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GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

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ECtHR, Chowdury and Others v. Greece.

Recommendations for the full compliance of the Greek State

27 August 2018

The Greek National Commission for Human Rights (GNCHR) is the independent advisory body to the Greek State on matters pertaining to human rights protection. It was established by Law 2667/1998 and is functioning in accordance with the UN Paris Principles. Thirty-two institutions whose activities cover the field of human rights are currently represented in the GNCHR (independent authorities, departments of university-level educational institutions, trade unions, NGOs, political parties and ministries).

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SUMMARY

The Greek National Commission for Human Rights (GNCHR), in the framework of its institutional role as the independent National Institution and advisory body to the State on matters pertaining to human rights promotion and protection, releases its Recommendations with regard to the immediate full compliance of the Greek government with the landmark ECtHR judgment, *Chowdury and others v. Greece* (known as the "Manolada case") and, above all, with the State's obligations arising from the international and European commitments undertaken regarding the effective action to combat, as well as to prevent trafficking in human beings or/and forced labour.

The GNCHR, focuses on the emblematic character (*leading case*) of the ECtHR judgment in the "Manolada case", since it was the first occasion on which the Strasbourg Court had to examine the situation of forced labour and trafficking in the agricultural sector and refers back to its previous and – unfortunately – repeatedly addressed recommendations, which remain relevant and up to date due to the prevailing situation in Greece, which demonstrates that the case's facts do not constitute "isolated incidents". At the upcoming 1324th Meeting of the Committee of Ministers of the Council of Europe, which will be held in Strasbourg, on 18-20 September 2018, the assessment of the level of compliance of the Greek State with the judgment will begin.

For the formulation of its Recommendations, the GNCHR took into account, among others, critical data arising from two large scale participation hearings of relevant national stakeholders, which were held by the GNCHR in its premises (23.11.2017 and 20.2.2018), a possibility provided for by the Greek legislator who recognises the GNCHR as a *bridge builder* between the State and Civil Society. During these hearings, special emphasis was placed on combatting trafficking in human beings for the purpose of labour exploitation and forced labour, as well as on the absolute need for the elaboration by the Greek State of a specific strategic plan for the prevention and suppression of both phenomena.

Through its Recommendations, the GNCHR:

- attempts a more focused approach to the phenomenon of trafficking for the purpose of labour exploitation, while drawing attention to the particular link between human trafficking and forced labour and recording the current regulatory and institutional framework for combatting both of them,
- assesses the implementation of the regulatory and institutional framework in practice, with special emphasis on matters pertaining to the prevention of human trafficking and forced labour, the promotion and protection of the rights of victims, as well as the effective investigation and prosecution of human trafficking and severe labour exploitation cases,
- draws attention to the particular connection between trafficking in human beings for the purpose of labour exploitation and undeclared employment in Greece, while at the same time noting with

great concern the linkage between labour exploitation in the agricultural sector and – in many cases extremely – racist behaviors and

- in view of the urgent need to immediately and effectively deal with both trafficking in human beings for the purpose of labour exploitation and forced labour in general, the GNCHR formulates specific recommendations and suggestions for the adoption of appropriate measures to combat the phenomenon of trafficking in human beings or/and forced labour and, therefore, for the full compliance of the Greek State with the ECtHR judgment on the *Chowdury and others v. Greece* case.

ECtHR, *Chowdury and Others v. Greece*.

Recommendations for the full compliance of the Greek State*

"1. No one shall be held in slavery servitude.

2. No one shall be required to perform forced or compulsory labour [...]"

European Convention on Human rights, Article 4

INTRODUCTORY REMARKS

1. The Greek National Commission for Human Rights (GNCHR), in the framework of its institutional role as the independent advisory body to the State on matters pertaining to human rights promotion and protection, has been repeatedly involved in the past, with the lack of effective implementation of the regulatory framework on fighting against trafficking in human beings (*Trafficking In Human Beings*) and the need for parallel and appropriate reinforcement of the institutional, as well as the substantial protection of the victims' rights in practice, by adopting a Framework of positions and proposals to effectively combat the phenomenon of trafficking in human beings¹.

2. Crucial is the fact that the degrading of the trafficking victims, from persons to *res*, from subjects to objects, renders *trafficking* a modern form of slave trade in the 21st century and a "globalised" version of procuring. Taking into account the complexity of the phenomenon, which is, by its own nature, inextricably linked to various individual sectors, such as immigration policy, organized crime, prostitution, forced labour, violence against women and children, pedophilia

* The present Recommendations were adopted by the GNCHR plenary. Rapporteurs: E. Varchalama, 2nd GNCHR Vice President, R. Fragkou, GNCHR legal officer.

¹ GNCHR, *Comments on the draft law for "combatting human trafficking, crimes against sexual freedom, child pornography and generally economic exploitation of sexual life and assistance to the victims thereof"*, 28.2.2002, *International Conventions for the protection of migrant workers and Greece's position*, 12.12.2002, *Decision to submit a proposal to the competent State Authorities for the ratification of: a. the Council of Europe Convention on Action against Trafficking on Human Beings and b. Optional Protocol to the Convention on the Rights of the Child, on the sale of children, child prostitution and child pornography*, 9.3.2006, *Opinion and recommendations with regard to the issue of human trafficking – The situation in Greece*, 14.6.2007, *Right to health of undocumented migrants*, 8.11.2007, *Observations on the Draft of the 20th and the 21st Periodic Report of the Hellenic Republic for the implementation of the International Convention on the Elimination of all forms of Racial Discrimination (ICERD)*, 15.1.2015, *Written Information in relation to the implementation of the International Convention on the Elimination of all forms of Racial Discrimination (ICERD) in Greece*, 11.7.2016, *Statement on the Draft Law of Ministry of Justice, Transparency and Human Rights, submitted to the Parliament on 9.11.2016 and entitled «Incorporation of Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, of the Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, and of the Directive 2014/54/EC, on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers II) adoption of measures in order to comply with Articles 22, 23, 30, 31(1), 32 and 34 of the Regulation No 596/2014 on market abuse and repealing the Directive 2003/6/EC of the European Parliament and the Council and the Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC and transposition of the Directive 2014/57/EU on criminal sanctions for market abuse and its implementing Directive 2015/2392, III) transposition of Directive 2014/62 on the protection of the euro and other currencies from counterfeiting through criminal law, and the replacement of the Framework-Decision 2000/383/JHA and, IV) Establishment National mechanism for investigating incidents of arbitrariness in security forces and in detention facilities*, 17.11.2016.

circuits, and the social pathology reflected in these phenomena²; the GNCHR has already addressed recommendations to all competent bodies of the Greek State and will continue to cooperate with them, as well as with the civil society, in order to contribute towards the most effective way in dealing with this complex challenge.

3. With regard to the criminal acts that took place in Manolada, in 2013, the GNCHR expressed its repulsion for the severe infringements of the rule of law principle and the fundamental rights, that eliminate human dignity, disturb social cohesion and undermine our civilization, stressing simultaneously the State's obligation not only to ensure respect of the Article 4 of the ECHR by calling the governmental Authorities to abstain from actions that breach its content, but also to take all appropriate measures for its effective enjoyment in practice and its timely protection from any violations³. Reminding, once again, that this cruel and humiliating treatment of people grossly violates the rules of the Constitution and the European and international law, that safeguard respect and protection of every person's value, life and physical integrity and prohibit slavery and any inhuman or humiliating treatment and trafficking in human beings, impose fair and dignified working and living conditions, equal pay, social security and health and safety protection, the GNCHR stressed the obligation of all competent state authorities to ensure the unimpeded and effective exercise of all human rights without exception, without any discrimination⁴. Since 2013 already, in view of the serious impact on the operational readiness and effectiveness of enforcement mechanisms due to the growing economic crisis and the successive austerity measures implemented in the country, the GNCHR had referred to all state bodies' obligation not only to refrain from actions against the provisions of Article 4 of the ECHR, but also to timely use all appropriate and effective measures - legislative, administrative and judicial - in order to facilitate and secure effective exercise and enjoyment of the particular right, as well as to protect it, by preventing any infringement and interference by third parties (private actors).

4. In this context, the GNCHR continuously monitors these issues, including the adaptation of Greek legislation to the international, European and national law provisions regarding human rights protection, in order to process and formulate policy advice to the competent bodies of the State for the full and immediate compliance of the Greek Government to the landmark decision of the ECtHR, *Chowdury and Others v. Greece* and, most importantly, to the State's obligations arising out of the international and European commitments that it has undertaken.

² GNCHR, *Opinion and recommendations with regard to the issue of human trafficking – The situation in Greece*, *op.cit.*, p. 1.

³ GNCHR, *Working and living conditions of migrant workers: the State's responsibility for the brutal exploitation of our fellow human beings*, Press Release, 29.4. 2013.

⁴ *Ibidem*.

5. It is worth mentioning at this point that the GNCHR, as the National Human Rights Institution (NHRI), is also responsible for promoting, in particular, the ECtHR's case law in our country⁵, taking up for that purpose the initiative, since December 2015, in consultation with the ECtHR, to translate in Greek the ECtHR's factsheets⁶. Among the factsheets which have already been made available, both on ECtHR's⁷ and GNCHR's⁸ official WebPages, are those related to the thematic aspects of human trafficking⁹ and slavery and forced labour¹⁰.

6. To this purpose also, and in recognition of its role as a *bridge builder* between the State and the civil society, assigned to it by the legislator, the GNCHR, using its competence to "[call] to hearing, at its discretion, individuals, who may facilitate its work by presenting personal experiences or by formulating opinions on matters pertaining to human rights protection"(Article 4(5) of Law 2667/1998), held a hearing of individuals and institutions on the substantive compliance of the Greek State to the ECtHR's judgment *Chowdury and Others v. Greece* (Manolada Case)¹¹. During this hearing, which took place at the GNCHR's offices on the 23rd November 2017, special emphasis was given on the fight against human trafficking for the purpose of labour exploitation and forced labour, as well as on the proven need for a well-defined strategic plan to be formulated by the Greek State to address similar phenomena, via preventive and restrictive means.

7. In the light of the above remarks, the GNCHR, highlighting the emblematic nature of the ECtHR's judgment on the Manolada case for the protection of working migrants (I) and referring back to its previous and – unfortunately – constantly recurrent Recommendations, attempts at first a more focused approach to the phenomenon of human trafficking for the purpose of labour exploitation, drawing attention to the particular link between human trafficking and forced labour (II) and recording the current regulatory and institutional framework for combating them (III). After

⁵ High-level Conference on the "Implementation of the European Convention on Human Rights, our shared responsibility", [Brussels Declaration](#), 27.4.2015.

⁶ CEDH, *Les fiches thématiques seront désormais traduites en grec*, Communiqué de presse du Greffier de la Cour, CEDH 233 (2016), 29.6.2016.

⁷ ECtHR, *Factsheets on the Court's case-law [in Greek]*, available at: <https://www.echr.coe.int/Pages/home.aspx?p=Press/factsheets/GREEK&C=gre>.

⁸ GNCHR, *ECtHR's Factsheets on the Court's case-law in the Greek language*, available at: <http://www.nchr.gr/>.

⁹ ECtHR, *Factsheet – Trafficking in human beings*, available at: https://www.echr.coe.int/Documents/FS_Trafficking_ELL.pdf.

¹⁰ ECtHR, *Factsheet – Slavery, servitude and forced labour*, available at: https://www.echr.coe.int/Documents/FS_Forced_labour_ELL.pdf.

¹¹ The hearing of individuals and institutions organised by the GNCHR was attended by representatives of the Unified Social Security Fund (EFKA), the Special Secretary of the Hellenic Labour Inspectorate (SEPE), the National Rapporteur for Combating Human Trafficking, representatives of the Ministry of Health, representatives of Greek Judges and Public Prosecutors for the Democracy and the Liberties, the President of Society of Judicial Studies, representatives of the Office of the UNHCR in Greece, representatives of the Racist Violence Recording Network, the lawyers who represented the applicants before the Court at the *Chowdury and Others v. Greece* case. The GNCHR was represented by its Board, as well as GNCHR members.

that, the GNCHR evaluates the implementation of the regulatory and institutional framework in practice, with special emphasis on matters pertaining to human trafficking and forced labour prevention, victims' rights' promotion and protection, as well as effective investigation and prosecution of human trafficking crimes and severe labour exploitation cases (IV). Through this approach, the GNCHR draws attention to the particular connection between the phenomenon of trafficking in human beings for the purpose of labour exploitation and undeclared employment in Greece (V), while at the same time noting with great concern the connection between labour exploitation in the agricultural sector and – in many cases extremely – racist behaviors (VI) and formulates specific recommendations and suggestions for the adoption of appropriate measures to combat the phenomenon of trafficking in human beings or/and forced labour and, therefore, for the full compliance of the Greek State with the ECtHR judgment on the *Chowdury and others v. Greece* case (VII).

I. ECtHR, CHOWDURY AND OTHERS V. GREECE: LANDMARK JUDGMENT FOR THE EFFECTIVE PROTECTION OF WORKERS VICTIMS OF TRAFFICKING FOR THE PURPOSE OF LABOUR EXPLOITATION AND FORCED LABOUR

8. The absence of an expressed reference to the prohibition of trafficking in human beings in the European Convention on Human Rights (ECHR) does not in any way imply the European legislator's denial of its socio-ethical disapproval. Moreover, it does not imply denying the recognition of the alarming dimensions of the global phenomenon of trafficking in human beings¹². The implementation of the case-law on Article 4 of the Convention, the provisions of which prohibit three severe forms of personal freedom violations: servitude, slavery and forced labour, has been infrequent, mainly because of the looming extinction of such phenomena in modern European States of rule of law. Unfortunately, the emergence of new forms of slavery has led the Strasbourg Court to a new approach of the normative content of Article 4 of the ECHR¹³. Indicative is the upward trend presented by the judgments of the ECtHR, which has found that the provisions of Article 4 have been violated, while in the 2005 judgment on *Siliadin v. France*¹⁴, and more recently,

¹² Interestingly, according to the case-law of the European Court of Human Rights (ECtHR), the absence of an express reference to human trafficking in the ECHR is not surprising, insofar as the source of inspiration for the Convention has been the Universal Declaration of Human Rights (UDHR), which was adopted by the United Nations General Assembly in 1948 and did not include any explicit reference to trafficking in human beings. However, as the ECtHR points out, the ECHR is a living text which must be interpreted in the light of the present-day conditions. Taking into account, therefore, that trafficking in human beings is a global phenomenon which has increased significantly in recent years, its prohibition is considered to fall within the scope of article 4 of the ECHR. The extent of the problem of trafficking in human beings and the need for measures to combat it are demonstrated by the vast range of international, regional and European human rights standards – including the Palermo Protocol in 2000 and the Convention against Trafficking in Human beings in 2005 – which explicitly forbid it (*Rantsev v. Cyprus and Russia* [application no.: 25965/04], 7.1.2010, par. 277-278).

¹³ M. Karavias, "Article 4. Prohibition of slavery and forced labour", in *European Convention on Human Rights. Commentary by article*, L. A. Sicilianos (Ed.), Nomiki Bibliothiki, 2017, p. 152 et seq. (in particular 153, 163).

¹⁴ ECtHR, *Siliadin v. France* [application no.: 73316/01], 26.7.2005.

in the judgment *L.E. v. Greece*¹⁵, the ECtHR confirmed the application of Article 4 in cases of trafficking in human beings.

9. In addressing and combating this "modern form of slavery"¹⁶ and in view of the increasing refugee and migratory flows, the judgment of the ECtHR, *Chowdury and Others v. Greece*¹⁷, widely known as the "Manolada judgment", is considered to be crucial for the protection of victims of trafficking and forced labour. The ECtHR itself has ranked it among its most important judgments; it is designated as a judgment to be used for case reports (*Importance Level: Case Reports*) of the Court¹⁸. This is, indeed, the first judgment of the ECtHR, in which the situation of trafficking for labour exploitation purposes in the agricultural sector is thoroughly examined. More specifically, for the first time, the ECtHR links human trafficking to the exploitation of migrant work, recognising that the very exploitation of migrant workers is a form of forced labour and trafficking in human beings, and recognizes that victims have been subjected to forced labour¹⁹.

