

Better Future

“We came to the United States to find a better future, not to be prostitutes. . . . No woman or child would want to be a sex slave and endure the evil that I have gone through. I am in fear for my life more than ever. I helped put these evil men in jail. Please help me. Please help us. Please do not let this happen to anyone else.”

—*Maria, trafficking survivor*

Introduction

- THB takes place in most parts of the world. The majority of countries are involved or affected. It is a complex, mutable phenomenon: a chain of offences and violations committed across time and space. It is practised inside countries, across state borders, even between continents.
- Various manifestations of THB

Introduction

- No country immune to THB, evolving and ever changing character. According to the Congressional Research service and the U.S. Department: 700 000 to 2 M people are trafficked across the international borders
- THB is a complex phenomenon with many dimensions and broad legal, social and economic implications.

The UN Convention

Definition of THB

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

The UN Convention

Definition of THB

- 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.

The UN Convention

Definition of THB

- The central document in force today is the *UN Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*.
- Adopted and opened for signature in Palermo in December 2000. A major contribution of the protocol is that it provides the first legally binding, comprehensive definition of THB to be agreed upon by the international community.

The UN Convention

Definition of THB

- The instrument contains provisions on a range of issues, including criminalisation, assistance to and protection for victims, the status of victims in the receiving states, repatriation of victims, preventive measures, actions to discourage the demand, exchange of information and training, and measures to strengthen the effectiveness of border controls.
- It stipulates that states parties must adopt or strengthen legislative or other measures to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

The UN Convention

Definition of THB

- Although it deals with transnational trafficking – the crime is committed or organised in more than one state – it can be applied just as effectively to trafficking within countries.
- Several perpetrators may be involved and the violations committed in a number of locations over time. THB is thus an elastic concept, behind which lurks a complex reality.

THB and other phenomena

- THB partially overlaps or coincides with a number of other issues and phenomena, such as people smuggling, migration, prostitution and child labour.

Smuggling of human beings

- **Smuggling of human beings** may be defined as the transportation of people to countries for which they lack visas or the necessary entry permits in order to obtain a financial or other material benefit.
- The transaction normally takes place *at the initiative* of the smuggled person or with his/her *consent*. People smuggling is a crime.

Migration of workers

- **Migration of workers** refers to the voluntary movement of people to other parts of the same country or other countries in search of work or a livelihood.
- Although it does not per se involve unwarranted use of pressure or influence, or the pursuit of financial or material benefit, the need or desire to migrate *can encourage the proliferation of* human trafficking activities and create a market for people smuggling. People not infrequently become the objects of smuggling operations while travelling in search of work.

Forced labour

- **Forced labour** may be defined as work performed under compulsion and subject to a penalty. Victims of human trafficking are frequently forced against their will to perform various kinds of work, in households or in agriculture, where their rights and movement are circumscribed.

Child labour

- **Child labour** refers to the exploitation of minors in hazardous or harmful occupations, i.e. the work itself may be physically or mentally damaging or it may prevent the child from exercising his or her right to education or development in general.

Sexual exploitation

- **Sexual exploitation**, in particular prostitution, is among the predominant forms of exploitation for which human beings are trafficked. The demand for sexual services is thus one of the most important causes of this type of trafficking.

Causes of THB

- THB is a complex, multi-layered problem. Important to identify and analyse both the more immediate causes and its underlying, structural determinants. **Political, economic, social and cultural factors and the interplay between them all play a part.**
- THB can also be viewed from a **supply and demand perspective**, i.e. on the basis of the factors that lead people into the hands of traffickers on the one hand, and those that generate a demand for their victims on the other (NAKRESLIT VZTAH D, S, IMP.)

Causes of THB

- Root causes of trafficking such as poverty, lack of security, economic crisis, gender inequality, weak states and conflict can drive people into the hands of the traffickers, thus transforming vulnerable persons into mere commodities who generate profits for their exploiters.

