29</sup>

The deportability regime is perpetuated by sovereign states through nationalistic ideologies which are realised through the establishing of physical borders. Nationalism creates a coherent identity which sets citizens apart from deportable individuals within a territory. The ideology justifies deportation to maintain a national identity, and deportability in turn perpetuates a national identity by creating a clear differentiating label between citizen and deportable.<sup>30</sup> Within the deportability regime borders are not only arbitrary lines indicating the jurisdiction of a nation state, but also an indication of national identity and security. Borders show where the citizens worthy of protection reside, and show from where deportable non-citizens come from. Deportability then becomes a permanent label, since a deportable non-citizen remains a threat to the national sovereignty the borders are supposed to uphold as long as they reside within the territory.<sup>31</sup>

The vulnerable position that deportability creates for women in particular has been elaborated by Sylvanna Falcón in her text *Rape as a Weapon of War: Advancing Human Rights for Women at the*

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<sup>27</sup> De Genova 2010, pg. 37-8.

<sup>28</sup> Ibid, pg. 48.

<sup>29</sup> Ibid, pg. 45-6.

<sup>30</sup> Ibid, pg. 50-1.

<sup>31</sup> Ibid, pg. 51-2.

*U.S.-Mexico Border*<sup>32</sup>. Although she focuses on the conduct by immigration officials on a militarised border, Falcón identifies the threats and risks faced by women labeled as deportable.

With an increasing number of women migrating across borders, Falcón evaluates the risk of rape in exchange for safe passage through territory as a deportable woman.<sup>33</sup> Through a number of cases, Falcón points to how women are subjected to gender-specific crimes and sexual violence once they cross borders into states illegally and as such are branded as deportable in the current regime. Her many examples indicate that deportable women live under a constant threat of sexual violence and exploitation due to their status. There is a general distrust towards authorities for any form of legal remedy or protection against rape, and a fear that contact with authorities will lead to deportation.<sup>34</sup>

Under the threat of being removed from the territory, the deportability regime places women at risk of exploitation for sexual purposes if they are travelling within a state illegally. Rape convictions being rare and difficult to prove leads to little being offered in form of legal protection to the victims, which in turn increases the threat.<sup>35</sup> Despite women migrating and seeking protection and opportunities in other states for the same reason as men, the deportability regime seems to affect women fundamentally different from men, placing them at even further risk of exploitation.<sup>36</sup> As we will see throughout the thesis, a core component of human trafficking is the exploitation of the victims vulnerable position. When analysing human trafficking, Falcón's theoretical approach shows the particular vulnerability faced by women in a border-crossing regime.

The deportability regime will be used as a theoretical approach in this thesis to fully evaluate the situation of human trafficking victims within Sweden and how that might affect what legal protection they require and are able to obtain. Combined with the victimological approach deportability will provide a broader scope for analysing human trafficking by adding aspects to determine the merit of legal

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<sup>32</sup> Falcón, Sylvanna. *Rape as a Weapon of War: Advancing Human Rights for Women at the U.S.-Mexico Border*. Social Justice. vol. 28, no. 2 (2001): 31-50.

<sup>33</sup> Ibid, pg. 34.

<sup>34</sup> Ibid, pg. 41-2.

<sup>35</sup> Ibid, pg. 45.

<sup>36</sup> Ibid, pg. 47.



measures in addressing those issues. This thesis will analyse the Swedish measures to assist victims of human trafficking based on to what extent they consider the risk of exploitation due to the victims status as deportable, including deportable women and the threat of sexual exploitation.

## **1.4. Method**

This thesis will use a legal dogmatic discipline for its methodological approach, meaning that the key issues of human trafficking and the assisting measures provided by the states will be researched through analysis of the existing law, *de lege lata*. To accomplish this, the thesis will therefore use primary legal sources to depict current legislation, including international and national law, legal doctrine and case law.

International law will be presented in a historical context to show what considerations have been made in the past and which interests have shaped the legal development of international standards regarding human trafficking and protection for its victims. This will help to show which interests have been implicitly considered when drafting modern law, even if not explicitly stated.

By looking at the Swedish national law on human trafficking and assistance to victims developing from these international legal standards it then becomes possible to analyse similar interests within the Swedish system. The legal dogmatic approach will be used to see how well these implicit interests are being accommodated by the Swedish measures.

There will also be a short section of the thesis focusing on future developments, *de lege ferenda*, to see how these accommodations are expected to develop. By analysing Swedish drafting documents, this methodological approach will help to show which interest will be considered in the future.

## **1.5. Limitations**

The crime of human trafficking encompasses several forms of exploitations of vulnerable people all over the world. The victims of the crime include men, women and children all over the world who are exploited for a large number of reasons including forced labour, adoption, sexual exploitation or organ harvesting. Legal responses

towards the crime and measures to assist the victims therefore cover areas of criminal, migration and labour law among others.

This thesis will focus specifically on women in Sweden who are victims of human trafficking for sexual exploitation. As further explained in chapter two, sexual exploitation of women has been a re-occurring aspect of the legal development regarding human trafficking. The effects that the crime has on women through sexual exploitation has been analysed throughout the decades and remains the most discussed aspect of human trafficking.

The analysis of the thesis will also be limited to the situation in Sweden in order to provide and discuss practical implications of the more general considerations. As will be discussed in the next segment, legal doctrine has previously discussed human trafficking in its historical context. With this thesis I therefore wish to focus on the situation in Sweden, where my own personal interest and contact with influential civil society organisations will provide a more rooted analysis. This in turn will provide the beginning of an interesting case study of where and how assisting measures for victims of human trafficking either fail or succeed.

## 1.6. Existing research

With this thesis I will not be the first to analyse the current legislation on human trafficking and the assisting measures provided by states. Nor will this be the first thesis to discuss the situation for victims of human trafficking in migration law. Two pieces of literature used in this thesis, *Mellan mäns händer* by Jenny Westerstrand<sup>37</sup> and *Human trafficking and slavery reconsidered* by Vladislava Stoyanova<sup>38</sup> both discuss the historical development of human trafficking as a crime and look at the situation for the victims today. However, whereas Stoyanova and Westerstrand consider the issues and implications concerning the legal definition of human trafficking on the international level, they do not analyse the implications on the local level.

In this thesis I will continue to build on the research of Westerstrand and Stoyanova among others to look closer at a particular case,

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<sup>37</sup> Westerstrand, Jenny. *Mellan mäns händer: Kvinnors rättssubjektivitet, internationell rätt och diskurser om prostitution och trafficking*. Uppsala: Universitetstryckeriet, 2008.

<sup>38</sup> Stoyanova, Vladislava. *Human Trafficking and Slavery Reconsidered: Conceptual Limits and States' Positive Obligations*. Lund: Media-Tryck, 2015.

specifically the current situation in Sweden. This will set my thesis apart from existing research by considering how the general ideas and considerations in the international standards are expressed in Swedish national legislation and assisting measures.

## **1.7. Disclaimer**

This thesis will use the word *victim* when referring to people who have been subjected to human trafficking. This is unfortunate as it may imply a lack of agency of these people by reducing their personality traits to only concerning their relationship to the crime. A more appropriate word would perhaps be *survivor* of human trafficking. However, in the interest of continuity the word *victim* has nonetheless been used. *Victim* is the word most often used in court cases and legislation and the theoretical approach in this thesis is called the victimological approach. In order to avoid confusion and present a uniform terminology throughout the thesis, the word *victim* will therefore be used.

## 2. Historical overview of human trafficking

The analysis in this thesis is contingent on the understanding of the crime of human trafficking itself. In order to understand the impact that deportability has on the victim, you need to understand the full extent of exploitation created by human trafficking. In the final chapter I will attempt to show what situation that victims are faced with through their deportability status.

To give as expansive understanding of the crime and its impact on victims as possible, this first chapter will place the definition in its proper historical context. The historical depiction will begin with the earliest development on the international stage and end by showing some of the more modern developments within the EU.

### 2.1. Early Developments

The early legislative measures against human trafficking began in 1904 when states wanted to regulate and suppress trafficking of white women.<sup>39</sup> The early measures that followed in the first decade of the 1900's were closely tied to the concept of slavery, specifically so-called white slavery. Measures against trafficking were primarily concerned with limiting the sexual exploitation of white women by non-white men, referring to the protection of the purity of their skin color.<sup>40</sup>

Based on racist and conservative ideas of maintaining the purity of the white race, several European superpowers and overseas colonies wanted to prevent the global inter-racial sex trade. The first binding international document on regulating human trafficking was signed by 26 states in 1904, the *International Agreement for the Suppression of the White Slave Trade*.<sup>41</sup>

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<sup>39</sup> UN Commission on Human Rights, *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, on trafficking in women, women's migration and violence against women, submitted in accordance with Commission on Human Rights resolution 1997/44 UN Doc. E/CN.4/2000/68*. New York: UN, 2000, pg. 10 para. 18.

<sup>40</sup> Ibid, pg. 10 para. 18-19.

<sup>41</sup> Ibid, pg. 10 para. 18.

This early international agreement focused primarily on the protection of the victims of human trafficking and were considered ineffective at suppressing the crime. Therefore, the agreement was re-negotiated and in 1910 the *International Convention for the Suppression of White Slave Traffic* was signed by 41 states.<sup>42</sup> The treaty established some of the action and means elements which would later be typically associated with human trafficking such as transportation and coercion on the international level, and also established the rules for minors and consent.<sup>43</sup>

In 1921 the League of Nations drafted the *International Convention for the Suppression of the Traffick in Women and Children* which was the first to establish the crime of trafficking in favour of the older term white slavery as an international crime against all women, regardless of skin color.<sup>44</sup> Further developments came with the *International Convention for the Suppression of the Traffic of Women in Full Age* in 1933. This treaty further recognised the exploitation of the women in human trafficking and the need for legal protection regardless of consent.<sup>45</sup>

These early documents introduced the crime of human trafficking itself, and also established the action and means elements that would come to define human trafficking in future treaties. These early treaties introduced the idea of focusing legal measures on the procurement, transportation and exploitation surrounding the prostitution, rather than the prostitution itself. In other words, these early treaties recognised that sexual exploitation of women on an international basis was dependant on a larger system of actions which needed to be criminalised separately.

Following the end of the second World War, the provisions in the earlier conventions were consolidated in an effort by the UN to create one uniform treaty on human trafficking. These efforts eventually led

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<sup>42</sup> UN Commission on Human Rights, *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, on trafficking in women, women's migration and violence against women, submitted in accordance with Commission on Human Rights resolution 1997/44 UN Doc. E/CN.4/2000/68*. New York: UN, 2000, pg. 10 para. 18-19.

<sup>43</sup> *International Convention for the Suppression of the "White Slave Traffic,"* May 4, 1910, 211 Consol. T.S. 45, 1912 GR. Brit. T.S. No. 20, as amended by Protocol Amending the International Agreement for the Suppression of the White Slave Traffic, and Amending the International Convention for the Suppression of the White Slave Traffic, May 4, 1949, 2 U.S.T. 1999, 30 U.N.T.S. 23, *entered into force* June 21, 1951, art. 1-2.