10. As far as the execution of the judgment is concerned, the case is categorised by the Council of Europe as "leading case", which means that the case has been identified as revealing new structural and/or systemic problems, either by the Court directly in its judgment, or by the Committee of Ministers in the course of its supervision of execution. Such a case implies the adoption of new general measures to prevent similar violations in the future and requires an enhanced execution procedure (*enhanced procedure*), which shall be applied in accordance with the Council of Europe Department for the execution of ECtHR judgments, in cases which, due to the nature or kind of the issues that they raise, require the priority attention of the Committee of Ministers²⁰. The State's obligation to draw up an *Action Plan* or *Action Report* is inextricably linked to the classification of the case.

11. And the ECtHR specific judgment is particularly important not only for the Greek state, to the extent that it condemns phenomena which are unacceptable in a modern rule of law and affect the core of human rights, including respect of human life and dignity, but also in general for the protection of the rights of migrant workers, for many reasons. At first, because, in its decision on the 30th March 2017, the ECtHR notes that trafficking in human beings falls within the scope of Article 4 of the ECHR and that, in accordance with Article 4A of the Convention of the Council of Europe on action against trafficking in human beings, labour exploitation constitutes a form of

¹⁵ ECtHR, *L.E. v. Greece* [application no.: 71545/12], 21.1.2016.

¹⁶ GNCHR, *Opinion and recommendations with regard to the issue of human trafficking – The situation in Greece, op.cit.*, p. 1.

¹⁷ ECtHR, *Chowdury and Others v. Greece* [application no.: 21884/2015], 30.3.2017.

¹⁸ Case Details, *Chowdury and others v. Greece*, available at: <http://hudoc.echr.coe.int/eng?i=001-172701>.

¹⁹ In its previous judgments (see e.g. *Siliadin v. France or Rantsev v. Cyprus and Russia*), the cases of forced labour and trafficking in human beings concerned either children or women who provided domestic services.

²⁰ CoE, Department for the Execution of ECtHR Judgments, Glossary, available at: <https://www.coe.int/uk/web/execution/glossary#%2215005454%22%9>].

trafficking²¹. Secondly, because the Court condemns the Greek State for violating Article 4(2) of the ECHR, recognising that labour exploitation is one of the ways in which human trafficking is expressed²², while at the same time – and here the Court's greatest contribution to human rights law is being identified too – rushes to identify, ignoring any typical obstacles, the content of positive measures, which State parties in the ECHR are called upon to take, to prevent new forms of slavery and to effectively protect victims of trafficking and forced labour²³. It is worth noting the fact that the ECtHR refers to the Council of Europe Convention on Action against Trafficking in Human Beings as a source of shaping the positive obligations of Greece, despite the fact that at the time of the facts of the case the particular Convention had not yet entered into force in Greece.

12. Of course, the 42 applicants, Bangladeshi citizens, who were deprived of legal documents and became victims of forced labour and exploitation in the strawberry fields of Manolada, may have been vindicated by the ECtHR, as the Greek Council for Refugees (GCR) which represented them in the proceedings before the Court has stated, however, they are only a few of the 100-150 workers who went on strike claiming their salaries and were shot, on 17 April 2013, by their guards, who sent 30 people (of whom 21 of the applicants) to the hospital²⁴. However, the GNCHR considers it appropriate to point out that the "Manolada case" was not an isolated incident, since many other incidents of severe labour exploitation of workers – mostly foreign field workers – have followed. Unfortunately, this fact is not reflected in the Official Action Report of the Greek authorities with regard to the compliance with the judgment *Chowdury and others v. Greece*, submitted for discussion at the 1324th Meeting of the Committee of Ministers of the Council of Europe (September 2018), where it is stated that the incident of Manolada was nothing but an "isolated incident" (*un cas isolé*), which has been adequately addressed by the Greek State and does not need further supervision by the Committee of Ministers²⁵.

13. Furthermore, tangible evidence of the sad observation that it's not merely an "isolated incident", is among others the extensive reference in the ECtHR judgment to the Ombudsman's warning, dated 2008, towards the competent ministries, according to which the Greek State had failed to protect the victims, to investigate in a sufficient manner the case and to punish the perpetrators²⁶. Indeed, since 2008, the Greek Ombudsman, in response to complaints and press

²¹ ECtHR *Chowdury and Others v. Greece* [application no.: 21884/2015], 30.3.2017, par. 86, 92 and 93.

²² *Idem*, par. 93.

²³ *Idem*, par. 103 et seq. See also I. Kouvaras, "Comment on the ECtHR judgment, *Chowdury and others v. Greece* (Manolada case): The condemnation of an entire system of forced labour and exploitation", *Human Rights*, Ed. Sakkoulas, 2018, to be published.

²⁴ GCR, *The ECtHR judgment doing justice to victims on the Manolada case becomes final*, Press Release, 14.7.2017.

²⁵ CoE, Comité des Ministres, *Communication de la Grèce concernant l'affaire Chowdury et autres c. Grèce (Requête n° 21884/15)*, DH-DD(2018)607, 13.6.2018, p. 12, available at: [http://hudoc.exec.coe.int/ENG?i=DH-DD\(2018\)607F](http://hudoc.exec.coe.int/ENG?i=DH-DD(2018)607F).

²⁶ ECtHR, *Chowdury and Others v. Greece* [application no.: 21884/2015], 30.3.2017, par. 48-53. For the Ombudsman's intervention see Ombudsman, *Intervention with regard to the migrant workers in the agricultural sector of Ileia (Nea Manolada)*, 22.4.2008, available at: <https://www.synigoros.gr/resources/eggrafo--2.pdf>.

releases with regard to the exploitation and ill-treatment of migrant workers by strawberry producers of the region of Manolada, had addressed a letter to the competent at the time Ministers of Interior, Employment and Social Protection, Health, Rural Development and Environment, highlighting, beyond the unacceptable labour relations, under which migrants were employed, that the migrant workers – including several minors – were living in a context of deprivation of liberty, since their employers appeared to have imposed supervision of their activities, even during their free time²⁷. Moreover, according to the Ombudsman's report, the complete lack of public health inspections, coupled with particularly poor living and hygiene conditions of accommodation provided to migrant workers, created serious and reasonable fears with regard to the health status of both migrant, as well as resident population²⁸. The Ombudsman's concerns, reiterated in 2013, in relation to the finding of the conjectural nature of the inspections carried out and the failure to seek and address the causes which continue to lead to this legally, socially and morally unacceptable situation throughout the Country²⁹, not only support the conclusion of the present report on the absence of the State and the lack of public regulation in specific areas of social life, especially when vulnerable social groups are affected³⁰, but furthermore contribute to establish that these incidents are not "isolated".

²⁷ Ombudsman, *Intervention with regard to the migrant workers in the agricultural sector of Ileia (Nea Manolada)*, *op.cit.*, p. 1.

²⁸ *Idem*, p. 2.

²⁹ Ombudsman, *Ombudsman's participation at the session of the Parliamentary Committee on Equality, Youth and Human Rights with regard to the incidents in Manolada*, Press Release, 24.4.2013.

³⁰ ECtHR, *Chowdury and Others v. Greece* [application no.: 21884/2015], 30.3.2017, par. 51 and Ombudsman, *Intervention with regard to the migrant workers in the agricultural sector of Ileia (Nea Manolada)*, *op.cit.*, p. 2-3. Regarding the State's absence and the competent state Authorities' tolerance, the Greek Ombudsman has made relevant references in later reports as well, such as *inter alia* Ombudsman, *Combating discrimination, Special Report 2013 (Article 20(3) of Law 3304/2005)*, p. 101-102 and *Special Report (Law 3094/2003 "Ombudsman and other provisions", Article 3(5)). Addressing the phenomenon of racist violence in Greece*, September 2013, p. 30-31.

II. TRAFFICKING IN HUMAN BEINGS FOR THE PURPOSE OF LABOUR EXPLOITATION AND FORCED LABOUR: FROM THEORY TO PRACTICE

14. The phenomenon of human trafficking for the purpose of economic exploitation of the person subjected to it constitutes indeed a «modern form of slavery»³¹, a new practice similar to slavery (*Slavery-Like Practice*)³². Before any reference to numbers or other statistical data with regard to human trafficking, with particular emphasis on labour exploitation and forced labour, and for methodological accuracy purposes, it is necessary to identify a comprehensive and commonly accepted conceptual definition, as a reference point, regarding trafficking in general, as well as labour exploitation and forced labour.

15. More specifically, the most comprehensive and complete definition of trafficking in human beings is included in the *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children* (Palermo Protocol), which was signed in Palermo, Italy, in December 2000, came into force in 2003 and was sanctioned by Greek Law in 2010³³. According to Article 3(a) of the Protocol, "«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 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 or others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or removal of organs". The same definition is reiterated in the *Council of Europe Convention on Action against Trafficking in Human Beings*, which was signed in Warsaw, Poland in 2005, entered into force in 2008 and sanctioned by Greek Law in 2013³⁴, as well as in the *Directive 2011/36 / EU on preventing and combating trafficking and protecting its victims*³⁵.

16. According to the Explanatory Report of the Council of Europe Convention, trafficking in human beings consists in a combination of three basic components, each to be found in a list given in the definition:

- the action of "recruitment, transportation, transfer, harbouring or receipt of persons",

³¹ GNCHR, *Opinion and recommendations with regard to the issue of human trafficking – The situation in Greece*, *op.cit.*, p. 1.

³² S. Scarpa, *Trafficking in Human beings: Modern Slavery*, Oxford University Press, 2008, p. 4.

³³ Law 3875/2010 on "Ratification and implementation of the United Nations Convention against Transnational Organised Crime and its three Protocols and related provisions" (OJ 158/A/20.9.2010).

³⁴ Law 4216/2013 on "Ratification of the Council of Europe Convention on Action against trafficking in human beings" (OJ 266/A/10.12.2013).

³⁵ Which has been incorporated into the Greek legal order by Law 4198/2013 on "Preventing and combatting against trafficking in human beings and protection of victims and other provisions" (OJ 215/A/11.10.2013).

- 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, which 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"³⁶.

17. In order for a behavior to be considered as trafficking, ingredients from each of the three categories (action, means, purpose) must be present together. However, in the case of acts concerning children, the act is considered as trafficking even if no means of threat or violence or other forms of enforcement were used³⁷.

18. This definition distinguishes acts of trafficking in human beings from other actions, such as migrant smuggling, where the criminal act consists in the transport of migrants in return for payment and illegal import, but without the subsequent exploitation of the persons carried or of their labour. On the other hand, the definition endeavours to encompass the whole sequence of actions that leads to exploitation of the victim (eg forced labour, sexual exploitation, slavery, removal and sale of organs)³⁸.

19. Human trafficking can take numerous and variable forms, including labour exploitation of men, women and children (forced or compulsory labour in industries, agricultural activities, construction or domestic work), sexual exploitation of men, women and children (forced prostitution), exploitation of children for beggary or drug trafficking purposes, exploitation of women and minor girls for illegal marriages and adoptions and exploitation of men, women and children for removal of organs³⁹. In any case, it is important to stress that, taking under consideration the dynamic development of the crime of human trafficking, "the emergence of new forms of labour exploitation of victims of human trafficking cannot be excluded *a priori*. The decisive criterion for considering a service or occupation as a form of exploitation is not the type of activity practiced, which may otherwise be lawful, but the relationship between the victim and the employer and the circumstances under which one works"⁴⁰.

³⁶ CoE Explanatory Report to the CoE Convention On Action Against Trafficking In Human Beings, 16.5.2005, par. 74.

³⁷ *Idem*, par. 76.

³⁸ *Idem*, par. 77-78. Common denominator of both remains, of course, the fact that they are a highly profitable business for traffickers. Office for the Study and Management of Trafficking/KEELPNO/Ministry of Health and Social Solidarity, *Trafficking and Smuggling. From the definition to practice*, October, 2009, p. 6. For distinguishing between trafficking in human beings and migrant smuggling, see Ministry of Interior and Administrative reconstruction, First Reception Service, *Trafficking and exploitation of human beings. Trafficking*, October 2005, p. 7.

³⁹ Office for the Study and Management of Trafficking, *Trafficking and Smuggling. From the definition to practice, op. cit.*, p. 5.

⁴⁰ Research project Pythagoras II – Gender – Equality, entitled "The Legal Status for foreign women-victims of exploitation and illegal international trafficking", Department of International Studies, Department of Law, Aristotle

20. In the present text of recommendations, the GNCHR, aiming in particular at monitoring the compliance of the competent national Authorities to the ECtHR judgment *Chowdury and Others v. Greece*, focuses on trafficking for the purpose of labour exploitation. In doing so, however, the GNCHR is under no circumstances disregarding the importance of other forms of exploitation, which it has also dealt with in the past⁴¹. Nonetheless, for a more effective approach to the issue, the GNCHR will deal exclusively, in the present text, with human trafficking for the purpose of labour exploitation and forced labour⁴².

21. The term "*forced or compulsory labour*" means, according to Article 2(1) of the International Labour Organization (ILO) Forced Labour Convention (No 29), "*all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily*". In the context of this ILO definition, it is worth highlighting two critical points for understanding the concept of forced labour: the concept of menace and the voluntary nature of the person's offer. In particular, according to the ILO Comprehensive Report on Compulsory work for 2009, entitled *The cost of coercion*, which is essentially a text monitoring the implementation of the ILO Declaration on Fundamental Principles and labour rights, regarding at first the retaliation threat, it may take different forms, ranging from the most extreme to subtler forms of menace, sometimes of a psychological nature, such as, for example, threats to denounce victims to the police or immigration Authorities when their employment status is illegal or penalties of financial nature, including economic penalties linked to debts⁴³. As regards "voluntary offer", the ILO noted with emphasis that "any victims enter forced labour situations initially out of their own choice, albeit through fraud and deception, only to discover later that they are not free to withdraw their labour, owing to legal, physical or psychological coercion. Initial consent may be considered irrelevant when deception or fraud has been used to obtain it"⁴⁴.

22. According to the International Trade Union Confederation (ITUC) Mini Action Guide to Forced Labour, cases of forced labour can be detected by means of specific indicators linked either

University of Thessaloniki, Prof. Z. Papasiwpi-Passia, funded by the EPEAEK and the AUTH Research Committee, 2008, p. 54 et. seq.

⁴¹ GNCHR, *Opinion and recommendations with regard to the issue of human trafficking – The situation in Greece*, *op.cit.*

⁴² From the explicit prohibition of compulsory work, the Greek Constitution establishes exceptions "in the event of war or mobilisation or to face defence needs of the country or urgent social emergencies resulting from disasters or liable to endanger public health, as well as the contribution of personal work to local government agencies to satisfy local needs"(Article 22(4b)). These are cases where citizens are called upon by the State to fulfil their "duty of social and national solidarity" (Article 25(4)). In the present text, the GNCHR will not deal with these two exceptions to the prohibition of compulsory work.

⁴³ ILO, *The cost of coercion*, Report of the Director-General, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference, 98th Session, 2009, Report I(B), par. 24, p. 5 et seq.

⁴⁴ *Idem*, par. 25, p. 6.

to the menace of penalty or to the lack of consent to work⁴⁵. In particular, indications as to whether the offer of employment by the employee was actually voluntary or not - or else, according to the Guide of ITUC, indications for the "route into" forced labour - are the following elements: birth or inheritance into "slave" or bonded status, physical abduction, sale of a person into the ownership of another, physical confinement in the work location, in prison or in private detention, psychological compulsion (i.e. an order to work, backed up by a credible threat of a penalty for non-compliance), induced indebtedness (by falsification of accounts, inflated prices, reduced value of goods or services produced, excessive interest charges, etc), deception or false promises about types and terms of work, withholding and non-payment of wages, retention of identity documents or other valuable personal possessions. At the same time, indications of a menace or a penalty - or else means of "keeping" a person in forced labour - are the following factors: physical violence against worker or family members or close associates, sexual violence, threat of retaliation, imprisonment or other types of physical confinement, financial penalties, denunciation to authorities (police, immigration services, etc) and deportation, dismissal from current employment, exclusion from future employment, exclusion from community and social life in general, removal of rights or privileges, deprivation of food, shelter or other necessities, shift to even worse working conditions, loss of social status⁴⁶.

23. At this point, it is crucial to clarify that labour exploitation is not always a consequence of human trafficking, components of which include the performance of certain acts, using unfair means, for the purpose of exploitation. The victims of labour exploitation are not necessarily forced to work. They are exploited because the conditions under which they work are far below the conditions that are considered acceptable by law as minimum standards (thresholds, safety nets) of labour protection⁴⁷.

