

# NATIONAL MONITORING MECHANISMS: STRENGTHENING THE ACTION AGAINST TRAFFICKING IN HUMAN BEINGS

**Sergey Ghazinyan**

*Expert, YSU Centre for European Studies,*

*Adjunct Lecturer at the YSU Chair of European and International Law*

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## Introduction

Action against trafficking in human beings is a critical aspect of safeguarding human rights globally. To effectively combat this pervasive crime, countries around the world have established national monitoring mechanisms tasked with tracking, evaluating, and enhancing efforts in this field. These mechanisms play a pivotal role in ensuring compliance with international standards and promoting effective anti-trafficking policies and interventions.

This paper explores the role and significance of national monitoring mechanisms in combating trafficking in human beings. It begins by examining the international standards that guide the establishment and operation of these mechanisms, highlighting the importance of regular and comprehensive monitoring. It further delves into country-specific experiences, offering insights into the strengths, challenges, and evolving dynamics of national monitoring frameworks.

The discussion extends to the designation of National Human Rights Institutions (NHRIs) as monitoring mechanisms for action against trafficking in human beings. Drawing on the principles outlined in the Paris Principles and other relevant frameworks, the potential of NHRIs to effectively carry out monitoring functions is explored, emphasizing their independence, cooperation with stakeholders, and alignment with international human rights standards.

Additionally, the paper underscores the importance of cooperation between national monitoring mechanisms and other monitoring bodies at the regional and international levels. Collaboration enhances the effectiveness of monitoring systems, facilitates the exchange of best practices, and fosters a unified approach to combating trafficking in human beings.

In essence, this paper underscores the indispensable role of national monitoring mechanisms in the collective effort to combat trafficking in human beings, uphold human rights, and ensure the protection and dignity of all individuals.

## I. National Monitoring Mechanisms on Action Against Trafficking in Human Beings: International Standards

Like other national monitoring mechanisms, the one for action against trafficking in human beings plays a crucial role in safeguarding and promoting human rights within a country. These mechanisms are established to monitor, evaluate, and report on the situation in the field, ensuring compliance with international standards. The important feature of the national monitoring mechanisms is that they are aimed at ensuring regular and constant examination of the situation in the country, whereas the international or regional monitoring bodies are doing that periodically. This gives a possibility to be engaged in various processes and developments of the field by providing recommendations to the authorities, getting engaged in discussions on the norm-creating processes, and monitoring and evaluating the implementation of policy documents.

International treaties also envisage the establishment of national monitoring mechanisms. The purpose of such mechanisms is to monitor the implementation of the state obligations persuaded by those treaties or to carry out monitoring of the respective fields in general. Sometimes it is more effective and resource-consuming to delegate the implementation of such functions to the existing human rights mechanisms, for instance, the National Human Rights Institutions (NHRI). Furthermore, it can be also the case that already-existing institutions are anyhow dealing with the topic and designating it with this mandate will be more effective rather than establishing a new one and trying to build it. Hence, international treaties do not oblige the states to establish a new institution or mechanism but give a possibility to put the role on an already-existing entity.

As the main treaty in the fight against the trafficking in human beings in the European continent, covering the European Union member states and much beyond, the Council of Europe Convention on Action Against Trafficking in Human Beings (Convention) also considers the establishment of a national monitoring mechanism. It provides that Parties shall consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements.<sup>1</sup> The institution of a National Rapporteur has been established in the Netherlands, where it is an independent institution, with its own personnel, whose mission is to ensure the monitoring of anti-trafficking activities. It has the power to investigate and make recommendations to persons and institutions concerned and makes an annual report to the parliament containing its findings and recommendations.<sup>2</sup>

According to the drafting history of the Convention, as illustrated in the Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings, initially it was discussed to merge the monitoring and co-ordinating functions and grant this to the National Rapporteurs. However, it was agreed to separate these two functions and consider that they should be implemented separately by the two different mechanisms, coordinating bodies and National Rapporteur for monitoring.<sup>3</sup>

Turning to the binding nature of establishing a monitoring mechanism in line with the Convention, it should be acknowledged that the State Parties are not obliged to establish the institution of a National Rapporteur nor to delegate the monitoring function to other institutions. Though, in the drafting process, the binding nature of this provision was the subject of discussion based on the proposal of Non-Governmental Organisations (NGOs), it was agreed to keep the wording "consider appointing", *inter alia*, due to the reason that states advocated against diverting funds from their effective field activities by creating a new centralised office at the federal level. However, the convention still obliges the states to consider the establishment of such an institution or an equivalent one.<sup>4</sup> This serves as a ground for the Group of Experts on Action against Trafficking in Human Beings (GRETA), the responsible body for the monitoring of the implementation of the Convention by the State Parties, to evaluate

<sup>1</sup> Council of Europe Convention on Action against Trafficking in Human Beings (2005), Article 29 (a), available at: <https://rm.coe.int/168008371d>.