Causes of THB

Links with Inequality

- Global THB may be seen as a response to the demand for people for various forms of exploitation, a **product of poverty** – relative as well as absolute, and as a consequence of the subordinate position of women and children in society and the lack of respect for and protection of human rights.

OSCE

- “Fighting poverty, unemployment and gender inequality while promoting decent work, access to social well-being and justice for all are fundamental to combating human trafficking”
- *OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings.*

Economic Causes of THB

- People become the victims of human traffickers mainly due to inequitable resource allocation and the absence of viable sources of income. In the countryside, agriculture is less profitable than formerly and land has become increasingly scarce.
- Women and children are therefore compelled to contribute more towards the family's subsistence than in the past. Households become increasingly vulnerable as margins shrink .

Economic Causes of THB

- Social security schemes are either lacking or do not reach the poorest, most disadvantaged sections of the community.
- Economic restructuring is driving people from the countryside into the cities and from poorer to richer countries. As a result of the rapid urbanisation fuelled by these trends, people from rural areas are being exposed to new income and consumption patterns.

Economic Causes of THB

- The effects of social inequality on an individual may lead to negative outcomes, such as violence, victimization, mental illness, substance abuse, homelessness, and disease. Individuals who experience social inequality also tend to lack in social capital. There is a strong relationship between low social capital and high mortality rates.

Economic Causes of THB

- In neighborhoods and localities where social inequality presides, mortality rates rise due to the presence of violence. In the United States, a strong relationship between disadvantaged neighborhoods and youth violence and child abuse. Disadvantaged neighborhoods produce a cycle of violence.

Globalisation

- **Globally**, these inequities result in the increasing socio-economic gap between developing and industrialized nations in **this era of globalization**. The increased global disparity can be found throughout economic, social, and political domains; it manifests as inadequate healthcare, poor standards of living, and the maintenance of a stratified class system.
- formative linkage between inequality and human trafficking.

Globalisation

- **Economic globalisation** combined with new communications technology and faster, cheaper transportation has spurred the growth of organised crime, which links local criminals and gangs into wider networks controlled by major crime syndicates.

Globalisation

- Some would argue that the social inequality gap has increased due to the globalization of the world. For example, Oatley suggested that globalization has increased the inequality gap by simultaneously enhancing wealth for the rich and increasing poverty for the poor. It has transformed social inequality from the nation state realm into an international problem.

THB in a global(ised) world

- Globalization is seen to create a class structure amongst nations that perpetuates and enhances social inequality for those nation states that are currently classified as developing.
- It may seem too easy to say that globalization is responsible for all the evils afflicting our society. However, globalization seems to have made it easier for human trafficking to get developed and, moreover, for the traffickers.

United Nations Millennium Declaration

“For while **globalization** offers great opportunities, at present its benefits are very unevenly shared, while its costs are unevenly distributed. We recognize that developing countries and countries with economies in transition face special difficulties in responding to this central challenge. Thus, only through broad and sustained efforts to create a shared future, based upon our common humanity in all its diversity, can globalization be made fully inclusive and equitable.”

United Nations

- The United Nations operationalized social inequality into six explicit categories: (1) inequalities in the distribution of income, (2) inequalities in the distribution of assets, (3) inequalities in the distribution of employment, (4) inequalities in access to knowledge, (5) political inequalities, and (6) inequalities in access to medical services, social security, and safety. In sum, lack of income for individuals and governments indicates social inequality and motivates other aspects of social inequality.

United Nations Millennium Declaration

- *I. Values and principles*
- We resolve therefore:
- To intensify our efforts to fight transnational crime in all its dimensions, including trafficking as well as smuggling in human beings and money laundering.

Socio-cultural causes

- The oppression of women and children within patriarchal family and social structures, in which women are subordinated to men, is of the main reasons why they fall prey to traffickers.
- It is also a major factor in the demand for sexual and other services, without which human trafficking could not prosper.

