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Combat Trafficking in Human Beings
The European and Legal and Policy Framework
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What is Human Trafficking? A brief introduction

Trafficking in human beings has gained momentum in recent years alongside an increase in the global migration flow. The scale of the phenomenon is greater than shown by statistics, which report victims as being in the range of millions of persons (excluding those who are non-identified). Many victims go undetected for difficulties faced by the legal systems.¹

The **terminology** used to refer to human trafficking is open to two main misconceptions.

- The first relates to the use of smuggling and trafficking in human beings as being the same phenomenon and thus the terms are used as synonyms.²
- The second, used in national legislation, by the media and policy makers, associates the expression of modern slavery and human trafficking adopting them as synonymous expressions³.

The **first misconception** relates to the assumption that smuggling and human trafficking are the same phenomenon. The problem here is more complex, as smuggling and trafficking could be either two aspects of the same offence or alternative crimes.

The **definition of trafficking** included in Directive 2011/36/EU refers to

“The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or 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”⁴.

Article 3 (a) of the Smuggling of Migrants Protocol provides that the term **smuggling of migrants**⁵ means

“the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”⁶.

¹Global Report on Trafficking in Persons, 2014 (UNODC) available at: http://www.unodc.org/documents/data-and-analysis/glotip/GLOTIP_2014_full_report.pdf; see also J. H. Harvey, R. A. Hornsby, and Z. Sattar, (2015) “Disjointed Service: An English Case study of Multi- Agency Provision in Tackling Child Trafficking” Brit. J. Criminol, Vol. 55, 496.

²For a detailed explanation of the differences between trafficking and smuggling see M. Lee (2011) Trafficking and Global Crime Control, Sage, London, at p. 7.

³ See for example, The Global Slavery Index (2014) drafted by Hope for Children Organization, Australia Ltd, available at www.globalsslaveryindex.org (accessed on 14/7/2015); J. Winterdyk, B. Perrin, and P.Reichel (2011) Human Trafficking Exploring the International Nature, Concerns, and Complexities, Routledge, London, at p. 7.

⁴The definition is contained in Art 2 of Directive 2011/36/EU entitled ‘Offences concerning trafficking in human beings’ and actually states that Member States are under an obligation to take the necessary measures to ensure that [the above listed]intentional acts are punishable. This definition here contained coincides with what is provided by Article 4 of the Council of Europe Convention on Action against Human Trafficking 2005.

⁵ Smuggling is covered by the 2000 Protocol against the Smuggling of Migrants by Land, Sea and Air Supplementing The United Nations Convention Against Transnational Organized Crime (entered into force on 28 January 2004) available at http://www.unodc.org/documents/southeastasiaandpacific/2011/04/som-indonesia/convention_smug_eng.pdf (accessed on 26/7/2015).

⁶ Ibid at Article 3 (a)

Thus, it is a smuggling case, when a person remunerates another in order to migrate illegally to a country of destination and once the destination is reached the agreement ends. In this circumstance, victims are not protected by the law under trafficking legislation, but might be claiming asylum or humanitarian protection if they flee from wars or other calamities. The “human trafficking” element kicks in when the smuggler is dissatisfied with the amount received and holds the victim captive for profit against her/his will. In other words, whilst a smuggler facilitates or transports a person across borders generally for payment, a trafficker is someone who controls, uses or exploits the victim for profit⁷ Thus, trafficking involves victims’ exploitation, the consent is considered irrelevant once the means is established⁸. There is no requirement that trafficking occurs transnationally. Trafficking can also occur within a country, which does not include the crossing of a border. In a migration context, depending on the facts of the case, the migrants might be legal or illegal. By contrast, smuggling of migrants requires a cross-border element, illegal entry of a person into another state and an agreement whereby a person may pay or give some other benefit to another person to facilitate migration⁹.

The **second erroneous expression** uses human trafficking and modern slavery interchangeably. In reality, human trafficking is wider than modern slavery as the latter is just one single aspect of the entire phenomenon. This has been clarified by EU secondary legislation which contains an extensive definition of human trafficking¹⁰. This includes sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or removal of organs and also forced begging, illegal adoption and forced marriage (Article 2 (3) and preamble 11 Directive 2011/36)¹¹. The Directive has also clarified further the concept of “vulnerability” in relation to victims’ identification, as referring to “*a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved*”(Art. 2 (2) Directive 2011/36).