<sup>2</sup> Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings (2005), Paragraph 289, available at: <https://rm.coe.int/16800d3812>.

<sup>3</sup> Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings (2020), Edited by Julia Planitzer and Helmut Sax, Paragraph 29.06, available at: <https://www.e-elgar.com/shop/gbp/a-commentary-on-the-council-of-europe-convention-on-action-against-trafficking-in-human-beings-9781788111553.html>.

<sup>4</sup> *Ibid.* Paragraph 29.07.

and recommend that states should examine the possibility of establishing an independent National Rapporteur, or another independent mechanism for monitoring the anti-trafficking activities of State institutions.

The main function of a National Rapporteur or an equivalent mechanism is the monitoring of anti-trafficking activities and, similar to NHRIs, it has not only the competence to investigate but may also exercise its quasi-judicial function (issue legally non-binding recommendations) and compile an annual report submitted to the parliament. Although the Explanatory Report and drafting history make this explicit reference to the example of the Netherlands' National Rapporteur, the Convention and its monitoring body, GRETA leaves it to the discretion of State Parties to decide what kind of competence will be delegated to the National Rapporteur or other mechanisms.<sup>1</sup>

The establishment of a national monitoring mechanism for action against trafficking in human beings is stipulated in other international treaties as well. According to the EU Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims (Directive), Member States shall take the necessary measures to establish national rapporteurs or equivalent mechanisms. The tasks of such mechanisms shall include the carrying out of assessments of trends in trafficking in human beings, the measuring of results of anti-trafficking actions, including the gathering of statistics in close cooperation with relevant civil society organisations active in this field, and reporting.<sup>2</sup>

Furthermore, according to the Directive, national monitoring systems such as national rapporteurs or equivalent mechanisms should be established by the Member States, in the way in which they consider appropriate according to their internal organisation, and taking into account the need for a minimum structure with identified tasks. The aim of these mechanisms should be to carry out assessments of trends in trafficking in human beings, gather statistics, measure the results of anti-trafficking actions, and regularly report.<sup>3</sup> Hence, the mechanism's main purpose does not include monitoring the implementation of the Directive itself.<sup>4</sup>

In the Report of the Special Rapporteur on trafficking in persons, especially women and children from the Second consultative meeting on strengthening partnerships with national rapporteurs on trafficking in persons and equivalent mechanisms, some of the key functions of national rapporteurs and equivalent mechanisms were identified as the collection of information on trafficking in persons, analysis of its root causes, nature, extent and type, and the identification of emerging trends in trafficking in persons, all to contribute to the development of effective anti-trafficking policies, programmes and interventions. Monitoring and evaluating the impact of existing anti-trafficking legislation and policies, revising existing laws and guidelines in line with international standards, and proposing new legislation and standard operating procedures for their uniform implementation also emerged as

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<sup>1</sup> Ibid. Paragraph

<sup>2</sup> EU Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims (2011), Article 19, available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32011L0036>.

<sup>3</sup> Ibid. Preamble Paragraph 27.

<sup>4</sup> Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings (2020), Edited by Julia Planitzer and Helmut Sax, Paragraph 29.13, available at: <https://www.e-elgar.com/shop/gbp/a-commentary-on-the-council-of-europe-convention-on-action-against-trafficking-in-human-beings-9781788111553.html>.

functions of national rapporteurs and equivalent mechanisms.<sup>1</sup>

To conclude, the establishment of national monitoring mechanisms for action against trafficking in human beings is a pivotal aspect of safeguarding and promoting human rights within a country. These mechanisms, designed to monitor, evaluate, and report on the state of affairs in the field, ensure adherence to international standards. A distinctive feature of national monitoring mechanisms is their commitment to regular and ongoing examination of the domestic situation, providing an advantage over periodic assessments conducted by international or regional bodies. While these mechanisms are not mandated to be new institutions, their role is crucial in monitoring anti-trafficking activities, issuing recommendations, and contributing to the development of effective policies. The overarching functions of these mechanisms involve the assessment of trafficking trends, impact evaluations of anti-trafficking measures, and proposing legislative changes in line with international standards. Thus, the role of national monitoring mechanisms proves indispensable in the collective effort to combat human trafficking and uphold fundamental human rights.

## II. National Monitoring Mechanisms on Action Against Trafficking in Human Beings: Insights from Country-Specific Experiences

Under the international standards highlighted above and following the fundamental idea to effectively combat trafficking in human beings, states around the world have implemented comprehensive monitoring mechanisms aimed at tracking, evaluating, and enhancing their efforts in the fight against this global menace. This chapter delves into the intricate landscape of national monitoring mechanisms designed to counter trafficking in human beings. The examination provides valuable insights into the experiences and formats that shape the ongoing battle against human trafficking. By shedding light on these monitoring frameworks, it aims to better understand the strengths, challenges, and evolving dynamics of the global commitment to eradicating this heinous crime and protecting the rights and dignity of the vulnerable, through effective oversight of the activities of the state authorities.