Socio-cultural causes

- Not only do women and girls rarely enjoy the same opportunities as men and boys, they are the objects of discriminating attitudes and treatment. They are often regarded as a burden to the family and far less time and resources are invested in them.
- Girls are frequently prevented from going to school. Women have less say in family matters than men and in many cases cannot own or rent land. The oppression of women has recently acquired new forms, such as the sale of brides on the Internet.

Socio-cultural causes

- Attitudes to male and female sexuality are a crucial factor. It is a widely endorsed notion in many cultures that men's sexual urges are part of the natural scheme of things, while women's sexuality is an aberration, tainted with guilt and shame. Women live under the constant threat of violence, stigmatisation and even murder. Women branded as 'bad' or 'immoral' may forfeit all legal rights and suffer total social ostracism.

Socio-cultural causes

- Sex trafficking is more than an issue of crime or migration; it is an issue of human rights, a manifestation of *persistent gender inequality* and the subordinate status of women globally. Around the world most trafficked people are women and children of *low socio-economic status*.
- Poor people are seldom treated with respect by the police or other representatives of the powers that be. Widespread denigration of and attitudes of disparagement towards the poor in a society lay the ground for exploitation and abuse.

Legal and political causes

- The lack of adequate legislation, properly functioning administrative machinery and an effective judiciary are the most obvious causes of human trafficking in this category. Although most countries are signatories to the international instruments set up to deal with the problem, many have yet to translate the provisions laid down in the various conventions and protocols into national legislation.
- Many countries lack both relevant legislation and explicit policies on human trafficking. Where these do exist, they are often not applied or followed up.

Legal and political causes

- In some countries where human trafficking or similar activities are criminal offences, sentences on conviction may be relatively lenient. The police services of many countries, and large sections of their public administration, such as customs departments, military border surveillance and immigration authorities are rife with corruption.
- Immigration laws are often stringent, forcing more and more people to resort to illegal means in order to cross borders now closed to them. Groups that are already vulnerable are especially likely to fall victim to traffickers.

The United Nations Human Development Report (2005)

- Increasing inequality within and among countries matters because it reflects unequal opportunity based on gender, identity, wealth, or location. One's life chances are diminished greatly by being born into a poor house-hold. For example, in the U.S., the world's richest country, health outcomes reflect inequities based on wealth and race.
- The UN argues that **more equitable income distribution** would contribute strongly to the reduction of poverty globally and in specific countries.

Legal Approaches to THB

- The usual response at the national level has been crime and immigration control in order to prosecute and punish traffickers/ smugglers and reduce the flow of trafficked/smuggled people. But trafficking in human beings poses problems outside the scope of criminal law.
- Trafficking involves many areas of law: criminal, human rights, immigration, labour, and even tort/delict .

Legal Approaches to THB

- Trafficking may be approached as an issue of migration or organized crime that affects State security, but it may also be viewed as a threat to the individual's human rights, since trafficking encompasses a spectrum of human rights abuses.

Legal Approaches to THB

- International/Transnational/National Criminal Law
- Human Rights
- Migration Issues

Migration Law

- It is often assumed that people enter the country illegally when they are trafficked, whereas our recent research shows that this is not the case. People often enter legally but are then vulnerable when they overstay their visa or are threatened by their employers with deportation. This also links in with the debate about asylum seekers and refugees

Migration Law

- The emphasis on the distinction between ‘legal’ and ‘illegal’ migrants is upholding a perspective that is generally confusing the discourse on trafficking.
- Besides reducing human beings to ‘legal’ or ‘illegal’, and therefore granting or withholding the protection of the law, it is also factually unhelpful in the case of trafficking.

Migration Law

- Recent migration policies across Europe have led to increased deportations of failed asylum seekers and incentives for return migration. This whole discourse shows the dilemma for governments across Europe: on the one hand the electorate wants to see a tough stance on immigration, for fears of 'swamping' and competition for lower skilled jobs.

Migration Law

- On the other hand European economies rely on the cheap labour of migrants, whether they are in possession of the correct documentation or not.
- Off the record agreements have been disclosed between local police and businesses relying on ‘flexibility’.