24. As aptly illustrated in a survey of the EU Fundamental Rights Agency, labour exploitation covers a wide range of criminal offenses, spanning from serious crimes such as slavery and other criminal actions of severe labour exploitation, to other, milder forms of labour exploitation which fall within the scope of civil and labour law⁴⁸. The term "severe labour exploitation" also refers to the cases reflected in Article 9(1) of the Employer Sanctions Directive (2009/52/EC) with regard to the employment of third country nationals in an irregular situation with "particularly exploitative working conditions" and includes, in particular, continuous or systematically recurrent infringements, involving the simultaneous employment of a significant number of third-country nationals in an irregular situation, infringements involving particularly exploitative working

⁴⁵ ITUC, *Forced Labour. Mini Action Guide*, May 2008, p. 8.

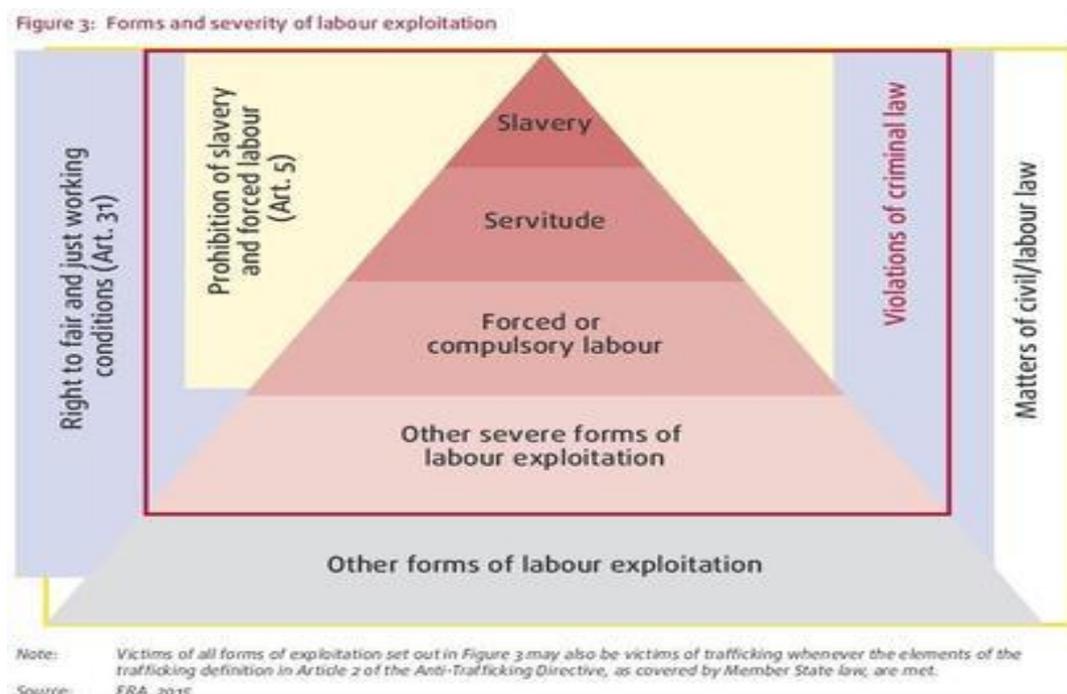
⁴⁶ *Ibidem*.

⁴⁷ FRA *Severe Labour Exploitation: Workers moving within or into the European Union-states' obligations and victims' rights*, June 2015, p. 12-13.

⁴⁸ *Idem*, p. 34-35.

conditions, offenses committed by employers who take advantage of the work or services of third-country nationals in an irregular situation, acknowledging the fact that they are victims of human trafficking, as well as offenses concerning the illegal employment of minors⁴⁹. As far the "particularly exploitative working conditions" are concerned, "there is a striking disproportion compared with the terms of employment of legally employed workers which, for example, affects workers' health and safety, and which offends against human dignity" (Article 2 (i) of Directive 2009/52/EC). This wording also refers to Article 31 of the Charter of Fundamental Rights of the EU, according to which "every worker has the right to working conditions which respect his or her health, safety and dignity". In other words, the term "severe labour exploitation" refers to work situations which significantly differ from the usual fair and reasonable working conditions, as they are specified by labour laws and other regulations, such as provisions of collective agreements, particularly with concern to remuneration, working hours, holidays, health and safety and the treatment of the employee with dignity and respect⁵⁰.

25. The following figure, as set out by the EU Agency for Fundamental rights, illustrates the forms and severity of labour exploitation⁵¹:



⁴⁹ *Ibidem*.

⁵⁰ *Idem*, p. 35-36.

⁵¹ FRA, *Severe labour exploitation: workers moving within or into the European Union - States' obligations and victims' rights, op.cit.*, p. 34

26. The economic sectors in which labour exploitation is mostly developed are *inter alia* agriculture, construction, domestic work, mining and the provision of services⁵². In fact, victims, especially in the agricultural sector, work as – in earlier times - slaves in plantations, under appalling living conditions, and with minimal to no remuneration at all. This description is also reflected in the facts of the ECtHR judgment in the "Manolada Case", where it is stated that the applicants, most of whom "[were] illegal migrants coming from Pakistan and Bangladesh, [...] working in greenhouses from 7am until 7 pm, all seven days, under the control of armed guards paid by [the employer], they were living in casual shrinks made of cardboard, nylon and canes, without toilets and running water. They alleged that their employers had warned them that they would not pay their wages unless they continued working for them"⁵³.

27. This is a form of exploitation which concerns - not exclusively, but mostly - migrant workers, as it has been observed that persons who flee their country, either to avoid persecution, seeking international protection or to look for better living conditions, are particularly vulnerable to trafficking and exploitation. Indeed, according to the ILO Global Trafficking Report for 2016, the majority of recognised victims of trafficking (approximately 60%) are third-country nationals. Most of them are *international migrants*⁵⁴, moving from one country to another. The vulnerability of persons seeking safer living conditions confirms the findings of the research of the International Organization for Migration (IOM), which was conducted on a sample of 2.385 immigrants and refugees, from December 2015 until March 2016, on recent mixed migration flows along the route of the Western Balkans from Turkey and Greece to Western Europe, according to which, more than 7% of the respondents reported at least one trafficking or exploitation incident during their journey⁵⁵. This finding highlights the severity of the phenomenon.

28. It has been proven difficult to quantify the phenomenon of trafficking in human beings at a global scale, because of its clandestine nature. Nevertheless, the statistics available are often indicative of the alarming dimensions of the phenomenon. Trafficking for the purpose of labour exploitation constitutes, according to the United Nations Office on Drugs and Crime (UNODC), the third largest and fastest growing criminal activity worldwide, similar to the arms' industry and the

⁵² ILO, *Profits and poverty: The economics of forced labour*, Special Action Programme to Combat Forced Labour (SAP-FL), Fundamental Principles and Rights at Work Branch (FPRW), 2014, p. 7, 16, as well as Eurostat, *Trafficking in human beings*, 2015, p. 29.

⁵³ ECtHR, *Chowdury and Others v Greece* [application no.: 21884/2015], 30.3.2017, par. 5-7.

⁵⁴ ILO, *Global Report on trafficking in persons 2016*, p. 57 et seq. United Nations (ST/ESA/STAS/SER.M/58/Rev.1, United Nations Department of Economic and Social Affairs, Population Division, *United Nations Recommendations on Statistics of International Migration, Revision 1*, 1998) has defined the concept of "international migrant" as "any person who changes his or her country of usual residence" (par. 32, p. 9).

⁵⁵ IOM, *Mixed Migration Flows in the Mediterranean and Beyond*, Findings: Counter –Trafficking Survey, Data Collected 7 December 2015-14 March 2016. According to the IOM, Afghans, Syrians and Pakistanis reported higher rates of human trafficking in the Eastern Mediterranean than other nationalities.

trafficking of illegal substances⁵⁶. In fact, according to the ILO estimates, 21 million people worldwide, mostly adult women and girls, are in forced labour, which is estimated to generate illegal profits reaching the amount of 150 billion dollars, out of which 9 billion a year come from forced labour in the agricultural sector, including forestry and fisheries⁵⁷.

29. More specifically, the most recent survey of the ILO and the Free Walk Foundation recorded 40.3 million victims of "modern slavery" during 2016, including around 25 million trapped in forced labour, while a quarter of them were children⁵⁸. However, according to the United Nations Office on Drugs and Crime (UNODC) Global Report, the victims officially recognised by the competent national Authorities, between 2012 and 2014, in 106 countries, reach just 63.251⁵⁹.

30. At a European level, as reported by Eurostat, for the period 2010-2012, 30.146 victims of human trafficking were recorded in the 27 EU Member States, out of which 80% were women, while over 1.000 children were victims of trafficking for sexual exploitation⁶⁰. For these cases, the prosecutions recorded for the same period were only 8.805 and the convictions were only 3.855⁶¹. At the same time, according to statistics provided by the Member States for a relevant European Commission Report on combating the phenomenon of trafficking in human beings, for the period 2013-2014, a total of 15.846 victims of trafficking in human beings in the EU (both identified and presumed)⁶² was registered, of which, 67% were victims of trafficking for the purpose of sexual exploitation and 21% victims of trafficking for the purpose of labour exploitation. More than three quarters of the registered victims were women (76%), while at least 15% of the victims were children⁶³. For these cases, only 4.079 prosecutions and 3.129 convictions for trafficking in human beings were recorded⁶⁴. The dimensions of the phenomenon are obviously overwhelming, and the gap between the problem and the inadequate and ineffective manner to address it is, beyond any doubt, clear.

⁵⁶ UNODC, *Estimating illicit financial flows resulting from drug trafficking and other transnational organized crimes. Research report*, October 2011, as well as *Global Financial Integrity, Transnational Crime and the Developing World*, by C. May, March 2017, p. xi-xii.

⁵⁷ ILO, *Profits and poverty: The economics of forced labour*, *op.cit.*, p. 15.

⁵⁸ ILO / Free Wald Foundation, *Global estimates of modern slavery: forced labour and forced marriage*, 2017, p. 9-10.

⁵⁹ UNODC, *Global Report on Trafficking in Persons*, Vienna, 2016, p. 23.

⁶⁰ Eurostat, *Trafficking in human beings*, *op.cit.*, σελ. 29.

⁶¹ *Ibidem*.

⁶² In accordance with the definition in the anti-trafficking Directive, the term "identified victim" refers to a person who has been formally identified by relevant authorities as a victim of trafficking. The term 'presumed victim' is used for a victim of trafficking who has met the criteria of the EU Directive but has not formally been identified by the competent authorities as a victim, or has declined to be formally and legally identified as a victim of trafficking. Some Member States have included both categories in their data collection, whereas others only include one of the two categories.

⁶³ European Commission, *Report to the European Parliament and the Council on the progress made in the fight against trafficking in human beings (2016) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims* (SWD (2016) 159 Final), 19.5.2016 COM (2016) 267 Final p. 4.

⁶⁴ *Idem*, p. 5.

31. This contradiction is occurring in Greece too, with these two parallel realities of the alarming spread of the phenomenon and the inability to effectively detect and combat it, still remaining relevant today, despite the fact that our Country has been, through the years, a country of destination, transit and, to a limited extent, origin of victims of trafficking in human beings, both for sexual and labour exploitation purposes⁶⁵. Indeed, trafficking in human beings is an unseen crime, which is difficult to establish. The National Rapporteur for Combating Human Trafficking has also agreed with this finding, during the hearing of persons and institutions, carried out by the GNCHR⁶⁶. That is why the statistical data regarding cases of human trafficking remain limited. In particular, according to official data provided by the Greek Police on trafficking in human beings, in 2017, in Greece, only 21 cases of *trafficking* were recorded, while the relevant figure for 2016 was slightly higher, reaching 25 cases. Out of these, for 2017, no case concerning labour exploitation was recorded, while just one was specifically about begging. Respectively, for 2016, the data are slightly differentiated, as only 3 trafficking cases have been recorded for the purpose of labour exploitation and 4 especially for begging⁶⁷.

32. The problem, of course, with the statistical data about trafficking of human beings in Greece is not limited to the fact that they do not reflect the actual dimensions that this phenomenon has taken, but also extends to the fact that their collection is fragmented and without coherence. This is also highlighted by the Council of Europe Experts, who noticed, in their report for Greece, that in our Country the data on trafficking in human beings are collected by many different bodies⁶⁸. Indeed, every public Authority or NGO dealing with the issue of human trafficking collects and maintains its own data. Apart from the statistics collected by the Police Authorities which, as observed by the experts of GRETA, do not consistently refer to the same categories of exploitation, statistics are also maintained by the Ministry of Justice, Transparency and Human Rights on convictions under articles 323A and 351 of the Criminal Code, as well as by the Residence Permits Department of the Ministry for Migration Policy, concerning residence permits granted to victims of *trafficking*. At the same time, the introduction of a new system is expected, for collecting judicial data on prosecutions and convictions of perpetrators of human trafficking, while the creation of a

⁶⁵ Department of State, USA, *Trafficking in persons report*, June 2017, p. 186, available at: <https://www.state.gov/documents/organization/258876.pdf>

⁶⁶ The hearing of individuals and institutions. carried out at the initiative of the GNCHR, on 23 November 2017, was also attended by the National Rapporteur for Combating Human Trafficking, Mr I. Moskof. For more details see *supra*, p. 7, as well as footnote no. 11, p. 7.

⁶⁷ Ministry of Citizen Protection, Greek Police, Statistics: Human trafficking, available at: http://www.astynomia.gr/index.php?option=ozo_content&perform=view&id=76629&Itemid=73&lang.

⁶⁸ CoE, GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece*, First evaluation round, Adopted on 7 July 2017, Published on 18 October 2017, GRETA(2017)27, par. 85.

common database, which is one of the key competences of the National Rapporteur for Combating Human Trafficking, has been significantly delayed due to, among other things, the lack of funds⁶⁹.

33. A deficiency in the collection and processing of relevant data is also found with regard to the detection of forced labour conditions by the competent inspection mechanisms of labour and social security (Hellenic Labour Inspectorate, SEPE and Unified Social Security Fund, EFKA respectively), given the fact that unfortunately there is lack of policies on inspecting and identifying forced labour conditions, along with competency issues, as is, for example the non-clarification of the competence and inspection procedures of labour inspection in the agricultural sector. It should be noted that there is no field for recording and registering data concerning the detection of forced labour or trafficking conditions, in the labour and social security databases maintained in the relevant information systems (ERGANI, OPS SEPE, IDIKA, OPS EFKA, etc.). Even more, it should be taken under consideration that those systems are mostly related to the declaration of employment with an employment contract, which however is neither the only nor the usual route of employment of workers in the agricultural sector, which is usually done through a labour ticket. Employment through this labour ticket in the agricultural sector gives employers the option to legally refrain from disclosure requirements of the staff they employ, blindly spotting the competent auditing bodies, while these workers are institutionally and statistically invisible. It is equally noteworthy that after merging the Agricultural Insurance Organization (OGA) into the Unified Social Security Fund (EFKA), which bore the responsibility to insure land workers, there are no data available from the 1st January 2017 and thereafter, for land workers who are paid and insured with a labour ticket, due to malfunctions⁷⁰. Unfortunately, events threatening the life of workers in the agricultural sector, such as the recent fire (June 2018) in a farm workers camp in Manolada, demonstrate the lack of provision for the basic health and safety conditions for land workers and, consequently, the degree of violation of the labour legislation, since the employer's duty to protect his employees' welfare is linked, in the Greek legal order, to the existence of an employment contract (Law 3850/2010). The GNCHR also notes that Article 109 of Law 4485/2017 for establishing the obligation to keep a "Book of Daily reports of employed personnel in farming and fishing" fails to comprehensively address the phenomenon of "invisible workers", as it only applies to fish workers' employment contract or relationship, by one or more employers, including citizens of third countries employed in agricultural work, but whose employment under contract is necessarily linked to their declaration in public information systems, hence to the possibility of

⁶⁹ *Ibidem*. See also D. Angeli, *Demand in the Context of Trafficking in Human Beings in the Domestic Work Sector in Greece*, DemandAT Country Study No 4, 2016, p. 24, available at: http://www.demandat.eu/sites/default/files/DemandAT_CountryStudies_4_Greece_Angeli.pdf.

⁷⁰ According to the information provided by the Greek General Confederation of Labour (GSEE) to the GNCHR, these data are derived from a specific study on the assessment of the labour ticket (ergosimo) system in Greece, which was elaborated in the framework of the implementation of the Road Map for fighting Undeclared Work in Greece, in 2018, for the Ministry of Employment, Social Security and Social Solidarity (author: A. Kapsalis).

control by the competent audit services. In the light of the Chowdury judgment, it is obvious that the abovementioned deficits demonstrate that forced labour is real but invisible, up until it reaches the threshold of criminal behavior falling within the scope of criminal law.