For the current analysis of the experience of the Parties to the Convention on implementing the provision of Article 29 (4) on the obligation to consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities were considered. Hence, the country reports of GRETA available at the time of the preparation of this article were studied. The particular focus of the study was GRETA reports of the 3<sup>rd</sup> evaluation round, which is focused on access to justice and effective remedies for victims of trafficking in human beings and was launched on 20 November 2018. It covers, *inter alia*, Article 29 of the Convention on the Specialised Authorities and Coordinating Bodies, including the obligation of the Parties to consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities.<sup>2</sup> However, the reports of the GRETA 2<sup>nd</sup> evaluation round also examine the topic.<sup>3</sup>

The analysis of the last available GRETA reports shows that in the main part of the Parties to the Convention (15), the functions of the National Rapporteur are

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<sup>1</sup> Report of the Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro from the Second consultative meeting on strengthening partnerships with national rapporteurs on trafficking in persons and equivalent mechanisms (2015), Paragraphs 13-14, available at: <https://digitallibrary.un.org/record/798408?ln=en>.

<sup>2</sup> Council of Europe action against trafficking in human beings, "Country reports and evaluation rounds", available at: <https://www.coe.int/en/web/anti-human-trafficking/3rd-evaluation-round>.

<sup>3</sup> Hence, the studied reports were published from 7 December 2018 to 9 November 2023 and included the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> rounds.

implemented either by an executive or a coordinating body of the field.<sup>1</sup> In those reports, GRETA notes that Article 29 of the Convention makes a clear distinction between National Coordination and National Rapporteur. In GRETA's view, the key features of National Rapporteurs' mechanisms in the sense of Article 29, paragraph 4, of the Convention, should be the ability to critically monitor the efforts and effectiveness of all state institutions, including national co-ordinators, and that end maintains a constant exchange with civil society, the research community and other relevant stakeholders. The human rights-based approach to anti-trafficking policies advocated by the Convention requires adequate monitoring and evaluation. A structural separation between monitoring and executive functions promotes an objective evaluation of the implementation of anti-human trafficking legislation, policy and activities, identification of lacunae and shortcomings, and the formulation of comprehensive legal and policy recommendations.<sup>2</sup>

Some Parties to the Convention (8) do not have any such institution, which does not exclude the possibility that the activities of the authorities might be subject to monitoring or oversight by certain independent bodies, which are not appointed as a National Rapporteur in line with the Article 29 (4) of the Convention. Furthermore, some of the reports refer to the position of the authorities not having any plans to appoint National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities.<sup>3</sup> Separate from these Parties, there are some (6) which consider having such a mechanism.<sup>4</sup> It should be particularly noted, that considering the absence of explicit obligation outlined in the Convention to establish a national monitoring mechanism. It provides that Parties shall consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements, in none of the reports GRETA "urge" the states on this point.

Though it is not a high number, there are Parties (8), which decided to designate the role of the National Rapporteur to other independent institutions, the majority of which are NHRIs or Ombuds Institutions.<sup>5</sup> Being in line with the concept offered by the Convention, this model seems to be effective and resource-consuming in those countries, and it was not criticised by GRETA.

It is only the Netherlands that has a specialised body, funded by the state and whose mission is to ensure the monitoring of anti-trafficking activities. The National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children is independent, addresses his/her reports to the government, and is appointed by law for a four-year term. This term can be extended by four years.<sup>6</sup>

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<sup>1</sup> Reports on Andorra, BiH, the Czech Republic, Israel, Liechtenstein, Monaco, San Marino, Turkey, Ukraine, and UK (10) do not contain information on the state of implementation of Article 29 (4) of the Convention.

<sup>2</sup> Reports on Austria, Belarus, Bulgaria, Denmark, Estonia, Greece, Italy, Latvia, Lithuania, Poland, Portugal, Romania, Slovak Republic, Spain, and Sweden, available at: <https://www.coe.int/en/web/anti-human-trafficking/country-reports-and-evaluation-rounds>.

<sup>3</sup> Reports on Armenia, Azerbaijan, Croatia, Georgia, Hungary, Malta, Montenegro, and Switzerland, available at: <https://www.coe.int/en/web/anti-human-trafficking/country-reports-and-evaluation-rounds>.

<sup>4</sup> Reports on Albania, Germany, Iceland, Moldova, Norway, and Slovenia, available at: <https://www.coe.int/en/web/anti-human-trafficking/country-reports-and-evaluation-rounds>.