<sup>44</sup> League of Nations, *International Convention for the Suppression of the Traffic in Women and Children*, opened for signature on Sept. 30, 1921, signed in New York, Nov. 12 1947, preamble.

<sup>45</sup> League of Nations, *International Convention for the Suppression of the Traffic in Women of the Full Age*, Oct. 11, 1933, 150 L.N.T.S., *entered into force* Aug. 24, 1934, art. 1.

to the adoption of the *Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others* from 1949.<sup>46</sup> The 1949 convention defined human trafficking as an entire sequence of procurement, transport and exploitation. Not only did the convention criminalise human trafficking, but it set out obligations to protect victims by stating in Article 19:

*The Parties to the present Convention undertake, in accordance with the conditions laid down by domestic law and without prejudice to prosecution or other action for violations thereunder and so far as possible:*

*(1) Pending the completion of arrangements for the repatriation of destitute victims of international traffic in persons for the purpose of prostitution, to make suitable provisions for their temporary care and maintenance*

Additionally, the convention recognised the inherent tie between human trafficking and international migrations flows, by providing specific provisions for border controls in article 17:

*The Parties to the present Convention undertake, in connection with immigration and emigration, to adopt or maintain such measures as are required, in terms of their obligations under the present Convention, to check the traffic in persons of either sex for the purpose of prostitution.*

Despite its ambitious scope however, the convention garnered little support among the member states to the UN. It viewed all forms of prostitution as forced prostitution, as a form of societal decay which needed to be opposed. Although the 1949 convention did not criminalise prostitution, it did seek to prohibit all actions that would enable prostitution.<sup>47</sup> Sex workers were by definition considered victims of human trafficking and were subject to state custody in article 16:

*The Parties to the present Convention agree to take or to encourage, through their public and private educational, health, social, economic and other related services, measures for the prevention of prostitution and for the*

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<sup>46</sup> UN Commission on Human Rights, *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, on trafficking in women, women's migration and violence against women, submitted in accordance with Commission on Human Rights resolution 1997/44 UN Doc. E/CN.4/2000/68*. New York: UN, 2000, pg. 10 para. 20.

<sup>47</sup> *Ibid*, pg. 10 para. 22.

*rehabilitation and social adjustment of the victims of prostitution and of the offences referred to in the present Convention.*

The convention also included a greater focus on social rather than criminal measures against human trafficking within the UN. In addition to the convention, there was an effort made to map out how extensive prostitution was within the states that adopted the convention, to find out how many sex workers lived in each country. The convention set out strict restrictions on prostitution that were in conflict with several of the member states of the UN. Although the convention was aimed at suppressing the sex trade but not harm sex workers, the harsh measures had consequences for them anyway. Due to the conflict between the conventions international provisions and national legislation among members states meant that only 69 states adopted the convention.<sup>48</sup>

## **2.2. Modern Developments**

There was a renewed interest on the international level to combat human trafficking in the 1970's and 1980's through the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW). The convention stated in article 6:

*States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.*

Furthermore, the convention creates an overall obligation for the signatory states to pursue equality between the genders and oppose discrimination of women. The states therefore set out to promote improved social standing of women in relation to men in article 5:

*States Parties shall take all appropriate measures:*

*(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;*

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<sup>48</sup> UN Commission on Human Rights, *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, on trafficking in women, women's migration and violence against women, submitted in accordance with Commission on Human Rights resolution 1997/44 UN Doc. E/CN.4/2000/68*. New York: UN, 2000, pg. 10 para. 25-26.

Article 5 therefore sets a background for the application of article 6, implying that there was a certain focus on recognising and improving the status of women in general, and as victims of human trafficking in particular. Within the realm of discrimination against women, CEDAW identified human trafficking in particular. To combat discrimination overall, CEDAW provides a number of social and legal measures that the states need to pursue. This includes assistance to victims of crimes such as human trafficking.<sup>49</sup>

Similar to earlier conventions however, the exact significance of prostitution in the context of human trafficking in article 6 remained undefined. Much like the 1949 convention, the exact legislative measures were left up to individual states.<sup>50</sup> Nevertheless, further resolutions and clarifications by Special Rapporteurs indicated that prostitution remained in conflict with the basic human values pursued by the UN. As such, a UN Convention against human trafficking would consider all forms of prostitution as sexual exploitation.<sup>51</sup>

In the 1993 the Vienna Conference on Human Rights introduced human trafficking as a violation of fundamental human rights. It incorporated many of the same ideas and definitions that had been proposed in the CEDAW, but also identified women as bearers of fundamental, inalienable rights. This in turn identified human trafficking as a form of gender-based violence which violated those rights, which member states needed to confront as they would other human rights violations.<sup>52</sup> The conference indicated one of the first larger, international legislative measures against human trafficking which did not connect it to the issue of prostitution. As such, there was no conflict regarding what forms of prostitution constituted sexual exploitation.<sup>53</sup>

The developments in regard to human trafficking from the Vienna Conference led to drafting of the Declaration on the Elimination of Violence against Women in 1993. This Declaration left the legislative question of prostitution in regards to human trafficking up to the

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<sup>49</sup> Westerstrand 2008, pg. 239.

<sup>50</sup> Stoyanova 2015, pg. 66.

<sup>51</sup> Ibid, pg. 66-67.

<sup>52</sup> Office of the United Nations High Commissioner for Human Rights, *Vienna Declaration and Programme of Action*, adopted by the World Conference on Human Rights in Vienna on 25 June 1993, pg. 4 pt. 18, pg. 13 pt. 38.

<sup>53</sup> Netkova, Bistra. *International Developments of the issue of Trafficking in human beings and the United Nations*. *Iustinianus Primus Law Review*. vol. 7. no. 1 (2015): 1-15, pg. 9.



states. Instead the main focus of the Declaration was on the violence faced by victims of human trafficking.<sup>54</sup>

In the 1990's there was also a renewed focus on the connection between human trafficking and organised crime. The newly formed UN Commission on Crime Prevention and Criminal Justice (UNCCPCJ) presented findings on transnational crime in 1994, where it identified human trafficking and violence against women as international crime in need of particular legal measures.<sup>55</sup> Similarly, in 1998 the UNCCPCJ presented the Draft International Convention against the smuggling of Illegal Immigrants, which covered criminal issues of on the one hand illegal trafficking of migrants, on the other hand trafficking of women and children. The draft convention identified human trafficking for prostitution and sexual exploitation as a criminal issue of transnational smuggling.<sup>56</sup>

These measures once again highlighted the importance of a consolidated international definition of human trafficking which took the modern developments into consideration. UN began work in 1998 drafting a convention which identified human trafficking as a transnational crime which therefore required transnational measures.<sup>57</sup> In 2000, delegations met in Palermo to sign on to these new conventions. This legislative procedure had separated provisions on human trafficking from the draft convention proposed earlier by UNCCPCJ. Rather than viewing human trafficking as a crime of transnational smuggling, it was regulated as a separate organised crime entirely in the Trafficking Protocol, commonly known as the Palermo Protocol.<sup>58</sup>

Among other things, the Palermo Protocol presented the first comprehensive international definition on human trafficking. The Trafficking Protocol defined the crime in article 3:

*(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of*

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<sup>54</sup> UN General Assembly, *Declaration on the Elimination of Violence against Women*, A/RES/48/104, 20 Dec. 1993, art. 2(b).

<sup>55</sup> UNODC, *Report of the Commission on Crime Prevention and Criminal Justice on its 3rd session (26 April - 6 May 1994)*, E/1994/30-E/CN.15/1994/12. United Nations Office on Drugs and Crime. Vienna: 1994, pg. 60.

<sup>56</sup> Stoyanova 2015, pg. 70.

<sup>57</sup> UN General Assembly, *Resolution on Transnational organized crime adopted by the General Assembly*, A/RES/53/111, 20 Jan. 1999, pg. 3 pt. 10.

<sup>58</sup> Netkova 2015, pg. 11.

*coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;*

Additionally, the protocol also clarifies which types of assistance and protections that the signatory states should provide for victims of the crime in article 6:

*[I]n appropriate cases and to the extent possible under its domestic law, each State party shall protect the privacy and identity of victims of trafficking in persons [...] each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons.*

Despite the ambitious scope of the Palermo Protocols, they included no concrete measures but rather left most requirements up to the digression of national legislation. Rather than an instrument to convict perpetrators, the function of the Protocols has been in guiding and setting international standards for national and regional legislation.<sup>59</sup>

## **2.3. European Developments**

The first legislative measures against human trafficking within Europe began in the 1980's. The legislative work against human trafficking within the European Union has historically fallen within scope of the Council of Europe's work with human rights and freedoms.<sup>60</sup> The first measures conducted by the Council were numerous initiatives throughout the 1980's and 90's to examine the full extent of human trafficking within Europe.<sup>61</sup> In 2000, the Council publishes the first formal recommendation in regards to human trafficking. The

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<sup>59</sup> Netkova 2015, pg. 13.

<sup>60</sup> *Action against Trafficking in Human Beings, HDIM.IO/0194/09*. Secretariat of the Council of Europe Convention on Action against Trafficking in Human Beings. Strasbourg: Council of Europe, 2009, pg. 1.

<sup>61</sup> *Ibid*, pg. 1-2.

recommendation established the connection between human trafficking and organised crime and proposed legislative measures and transnational cooperation within the EU to combat the crime. Trafficking in the 1980's with informative and educational work before it began listing recommendations for the Member States of the EU.<sup>62</sup>

The definition of human trafficking according to the recommendation identifies action, means and purpose elements similar to the Palermo Protocol. The actual occurrence of exploitation at the destination is irrelevant for assessing the crime. The definition does not require previous consent by the victim if coercive means had been used from the point of recruitment, thereby the discussion about whether prostitution constituted sexual exploitation was avoided.<sup>63</sup>

Beginning in the 21st century there were developments within the Council of Europe in order to pursue a stronger European approach against human trafficking. A committee presented the Council with a draft convention in 2005, which was dismissed however. The Council found that the proposed measures did not offer adequate protections and assistance for victims.<sup>64</sup> Furthermore the Council were critical that the measures proposed by the convention were not legally binding for the signatory states.<sup>65</sup>

Eventually the Council of Europe adopted the *Convention on Action against Trafficking in Human Beings* in 2005 (the Trafficking Convention). The Trafficking Convention adopts the same definition of human trafficking as the Palermo Protocols.<sup>66</sup> However, apart from the Palermo Protocol the Trafficking Convention identifies human trafficking as an issue of human rights violations rather than a criminal justice question. The focus of the Trafficking Convention was therefore on respect and protection of victims.<sup>67</sup> Furthermore the Trafficking Convention recognised gender inequality as a

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<sup>62</sup> *Action against trafficking in human beings for the purpose of sexual exploitation Recommendation No. R (2000) 11 of the Committee of Ministers and Explanatory Memorandum*. Council of Europe, pg. 5.

<sup>63</sup> *Ibid*, pg. 25.