34. Taking into account the need to ensure a *human rights-based approach* to effectively combat trafficking in human beings or/and forced labour, adequate monitoring and evaluation of data related to the development of the phenomenon is a prerequisite for the beginning of solving the problem. To this end, it is necessary to regularly evaluate the data obtained through the relevant public databases, containing critical elements, both on trends in human trafficking and forced labour, as well as on the performance of key stakeholders involved in combating trafficking and forced labour in the Country, with due respect for the protection of personal data of victims and perpetrators⁷¹.

⁷¹ CoE, GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece, op.cit.*, par. 84 et seq.

III. THE EXISTING REGULATORY AND INSTITUTIONAL FRAMEWORK ON COMBATING TRAFFICKING IN HUMAN BEINGS OR/AND FORCED LABOUR

35. Consistent with the purpose of its mission, which is to formulate specific proposals and recommendations to the competent national Authorities on matters pertaining to human rights promotion and protection and, in this particular case, for the compliance with the ECtHR judgment *Chowdury and Others v. Greece*, the GNCHR attempts, in this subsection, a more focused approach to the existing regulatory (A) and institutional framework (B) on combating trafficking in human beings and/or forced labour, which will allow its evaluation, on a second level, in order to identify the causes leading to the growing phenomenon of human trafficking for the purpose of labour exploitation and forced labour.

36. [...]

[The full text of the present subsection is available only in Greek language on the GNCHR webpage].

IV. IMPLEMENTATION AND EVALUATION OF THE EXISTING REGULATORY AND INSTITUTIONAL FRAMEWORK ON COMBATING TRAFFICKING OR/AND FORCED LABOUR

66. Starting from the observation of the existence – at least *prima facie* - of a wide range of legislative and regulatory provisions and policies adopted and implemented by the Greek State in the fight against trafficking in human beings and forced labour – a finding which obviously is in direct conflict with the conviction of our Country by the ECtHR in the "Manolada case" for breaching Article 4(2) of the ECHR, the conclusion reached by the Strasbourg Court on "the obligation to establish an appropriate legal and regulatory framework"⁷² seems reasonable and unsurprising:

*"[...] The Court therefore finds that Greece has essentially complied with the positive obligation to put in place a legislative framework to combat human trafficking"*⁷³.

67. The problem – as it has been repeatedly demonstrated by the GNCHR, particularly with regard to the most vulnerable social groups, such as migrants, refugees, asylum seekers or irregularly staying third country nationals – is related to the enjoyment of human rights in practice. The gap of protection is located between the law and its implementation in practice⁷⁴. Once again, the GNCHR notes with deep concern that unconditional recognition of the universality of human rights is not sufficient when their effectiveness is subject to their selective case-by-case application in practice. An important obstacle to the promotion and protection of fundamental human rights is the

⁷² ECtHR, *Chowdury and Others v Greece* [application no.: 21884/2015], 30.3.2017, par. 105 et seq.

⁷³ *Idem*, par. 109.

⁷⁴ The major gap between legislation to combat trafficking in human beings and its application is deplored, among other things, by a resolution of the European Parliament. See European Parliament, *Combating trafficking in human beings in the EU's external relations, European Parliament resolution of 5 July 2016 on combating trafficking in human beings in the context of the EU's external relations* (2015/2340 (INI)), P8_ta (2016) 0300 (2018/C 101/04), par. 6.

existence of difficulties in implementing them in practice, while the most vulnerable groups often require specific action to ensure full exercise by everyone, without distinction, of their rights.

68. This emblematic judgment of the ECtHR was acclaimed as a vindication of the land workers who appealed to the Strasbourg court, both by the civil society⁷⁵, as expected, and by official State institutions⁷⁶, who warmly welcomed it as a very important step to effectively address the labour exploitation phenomenon in our Country. Nevertheless, five years after the tragic incident in the Manolada fields which shocked the public opinion, the lack of commitment and the complacency of the competent State authorities on the harsh human rights violations of hundreds of people who are severely exploited, do not seem to have been eliminated. Unfortunately, incidents like the serious accident at the onion fields in Thiva, on the 16th June 2016 or the fire, on the 7th June 2018, in an improvised camp made of canes and plastic in the area of N. Manolada, which of pure luck did not result in any fatalities, have led to the realisation of the extent of such problems that accompany employment in the agricultural sector of our Country for years and proved that the working conditions of Manolada did not constitute an occasional phenomenon, but they still apply throughout the country, highlighting tragically the perpetual state and employer tolerance to incidents of severe labour exploitation.

69. It is of critical importance to point out that this tolerance does not seem to be limited only to the attitude of the competent national authorities and employers but is also expanded, as demonstrated by relevant research by the EU Fundamental Rights Agency, to the general perception of citizens, who do not give the impression to realise the gravity of the exploitation of their fellow human beings⁷⁷. As very aptly noted by the ILO's diagnostic report, in 2016, "undeclared labour, from an institutional point of view, is interpreted as a phenomenon arising when the failures of formal institutions have the effect of misalignment between the ethics of the State and the Citizens"⁷⁸. The ILO concludes that in order to combat undeclared labour, as well as the phenomenon of labour exploitation in general, it is an absolute priority to reduce the gap between the ethics of the State and the ethics of its citizens. And to do so, a necessary precondition is to

⁷⁵ See for example Amnesty International, *Victory for the strawberry harvest workers who were shot and were victims of human trafficking and forced labour*, Press Release, 31 March 2017, GSEE, *GSEE calls for immediate measures of compliance with the ECtHR's judgment on the conditions of modern slavery in the agricultural sector in Greece – a crucial provision of the new national general CRS*, Press Release, 31 March 2017, HLHR, *Forced labour and Greek justice*, Press Release, 3 April 2017, GCR, *Final decision for the vindication of the victims of Manolada*, Press Release, 14.7.2017.

⁷⁶ See interventions of A. Kavadias, A. Christodouloupoulou and G. Psychogi to the Council of Europe: "No more big words for the refugee crisis. Time for Action", Strasbourg, 3 July 2017, available on the website of the Greek Parliament: <https://www.hellenicparliament.gr/Enimerosi/Deltia-Typou?press=bd2d25cb-6b8d-4fd9-95dc-a7a500ce64b2>, as well as SYRIZA, Question to the Ministers of Finance, Justice, Transparency and Human Rights and Foreign Affairs, on: *Seeking and attributing responsibility for the request for review of the judgment of the European Court of Human Rights on migrants of New Manolada*, no: 7193/12.7.2017.

⁷⁷ FRA, FRA, *Severe labour exploitation: workers moving within or into the European Union - States' obligations and victims' rights*, op.cit., p. 53.

⁷⁸ ILO, *Diagnostic report on undeclared work in Greece*, 2016 p. 9-10.

resolve or correct these failures and shortcomings of the official institutions which have resulted to an extensively undeclared economy⁷⁹.

70. But what remains of a right when it is deprived of its effectiveness in exercising it? A year after the ECtHR judgment was made final⁸⁰, and in the framework of its monitoring function, the GNCHR attempts an evaluation of the implementation of the above regulatory and institutional framework and the fulfillment of the objectives it sets. To this end, the GNCHR draws information from the institutions and individuals who participated in the hearing organised by the GNCHR, on the 23rd of November 2017, and by international or European institutional reports on the phenomenon of human trafficking and forced labour in Greece.

71. This evaluation is built upon three thematic axes: the prevention of trafficking in human beings for the purpose of labour exploitation or/and forced labour (A), the promotion and protection of the rights of victims of trafficking in human beings for the purpose of labour exploitation and forced labour (B) and the effective investigation and prosecution of human trafficking crimes for the purpose of labour exploitation and forced labour (C), essentially following the rationale of the ECtHR judgment, in the "Manolada case"⁸¹, according to which:

«[...] There has accordingly been a violation of Article 4 § 2 on account of the failure of the respondent State to fulfil its positive obligations under that provision, namely the obligations to prevent the impugned situation of human trafficking, to protect the victims, to conduct an effective investigation into the offences and to punish those responsible for the trafficking»⁸².

A. Preventing trafficking in human beings for the purpose of labour exploitation or/and forced labour

72. As far as operational measures to prevent trafficking in human beings or/and forced labour are concerned, the ECtHR noted that:

"[...] the Council of Europe's Anti-Trafficking Convention calls on the member States to adopt a range of measures to prevent trafficking [...]. The preventive measures [...] include measures to strengthen

⁷⁹ *Idem*, p. 10.

⁸⁰ The ECtHR judgment was issued on 30 March 2017 and became final 3 months later, on 30 June 2017. It is, of course, recalled that, as is evident from parliamentary scrutiny, and more specifically from a relevant question tabled by members of SYRIZA and the answer of the competent Minister for Justice, Transparency and Human Rights, before the end of this three-month period (30 June 2017), the Greek Government requested the referral of the case to the Grand Chamber for fresh consideration. The request was revoked a few days later. See with regard to SYRIZA, question on: *Seeking and attributing responsibility for the request for review of the judgment of the European Court of Human Rights on migrants of N. Manolada, op.cit.* and Ministry of Justice, Transparency and Human Rights, Department of Parliamentary Scrutiny, [Answer] to question 7193/12.7.2017, 16.10.2017.

⁸¹ The reasoning for the ECtHR judgment *Chowdury and Others v. Greece* followed along the entire subsection on the assessment of the regulatory and institutional framework on combating trafficking in human beings for the purposes of labour exploitation, while, where necessary, for the purposes of facilitating the reader, through extracts from critical thoughts of the judgment are listed.

⁸² ECtHR, *Chowdury and Others v. Greece* [application no.: 21884/2015], 30.3.2017, par. 128.

coordination at national level between the various anti-trafficking bodies and to discourage the demand, which promotes all forms of exploitation of persons, including border controls to detect trafficking"⁸³.

73. Finally, concluding that:

"[...] the operational measures taken by the authorities were not sufficient to prevent human trafficking [...]"⁸⁴.

74. One year has passed since the ECtHR judgment has become final, but what has really changed? As regards the obligation of establishing and reinforcing effective policies and action plans to prevent trafficking in human beings and/or forced labour⁸⁵, the first evaluation by GRETA experts of the Council of Europe is rather damning with regard to the competent Greek authorities, pointing out serious pathologies in the implementation of the relevant legal framework⁸⁶. Although the Council of Europe experts acknowledge the serious efforts of the Greek State to fulfill its obligations under its commitments to combat human trafficking, through constant legislative amendments, they cannot fail to emphasise the lack of a national strategy or an action plan against trafficking in human beings, which must be immediately prioritised by the Greek Authorities, accompanied by a mechanism to monitor their implementation⁸⁷.

75. In fact, in light of the ECtHR judgment in the "Manolada case", the GRETA Experts estimate that a national strategy is necessary to focus *inter alia* in strengthening actions against trafficking in human beings for the purpose of labour exploitation⁸⁸. Furthermore, in the case of Greece, and taking into account the dimensions of the refugee/migration crisis, which threatens fundamental human rights – in particular those of asylum seekers and refugees – GRETA stresses the need for the initiatives and preventive actions to be realised mainly through social and economic protection measures, mostly of the most vulnerable groups such as asylum seekers, migrants or unaccompanied minors⁸⁹. Starting from the assumption that the main causes of creating and maintaining the phenomenon of trafficking in human beings lie in the victim's vulnerability, mainly due to poverty, marginalisation, economic exclusion, social and gender inequalities or even discrimination against ethnic minorities, one reasonably concludes that the more vulnerable a social group is, the higher their victimisation rates are, not limited to forced labour.

⁸³ *Idem*, par. 110.

⁸⁴ *Idem*, par. 115.

⁸⁵ According to Article 5 of the Council of Europe Convention on Action against Trafficking in human beings, Member States are required to take appropriate measures *inter alia* for research, information, awareness-raising and training on these matters, while promoting a human rights based approach and integrating the dimension of gender equality and the child friendly approach in the development, implementation and evaluation of these policies and programmes.

⁸⁶ CoE, GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece, op.cit.*

⁸⁷ *Idem*, par. 67, 71.

⁸⁸ *Idem*, par. 68.

⁸⁹ *Idem*, para. 113 et seq.

76. It is also important to emphasise that, as pointed out during the hearing of individuals and institutions organised by the GNCHR, legal employment in Greece - and therefore addressing in the most effective manner the phenomenon of the exploitation of the vulnerable social group of immigrants - depends on the employee's legal residence in the Country. Despite the fact that the number of irregular residents in the country has decreased significantly in recent years, following some corrective movements that have taken place between 2014 and 2015, and before the Balkan Corridor closed in 2016, there is a gradual de-legalisation of migrants. After the closing down of the Corridor, many are those who stayed in Greece. There is a reduction in the total number of residence permits, while increasing trends are shown on the number of rejected international protection applications, of individuals added up as irregularly staying in the country. According to estimates by the Labour Institute of the Greek General Confederation of Labour (GSEE), in 2017, immigrants residing in our Country without residence permits in force were estimated at 500.000, since in the last five years, due to the consequences of the recession and the crisis, there has been a residence *status* de-legalisation for at least 200.000 permanently settled migrants⁹⁰. The situation thus, in absence of an institutionalised mechanism for access to legal residence *status* for all foreign residents living and working in Greece, remains worrying, insofar as problems afflicting today immigrants, of either excluding them from the process or putting their settlement status at risk, continue to exist today despite the focus on their social inclusion, which is impossible without dealing with the issue of their legal residence in the Country.

77. In addition, the Council of Europe experts expressed their concern about the impact of the tightening up of the entry procedures and the closing down of borders, especially on families and unaccompanied minors, who unfortunately are being exposed to exploitation and trafficking when they seek the help of smugglers and try to raise money for their journey⁹¹. According to the competent Greek authorities, indeed, the mixed migratory flows arriving in Greece pose a specific challenge for border management, because the arriving persons have to be screened and controlled. But at the first stage of control, there is little indication of trafficking in human beings⁹². Therefore, in order to reinforce the measures to prevent human trafficking, the Council of Europe experts recommend the strengthening of the efforts of the Greek authorities to detect cases of human trafficking in the context of border controls⁹³.

⁹⁰ GSEE, Press Release, 16 June 2016 and 31 March 2017.

⁹¹ CoE, GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece, op.cit.*, par. 14. See also in this regard CoE, Parliamentary Assembly, Report by Ms Tineke Strik, *Refugees at Risk in Greece*, Committee on Migration, Refugees and Displaced Persons, Parliamentary Assembly of the Council of Europe, Doc. 14082 Add, 20 June 2016.

⁹² CoE, GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece, op.cit.*, par. 126.

⁹³ *Idem*, par. 128.

78. Also, according to the report of GRETA, the Greek Authorities are required to comply with their positive obligation to adopt or/and strengthen initiatives and actions to discourage demand for the services of victims of trafficking of any form of exploitation and to emphasise, in cooperation with NGOs, trade unions and the private sector, the criminalisation of knowingly using the services of trafficked persons⁹⁴. Raising awareness of public opinion as a tool for the effective prevention of the phenomenon of trafficking in human beings must be treated with propriety and diligence by the Greek State, which should reinforce the initiatives already taken, by the Office of the National Rapporteur for Combating Human Trafficking and the General Secretariat for Gender Equality of the Ministry of Interior. The awareness-raising measures should aim to cover the whole country and must focus on the needs identified through research and evaluation of the impact of previous awareness-raising projects⁹⁵.

79. At the same time, with regard to the existing legislative framework, GRETA considers that stating the irrelevance of the consent of a victim of trafficking to the intended exploitation, when any of the means are used, could improve the implementation of the anti-trafficking provisions⁹⁶. According to GRETA experts, the Greek authorities should ensure that the criminalisation of trafficking in children fully reflects the provisions of Article 4 of the Convention, so that it is clear that recruiting, transporting, supporting or receiving a child for the purpose of exploitation is criminalised as trafficking in human beings without having to prove the use of any of the means of trafficking such as, among others, threat, violence or other forms of coercion, abduction, fraud or abuse of power or exploitation of a particularly vulnerable position, or offering money or privileges⁹⁷. The Greek Criminal Code actually punishes child trafficking as an aggravating circumstance in Articles 323A(4) and 351(4), but fails to specify, as required by the Convention, that it is immaterial whether any of the means have been used.