Migration Law

- This acknowledgement of the structural reliance on cheap labour and therefore on exploitation of migrant workers, is illustrated by what Bhattacharya (2005) has called 'the underbelly of the global economy'

Sharpest sword the law wields: Criminal Law

- Organized criminal groups can be heavily involved in human trafficking, at different operational levels.
- Trafficking in persons is dynamic, adaptable, opportunistic, and like many other forms of criminal activity, it takes advantage of conflicts, humanitarian disasters and the vulnerability of people in situations of crisis.
- It is multidisciplinary and involves a wide range of actors.

Criminal law: forced labour

- The number of people trafficked for the purposes of **forced labour** is considered far greater than the number estimated to be exploited in prostitution, still it receives less attention and is much less visible in the media.
- There have been very few prosecutions of trafficking for labour exploitation. This seems to be due to several reasons, *inter alia*:



Criminal law: forced labour

- The concept is relatively new.
- States have not criminalised the concept or have only recently done so.
- Cases are rarely identified because (among other reasons): the crime is often inherently “underground” by virtue of a victim’s legal status and the economic sectors they work in;
- There is a lack of familiarity with the relevant indicators by law enforcers (authorities); •

Criminal law: forced labour

- Regulatory bodies have fragmented frameworks and do not co-ordinate with each other (e.g. labour regulation, immigration control and police).
- • Lack of resources committed to detection and identification of cases, as well as to protection of victims and training officials does not permit adequate responses.
- •

Criminal law: forced labour

- There is a disproportionate focus on an individual's immigration status rather than on the conditions of their exploitation.
- There are inherent evidential difficulties for police and prosecutors in establishing a criminal offence of such complexity to the standard of proof required.

Elements required for THB for labour exploitation

- a. The act of trafficking: recruitment or transportation or harbouring or receipt of persons. AND
- b. The means used to involve the individual: threat or use of force or forms of coercion or abduction or fraud or deception or abuse of power or abuse of a position of vulnerability or the giving and receiving of payments or benefits to achieve the consent of a person who has control over another person (i.e. “purchasing or selling” a person from another trafficker). AND
- c. The purpose of the trafficking, at minimum: forced labour or slavery or practices similar to slavery or servitude.

Illegal migrant workers in the textile sector suffering serious violence

- **United States v Lee 2001.** Five defendants charged with subjecting 250 Vietnamese and Chinese nationals, mainly young women, to involuntary servitude in a garment factory in American Samoa. Some of the victims were held for up to two years, were forced to work through extreme food deprivation, beatings and physical restraint. They were held in barracks in a guarded company compound and were threatened with deportation, bankruptcy, false arrest, confiscation of their passports and severe economic hardship to their families. One victim had an eye gouged out after a defendant struck her with a pipe in order to punish her for refusing to comply with orders. The lead defendant was sentenced to 40 years for on a number of counts.

Child domestic servant from abroad subject to physical abuse

- **United States v Mubang 2003.** A naturalized US citizen of Cameroonian origin was convicted of having brought an 11 year old girl to the USA to provide free labour to care for the defendant's two children and to perform household chores. While at the Mubang household the victim received no wages, was isolated, was not allowed to attend school, and was subject to verbal and physical abuse i.e. being struck with a cable, a high-heeled shoe, a metal broom handle leaving a scar. Mubang fled before sentencing but was recaptured and sentenced to more than 17 years in prison.

Slavery and the seizure of identity papers

- **Judgment of the City of Tulalinsk in the Russian Federation 2005.** The Court found four men to be treated as slaves by the defendant who forced them to work for him without wages, housing them in degrading conditions and providing them with food only occasionally depending on his goodwill. The victims' papers were also seized and they were forced to return when they attempted to flee. The defendant was sentenced to four years imprisonment which was reduced to 7 months on appeal on the basis that he had small children, no previous convictions and previous good character.