<sup>64</sup> *Draft Council of Europe Convention on action against trafficking in human beings, Parliamentary Assembly Opinion 253*. Council of Europe. Strasbourg: 2005, para. 8.

<sup>65</sup> *Ibid*, para. 12.

<sup>66</sup> Council of Europe, *Convention on Action against Trafficking in Human Beings*, CoE T.S. No. 197, Warsaw: 16 May. 2005, art. 4a.

<sup>67</sup> *Ibid*, preamble.

fundamental aspect of human trafficking for sexual purposes.<sup>68</sup> The Trafficking Convention also goes even further by including all types of conduct that could constitute human trafficking regardless of connection to transnational organised crime.<sup>69</sup>

Unlike the Palermo Protocols focus on criminal measures, the Trafficking Convention recognised social measures within the states to promote gender equality. Thereby the Trafficking Convention recommends that member states improve the situation for victims of human trafficking by creating a safer environment for women in general throughout their societies. These measures of gender equality would not limit itself to merely assist victims but also act as preventive measures.<sup>70</sup>

Similar to the definition set out in the recommendation from 2000 and from the Palermo Protocols, the Trafficking Convention recognised victims of human trafficking even if the final exploitation has not taken place.<sup>71</sup> The Trafficking Convention clarified the irrelevance of consent of the victim if any of the coercive means has been used during the sequence of actions elements.<sup>72</sup> In explanatory reports, the Council of Europe clarified that the coercive means was intended to be broadly interpreted. The intention of the drafters was to include as many vulnerable individuals as possible as victims in regards to human trafficking.<sup>73</sup>

In 2011 there were further developments on European standards on the treatment of human trafficking victims with the *EU Directive on preventing and combating trafficking in human beings and protecting its victims*, also known as the Trafficking Directive. The main focus of the Trafficking Directive was on combating and preventing crime by expanding the definition<sup>74</sup> and proposing stricter punishment<sup>75</sup>. The

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<sup>68</sup> Council of Europe, *Convention on Action against Trafficking in Human Beings*, CoE T.S. No. 197, Warsaw: 16 May. 2005, art. 1.

<sup>69</sup> *Ibid*, art. 2.

<sup>70</sup> *Ibid*, art. 17.

<sup>71</sup> *Ibid*, art. 4a.

<sup>72</sup> *Ibid*, art. 4b.

<sup>73</sup> *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings. CETS No.197*. Council of Europe. Warsaw: 2005, pg. 15, pt. 83.

<sup>74</sup> *Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA*. European Parliament and European Council. 2011, art. 2.

<sup>75</sup> *Ibid*, art. 4.

Trafficking Directive did also aim to offer further assistance and protection for the victims, as it was drafted out of a growing fear that human trafficking was growing throughout the EU and that the consequences for victims were growing more violent and dangerous.<sup>76</sup> Overall, the Trafficking Directive provided several provisions regarding the victims cooperation with authorities against organised crime networks<sup>77</sup> and assistance granted to them if they decided to cooperate<sup>78</sup>. The Trafficking Directive also further emphasises the inherent gender inequality within human trafficking, and the importance of taking this gender inequality into consideration both when regulating the crime and when assisting the victims.<sup>79</sup>

When examining the historical context of human trafficking, it becomes clear how the perception of the victim has changed as therefore also the measures to assist them. Whereas the early legal instruments primarily showed a concern for racial purity and female dignity, the Palermo Protocols and the Trafficking Convention shows a greater examination of the root causes for human trafficking. The development towards focusing on acts that occur prior to arriving in the country of destination also shows a certain understanding that the victims may in fact already be vulnerable and exploited by the time they arrive. There is also a slow development towards regulating assistance to the victims as part of the strategy towards combating human trafficking, indicating that the solution to the crime might not be as easy as simply apprehending the perpetrators.

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<sup>76</sup> *Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA*. European Parliament and European Council. 2011, preamble pt. 7, 11.

<sup>77</sup> *Ibid*, art. 11 p.3.

<sup>78</sup> *Ibid*, art. 11 p.1.

<sup>79</sup> *Ibid*, preamble pt. 3.

# 3. International definition of human trafficking

Considering the historical developments in chapter two, it is easier to understand the subtleties and meanings of the legal definition of human trafficking today. In this chapter I will look closer at the international definition on human trafficking from the Palermo Protocols which have been depicted in the previous chapter. To fully understand how human trafficking today exploits the victims, we must first understand what human trafficking entails. I will analyse each individual segment of the modern definition of human trafficking to see what it entails and to determine what the victims face.

Human trafficking is a complex crime in the sense that it can cover multiple actions perpetrated by multiple people across the borders of multiple countries. As we saw in the earlier chapter, the Palermo protocol defines human trafficking in article 3a as *recruitment, transportation, transfer, harbouring or receipt* of the victims through the use of *threats, use of force or other forms of coercion* with the ultimate *purpose of exploitation*.

The definition in the protocol identifies the crime of human trafficking as constituting three separate elements; action, means and purpose. In the following sections these elements will be defined separately.

## 3.1. Action

The action element of human trafficking covers the sequence of events that together place a victim in a situation where they are criminally exploited. In legislation against the crime, performing each of these actions by themselves are grounds for conviction.<sup>80</sup> In accordance with the international definition of human trafficking in the Palermo protocols, the action elements include:

[...]the *recruitment, transportation, transfer, harbouring or receipt of persons*[...]

The recruitment part of the action element refers to both active and passive recruitment. This covers both situations where recruiters are actively seeking out potential victims and where venues are set up

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<sup>80</sup> Stoyanova 2015, pg. 88.

for victims to seek recruitment themselves.<sup>81</sup> The transportation and transfer sections of the action element refers both to the active transportation of victims through land, air or sea as well as providing support and assistance in transporting victims and getting them across borders.<sup>82</sup>

Although human trafficking is mostly characterised as an international crime, it is possible for it to take place within the borders of a single nation.<sup>83</sup> The transport and transfer sections of the action element can take place through formal, legal methods of travel like travel and tourism agencies.<sup>84</sup>

The harbouring section of the action element ties in both with the accommodations that are set up during transport and transfer of the victims, and with the accommodations that are set up for victims at the final destination. Similar to the transportation and transfer this section covers both the active harbouring of victims by running a form of accommodation, and forms of support towards such accommodations.<sup>85</sup> The receipt part of the action element refers both to accommodating the victims at the final destination, and to meeting up with victims during their transportation and transfer to provide them with instructions and guidance to further their exploitation at the final destination.<sup>86</sup>

## 3.2. Means

For the crime of human trafficking it is not enough to identify an action element. Each action element needs to have been performed in a certain way, through certain means. The means element refers to the coercive and persuasive way in which the actions are performed in order to exploit the victims. In accordance with the international definition of human trafficking in the Palermo protocols, the means element include:

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<sup>81</sup> Joint Council of Europe and United Nations. *Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs*. Strasbourg: Council of Europe, 2009, pg. 78.

<sup>82</sup> Ibid, pg. 78.

<sup>83</sup> UNODC, *Global Report on trafficking in persons 2012*. Vienna: UN Office on Drugs and Crime, 2012, pg. 41,49.

<sup>84</sup> Åström 2014, pg. 20.

<sup>85</sup> Joint Council of Europe and United Nations. *Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs*. Strasbourg: Council of Europe, 2009, pg. 78.

<sup>86</sup> Ibid, pg. 78.

*[...]the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person[...]*

Unlike the action element which can be viewed and recorded, the means by which the actions are performed are harder to prove. Although a person might clearly be coerced through abduction or threats of violence, coercive means such as deception and abuse of power can be more difficult to identify.<sup>87</sup> Vladislava Stoyanova have identified two aspects of coercive means in particular that prove this difficulty.

First of all, there is the question of time; at what point throughout the sequence of action elements mentioned above does coercion need to present to be considered human trafficking and thus at what point does a person need to be coerced to be considered a victim? Stoyanova propose two conflicting viewpoints, either human trafficking require coercion from the very beginning with recruitment, or it is enough if coercion occurs at the end with the receipt.<sup>88</sup>

By reading the basic wording in the Palermo Protocol listed above it would seem to support Stoyanovas first approach, by tying the means to all the action elements. This connection between the actions and means is also supported by UN bodies.<sup>89</sup> With the first approach, a person becomes a victim of human trafficking once they are tricked into being recruited for something they had no wish or intention of being a part of. This includes both situations where people are forcefully abducted into human trafficking and where people are given false information and are tricked into human trafficking.<sup>90</sup>

The implications of either approach can be far-reaching. If human trafficking requires that coercive means have been used at the very beginning, it can be difficult for people to prove that they are victims. It would be required for victims to prove that the circumstances

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<sup>87</sup> Stoyanova 2015, pg. 107.

<sup>88</sup> Ibid, pg. 107.

<sup>89</sup> UNODC, *Abuse of position of vulnerability and other "means" within the definition of trafficking in persons*. Vienna: UN Office on Drugs and Crime Issue Paper, 2013, pg. 4.

<sup>90</sup> Stoyanova 2015, pg. 107-108.



around their recruitment were coercive and fraudulent, which they may not be in a good position to prove.<sup>91</sup> Similarly, the conduct and intentions by the perpetrator in charge of recruitment or transport and what effect that has on enabling the sequence of human trafficking is difficult to prove.<sup>92</sup>

If we instead consider Stoyanovas second approach to the time aspect of coercion, that coercion needs only to occur at the end with the receipt of the victim, the assessment does not require victims to prove the circumstances at their recruitment. Rather, the focus when determining whether human trafficking has occurred would be on the exploitation taking place at country of destination.<sup>93</sup> The question of whether or not victims were tricked into recruitment or choose to willingly be trafficked would then be irrelevant. This approach seems to be supported by the idea that the victims consent is irrelevant when discussing human trafficking, for example uttered by the Council of Europe.<sup>94</sup>

However, the second approach does raise issues in regards to acknowledging the situation at the country of origin. Stoyanova notes how the second approach disregards the socio-economic aspects that affects how victims are recruited into human trafficking and in turn affect what assistance the victims may require.<sup>95</sup> Additionally, the second approach also does not set victims of human trafficking apart from other migrants at the point of migration, since their victim status is based on coercion once they are at their destination. The second approach would then disregard the particular vulnerability of victims of trafficking in comparison to other migrants.<sup>96</sup>

Stoyanovas second aspect that complicates the matter of coercive means is the level required. Certain forms of coercion such as explicit violence make out clear coercive means that are often criminalised in and of themselves.<sup>97</sup> For other types of coercion

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<sup>91</sup> Eurojust, *Strategic Project on Eurojust's action against trafficking in human beings Final Report and action plan*. The Hague: The European Union's Judicial Cooperation, 2012, pg. 10.

<sup>92</sup> Stoyanova 2015, pg. 108.

<sup>93</sup> *Ibid*, pg. 108-9.

<sup>94</sup> Council of Europe, *Convention on Action against Trafficking in Human Beings*, CoE T.S. No. 197, Warsaw: 16 May. 2005, art. 4b.

<sup>95</sup> Stoyanova 2015, pg. 109.

