

“The competence of the
Greek State Actors in the
protection of labour
rights in agricultural
field and the system of
Labour Inspectorate”

Post-doctoral Research

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ABBREVIATIONS

CETS	Council of Europe Treaty Series
COE	Council of Europe
DGI	Council of Europe's Directorate General of Human Rights and Rule of Law
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EKKA	National Center for Social Security
ETUC	European Trade Union Confederation
EU	European Union
Eurofound	European Foundation for the Improvement of Living and Working Conditions
Eurojust	European Union's Judicial Cooperation Unit
FRA	European Union Agency for Fundamental Rights
GNCHR	Greek National Commission for Human Rights
GRETA	Council of Europe's Group of Experts on Action against Trafficking in Human Beings
GSEE	Greek General Confederation of Greek Workers
ILO	International Labour Organization
ITUC	International Trade Union Confederation
NGO	Non-governmental Organisations
OPANDA	City of Athens Culture, Sport & Youth Organization
OSCE	Organization for Security and Co-operation in Europe
PC	Greek Penal Code
PES	public employment services
PICUM	Platform for International Cooperation on Undocumented Migrants
SEPE	Hellenic Labour Inspectorate
SDOE	Financial and Economic Crime Unit of the Greek Ministry of Finance
TFEU	Treaty on the Functioning of the European Union
THB	trafficking for human beings
UN	United Nations

A. Introduction

The system of the rural economy and, consequently, of the European supply chain is largely based primarily on the hands of workers from third countries. European legislation, as incorporated in each Member State, legally covers this area with Directives which, on the one hand, set a labyrinthine process of seasonal employment, based on the employer's initiative (Seasonal Workers Directive), and, on the other hand, provide for a legal process of suppression against crimes resulting from the illegal employment of third-country nationals, i.e. labour trafficking or employment under exploitative working conditions (Employers Sanctions Directive). As a result, in practice the legal framework lacks connection.

At this point, it is proved essential the clear demarcations and highlighting of state bodies' competence for the purpose of labour rights' protection, and especially the role of Labour Inspectorate in the agricultural sector, where due to the nature of this sector, the boundaries of competence are fluid. Thus, inspections for detecting both working and living conditions of workers for the purpose of identifying and reporting labour exploitation phenomena, in reality, have been proved weak.

Towards this direction the specific study:

- makes a synthesis of the existing legal framework to point out the competence of state institutions even at the first stage of the agricultural production sector (fields),
- highlights the importance of the proper exercise of competencies and, in particular, of the inspection body both at workplaces-production and at the living quarters of the land workers, in order to identify cases of labour exploitation,
- explains the importance of identifying the element of vulnerability, through in-situ inspection both at workplaces of production and in living places of accommodation (open area), as an essential component of offences of labour trafficking or particularly exploitative working conditions,
- takes an interpretative approach to the legal provisions of Greek legislation as incorporates the European Directives, and observes weaknesses of their application through the most important labour exploitation cases that crossed the borders of the country and took on a European or even international dimension,
- proposes a reform of the existing legal system of seasonal employment so as being more effective and favorising the control of the legitimacy as far as the rural economy is concerned at an earlier stage and not repressively, after inspection and the application of the criminal procedure,

- proposes the incorporation of international legal documents into the European or the Greek legal order, which will strengthen the role of the bodies involved in labour inspection,
- seeks solutions in the participation of more stakeholders for promoting transparency in supply chain practices and proposes their involvement for the strengthening of the socio-ethical profile of companies, that respect both the land workers and consumers' rights, while counting on consumer's assistance in dealing with problems of labour exploitation in the primary sector of the economy, i.e. agriculture.

In this framework, first of all, it is outlined the legal framework on third-country national employment· afterwards, it is approached the international, European and national framework against labour trafficking and other forms of labour exploitation· next, there are explained the inconsistencies in practical application of the existing legal framework through legal cases that occupied the European Court of Human Rights, and it is revealed the lame role of the state actors in contributing towards its application· in parallel, reports and placements of national and international authorities are evaluated· finally, measures and practical recommendations are proposed for the rationalisation of the system of agricultural economy and the control of the seasonal labour immigration.

B. EU Legal Frameworks Applied on Agricultural Labour Market

B.1 Legal framework on Third-Country Nationals' Employment

a) Directive 2011/98/EU¹

The Directive 2011/98/EU of the European Parliament and the Council of 13 December 2011 lays down a single application procedure for issuing a single permit for third-country nationals to reside for the purpose of work in the territory of a Member State, in order to simplify the procedures for their admission and to facilitate the control of their status; in addition, it provides for a common set of rights to third-country workers legally residing in a Member State, irrespective of the purposes for which they were initially admitted to the territory of that Member State, based on the principle of equal treatment with nationals of that Member State.

As far as a single permit has been issued in accordance with national law, it shall authorise, during its period of validity, its holder to enter and reside in the territory of the Member State issuing the single permit, provided that the holder meets all admission requirements in accordance with national law; have free access to the entire territory of the Member State issuing the single permit within the limits provided for by national law; exercise the specific employment activity authorised under the single permit in accordance with national law; be informed about the holder's own rights linked to the permit conferred by this Directive and/or by national law (article 11). Third-country workers shall enjoy equal treatment with nationals of the Member State where they reside with regard, inter alia, to working conditions, including pay and dismissal as well as health and safety at the workplace; freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security; branches of social security; tax benefits; access to procedures for obtaining housing as provided by national law; advice services afforded by employment offices (article 12).

¹ Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0098&from=EN>

b) Directive 2014/36/EU²

The Directive 2014/36/EU of the European Parliament and the Council of 26 February 2014 provides for the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers (**the Seasonal Workers Directive**).

According to the Directive, the term ‘seasonal worker’ refers to a third-country national who retains his or her principal place of residence in a third country and stays legally and temporarily in the territory of a Member State to carry out an activity dependent on the passing of the seasons, under one or more fixed-term work contracts concluded directly between that third-country national and the employer established in that Member State (article 3).

Applications for admission to a Member State under the terms of this Directive for a stay exceeding 90 days shall be accompanied by (a) a valid work contract or, if provided for by national law, administrative regulations, or practice, a binding job offer to work as a seasonal worker in the Member State concerned with an employer established in that Member State which specifies: the place and type of the work; the duration of employment; the remuneration; the working hours per week or month; the amount of any paid leave; where applicable, other relevant working conditions; and if possible, the date of commencement of employment; (b) evidence of having or, if provided for by national law, having applied for, sickness insurance for all the risks normally covered for nationals of the Member State concerned for periods where no such insurance coverage and corresponding entitlement to benefits are provided in connection with, or as a result of, the work carried out in that Member State; (c) evidence that the seasonal worker will have adequate accommodation or that adequate accommodation will be provided, in accordance with Article 20 (article 6).

Member States shall require evidence that the seasonal worker will benefit from accommodation that ensures an adequate standard of living according to national law and/or practice, for the duration of his or her stay. The competent authority shall be informed of any change of accommodation of the seasonal worker. Where accommodation is arranged by or through the employer, the seasonal worker may be required to pay a rent which shall not be excessive compared with his or her net remuneration and compared with the quality of the accommodation, nor shall be automatically deducted from the wage of the seasonal worker. Moreover, the employer shall provide the seasonal worker with a rental contract or equivalent document in which the rental conditions of the accommodation are clearly stated and shall ensure

² Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0036&from=EN>

that the accommodation meets the general health and safety standards in force in the Member State concerned (article 20).

Member States shall provide for measures to prevent possible abuses and to sanction infringements of this Directive, such as monitoring, assessment or inspection in accordance with national law or administrative practice, and shall ensure that services in charge of inspection of labour or competent authorities and, where provided for under national law for national workers, organisations representing workers' interests have access to the workplace and, with the agreement of the worker, to the accommodation (article 24). The Seasonal Workers Directive also provides for sanctions against employers who are in 'serious breach' of their obligations under this Directive, from employing seasonal workers from outside the EU (article 17). Member States need to ensure the liability of employers to pay compensation to seasonal workers in the case that the employer is no longer authorized to employ seasonal workers. Authorization can be withdrawn, for example, if the employer was previously sanctioned for undeclared and/or illegal work, or if the employer failed to meet its legal obligations regarding 'social security, taxation, labour rights, working conditions or terms of employment, as provided for in applicable law and/or collective agreements' (article 9).

The Seasonal Workers Directive is not directly linked to trafficking. Yet the failure of an employer to meet obligations in relation to labour rights, working conditions or terms of contract can – in serious cases – amount to exploitative working conditions. If linked to fraudulent recruitment practices, for instance, the employer could be held accountable for trafficking. In both cases authorisation would be withdrawn and compensation to the seasonal worker would be required.³

c) Directive 2009/52/EC⁴

The Directive 2009/52/EC of the European Parliament and the Council of 18 June 2009 provides for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (the **Employers Sanctions Directive**).

Member States shall prohibit the employment of illegally staying third-country nationals and shall take the necessary measures to ensure that infringements are subject to effective, proportionate and dissuasive sanctions against the employer. Sanctions

³ Eurofound (2016), *Regulation of labour market intermediaries and the role of social partners in preventing trafficking of labour*, Publications Office of the European Union, Luxembourg, p. 18, Available at: <https://www.eurofound.europa.eu/publications/report/2016/labour-market-industrial-relations/regulation-of-labour-market-intermediaries-and-the-role-of-social-partners-in-preventing-trafficking>

⁴ which was incorporated in the Greek legal order with Law 4052/2012. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0052&from=EN>

shall include financial ones which shall increase in amount according to the number of illegally employed third-country nationals; payments of the costs of return of illegally employed third country nationals in those cases where return procedures are carried out (articles 3, 5). Article 9 provides for different situations in which Member States must impose effective, proportionate and dissuasive criminal sanctions on employers when committed intentionally, recruiting migrants in condition of irregularity. These include the illegal employment of children (article 9 (1) (e)), the exploitation of victims of trafficking in human beings (article 9 (1) (d)) and employment “accompanied by particularly exploitative working conditions” (article 9 (1) (c)).