⁷ Rodríguez, 2015, p. 364

⁸For a complete analysis of the consent in human trafficking see J Elliot (2015) The Role of Consent in Human Trafficking, Routledge, London.

⁹United Nations Office on Drugs and Crime (UNODC) (2012) Assessment Guide to the Criminal Justice Response to the Smuggling of Migrants, p 21-22, available at http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/UNODC_2012_Assessment_Guide_to_the_Criminal_Justice_Response_to_the_Smuggling_of_Migrants-EN.pdf (accessed on 26/7/2015).

¹⁰ Article 2 (3) Directive 2011/36/EU states “Exploitation shall include, 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”. See also Preamble 11 which states “Within the context of this Directive, forced begging should be understood as a form of forced labour or services as defined in the 1930 ILO Convention No 29 concerning Forced or Compulsory Labour. Therefore, the exploitation of begging, including the use of a trafficked dependent person for begging, falls within the scope of the definition of trafficking in human beings only when all the elements of forced labour or services occur [...] The expression ‘exploitation of criminal activities’ should be understood as the exploitation of a person to commit, inter alia, pick-pocketing, shop-lifting, drug trafficking and other similar activities which are subject to penalties and imply financial gain. The definition also covers trafficking in human beings for the purpose of the removal of organs, which constitutes a serious violation of human dignity and physical integrity, as well as, for instance, other behaviour such as illegal adoption or forced marriage in so far as they fulfil the constitutive elements of trafficking in human beings”.

¹¹Ibid

Human trafficking legislative framework in Europe

The human trafficking legislative framework in Europe is characterised by a variety of provisions, which encompass International Conventions (such as the UN Convention against Transnational Organized Crime, known as Palermo Protocol 2000¹² and 1930 ILO's Convention No 29 concerning Forced or Compulsory Labour¹³) and two overlapping regional instruments (the 2005 Council of Europe Anti-Trafficking Convention (CAT) and Directive 2011/36/EU).

This Report focuses on Council of Europe Anti-Trafficking Convention (CAT) and Directive 2011/36/EU and its implementing measures and does not analyse smuggling of migrants and its legislative framework.¹⁴

The **Council of Europe Anti-Trafficking Convention (CAT)**, adopted in 2005, has the purpose of combating and preventing trafficking in human being imposing a number of obligations on the Council of Europe's contracting parties.

The **Directive 2011/36/EU** introduced in 2011 has the purpose not only to combat trafficking crimes but also to provide suitable support for victims. It sets out that human trafficking is a criminal offence. Also inciting, aiding, abetting and attempts to commit human trafficking are considered as wrongdoings and are punishable (Article 3 Directive 2011/36). This legal instrument seems well balanced in that it imposes an obligation on the EU Member States to set up criminal procedures to investigate offences and to prosecute offenders. It levies strong duties on Member States to protect victims even when they have appeared to commit the crime under duress. It stipulates that consent of a victim is irrelevant when means of exploitation can be found; in particular when trafficking involves a child the conduct is punishable even if there is no evidence that means of exploitation was used (Article 2 (4) and (5) Directive 2011/36).

Applicable norms introduced by the Convention and the Directive are both in force at national level in the UK, Romania and Finland, research partners in this EU funded project.

In the UK, the Convention came into force on 1 April 2009. To comply with it, the UK has not introduced national legislation but met its international obligations by the adoption of policies. Thus, the National Referral Mechanism (NRM)¹⁵ has been created as a system to identify and support victims. In addition, policy guidelines were drafted to regulate the work of the

¹²United Nations Convention against Transnational Organized Crime (known as Palermo Protocol 2000) including a Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime available at https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOL_THEREOF.pdf

¹³International Labour Organisation (ILO)'s Convention No 29 1930 concerning Forced or Compulsory Labour available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029

¹⁴ Protocol against the Smuggling of Migrants by Land, Sea and Air, Op. cit, footnote no 11.

¹⁵ The National Referral Mechanisms (NRM) is a system by which the potential victims are brought to the assessment of whether they are victims of human trafficking or not. In the UK, the NRM is based on Articles 10, 12-13, and 16 of the Council of Europe Anti-Trafficking Convention (CAT). For further detail see page 13 of "Review of the National Referral Mechanism for victims of human trafficking" November, 2014 available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/360482/Interim_review_of_the_NRM_for_victims_of_human_trafficking.pdf (accessed on 26/7/2015).