<sup>96</sup> *Ibid*, pg. 109-10.

<sup>97</sup> *Ibid*, pg. 110.

however, it may not quite as clear-cut. Coercion through deception or abusing victims vulnerable position have no clear thresholds for what form of conduct would constitute the means element. Coercion by abusing a vulnerable position is particularly vaguely defined.<sup>98</sup>

There have been interpretations in regards to abuse of a vulnerability ranging between more or less inclusive. The Council of Europe have adopted an expansive interpretation of the means element, including any abusive conduct against people suffering from any vulnerability. With this interpretation, the coercion may not necessarily concern the specific vulnerability in question, and so offers greater protection for the victim.<sup>99</sup> UN bodies have instead adopted a more narrow interpretation that covers conduct that specifically takes advantage of a known vulnerability. With the second interpretation there needs to be an established vulnerability and there also needs to be an act of coercion that specifically targets that vulnerability. The burden of proof is therefore higher for the victim.<sup>100</sup>

In reality, the means by which the perpetrators coerce people into human trafficking are often subtle and neither the timing nor the threshold are easily established. In previous years the perpetrators mostly performed the actions through forms of violence or threat of violence, which was easy to identify as coercive means.<sup>101</sup> Today however, perpetrators use less violent and less obvious coercive means. Friends and family members in the country of origin are threatened and perpetrators can easily maintain these threats through contacts with the country.<sup>102</sup> Once the victim has reached their country of destination, further coercive means can be used to take advantage of their situation. By taking away their passports and their funds, the victims are robbed of their independence and agency and makes them completely dependant on the perpetrator. Similarly, by placing the victim in debt bondage by demanding high rents and

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<sup>98</sup> UNODC, *Abuse of position of vulnerability and other "means" within the definition of trafficking in persons*. Vienna: UN Office on Drugs and Crime Issue Paper, 2013, pg. 19.

<sup>99</sup> *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings. CETS No.197*. Council of Europe. Warsaw: 2005, pg. 15, pt. 83.

<sup>100</sup> UNODC, *Guidance Note on 'abuse of a position of vulnerability' as a means of trafficking in persons in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*. Vienna: UN Office of Drugs and Crime, 2012, para. 2.3-5.

<sup>101</sup> US State Department, *Trafficking in persons report June 2008*. Washington, D.C: US State Department, 2008, pg. 21.

<sup>102</sup> Brottsförebyggande Rådet, *Rapport 2008:24 Sexuell människohandel en fråga om tillgång och efterfrågan*. Stockholm: Brottsförebyggande Rådet, 2008, pg.10.

prices for mundane services, they are further coerced into a life of servitude.<sup>103</sup>

### 3.3. Purpose

The purpose element of the definition in the Palermo Protocol refers to the reason behind the action and means element. The purpose of the crime refers to the specific crime in mind by the perpetrators initiate the sequence of actions making out human trafficking. This includes exploitation taken place at any point throughout the entire sequence of the trafficking. In other words, people who are coerced in exploitation during recruitment, harbouring, transport and transit should similarly be considered victims of human trafficking as long as this exploitation was part of the purpose.<sup>104</sup> In accordance with the international definition of human trafficking in the Palermo protocols, the purpose element includes, at a minimum:

*the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;*

### 3.4. Exploitation and sexual exploitation

The focus of this thesis is on human trafficking for sexual exploitation, and so this particular purpose element will be explained in further detail. During the drafting of the international definition there were some disagreement among state delegations regarding the role of prostitution as a form of sexual exploitation. Certain delegations wanted all recruitment of people into prostitution to constitute human trafficking, regardless of prior consent.<sup>105</sup> In the end a definition was agreed upon, including “*the exploitation of the prostitution of others*” as a form of sexual exploitation. This wording was deliberately chosen to distinguish between victims of human

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<sup>103</sup> US State Department, *Trafficking in persons report June 2007*. Washington, D.C: US State Department, 2007, pg. 22.

<sup>104</sup> Åström 2014, pg. 23.

<sup>105</sup> Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, *Draft elements for an agreement on the prevention, suppression and punishment of international trafficking in women and children, supplementary to the Convention against Transnational Organized Crime: submitted by Argentina, A/AC.254/8*. Vienna: United Nations General Assembly, 1999, art. 3(d) (iii).

trafficking and people who chose to get into prostitution by their own free will.<sup>106</sup>

Thus, there was and remains uncertainty whether or not all prostitution should be viewed as sexual exploitation. The deliberations made during the drafting of the human trafficking definition in the UN was mirrored in the EU. The Council of Europe wanted to leave legislative room for member states to define sexual exploitation in accordance with their national laws regarding prostitution.<sup>107</sup> These difficulties in defining the which types of sexual conduct should fall within sexual exploitation causes a shift in attention towards the importance of establishing the means element. Regardless of national definitions on sexual exploitation depending on prostitution legislation, the original coercion of a person will still define them as a victim of human trafficking for sexual exploitation.<sup>108</sup>

By examining each element of the contemporary definition of the crime, we not only get a clearer picture of what the perpetrator does but also what the victim is subjected to. Even if the victim never arrives at his or her destination, by definition he or she has nonetheless faced exploitation sprung from some form of vulnerability at the hands of perpetrators. Additionally we see in this chapter how even the slightest disagreement as to the exact definition of human trafficking can have far-reaching implications on how assisting measures should be formulated.

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<sup>106</sup> Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, *Revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, A/AC.254/4/Add.3/Rev.7*. Vienna: United Nations General Assembly, 2000, art. 2a.

<sup>107</sup> *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings. CETS No.197*. Council of Europe. Warsaw: 2005, pg. 16, pt. 88.

<sup>108</sup> Stoyanova 2015, pg. 119.

## **4. EU measures for assistance and protection**

Having depicted the current international definition on human trafficking and shown its historical context, I will now analyse some of the international measures for assisting the victims. The EU has contributed in this area through a number of directives and conventions as well as case law from the European Court of Human Rights (ECtHR) that attempt to provide certain forms of assistance that victims of human trafficking require. This chapter will look at these measures in order to see if they cover all types of exploitation faced by the victims. In the final analysis in chapter seven and eight I will look at whether these measures manage to address the victims inherent deportability as well. A similar depiction of the measures provided by Swedish national law will be presented in chapter six.

### **4.1. Council of Europe Trafficking Convention**

Within the EU, several legal documents have been passed in recent decades that establishes the requirements and standards for member states to follow in regards to victims of crime in general and victims of human trafficking in particular. Most recent and influential among these documents are the Trafficking Convention which sets out some general requirements for member states, the EU Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (the Residence Permit Directive) and the EU Trafficking Directive which regulates those provisions in more detail. All these documents differentiate between presumed victims on the one hand, confirmed victims on the other.

Within the EU, the Trafficking Convention provides the most basic rules and standards regarding legal protection and aid for victims of human trafficking. The main focus of the Trafficking Convention is not to provide assistance and protection to the victims. Rather, the purpose of the Trafficking Convention is stated as promoting and protecting gender equality, human rights and international

cooperation in the pursuit of combating the crime of human trafficking.<sup>109</sup>

Despite this however, the Trafficking Conventions includes certain regulations providing minimal standards to improve the situation of the victims. Article 12.1 and 12.2 in particular covers the assistance which should be offered to all victims regardless of the current migration status, and includes:

*1. Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery.*

*[...]*

*2. Each Party shall take due account of the victim's safety and protection needs.*

These are referred to as the minimum requirements that signatory states are required to provide for all victims of human trafficking, whether the crime against them has been confirmed or is just presumed. Even so, the Trafficking Convention leaves a lot of interpretation for member states to practice their own legislative discretion when abiding by article 12.<sup>110</sup>

The minimum requirements for any victim of human trafficking are divided up into assistance to recovery and assistance for safety and protection. For victims who are seeking residence permits, the recovery assistance only covers emergency medical treatment, compared to necessary medical treatment for victims who are residents already. Additionally, the Trafficking Convention only requires the signatory states to offer victims certain assistance such as translation when it is deemed necessary.<sup>111</sup> The definition of appropriate in this particular case is left up to the states discretion. The states may therefore make this assistance contingent on certain prerequisites which victims are required to meet. The Trafficking Convention also requires that all victims of human trafficking should be informed about their legal situation and be provided legal assistance, although the exact form of this is once again left up to the

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<sup>109</sup> Council of Europe, *Convention on Action against Trafficking in Human Beings*, CoE T.S. No. 197, Warsaw: 16 May. 2005., art. 1.

<sup>110</sup> Stoyanova 2015, pg. 191.

<sup>111</sup> Council of Europe, *Convention on Action against Trafficking in Human Beings*, CoE T.S. No. 197, Warsaw: 16 May. 2005, art. 12.3.

state in question. There are in other words no requirements to inform the victim specifically about their current migration status.<sup>112</sup>

No matter the extent and form of the assistance set out in article 12 however, the assistance should be made available for victims of human trafficking regardless of the level of cooperation with authorities. Article 12.6 of the Trafficking Convention states that:

*Each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness.*

However, the provision still allows states to practice their discretion when granting victims assistance. The article only excludes states from demanding that a victim acts as a witness, and so the Trafficking Convention allows for states to make assistance towards victims conditional on other forms of cooperation. However, the assistance can not be conditional upon the quality of the cooperation. Even so, this provision only extends to confirmed victims of human trafficking, not for presumed victims. For the presumed victims the Trafficking Convention seems to allow states to make assistance conditional on specific forms of cooperation and can deny assistance depending on the quality of the cooperation.<sup>113</sup>

Apart from the forms of assistance discussed above, the Trafficking Convention also explains under what conditions residence permits should be granted to victims of human trafficking. Provided that a person is a confirmed victim of human trafficking, article 14.1 states that:

*Each Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both:*

- a) the competent authority considers that their stay is necessary owing to their personal situation;*
- b) the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.*

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<sup>112</sup> Council of Europe, *Convention on Action against Trafficking in Human Beings*, CoE T.S. No. 197, Warsaw: 16 May, 2005, art. 12.1d-e.

<sup>113</sup> Stoyanova 2015, pg. 198.

The first form of residence permits are based on humanitarian grounds, although the exact extent of the victims personal situation is once again left to the states legal discretion. The Council of Europe has proposed a broad application of this provision, with personal situation cover social, medical, political and economical conditions.<sup>114</sup> Additionally, certain indications as to what can constitute humanitarian grounds for a residence permit can read in context with article 16.2 which states that:

*When a Party returns a victim to another State, such return shall be with due regard for the rights, safety and dignity of that person and for the status of any legal proceedings related to the fact that the person is a victim, and shall preferably be voluntary.*

In other words, if the personal situation of a victim of human trafficking is such that they can not travel to another state out of fear for their safety then they should be granted a residence permit on humanitarian grounds. The Council of Europe has clarified that residence permit should be afforded on humanitarian grounds to a victim if they are at risk of physical abuse or to return to trafficking.<sup>115</sup>

Furthermore, the Trafficking Convention also prohibits states from denying residence permits on humanitarian grounds to victims seeking asylum in their country. Article 14.5 of the Trafficking Convention states that:

*Having regard to the obligations of Parties to which Article 40 of this Convention refers, each Party shall ensure that granting of a permit according to this provision shall be without prejudice to the right to seek and enjoy asylum.*

The article in question is article 40.4 which states that:

*Nothing in this Convention shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*

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<sup>114</sup> *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings. CETS No. 197.* Council of Europe. Warsaw: 2005, pg. 29, pt. 184.