In respect of criminal offences covered by Article 9(1)(c) or (e), Member States shall define in national law the conditions under which they may grant, on a case-by-case basis, permits of limited duration, linked to the length of the relevant national proceedings, to the third-country nationals involved, under arrangements comparable to those applicable to third-country nationals who fall within the scope of Directive 2004/81/EC (article 13). In respect of cases where residence permits of limited duration have been granted under Article 13(4), Member States shall define under national law the conditions under which the duration of these permits may be extended until the third-country national has received any back payment of his or her remuneration (article 6).

B.2 Legal Framework on Labour Trafficking

a) International Labour Organization

Under Article 2 § 1 of 1930 ILO Convention concerning Forced or Compulsory Labour (Convention No. 29), the term *forced or compulsory labour* shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily. In addition, a Protocol of 2014 to the Forced Labour Convention, 1930 (ILO Forced Labour Protocol) adopted by the International Labour Conference in 2014⁵ (entered into force on 9th November 2016), deletes the transitional provisions of Article 1, paragraphs 2 and 3, and Articles 3 to 24 of the Convention, completing it.

The ILO’s definition of forced labour comprises two basic elements: the work or service is exacted under the *menace of a penalty*; and it is *undertaken involuntarily*. Clarifying both elements, the penalty does not need to be in the form of penal sanctions, but may also take the form of a loss of rights and privileges and the menace of a penalty could take many different forms. Of course, its most extreme form involves physical violence or restraint, or even death threats addressed to the victim or

⁵ Available at:
https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P029

relatives. But also, subtler forms of menace may be noticed, sometimes of a psychological nature, including, as ILO has reported, threats to expose victims to the police or immigration authorities when they are occupied illegally, or in the case of girls forced to prostitute themselves in distant cities, denunciation to village elders. In addition, penalties can include economic penalties linked to debts or other of financial nature. Sometimes employers may require workers to deliver their identity papers using the threat of confiscation of these documents to exact forced labour.⁶

With regard to the concept of voluntary offer, the ILO supervisory bodies have touched on a range of aspects including the form and subject matter of consent, the role of external constraints or indirect coercion, and the possibility of revoking freely-given consent. It is noticed in many cases that victims entering forced labour situations do so through fraud and deception, and later discover that they are not free to withdraw their labour, owing to legal, physical or psychological coercion. For this reason, initial consent may be considered irrelevant when deception or fraud has been used to obtain it.⁷

b) United Nations

Under the article 3 (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (“the Palermo Protocol”⁸), supplementing the United Nations Convention against Transnational Organised Crime, provides for the definition of ‘Trafficking in persons’ which shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

From a careful reading of the definition of trafficking in human beings, it follows that the Palermo Protocol adopts a specific structure; it is first described the “act” of the perpetrator, then, the “means” used to serve the “act” and, thirdly, the “purpose of exploitation”. It is also clarified that exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced

⁶ International Labour Office, “The cost of coercion. Global Report on forced labour under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work”, *International Labour Conference, 98th Session 2009*, Geneva, paragraph 24, Available at:

https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_106268.pdf

⁷ International Labour Office, *op.cit.*, paragraph 25.

⁸ The Protocol was adopted in Palermo, Italy in November 2000, Available at:

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>

labour or services, slavery or practices similar to slavery, servitude or the removal of human organs.

c) Council of Europe

Following a similar structure the **Council of Europe Convention on Action against Trafficking in Human Beings** (“the Council of Europe Anti-Trafficking Convention”⁹) in Article 4 reads as follows: a) ‘Trafficking in human beings’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs; b) The consent of a victim of ‘trafficking in human beings’ to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used; c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in human beings” even if this does not involve any of the means set forth in subparagraph (a) of this article; d) ‘Child’ shall mean any person under eighteen years of age; e) ‘Victim’ shall mean any natural person who is subject to trafficking in human beings as defined in this article.

CoE Anti-Trafficking Convention provides for Each Party to take measures to establish or strengthen national co-ordination between the various bodies responsible for preventing and combating trafficking in human beings, as well as establish and/or strengthen effective policies and programmes to prevent trafficking in human beings, by such means as: research, information, awareness raising and education campaigns, social and economic initiatives and training programmes, in particular for persons vulnerable to trafficking and for professionals concerned with trafficking in human beings (article 5). Moreover, the Convention indicates to Each Party adopting such legislative or other measures as may be necessary to identify victims as appropriate, in collaboration with other Parties and relevant support organisations, and ensuring that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall

⁹ Signed in Warsaw, on 16th/5/2015, Available at: <https://www.lastradainternational.org/wp-content/uploads/2020/10/Council-of-Europe-Convention-on-Action-against-Trafficking-in-Human-Being.pdf>

likewise ensure that that person receives assistance (article 10). In parallel, Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. During this period, it shall not be possible to enforce any expulsion order against him or her (article 13). In addition, Each Party shall provide, in its internal law, for the right to legal assistance and to free legal aid for victims under the conditions provided by its internal law, as well as for the right of victims to compensation from the perpetrators, for instance through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims (article 15).

According to the Explanatory Report accompanying the Anti-Trafficking Convention the term “abuse of a position of vulnerability” must be perceived as the abuse of any situation in which the person concerned has no other real and acceptable choice, than to surrender. It can therefore be any kind of weakness, whether physical, mental, emotional, family, social or economic. This situation can, for example, be a precarious or illegal administrative situation, a state of economic dependence or a fragile health condition. In summary, this is all the risky situations that can lead a human being to accept his exploitation. Those who are abusing such a situation commit a manifest violation of human rights and an attack on dignity and integrity, from which no one can recover (paragraph 83, 84). The purpose must be exploitation of the individual. The forms of exploitation specified in the definition (paragraph 85) cover sexual exploitation, labour exploitation and removal of organs, for criminal activity is increasingly diversifying in order to supply people for exploitation in any sector where demand emerges (paragraph 86).

Moreover, the **European Convention on Human Rights (ECHR)**¹⁰ in Article 4 prohibits forced labour without defining it. According to the interpretation of Article 4 (2) of the ECHR, based on applicable provisions of international conventions, such as Convention No. 29 of the ILO and the Council of Europe Convention on Action against Trafficking in Human Beings of 16/5/2005, the prohibition provided for in Article 4 of the Convention is not only aimed at situations of total vulnerability of the victims, the deprivation of liberty or exclusion from the outside world. The exploitation of labour is one form of exploitation which includes human trafficking. The forms of psychological threat (means of coercion), such as complaints to the police or immigration services, the refusal to pay wages and generally the exploitation of the vulnerable position of the worker, in which he is by definition due to his illegal employment regime, and in addition because of his despicable living conditions in places that serve the daily (6-day) job offer, have as a result that any act of violation of the labour legislation (e.g. timetables, working conditions, workers' insurance,

¹⁰ Available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf

declaration of workers etc.) may fall within the purpose of the “exploitation” in the context of forced labour.¹¹ In this sense, when the employer exploits and controls the workers by taking advantage of their status as illegal immigrants and therefore, by their weakness, when the surveillance is done in situ, when working hours are long, when wages are low or are not properly paid, when there are threats of violence in the event of failure to cooperate with the conditions submitted, then the work becomes compulsory.¹²

The European Court of Human Rights (ECtHR) regarding the state’s obligations stemming from Article 4 (2) of the ECHR, ruled that the triptych of positive obligations includes (1) the prevention of trafficking by informing vulnerable groups about their rights and how they are claimed and by adequately training all relevant actors, in cooperation with relevant anti-trafficking bodies, (2) the protection of victims by taking measures to protect the actual or potential victims of trafficking in human beings, in order to identify the conditions that constitute exploitation in the workplace and thus to identify the victims according to article 4 and the right of victims to be compensated by the perpetrators of crime, along with measures to set up a compensation fund for victims; and (3) on a repressive level, the punishment of perpetrators.¹³ Consequently, the general legal framework on a State’s positive obligations as derived by the ECHR allocates the competence or otherwise, it positively obliges a State to take further action at national level specifying their context not only legislating as general Law, but, in addition, issuing Ministerial Decisions, Joint Ministerial Decisions, regulatory Circulars etc¹⁴. Consequently, the combination of the instrument (exploitation of a vulnerable position of a worker) and the purpose (exploitation of work by breaching labour law provisions) as elements of trafficking in human beings in the context of labour exploitation constitute controllable elements falling within the competence of the labour inspectorates and insurance; thus, administrative actions such as issuing circulars to Supervisory Bodies for even outdoors field actions for controlling the labour and insurance legislation, in relation

¹¹ Michopoulou, K. "The positive obligations of the State under Article 4 of the European Convention on Human Rights (ECHR) concerning Labour Trafficking", *Talk Forward: Work Breakthrough, organised by Ministry of Foreign Affairs, National Office for Combating Trafficking in Human Beings (NRO), Municipality of Athens, OPANDA, Elculture.gr*, Athens, 2/12/2017 (World UN Day for the Abolition of Slavery)

¹² As analyzed in the Intervention Anti-Slavery International report in the ECHR case, *Chowdury and Others v. Greece*, para. 84

¹³ ECHR, *Chowdury and Others v. Greece*, judgment of 30.3.2017, paragraphs 93, 99, 104, 128, Available at: <https://hudoc.echr.coe.int/eng?i=001-172701>

¹⁴ Michopoulou, K. (2017), *Positive Obligations of State Institutions. The case law of the European Court of Human Rights and the Greek Constitution*, Doctoral Thesis, Panteion University of Social and Political Sciences, Athens, pp. 95-103, Available at: <https://www.didaktorika.gr/eadd/handle/10442/40614?locale=en>

to the 'detection' of the exploitation purpose and the element of vulnerable position, should be entailed in an effective public policy¹⁵.