“Competent Authority” in charge of making decisions on human trafficking issues.¹⁶ Anti-human trafficking statutory instruments came into effect first on 6 April 2013 and then on 26 March 2015 to implement the EU Directive 2011/36/EU¹⁷, via the Modern Slavery Act 2015.

Core problems with the transnational dimension of human trafficking

As human trafficking is a phenomenon that can transcend national borders, legislation has been introduced in Europe by the two overlapping pan-European legal orders (the EU and the CoE) and their Member States. European nations have adopted either their own national legislation including international measures often differing across Europe or have implemented regional instruments.

There are **two main problems** associated with the supranational dimension of human trafficking legislation.

The **first issue** relates to multiple interpretations across Europe of “what is human trafficking” and “who can be considered a victim”. Although the EU and the CoE adopt a similar notion of human trafficking, several interpretations are adopted by legal and judicial authorities at national level.

The CoE Convention (CAT) expressly defines this crime classifying it as a violation of human rights and an offence to the dignity and integrity of the human being. It does not foresee a European interpretation via the European Court of Human Rights. This Court might only be invoked to decide on a human rights claim raised by an individual against the State after the exhaustion of all the national judicial remedies.

Conversely, the EU Directive includes a broader definition of trafficking and contains a notion of “vulnerability” widely applicable to all victims of trafficking including children. The inclusion of these legal definitions in EU secondary legislation constitutes a robust development for a common interpretation at least for EU Member States.

The **second problem** relates to the monitoring mechanisms of compliance and enforcing procedures which are based on different systems.

The CoE Convention adopts a national reporting structure through the “Group of experts on action against trafficking in human beings” (GRETA)¹⁸. This system monitors the implementation of the Convention by the Contracting Parties, but it does not necessarily secure compliance at national level. In fact, for example in the UK, the judiciary has at times affirmed that the Secretary of State’s guidelines purporting to implement the Anti-Trafficking Convention were incorrectly interpreted and transposed¹⁹.

¹⁶There are two different policy guidelines: one which regulates UK and EU citizens and, the other which addresses non-EU nationals who are claiming asylum or fear to return to their country of origin. This is clearly stated in case *AS (Afghanistan) v Secretary of State for the Home Department* [2013] EWCA Civ 1469 (21 November 2013) at para 2.

¹⁷ Statutory instrument implementing the EU Directive 2011 are: The Trafficking People for Exploitation Regulations 2013 No. 554; and the recently passed Modern Slavery Act 2015. The Modern Slavery Act will come into force in stages and not all sections are in force.

¹⁸See Articles 36-38 of the Convention.

¹⁹See *Atamewan, R (on the application of) v Secretary of State for the Home Department* [2013] EWHC 2727 (Admin), paras 85 and 103.

By contrast, the EU, via the Directive 2011/36/EU, requires the Commission to monitor compliance²⁰. Even when it comes to measuring observance via statistical data, there are inconsistencies between the two collection systems. The European Statistics Agency (EUROSTAT) relies on collection at national level via national authorities reporting about their national systems. This is similar to the system adopted by the CoE but there is no uniformity of data, as they use different indicators in data collection causing discrepancies and inconsistencies²¹.

Whilst an enforcement mechanism is not available within the CoE Convention, the CJEU can exercise control over judicial co-operation in criminal matters, which includes human trafficking. Thus, the Commission is competent to enforce the law bringing non-compliant Member States before the Court of Justice of the EU (CJEU). The Court has the power to condemn infringing States, fining them for non-compliance. Such a mechanism ensures is essential to ensure compliance and effectiveness of EU law²².

The National legal system's dilemmas in relation to human trafficking

Taking the UK as a case study, this section highlights **three main anomalies** in dealing with human trafficking, which hinder or delay victims' recognition and protection in the country. Similar problems can be experienced by other EU countries.

The first anomaly is the domestic organisation of the system of justice

Generally there is neither a precise order in law that determines which court should hear the human trafficking case at first instance, nor a specialised tribunal that deals with this crime.