<sup>115</sup> *Draft Council of Europe Convention on action against trafficking in human beings, Parliamentary Assembly Opinion 253.* Council of Europe. Strasbourg: 2005, amendment vii. art. 14.1.



*and the principle of non-refoulement as contained therein.*

These articles therefore prevents states from making their obligations according to the Trafficking Convention contingent on whether or not the victims are simultaneously applying for asylum within their country. However, despite all this, the Council has clarified that it is within the states discretion to make the issuance of residence permit contingent on the cooperation by the victim.<sup>116</sup>

The second form of residence permit mentioned in article 14.1 requires the victim to provide some form of co-operation with authorities. Once again the exact co-operation required is not clarified and it is left to the states discretion to decide both the form and the extent. Furthermore, there are no clear provisions regarding the period for the permit, only article 14.3 of the Trafficking Convention which explicitly leaves this issue up to the discretion of the states:

*The non-renewal or withdrawal of a residence permit is subject to the conditions provided for by the internal law of the Party.*

Article 14.1 also leaves the actual process of granting residence permits up to the states discretion. Victims of human trafficking might therefore be subject to the same procedural laws as anyone migrating into a country. The national legislation regulating residence permits may or may not identify the particular vulnerabilities of victims of human trafficking, which in turn could create issues for the individuals looking for the permit. Through coercive recruitment and exploitation victims of human trafficking might often find themselves in foreign countries without the proper documentation or tools to prove their identity.<sup>117</sup>

Through the scope of victimology that this thesis proposes, this approach to the victims of human trafficking creates certain problems. Like victimology suggests, the abuses against the victims do not occur in a vacuum, so if the national legislation is not required to adress all individual vulnerabilities then it may fail to assist the victim altogether. A closer analysis of the problems this creates will be provided in chapter seven and eight.

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<sup>116</sup> *Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings. CETS No.197.* Council of Europe. Warzaw: 2005, pg. 27, pt. 169.

<sup>117</sup> Stoyanova 2015, pg. 218.

## 4.2. The Residence Permit Directive 2004/81/EC

In 1999, the Council of Europe began drafting ideas to limit illegal immigration by targeting criminal networks providing human smuggling services directly. One of the areas of focus within this approach was to work with the victims of trafficking by providing them with legal protection.<sup>118</sup> The Residence Permit Directive was therefore drafted to create a legal framework to provide victims of human trafficking with residence permits and other forms of legal protection and assistance.<sup>119</sup>

The general purpose of the Residence Permit Directive is to create a venue through which victims of human trafficking can be granted residence permits in return for their co-operation with authorities. This would be done in order to combat the crime of human trafficking itself.<sup>120</sup> In order to accomplish this goal, the directive sets up both rights associated with the application process for a residence permit, as well as the rights of the victim once a residence permit has been granted.

The Residence Permit Directive stipulates that before granting residence permits to victims of human trafficking, states must first provide certain assistance to presumed victims. As soon as a state suspects that a person is a victim of human trafficking, they must take measures to inform them of the assistance and protection available to them.<sup>121</sup> Once the person has been given information about their situation, they are entitled to a reflection period in order to make an informed decision about how they wish to go forward with a residence permit, during which they are entitled to further assistance.<sup>122</sup> This includes legal aid in regards to what is legally required of the victims for their residence permit.<sup>123</sup>

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<sup>118</sup> *Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.* Vienna: Council of Europe, 2004, preamble pt. 2.

<sup>119</sup> *Ibid.*, preamble pt. 9-12.

<sup>120</sup> *Ibid.*, art. 1.

<sup>121</sup> *Ibid.*, art. 5.

<sup>122</sup> *Ibid.*, art. 6(1)-(2).

<sup>123</sup> *Ibid.*, art. 7.4.

Authorities must make a decision whether or not to grant a residence permit once the reflection period is over, based on a combined assessment of the victims intention to co-operate, their usefulness in combating human trafficking and their relationship with criminal networks.<sup>124</sup> Once they have been granted residence permits, the victims are entitled to further assistance for the duration of the permit. Victims with residence permits should be granted certain access to the labour market of the country they are residing in. The exact extent of the access is left to the state to decide however.<sup>125</sup>

### 4.3. The Trafficking Directive 2011/36/EU

The Trafficking Directive provides for basic material assistance for both presumed and confirmed victims of human trafficking similar to the Trafficking Convention. Unlike the Trafficking Convention however, the Trafficking Directive offers broader assistance to both presumed<sup>126</sup> and confirmed<sup>127</sup> victims who are not legal residents in the state. The forms of assistance are also more detailed and specific, decreasing the states discretion when deciding what kinds of assistance should be afforded to victims. In addition to emergency healthcare, article 11.5 of the Trafficking Directive also states that assistance:

*...shall include at least standards of living capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate.*

The information referred to in the article shall include information which is necessary for the victim to make an informed decision regarding their options for residence permit. The Trafficking Directive

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<sup>124</sup> Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. Vienna: Council of Europe, 2004, art. 8.1.

<sup>125</sup> Ibid, art. 11.1-2.

<sup>126</sup> Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA. European Parliament and European Council. 2011, art. 11.2.

<sup>127</sup> Ibid, art. 11.1.

does however leave the decision of when such information is deemed relevant for the victims up to the discretion of the states.<sup>128</sup>

Similar to the Trafficking Convention, the Trafficking Directive sets out provisions guaranteeing some of the assistance regardless of whether or not the victim chooses to cooperate with authorities.

Article 11.3 states that:

*Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial, without prejudice to Directive 2004/81/EC or similar national rules.*

This provision has a broader application compared to similar provisions in the Trafficking Convention. Whereas the article 12.6 of the Trafficking Convention only requires that states do not make assistance contingent on cooperation as a witness, the Trafficking Directive covers the entire criminal process.

The provision in article 11.3 also explicitly mentions the Residence Permit Directive as excluded. This would seem to indicate that in regards to the issuance of residence permits, states are allowed to limit the right to those victims who choose to cooperate with authorities. This interpretation has also been supported by the Council of Europe.<sup>129</sup>

## **4.4. Article Four in the European Convention on Human Rights**

Article 4 of the European Convention on Human Rights (ECHR) sets forth the provision that prohibits slavery and forced labour within the EU. The Conventions states that:

- 1. No one shall be held in slavery or servitude.*
- 2. No one shall be required to perform forced or compulsory labour.*

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<sup>128</sup> Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA. European Parliament and European Council. 2011, art. 11.6.

<sup>129</sup> Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings. CETS No.197. Council of Europe. Warsaw: 2005, pg. 27, pt. 169.

Due to the nature of human trafficking as exploitation of a persons labour or sexual services, article four has relates closely to the crime. Whereas the Trafficking Convention and the two directives mentioned above deal with states obligations towards the victims of trafficking specifically, the European Court of Human Rights (ECtHR) have discussed this obligation from the scope of article 4. Two cases in particular show the development in legal reasoning regarding human trafficking in the EU.

#### **4.4.1. Rantsev v. Cyprus and Russia**

The case concerned Oxana Rantseva, a Russian national who went to Cyprus on a work visa and was subsequently found dead after trying to escape from her employers at a cabaret.<sup>130</sup> The father of Rantseva filed the case with the ECtHR, claiming that his daughter had been a victim of human trafficking and neither the Cypriot nor the Russian government had done enough to investigate her case or to take measures against further trafficking.<sup>131</sup>

The court viewed human trafficking according to the interpretation of article 4 of the ECHR. The court considered if the article imposes positive obligations on states to introduce legal measures to combat trafficking and to provide victims with protection and assistance.<sup>132</sup> Since the article itself does not mention human trafficking explicitly, the court first wanted to see if the crime was covered by article 4 in the first place.<sup>133</sup>

The court considered all the core aspects that make out human trafficking to determine if they in turn were similar to the core aspects of slavery in article 4. The court also included their view of how human trafficking exploited people and turned them into commodities. By restricting freedom through violence and threats, human trafficking forces people to work under poor conditions.<sup>134</sup> As such, the court found that human trafficking was no doubt a violation against human rights and dignities. By interpreting the ECHR through

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<sup>130</sup> *Rantsev v. Cyprus and Russia*, Council of Europe: European Court of Human Rights, Application no. 25965/04, Judgment of 7 January 2010, pt. 15-16, 25.

<sup>131</sup> *Ibid*, pt. 190.

<sup>132</sup> *Ibid*, pt. 200.

<sup>133</sup> *Ibid*, pt. 272.

<sup>134</sup> *Ibid*, pt. 281.

more modern-day issues and interests, the court therefore found that human trafficking was covered by article 4.<sup>135</sup>

Therefore, the court argued that article 4 placed obligations on states not only to impose criminal measures against perpetrators of human trafficking, but also to create a legislative and administrative infrastructure for providing legal assistance and protection for victims.<sup>136</sup> This included an implicit requirement on the states to investigate suspected crimes of human trafficking and provide speedy assistance, especially if there was an active danger towards the victim in question. Furthermore, the court noted how effective measures against human trafficking needs to consider the global character of the crime and adopt a “comprehensive international approach”, which would include cooperation with other states.<sup>137</sup> However, this obligation does not require states to impose disproportionate burdens on their authorities. At the very least though, the court interpreted the obligation to require education and instructions to law enforcement to provide victims with physical safety.<sup>138</sup>

Although the court found that Cyprus provided adequate measures against human trafficking in their legislation, provisions in labour and immigration law constituted a violation of article 4. The Cypriot legislation and policies placed Rantsevas immigration status at the hands of her employer at the cabaret, thereby removing her agency and personal freedom.<sup>139</sup> Furthermore, the court found that the failures by the Cypriot police to protect Rantseva, to investigate her death and to prosecute the perpetrators, all pointed to a systematic inadequacy of the Cypriot legal system. The court found that these failures indicated that the legal measures and protections by Cyprus were inadequate and therefore violated article 4.<sup>140</sup>

Finally, the court considered what obligations article 4 created for Russia, the country of origin. Since recruitment makes out a basic element of human trafficking, the court argued that the article needed

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<sup>135</sup> *Rantsev v. Cyprus and Russia*, Council of Europe: European Court of Human Rights, Application no. 25965/04, Judgment of 7 January 2010, pt. 282.

<sup>136</sup> *Ibid*, pt. 284-6.

<sup>137</sup> *Ibid*, pt. 288-9.

<sup>138</sup> *Ibid*, pt. 287.

<sup>139</sup> *Ibid*, pt. 290-3.