Furthermore, in its Fourth General Report on its activities (for the period 1 August 2013 to 30 September 2014),¹⁶ the **Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA)** reported that some countries focus almost exclusively on THB for sexual exploitation and not enough is done to conceive prevention measures addressing trafficking for other purposes. For example, GRETA has urged the Spanish authorities to develop measures to raise awareness of THB for the purpose of labour exploitation and to organise information and education activities about THB, including for children. In addition, in its Fifth General Report,¹⁷ GRETA added that Article 10 of the Anti-Trafficking Convention places a positive obligation on States Parties to identify victims of trafficking. The Convention requires that the competent authorities have staff who is trained and qualified in identifying and helping victims, including children, and that the authorities collaborate with one another and with relevant support organisations, such as NGOs. Victim identification is a process that takes time. Even when the identification process is not completed, as soon as the competent authorities consider that there are reasonable grounds to believe that a person is a victim, he/she must not be removed from the territory of the state concerned, be it to the country of origin or a third country (paragraph 94).

Moreover, according to its 7th General Report¹⁸ the enforcement of labour law standards as a means of preventing trafficking for the purpose of labour exploitation has received attention from the International Labour Organization (ILO). Labour legislation and workplace inspections, including on health and safety, compliance with labour standards and revenue laws, play an important role in deterring instances of human trafficking for forced labour and identifying possible victims. Effective regulation of labour supply and workers' rights, including the protection of unionisation of workers, are also important for preventing human trafficking. The extension of the scope of labour protection over all sectors of the economy and over

¹⁵ Michopoulou, K. (2018) Complaint-Petition attached to the Greek National Commission for Human Rights (GNCHR)'s Recommendations for the full compliance of the Greek State with the ECtHR judgment *Chowdury and others v. Greece* - Application No.21884/15, DH-DD(2018)1074: Rule 9.2 - NGO/NHRI Observation, *Secretariat General, Secretariat of the Committee of Ministers*, 1331st meeting (December 2018) (DH), Available at: [http://hudoc.exec.coe.int/ENG/?i=DH-DD\(2018\)1074E](http://hudoc.exec.coe.int/ENG/?i=DH-DD(2018)1074E)
<https://www.tovima.gr/2018/11/29/society/imerida-gia-tin-ypothesi-tis-manoladas/>

¹⁶ GRETA, Group of Experts on Action against Trafficking in Human Beings, 4th General Report on GRETA's activities, covering the period from 1 October 2014 to 31 December 2015), Council of Europe, March 2015, Available at: <https://rm.coe.int/16805aa45f>

¹⁷ GRETA, Group of Experts on Action against Trafficking in Human Beings, 5th General Report on GRETA's activities, covering the period from 1 October 2014 to 31 December 2015), Council of Europe, February 2016, Available at: <https://rm.coe.int/168063093c>

¹⁸ GRETA, Group of Experts on Action against Trafficking in Human Beings, 7th General Report on GRETA's activities, covering the period from 1 January to 31 December 2017, Council of Europe, March 2018, Available at: <https://rm.coe.int/greta-2018-1-7gr-en/16807af20e> , paragraphs 136, 137

undocumented workers is essential for preventing vulnerable workers from exploitation and human trafficking. GRETA's reports pay particular attention to the mandate, resources and training of labour inspectors, their collaboration with specialised anti-trafficking agencies (e.g. through joint inspections and joint training and events) and their involvement in National Referral Mechanisms for victims of trafficking. GRETA also noted that in many countries, labour inspectors lack the training and resources to respond efficiently to reports of labour violations and urged the authorities to reinforce labour inspections in sectors known to be prone to undeclared work and/or human trafficking, and to ensure that labour inspections are comprehensive and proactive.

d) European Union

In the framework of the **European Union the Charter of Fundamental Rights of the EU (2012/C 326/02)**¹⁹ provides for the Prohibition of slavery and forced labour distinguishing in three sentences:

- “1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited” (article 5)

Moreover, according to the Charter every worker has the right to working conditions which respect his or her health, safety and dignity; also, has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave (article 31).

In parallel, the **Directive 2011/36/EU** of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims (**EU Anti-Trafficking Directive**), replaces Council Framework Decision 2002/629/JHA,²⁰ establishes minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings, adopting an integrated, holistic, and human rights approach to the fight against trafficking in human beings²¹. It also introduces common provisions, taking into account the gender perspective, to strengthen the prevention of this crime and the protection of the victims thereof (article 1). Specially, according to the Directive (article 2) Member States shall take the necessary measures to ensure that are punishable the recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or

¹⁹ Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN>

²⁰ Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011L0036>

²¹ as incorporated in the Greek legal order with Law 4198/2013 adding art. 323A of the Greek Penal Order, Available also at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=100467

transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation (paragraph 1).

In addition, **paragraph 2 defines the “position of vulnerability” as a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.** Moreover, according to paragraph 3 “Exploitation” includes, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, **forced labour or services**, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs. It is also explained that the “**consent**” by a victim of trafficking in human beings to the exploitation, whether intended or actual, shall be **irrelevant** where any of the means set forth in paragraph 1 has been used (paragraph 4). Furthermore, Member States shall take the necessary measures to ensure that inciting, aiding and abetting or attempting to commit an offence referred to in Article 2 is punishable (article 3) as well as that an offence referred to in Article 2 is punishable by a maximum penalty of at least five years of imprisonment, or even 10 years of imprisonment when i.e. committed against a victim who was particularly vulnerable or committed by use of serious violence or has caused particularly serious harm to the victim (article 4).

According to the Directive, labour market intermediaries are to be held liable for engaging in trafficking activities, imposing clearly to Member States the obligation to initiate criminal proceedings against legal as well as natural persons who are perpetrators, inciters, or accessories in the offences (or their attempts to commit one) concerning trafficking in human beings (Article 5). Moreover, in this framework, the term “labour exploitation” is more inclusive than forced labour or slavery, as it encompasses a variety of possible abusive situations related to work²².

Furthermore, the **Directive (2011/83/EU)** of the European Parliament and of the council of 25 October 2011 on consumer rights (**Consumer Rights Directive**),²³ amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council²⁴, although it is not directly related to labour trafficking, offers a legal basis for more stakeholders’

²² Eurofound (2016), *Regulation of labour market intermediaries and the role of social partners in preventing trafficking of labour*, Publications Office of the European Union, Luxembourg, p. 24, 9.

²³ Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0083&from=EN>

²⁴ Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0064:0088:en:PDF>

participation towards supply chain's transparency; the exercise of consumers' rights laid down in the "Consumer rights Directive" may consist a dynamic tool in their hands for providing their assistance concerning possible cases of labour exploitation. And, in the end, this consumers' power may control the social and ethical profile of a company.

Specifically, this Directive lays down information requirements for contracts other than distance or off-premises contracts reading as follows: "1. Before the consumer is bound by a contract other than a distance or an off-premises contract, or any corresponding offer, the trader shall provide the consumer with the following information in a clear and comprehensible manner, if that information is not already apparent from the context: (a) the main characteristics of the goods or services, to the extent appropriate to the medium and to the goods or services; (b) the identity of the trader, such as his trading name, the geographical address at which he is established and his telephone number; (c) the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated, as well as, where applicable, all additional freight, delivery or postal charges or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable; (d) where applicable, the arrangements for payment, delivery, performance, the time by which the trader undertakes to deliver the goods or to perform the service, and the trader's complaint handling policy; (e) in addition to a reminder of the existence of a legal guarantee of conformity for goods, the existence and the conditions of after-sales services and commercial guarantees, where applicable; (f) the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract; (...)"

Under Article 5 of the Consumer Rights Directive, consumers should be provided with information concerning the main characteristics of the goods or services they purchase or use. Consumers who are concerned about humane working conditions should have a right to know when they buy a product that comes with a serious risk of having been produced in exploitative conditions.²⁵

²⁵ FRA, European Union Agency for Fundamental Rights, (2015) "Severe labour exploitation: workers moving within or into the European Union - States' obligations and victims' rights", Publications Office of the European Union, Luxemburg, p. 16, Available at: <https://fra.europa.eu/en/publication/2015/severe-labour-exploitation-workers-moving-within-or-european-union>

C.National Legal Framework

The Greek legal order has provided for two ways for immigrant's access in labour market. The Immigration and Social Integration Code (Law 4251/2014²⁶) as transported Dir. 2014/36/EU lays down the conditions for legal migration and seasonal work. First, the "standard" procedure (article 13), the invitation (metaklisis) from abroad, which mainly concerns the agriculture sector, as laid down in article 13 (Law 4251/2014), and second, the "quicker" procedure (article 13A), for immigrants without residence permit who have already crossed the borders and have an irregular status in the Greek territory. The application of these systems depends on state's intervention, thus make the labour immigration market a tripartite one (employers-immigrants-state). However, the conditions under which the labour permits are granted, are based on arbitrary criteria that could risk violating the principle of fair treatment and intensifying social exclusion;²⁷ moreover, the conditions are basically dependent on employer's initiative that, in fact, render the whole process inapplicable or hardly applicable, as it asks from the employer, either small/medium farmers, or large-scale ones, without any distinction, to get involved in a very labyrinthine process which acts as a deterrent and, most of the time, leads to the acceptance, on employer's part, of a problematic system which reaches the edges of labour trafficking²⁸.

Specifically, the provisions of article 13, Law 4251/2014 are applied to third-country nationals who either reside outside the Greek Territory and are requested to be admitted and resident there or have already been admitted to it in accordance with the provisions of this Code for the purpose of seasonal work. Any employer who wishes to recruit seasonal workers on the basis of the jobs contained in the joint ministerial decision referred to in Article 11 of the Code shall file an application with the Decentralized Administration of his place of residence, the number of jobs, data and citizenship of third-country nationals to work, the specialization and the length of time spent in employment. Under paragraph 3 of this article, along with the application, the employer submits:

- a) Proof of payment of a fee of one hundred (100) euro for any citizen of a third country who wishes to employ, which is collected in favor of the State and is not refunded.