<sup>5</sup> Reports on Belgium, Cyprus, Finland, France, Ireland, Luxemburg, North Macedonia, and Serbia, available at: <https://www.coe.int/en/web/anti-human-trafficking/country-reports-and-evaluation-rounds>.

<sup>6</sup> Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, available at: <https://www.dutchrapporteur.nl/>.

This institution was established in 1997 by the Hague Declaration on the recommendation to appoint a national rapporteur. Initially, the mandate did not include sexual abuse against children, but only trafficking in human beings. In 2009 the mandate was expanded by a ministerial decree to include the topic of child sexual abuse material, on which the Rapporteur published her first report in 2011. In that report, one of the recommendations of the Rapporteur was to expand the mandate to the entire terrain of sexual violence against children. In 2012 The government decided to comply with this request and widened its mandate to encompass sexual violence against children. Thereby the official name changes to 'National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children'. Already in 2013, as of November 15<sup>th</sup>, the independent position of the National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children is preserved by a formal Dutch law. The 'Law on the National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children' was adopted by Parliament with broad support.<sup>1</sup>

The office of a National Rapporteur on Trafficking in Human Beings can help give a voice to the ideas or concerns of various organizations and individuals in society, from NGOs to law enforcement or local authorities. In turn, the institution of a National Rapporteur relies on these stakeholders for areas of concern, questions, and data in need of analysis. In this symbiotic relationship, the office of a National Rapporteur benefits from a continual reassessment of its own role; its core vision, goals, and strategy; and how they can best meet the needs of the victims, the organizations involved, and the society. A position of independence coupled with an extensive network of national and international actors in the field, allowing different kinds of expertise to be combined, is an indispensable condition for the successful fulfilment of this mission.<sup>2</sup>

For the GRETA position and the Convention, it can be concluded that the Parties are encouraged to establish a national monitoring mechanism for the anti-trafficking activities of State institutions and the implementation of national legislation requirements. It is not expected from this mechanism to carry out the monitoring of the implementation of the conventional provisions by the Party, but the system on action against trafficking in human beings at large.

It is envisaged that the monitoring mechanism should have the ability to critically monitor the efforts and effectiveness of all state institutions, including national coordinators, as well as the human rights-based approach to anti-trafficking policies. The desirable option is the establishment of a specialised and independent institution of the National Rapporteur, however, the designation of the role of the monitoring mechanism to existing entity satisfying the requirements is considered in line with the Convention. It is envisaged that the monitoring mechanism should effectively cooperate with civil society, the research community and other relevant stakeholders, having a constant exchange and serving as a bridge between them and the authorities.

As highlighted in the Report of the Special Rapporteur on trafficking in persons, especially women and children from the Second consultative meeting on

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<sup>1</sup> History of the Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, available at: <https://www.dutchrapporteur.nl/about-us/history#timeline-minor-event-124413560-854696279>.

<sup>2</sup> "National Rapporteur on Trafficking in Human Beings and Sexual Violence Against Children, the Netherlands" (2019). Alexis A. Aronowitz and Suze E. Hageman, available at: [https://www.researchgate.net/publication/333802773\\_National\\_Rapporteur\\_on\\_Trafficking\\_in\\_Human\\_Beings\\_and\\_Sexual\\_Violence\\_Against\\_Children\\_the\\_Netherlands](https://www.researchgate.net/publication/333802773_National_Rapporteur_on_Trafficking_in_Human_Beings_and_Sexual_Violence_Against_Children_the_Netherlands).

strengthening partnerships with national rapporteurs on trafficking in persons and equivalent mechanisms, the benefits of a mechanism to address trafficking in persons that is independent of the Government were particularly noted by participants from Nepal, where the Office of the Special Rapporteur on Trafficking in Women and Children is part of the National Human Rights Commission, and from Finland, where the Ombudsman for Minorities is appointed as a National Rapporteur. The main strength of that arrangement is the ability to build on the interdependence and indivisibility of all human rights and mainstream the issue across all anti-trafficking areas. Given the autonomous nature of such mechanisms, their staff can objectively evaluate the implementation of anti-human trafficking legislation, strategies and activities, point out existing drawbacks and make comprehensive legal and policy recommendations. Their autonomy also increases the credibility of their actions, which include handling complaints regarding trafficking in persons. The Office of the Special Rapporteur on Trafficking in Women and Children in Nepal is mandated to carry out investigations and monitor site visits. In Finland, the National Rapporteur provides legal advice and may also assist victims of human trafficking in securing their rights. The National Rapporteur enjoys independent collaboration with the Government, Civil Society Organizations and victims, based on trust. However, to ensure a unified approach in that setup, there is a need for willingness and incentives to undertake cross-disciplinary work in collaboration with stakeholders.<sup>1</sup>