<sup>140</sup> *Ibid*, pt. 298-300.

to impose an obligation on the country of origin to investigate the causes for the crime within their borders. Seeing as no such investigation was made in Rantsevas case, the court found that Russia had violated article 4.<sup>141</sup>

#### **4.4.2. J and Others v. Austria**

Following the decision in Rantsev which introduced human trafficking within the scope of article 4, the court developed further legal reasoning through several court cases. In 2017 the ECtHR delivered a judgement in J. and Others v. Austria, the most recent case to discuss human trafficking within the scope of article 4.

The case concerned three Philippine women who had moved to Dubai to work. Once they arrived however, their identifications were removed by the employers and they were exploited by being forced to work long hours while being denied payment.<sup>142</sup> All three women reported either cases of threats<sup>143</sup>, violence<sup>144</sup> or false imprisonment<sup>145</sup> at the hands of their employers. During a trip to Vienna with their employers the women ran away and filed a criminal complaint with the help of an Austrian NGO.<sup>146</sup>

Based in the Rantsev case, the court reiterated some of the considerations regarding human trafficking and article 4 of ECHR. The court held that states are obligated under the article to pursue measures against human trafficking, and to investigate suspected cases as soon as it comes to their attention.<sup>147</sup> In the present case, the court therefore looked at whether the Austrian state had lived up to their obligation to identify the women as victims and if they then had investigated the crime properly.<sup>148</sup>

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<sup>141</sup> *Rantsev v. Cyprus and Russia*, Council of Europe: European Court of Human Rights, Application no. 25965/04, Judgment of 7 January 2010, pt. 307-9.

<sup>142</sup> *J. and Others v. Austria*, Council of Europe: European Court of Human Rights, Application no. 58216/12, Judgment of 17 January 2017, pt. 7.

<sup>143</sup> *Ibid*, pt. 12, 16.

<sup>144</sup> *Ibid*, pt. 17.

<sup>145</sup> *Ibid*, pt. 14, 20.

<sup>146</sup> *Ibid*, pt. 24-5.

<sup>147</sup> *Ibid*, pt. 106-7.

<sup>148</sup> *Ibid*, pt. 109.

Considering the question of identification, the court found that the Austrian legal system included provisions that offered adequate protection for presumed victims of human trafficking.<sup>149</sup> Additionally, the court also found that in practice the police and law enforcement had acted in accordance with the legislation in a sufficient manner. The women had been identified as victims of human trafficking as soon as they contacted the authorities and were given all the assistance set out by Austria's obligations according to article 4.<sup>150</sup>

Considering the second question of investigation, the court focused on the decision by the prosecutor to discontinue the investigation due to a lack of evidence. Based on the testimonies by the women, the prosecutor found that crime of human trafficking had been committed abroad and therefore they had no obligation to pursue the investigation if it would not lead to a prosecution.<sup>151</sup> The court agreed that article 4 does not confer an obligation on states to impose a universal jurisdiction for the crime of human trafficking. Therefore, the convention does not require states to investigate crimes of human trafficking that have taken place in another state.<sup>152</sup>

Instead, the court considered whether there were crimes committed in Austria that the state was obligated to investigate. The three women had not stated that any crimes constituting human trafficking had been committed during their time in Austria, rather the separate action elements had taken place in the United Arab Emirates or in their native Philippines.<sup>153</sup> Finally, the court considered whether the combined treatment of the women in the Philippines, U.A.E. and Austria could constitute human trafficking. The court found that the Austrian prosecutor had done everything possible in regards to conducting an investigation into actions committed in Dubai, through diplomatic channels. Even though these measures had garnered no results, the court found that Austria had nonetheless done everything in its power to investigate the charge of human trafficking in full.

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<sup>149</sup> *J. and Others v. Austria*, Council of Europe: European Court of Human Rights, Application no. 58216/12, Judgement of 17 January 2017, pt. 111.

<sup>150</sup> *Ibid*, pt. 110.

<sup>151</sup> *Ibid*, pt. 112.

<sup>152</sup> *Ibid*, pt. 114.

<sup>153</sup> *Ibid*, pt. 116.



Therefore, the court concluded that Austria had not violated its obligations in accordance to article 4.<sup>154</sup>

The measures provided by the EU through the Trafficking Convention, the two directives and to a certain extent through interpretation of ECHR gives the impression that victims of human trafficking are receiving all the assistance they may require. After all, these legal tools not only provide the victims with the most basic protection and medical attention to escape any immediate danger, but they also create venues for the victims mend any vulnerability and escape further exploitation. Despite this however, these measures suffer from one common theme; they all ask the victim of human trafficking for a great deal of trust in the authorities that will provide their assistance. Although this may seem natural at first, I will show why this might prove problematic in chapters seven and eight.

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<sup>154</sup> *J. and Others v. Austria*, Council of Europe: European Court of Human Rights, Application no. 58216/12, Judgement of 17 January 2017, pt. 117-8.

# 5. Swedish definition on human trafficking

Having properly depicted the international legal framework against human trafficking, it is now time to turn our focus toward Sweden in particular. In these next two chapters, I will depict the Swedish legal definition of human trafficking as well as the Swedish measures for assistance and protection for the victims. As we will see, the Swedish definition of the crime matches the international definition overall, with some slight differences. In this chapter I will discuss what these differences mean for the victim and how it affects the Swedish perception of the crime. In the final analysis I will consider the Swedish definition to see how it views the struggles of the victim and if it addresses issues of the deportability. At the end of the chapter I will also analyse the drafting document for future legislation on the topic to see if we can expect any radical changes in the future.

## 5.1. Current Definition in Swedish Law

The current definition of human trafficking in Sweden can be found in *Brottsbalken*<sup>155</sup>. Similar to the international definition depicted in chapter three, the Swedish law mostly recognises the same types of action, means and purpose elements of the crime. Unlike the broad international definition however, the Swedish law clarifies the list of specific forms of means, including coercion, deception, exploitation of victims vulnerability or other use of improper means.<sup>156</sup> Similar clarification is listed for the purpose elements, listing sexual exploitation, organ harvesting, warfare, forced labour or other distressing work.<sup>157</sup>

The provisions in the Swedish law against human trafficking was further clarified during the drafting process. Coercion through exploitation of the victims vulnerability is intended to cover any situation where there is an unequal relationship between the victim and the perpetrator, regardless of whether or not the two have a personal relationship. This includes but is not limited to situations

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<sup>155</sup> Swedish Criminal Code.

<sup>156</sup> BrB:4 kap 1a§

<sup>157</sup> BrB:4 kap 1a§

where the victim is suffering from economic, social or medical conditions that affects their personal independence and integrity.<sup>158</sup> Other improper means is intended to cover any situation where the perpetrator in any other way has control over the free will of the victim, even if there is no kind of relationship between the two.<sup>159</sup> Ultimately, to determine whether or not coercive means have been used the legislators required that an overall assessment of the victims situation needed to be conducted. Any social, economic, political or medical aspects of the victims life that may affect their will and independent reasoning need to be taken into consideration.<sup>160</sup>

The Swedish legislation recognises action elements similar to the international definition. Some form of coercive and improper means must be present at all separate action elements of the crime.<sup>161</sup> Although a perpetrator is not required to be active in all separate action elements of the crime, they must have direct intent towards the final exploitation at the destination. The use of the word exploit<sup>162</sup> which was changed from older versions of the law from the word use<sup>163</sup> is meant to indicate the dehumanising view of the victim that is present in the crime.

The connection between the action element and the coercive means used have been further elaborated in case law. Courts have determined that it is not enough for the perpetrator to perform one of the action elements and use coercive means, there must also be a proven causality between the action and the means in question. In other words, a victim choosing to reside with a perpetrator who abuses her is therefore not enough to constitute harbouring of the victim for the sake of human trafficking. Instead, it must be proven that the victim chooses to stay specifically because of the abuse by the perpetrator.<sup>164</sup>

The courts have further elaborated exploitation of a difference in power as coercive means. Inequality between the victim and

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<sup>158</sup> Swedish Justice Department (Justitiedepartementet), *Proposition 2009/10:152. Förstärkt straffrättsligt skydd mot människohandel*. Stockholm, 2010, pg. 59-60.

<sup>159</sup> Ibid, pg. 60.

<sup>160</sup> Ibid, pg. 60.

<sup>161</sup> Ibid, pg. 60.

<sup>162</sup> *exploatera*

<sup>163</sup> *utnyttja*

<sup>164</sup> *B 2827-12*, Hovrätten för Västra Sverige (Sweden), Avdelning 1, Rotel 13, 2009-09-21, pg. 29.

perpetrator must be of such nature that the victim has no real option of leaving the perpetrator. The courts have therefore emphasised the relationships originating in the country of origin, since it leaves the victim with nowhere to run.<sup>165</sup> Similarly if the coercive means of the perpetrator includes taking control of the victims finances in such a way that she has no agency of her own economy. In these cases the court has determined that the victim has no option other than staying with the perpetrator due to a lack of money.<sup>166</sup>

The purpose element of the crime includes sexual exploitation which covers situations where women are coerced into prostitution. Furthermore, the purpose elements of the Swedish legislation also includes exploitation for occupation which puts the victim in distress<sup>167</sup>. This is intended to cover forms of situations that does not clearly fall into one of the forms of exploitation listed in the legislation, but nonetheless places the victim in danger. These situations remove the victims free will and agency not necessarily by force but by placing them in such conditions that they become dependant on perpetrators. The situations need to be permanent or otherwise last for such a long time that the victim has no other choice but to abandon their free will and agency.<sup>168</sup>

The purpose element of sexual exploitation in particular has been elaborated further in courts. Apart from sexual crime such as rape, sexual exploitation is intended to entail exploitation into temporary sexual relationships.<sup>169</sup> Although the legislation mentions prostitution explicitly, the court emphasised that sexual relationships which normally do not fall within the definition of prostitution can be considered sexual exploitation. This includes cases of arranged marriages.<sup>170</sup>

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<sup>165</sup> B 5309-12, Svea Hovrätt (Sweden), Avdelning 07, Rotel 0713, 2012-10-10, pg. 19-20.

<sup>166</sup> B 11747-13, Svea Hovrätt mål (Sweden), Avdelning 03, Rotel 030106, 2014-05-14, pg. 13-14.

<sup>167</sup> *annan verksamhet i en situation som innebär nödläge för den utsatte*

<sup>168</sup> Swedish Justice Department (Justitiedepartementet), *Proposition 2009/10:152. Förstärkt straffrättsligt skydd mot människohandel*. Stockholm, 2010, pg. 60-1.

<sup>169</sup> B 1689-12, Hovrätten för Västra Sverige (Sweden), Avdelning 4, Rotel 44, 2012-09-14, pg. 11.

<sup>170</sup> *Ibid*, pg. 12.