The challenge of prevention and protection through labour regulation and immigration policy

- The absence of regulation of “go-betweens” (e.g. recruitment agencies, gangmasters) often responsible for trafficking or exploitative practices (e.g. through “selling” or charging a fee for their services or “valid” work visas, purporting to provide valid visas but failing to regularise the status of the worker, promising work in a particular sector or at a certain wage and failing to deliver either, or through organising the workers into groups of sub-contractors (e.g. Tree Workers Case).

Exorbitant mediation fees charged to migrants to Israel

- Five Romanian women went to Israel as caregivers during 2005. Prior to their arrival they contacted a mediation company which arranges for Romanians to work as caregivers. The workers were asked to pay a \$3500 mediation fee. Most of them could not afford to pay the sum demanded and therefore signed a loan contract, in which they mortgaged their home to the sister of the company owner. If the employees failed to pay back the loan, their homes would become her property. However, the workers did not receive the “loan”, which was immediately ‘collected’ as commission.

Exorbitant mediation fees charged to migrants to Israel

- Not only were the workers charged an illegal mediation fee but they were also underpaid. The working contract signed by the workers in Romania, indicates a salary of \$550 per month when the Israeli minimum wage for a caregiver is \$950. The workers were told that the agency represents different placement companies in Israel to whom most of the mediation fee is transferred. In practice, the workers were received in Israel by a different job mediator against whom one of the Romanians filed a complaint.

Exorbitant mediation fees charged to migrants to Israel

- As a result, he threatened her that her employer would file a complaint to the police saying that she had run away and stolen his jewels. After she resigned a letter was sent to her family in Romania saying that she ran away from her employer stealing her jewels. The letter was published in her home town causing her family great embarrassment. The Israeli Police, however, did not receive any such complaint against the worker.

Exorbitant mediation fees charged to migrants to Israel

- Visas linking a migrant to a single employer. The fewer options available to a migrant to change employer, the more vulnerable s/he is to being exploited.
- In general, these types of visas have caused particular problems for those entering as domestic servants living in the employer's home. In an Israeli case one Judge spoke of this type of visa regime in the following way:

Exorbitant mediation fees charged to migrants to Israel

- “Indeed, one must conclude – painfully and shamefully – that the migrant worker became the employer’s serf; ... that binding workers to employers created a form of modern slavery. In this binding arrangement the state ...shackled the workers’ hands and feet to the employer who “imported” them – nothing less. The migrant worker turned from a subject of law – a person who has rights and obligations under the law – into an object of law, as if he were a piece of property. This arrangement infringed on the autonomy of workers, and practically denied them their liberty. According to the binding arrangement the workers became machines ... **slaves of olden days, like the people who built the pyramids or rowed Roman ships into war.**”

THB and International Criminal Law

- People are more vulnerable and exposed in extreme situations, e.g. in the wake of natural disasters or armed conflicts, where their lives have been severely disordered and social structures and support systems have collapsed.
- Serious effects of armed conflict on trafficking

THB and International Criminal Law

- Political turmoil and conflict act as a catalyst for people to leave home and both regular and irregular armed forces may engage in trafficking of especially uprooted people to gain a profit.
- In addition, the presence of troops very often results in a rise in trafficking cases and cases of forced prostitution (Kosovo: UN, NATO/KFOR) .

THB and International Criminal Law

- Crimes under International Law:
- War Crimes
- Crimes against Humanity
- Genocide

THB as a Crime Against Humanity

- Widespread: large scale nature and the number of victims
- Systematic: organized nature of the acts of violence

THB as a Crime Against Humanity

- ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
- (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity

THB as a Crime Against Humanity

- h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health

THB as a Crime Against Humanity

- 2. For the purpose of paragraph 1:
- (c) 'Enslavement' means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

THB as a Crime Against Humanity

- Other inhuman acts: so called catch-all category
- Special Court for Sierra Leone: forced marriage falling under this category
- Most cases of trafficking are very unlikely to meet the criteria for a crime against humanity, but the inclusion in the Rome Statute is significant.