B. Promotion and protection of the rights of victims of trafficking in human beings for the purpose of labour exploitation or/and forced labour

80. On a second level, with regard to the operational measures aiming at protecting the rights of victims of trafficking in human beings and/or forced labour :

"[...] the Council of Europe's Anti-Trafficking Convention calls on the member States to adopt a range of measures to prevent trafficking and to protect the rights of victims [...] Protection measures include facilitating the identification of victims by qualified persons and assisting victims in their physical, psychological and social recovery. [...]. In the present case, the Court notes at the outset that, well before the incident of 17 April 2013, the situation in the strawberry fields of Manolada was known to

⁹⁴ *Idem*, par. 112.

⁹⁵ *Idem*, par. 103.

⁹⁶ *Idem*, par. 51.

⁹⁷ *Idem*, par. 53.

the authorities, whose attention had been drawn to it by reports and press articles [...].The Court notes, however, that there had only been a sporadic reaction on the part of the authorities, which had failed, at least until 2013, to provide a general solution to the problems encountered by migrant workers in Manolada. [...] the Amaliada police station appeared to be aware of the refusal of the applicants' employers to pay their wages [...]"⁹⁸.

81. Finally, concluding that:

"[...] the operational measures taken by the authorities were not sufficient to prevent human trafficking or to protect the applicants from the treatment to which they were subjected"⁹⁹.

82. Indeed, in the context of their positive obligations under Article 4 of the ECHR and the provisions of the Council of Europe Convention on Action against Trafficking in Human Beings, States should take appropriate measures to promote and protect trafficked victims' rights, which include safeguarding and improving the identification of victims of trafficking, with special emphasis on the most vulnerable categories of victims, in particular children, including granting a recovery and reflection period when there are reasonable grounds to believe that a person concerned is a victim of trafficking in order to escape the influence of the perpetrators and take an informed decision as to whether to cooperate with the criminal authorities, to ensure that victims have access to renewable residence permits and to compensation and legal aid, as well as facilitating their repatriation and return, while taking due account of their rights, of their safety and integrity.

83. More specifically, as far as the recognition of victims of human trafficking is concerned, in accordance with the GRETA Experts, despite the positive steps taken by the Greek government with regard to the institutional framework for the protection of victims' rights, the process of identifying a victim is officially problematic, as it may take a long time¹⁰⁰. Indeed, as the civil society actors in the field mention, the identification procedure by the Prosecutor's Office, pursuant to the provisions of Article 1(k) of Law 4251/2014 (Immigration and social integration code), can take from 6 to 12 months. In this context GRETA refers to the judgment in the case of *L. E. v. Greece*, in which the ECtHR held that there had been violation of Article 4 of the ECHR (Prohibition of slavery and forced labour). The Case was about a Nigerian national, who had been forced into prostitution in Greece and who had to wait for more than nine (9) months between her statement and the recognition of her victim status by the Authorities¹⁰¹.

84. At the same time and despite the reports identifying forced labour in agriculture, tourism, beverage, food industries and domestic work, there have been few cases of recognised victims of

⁹⁸ ECtHR, *Chowdury and Others v. Greece* [application no.: 21884/2015], 30.3.2017, par. 110-114.

⁹⁹ *Idem*, par. 115.

¹⁰⁰ CoE, GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece, op.cit.*, par. 138.

¹⁰¹ ECtHR, *L.E. v. Greece* [application no.: 71545/12], 21.1.2016.

human trafficking for the purpose of labour exploitation¹⁰². There are also very few cases of officially recognised victims of human trafficking for the purpose of labour exploitation, resulting from inspections of the Hellenic Labour Inspectorate (SEPE)¹⁰³. This fact does not reflect the Greek reality in any case, as indicated not just by the sad incidents in Manolada, but also by the vast number of other incidents recorded by civil society organisations. As noted in the report of the European Commission against Racism and Intolerance (ECRI), the shootings in Manolada in 2013 were nothing but the mere culmination of months of neglect and exploitation of thousands of migrant workers who often suffer from a violent employment relationship¹⁰⁴. Why, however, these parallel realities have been moving asymmetrically for years in Greece?

85. Under the provisions concerning the function and responsibilities of SEPE (Article 2 of Law 3996/2011, as amended), labour inspectors carry out audits in the area of their competence, as defined both in the context of a planned action, as well as after the submission of a named or anonymous complaint. SEPE is therefore responsible for inspecting and monitoring the workplaces by any appropriate means, by carrying out all necessary examination and inspections in all primary, secondary and tertiary sectors, and generally in any private or public place of work or exploitation or any place where workers are likely to be employed. It also conducts inspections in the workplaces at any time, during the day or night, when it deems it necessary, without prior notice to the employer. In addition, it has access to any of the documents, books, registrations, records and any other kind of items, maintained by the business. The competence of SEPE lies within the scope of monitoring employers' compliance to the labour legislation, due to contract or dependent employment relationship. Consequently, with the currently existing rules, SEPE does not have the power to oversee contracts of work or independent services, nor employment through labour ticket (*ergosimo*)¹⁰⁵.

86. According to the public hearing carried out by the GNCHR, SEPE is competent to inspect labour in the agricultural sector. As far as the lack of inspection in open rural areas is concerned, SEPE claimed that it is due to significant particularities, which require a specific approach. To that direction, SEPE strongly recommended the ratification of the International Labour Convention no. 129 and the necessary adaptation of the legal framework for agricultural inspections, in order for the

¹⁰² CoE, GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human beings by Greece, op. cit.*, par. 140.

¹⁰³ It would be interesting to have institutional information on the methodology and inspection protocols used in the joint operation of the Greek police and the SEPE, which was reported that it took place from 15 to 19 May 2018, in the context of the Operational Action Plan "EMPACT- Trafficking In Human Beings (THB)" of Europol. For More Information see Hellenic Republic, *Voluntary national review on the implementation of the 2030 Agenda for Sustainable Development, op.cit.*, p. 75, as well as *A total of 133 arrests. Huge Common Operation Greek Police-SEPE to combat trafficking in human beings*, 22.6.2017, available at: <http://policenet.gr>.

¹⁰⁴ CoE, ECRI, *Report on Greece (fifth monitoring cycle)*, Adopted on 10 December 2014, Published on 24 February 2015, CRI(2015)1, par. 92-93.

¹⁰⁵ See *supra*, par. 33.

relevant national framework to be compatible with the ILO Convention¹⁰⁶. In the Road Map for fighting Undeclared Work in Greece, the content of which was formulated with the technical support of ILO and consisted the subject of a tripartite validation (State, employers, employees) in 2016, the ratification of the International Labour Convention no. 129 is included as an autonomous policy measure with a specific timeline for implementation (31st of December 2018). Participants in the hearing noted that SEPE has the authority to access all workplaces in the private and public sector, at any time of day or night, even without notice, in order to carry out any kind of necessary examination, inspection or check, with regard to the observance of implementation of the labour law provisions¹⁰⁷. However, there was no clear conclusion on the reason why no audits were conducted by SEPE in the agricultural sector, as various and even conflicting opinions have been expressed, such as that SEPE does not have audit competence in open rural areas, it is still understaffed, there is no adequate logistics infrastructure and labour inspectors are not properly trained, as well as that the audits cannot be held safely, unless police forces are present. It was also left unclear, after the inclusion of Agricultural Insurance Organization's (OGA) in the Unified Social Security Fund (EFKA), with Law 4387/2016, which are the social security auditing competencies and the competent control mechanisms.

87. The inability to carry out audits for the implementation of labour legislation is also amplified by the abundance of operational problems faced by SEPE, the main inspection mechanism of the Ministry of Labour, with the most important of them being its understaffing. More specifically, according to the ILO diagnostic report, SEPE employs about 750 employees, of which 324 are labour inspectors and 253 are technical and health inspectors¹⁰⁸. Among the most important problems they face lie the geographical dispersion of the country, the limited resources (inspectors often use their own vehicles, paying for the costs of their transportation), the administrative reforms and the seasonality of audits¹⁰⁹. The important operational problems of SEPE, and in particular its understaffing, has also been pointed out by the ILO's *Committee of Experts on the Application of Conventions and Recommendations (CEACR)*, which in its Observations indicated that the number of labour inspectors and supporting staff of SEPE was inadequate, which had consequences on the effective operation of its services¹¹⁰. The GNCHR recognises the efforts of the Greek State to strengthen the human resources of SEPE, by increasing its posts with presidential decree 134/2017 for the organisation of the Ministry of Labour, Social Security and Social Solidarity (OJ

¹⁰⁶ See hearing of individuals and institutions carried out at the initiative of the GNCHR, on 23 November 2017, which was attended *inter alia* by the former General Secretary of SEPE, Mr. A. Iliopoulos. See *supra* par. 6, as well as footnote no. 11. p. 7.

¹⁰⁷ ILO, *Diagnostic report on undeclared work in Greece*, *op.cit.* p. 47.

¹⁰⁸ *Idem*, p. 47.

¹⁰⁹ *Idem*, p. 47-48.

¹¹⁰ CEACR, *Observations on Labour Inspection Convention, 1947 (No 81), Greece (Ratification 1995), Adopted 2015*, Published 105th Session (2016).

168/A/6.11.2017); nevertheless, it retains some reservations as to whether the distribution of these posts amongst each sector by category, sector and specialty will meet the inspection requirements of labour law, particularly in the agricultural sector, and geographically will cover the entire Country, including rural and island regions.

88. Finally, with regard to SEPE, and beyond the question of its competence to carry out inspections in open rural areas, it is interesting to explore the diagnostic tools available, in order to detect circumstances of "particularly exploitative working conditions"¹¹¹. The diagnosis does not seem to be an easy task for the State's inspection mechanisms. Determining the nature of "particularly exploitative working conditions" requires the combination of a series of more specific criteria. Indicative is the list of indicators relating directly to labour *trafficking* of the United Nations' Office on Drugs and Crime (UNODC), according to which individuals who have been trafficked for the purpose of labour exploitation are typically made to work in sectors such as agriculture, construction or the provision of services and may *inter alia* live in groups in the same place where they work and leave those premises infrequently (if at all); they live in degraded, unsuitable places, such as agricultural or industrial buildings, and they are not be dressed adequately for the work they do; for example, they lack protective equipment or warm clothing, they are given only leftovers to eat, there is no labour contract or access to their earnings, they work excessively long hours, and they depend on their employer for a number of services, including work, transportation and accommodation, lacking housing choices, being unable to leave the work premises without their employer, and generally being unable to move freely, being subject to security measures designed to keep them on the work premises, they are disciplined through monetary fines, and are subject to insults, abuse, threats or violent acts, lacking basic training and professional licenses¹¹². Other indicators that people have been trafficked for labour exploitation include the placement of notices and signs in languages other than the local language, the absence of health and safety notices, the inability of the employer or manager to show the documents required for employing workers from other countries, health and safety equipment is of poor quality or is missing, the equipment is designed or has been modified so that it can be operated by children, there is evidence that labour laws are being breached and that employees must pay for tools, food, or accommodation, or that those costs are being deducted from their wages¹¹³.

89. Another factor which significantly hampers the recognition of victims of trafficking and/or forced labour is, according to the Council of Europe Experts, the difficulties observed in the collection of data and statistics. In particular, as noted in the GRETA report, data collection is fragmented and incoherent, while data is collected by many and differing authorities and NGOs, to

¹¹¹ Such terms are considered to be those who are grossly disproportionate to the working conditions of the legally employed Workers, having a serious impact on the health and safety of Workers, and offend human dignity.

¹¹² UNODC/UN.GIFT, *Human trafficking indicators, Labour exploitation*.

¹¹³ *Ibidem*.

the extent that the consolidation in a comprehensive database by the Office of the National Rapporteur for Combating Human Trafficking has been delayed due to lack of funds¹¹⁴.

90. At the same time, there is a link between the financial crisis and the austerity measures imposed in Greece since 2009, with high unemployment and labour market deregulation, which increase vulnerability to human trafficking and labour exploitation¹¹⁵. It is also noteworthy that 14% of the 1.545 immigrants who arrived in Europe from June to September 2016 via the Mediterranean route, and more specifically Greece, experienced at least one of the indicators of exploitation or human trafficking at some point of the journey¹¹⁶, however there is no information on recognised victims of trafficking or forced labour among asylum seekers. In any case, the inability to provide data on the number of victims has been recorded and it includes the inability to process data collected through psychiatric or psychologist reports (of otherwise not cooperating victims of trafficking), due to the lack of computerisation in the criminal justice system¹¹⁷.

91. Furthermore, the Council of Europe report, as well as the evidence submitted to the GNCHR by civil society organisations who participated in the hearing of the 23rd of November 2017 point out the ineffectiveness of accommodation facilities for victims of trafficking. More specifically, the limited number of specialised shelters for victims of human trafficking and the total lack of specialised shelters for male victims or children have been highlighted¹¹⁸. Specifically, the male victims may be accommodated in accommodation facilities for sexually exploited men, in short-term state shelters for international protection applicants or in shelters for homeless people, while child victims in specialised facilities for victims of trafficking¹¹⁹. Referring, in particular, to victims in rural areas, they have little (if any) access to support services, and are often accommodated in police stations, hospitals, or left without accommodation options at all¹²⁰.

92. With regard to the recovery and reflection period, when there are reasonable grounds to believe that a person is a victim of trafficking, it is worth emphasising that although this measure is legally regulated and the length of the prescribed period is 3 months¹²¹, its implementation in

¹¹⁴ CoE, ECRI, *Report on Greece (fifth monitoring cycle)*, *op.cit.*, par. 86-87.

¹¹⁵ CoE, GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece*, *op.cit.*, par. 14, 67.

¹¹⁶ IOM, *Analysis: Flow Monitoring Surveys – the Human trafficking and Other Exploitative Practices Prevalence Indication Survey*, Reporting Period: June to September 2016, available at: [http://migration.iom.int/docs/Analysis - Flow Monitoring and Human Trafficking Surveys in the Mediterranean and Beyond - 6%20 October 2016.pdf](http://migration.iom.int/docs/Analysis_-_Flow_Monitoring_and_Human_Trafficking_Surveys_in_the_Mediterranean_and_Beyond_-_6%20October_2016.pdf).

¹¹⁷ CoE, GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece*, *op.cit.*, par. 137.

¹¹⁸ *Idem*, par. 151 et seq.

¹¹⁹ Department of State, USA, *Trafficking in Persons Report*, *op. cit.*, p. 185.

¹²⁰ *Ibidem*.

¹²¹ Article 49 of the Immigration and Social Integration Code (Law 4251/2014) reads as follows: "1. Third-country nationals who have been characterised as victims of trafficking in human beings [...] are granted a reflection period of three months by act of the competent public prosecutor in order to escape the influence of the perpetrators of the

practice is rare. There is absolutely no information on the granting of a reflection period, and it is true that the delays in the victim identification process are so long that, even if the reflection period was granted, it would definitely have expired before the victim receives a residence permit. Especially with regard to human trafficking for the purpose of labour exploitation, GRETA experts report that, according to their own information, there are cases in which the Greek authorities deported the victim without providing a recovery and reflection period¹²². Moreover, as stressed in the relevant GRETA Report, the Council of Europe Convention on Action against Trafficking in Human Beings (Article 13) provides for the possibility of recovery and reflection periods not only for recognised victims of human trafficking, but also when there are reasonable grounds for the authorities to believe that the person concerned is a victim of human trafficking and, therefore, before the formal recognition of the person concerned as a victim. The rationale behind this choice of the European legislator is based *inter alia* on the need to give time to the presumed victim of human trafficking in order to recover and escape from its traffickers' influence and not merely to facilitate the co-operation of the victim with the competent law enforcement authorities¹²³.

93. Indicative on this point is the following excerpt of the *Chowdury and Others v. Greece* judgment, according to which:

"The Court further finds that, in rejecting the request of this group of applicants on the grounds, inter alia, that their complaint to the police was belated, the public prosecutor disregarded the regulatory framework governing human trafficking. Article 13 of the Council of Europe's Anti-Trafficking Convention provides for a "recovery and reflection period" of at least thirty days for the person concerned to be able to recover and escape from the influence of the traffickers and knowingly take a decision about cooperating with the authorities [...]"¹²⁴.

94. Regarding the procedure for issuance or renewal of residence permits for victims of human trafficking, despite the fact that this option is provided for by the Greek legal order or through the provisions of Articles 52-53 of Law 4251/2014 (Immigration and Social Integration Code) on granting and renewing a residence permit for victims of human trafficking or the illegal trafficking of migrants, as well as by Article 19A of the above law on granting residence permits for

offences against them and to recover so that they can take an informed decision as to whether to co-operate with the criminal authorities. 2. With regard to child victims of trafficking in human beings [...], the same deadline may be extended for two more months by decision of the competent public prosecutor and with the child's best interests in mind. 3. In the interim and until the expiry of the reflection period, the persons in the abovementioned paragraphs cannot be deported from the country. Any issued decision for forced return is suspended".