²⁶ Available also at: https://ec.europa.eu/migrant-integration/library-document/law-42512014-immigration-social-integration-code-and-other-provisions_en

²⁷ Papatheodorou, T. (2015) "Alien legal status: Greek and European legislation", *Nomiki Bibliothiki*, Athens.

²⁸ Michopoulou, K. (2018) "Problems in the administration of justice in human trafficking cases; Proposals", *Greek Parliamentary Records, Subcommittee for combating human trafficking and exploitation (Special Permanent Committees) session of 12th.12.2018*, Hellenic Parliament

- b) A statement that he will recruit the employees and will assume the anticipated expenses if the conditions for the application of paragraph 3 of article 80 of Law 3386/2005 (A '212) are met.
- c) Valid employment contract for the purpose of seasonal work, signed by an employer established in the Greek territory, that shall indicate: (a) the type of employment and the date of commencement thereof; (b) the place where such employment takes place; (c) the date of commencement thereof; (d) the duration of employment; (e) the number of hours worked, which will be specific per day, within the week or month; (f) the amount of any allowance, if provided for in the contract, and (g) any other working conditions, as appropriate. (...)
- d) *Evidence that a suitable accommodation* is provided to the employee as defined by a decision of the Minister of Health under the authorization of article 43 of Law 4025/2011 (A' 228), as in force. Where the accommodation is provided by the employer, he must on the one hand ensure that the accommodation meets the health and safety requirements of the health and safety regulations under the control of the competent authorities, on the other hand, informs the competent authority of any change to that. Where the seasonal worker is required to pay a rent, the employer shall offer to the seasonal worker a tenancy agreement or an equivalent document clearly stating the terms of his rental.

In any case the amount of the rent must be proportional to the seasonal worker's remuneration and the quality of the accommodation, and it does not automatically deduct from the salary of the seasonal worker. Where the accommodation is not provided by the employer, the employer must provide the relevant department of the decentralized administration with evidence that the seasonal worker has self-catering accommodation that meets the statutory requirements.

This (new) Article 13A was added to Law 4251/2014 after an amendment to Law 4384/2016 provides exceptionally for a 6-month work permit in order to address emergency needs in agricultural holdings. A prerequisite is that the maximum number of invitations/metaklisis per year, as defined in the relevant two-year ministerial decision, is not completed. The urgency is certified only by the employer's statement that he is in a situation of force majeure, and he is unable to conclude legal contracts in time to meet the needs of his holding. For this purpose, he submits to the competent department of the Decentralized Administration of the place of residence an application for the exceptional employment of third-country nationals who are denied residence in the country in order to meet these urgent needs, together with the rest of the supporting documents as referred to in paragraph 3 of Article 13 (invitation/metaklisi procedure) which include evidence of accommodation. The Deputy Administrator may issue authorizations until the number of employees provided for in the joint ministerial decision. The authorization granted for the

exceptional employment of third-country nationals constitutes a reason for postponing expulsion and the competent department of the Decentralized Administration shall send the approved act of approval to the local police department. If a return decision has already been issued, the competent police authority shall issue an attestation of **postponement of removal**.

Even government representatives or officials admit on the seasonal labour permits system's inefficiency, thus trying to conclude in amendments of the existing of a new seasonal labour system. "*The competent local authorities and Prefectures mostly does not apply at all the "article 13A"; they don't even know; the problems are intense, and the quotas released by the General Secretary [Ministry of Migration Policy] prove that the measure does not go ahead. The needs of rural workforce in Greek agriculture are huge and don't correspond to these quotas*".²⁹ Also, in the framework of the Parliamentary Control,³⁰ the Minister of Migration Policy presented the numbers of permits granted under article 13A for the season 2017 according to which only 103 were granted for the Region of Ilia, west Peloponnese, whereas the joint Ministerial Decision [No 4872/105/ 2017/Official Gazette (FEK) B' 398/13-2-2017)] provided for 1.500 potential work permits.

The deficiencies of this problematic system of seasonal work permits create a category of "para-legal" immigrants for the reason that their deportation is simply postponed and not inhibited and, simultaneously, there is a very low degree of enjoyment of civil and social rights,³¹ as they may have access to a temporary welfare under insurance and tax legislation, but to no other civil right of definite duration.

The Hellenic Labour Inspectorate (SEPE) is the competent body within the executive power, i.e., the Ministry of Labour, Social Security and Welfare, charged with organizing and managing the labour inspection services. Labour Inspectors are qualified, professional civil servants. They carry out inspections at workplaces and worksites to check compliance with national labour laws and standards, including employment and safety and health regulations.

²⁹ Vastardos-Honas, A., Associate of the Minister of Rural Development and Food, Arachovitis, S., Greek Parliamentary Records, Subcommittee for combating human trafficking and exploitation (Special Permanent Committees), session of 12th.02.2019.

³⁰ Parliamentary Control, doc. Prot. No 879/6-03-2017, Ministry of Migration Policy, Minister Office, Available at: <https://www.hellenicparliament.gr/UserFiles/67715b2c-ec81-4f0c-ad6a-476a34d732bd/9960507.pdf>
https://www.hellenicparliament.gr/Koinovouleftikos-Elenchos/Mesa-Koinovouleutikou-Elegxou?pcm_id=27c62b94-9ed9-4445-ab5d-a715014dff4b

³¹ Kapsalis, A. (2018) "The development of Greek migration policy and the invention of 'para-legality' in labour relations of immigrants", *Social Policy* 9, Hellenic Social Policy Association, p. 78.

There are about 720 inspectors for the whole of Greece, divided into two sectors dealing respectively with salaries and insurance payments, and working conditions. Labour inspectors can inspect any place where workers are likely to be employed, be it private or public, including farms, but cannot enter private houses without the owner's consent. Under the Greek Law 3996/2011 SEPE inspect the application of legal provisions regarding the legality of third-country national's employment. The inspections aim at detecting violations of the labour legislation and illegal employment of workers, including possible victims of trafficking, and, in case the labour inspectors find employment not declared or under-declared, they have the authority to impose administrative fines³². However, in agricultural sector, there have not been many cases of THB for the purpose of labour exploitation detected by labour inspectors under the excuse that since Greece has not ratified -even 50 years after its signature (1969)- the International Labour Convention No. 129 concerning Labour Inspection in Agriculture,³³ Labour Inspectorate has not competence in inspecting living conditions. In case there is an indicator of labour exploitation, labour inspectors notify the police and, in case of a suspected criminal offence, the Prosecutor's Office. In some cases, as provided in Law 4144/2013, SEPE and Financial and Economic Crime Unit (SDOE) may collaborate in joint inspection teams for undeclared or under-declared work and fraud regarding social security and taxes.

In addition, under Article 88, paragraph 5 of Law 4052/2012³⁴ SEPE has the competence to file a criminal report before the prosecution authorities and initiate penal proceedings. The agricultural sector is particularly difficult to monitor, especially in remote country areas where labour inspectors are accompanied by police officers. The Labour Inspectorate has informed GRETA that it had suggested the Ministry of Labour, Social Security and Welfare to address the regulation of private employment agencies. The Greek authorities have stated that within the framework of Europol's EMPACT THB project, SEPE participated in joint actions with the police aimed at combating trafficking in human beings for labour exploitation (15-19 May 2017). Inspections were carried out in 206 companies, 46 undeclared workers were found, while 148 employees were found to be employed on a different timetable than what was declared. In one case, after a complaint about possible illegal exploitation of workers in an illegal migrant camp, a joint inspection took place. The labour inspectors interviewed a group of migrants as to whether they were forced in any way to stay and work, or work without pay, or if their travel and other documents were withheld, but in all cases the answers were negative. Labour inspectors, after having informed the

³² Under Law 4554/2018 (article 5) and its amendments, administrative fines may reach up to 10.500 € (about 18 times the minimum wage) for each undeclared worker.

³³ Entry into force: 19 Jan 1972

³⁴ The Greek Law 4052/2012 incorporated the Employers' Sanctions Directive.

migrants about the possibility to receive protection in case of labour exploitation, forwarded the case to the competent prosecutor.³⁵

It was not earlier than October 2018 that for first time in SEPE's history, after the filing of the Petition-Application on behalf of the 164 victims of June's 2018 fire before the Central Service of Labour Inspection,³⁶ SEPE corresponded to the competences as had been indicated by the Petition-Application and, finally, realised on 11th/10/2018 in-situ visits³⁷ in the area of Manolada, West Peloponnese, at open-area workplaces (fields) where the applicants were working during the harvest season; but nothing reproachable was found, since October is well before the strawberry harvest season.

³⁵ GRETA, Group of Experts on Action against Trafficking in Human Beings, 2017(27) "Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece (1st evaluation round)", *Council of Europe*, adopted on 7 July 2017, published on 18 October 2017, paragraph 143, 144, 148, Available at: <https://rm.coe.int/greta-2017-27-fgr-gre-en/168075f2b6>

³⁶ Available at: [http://hudoc.exec.coe.int/ENG?i=DH-DD\(2018\)1074E](http://hudoc.exec.coe.int/ENG?i=DH-DD(2018)1074E)

³⁷ According to the Document with Prot.No.447461/5.12.2018 of the Central Service of Labour Inspection, Ministry of Labour, Social Security and Welfare, notified to the legal representative of the applicants-workers, Kon. Michopoulou, on 5.12.2018.