THB and International Criminal Law

- International Criminal Tribunal for the former Yugoslavia
- To outline and discuss the significance of the *Kunarac* case (*Prosecutor v Kunarac, Kovac and Vukovic*, IT-96-23-T and IT-96-23/1-T, especially par. 542) for the development of international criminal law with regard to THB.
- International Criminal Court: Rome Statute
- *War crimes* – Art 8
- -distinction between International Armed Conflicts (IACs) and Non International Armed Conflicts (NIACs)
- *Crimes against humanity* – Art 7 (Enslavement)

THB and International Criminal Law

- Prohibition against slavery is among the rules of customary law
- Link between or the frequent equivalence of, slavery and THB
- Not all slavery involves THB, but THB almost always involve slavery practices
- Need for continuation of exploitation of victims (exercise of ownership)

International Criminal Tribunal for the former Yugoslavia

- A Trial Chamber of the ICTY applied a non-restrictive approach to enslavement category in 2001 in the Kunarac et al., when it accepted in connection to the trafficking of women in wartime, that enslavement may occur even when the victims still enjoy *de jure* a certain freedom of movement, but the situation in which they find themselves leaves them no real choice of escape.

International Criminal Tribunal for the former Yugoslavia

- The Trial Chamber considers the following elements to be of particular relevance for the crime of *enslavement*:
 - (i) the fact that the girls were detained;
 - (ii) the fact that they had to do everything they were ordered to do, including the cooking and household chores;
 - (iii) the fact that you asserted exclusivity over FWS-191 by reserving her for yourself;

International Criminal Tribunal for the former Yugoslavia

- (iv) that they were at the constant disposal of you and DP6;
- (v) other degrading treatment such as offering one soldier the permission to rape her for DM 100 in the presence of Witness FWS-191; and
- (vi) that they were effectively denied any control about their lives.

International Criminal Court

- The gravity of trafficking: inclusion as **both** a war crime and a crime against humanity.
- Number of offences linked to trafficking are stated to be war crimes such as deportation of the population (Art. 8(2)(b)(viii)), outrages upon person dignity (Art. 8(2)(b)(xxi)), rape, sexual slavery and enforced prostitution (Art. 8(2)(b)(xxii); 8(2)(c)(vi)).
- Not all trafficking occurs during armed conflict, and that which does not cannot be a war crime.

Who owes human rights?

- Human Rights: to protect the individual against state action—to protect human beings from being abused by a power much stronger than them.
- Human rights „are designed to reconcile the effectiveness of state power with the protection against that same state power“ (Tomuschat)
- Vertical relationship

Who owes human rights?

- The issue is the extent to which States have to take appropriate (protection) measures.
- There is no absolute obligation of protection.
- Obligations to enact appropriate legislation (i.e. criminalization of THB) and provide necessary protection for victims.
- State must be in some way accountable (if HR violations in play)

THB and Human Rights Law

- Whereas the media, the police and layers of government focus on the criminalisation of trafficking by prosecuting both traffickers and ‘illegal’ migrants, NGOs have persistently campaigned for the recognition of trafficking as a **human rights issue**. Of course, human rights can also be approached by emphasising the punishment for violations:

THB and Human Rights Law

- However, the punishment angle in international human rights law is arguably less important than and should at least be accompanied by prevention of the violation in the first place and adequate provisions for the support of victims.
- Moreover, whereas the first internationally agreed definition of trafficking was developed in an optional protocol to the Transnational Organised Crime Convention, many people still mainly approach trafficking from a 'sex and crime' angle.

Human Rights Law

- Trafficking must be addressed from a criminal law perspective, and trafficking victims must be addressed with a human rights perspective.
- The responsibilities of the state to protect at risk groups and to prosecute traffickers. The trafficked person as a “rights bearer”.



Human Rights Law

- The primary threat to victims of trafficking is clearly one of many criminal acts at the hands of private persons and such acts are not necessarily human rights violations on the part of a state.
- Trafficking can be linked to organized criminal and law enforcement activities or can be viewed from the perspective of the victim, predominantly as a violation of human rights.
- These two perspectives are not mutually exclusive but rather inherently linked.
- Question of approach and context.