¹²² CoE, GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece, op.cit.*, par. 168. The GRETA Report refers to N. Kambouri, D. Parsanoglou, V. Touri, "Domestic Work and Trafficking in Human Beings in Greece: A Crossroads in the Dark?", in: I thought I was applying as a care giver. Combating Trafficking in Women for Labour Exploitation in Domestic Work, University of Nicosia, 2015, p. 109.

¹²³ CoE, GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece, op.cit.*, par. 170.

¹²⁴ ECtHR, *Chowdury and Others v. Greece* [application no.: 21884/2015], 30.3.2017, par. 121.

humanitarian reasons, among others, to victims of trafficking, unfortunately, in practice the implementation of these provisions appears to be problematic. More specifically, according to the GRETA's Report, as well as civil society organisations involved in the relevant GNCHR hearing, the process of granting residence permits to victims of human trafficking is very time-consuming (from 6 to 12 months). In 2013, the number of residence permits granted to trafficked persons was only 11, in 2014 29, while for the years 2015 and 2016 only 3 and 1 respectively. Renewals of residence permits of victims of human trafficking were equally limited: 48 in 2013, 31 in 2014, 23 in 2015 and 22 in 2016¹²⁵. If these numbers appear to be particularly low, the respective statistics of granting residence permits for humanitarian reasons to victims of human trafficking are even lower¹²⁶. The Council of Europe's experts estimate that prosecutors are reluctant to implement the relevant provisions¹²⁷.

95. According to the findings of the public hearing carried out by GNCHR, the implementation of Article 13A of the Immigration and Social Integration Code is also problematic. More specifically, Article 58 of Law 4384/2016 "Agricultural cooperatives, forms of collective organisation of rural areas and other provisions" (OJ 78/A/26.4.2016) added Article 13A to Law 4251/2014 (Immigration and Social Integration Code and other provisions), which allowed the employment of illegally staying third-country nationals in order to meet the urgent needs of the rural economy. Indeed, according to the relevant Circular of the Ministry of Interior for the *Implementation of the provisions of Article 13A of Law 4251/2014 on the employment of illegally staying third-country nationals in the agricultural economy*, the employer employing an illegally staying third-country national must *inter alia* conclude "a contract of employment which will include: i) the type of employment and the date of onset, ii) the place that the employment takes place at, iii) the duration of employment, iv) the number of working hours per day and week, v) the remuneration of the employee, which cannot, in any way, be lower than the legal wage of an unskilled worker, vi) the amount of any unemployment allowance, if provided by the contract and (vii) any other employment condition, as appropriate. In addition, the employer provides evidence that suitable accommodation is provided to the worker, as determined by the Minister of Health's decision under Article 43 of Law 4025/2011, as applicable. In case that accommodation is not provided by the employer, the latter must provide information to the Decentralised Administration's offices,

¹²⁵ CoE, GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece, op.cit.*, par. 174.

¹²⁶ *Idem*, par. 175.

¹²⁷ *Ibidem*.

demonstrating that the worker is staying at his own accommodation facilities, which meet the legal requirements"¹²⁸.

96. The above mentioned provisions of Article 13A, in the State's view, sought to combat undeclared work in the agricultural sector. However, in practice, things seem to be very different, since, ultimately, what is achieved by Article 13A is creating and maintaining multiple categories and subcategories of employees. In particular, this measure contributes to the creation of an unlawful environment of severe exploitation, taking into account that hundreds of thousands of land workers constitute a particular category of inhumane and undeclared employment, compared to all other professional categories of migrants, since they work in an uncontrolled working environment with worse remuneration, insurance and residence settlement conditions. At the same time, within this broad category of working migrants in the rural economy, other subcategories of workers can be found, such as: (a) "legal" migrants who have, at least typically, the same social rights as Greek workers; b) "illegal" migrants who are absolutely invisible in terms of protection and rights; and (c) "para-legal" land workers (Article 13A of the Law 4251/2014), who remain in the Country in a *status* of deportation postponement, with six-month work permits (without residence permits) and working conditions of absolute lack of freedom¹²⁹. In addition, workers are not registered at all, which means that they are not provided with decent accommodation and that their wages and social security coverage are not guaranteed.

97. Taking into account the facts demonstrating the consolidation of forced labour conditions to the detriment of farm workers, the measure under Article 13A of Law 4251/2014 appears to have served better the need to increase revenues of the Agricultural Insurance Organisation (OGA), by exacerbating the abusive nature of the employment conditions of undocumented migrant workers and making them even more vulnerable to extreme labour exploitation. Under no circumstances, however, such arrangements would constitute State compliance with the ECtHR judgment in the "Manolada Case". At the same time, this specific work permit does not provide any incentives either on the employers' side (tax incentives from the workplace) or on the labour market, since it involves the identification and then the expulsion of the irregularly resident migrant. The "benefits" of the fully undeclared work of legal and illegal immigrant workers have already been shown to be less powerful, as the desire to include farmers in the new arrangement has been limited. In any case it is obvious that the huge and lasting labour needs in the agricultural sector can neither be covered by the anachronistic, inelastic and inapplicable institutional framework governing both the "recruitment" of foreign workers and employment in seasonal work (Law 4251/2014), nor with the

¹²⁸ Ministry of Interior, Circular No. 11/15.6.2016, *Implementation of the provisions of Article 13A of Law 4251/2014 on the employment of irregularly staying third-country nationals in the rural economy*, Ref. no.: Oik. 27430/16 II, p. 3-4.

¹²⁹ A. Kapsalis, "The development of Greek migration policy and the invention of 'para-legality' in labour relations of immigrants", *Social Policy*, Issue 9, January 2018, p. 74 et seq.

half-way of "legal" work of irregularly resident alien workers in agriculture until their deportation¹³⁰.

98. Similar problems are also observed with regard to the procedure of granting compensation by the offenders to victims of human trafficking, although once again this option has been provided by law in the Greek legal order. The reasons for this problematic situation appear to be, in addition to the costs incurred by the victim, the lengthy proceedings before the criminal and civil courts, which often discourage victims to seek redress¹³¹. At the same time, it is important to stress that there is no available data from the competent Greek authorities on the number and amount of compensations granted to victims of human trafficking by the perpetrators. This is, according to the GRETA expert's assessment, due to the fact that there is no centralised database for all criminal and civil courts, which would allow investigations into the compensation of victims by the perpetrators¹³². However, according to NGOs, there have not been any cases in which a trafficker actually paid compensation to a victim. In the majority of cases where a criminal trial is held, the victim does not participate as a civil party because he/she is not represented by a lawyer, while for the same reasons the victim does not seek to be compensated accordingly in civil courts¹³³. It is also worth mentioning, as acknowledged by the competent Greek authorities, that the provisions on compensation for victims of intentional violent crimes, including victims of human trafficking¹³⁴, have never been implemented¹³⁵.

99. It is no coincidence, as the ECtHR states in its judgment in the "Manolada case", that:

*"Lastly, the Court finds that, even though T.A. and one of the armed guards were found guilty of grievous bodily harm, the Assize Court only ordered them to pay compensation of EUR 1,500, i.e. EUR 43 per injured worker [...] However, Article 15 of the Council of Europe's Anti-Trafficking Convention obliges Contracting States, including Greece, to provide in their domestic law for the right of victims to receive compensation from the perpetrators of the offence, and to take steps to, inter alia, establish a victim compensation fund"*¹³⁶.

100. The same conclusion is drawn by the US Department of State in its comprehensive annual report on the situation of trafficking in human beings worldwide, according to which, on the one hand, no victim has received compensation or reparation by the perpetrator, on the other hand,

¹³⁰ GSEE, Tripartite Validation of Diagnostic Report for Undeclared Work, Athens, 6 July 2016, Intervention of GSEE President, Mr. Yannis Panagopoulos, p. 1. 6-7.

¹³¹ CoE, GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece, op.cit.*, par. 179-180.

¹³² *Idem*, par. 181.

¹³³ *Ibidem*.

¹³⁴ Law 3811/2009 on Compensation of victims of intentional violent crimes (harmonization of Greek legislation with Directive 2004/80/EC of 29 April 2004) and other provisions (OJ 231/A/17.12.2009).

¹³⁵ CoE, GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece, op.cit.*, par. 183.

¹³⁶ ECtHR, *Chowdury and Others v. Greece* [application no.: 21884/2015], 30.3.2017, par. 126.

criminal proceedings have lasted for years, preventing the cooperation of victims and witnesses, especially given the fact that the government has not covered any travel expenses so that they can attend the hearing. The difficulty in the administration of justice is exacerbated by the lack of audiovisual means for distance examinations, the persistence of judges to require victims to appear in person in court and the failure to provide full protection to witnesses. This report also highlights the time-consuming process of obtaining residence permits by victims¹³⁷.

101. Finally, as regards the State authorities' obligation to facilitate the repatriation and return of victims to other States, the number of victims of trafficking repatriated in 2015 and 2016 is limited: only 11 victims, including 9 women and 2 children. At the same time, the data provided by the International Organization for Migration (IOM) are pretty similar, since according to its statistics, with the Program of Assisted Voluntary Return and Reintegration (AVRR), from 2012 up until November 2016, only 61 victims, of whom the majority (38) were victims of trafficking for labour purposes, were repatriated¹³⁸. Given that repatriation and return of victims of trafficking must always take place with respect to the rights of victims, their security, dignity and integrity, the Council of Europe experts are genuinely concerned by the risk of forced returns of victims of trafficking as a result of the EU Turkey agreement of 18 March 2016 which stipulates *inter alia* that all new migrants crossing from Turkey to the Greek islands who are not applying for asylum or whose asylum applications are found unfounded or inadmissible will be returned to Turkey¹³⁹.

C. Effective investigation and prosecution of human trafficking crimes for the purpose of labour exploitation or/and forced labour

102. As regards, finally, the effectiveness of investigation and judicial proceedings relating to cases of human trafficking for the purpose of labour exploitation or/and forced labour, the ECtHR pointed out that:

"For an investigation into exploitation to be effective, it must be capable of leading to the identification and punishment of the individuals responsible [...] However, once the matter has come to the attention of the authorities they must act of their own motion (see C.N. v. the United Kingdom, no. 4239/08, § 69, 13 November 2012) [...] the obligation to investigate effectively is binding, in such matters, on the law-enforcement and judicial authorities. Where those authorities establish that an employer has had recourse to human trafficking and forced labour, they should act accordingly, within their respective spheres of competence, pursuant to the relevant criminal-law provisions [...]"¹⁴⁰.

¹³⁷ Department of State, USA, *Trafficking in Persons Report*, *op. cit.*, p. 186.

¹³⁸ CoE, GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece*, *op.cit.*, par. 194.

¹³⁹ *Idem*, par. 195.

¹⁴⁰ ECtHR, *Chowdury and Others v. Greece* [application no.: 21884/2015], 30.3.2017, par. 116.

103. At the same time, the Strasbourg Court focused on the State's prosecution Authorities' responsibilities, noting that :

"[...] in failing to ascertain whether the allegations of that group of applicants were well founded, the public prosecutor failed in his duty to investigate [...and] disregarded the regulatory framework governing human trafficking"¹⁴¹.

104. In addition, the ECtHR stressed the shortcomings of the Prosecution of the Greek Court of Cassation, that:

"[...] refused to appeal on points of law against the acquittal. To the allegation of the workers' lawyers that the Assize Court had not properly examined the charge of human trafficking, the public prosecutor replied without any further reasoning that "the statutory conditions for an appeal on points of law [were] not met" [...]"¹⁴².

105. Finally, it concluded that:

"[...] there has been a violation of Article 4(2) of the Convention as a result of the State's procedural obligation to guarantee an effective investigation and judicial procedure in respect of the situations of human trafficking and forced labour complained of by these applicants"¹⁴³.

106. Indeed, trafficking and forced labour constitute a modern form of slavery and a serious crime which constitutes one of the worst forms of human rights violations that cannot be accepted in societies based on respect for human rights, including gender equality¹⁴⁴. As such, it must therefore be investigated and effectively prosecuted, but not at the expense of the victims themselves. To this end and in order to combat this phenomenon, it is very important for national authorities, to ensure that victims of trafficking or/and forced labour will not face the risk of being punished for any offences committed by them, due to their situation as victims. This can be achieved with a provision of abstaining from imposing penalties on victims for their involvement in illegal activities, to the point that they have been forced to act in this way.

107. In Greece, the implementation of the principle of non-punishment of the victim does not appear to be satisfactory, if one takes into account that the Prosecutor's ability to abstain from criminal proceedings requires a prior complaint by the victim and its definite assessment as valid (Article 187B(3) CC)¹⁴⁵. Indicative, once again, of the problems posed by the failure to apply in the Greek legal order the principle of non-punishment of the victim of human trafficking is the ECtHR Case *L.E. v. Greece*, according to which the applicant, a Nigerian national who had been forced into

¹⁴¹ *Idem*, par. 120-121.

¹⁴² *Idem*, par. 125.

¹⁴³ *Idem*, par. 127.

¹⁴⁴ European Parliament, *Resolution of 5 July 2016 on the fight against trafficking in human beings in the EU's external relations* (2015/2340 (INI)), *op.cit.*, par. 2.

¹⁴⁵ CoE, GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece*, *op.cit.*, par. 206.

prostitution in Greece, was arrested twice for breaching Laws 2734/1999 and 2910/2001, on prostitution and on the entry and residence of aliens in Greece, respectively¹⁴⁶.

108. The Council of Europe experts conclude that it is essential to prioritise the identification of any gaps during the investigation and prosecution process on human trafficking cases, in order to speed up the process of the trial and ensure the effective and proportionate criminal convictions, as the low number of final convictions on cases of human trafficking tend to be alarming. Indeed, the number of criminal prosecutions for the crime of trafficking in human beings is steadily low, with an average of 5 persecutions annually between 2013 and 2016, while the number of convictions, for the same crime, at first instance courts, decreased from 7, for the year 2013, to 1 conviction for 2016. Convictions at second instance on the crime of trafficking in human beings for the purpose of labour exploitation have not been recorded, according to the information submitted by the Greek State to the experts of GRETA¹⁴⁷.

109. One of the most characteristic cases of inefficient judicial proceedings is, of course, the "Manolada case", in which the Patras' Assize Court acquitted the defendants on the charge of human trafficking, finding in particular that the workers were not absolutely unable to protect themselves and that their freedom of movement was not compromised, on the grounds that they were free to leave their work. In other words, in order to avoid characterising the applicants' situation as human trafficking, the Greek judge adopted a narrow interpretation of the concept of human trafficking, basing the judgment's reasoning closest to the concept of slavery, rather than trafficking for the purpose of labour exploitation. "However, a situation of trafficking may exist in spite of the victim's freedom of movement", emphasised the Strasbourg court¹⁴⁸.

110. In particular, in accordance with the reasoning of the ECtHR in the judgment *Chowdury and others v. Greece*:

"[...] restriction of freedom of movement is not a prerequisite for a situation to be characterized as forced labour or even human trafficking. The relevant form of restriction relates not to the provision of work itself but rather to certain aspects of the life of the victim of a situation in breach of Article 4 of the Convention, and in particular to a situation of servitude. On this point the Court reiterates its finding Patras Assize Court adopted a narrow interpretation of the concept of trafficking, relying on elements specific to servitude in order to avoid characterizing the applicants' situation as trafficking [...]. However, a situation of trafficking may exist in spite of the victim's freedom of movement [...] Patras Assize Court not only acquitted the defendants on the charge of human trafficking, it also commuted the prison sentences imposed on two of them for grievous bodily harm to the payment of a fine of EUR 5 per day of detention. [...] The public prosecutor at the Court of Cassation refused to

¹⁴⁶ ECtHR, *L.E. v. Greece* [application no.: 71545/12], 21.1.2016, par. 10 et seq.

¹⁴⁷ CoE, GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece*, op.cit., par. 216-217, as well as Department of State, USA, *Trafficking in persons report*, op.cit., p. 184-185.

¹⁴⁸ ECtHR, *Chowdury and Others v. Greece* [application no.: 21884/2015], 30.3.2017, par. 123.

*appeal on points of law against the acquittal. To the allegation of the workers' lawyers that the Assize Court had not properly examined the charge of human trafficking, the public prosecutor replied without any further reasoning that 'the statutory conditions for an appeal on points of law [were] not met' [...]*¹⁴⁹.