D. The System of Agricultural Economy in Practice Applying Law (The Legal Chronicle and its Evaluation)

Over the last decade, the "system" of agricultural operating mechanism of production in one of the biggest agricultural areas in Southern Greece, in Western Peloponnese, is based on the existence of rudimentary housing for workers, mostly Bangladeshi and Pakistani origin, who are hired to support the needs of agricultural productivity (mainly strawberries and vegetables). During the harvest period, the migrants may reach the 8.000 workers, out of them only around the 4% is occupied regularly. This temporary residence for land workers is a shantytown or makeshift camps next to the main town. The camp site selected to serve the needs of carrying out seasonal agricultural work, in a land not owned by the employer, results in the diminishing any liability for the degrading living conditions. The type of shanty camp development is usually dependent on a basic normal house built in a farm with electricity and water supply, next to which the shanties are constructed like greenhouses, being supplied by the main house.³⁸

Nevertheless, this "accommodation area" is located within the settlement of the region, under the tolerance of the authorities, and completes the "work" system in the area, offering, in fact, a "safety" distance out of reach of labour inspectorate bodies. The workers can approach the nearby work fields on foot or by a truck of the producer or the agent. Notwithstanding the knowledge and the tolerance by the authorities and the local actors, it doesn't seem anyone really concerns about the vulnerability of the land workers, due to their irregular recruitment in conjunction with the intimidating living conditions, which rend them exposed to any kind of labour exploitation.

The "big bang" of the problematic situation

The most important case regarding the interpretation of article 4 (2) of the European Convention on Human Rights (ECHR) on forced labour and labour trafficking, ranked among European Court of Human Rights (ECtHR)'s 30 cases with the greatest impact,³⁹ is *Chowdury and others vs Greece* case⁴⁰ (alias "Manolada case") which took

³⁸ See, <http://www.immigration.gov.gr/miniaia-statistika-stoixeia>; Manolada Watch, Report on the situation at Manolada - January 2019, Available at: <https://g2red.org/report-on-the-situation-at-manolada-january-2019/>; Augère-Granier M-L. (2021), Members' Research Service PE 689.347, "Migrant seasonal workers in the European agricultural sector", *European Parliamentary Research Service (EPRS)*, European Union, Available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/689347/EPRS_BRI\(2021\)689347_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/689347/EPRS_BRI(2021)689347_EN.pdf)

³⁹ For further information: <https://www.coe.int/en/web/portal/-/30-new-cases-highlight-the-impact-of-the-european-convention-on-human-rights?fbclid=IwAR04430RTFaPqV0tuqoSNj-TNnKrR44Ca5OdZ8a67kda7AeHSwDDUBkkVXU>

⁴⁰ ECtHR, *Chowdury and Others v. Greece*, application no. 21884/15, Judgment 30.3.2017, Available at:

place in New Manolada, Western Peloponnese, Southern Greece.⁴¹ The case revealed the problematic situation in the region of Western Peloponnese, as well as in agricultural sector, which is based on and flourish thanks to migrants' labour hands, most of them Bangladeshi or Pakistan.

Even though the prosecutor asserted that the incident of 17 April 2013 was indicative of a situation of overexploitation and barbarism to which the large landowners in the region had subjected migrant workers, arguing that this incident referred to images of a "Southern Slave" having no place in Greece, by its judgment of 30 July 2014, the Assize Court acquitted the accused of the charge of trafficking in human beings stating that the victims hadn't been in a state of absolute weakness. Consequently, it convicted the armed guard and one of the employers of grievous bodily harm and unlawful use of firearms; their prison sentences were commuted to a financial penalty.⁴² On 21 October 2014 the workers asked the public prosecutor at the Court of Cassation to appeal against the assize court judgment, arguing that the charge of human trafficking had not been examined properly. That request was dismissed and the part of the assize court judgment dealing with human trafficking became "irrevocable".

The workers, victims of labour trafficking, relying on Article 4 § 2 (prohibition of forced labour) alleged before **the European Court of Human Rights that the authorities had failed to react; they further submitted that the State was under an obligation to prevent them from being subjected to human trafficking, to adopt preventive measures for that purpose and to punish the employers.** The ECtHR based on various ratified international legal texts, which safeguard fundamental rights in labour and prohibit the forced labour and labour exploitation, **reiterated that human trafficking fell within the scope of Article 4 of the Convention, found that the applicants' situation was one of human trafficking and forced labour, and specified that exploitation through labour is one aspect of trafficking in human beings.** The Court then held that the State had failed in its

<http://hudoc.echr.coe.int/eng?i=001-172701>

⁴¹ The case concerned 42 Bangladeshi nationals who did not have work permits when they were recruited between October 2012 and February 2013. Their employers had recruited them to pick strawberries on a farm in New Manolada but failed to pay the applicants' wages and obliged them to work every day from 7 a.m. to 7 p.m. in difficult physical conditions under the supervision of armed guards. They had been promised a wage of 22 euros for seven hours' work and three euros for each hour of overtime. Their employers had warned them that they would only receive their wages if they continued to work. The applicants lived in makeshift huts without toilets or running water. In February 2013, March 2013 and April 2013 the workers went on strike demanding payment of their unpaid wages, but without success. On 17 April 2013 the employers replaced them with other Bangladeshi migrants. Fearing that they would not be paid, 100 to 150 workers from the 2012-2013 season started moving towards the two employers to demand their wages. One of the armed guards then opened fire, seriously injuring 21 of the applicants. The wounded were taken to hospital and were subsequently questioned by police. The two employers, together with the guard who had opened fire and an armed overseer, were arrested and tried for attempted murder – subsequently reclassified as grievous bodily harm – and also for trafficking in human beings.

⁴² They were also ordered to pay 1,500 euros to the 35 workers who had been recognised as victims – that is, 43 euros to each of them.

obligations to prevent the situation of human trafficking, to protect the victims, to conduct an effective investigation into the offences committed and to punish those responsible for the trafficking. The Court also noted that the domestic courts had interpreted and applied the concept of trafficking in human beings in a very restrictive manner, by identifying it with servitude, while the seasonal workers' labour conditions corresponded to labour trafficking and not to servitude which amounts to a permanent condition.⁴³

In the framework of state's implementation of ECtHR's judgment and under the enhanced supervision of the Committee of Ministers, the public prosecutor at the **Court of Cassation** lodged **an appeal on points of law**,⁴⁴ mostly with proclamatory character, with no legal effects, in order to reverse the *res judicata* on legal issues in the Greek legal order. The labour exploitation is one form of exploitation which includes human trafficking, which, as an idea, is verified by the spirit of Article 323 A of the Greek Penal Code (PC). The Supreme Court ruled, even though interpreting article 323A of PC *ex nunc*, that “**vulnerable position**” for the purpose of labour exploitation includes any situation in which the person concerned has no other real and acceptable choice, than to surrender. This risky situation (or state of weakness) due to economic, social, personal or other problems that the person faces, such as ignorance of language, living conditions, lack of ties with the state of residence, fear of deportation, has as a result this person deprives of any “self-protection mechanism” which leads to an absolute lack of ability to protect integral legal goods -such as life, personal freedom, physical integrity- and has no choice but to be surrendered to perpetrator's (employer's) sphere of authority. **The integral difference between slavery-servitude and labour trafficking is that this “sphere of authority” amounts neither to complete enslavement nor to a total deprivation of liberty of the victim, but it is -as the Court mentions- a “breakage of victim's personal liberty” that leads to his voluntary submission as an object of exploitation by the perpetrator.**

Notwithstanding ECtHR's conviction, the situation in substance remains all the same. The migrant workers are still accumulated in makeshift camps under inhuman conditions and most of them are irregular workers because of the problematic and labyrinthine legal framework that favorise the phenomena of labour exploitation.

⁴³ ECtHR, *Chowdury and Others v. Greece*, *op.cit.*, paragraphs 99, 123, 134.

⁴⁴ Decision of 18th of June 2019. For further legal analysis: Michopoulou, K. (2019) “*Annulment for misapplication of the legislation on Labour Trafficking as a measure of last resort for the judicial judgement's rescuing*” [“*Αναίρεση υπέρ της ορθής ερμηνείας του νόμου περί εμπορίας ανθρώπων ως έσχατο μέτρο «διάσωσης» της δικαστικής κρίσης*”], Commentary publication on No 2/2019 Judgment of Penal Plenary of the Greek Supreme Court; Available at: <http://www.immigration.gr/2019/07/anairesi-yper-ths-orthis-ermhneias--nomoy-kata-ths-emporias-anthropon-ws-esxato--metro-diasosis-dikastikhskrishi.html>

This "Omerta" type cover-ups that prevail in Western Peloponnese was revealed **again** in the morning of 7th June 2018 when, during workers' occupation in nearby farms of seasonal strawberry cultivation -and for this reason there were no victims of explosion- a fire broke out at the main camp of residence of workers in New Manolada, Iliia, Greece.⁴⁵ The fire domino effect in plastic accommodation, like greenhouses, built next to each other, proved to be an absolute catastrophe. As a result, at the end of the season the workers were found with no money, documents and accommodation. In an absence of an organised state action plan, after the event, tents were set up on a plot of land, made of thin plastic, inside of which were placed mainly blankets or sleeping bags under 40° C sun exposure or rainfalls. The described circumstances render the way the campsite has been set up unsustainable and therefore an ineffective measure to address the problem. These victims were only granted a "**Certification of Fire**" by the competent Fire Service but neither any burn document was replaced, nor their living conditions ameliorated, nor their working status legalised, even for the seasonal needs. Consequently, in September 2018 these workers filed a **Petition**⁴⁶ before the Central Inspectorate Service of the Ministry of Labour, which was notified⁴⁷ to more than ten competent authorities,⁴⁸ asking for autopsies on working and living conditions, financial grant, effective system of seasonal permits. Lodged under the procedure provided on the ECtHR's execution of judgments⁴⁹ this last case was associated with the previous one of 2013 by the Committee of Ministers under its enhanced supervision following up the *Chowdury and others vs Greece* case about the conditions that prevail in Western Peloponnese's region as far as the system of labour in agriculture is concerned that favors labour exploitation phenomena.