THB and Human Rights

- In trafficking cases, a broad range of human rights can be and are violated.
- The most expressive violations are the violation of a person's personal and physical dignity, the right to personal freedom and security, and the principle of non-discrimination.

The European Convention on Human Rights

- The European Convention on Human Rights entails not only negative, but also positive obligations for the State Parties to the Convention.
- State Parties should not only refrain from any action that might conflict with or cause a violation of the protected rights, but are also obliged to take all measures necessary to guarantee the undisturbed enjoyment of the rights granted.
- Case-law (Siliadin v. France, Rantsev v. Cyprus and Russia)

Positive obligations

- If a state does not fulfil positive obligations in the sense that trafficking (in all its forms) is not adequately forbidden in criminal law or is not effectively fought, this may lead to state liability when trafficking is established.
- The scope of the state obligations in this respect is not fully clear.

THB and Human Rights

- To outline and discuss the significance of the recent international case-law for the development of human rights law with regard to THB:
- Convention for the Protection of Human Rights and Fundamental Freedoms: *Rantsev v Cyprus and Russia*, Application no. 25965/04, European Court of Human Rights, Judgment of 7 January 2010 (also to consider applicability of the ECHR in relations between private individuals).
- African Charter on Human and Peoples' Rights: *Hadijatou Mani Koraou v Niger*, ECOWAS Court of Justice, Judgment No. ECW/CCJ/JUD/06/08.

RANTSEV V. CYPRUS AND RUSSIA

- The Decision on the Merits
- *Alleged Violation of Article 2, the Right to Life*
- *Alleged Violation of Article 3, the Right to be Free from Torture, Inhumane and Degrading Treatment and Punishment.*
- *Alleged Violation of Article 4, the Right to be Free from Slavery, Servitude, Forced or Compulsory Labor*
- *Alleged Violation of Article 5, the Right to Liberty and Security of Person*

RANTSEV V. CYPRUS AND RUSSIA

- Groundbreaking decision regarding Article 4 of the European Human Rights Convention

RANTSEV V. CYPRUS AND RUSSIA

- It also formulated novel state duties arising from this construction. Such obligations ranged from:
- raising awareness about the phenomenon of human trafficking,
- training law enforcement and immigration officials on issues related to human trafficking,
- implementing administrative measures to regulate the operation of businesses that cover up human trafficking,

- instituting necessary changes in the policy and the law related to immigration, criminalization, investigation and prosecution of all aspects of trafficking, to practically and effectively protecting victims' rights

- Russian national, Nikolay Mikhaylovich Rantsev alleged that the Republic of Cyprus insufficiently investigated the death of his daughter, Oxana Rantseva. Additionally, he alleged that the Cypriot police inadequately protected Ms. Rantseva while she was still alive, and that the Cypriot government failed to take necessary steps to bring to justice those responsible for her ill-treatment and death.
- The applicant further complained under articles 2 and 4 of the Convention that Russia failed to protect Ms. Rantseva from the risk of human trafficking and failed to investigate her subsequent death.

- Oxana Rantseva arrived in Cyprus with the intention to work as an “artiste” in a cabaret, until March 28, 2001, when she was found dead on the street with her handbag over her shoulder.
- Rantseva allegedly fell from the balcony of an apartment on the fifth floor.
- A cabaret owner, X.A., in the city of Limassol of Cyprus had applied for an “artiste” visa and work permit for Rantseva.

- Rantseva apparently left the apartment after collecting all her belongings and leaving behind a letter stating that she was tired and intended to go back to Russia. Once informed by the girls that Rantseva had left, M.A. notified the Limassol Immigration Office of Rantseva's disappearance—stating that she had “abandoned her place of work and residence.”

- Rantseva was spotted at a discotheque in Limassol and notified M.A., who immediately informed the police of her whereabouts and requested again that the police arrest her. He then took matters into his own hands by going to the discotheque with a security guard from his cabaret, retrieving Rantseva, and taking her to the
- Limassol Central Police Station, where he requested that she be detained because she had illegally stayed in the country.