There is no shortage of examples of such structural difficulties. If a case relates to a labour law issue, such as forced labour (Benkharbouche and Anor, 2005 and Reyes and Anor, 2005) or slavery, servitude or illegal work in a private household (Hounga v Allen and Anor, 2014) it is heard in an employment tribunal. It might then move onto other parts of the legal system for the punishment of the perpetrators or decisions on deportation if the victim is a foreigner.

For a criminal conviction such as prostitution or any other forms of sexual exploitation, the case is heard in a criminal court (L and Others, 2013).

It can also commence in a civil tribunal if it relates to a victim's claim for compensation or in the immigration tribunal if the claimant challenges a removal decision to his/her country of origin or a safe third country.

²⁰ See Article 20 of the Directive 2011/36/EU sets out Member States' duty to coordinate and contribute to the Report prepared by the Commission every two years on the progress of the fight against human trafficking. Article 22 (2) states: "Member States shall transmit to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Directive."

²¹ Difficulty in gathering complete information on trafficking is also mentioned in the 2014 Eurostat Report (as revised in February 2015); The Eurostat Report on Trafficking in Human Beings in Europe(2014) is available at https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/trafficking_in_human_beings_-_eurostat_-_2014_edition.pdf (accessed 12/03/2015); Edition revised in February 2015, available at <http://ec.europa.eu/eurostat/web/products-statistical-working-papers/-/KS-TC-14-008-1> (accessed 12/03/2015).

²² European Commission, 31st Annual Report on Monitoring the Application of EU Law (2013) Brussels, 1.10.2014 COM(2014) 612 final, available at http://ec.europa.eu/atwork/applying-eu-law/docs/annual_report_31/com_2014_612_en.pdf (accessed on 26/07/2015).

The complexity of the legal system can cause unnecessary distress for individuals who may be subject to excessive procedural requirements, thereby spending most of their time in courtrooms and moving across different fora. Ultimately, they might not even be recognised as victims at all. Indeed, Directive 36/2011 provides that victims receive “specific treatment aimed at preventing secondary victimisation by avoiding unnecessary repetition of interviews during investigation, prosecution or trial [...] and unnecessary questioning concerning the victim’s private life” (Article 12 (2) Directive 2011/36/EU).

The following table shows where a trafficking issue starts and progresses.

Human Participant				
Foreigner and National				Foreign
	Civil	Criminal	Employment	Immigration
Victim	Compensation claims ²³	Injury compensation	Forced labour, slavery, servitude	Legal/Illegal immigrant ²⁴ : <ul style="list-style-type: none"> • Determination of legal status to remain or removal. • Not automatic right to remain on a long-term basis (in the UK) • Provisions are available for the individual concerned to recover and escape the influence of traffickers and residence permits are issued in certain circumstances²⁵ • Temporary support and assistance like native ones
Perpetrator	Perpetrator may be required to pay the victim; also the proceeds of his criminal act may be forfeited	Criminal charges: a conviction and a criminal sentence	Employment contact might be declared void	In addition to the serving sentence, the perpetrator might be deported to their country of origin. The ‘removal’ question is dealt with by immigration law and not criminal law.

The second anomaly of the system concerns the role played by the legal advisor when handling trafficking issues.

The common advice given by the lawyer if the client has committed an offence is to plead guilty. Thus, in a criminal case, once the representative identifies the defendant’s involvement in the offence, the legal advisor would occasionally advise her/him to plead guilty even if the offence was committed under duress. An immigration lawyer is not required to investigate elements of criminality in a claim relating to the immigration status of a victim. In many cases, the claimant is an illegal immigrant and factors that pushed her/him to move

²³ Examples of compensation claims in the county court are Reyes & Anor v Al-Malki & Anor [2015]; Houna v Allen and Anor [2014] UKSC 47 (30 July 2014).. Once compensation is awarded at employment tribunal – failure to pay it can be challenged at county court.

²⁴ See the cases such as AS (Afghanistan) v SSHD [2013], [EK \(Article 4 ECHR: Anti-Trafficking Convention\) Tanzania \[2013\] UKUT 313 \(IAC\) \(19 June 2013\)](#), and Atamewan, R (on the application of) v Secretary of State for the Home Department [2013] EWHC 2727 (Admin).