⁴⁵ This place was the living space during the execution of agricultural work, for the last 8 years. On this land lived about 400 people mainly of Bangladeshi and Pakistani origin. It was consisted of 37 greenhouse- tents with metal support, which contained rudimentary household equipment (cooking stove, gas bottles, kitchen utensils) for food preparation, old bedding, clothing and personal documents such as passports, residence permits or applications, money/salary, medical certificates, bank documents (bank statements, receipts of money transfers) and other documents justifying their stay and work in the area. As most of them were recruited illegally, the above documentary evidence was gathered by many of them, so as to apply for a residence permit for exceptional reasons (Art. 19, Greek Law 4251/2014, as amended by the Greek Law 4540/2018).

⁴⁶ It was filed as a "Petition-Application", because it was an official complaint which included an application to the competent authorities for taking action and adopting necessary measures to combat these problematic phenomena.

⁴⁷ by the author as their legal representative

⁴⁸ including the Ministry of Immigration Policy; the Ombudsman; the Office of the National Rapporteur for Combating Trafficking in Human Beings at the Ministry of Foreign Affairs; the Ministry of Rural Development and Food; the National Commission for Human Rights.

⁴⁹ As this Petition (Complaint) was attached and submitted together with the Greek National Commission for Human Rights (GNCHR)'s Recommendations according to the Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, and was filed as "Rule 9.2 Communication from the Greek National Commission for Human Rights (12/10/2018) in the case of Chowdury and Others v. Greece (Application No. 21884/15), NGO/NHRI Observation", *Secretariat General, Secretariat of the Committee of Ministers*, 1331st meeting (December 2018) (DH), Available at: [http://hudoc.exec.coe.int/ENG?i=DH-DD\(2018\)1074E](http://hudoc.exec.coe.int/ENG?i=DH-DD(2018)1074E)

Consequently, two joint inspections were carried away by police authorities and units from the **Prefecture's Directorate** of Public Health and Welfare in workers' living camps, where non-compliance with basic hygiene rules as well as lack of cleanliness were confirmed. Still, Labour Inspectorate refused to take action and carry away in-situ visits to report these living conditions of the workers for the purpose of detecting the **level of vulnerability** of suspecting victims of labour exploitation. Instead, in December 2018, the police authorities issued 164 **deportation orders** against the petitioners since their identity had been disclosed because of the Petition's filing.

At the same time⁵⁰, the Hellenic Labour Inspectorate acting under Article 88 (5) of Law 4052/2012, which incorporated the Employers Sanctions Directive, exercised its competence to file a criminal report before the prosecution authorities and initiate penal proceedings. Its penal Report was forwarded, together with worker's Petition, to the Supreme Court Prosecutor which ordered the local Prosecutor (of Amaliada) to issue -totally- 328 **Acts of Characterization**⁵¹ as employees working under exploitative working conditions according to employers' sanctions directive as incorporated in Greek law (4052/2012). Under Article 2 (i) of Employers Sanctions Directive "*particularly exploitative working conditions*" means working conditions, including those resulting from gender based or other discrimination, where 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". Consequently, 297 residence permits were granted according to article 13 of Employers Sanction Directive for the reason of being submitted to particularly exploitative working conditions. To reach this conclusion, the Prosecutor accepted (based on the arguments included in worker's Petition) that the **illegality** of third-country nationals' employment in conjunction with their **living** conditions in improvised and makeshift installations without meeting the basic rules of health and security, are solid **evidence** of particularly exploitative working conditions.

The criminalisation of employment under particularly exploitative working conditions is introduced by Article 9(1)(c) of the Employers Sanctions Directive and differs from that of trafficking in human beings for labour exploitation which should be perceived as an aggravating situation. Of course, although particularly exploitative working conditions may be the result of trafficking in human beings, not all exploitation occurs in the context of trafficking.⁵²

⁵⁰ In parallel with legal representatives' reactions before National Rapporteur on trafficking in human beings and Supreme Court Prosecutor

⁵¹ Prosecutor of Amaliada, Act of Characterization No. 14/2019.

⁵² FRA-European Union Agency for Fundamental Rights (2021), Report on "Protecting migrants in an irregular situation from labour exploitation. Role of the Employers Sanctions Directive Severe",

However, there is not a clear dividing line between these crimes, as “particularly exploitative conditions” are met in working situations where these are **disproportionally below** what is acceptable under labour law in situations of legal recruitment. This is because such conditions may be due to the vulnerability of employee’s situation⁵³ which makes them be submitted to employer’s sphere of authority who **gains benefit** because either of the illegal recruitment itself or of any other breach of labour law (eg. failure to pay a mandated minimum wage, exceeding of legal working hours without paying the overtime, lack of health or safety conditions at work etc).

In this case, the **objective** constitutive elements of both crimes, labour trafficking and particular exploitative working conditions, i.e. the **act** of illegal recruitment and the **means** (abuse of a person’s position of vulnerability), may be **identical** with slight deviations in the gravity of the abuse. Regarding to the subjective element, under article 9 of the Employers Sanctions Directive both crimes need to be committed “**intentionally**”. In this sense, it may be supported that these crimes differ in the **intensity** of the subjective element of these crimes, as trafficking in human beings for labour exploitation (labour trafficking) requires the **purpose** of exploiting the victim. For this reason, the “solution” of characterising that an act falls within the meaning of “particularly exploitative working conditions”, seems more easily to be proved, since, for the purpose of Article 9 (1) (c), it is sufficient to establish that there has been an act of exploitation of a **certain gravity** and there is no need to prove the employer’s purpose to exploit the victim.⁵⁴

At the threshold of “labour trafficking” the (Greek -and not only-) prosecutors and judicial authorities are cautious to accept the “purpose of exploitation” in an act which makes use of/abuses a vulnerable position. However, it is common sense that “exploitation” is nothing but the pecuniary gain or financial benefit that the employer-perpetrator derives from employee-victim’s vulnerable situation by violating labour law, including breaching of tax and social insurance obligations.⁵⁵ And when there is evidence that these labour law violations are **pursued** by the perpetrator, the concept of “purpose of (labour) exploitation” as the substantive element of labour trafficking is fulfilled. Therefore, it may be concluded that **any act constituting a violation of**

Publications Office of the European Union, Luxembourg, p. 34, Available at:

https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-employers-sanctions-directive-report_en.pdf

⁵³ as it happened in the abovementioned case resulting in Acts of Characterization

⁵⁴ FRA Report, op.cit., p. 35.

⁵⁵ Michopoulou, K. (2021) “The protection of labour rights in agricultural sector after ‘Manolada cases’ and the role of Labour Inspectorate in the application of the Employers’ Sanctions Directive”, *ILO, PICUM, ETUC’s Legal Seminars on “Criminal law approaches to exploitative working conditions”*, October 2021.

labour law may be fall within the sense of exploitation for the purpose of “labour trafficking” or of “particularly exploitative working conditions”.⁵⁶

On the part of the **Greek Ombudsman**⁵⁷, the situation is confronted as pathogenesis in agriculture in Western Peloponnese that persists in this area the last decade. Following its previous Report on labour exploitation concerning this area, which was initiated ex officio,⁵⁸ after having received the notification of workers-victims’ Petition, the Greek Ombudsman began once again investigating the large-scale illegal employment in agriculture and the labour exploitation effects. Thus, on its Observation Ombudsman names 12 competent authorities, reminds them the legal basis of their competence and calls them for providing clarifications and quotas on compliance on the part of employers-farmers with labour and social security legislation; on the medical care provision to migrant workers and information of their rights; statistical data on the number of seasonal permits issuing under article 13, 13A (as above) for the years 2017-2018; on the existence of the required documents under these provisions, especially on housing with emphasis on the burnt camp as well as the after-fire rough one; on any investigations identified victims of labour trafficking for labour exploitation and if any permits for humanitarian reasons⁵⁹ have been granted; on what they have done (or not) concerning seasonal permits issuing; if any autopsies carried out on housing, potability of drinking water, etc.⁶⁰ Meditating⁶¹ on the case brought by the workers’ Complaint-petition in 2018, the Ombudsman verified that the living camp of the workers’ victims of fire was not declared as legal accommodation by any employer according to requirements set by Law 4251/2014⁶² for seasonal employment (as incorporated Seasonal Workers Directive). Also, the Ombudsman confirmed the

⁵⁶ Michopoulou, K. (2017) "The positive obligations of the State under Article 4 of the European Convention on Human Rights (ECHR) concerning Labour Trafficking", *Talk Forward: Work Breakthrough, organised by Ministry of Foreign Affairs, National Office for Combating Trafficking in Human Beings (NRO), Municipality of Athens, OPANDA, Elculture.gr*, Athens, 2/12/2017 (UN International Day for the Abolition of Slavery).

⁵⁷ The Greek Ombudsman is an independent non adjudicatory authority, established according to art. 101A & 103 § 3 of the Greek Constitution, with competence to act as a mediator in human rights disputes, to carry out investigations or autopsies regarding human rights violation that is brought to its attention by a person asking for Ombudsman’s intervention filing an official complaint, and to issue Reports, Observations or Proposals. Its competence is related specially to the public sector, such as ministries, local authorities, and their legal entities, to other legal entities of public law, such as social security funds, hospitals, universities, as well as to public utility companies or corporations and state legal entities of private law. Exceptionally, the Greek Ombudsman has competence over the private sector or specific individuals, in case of children’s rights’ violation or when the case concerns a breach of the principle of equal treatment or of anti-discrimination provisions. For further information:

<https://www.synigoros.gr/?i=stp.en.home>

⁵⁸ See, <https://www.synigoros.gr/resources/fraoules.pdf>

⁵⁹ Art. 19A, Law 4251/2014.

⁶⁰ Doc. Protocol No. 250423/46753/22.10.2018 Observation of Greek Ombudsman.