111. However, according to the civil society actors who participated in the GNCHR hearing and the lawyers who represented the victims of trafficking in the courts, the lengthy procedures before the Greek courts, as well as the repeated and unnecessary postponements often prevent victims from claiming the punishment of the perpetrators and seeking their satisfaction, moral and material¹⁵⁰. With regard to the protection measures for victims of human trafficking and witnesses, which have been established in the Greek legal order too, by various legislative provisions, including, but not limited to, the provisions of Articles 12 of Law 3064/2002, 51(3) of Immigration and social integration code or 226A and 226B of the Code of Criminal Procedure, it is observed that in practice these protection measures are rarely applied.

¹⁴⁹ ECtHR, *Chowdury and Others v. Greece* [application no.: 21884/2015], 30.3.2017, par. 123-125.

¹⁵⁰ CoE, GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece, op.cit.*, par. 219.

V. THE PHENOMENON OF TRAFFICKING IN HUMAN BEINGS FOR THE PURPOSE OF LABOUR EXPLOITATION, FORCED LABOUR AND THE DIMENSION OF UNDECLARED WORK

112. "Never before in the history of the Country had there been so many measures to combat undeclared work in such a short time and never before had the size of undeclared work been so high"¹⁵¹. This phrase focuses on the general climate of employer arbitrariness and labour illegality which dominates the Greek labour market, while highlighting the deeply interactive relationship between undeclared work and human trafficking for the purpose of labour exploitation or/and forced labour.

113. The GNCHR notes with emphasis that undeclared (black) work is a complex issue which creates significant side effects and distortions in the Greek market. More specifically, undeclared work undermines not only the quality of work, the working conditions and the workers' rights but also has significant negative impact on the economy, as it supports the informal economy and tax evasion, and is characterised over the years by a lack of political will to effectively address it. It is an undeniable fact that from 2010 until today there has been a violent deregulation of labour relations, both in an individual as well as in a collective level, resulting in a significant reduction in the overall protection of workers, along with the violation of labour and insurance law provisions. These developments, in combination with the inadequacy of inspections by the competent Authorities, have resulted in an increase in delinquency in the labour market and limited the objective ability to take protection measures at the initiative of workers themselves in an environment of liberalised redundancies and unprecedented unemployment rates¹⁵². Undeclared work is a choice to undermine the social security system, the health system and, generally, the social state left over from the implementation of the economic adjustment programmes¹⁵³.

114. In this regard, the GNCHR welcomes as a very important first step the adoption and implementation of the Road Map for fighting Undeclared Work in Greece with actions up until 2019¹⁵⁴, the content of which was formulated with the ILO's technical assistance and ratified by a tripartite procedure (according to the ILO operating standards), and more specifically by the Ministry of Labour and the National social partners [on behalf of the workers, the Greek General Confederation of Workers (GSEE) and on behalf of the employers, the Hellenic Federation of Enterprises (SEV), the General Confederation of Professionals, Craftsmen and Traders of Greece (GSEVEE), the Hellenic Confederation of Commerce and Entrepreneurship (ESEE) and the Greek Tourism Confederation (SETE)]. The presence of the ILO was crucial in ensuring the tripartite process and restoring an environment of institutional social dialogue, which was disturbed particularly during the period of the economic crisis and the adoption of successive austerity

¹⁵¹ A. Kapsalis, *Undeclared work in Greece. Assessing modern measures to combat this phenomenon*, INE Labour Institute of GSEE, January 2015, p. 7.

¹⁵² GSEE, *Tripartite Validation of Diagnostic Report for Undeclared Work*, *op.cit.*, p. 3.

¹⁵³ INE Labour Institute of GSEE, *Results – Conclusions of a nationwide cross-sectoral working meeting on undeclared work*, April 14, 2016, p. 1. 2.

¹⁵⁴ ILO, *Road Map for fighting Undeclared Work*. Summary Policy reports, No 2, October 2017.

measures, with a serious impact on fundamental labour rights, but also on human rights in general¹⁵⁵.

115. The content of the Road Map was formulated on the basis of a diagnostic report conducted under the responsibility of the ILO, which, in close collaboration with the Greek Government and the social partners, under a project financed by the European Commission aiming at "Supporting the transition from informal to formal economy and tackling the undeclared work in Greece", issued, through a participatory consultation process, a report on the *Diagnosis of Undeclared Work in Greece*. The Diagnostic Report and the Road Map were endorsed by the Greek Government and the national social partners at two high-level tripartite meetings which took place on July 6, 2016 and October 26, 2016 respectively¹⁵⁶. The validated Diagnostic Report provides a set of recommendations on policies which reflect the ILO's vision for a balanced approach, combining incentives with compliance measures, as required by Recommendation No. 204 of ILO regarding the transition from informal to formal economy, adopted at the International Labour Conference in June 2015. On the other hand, the Road Map contains a framework of commitments for formulating policies and taking the necessary measures, as ultimately decided, following tripartite consultations between the State and the national social partners. Among the policy measures proposed by the Road Map on undeclared work is also the ratification of the International Labour Convention No. 129 with a time frame until the 31st of December 2018.

116. The GNCHR follows with great interest the progress of implementation of all the actions of the Road Map on undeclared work. However, in the light of the *Chowdury and Others v. Greece* judgment, the GNCHR attaches particular importance to the commitment of the ratification of the International Labour Convention No. 129 on Labour Inspection in the Agricultural Sector, given the severe impact of the lack of clearly defined inspection competence of SEPE¹⁵⁷. It is also crucial to resolve other issues in the current system of labour inspection, which prevent or make particularly difficult the monitoring of employment in the agricultural sector, such as for instance, the non-standardisation of the employment relationship with employment contracts, the non-declaration of work in the ERGANI system, the payment with a labour ticket, the absence of staff tables¹⁵⁸.

¹⁵⁵ *Idem*, p. 2.

¹⁵⁶ ILO, *Diagnostic report on undeclared work in Greece*, 2016. For more information on undeclared work see <http://adilotiergia.org>.

¹⁵⁷ See *supra*, par. 85.

¹⁵⁸ See also Article 109 of Law 4485/2017. For more information, see *supra*, par. 3332.

VI. LABOUR EXPLOITATION IN THE AGRICULTURAL SECTOR AND INCIDENTS OF RACIST VIOLENCE

117. The observation of the established state and employer tolerance in cases of serious labour exploitation is unfortunately also reinforced by the Racist Violence Recording Network's (RVRN) reports. Indeed, the initiative for the creation of RVRN was launched in mid-2011 by GNCHR and the Office of the UN High Commissioner for Refugees in Greece (UNHCR) following the rise of xenophobia and had two major findings: the absence of an official and effective system of recording; and the need for interconnection among civil society organisations who dealt on their own initiative with victims of racist violence¹⁵⁹.

118. Taking into account RVRN's mission, which consists *inter alia* in the formulation of recommendations to the Greek Authorities, in compliance with the Greek and international legislation in human rights protection, the promotion of public information and awareness raising on combating racist violence as well as organising and participating in training programmes held by civil society and other competent institutional bodies regarding issues which refer to identification, recording and combating of hate crimes, the GNCHR carefully monitors, through the action and operation of RVRN, the implementation of legislation on combating racist crimes and the practices of all relevant stakeholders involved, highlighting the legislative and practical obstacles, with regard to the access of victims to the Authorities.

119. In this context, the GNCHR stresses with deep concern the constant and repeated reference of the RVRN's reports, since its establishment up until today, to incidents of racist violence against migrant workers¹⁶⁰. Indeed, especially for the year 2013, the number of victims reported by the RVRN is particularly high, due to the recording of the incidents of the "Manolada case", where 155 victims of labour exploitation with a racist motive were recorded, of which 35 were injured and more were shot by the guards¹⁶¹. The Greek Ombudsman also refers to the interconnection among racist violence, tolerance of the competent State authorities and labour exploitation, in its Special Report for racist violence in Greece, in which the need for an explicit provision for protection of the victims who do not have a legitimate residence permit is particularly emphasised.

120. It is worth, at this point, making a more extensive reference to the fact that the GNCHR observes with great concern that, unfortunately, the pattern recorded in the tragic event of Manolada, in 2013, is being steadily repeated in other incidents until today. Indicative and yet shocking – for its similarity to the incidents of Nea Manolada, in 2013 – is the recent recording, in 2017, of an incident of racist violence against a young man from Pakistan, who was working as a land worker in various units of primary agricultural production in the area of Lappa Achaia.

¹⁵⁹ RVRN is comprised of actors offering medical, social and legal services or/and come in direct contact with victims of racist violence or victims of other hate-motivated violent attacks. Apart from the coordinators, the UNHCR and the GNCHR, RVRN is comprised of 45 Non-Governmental Organizations and civil society actors, as well as the Greek Ombudsman and the Migrants' Integration Council of the Municipality of Athens as observers. More information is available on RVRN's website: <http://rvrn.org/>.

¹⁶⁰ RVRN's Annual Reports are available on its website: <http://rvrn.org/category/reports/>.

¹⁶¹ RVRN, *Annual Report 2013*, available at: <http://rvrn.org/2014/04/2013-annual-report/>.

According to the complaint report submitted to the Public Prosecutor of Patras, after the recording of the incident by RVRN, when the employee claimed his wages, his employer referred him to the guard, a Bangladeshi national, who not only did not pay him the due remuneration, but also threatened him, using means of physical violence, that if he doesn't keep working, he'll never get paid. It is noted that in the same position as his were other Bangladeshi nationals as well, who were unpaid for months. This incident is unfortunately not isolated, which proves once again that the measures taken by the State over the last five years in order to combat serious labour exploitation are not sufficient or effective.

VII. RECOMMENDATIONS

121. Monitoring the compliance of the relevant competent Greek Authorities with the ECtHR judgment in the "Manolada case" is by no means an easy matter, in particular, to the extent that monitoring the phenomenon of human trafficking for the purpose of labour exploitation and, more generally, of severe labour exploitation, is at the intersect of more than one fields of disciplines and requires comprehensive combined actions, such as the legislative framework and its implementation, the flexibility of the regulations concerning aspects of the migratory issue, the adequacy and effectiveness of enforcement and prosecution mechanisms, the administration of justice, and addressing the underlying tolerance of society to human rights violations.

122. In the light of the above observations, and in view of the necessity to duly tackle both the phenomenon of human trafficking for the purposes of labour exploitation and the severe labour exploitation in general, the GNCHR elaborates for the competent State Authorities a framework of comprehensive recommendations, following the same thematic axes adopted for the assessment of the implementation of the regulatory and institutional framework governing these issues, and in particular, three of the State's positive obligations as derived from the Council of Europe Convention on Action against Trafficking in Human Beings: prevention of trafficking in human beings and/or forced labour (A); promotion and protection of the rights of victims of trafficking in human beings and/or forced labour (B) and effective investigation and prosecution of crimes of trafficking in human beings and/or forced labour (C).

A. Prevention of trafficking in human beings for the purpose of labour exploitation and/or forced labour

123. With regard to the aim of elimination, and until then, the effective abolition, and the prevention and suppression of human trafficking for the purpose of labour exploitation and forced labour (work in particularly abusive circumstances), the GNCHR recommends to the competent state authorities to:

124. Take steps to **strengthen the existing regulatory framework and fill gaps where these are found to exist**. More specifically, the GNCHR recommends:

- the **ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**, adopted by the UN General Assembly in 1990, thus confirming that the State has undertaken to respect, protect and promote all human rights, without discrimination.
- the **ratification of the Protocol of 2014 to the Forced Labour Convention No. 29 of the ILO (P029)**, with the aim *inter alia* of promoting concrete measures for the education and information of the general public, focusing on the most vulnerable social groups, or the education and information of employers and other relevant actors.
- the **ratification of the International Labour Convention No. 129 concerning Labour Inspection in Agriculture**, given the very serious impact of the lack of clear and defined control competence of SEPE, according to the current framework governing its operation and the adaptation of the legal framework on inspections in agriculture in order to be compatible with the ILO Convention. It is also considered crucial that the instrument of ratification of the Convention be accompanied by the simultaneous **adoption of the appropriate implementing measures and the adoption of the necessary legal and regulatory acts**, with clear guidelines and labour control protocols in the agricultural sector clarifying the competences of each control service (e.g. Unified Social Security Institutions-EFKA, Police, Ministry of Rural Development) in order to ensure the effective implementation of the Convention.
- the **coherent transfer and integration into the legislative and institutional framework of the definitions regarding human trafficking for the purpose of labour exploitation and forced labour**, in line with international and regional standards on human rights.
- the **integration**, where necessary, **of the indicators which define the phenomena, identify and facilitate the scope and process of inspections in all sections of employment**, with emphasis on areas of high crime and law evasion, such as in the agricultural sector.
- the **legislative recognition of the two aggravating reasons for increasing the penalties imposed by SEPE, included in Law 4052/2012** (trafficking and particularly abusive conditions) as separate reasons with horizontal application, in each case of inspection of the conditions of employment, and not only in the case of employment of illegally staying third country nationals.
- the **assessment of the establishment of a *minimum* number of staff and relevant objective criteria of inspection, depending on the particular activities of employment**, building upon the model and approach used in the construction sector, due to the delinquency and criminality in cases of trafficking and forced labour. This procedure also corresponds to the provision of Article 46 of Law 4387/2016, where a Presidential Decree is envisaged.

- the **explicit inclusion in the law (Articles 323A and 351 of the Criminal Code) of "servitude" among the forms of exploitation resulting from human trafficking**¹⁶².
- the **adaptation of the provisions of the law (Articles 323A(4) and 351(4) CC) regarding the trafficking in children so that they fully reflect the provisions of Article 4(c) of the Council of Europe Convention on actions against human trafficking.**
- the **explicit reference in law (Articles 323A and 351 CC) that the consent of a victim of human trafficking on his or her holding is irrelevant**, regardless what means (use of force, threat or other coercive instrument or enforcement or misuse of authority) the perpetrator employs to achieve his purpose¹⁶³.
- **legislative provision for the observance of a unified and coherent system of collecting statistical data and related data on the phenomenon of human trafficking and forced labour in Greece.**

125. Ensure the existence of an **integrated and effective system of inspections of working conditions** and paying due attention to the factors which increase the risk of exploitation. To this end, it is necessary to ensure:

- **adequate staffing of SEPE with staff trained to conduct targeted and effective inspections and capable of understanding and assessing the factors which increase the risk of severe labour exploitation in practice.** For this purpose, the contribution of the ECtHR's judgment on the criteria of "particularly abusive working conditions" is expected to be important, as well as the list of indicators on labour trafficking of the United Nations Office on Narcotic Drugs and Crime (UNODC). The present GNCHR also applies to the inspection services of EFKA.
- **coordination between SEPE and the Police**, where necessary - to the extent that, as research suggests, the importance of their cooperation is critical for the effectiveness of monitoring and controls - along with a specific delimitation of competences, on the one hand, of the SEPE, on the other hand, of the Police. As ILO points out, coordinating the work of the Labour Inspectorate with law enforcement agencies is crucial to the effectiveness of audits¹⁶⁴. The present GNCHR recommendation also applies to the inspection services of EFKA.
- the **precise delimitation of the SEPE competences**, so that there is no legal doubt of their jurisdiction, which otherwise results in the complete discharge from inspecting certain workplaces, especially in the agricultural sector. The present GNCHR recommendation

¹⁶² GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece, op.cit.*, par. 53.

¹⁶³ *Idem*, par. 54.

¹⁶⁴ See ILO, Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation, *Conclusions adopted by the Meeting, op.cit.*, par. 7 και 16.

applies to all competent inspection services of EFKA, the Police, the Ministry of Rural Development (for the agricultural sector), the Ministry of Immigration Policy (for foreigners).

126. In light of the above mentioned findings, the GNCHR reiterates its opinion that it considers **necessary the State's compliance with the relevant recommendations of the Ombudsman**¹⁶⁵, stressing however that it is also crucial to extend the coordinated and effective state intervention with regard to the working conditions of the employees, natives and foreigners, in the entire agricultural sector.

127. **Maintain a single coherent system for collecting statistics and related data on the phenomenon of human trafficking and forced labour in Greece**, in which will be included reliable and comprehensive statistics on measures to protect and promote the rights of victims of trafficking and/or forced labour, on the investigation and prosecution of relevant cases concerning both trends in trafficking and forced labour, as well as on the performance of the main stakeholders involved in the fight against the two phenomena¹⁶⁶. In this context, the shortcomings of the current framework of labour and social security, which make invisible labour proven to be provided under conditions of extreme dependence, such as work in the agricultural sector and issues arising from the use of the labour ticket ("ergosimo"), must be immediately assessed. Data are to be collected and maintained with due respect for the protection of personal data of both victims and perpetrators¹⁶⁷.