## 5.2. SOU 2016:70 - Ett starkt straffrättsligt skydd mot människohandel och annat utnyttjande av utsatta personer

In 2014 the Swedish government assigned a special investigator to look into the crime of human trafficking within Sweden. Their intent was to review the legal responses against the crime since the most recent change to legislation in 2010. In 2016 the investigating group published their report. Throughout the investigation, the group looked into court decisions on human trafficking, working methods of police and prosecutors in regards to the crime and the legislation itself.<sup>171</sup> The purpose of the investigation is to determine what protection is afforded to victims of human trafficking and to see if there is a need for further protection, as well as additional questions regarding investigation methods and sentencing. Specifically, the investigators wanted to map out how well courts and legislation had managed to work towards combating human trafficking and to see if a more effective job could be done.<sup>172</sup>

The report began by setting out a number of premises that had formed the method of the investigation. Among these premises the report stated that the investigators had adopted a gender-based perspective for their work, stating that human trafficking is a crime that perpetuates discrimination based on social, racial or gender categorisation by exploiting already existing vulnerabilities within societies.<sup>173</sup> This in turn meant that the investigation focused primarily on victims of human trafficking as poor women in low social standing from countries suffering from conflict, discrimination against women or minority groups as well as a lack of adequate social protection from the state.<sup>174</sup>

Despite numerous measures by the Swedish government to equip the relevant agencies with the tools needed to combat human trafficking, the investigation found that the results did not quite meet the expectations. The amount of reported cases of human trafficking remains low, and even fewer cases lead to convictions. Meanwhile,

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<sup>171</sup> Swedish Justice Department (Justitiedepartementet), *SOU 2016:70. Ett starkt straffrättsligt skydd mot människohandel och annat utnyttjande av utsatta personer*. Stockholm, 2016, pg. 42.

<sup>172</sup> Ibid, pg. 41.

<sup>173</sup> Ibid, pg. 46.

<sup>174</sup> Ibid, pg. 50.

reports from numerous government agencies indicate that the amount of unreported cases remain high.<sup>175</sup> As such, there seemed to be something missing from the existing methods of combating human trafficking, and so investigators considered some clarifications and additions to legislation.<sup>176</sup>

In their review of court cases, they looked closer at how the separate elements of the crime of human trafficking had been handled and discussed in courts. The most common forms of coercive means in the cases were various tricks and lies regarding economic possibilities in Sweden. These means mainly targeted victims suffering from economic hardship in their country of origin. Once in Sweden the victims would be denied the jobs or economic compensation they had been promised, and be unable to change their situation.<sup>177</sup> However, the investigators found that the courts have shown restraint in defining crimes as human trafficking when there is no established causality between the coercive means used and the particular vulnerable relationship between victim and perpetrator. In other words, the courts have interpreted the means element to require a relationship between victim and perpetrator, and for the perpetrator to utilise coercive means to specifically exploit this relationship.<sup>178</sup>

The courts have mostly interpreted the action element of the crime in accordance with the purpose set out in the drafting process. The majority of cases the courts dealt with recruitment, transport and housing of the victims. Victims were recruited both in person and online by perpetrators in their country of origin.<sup>179</sup> Finally the courts decisions also indicated that the purpose element need to be present with the first action to constitute human trafficking. In cases where the victim had been coerced into exploitation once they made it to their country of destination by their free will, the courts have not interpreted the purpose element of being present.<sup>180</sup>

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<sup>175</sup> Swedish Justice Department (Justitiedepartementet), *SOU 2016:70. Ett starkt straffrättsligt skydd mot människohandel och annat utnyttjande av utsatta personer*. Stockholm, 2016, pg. 159.

<sup>176</sup> *Ibid*, pg. 160-1.

<sup>177</sup> *Ibid*, pg. 131-2.

<sup>178</sup> *Ibid*, pg. 135-6

<sup>179</sup> *Ibid*, pg. 136-7.

<sup>180</sup> *Ibid*, pg. 137.

In response to the application and interpretation of the provisions, the investigators suggested certain changes to the Swedish legislation. In regards to the definition of coercive means, the investigators were critical of the interpretation adopted by the courts, requiring a de facto exploitation of the victim to fall within the definition of coercive. This seems to be in conflict with the purpose of both international standards and the intentions during drafting, which states that human trafficking has occurred even before any exploitation has taken place, provided one of the actions have taken place through coercive means with a exploitive purpose.<sup>181</sup> The investigation report therefore proposed a change to the wording of the legislation to further emphasise that perpetrators were not required to first establish and exploitative relationship with the victim for subsequent actions to constitute human trafficking.<sup>182</sup>

This consideration regarding the coercive means in the investigation reports is also reflected in their reflections surrounding the action element. Having evaluated the removal of the control-requisite, the requirement that a perpetrator through their actions must have control over the victim, the investigation found no reason to add or alter the existing definition of the action element of human trafficking.<sup>183</sup> The investigation also proposed a broader interpretation of the the purpose element, making it possible to recognise perpetrators of human trafficking even if they lacked a direct intent and purpose to exploit the victim. The investigators wanted the purpose element to also encompass victims who simply were aware or otherwise were passive towards the exploitation of the victim.<sup>184</sup>

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<sup>181</sup> Swedish Justice Department (Justitiedepartementet), *SOU 2016:70. Ett starkt straffrättsligt skydd mot människohandel och annat utnyttjande av utsatta personer*. Stockholm, 2016., pg. 168.

<sup>182</sup> *Ibid*, pg. 169-70.

<sup>183</sup> *Ibid*, pg. 171.

<sup>184</sup> *Ibid*, pg. 175-6.

## 6. Swedish measures for assistance and protection

Before the final analysis I will look at the legal measures for assistance and protection of victims of human trafficking in Sweden. Although many of the European measures listed in chapter 4 are applicable in Sweden as well, in this chapter I will look at how the situation may be different in Sweden. I will analyse how Swedish legislation or case law can provide additional assistance or present additional obstacles for the victim of human trafficking.

### 6.1. Legislation

The treatment of migrants and exact regulation of the application process for residence permits are covered in the Swedish Aliens Act<sup>185</sup>. There is currently a temporary law in place that places certain limits on how residence permits are granted in Sweden.<sup>186</sup> However, for the purposes of this thesis the interest is in the provisions, measures and consideration made in the original Aliens Act. After all, the aim of the thesis is to determine which considerations are made when providing victims of human trafficking with assisting measures, including residence permits. Because of this the temporary restrictions will not be covered in the thesis.

Residence permits in Sweden are afforded to people as a form of protection, by granting certain groups of people residence permits depending on the danger of their situation in their home country. The law traditionally covers those situations listed in the fourth chapter of the Aliens Act when people are fleeing persecution, armed conflicts, environmental catastrophes or other forms of violence or unfair punishment.<sup>187</sup> In addition to that, the Aliens Act also recognises the need for residence permits for people due to particularly distressing

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<sup>185</sup> Utlänningslagen.

<sup>186</sup> Lag (2016:752) om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige.

<sup>187</sup> UtIL 4 kap:1-2a§.



circumstances<sup>188</sup> if neither of the above listed situations apply to the victim of human trafficking.<sup>189</sup>

Permits granted for particularly distressing circumstances are referred to as residence permits on humanitarian grounds and are given to people based on an assessment of the persons health, their current situation in Sweden and in their country of origin.<sup>190</sup> The person's health must be such that the person is in immediate danger and can not wait for a later moment to receive healthcare. The provision does not exclude mental illness, if the mental condition places the person in physical danger.<sup>191</sup> There are no indicated types of health conditions that would guarantee the person a residence permit, nor is there a condition which automatically disqualifies the person. Rather, if a collected assessment of the persons health condition suggests that the person places him- or herself in immediate danger they require medical assistance. During the drafting of the law, legislators clarified their intention that the provision could and should have a broader scope of application than the wording of the rule implied. As such, the provision should be interpreted as including additional grounds for a permit, depending on the individual assessment.<sup>192</sup>

In regards to the persons situation in Sweden and their country of origin, similar interpretations were made during the drafting process. The legislators did not want the time spent in Sweden to be the determining factor to whether the person had adapted to Swedish society or not. Rather, the provision needed to cover an overall assessment of in each individual case of how the applicant had adapted to Swedish society.<sup>193</sup> The assessment also needs to consider practical obstacles preventing a person from returning to their country of origin or if the person suffers from social ejection<sup>194</sup> or

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<sup>188</sup> *synnerligen ömmande omständigheter*

<sup>189</sup> UtIL 5 kap:6§, Prop. 2004/05:170 s. 185.

<sup>190</sup> UtIL 5 kap:6§.

<sup>191</sup> Swedish State Department (Utrikesdepartementet), *Proposition 2004/05:170. Ny instans- och processordning i utlännings- och medborgarskapsärenden*. Stockholm, 2005, pg. 280.

<sup>192</sup> Swedish State Department (Utrikesdepartementet), *Proposition 2004/05:170. Ny instans- och processordning i utlännings- och medborgarskapsärenden*. Stockholm, 2005, pg. 280.

<sup>193</sup> *Ibid*, s 280.

<sup>194</sup> *social utstötning*.

if returning home places the person at risk of mental distress due to previous trauma.<sup>195</sup>

Despite these additional grounds to provide a person with a residence permit in Sweden based on particularly distressing circumstances is intended to be an exceptional rule. This means that it is granted only if a residence permit can not be granted due to refugee status or and ongoing conflict and Sweden is obligated to provide assistance according to international commitments.<sup>196</sup>

## 6.2. Jurisprudence

The Swedish Migration Court<sup>197</sup> has elaborated several of the provisions by interpreting the Aliens Act. Regarding the status of residence permits for particularly distressing circumstances, the court has interpreted the meaning of “particularly” as emphasising the exceptional nature of the provision.<sup>198</sup> However, the court has also warned against interpreting the provisions too narrowly out of concern to violate Swedens obligations according to ECHR. Considering the right to a private life in article 8 of the convention, the court stated that a person might adapt to Swedish society even during illegal residence. Social and family relations need to be taken into consideration, and article 8 prevents the courts to scrutinise it.<sup>199</sup>

In regards to granting residence permits for particularly distressing circumstances based on the situation in the country of origin, the courts have also clarified the definition of social ejection. These situations are intended to cover countries where social welfare from the state is weak or non-existent, and so assistance and protection is closely tied to the family. Social ejection therefore places a person at risk of losing their means of survival. Although the definition is gender-neutral, the court has stated that women run a much higher risk of social ejection than men.<sup>200</sup> The court has clarified that issuing residence permits due to social ejection requires that the loss of

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<sup>195</sup> MIG 2009:31 (I & II), UM 5814-08, Migrationsöverdomstolen, Avdelning 1, 2009-10-09, pg. 10.

<sup>196</sup> Swedish State Department (Utrikesdepartementet), *Proposition 2004/05:170. Ny instans- och processordning i utlännings- och medborgarskapsärenden*. Stockholm, 2005, pg. 279-280.

<sup>197</sup> *Migrationsdomstolen*.

<sup>198</sup> See for example MIG 2009:31 (I & II), UM 5814-08, Migrationsöverdomstolen, Avdelning 1, 2009-10-09, pg. 7.

<sup>199</sup> MIG 2012:13, UM 11040-11, Migrationsöverdomstolen, Avdelning 1, 2012-09-28, pg. 8.