⁶¹ The Greek Ombudsman, Resolution 250423/53179/30-9-2021.

⁶² The Immigration and Social Integration Code (Law 4251/2014) as transported Dir. 2014/36/EU.

weakness of inspectorate organs to conduct effective and extensive controls for the obedience of labour legislation by the employers of seasonal workers (because of the seasonality of the works and the dispersal of land workers, together with the lack of service staff), as well as **the non-observance of legislation**, which presupposes safeguards of adequate accommodation that meets the health and safety standards for seasonal land workers, as a situation that is considered to be particularly burdensome and dangerous and is perpetuated in this area.

In parallel, the **National Commission for Human Rights (GNCHR)**⁶³ in its Recommendations 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 *Chowdury and others v. Greece*⁶⁴, underlined that the Manolada Case is not an "isolated incident", as suggested by the Greek competent Authorities in their Action Report with regard to their compliance with the ECtHR judgment⁶⁵. In its Recommendations GNCHR emphasises the promotion and the protection of victims' rights, as well as the importance of an effective investigation and prosecution of human trafficking and severe labour exploitation cases, particularly for the identification of victims, and draws attention to the particular connection between trafficking in human beings for the purpose of labour exploitation and undeclared employment in Greece, noting the linkage between labour exploitation in the agricultural sector and even racist behaviors.

Thus, GNCHR underlines the importance of the ILO's Convention concerning Labour Inspection in Agriculture No 129 (C-129, Entry into force: 19 Jan 1972, adoption: Geneva, 53rd ILC session, 25 Jun 1969) concerning Labour Inspection in Agriculture, and the need of its ratification given the very serious impact of the lack of clear and defined control competence of SEPE. Also, the GNCHR insists on the importance of an integrated and effective system of inspections of working conditions and adequate

⁶³ The Greek National Commission for Human Rights (GNCHR) is the independent advisory body to the Greek State on issues related to the protection of human rights. It exercises its advisory role by issuing Recommendations, Observations, Submissions and Reports. It was established in accordance with the UN Paris Principles and is governed by Law 4780/2021. Its members are persons appointed by forty-two institutions whose activities cover the field of human rights (independent Authorities, universities, third level trade unions, NGOs, political parties, and the Administration). For further information:

<https://www.nchr.gr/>

⁶⁴ GNCHR's Recommendations were adopted on 27th August 2018 and submitted on 12th October 2018 under Rule 9.2 before the Head of the Department for the Execution of Judgments of the ECtHR, DGI – Directorate General of Human Rights and Rule of Law, Council of Europe, Secretariat of the Committee of Ministers for its 1331st meeting (December 2018) (DH), attaching the abovementioned Petition (Complaint) of 164 land workers-victims in support of the GNCHR's findings, Available at:

[http://hudoc.exec.coe.int/ENG?i=DH-DD\(2018\)1074E](http://hudoc.exec.coe.int/ENG?i=DH-DD(2018)1074E)

⁶⁵ Greece's Action Plan was submitted to the Committee of Ministers of the Council of Europe for its 1324th meeting in September 2018 (DH).

staffing of SEPE 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. At the same time, the GNCHR suggests the precise delimitation of the SEPE's competences, so that there will be no legal doubt of their jurisdiction, which otherwise results in the complete discharge from inspecting certain workplaces, especially in the agricultural sector. The same should be applied 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). Also, the control of the legality of employment relationship should not be limited to the control of legality of the foreign workers who stay in the Country, but should also include the employers hiring illegally staying third-country nationals.

In addition, GNCHR has asked the competent authorities to maintain a single coherent system for collecting statistics and related data on the phenomenon of human trafficking and forced labour in Greece. In the framework of its competences, GNCHR suggests that a sufficient funding for the National Referral Mechanism for Victims and Potential Victims of Trafficking in Human Beings should be secured, so that identification networks may be built up as well as training for relevant professionals on identification techniques and procedures may be provided. In view of the strong link between human trafficking and immigration, GNCHR urges state actors 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. Of course, it is underlined the importance of the cooperation of local communities and municipalities in a way to coordinate information and awareness of citizens nationwide, aiming at the mapping of the phenomenon of human trafficking and forced labour and its effective prevention, as well as, at next level, at the reintegration of the victims into the community.

Furthermore, based on GRETA's proposals concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece,⁶⁶ GNCHR recommends the promotion of targeted measures for the social and economic empowerment of socially vulnerable groups, including irregularly staying third-country nationals, asylum seekers and refugees, unaccompanied children and women, as well as the development of programmes for information of migrant workers on their rights, in order to avoid cases of loss of earnings and insurance for their working days. It also urges state authorities to raise awareness among the general

⁶⁶ 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 22 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, as also included in CP(2020)02 Report submitted by the authorities of Greece on measures taken to comply with Committee of the Parties Recommendation CP(2018)3, 28 February 2020, Available at: <https://rm.coe.int/cp-2020-02-greece/16809eb4db>

public in cooperation with NGOs, trade unions and private sector bodies, about the criminalisation of the intentional use of the services of these individuals; at the same time, GNCHR pays attention to the need of victims' effective access to legal aid so as to be able to exercise their right to compensation either by building the capacity of legal practitioners to support victims to claim compensation, or by including the issue of victim compensation in training programmes for law enforcement officials, prosecution and the judiciary.

Notwithstanding the lacks in application of the existing legislation and the “distance” that should be covered concerning the respect for labour rights and the importance of the evolution of inspections in agricultural sector, the **Committee of Ministers of the ECtHR** which was supervising the execution of “Chowdury and others” judgement, decided to close the case⁶⁷ referring to the inspections that Labour Inspectorate carries out at workplaces, including farms and agricultural activities as well as to the inspections of the Police Anti-Trafficking unit at workplaces, without any reference to the persistent refusal of SEPE to deal with in-situ visits in places where workers are living, even though living conditions consist an integral part of the system of agricultural labour sector and pre-condition for the detection of vulnerability as the key element of labour exploitation.

In the light of the abovementioned, undeniably, the adoption of legal measures and reforms is the cornerstone of migrant workers' socio-economic integration. To this direction, a collaboration between the competent authorities should be achieved and it is necessary a mechanism to be set up which shall:

- Monitor the application of any reforms, the cooperation between the central public sector and the local authorities, including local labour inspectorate, prefecture, police department and prosecutor's office, and, specially, how they may interconnect, how they will overcome the existence of any local 'centers of power' and how they will interfere for the identification of victims of labour exploitation and assure their protection instead of their treatment as irregular migrants issuing deportation orders.⁶⁸
- Activate the trade unions, supply chains, customers unions to cooperate with local social centers and act as a mediator between various stakeholders and state actors by offering expert legal opinions

⁶⁷ Committee of Ministers, Resolution [CM/ResDH\(2020\)179](#) on the Execution of the judgment of the European Court of Human Rights 'Chowdury and Others against Greece', adopted on 3 September 2020 at the 1377bis meeting of the Ministers' Deputies.

⁶⁸ As it happened in December 2018 to the 164 victims of June's fire/arson after having filed their Petition-Application and, thus, their identity had been disclosed-exposed to police authorities.

- Engage in discussions with stakeholders to enable the community empowerment through interactions between local society and municipality
- Collect data and follow up the stages of social inclusion for the enjoyment of social rights. This may be achieved by watching, intervening or exercising pressure - prioritising non adjudicatory means- for the adoption of a **wholistic** system of seasonal permits· this means that seasonal permits should be granted in conjunction with human housing under state’s control and initiative which through housing-permits allocation may regulate the flows of migrants in connection with both the local **needs** for labour hands in agriculture and migrant worker’s **social inclusion** ensuring worker’s access to social insurance, welfare and the full application of general labour law provisions.⁶⁹
- Watch in close the role of local municipalities in migrant victims’ intergration into local society, including any programmes run by the municipalities for information and social awareness
- Collect and assess the data and quotas on the basis of the information regularly asked by the Greek Ombudsman about the actions and omissions of the competent authorities, exercising pressure to them for taking actions
- Cooperate with the GNCHR as an advisory body offering expert academic legal and socio-economic opinions.
- Report regularly and officially on actions or failure of actions by state’s authorities.

In this context, it is necessary to be enhanced a cooperation with the **National Center for Social Security (EKKA)**⁷⁰ which is a principal state agency to co-ordinate efforts of anti-trafficking stakeholders in the framework of the Greek National Referral mechanism. In this way, EKKA’s actions may be directed so as to include more actively the area of migration labour in agriculture and migrant workers’ social intergration, creating simultaneously a national database of identified or presumed victims of labour trafficking that could combine information by various stakeholders, including social assistance services and prosecutor offices that carry out criminal investigations. In parallel, the actions of social partners, such as the *Greek General Confederation of Greek Workers (GSEE/ΓΣΕΕ)*,⁷¹ the highest, tertiary trade union in Greece which, inter alias, intervenes to state actors submitting its observations or making reports on proposed national action plans, should be supported.