### **III. Designating the National Human Rights Institutions as the Monitoring Mechanism of Action Against Trafficking in Human Beings**

As the phenomenon of trafficking in persons is evolving rapidly, it was suggested in the Consultative Meeting on Strengthening Partnerships with National Rapporteurs on Trafficking in Persons and Equivalent Mechanisms that anti-trafficking legislation should be assessed regularly. For countries that have not established such mechanisms or would not be able to have a formal national rapporteur's mechanism, it was suggested to look at other institutions such as NHRIs that might also be able to carry out monitoring functions in relation to trafficking.<sup>2</sup>

Eight Parties to the Convention designated the role of the National Rapporteur to other independent institutions, the majority of which are NHRIs or Ombuds Institutions. Furthermore, some of those who plan to establish such a monitoring mechanism, are considering delegating the role to their NHRIs. The current chapter seeks to reveal the potential of NHRIs to implement the functions of the national monitoring mechanism of action against trafficking in human beings, comparing the requirements for such a mechanism and the general principles of the NHRIs.

According to the observations made in the previous chapter, the most important characteristic for this institution is to be independent and separate from the authorities the monitoring of the operation of which should be under its mandate. Certainly, this is a key principle for the NHRIs, which is promoted and safeguarded in the Principles

<sup>1</sup> Report of the Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro from the Second consultative meeting on strengthening partnerships with national rapporteurs on trafficking in persons and equivalent mechanisms (2015), Paragraph 23, available at: <https://digitallibrary.un.org/record/798408?ln=en>.

<sup>2</sup> Summary report of the Consultative Meeting on Strengthening Partnerships with National Rapporteurs on Trafficking in Persons and Equivalent Mechanisms (2013), available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Trafficking/Consultation/2013/SummaryReport-BerlinconsultationofNREMs.pdf>.

Relating to the Status of National Human Rights Institutions (Paris Principles).<sup>1</sup> Independence is also considered of vital importance for the Ombudsman Institutions by the European Commission for Democracy through Law (Venice Commission).<sup>2</sup> Furthermore, for the effective implementation of such functions, it is necessary to grant these bodies the minimum level of power for having access to the information and institutions, freely and confidentially communicating with people whose rights protection is under their competence, having sufficient resources, as well as exchange information with partners.

The importance of cooperation of the NHRIs with civil society is also outlined in the Paris Principles, stating that within the framework of its operation, the NHRIs shall develop relations with the non-governmental organizations devoted to promoting and protecting human rights, economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.<sup>3</sup> The drafters of the Paris Principles recognized the comparative advantage of the Civil Society Organisations (often small, flexible, and responsive to community needs) vis-a-vis NHRIs (official institutions of the state). Civil Society Organisations benefit from "proximity to their members or clients, their flexibility and the high degree of people's involvement and participation in their activities, which leads to strong commitments, appropriateness of solutions and high acceptance of decisions implement."<sup>4</sup>

In different countries, NHRIs are considered a national monitoring mechanism for various treaties, including UN conventions. NHRIs, as independent bodies, have a crucial role in promoting and monitoring the effective implementation of international human rights standards at the national level. This role makes them a significant actor in international human rights monitoring mechanisms: they can provide reliable, detailed and up-to-date information about the human rights situation in the field in any country. In the last decade, NHRIs are gaining popularity among citizens as well as researchers partially thanks to their successful advocacy activities in front of international organisations.<sup>5</sup>

Some of the UN human rights treaties require the establishment of institutions in compliance with the Paris Principles to monitor the implementation of the respective Convention on the national level. Designation of a national monitoring body by an international convention is certainly the strongest legal basis for NHRIs: the state parties agree to the provision by signing and ratifying the convention therefore, they

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<sup>1</sup> General Assembly resolution 48/134 on Principles Relating to the Status of National Human Rights Institutions (Paris Principles) adopted 20 December 1993, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris>.

<sup>2</sup> "Principles on the Protection and Promotion of the Ombudsman Institution" (2019), European Commission for Democracy through Law, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)005-e).

<sup>3</sup> General Assembly resolution 48/134 on Principles Relating to the Status of National Human Rights Institutions (Paris Principles) adopted 20 December 1993, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris>.

<sup>4</sup> "National Human Rights Institutions and Civil Society Organizations: New Dynamics of Engagement at Domestic, Regional, and International Levels" (2012), Catherine Shanahan Renshaw, available at: <https://www.jstor.org/stable/23269959>.