<sup>200</sup> MIG 2009:31 (I & II), UM 5814-08, Migrationsöverdomstolen, Avdelning 1, 2009-10-09, pg. 12.

social network affects the individuals sustenance and capacity to survive. It is therefore not enough that the individual faces difficulties in engaging with society and local communities.<sup>201</sup>

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<sup>201</sup> MIG 2009:31 (I & II), UM 5814-08, Migrationsöverdomstolen, Avdelning 1, 2009-10-09, pg. 11-12.

## 7. Analysis

In this thesis I provided an extensive depiction of how the crime of human trafficking affects its victims. By analysing each separate element of the crime in detail, the journey of the victim has been depicted starting in the country of origin, going through transit and finally ending at the country of destination. The legal response towards the crime has then been analysed, depicting the assistance and protection offered by the Swedish to resolve any obstacles and remedy any exploitation experienced by the victims. In order to give a full view of which interests were taken into consideration when drafting the legal instruments in Sweden, their origins have been traced through their legislative history in the UN and EU.

Human trafficking covers a sequence of several exploitive actions, a sequence that can go on for a long period of time. As such, the effects on the victims can be far-reaching and varied in nature, meaning that measures to remedy these effects need to be similarly expansive. In this analysis I will summarise my findings throughout the thesis to see what forms of exploitation that victims of human trafficking for sexual purposes may face and how the assisting measures either succeed or fail to counteract that.

Beginning in the country of origin, victims may face difficult living conditions due to poverty, inequality, discrimination or even threats to their physical and mental well-being. This create a vulnerability to be exploited by individuals in more powerful and privileged positions. With promises of better working conditions or freedom from persecution the victims are recruited into human trafficking. The exploitive nature of the crime is thereby inherent in human trafficking from the very beginning. The victims are either lied to about the nature of the work they will perform, or the situation in their country of origin is so desperate that their situation can be exploited.

Through transport and transit the exploitation continues by how the victims are handled. Regardless of whether the transportation is legal in itself or if the victim is brought into another country illegally, the exploitive nature creates further vulnerability during transport and transit. When leaving their home and comfort, the victim is at the hands of the perpetrator in order to reach their destination. The travel conditions of the victims are dependant on on the preparations made by the perpetrator. There may be a constant threat of violence,

sexual or otherwise. Once the victim is residing within another country illegally, they are then dependant on the perpetrators to move around without being apprehended by authorities.

The harbouring of a human trafficking victim further puts the individual in a vulnerable position which can be exploited by the perpetrator. The victims place their well-being and survival in the hands of the perpetrator, being the only ones who can provide them with a place to stay, food to eat and other necessities both during the transport and when they ultimately eventually reach the final destination. In a similar way, the receipt of the victim creates further exploitation at the destination by having their income and residence be controlled by the perpetrator. Depending on the situation, the victim may only receive information about their situation at the point when they reach their final destination. Only then may they find out the conditions of their exploitation, what form of compensation they can expect and what they are and are not allowed to do. At this point, the perpetrators may be the only connection that the victim has to their home country, the only information available to them in their own language.

The entire existence of the victims within the country of destination is thereby tied to the intent of the perpetrator. Whatever the reason for the victim to seek out human trafficking as a livelihood, their situation once they are trafficked is dependant on their relationship to the perpetrator. Without the support and accommodations prepared by the perpetrator, the victim is at best left out in the cold, now potentially an illegal immigrant without any means of sustaining themselves in a country with foreign customs and language. At worst, the perpetrator decides that the victim is a liability and puts the person at risk of further threats or acts of violence.

Furthermore, considering the victimological approach we must also consider further types of exploitation faced by the victims outside the scope of the different action elements I have recounted above. I will look outside the legal definition of the crime as defined by international standards and Swedish legislation. In addition to the types of exploitation faced by victims of human trafficking during recruitment, transport, transit, harbouring and receipt, we need to consider other ways in which victims may be at risk of exploitation. Through victimology we can view victims of human trafficking as human beings and analyse their entire life situation throughout the

process of being trafficked, rather than viewing their situation strictly through the scope of the legal definition.

Specifically, let's consider the situation for victims of human trafficking through the scope of deportability. For victims who have made it into another country and are residing there illegally, the laws of that country may label them as deportable. This status causes real-life obstacles and threats that the victim needs to consider, to be aware and cautious about. The prospect of being taken into custody and placed at the hands of the authorities creates another form of vulnerability for the victim of human trafficking. Depending on the situation in the victim's country of origin, the idea of returning home may be a frightening or hopeless one. Perhaps the victim faces threats of violence, perhaps the social or economic conditions make a sustainable lifestyle impossible or perhaps they risk just being coerced into human trafficking again. Whatever the reason, deportability as it is created by sovereign states creates another vulnerability of the victim that can be exploited.

As such, deportability perpetuates the existing forms of exploitation faced by the victims, by emphasising their vulnerability in relation to the perpetrator. Once a victim is residing within a country illegally, their deportability means that their continued existence within that state is dependant on the assistance of the perpetrator that brought them there. By being the only ones offering them protection from the state that may remove them from the country, the perpetrator can set further forms of exploitative conditions. In an effort to remain hidden, the victim can be exploited to forsake their own well-being in exchange for not being deported.

As Falcón points out, the vulnerability arising from deportability is intensified for women. As a deportable you are faced with either achieving legal residency, be deported or provide other means to avoid deportation. Without funds or proper documentation you are left with whatever is left on your person. For women, this includes your body, which substitutes as a commodity which can be exchanged in order to remain in the state. As a deportable woman you are therefore faced with this particular risk of exploitation as long as their status remains unchanged. This in turn creates a particularly vulnerability for women who are trafficked, who are aware of the risk that deportability creates for them.

All these forms of exploitation may have affected the victim in one way or another once they receive assistance and protection from the

state. Victims may have direct experience of exploitation throughout the entire sequence of human trafficking. Or they may otherwise have faced constant threat of such exploitation. Either way, victims are aware of the dangers they face if the state is unable to assist or protect them properly.

So what forms of assistance and protection are states offering to victims of human trafficking? The EU-directives and conventions that have shaped and influenced the assisting measures in Sweden have themselves risen out of the legal definitions from international standards. As such these measures aim to protect victims from further exploitation and threats at the hands of the perpetrators, while also assisting victims out of their current vulnerable situation. The measures are aimed at giving victims of human trafficking agency over their own bodies and their own circumstances.

In order to accomplish this, assistance include both medical and social measures. Victims are offered limited forms of work and treatments to stabilise their situation in the country, to ensure that human trafficking is no longer their only viable option. Protective measures include both legal counsel and physical protection from further threats or exploitation. In other words, the provisions aim at remedying any form of exploitation that the victim has experienced, while simultaneously setting up protective measures to prevent any further exploitation.

Assisting measures concerning residence permits helps create a form of stability for the victim. To make the most of the assistance and protection, the victims needs to be sure that their current situation is stable, that the exploitation will not resume if they are removed from the country and returned to their country of origin, where the original exploitation began. This is why assisting measures on residence permits need to create a viable and realistic venue for victims to pursue. Not only that, but the victims need to be aware of what forms of assistance is available to them.

As such, the assisting measures I have included in this thesis cover both the information that should be given to the victim of human trafficking, and a reflection period during which the victim should be given time to process the information. Residence permits for the victims have been tied to their cooperation with authorities to prosecute the perpetrators of human trafficking. The victims must therefore be made aware of the risks and the stress associated with the long process that the criminal conviction will entail.

## 8. Conclusion

All in all, an effective system to accommodate the victims of human trafficking will inadvertently be intricate and complicated. It needs to address the wide array of exploitations that victims face or risk facing throughout the entire sequence of human trafficking. It needs to provide enough protection so that no further exploitation can take place. It needs to create new opportunities and remove the vulnerability of the victims. And through it all, it needs to create stability to these measures by providing viable methods for the victims to apply for residence permits.

In regards to these areas, I believe that existing legislation presents some viable solutions. The material that I have presented in this thesis depicts both definitions and assisting measures, both national and international, which to a certain extent recognises the broad scope the issue. Through the historical depiction I have showed how the understanding of the victims difficult situation has developed over the decades. Human trafficking is no longer viewed strictly as a crime that only requires measures to capture the wrong-doers, but rather a complicated issue of systematic abuse and exploitation requiring measures targeting underlying inequality and vulnerability. The solution to human trafficking is no longer just seen as being harsher punishment against the perpetrators, but also assisting measures to create security and stability for the victims.

Despite these developments and measures in modern legislation, human trafficking remains a growing issue in the world today. As I presented at the very beginning of the thesis, human trafficking still exposes women to terrifying prospects every day. It seems that the measures to create a safer environment for the victims and more effectively assist them away from getting caught up with the crime are not working according to hopes and expectations.

Like any obstacle faced by a state, the issue is bigger than one single problem, and so there is also more than one answer. For this thesis however I have chosen to view the issue through the lens of De Genovas deportability regime and the idea of the inherent deportability of a victim of human trafficking. In this final conclusive segment I intend to show how the idea of adapting a wider scope of the impact on victims as deportable highlights some of the issues



and shortcomings of the current measures used to assist victims of human trafficking.

As I mentioned in the analysis, it would seem that the assistance and protections offered in Sweden through EU-directives, Conventions and national legislation cover any issues that a victim could face. The assisting measures have been developed to take a wide array of exploitation into consideration. The assumption on the side of the Swedish state is therefore that as long as the assisting measures are good enough, then victims would always turn to the state rather than the perpetrators for assistance and protection.

I would however argue that this misses an important obstacle faced by the victim, namely their inherent deportability. By establishing borders and imposing a border-crossing regime, states adapt a system where victims of human trafficking are branded as deportable as soon as they enter Sweden illegally. It is this very status that creates an inherent vulnerability and amplifies the existing vulnerability of the victim towards the sovereign with the power to deport them, in this case the Swedish state. This in turn creates further opportunities for perpetrators to exploit the victims, thereby expanding the grounds of possible exploitations within the crime.

This inherent deportability thereby creates a corresponding fear and distrust towards authorities that are offering assistance to the victims. After all, the state might be the only entity with the power to offer the victim assistance, but it is also the only entity with the power to remove the victim from territory altogether. In the cases described from the European Court of Human Rights the states have been criticised for not adopting adequate measures and processes for identifying victims of human trafficking. With this thesis I want to show how there might be a more underlying issue of a misconception of the states relationship towards the victim and the role that the state plays in making the victim vulnerable to further exploitation. Rather than seeing itself as a benefactor for victims of human trafficking, Sweden needs to recognise its role in amplifying the vulnerability and thereby the exploitation of victims by labelling them as deportable through the border-crossing regime created by their sovereign authority over borders.

Human trafficking is an inherently complicated crime, encompassing a global process of exploitation through numerous actions. The solution for this crime will take far more than the assisting and protective measures I have presented in this thesis. It will require a

combined effort of criminal, social, economic and political measures to get to the core of the problem. However, I hope this thesis will show the importance of the state to recognise and mitigate its role in creating and perpetuating the victims vulnerable situation.

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