⁶⁹ Michopoulou, K. (2018) “Problems in the administration of justice in human trafficking cases; Proposals”, *Greek Parliamentary Records, Subcommittee for combating human trafficking and exploitation (Special Permanent Committees)*, session of 12th.12.2018, Hellenic parliament

⁷⁰ EKKA has a public legal personality and functions according to the Presidential Decree 22/7-2-2006 (Official Gazette/FEK A’ 18) under the supervision of the Ministry of Labour, Social Security and Welfare: <http://www.ekka.org.gr/index.php>

⁷¹ For further information: <https://gsee.gr/?cat=2880&lang=en>

E.Synthesis and Recommendations for Legal Reforms

In Southern Europe, one of the sectors most inflicted by trafficking for labour exploitation is the agriculture. Within a labyrinthine legal context of granting permits for seasonal labour which facilitates the development of conditions of labour exploitation, another factor in favour of trafficking for the purpose of labour exploitation in agriculture is the labour market intermediaries. Regardless of the immoral and criminal nature of the act of the action of trafficking in human beings, some people seem to engage in trafficking for labour exploitation by means of fraudulent and deceptive recruitment or through exploiting the vulnerable position of individuals, since many informal or unregistered business remain due to private intermediaries that interfere between the individual seeking employment and the employer needing work to be done.⁷² This admission leads to the conclusion that public employment services (PES) should retain the power to implement market policy; and this is in conformity with the Charter of Fundamental Rights of the EU, according to which free PES constitute services of general economic interest.⁷³

In parallel, under article 11 and 12 of the Anti-trafficking Directive Member States have the positive obligations to act ex officio and provide the victims of labour exploitation with free and unhindered access to state actors combating labour trafficking. One of the main problems to be overcome is the lack of confidence on the part of the workers exposed to exploitation that their complaints might lead to some restitution and that the perpetrators will be punished. Furthermore, the establishment by each Member State of a victims' fund for compensation purpose, as provided in article 15 of CETS 197, could help victims' restitution at the exact time of need, where they have been characterised as criminal by the prosecutor, and not at the end of the penal process after the legal outcome having been irrevocable.

Despite the efforts undertaken by national authorities, civil societies or the international community, the overall protection mechanisms available for victims of trafficking in mixed migration flows require greater coherence and co-ordination.⁷⁴ The legal recommendations should consider a comparison between the existing national legislations and the forthcoming reforms in migrant labour system, with an emphasis in agriculture sector, as well as the common deficiencies at various national

⁷² For example, in West Peloponnese mediators (“mastur”) usually are people come from the migrant communities with many years of residence in the area and recruited under the legal route.

⁷³ Eurofound (2016), *idem*, pp. 13, 17, 27, 26.

⁷⁴ Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings (2018), “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”, *Organization for Security and Co-operation in Europe*, Vienna, p.32, Available at: <https://www.osce.org/files/f/documents/b/e/367061.pdf>

levels as a starting point for setting forward unified policies and strategies in mixed migration flows.

- First and foremost is to approach the seasonal work as a “**system**” which includes, apart from the labour offer itself, the work of harvesting in the countryside, in addition the living conditions of land workers, which element determines, on the one hand, their level of vulnerability to exposure to labour exploitation through labour law violation; on the other hand, the living conditions are included as a prerequisite for a problematic and hardly applicable legislative framework for inviting and occupying exceptionally third-country nationals, as laid out in the Seasonal Workers Directive (2014/36/EU). Therefore, it is a key point for the competent authorities through their inspections to identify the vulnerability element so that -at next level- the work of the Prosecutor or Judge will be facilitated. In this sense, in a vulnerable position for the purpose of exploitation, the victim is found by principle when is in **a state of illegality which extends to the inhumane living conditions** and, thus, is exposed to the risk of being exploited and of being subjected to criminal activities.
- For the identification of victims of labour exploitation as well as for the confrontation of the illegal employment, it is imperative the organisation of a stronger inspectorate system, i.e. of a **unified Labour Inspectorate system** based on the establishment of an Inspectorate Body of mixed synthesis, composed of trained representatives of different departments (labour, health and safety inspectors, tax and insurance authorities, anti-trafficking police) in charge of carrying out joint operations both in fields as workplaces and in living camps, as Seasonal Workers Directive provides.⁷⁵ To this direction, it would be supportive and would better define Labour Inspectorate’s control competence, the ratification of the ILO’s Convention concerning Labour Inspection in Agriculture No 129 (C-129), accompanied by the appropriate implementing measures and the necessary legal and regulatory acts, with clear guidelines and labour control protocols which would clarify the competences of each control service in agricultural sector, ensuring in this way the effective implementation of the Convention.
- In parallel, for the prevention of labour trafficking and the combating of illegal forms of employment, it is crucial a reform on the Seasonal Workers Directive; a **sound system of seasonal work**, especially in agriculture sector which by its nature is susceptible to labour exploitation of migrants because of their vulnerability,

⁷⁵ As these proposals were developed at national level by the author in the framework of 12th.12.18 session of the Parliamentary Subcommittee for combating human trafficking and exploitation (Special Permanent Committees), elaborating reforms on Problems in the administration of justice in human trafficking cases.

requires at the same time rationalisation of the legal framework for the granting of seasonal work permits in conjunction with the creation of safe and decent accommodation spaces for seasonal land workers.

The existing system does not correspond to the reality of agriculture needs because it presupposes the knowledge of the illegally staying third-country nationals by the employers and seems to ignore the real needs of a small grower by asking him to submit a written contract of employment, a certificate of accommodation, names, exact days and hours of work -irrespective of weather conditions- to be declared in advance.

A sustainable and applicable system of seasonal work needs to be put in place so that the process of legalising a worker shall not be dependent on the average farmer's initiative through a lapidary process that often leads to the *acceptance* of a system, the existing one, which may reach the boundaries of labour trafficking. Therefore, the seasonal work system should be identified with the worker's legalisation system during the harvest period, when there is an increased need for working hands. The provision of accommodation for seasonal land workers, as a prerequisite for their legitimacy, but -up to now- dependent on employer's initiative, should be carried out **on state's initiative and control** with the construction of humane housing, for example under the auspices of the Prefecture, which will maintain the control of their coverage and, consequently, the responsibility of the legalisation of worker's stay for the purpose of restoring the rural economy· in this way, the legitimacy of their labour offer will permit and facilitate the workers to enjoy their social rights, such as family life they are in most of cases deprived of.⁷⁶

In conclusion, it is needed decent both working and living conditions under state's control and responsibility so that the "black market" phenomena which lead to labour exploitation, will be combated.

- Effective confrontation of the deficiencies and flaws in the labour market should include a cross-border cooperation between Member States and with third partner states in Mediterranean routes of migration flows. Actually, in November 2018 in accordance with the article 85 of the Treaty on the Functioning of the European Union (TFEU) a *Regulation on the European Union Agency for Criminal Justice*⁷⁷

⁷⁶ Michopoulou, K. (2018) "Problems in the administration of justice in human trafficking cases; Proposals.", *Greek Parliamentary Records, Subcommittee for combating human trafficking and exploitation (Special Permanent Committees)*, session of 12th.12.2018, Hellenic Parliament.

⁷⁷ REGULATION (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA, Available at: [http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/EurojustRegulation/Eurojust%20Regulation%20\(Regulation%20\(EU\)%202018-1727%20of%20the%20European%20Parliament%20and%20of%20the%20Council\)/2018-11-21_Eurojust-Regulation_2018-1727_EN.pdf](http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/EurojustRegulation/Eurojust%20Regulation%20(Regulation%20(EU)%202018-1727%20of%20the%20European%20Parliament%20and%20of%20the%20Council)/2018-11-21_Eurojust-Regulation_2018-1727_EN.pdf)

was adopted which establishes a new governance system, clarifies the relationship between Eurojust and the European Public Prosecutor's Office (EPPO), prescribes a new data protection regime, adopts new rules for Eurojust's external relations and strengthens the role of the European and national Parliaments in the democratic oversight of Eurojust's activities. Consequently, within this framework it could be integrated a systematic cooperation for the combating of interstate networks of labour trafficking, either at the level of the recruitment, or at the next level, i.e., of supply chains. Towards this aim, the recently established European Labour Authority should be expected to develop its operational capacity.⁷⁸ In addition, Directions may be issued for setting up local prosecutors' offices in Member States, with specialised prosecutors who may be able to adopt proactive methods of victim identification, collecting data from the local public prosecutor offices and receiving updates on the territory's agriculture labour market, and who may be referred directly to EPPO.

- Further improvements may include co-operation with trade unions and NGOs for tackling cases of trafficking for labour exploitation successfully in a more structured way.⁷⁹ Migrant workers should be given access to a better information on local employment legislation and rights, and the role and function of trade unions should be strengthened; in this way, in case of labour rights' violation the victims may directly contact the trade union representatives who may inform the police, follow up an inspection, or be enabled to apply for a criminal investigation to be launched on grounds of human trafficking.
- Ensure that victims of labour exploitation are not excluded from support services due to their irregular residence status and reinforce or adopt measures to establish mechanisms for referral which support services for victims of all forms of severe labour exploitation.⁸⁰
- Last but not least, it should be paid attention to the dynamic of the external stakeholders in balancing a **Corporation's Social Responsibility** (CSR) profile regarding labour exploitation. The market itself is a measure of a corporation's social responsibility since market may function as a better deterrent to wrongdoing than new laws and regulations.⁸¹ It is derived from the Consumer Rights Directive

⁷⁸ For further information: <https://www.ela.europa.eu/en>

⁷⁹ GRETA, Group of Experts on Action against Trafficking in Human Beings, 7th General Report on GRETA's activities, covering the period from 1 January to 31 December 2017, Council of Europe, March 2018, Available at: <https://rm.coe.int/greta-2018-1-7gr-en/16807af20e>, paragraph 145

⁸⁰ FRA-European Union Agency for Fundamental Rights, "Severe labour exploitation: workers moving within or into the European Union - States' obligations and victims' rights", *idem*, p.19.

⁸¹ Friedman, M. (2002) "Business Leaders, Politicians and Academics Dub Corporate Irresponsibility 'An Attack on America from Within'", *Business Wire*.

that Member States should encourage consumers to ask for agriculture products information assessing both the implications on labour market and the ethical issues arisen out of a consumption of a product created after involving severe labour exploitation. It should also be considered the long-range impact on society and on the industry itself. On the other side of the coin, a broader view of social responsibility takes into consideration the long-term social welfare and it is not restricted in firm-centric interests. In fact, only in this way, healthy profitability may be maintained on the basis of loyalty, trust, sustainability and respect for human rights.

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⁸² LAW/No/Part (A) of the Official Gazette (FEK)