²⁵ The first stage of competent authority’s decision is whether there are ‘reasonable grounds’ for believing a person is a victim of trafficking. If so the person must be granted a period of reflection and recovery under Article 13 of CAT 2005 (this period is of 45 days in the UK). Then, the competent authority should investigate the claim by referring to or consulting with the police, and also informing the victim to have the option of co-operating with the police’s investigation in accordance with Articles 10, 12 and 13. Following a second-stage decision of ‘conclusive grounds’ for believing the person is a victim, residence permit can be granted under Article 14.

to the host country outside the regular migration routes can be poverty, social or political persecution, civil wars or other calamities. Therefore, an immigration advisor investigates the reasons for the immigrant's presence in the country and the particular circumstances experienced by her/him to establish any ground for state protection. If the illegal migrant commits an offence, the lawyer's role is to determine whether the action was controlled by someone else, but as previously mentioned, the immigration lawyer does not investigate elements of criminality but simply examines the grounds for protection or permission to stay. Thus, victim's identification again depends on the particular representative's understanding and expertise in trafficking issues. Misleading legal advice in employment law might be determined by the lawyer's limited expertise on human trafficking. For example, the victim might be advised not to claim damages from the employer due to her/his irregular/illegal worker status (*Hounga v Allen and Anor*, 2014)²⁶.

The third concern relates to the potential delay caused by the authorities in victims' identification.

This has the indirect but immediate effect of increasing victims' "vulnerability". Flaws in the decision-making process by the competent authority (*AS (Afghanistan) v SSHD*, 2013)²⁷ leave victims without proper judicial guarantees as decisions are not appealable except by way of judicial review (*R (AA Iraq) v SSHD*, 2012)²⁸, unless they are raised alongside an asylum appeal (*AS (Afghanistan) v SSHD*, 2013)²⁹.

Examples of irregularities are the introduction of temporal limitations, i.e. the length of time occurred between the perpetuation of the offence and the trial (*Atamewan v SSHD*, 2013), substantial shortcomings in identifying whether a victim was smuggled or trafficked (*AS (Afghanistan) v SSHD*, 2013), and weaknesses in giving weight to the victim's position of "vulnerability" (*R (AA Iraq) v SSHD*, 2012). At times, authorities have erroneously concluded that the claimant's claim was historic, thus failing to complete the victim's identification process and not complying with CoE's Anti-Trafficking Convention (CAT)'s obligation (see also *Atamewan v SSHD*, 2013).

Then, authorities in accordance to the CAT (Art 27 CAT and also *Atamewan v SSHD* 2013 paras 85 and 103) and its implementing guidelines (UK Home Office, 2013) have the obligation to investigate the claim by referring cases to the police, consulting the police on evidence gathering (Article 10 CAT 2005) and when sufficient evidence is found, protect victims and prosecute perpetrators (Article 2 CAT 2005). By contrast, UK authorities rely

²⁶ In *Hounga v Allen and Anor* the claimant's employer refused to give her compensation on the grounds that Miss Hounga had no permission to work and thus could not claim compensation for being dismissed. The Supreme Court allowed her to claim compensation because of the particular circumstances of her case. Cfr with *Reyes and Anor v Al-Malki and Anor* 2015, para 31.

²⁷ In *AS (Afghanistan) v SSHD*, 2013 the so called 'competent authority' (CA) failed to understand the law relating to human trafficking. In this case it was decided that in order to claim forced labour in trafficking cases, the claimant needed to be under the age of 18. This is clearly not correct and against the definition of trafficking.

²⁸ The case *R (AA Iraq) v SSHD* 2012 confirms that the competent authority's decision is not appealable, except a challenge by way of judicial review. This is a considerably difficult legal procedure for a victim to undertake as the case must have high prospect of success.

²⁹ In *AS (Afghanistan) v SSHD*, 2013 however, the court decided that the decision of competent authority is appealable as additional grounds to an asylum appeal.

prevalently on victims' co-operation (*FM v SSHD*, 2015, para 7;³⁰ rather than evidence collected via proper legal investigations (*OOO and Ors*, 2011, paras 154; *Atamewan v SSHD*, 2013; *EK (Tanzania) v SSHD*, 2013; *FM, R (on the application of) v SSHD*, 2015, paras 37, 38 and 51)³¹. This is a direct consequence of the UK incomplete transposition and incorrect interpretation of the CAT.