128. **Promote targeted measures for the social and economic empowerment of socially vulnerable groups**, including irregularly resident third-country nationals, asylum seekers and refugees, unaccompanied children and women¹⁶⁸.

129. As far as the **working conditions of migrant workers** are concerned, the GNCHR refers to the Ombudsman's recommendations, dated 2008¹⁶⁹. More specifically, the GNCHR calls upon all competent state Authorities to take all appropriate measures:

- **control of legality of employment relationship** should not be limited to the control of legality of the foreign workers stay in the Country, but should also include the employers who employ irregularly resident third country nationals,

¹⁶⁵ Ombudsman, *Immediate, coordinated and effective state intervention on the working conditions in the strawberry farms of Nea Manolada is required by the Ombudsman*, Press Release, 18.4.2013.

¹⁶⁶ See ILO, Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation, *Conclusions adopted by the Meeting, op.cit.*, par. 9.

¹⁶⁷ CoE, Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings, Recommendation CP(2018)3 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece, adopted at the 22nd meeting of the Committee of the Parties, on 9 February 2018, Addendum: *List of GRETA's proposals concerning the implementation of the Convention by Greece*, par. 9.

¹⁶⁸ *Idem*, par. 14.

¹⁶⁹ Ombudsman, *Immediate, coordinated and effective state intervention on the working conditions in the strawberry farms of Nea Manolada is required by the Ombudsman*, Press Release, *op.cit.*, p. 3.

- **the working conditions of migrant workers should meet all the necessary requirements laid down in the relevant legislative framework.** Otherwise, the competent inspection mechanisms must impose the provided for by law penalties,
- **migrant workers** – including those who without legal documents – **should have adequate insurance coverage for the health services they need** and
- **migrant workers should be informed of their rights**, in order to avoid cases of loss of earnings and insurance for their working days.

130. **Strengthen their efforts to detect cases of human trafficking in the context of border controls**, including through further training of border guards on the identification of victims of human trafficking¹⁷⁰.

131. Undertake **targeted awareness-raising and training initiatives for organisations and services who deal with cases of labour exploitation**, so that they are aware of the various forms of severe labour exploitation and their causes, in order to be ready to react appropriately. Labour inspectors, police officers, law enforcement officers, social workers and other workers in asylum and immigrant reception centers, lawyers and health professionals should be informed and trained to be able to detect labour trafficking indicators and other forms labour exploitation, in order to give priority to the rights of victims of severe labour exploitation before immigration management issues¹⁷¹.

132. Taking into account the wider access of local authorities to vulnerable target groups for exploitation, **to cooperate with local communities and municipalities by coordinating prevention, information, awareness raising and wake-up actions of citizens nationwide**, aiming at the mapping of the phenomenon of human trafficking and forced labour and its effective prevention. The contribution of local Authorities, of course, is equally important at the later stage of reintegration of the victims into the community.

133. **Take awareness-raising initiatives** with regard to the issue of severe labour exploitation of migrant workers and step up efforts to **create a climate of zero tolerance of labour**

¹⁷⁰ CoE, *List of GRETA's proposals concerning the implementation of the Convention by Greece, op.cit.*, par. 16 and OSCE, *From Reception to Recognition: Identifying and Protecting Human Trafficking Victims in Mixed Migration Flows. A Focus on First Identification and Reception Facilities for Refugees and Migrants in the OSCE Region*, Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, 2017, p. 46.

¹⁷¹ See CoE, *List of GRETA's proposals concerning the implementation of the Convention by Greece, op.cit.*, par. 8, FRA, *Severe labour exploitation: workers moving within or into the European Union - States' obligations and victims' rights, op.cit.*, p. 15, ILO, *Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation, Conclusions adopted by the Meeting, op.cit.*, par. 7 and OSCE, *From Reception to Recognition: Identifying and Protecting Human Trafficking Victims in Mixed Migration Flows. A Focus on First Identification and Reception Facilities for Refugees and Migrants in the OSCE Region, op.cit.*, p. 46.

exploitation¹⁷². This is expected to make a significant contribution to the efforts of the competent state authorities to correct the failings and shortcomings of official institutions in order to reduce the gap between the State's ethics and citizens' ethics with regard to undeclared employment, with specific tools, such as, for example, awareness-raising campaigns. ILO, as shown by its Recommendations adopted at the Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation, stresses the importance of taking regular actions to raise public awareness through information campaigns, brochures and school curricula, **targeting among others the most vulnerable to forced labour social groups**¹⁷³.

- In this context, state Authorities should enhance their efforts **to discourage demand for the services of victims of human trafficking for the purpose of labour exploitation and/or forced labour**, in particular by raising awareness among the general public in cooperation with NGOs, trade unions and private sector bodies, on the criminalisation of knowingly using the services of these individuals¹⁷⁴,
- as well as take concrete **measures to encourage businesses to eliminate human trafficking and forced labour from their supply chains**.
- Efforts must also be stepped up for **effective cooperation between public and private actors**, based on a consensus on the problems caused by labour exploitation, the fundamental rights at stake and the interventions required, with the sole purpose of effectively implementing the policy against human trafficking and forced labour¹⁷⁵.

B. Promotion and protection of the rights of victims of trafficking in human beings for the purpose of labour exploitation or/and forced labour

134. Regarding the more effective promotion and protection of the rights of victims of human trafficking for the purpose of labour exploitation and/or forced labour, the GNCHR recommends to the competent State authorities to:

135. Take initiatives to **improve the system for the identification of victims of human trafficking and/or forced labour**, following *inter alia* the highly targeted recommendations of the

¹⁷² See CoE, *List of GRETA's proposals concerning the implementation of the Convention by Greece*, *op.cit.*, par. 12 and FRA, *Severe labour exploitation: workers moving within or into the European Union - States' obligations and victims' rights*, *op.cit.*, p. 15.

¹⁷³ ILO, Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation, *Conclusions adopted by the Meeting*, *op.cit.*, par. 8.

¹⁷⁴ CoE, *List of GRETA's proposals concerning the implementation of the Convention by Greece*, *op.cit.*, par. 13.

¹⁷⁵ See CoE, *List of GRETA's proposals concerning the implementation of the Convention by Greece*, *op. cit.*, par. 7 and OSCE, *From Reception to Recognition: Identifying and Protecting Human Trafficking Victims in Mixed Migration Flows. A Focus on First Identification and Reception Facilities for Refugees and Migrants in the OSCE Region*, *op.cit.*, p. 46.

Council of Europe and ILO experts on the identification of victims¹⁷⁶, according to which the Greek authorities must among other things:

- ensure that **the identification of victims does not depend on the presumed victim's statement and co-operation in the investigation or criminal proceedings,**
- **speed up the process of granting the status of victim of trafficking,**
- **pursue a proactive approach to the identification of victims of human trafficking for the purpose of labour exploitation and/or forced labour,** by encouraging regular and coordinated multi-agency inspections in the sectors most at risk,
- **secure a sufficient funding for the National Referral Mechanism for Victims and Potential Victims of Trafficking in Human Beings,** in order to build up identification networks and provide training for relevant professionals on identification techniques and procedures,
- **pay increased attention to detecting victims of human trafficking among migrants and asylum seekers in first-line reception centers and persons detained as irregular migrants and provide additional training to staff** who come into contact with them.

136. Ensure that **suitable accommodation is provided for male victims of trafficking and that they can fully benefit from the assistance measures provided for in law**¹⁷⁷.

137. Ensure that **all possible foreign victims of human trafficking and/or forced labour, including EU citizens, are systematically informed of the possibility to use a recovery and reflection period and are effectively granted such a period.** Steps should be taken to alert police officers and other relevant staff of the importance of this period and to issue instructions regarding the procedure for granting it¹⁷⁸.

138. Take initiatives to **ensure that all victims of human trafficking and/or forced labour can effectively benefit in practice from the right provided under Greek law to obtain a renewable residence permit**¹⁷⁹. In particular, it is considered effective and necessary to adopt measures to encourage victims and witnesses of human trafficking for the purpose of forced labour or other forms of severe exploitation to report a crime without fear of being expelled, with the possibility of granting a residence permit, on the basis of clear legal terms¹⁸⁰.

¹⁷⁶ CoE, *List of GRETA's proposals concerning the implementation of the Convention by Greece*, *op.cit.*, par. 17 and ILO, Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation, *Conclusions adopted by the Meeting*, *op.cit.*, par. 11.

¹⁷⁷ CoE, *List of GRETA's proposals concerning the implementation of the Convention by Greece*, *op.cit.*, par. 19.

¹⁷⁸ *Idem*, par. 21.

¹⁷⁹ *Idem*, par. 22.

¹⁸⁰ FRA, *Severe labour exploitation: workers moving within or into the European Union - States' obligations and victims' rights*, *op.cit.*, p. 20.

- In this context, and in view of the strong link between human trafficking and immigration, it is appropriate to take measures to **establish and maintain a permanent mechanism for access to a legal residence regime for all foreigners living and working in Greece.**

139. Adopt measures to **facilitate and guarantee access to compensation for victims of trafficking and/or forced labour**, in particular following the recommendations of the Council of Europe and the ILO¹⁸¹, according to which the Greek authorities must *inter alia*:

- **ensure that victims are systematically informed in a language that they can understand of the right to seek compensation** and the procedures to be followed,
- **enable victims to exercise their right to compensation by ensuring their effective access to legal aid**, by building the capacity of legal practitioners to support victims to claim compensation and by including the issue of victim compensation in training programmes for law enforcement officials, prosecution and the judiciary,
- ensure that **the state-funded compensation scheme is genuinely accessible to the victims**, irrespective of their citizenship and residence status,
- **use assets confiscated from perpetrators to compensate the victims,**
- **enable victims who are non-EU nationals and who have left Greece to benefit from the possibility to claim compensation.**
- In this context, it is necessary to **develop a system for recording compensation claims made by victims or granted to them**¹⁸², in order to effectively address the complete lack of data on the number and amount of compensation granted to victims of trafficking.
- In addition, reference should be made to the recommendation of the EU Fundamental Rights Agency **to extend the system of compensation to victims so that it also affects the victims of severe exploitation.** In particular, it is proposed that the EU institutions should consider amending the Employer Sanctions Directive against employers to include a provision similar to Article 17 of the Anti-Trafficking Directive, according to which Member States shall ensure that victims of human trafficking have access to existing schemes of state compensation¹⁸³.

¹⁸¹ CoE, *List of GRETA's proposals concerning the implementation of the Convention by Greece, op.cit.*, par. 23 and ILO, Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation, *Conclusions adopted by the Meeting, op.cit.*, par. 14.

¹⁸² CoE, *List of GRETA's proposals concerning the implementation of the Convention by Greece, op.cit.*, par. 24.

¹⁸³ FRA, *Severe labour exploitation: workers moving within or into the European Union - States' obligations and victims' rights, op.cit.*, p. 22.

140. Adopt measures to **assess the return of victims of human trafficking and/or forced labour while respecting their rights, safety and dignity**¹⁸⁴. To this end, it is necessary to ensure **compliance with the non-refoulement obligation**, while taking into account the UNHCR's guidelines on the application of the Geneva Convention relating to the Status of Refugees to trafficked people.

141. Taking into account the proximity of local authorities to the citizens, to **build on cooperation and synergy at a level of Municipalities and local communities, by developing actions to support and reintegrate victims of human trafficking and/or forced labour**.

142. Given that **labour related protection provisions, such as payment of wage arrears, are often neglected, appropriate measures should be taken to ensure that these provisions are part of a comprehensive and systematic approach to the protection of victims**, in accordance with relevant ILO Recommendations¹⁸⁵.

143. Finally, the GNCHR considers it necessary and thus recommends that **instruments and mechanisms established to address trafficking – such as referral mechanisms or temporary residence permits – should be reviewed with a view to broadening their scope of application to cases of severe labour exploitation that do not involve trafficking**. To this end, the competent Greek authorities should follow the relevant recommendations of the EU Fundamental Rights Agency¹⁸⁶, in order to:

- **adopt measures to establish mechanisms for referral to support services for victims of all forms of severe labour exploitation,**
- **ensure that victims of labour exploitation are not excluded from support services due to their irregular residence status.**

C. Effective investigation and prosecution of human trafficking crimes for the purpose of labour exploitation or/and forced labour

144. Regarding the effective investigation and prosecution of crimes of human trafficking for the purpose of labour exploitation and/or forced labour, the GNCHR expresses the wish that **this landmark ECtHR judgment will be a valuable guide for the judicial, prosecutorial and administrative Authorities** and recommends to the competent state Authorities to:

¹⁸⁴ CoE CoE, *List of GRETA's proposals concerning the implementation of the Convention by Greece, op.cit.*, par. 25.

¹⁸⁵ ILO, Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation, *Conclusions adopted by the Meeting, op.cit.*, par. 13.

¹⁸⁶ FRA, *Severe labour exploitation: workers moving within or into the European Union - States' obligations and victims' rights, op.cit.*, p. 19.

145. Take initiatives to **ensure compliance with the principle of non-punishment of victims of human trafficking and/or forced labour for their involvement in unlawful activities**, to the extent that they are well compelled to do so. In particular, the following measures are proposed:

- the **abolishment of the requirement of a prior complaint by the victim** and the development of guidance for police officers and prosecutors on the scope of the non-punishment provision.
- to **refrain from prosecution and punishment of potential victims** for their involvement in unlawful activities, to the extent that they are well compelled to do so, **while the identification procedure is on-going**.

146. To prioritise the **identification of gaps in the investigation procedure and the prosecution of human trafficking and/or forced labour cases**, with a view to ensuring an expeditious trial and effective, proportionate and dissuasive convictions. To this end, it is considered crucial to develop the specialisation of prosecutors and judges to deal with cases of human trafficking and/or forced labour¹⁸⁷.

147. To **improve the effectiveness of police investigations** by exploring the possibility of setting up specialist police units and establishing close links of cooperation between the Hellenic Police and monitoring Authorities, such as the SEPE or the police units for the prosecution of financial crime. At the same time, the cross-border cooperation of law enforcement agencies should be enhanced and brought to the level of cooperation achieved in other areas of organised crime¹⁸⁸.

148. To seek **further specialisation of prosecutors and judges, allowing them to identify and deal with human trafficking cases in a timely and effective manner**¹⁸⁹.

149. To **intensify actions to protect victims of human trafficking and/or forced labour**, preventing them from being intimidated, both during and after their identification process as victims¹⁹⁰.

150. Taking into account the findings of the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA)¹⁹¹, the findings of the EU Fundamental Rights Agency¹⁹², the ILO Recommendations adopted at the Tripartite Meeting of Experts on Forced

¹⁸⁷ CoE, *List of GRETA's proposals concerning the implementation of the Convention by Greece, op.cit.*, par. 27 and ILO, Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation, *Conclusions adopted by the Meeting, op.cit.*, par. 19.

¹⁸⁸ FRA, *Severe labour exploitation: workers moving within or into the European Union - States' obligations and victims' rights, op.cit.*, p. 15.

¹⁸⁹ CoE, *List of GRETA's proposals concerning the implementation of the Convention by Greece, op.cit.*, par. 27.

¹⁹⁰ *Idem*, par. 28.

¹⁹¹ CoE, *List of GRETA's proposals concerning the implementation of the Convention by Greece, op.cit.*

¹⁹² FRA, *Severe labour exploitation: workers moving within or into the European Union - States' obligations and victims' rights, op.cit.*

Labour and Trafficking for Labour Exploitation¹⁹³, as well as the Ombudsman's relevant Recommendations¹⁹⁴, the GNCHR recommends the **discussion of the present text of Recommendations before the competent parliamentary committees**, to the extent that this will significantly contribute to the better understanding of the phenomenon of human trafficking for the purpose of labour exploitation and forced labour and, in general, to address all forms of severe labour exploitation and to combat it in the most effective way.

¹⁹³ ILO, tripartite Meeting of experts on forced Labour and Trafficking for Labour exploitation, *Conclusions adopted by the Meeting, op. cit.*

¹⁹⁴ Ombudsman, *Intervention with regard to the migrant workers in the agricultural sector of Ileia (Nea Manolada), op.cit.*, as well as *Manolada case: a conviction which would have been avoided if the measures requested by Ombudsman would have taken*, Press Release, 31.3.2017.