<sup>5</sup> "National human rights institutions engaging with human rights monitoring mechanisms of the United Nations: comparative assessment" (2021), Zsuzsanna Rutai, available at: <https://ceere.eu/pjiel/wp-content/uploads/2021/06/pjiel-2021-1-zsuzsanna-rutai.pdf>.



can be found of breaching the convention by not doing so. Nevertheless, it has to be recalled that these instruments are among the latest developments in the human rights protection field building on the experiences of monitoring bodies with NHRIs.<sup>1</sup>

One of them is the National Preventive Mechanism (NPM) under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), which envisages that each State Party shall maintain, designate or establish one or several independent national preventive mechanisms for the prevention of torture at the domestic level.<sup>2</sup> The OPCAT does not prescribe that NPMs take any particular or specific form. States can either establish new bodies or designate existing NPMs, including decentralized units. No preferred model exists as such; the key is that the mechanism shall comply with the requirements of the OPCAT by allowing it to perform its independent visiting mandate and other functions. Entities designated as NPMs include, for example, NHRIs, including the Ombudsperson, the “Ombudsman plus model”, national human rights commissions, and consultative commissions.<sup>3</sup> As a way of example, according to the Constitutional Law on the Human Rights Defender of Armenia, except for being an independent official who observes the maintenance of human rights and freedoms by public and local self-government bodies and officials, and in cases prescribed by this law also by organisations, facilitates the restoration of violated rights and freedoms, improvement of normative legal acts related to rights and freedoms the Defender shall be entrusted with the mandate of the NPM. Furthermore, the Constitutional Law also stipulates that the Defender shall conduct monitoring of the implementation of the provisions of the UN Convention on the Rights of the Child and the UN Convention on the Rights of Persons with Disabilities, as well as carry out prevention of violations of the rights of the child and persons with disabilities, and the protection thereof.<sup>4</sup>

Considering the important role of the NHRIs and the Ombudsman Institutions in promoting international human rights standards on the domestic level, as well as the principles of their work, including the independence and cooperation with relevant stakeholders, including the civil society, state authorities and international organisations, it should be concluded that they can effectively serve as a national monitoring mechanism for the action against trafficking in human beings, also being designated as the National Rapporteurs under the Convention.

#### **IV. Cooperation between the National Monitoring Mechanisms on Action Against Trafficking in Human Beings and other Monitoring Mechanisms of the Field**

Being an independent monitoring mechanism of the field with regular oversight of the action against the trafficking in human beings, the national monitoring mechanisms can serve as a credible source for international monitoring mechanisms. National monitoring mechanisms can provide valuable, first-hand data and information on trafficking trends, patterns, and challenges within their respective countries. This data is essential for international bodies to have a comprehensive understanding of the frame of the country in the course of the evaluation. Furthermore, even if the national mechanism is not monitoring the implementation of the international treaty by the

<sup>1</sup> Ibid., Page 11.

<sup>2</sup> Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2002), Article 17, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-against-torture-and-other-cruel>.

<sup>3</sup> Preventing Torture: A Practical Guide: Professional Training Series No. 21 “The Role Of National Preventive Mechanisms”, Page 8, available at: [https://www.ohchr.org/sites/default/files/Documents/Publications/NPM\\_Guide\\_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/NPM_Guide_EN.pdf).

<sup>4</sup> Constitutional Law on the Human Rights Defender of Armenia, Article 2, available at: [https://www.ombuds.am/en\\_us/site/AboutConstitution/79](https://www.ombuds.am/en_us/site/AboutConstitution/79).

country, it anyway assesses the national legislation and policies in line with international standards.

Some states might be reluctant to establish an independent monitoring mechanism on the domestic level, considering that the existing international mechanisms and general ones on human rights, such as the NHRIs, are sufficient. In this frame, it should be particularly noted that the national monitoring mechanisms for action against trafficking in human beings should not replace the regional or international monitoring mechanisms. Furthermore, it should contribute to their work. Moreover, the existing general monitoring mechanisms should be sufficiently capacitated to be able to carry out effective monitoring. Meantime, the establishment of international or regional monitoring mechanisms should not replace the national ones. For instance, In the course of the establishment of GRETA, it was highlighted that this must not be seen by State Parties as a replacement of domestic monitoring structures such as national rapporteurs or other mechanisms as mandated by Article 29(4) of the Convention. The mechanism can, thus, be regarded as an external human rights-based evaluation in the field of anti-trafficking measures.<sup>1</sup>

Cooperation between the national monitoring mechanisms is also important. It first of all strengthens the operation of national monitoring systems. It allows to exchange experience and find solutions to common challenges. Furthermore, successful practices and innovative approaches developed by national monitoring mechanisms can serve as valuable examples for other countries and international bodies. Sharing best practices helps in creating a repository of effective strategies to combat trafficking globally. Moreover, national mechanisms contribute to international efforts by actively participating in collaborative initiatives and discussions. They provide a direct link between local and global perspectives, facilitating better coordination and cooperation in the fight against human trafficking.