Moreover, there are concerns that victims are subject to a "credibility test"³², proper of asylum law, by the UK competent authority, which is *inter alia* the same body deciding on both issues of trafficking and asylum. Challenging victims on their credibility is not required by trafficking regulations (*R (AA Iraq) v SSHD*, 2012)³³, which signify incomplete implementation of human trafficking obligations. Then, focusing on credibility earlier on in the identification process has proved to be ineffective, as most victims tend not to reveal the truth about their experiences when first questioned, probably because they have only recently escaped the traffickers' control (Rijken and Bosma, 2014 p. 81).

This shortcoming might be fatal for victims as they might not be recognised and protected as the National Referral Mechanism (NRM) might not be invoked at all. The reasons often lie either on the initial facts which might not have revealed a human trafficking issue and consequently the police is exempted from the case, or initial decisions concluded that the evidence was insufficient and no further investigation was conducted.

Conclusions

The legal definition of human trafficking and the explanation of the meaning of "vulnerability", as introduced by the Directive, have the potential to define the obligation to protect trafficking victims and punish perpetrators. The extent to which these definitions will assist authorities in identifying signs of possible trafficking is yet to be appreciated. To date, at least in the UK, trafficking cases have mainly relied upon guidelines introduced to implement the CAT, which have often been misapplied and the Directive was only briefly referred to in a sporadic number of cases (*L & Others*, 2013).

³⁰ In *FM v SSHD*, 2015 at para 7 the Secretary of State Home Department blamed the claimant for not-cooperating by providing evidence. In *Atamewan v SSHD*, 2013 the claim was rejected as baseless. In cases of *EK (Tanzania) v SSHD*, 2013 and *FM, R (on the application of) v SSHD*, 2015 paras 37, 38 and 51, Home Office policy Guidance on human trafficking was held to be breached by the competent authority pages 37 and 58.

³¹ Para 154 and ff. that *OOO and Ors* 2011 state that the police were under a duty to carry out an effective investigation once a credible account of a breach of Article 4 of the ECHR had been brought to their attention, even without a complaint from or on behalf of the victim.

³² The credibility test refers to the burden of proof required in asylum cases to the claimant. It aims at examining whether the claim is plausible or credible. An asylum claimant, for example, who did not applied for asylum in the first safe country, is considered not to have any basis to claim asylum in the second country. Therefore his claim is false under Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. In *Atamewan* the SSHD decided that the claimant's case was not credible and in fact it decided to be baseless.

³³ In *R (AA Iraq) v SSHD* 2012, the claimant first arrived in Belgium where she suffered physical assault. The Belgium police did not protect her. She then moved to the UK and informed the UK authorities that she arrived straight from Iraq. She lied as she was afraid of being deported back to Belgium. The victim's position of "vulnerability" in this case was not considered. Her fear of harm to be returned to Belgium made her a "vulnerable" victim. This was the sole reason behind her false story and it should have been considered in her favour rather than against her. By concluding she was not a credible person, she was not eligible for protection.

However, the **benefits of the EU Directive** could not be undermined or denied.

- First of all the inclusion of legal definitions in EU secondary legislation constitutes a robust development of a common interpretation for EU Member States. In fact, if a preliminary reference to the CJEU is raised by a national court during national proceedings the CJEU can clarify ambiguous points of law or legal issues and ensure uniform interpretation across the EU.
- Secondly, the Directive aims at creating a common playfield for all Member States. It requires the Commission to submit a report to the European Parliament and the Council, assessing the extent to which the Member States have taken the necessary measures to comply with the Directive, including a description of actions taken, and, if necessary, accompanied by legislative proposals (Article 23 of the Directive 2011/36/EU). Thus, problems with implementation and interpretation of the Anti-Trafficking Convention (CAT) are overcome by the Directive, which secures compliance at national level.
- Thirdly, the Commission is competent to enforce the law bringing non-compliant Member States before the CJEU which has the power to condemn infringing States, fining them for non-compliance.

Progress in relation to the EU Directive is ongoing as most countries have implemented this instrument, but the extent to which it will shed new light into the legal authorities' perspective in their assessment exercise is still to be seen. To date, at least in the UK, trafficking cases have mainly relied upon the guidelines introduced by the Convention. A recent Irish judgment represents the first case dealing with the implementation of the Directive in Ireland (P v Chief Superintendent Garda National Immigration Bureau and Ors, 2015) and highlights aspects on the effectiveness of EU law in relation to protecting victims of trafficking.