- The Police Aliens and Immigration Service advised the Limassol police against her detention, but requested that M.A. pick her up from the station and bring her to the immigration office the following day at 7 a.m. After speaking to a senior police officer over the phone, M.A. picked up Rantseva around 5:20 a.m. and accompanied her to a fifth floor apartment belonging to M.P., one of the cabaret employees.
- She was placed in a room on the upper level of the apartment, with M.A. sleeping in the living room, thereby blocking her only gateway to the outside.
- At around 7 a.m., M.A. and M.P. awoke to find police gathered around Rantseva's dead body on the street.

- Rantsev approached Russian authorities in order to initiate an additional investigation of his daughter's death, which Rantsev believed had taken place under strange and unestablished circumstances.

Violation of Article 2, the Right to Life

- Both Russia and Cyprus failed to take steps to protect Rantseva by not taking reasonable measures to avoid a “real and immediate threat” to her life.
- Both Russia and Cyprus failed to investigate effectively the circumstances that had led to her death. Regarding the first allegation, the Cypriot government argued that there was no indication of a real or immediate risk to Rantseva’s life because she was calm at the police station, did not complain about her employer or the conditions of her work, and did not object to leaving the station with M.A. In their written submission, the Cypriot authorities accepted responsibility for handing Rantseva over to M.A. rather than releasing her

- The Court went on to clarify that a government must secure the right to life of a person by legislative and enforcement mechanisms. Specifically, it must criminalize acts that jeopardize a person's life by creating proper enforcement machinery that prevents and punishes violations. This duty “also implies a positive obligation . . . to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.”

- The Court, inter alia, considered the circumstances of Rantseva's death to be "ambiguous." Coupled with the allegations of human trafficking, ill-treatment, and unlawful detention prior to her death, the Court concluded that the situation warranted a detailed investigation to appraise any potential links of Rantseva's alleged trafficking

Alleged Violation of Article 4, the Right to be Free from Slavery, Servitude, Forced or Compulsory Labor

- The most compelling arguments of the Court are put forward in its considerations of the allegations under article 4. Rantsev contended that both Russia and Cyprus had violated article 4, because of their failure to protect Rantseva from being trafficked, as well as their failure to investigate “the circumstances of her arrival in Cyprus and the nature of her employment there.

- Cyprus accepted responsibility for not having conducted an effective investigation into the possibility that Rantseva had been a victim of trafficking and exploitation.

- The ECtHR revisited its determination of the relationship between “slavery” and “human trafficking,” choosing to see this relationship in light of the “proliferation of both trafficking itself and of measures taken to combat it.

- The Court then referred to the findings of the ICTY, which concluded that the traditional concept of slavery, closely linked to the right of ownership, had now evolved to include a range of contemporary forms of slavery, exercising one or more powers attached to the right of ownership. ICTY's analysis helped the ECHR
- recognize that human trafficking is, by its very nature and exploitative aim, an exercise of powers attached to ownership.

- It concluded that human trafficking as defined in article 3(a) of the Palermo Protocol falls within the scope of article 4. From now on in Europe, protection from human trafficking as defined in the Palermo Protocol and mirrored in the 2005 Council of Europe Convention on Action against Trafficking in Human Beings, is guaranteed through article 4 of the ECHR.

What is the Scope of Article 4 vis- a-vis Human Trafficking?

- Furthermore, the Court stated that governments must investigate once they become aware of a potential situation of trafficking; they cannot wait for a complaint to be launched by a victim or next-of-kin.
- It added that an effective investigation must be independent of those implicated in the events; the victim has to be urgently removed from the harmful situation, and the victim or its representatives have to be able to pursue their legitimate interests by taking part in the procedure.

- The Court discusses two aspects, inter alia, of Cyprus' positive obligations:
- (a) positive obligations to put in place an appropriate legislative and administrative framework; and
- (b) positive obligations to take protective measures.