Above mentioned applies to the monitoring mechanisms of action against the trafficking in human beings as well. Since 2018, annual meetings of National Anti-Trafficking Co-ordinators and Rapporteurs or equivalent mechanisms are co-organised by the Council of Europe and the Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings of the Organization for Security and Co-operation in Europe (OSCE). These meetings aim to exchange promising practices, strengthen partnerships and promote the implementation of international obligations in the area of combating trafficking in human beings.<sup>2</sup> This serves as a platform for the exchange of experiences and discussion on the trends and challenges.

Another example of the platform for cooperation among the national monitoring mechanisms on action against trafficking in human beings is on the EU level. Even the Directive itself states that national rapporteurs or equivalent mechanisms are constituting an informal Union Network established by the Council Conclusions on establishing an informal EU Network of National Rapporteurs or Equivalent Mechanisms on Trafficking in Human Beings of 4 June 2009. Furthermore, it also states that the anti-trafficking coordinator would take part in the work of that Network, which provides the Union and the Member States with objective, reliable, comparable and up-to-date strategic information in the field of trafficking in human beings and

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<sup>1</sup> Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings (2020), Edited by Julia Planitzer and Helmut Sax, Paragraph 38.15, available at: <https://www.e-elgar.com/shop/gbp/a-commentary-on-the-council-of-europe-convention-on-action-against-trafficking-in-human-beings-9781788111553.html>.

<sup>2</sup> Annual meetings of National Anti-Trafficking Co-ordinators and Rapporteurs or equivalent mechanisms, available at: <https://www.coe.int/en/web/anti-human-trafficking/anti-trafficking-national-coordinators>.

exchanges experience and best practices in the field of preventing and combating trafficking in human beings at Union level. The European Parliament should be entitled to participate in the joint activities of the national rapporteurs or equivalent mechanisms.<sup>1</sup> The network meets twice per year.<sup>2</sup>

Therefore, the role of national monitoring mechanisms in the fight against trafficking in human beings is indispensable, as they provide a credible source of valuable, first-hand data and insights into trafficking trends and challenges within their respective countries. While some states may hesitate to establish independent monitoring mechanisms, viewing existing international mechanisms and general human rights bodies as sufficient, it is crucial to recognize that national monitoring mechanisms should not replace but rather complement regional and international counterparts. Furthermore, cooperation among national mechanisms is essential, strengthening the overall operation of monitoring systems, promoting the exchange of experiences, and offering solutions to common challenges.

### Conclusion

In conclusion, the creation and functioning of national monitoring mechanisms for action against trafficking in human beings represent a crucial step towards safeguarding and promoting human rights within a country. These mechanisms, designed to regularly assess, evaluate, and report on the state of human trafficking, ensure compliance with international standards. Notably, the unique aspect of national monitoring mechanisms lies in their dedication to continuous and thorough scrutiny at the domestic level, offering an advantage over periodic assessments conducted by international or regional bodies. While the establishment of these mechanisms is not mandated to take the form of entirely new institutions, their pivotal role in monitoring anti-trafficking activities, providing recommendations, and contributing to the formulation of effective policies cannot be overstated.

The flexibility allows states to choose models that align with their unique contexts, reinforcing the collective commitment to upholding fundamental human rights in the action against trafficking in human beings. There are diverse options available to states, whether through the establishment of new entities or leveraging existing structures like NHRIs or Ombudsman Institutions. However, as states consider their approach, it is vital to view national monitoring mechanisms not as replacements but as complementary elements to regional and international efforts, fostering cooperation, sharing experiences, and collectively advancing the global fight against human trafficking.

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## ՄՇՏԱՂԻՏԱՐԿՄԱՆ ԱԶԳԱՅԻՆ ՄԵԽԱՆԻԶՄԵՐ.

### ՄԱՐԴԿԱՆՑ ԹՐԱՖԻՔԻՆԳԻ ԴԵՄ ՊԱՅՔԱՐԻ ՀՋՈՐԱՑՈՒՄ

#### Սերգեյ Ղազինյան

*ԵՊՀ եվրոպական հետազոտությունների կենտրոնի փորձագետ,  
ԵՊՀ եվրոպական և միջազգային իրավունքի ամբիոնի դասախոս*

Մարդկանց թրաֆիքինգի դեմ պայքարը պահանջում է բազմակողմանի և բազմաշերտ մոտեցում: Այն պետք է ներառի ոչ միայն քրեական արդարադատության արձագանքը մարդկանց թրաֆիքինգի հանցագործությանը և դրա ձևերին, այլ նաև զոհերի պաշտպանությունը, աջակցությունը և այլ էական իրավունքներ: Այդ նպատակով ակնկալվում է, որ պետությունները կստեղծեն անհրաժեշտ ինստիտուտներ և մեխանիզմներ, որոնք պետք է ապահովեն մարդու իրավունքների վրա հիմնված մոտեցում մարդկանց թրաֆիքինգի զոհերի նկատմամբ:

Մարդկանց թրաֆիքինգի դեմ պայքարի կառուցվածքում անկախ մշտադիտարկումը առանցքային դեր ունի: Այն նպաստում է կանխարգելմանը, պատշաճ հակազդմանը, քաղաքականության մշակմանը, միջազգային համագործակցությանը և ոլորտում մարդու իրավունքների պաշտպանության ընդհանուր բարելավմանը: Այդ մեխանիզմները նշանակալի դեր ունեն քաղաքականություն մշակողներին աջակցելու ռազմավարական փաստաթղթերի մշակման և իրականացման գործում՝ նպաստելով մարդկանց թրաֆիքինգի դեպքերի բացահայտմանը և իրավապահ մարմիններին դրանք հաղորդելու, ինչպես նաև միջազգային կազմակերպությունների, մասնավորապես՝ մշտադիտարկման մեխանիզմների հետ տեղեկատվության փոխանակմանը: Ավելին, այն կարող է ծառայել որպես կամուրջ քաղաքացիական հասարակության և իշխանությունների միջև՝ ընդգծելով քաղաքացիական հասարակության դերը զոհերին աջակցելու գործում: Ի վերջո, մարդկանց թրաֆիքինգի դեմ մշտադիտարկման ազգային մեխանիզմները կարող են ներգրավվել նաև հասարակության լայն շերտերի իրազեկվածության բարձրացման գործում՝ խնդիրը մատչելի ներկայացնելով:

Սույն հոդվածը նպատակ ունի բացահայտել, թե ինչու է կարևոր մարդկանց թրաֆիքինգի դեմ պայքարի ազգային մշտադիտարկման մեխանիզմների առկայությունը, դրա մանդատը և տարբեր մոդելները, ոլորտի ազգային և միջազգային մշտադիտարկման մեխանիզմների գործունեության սիներգիան, շահագրգիռ կողմերի հետ համագործակցությունը, ինչպես նաև ներկայացնելու միջազգային չափանիշներն ու լավագույն փորձը՝ հիմնված երկրների հատուկ օրինակների վրա:

## СВЯЗЬ МЕЖДУ ТОРГОВЛЕЙ ЛЮДЬМИ И МИГРАЦИЕЙ: ИДЕНТИФИКАЦИЯ ЖЕРТВ

Сергей Казинян

*Эксперт Центра европейских исследований ЕГУ,*

*Преподаватель Кафедры европейского и международного права ЕГУ*

Действия против торговли людьми требуют разнообразного и многоуровневого подхода. Оно должно включать не только меры уголовного правосудия по борьбе с торговлей людьми и ее формами, но также защиту, помощь и другие основные права жертв. Ожидается, что с этой целью государства создадут необходимые институты и механизмы, которые должны обеспечить правозащитный подход к жертвам торговли людьми.

В архитектуре действий по борьбе с торговлей людьми ключевую роль играет независимый мониторинг. Это способствует предотвращению, вмешательству, разработке политики, международному сотрудничеству и общему улучшению защиты прав человека в стране. Эти механизмы играют важную роль в поддержке правительственных учреждений в разработке и реализации стратегических документов, способствуя выявлению случаев торговли людьми и информированию о них правоохранительных органов, а также сотрудничеству и обмену информацией с международными организациями, особенно с механизмами мониторинга. Более того, он потенциально может служить мостом между гражданским обществом и государством, подчеркивая роль гражданского общества в поддержке жертв. Наконец, национальные механизмы мониторинга, действующие против торговли людьми, также могут быть задействованы в повышении осведомленности широкой общественности, представляя проблему в доступной форме.

Настоящая статья призвана раскрыть, почему важно иметь национальные механизмы мониторинга действий против торговли людьми, его мандат и различные модели, синергию работы национальных и международных механизмов мониторинга на местах, сотрудничество с заинтересованными сторонами, а также международные стандарты и передовой опыт, основанные на примерах конкретных стран.

**Key words:** human trafficking and exploitation, action against human trafficking, victim of human trafficking, national monitoring, independent monitoring, GRETA, cooperation, civil society, international standards, NHRI

**Բանալի բառեր** — մարդկանց թրաֆիքինգ և շահագործում, մարդկանց թրաֆիքինգի դեմ պայքար, մարդկանց թրաֆիքինգի զրհ, ներպետական մշտադիտարկում, անկախ մշտադիտարկում, ԳՐԵՏԱ, համագործակցություն, քաղաքացիական հասարակություն, միջազգային չափանիշներ, Մարդու իրավունքների ազգային հաստատություն

**Ключевые слова:** торговля людьми и эксплуатация, действия против торговли людьми, жертва торговли людьми, национальный мониторинг, независимый мониторинг, ГРЕТА, сотрудничество, гражданское общество, международные стандарты, Национальное правозащитное учреждение.