Αντιγόνη: το ερώτημα

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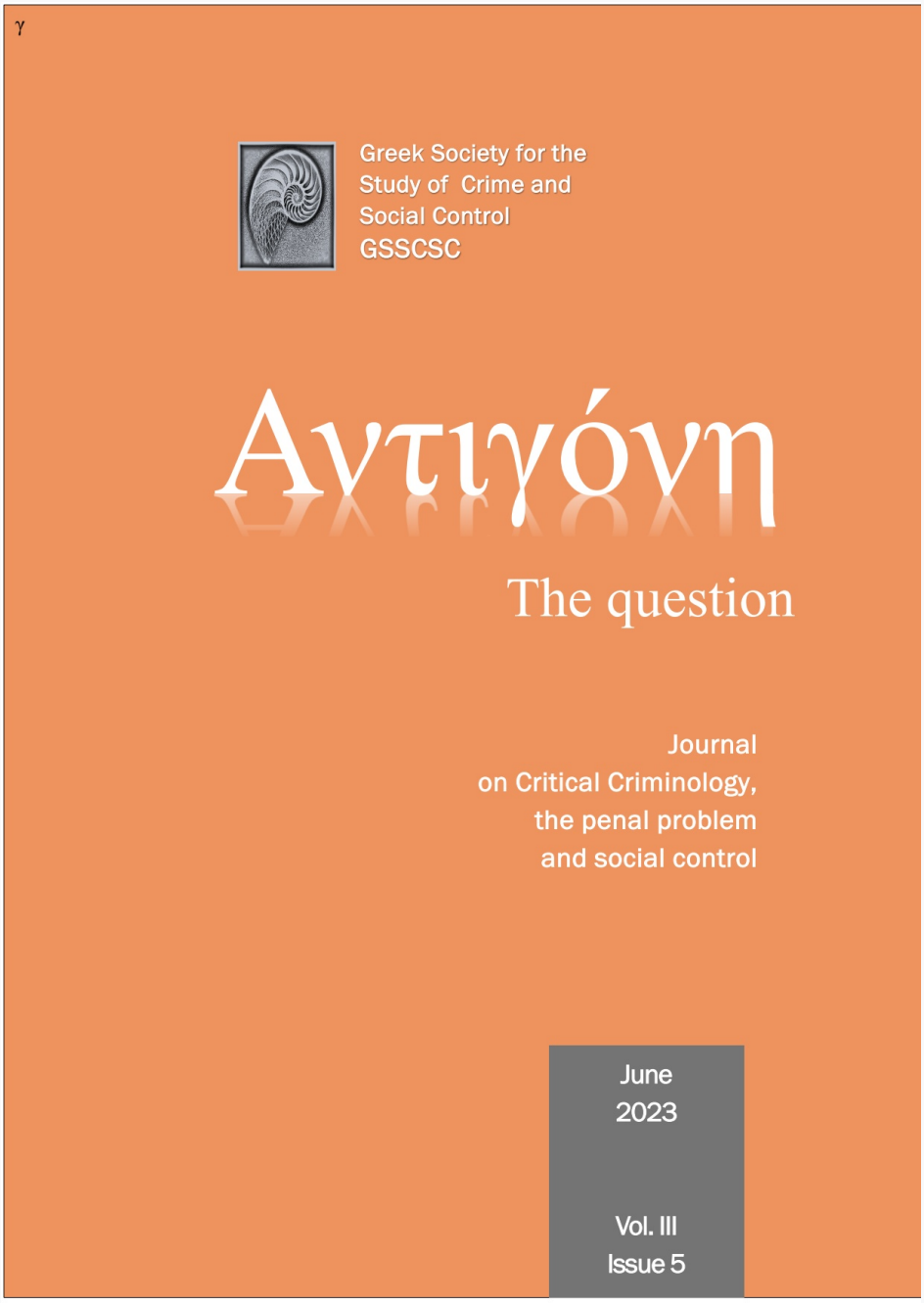

Greek Society for the Study of Crime
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GRSSCSC

Αντιγόνη
the question

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Contact GRSSCSC: grsscsc@gmail.com

Contact person: For GRSSCSC: Eirini Stamouli

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ARTICLES-STUDIES

REPORTS AND POLICY PAPERS' PRESENTATIONS AND REVIEWS

Editorial Note

'Αντιγόνη, the question' is entering the 3rd year of its walk of life in the endeavours of critical criminological thinking, and opens the floor to discussions over some traditional or innovative issues in the field, this time with a publication including contributions exclusively in English. The main topics of the five contributions published in the present, 5th issue of the journal are trafficking in human beings definitions, manifestations of conduct, and crime policies, the market (trade and collection) of cultural objects and the deficits in the protection of cultural heritage in Greece, power relations in Greek prisons exemplified in the strategic co-modality of discipline and governmentality for the management of prisoners, the organized and systematic pushbacks of asylum seekers at the land and sea borders of Greece with Turkey, their victimisation and the intimidation and criminalisation of their human rights defenders and, finally, the problematic living conditions-based approach of custody at the EU, recognising the need to consider prisoners' and pretrial detainees rights violations for the sake of the smooth judicial cooperation in criminal matters. These contributions are collected in two parts. The first includes three peer reviewed articles; the second consists of two presentations of national and European organisations' reports and policy recommendations.

The first paper, *'Uncovering Trends in Human Trafficking and Migrant Smuggling Activities: A Natural Language Processing Approach to UNODC SHERLOC Database'* is written by Maria Eirini Papadouka, Senior Lecturer in Quantitative Criminology, Department of Criminology & Sociology, Middlesex University. It addresses human trafficking and the complex issue of its practical overlapping with human smuggling as criminal activities involving material benefits and/or exploitation, focusing on the similarities and differences in the respective prevalent criminal activities (topics) as indexed in the above mentioned UN database, taking into account different countries' geographic and demographic characteristics. It is an innovative exploration of UNODC's SHERLOC Case Law database, where 2,284 case summaries of judicial decisions from 133 different countries have been categorised, either as human trafficking or migrant smuggling cases or both. Using a two-layered approach, the work first mines the database of cases included in SHERLOC, then identifies and codifies

topics emerging from the cases across locations and activities involved. The approach taken is of substantive methodological merit; despite the limitation that it draws from cases included in a particular database, the documentation of the method and how it applies in this instance is transparent, and the results point to significant ways in which such an approach could potentially complement the qualitative methods that are established in the field or research into trafficking in human beings and human smuggling.

Another area of globalised trafficking and smuggling is examined in the next paper, *'Arguments and posture of "market" and "source" countries on illicit or not trade and collection of cultural objects: Reflections on the information and data deficit from and to 'source' countries',* by Maria P. Kranidioti, retired Associate Professor, Department of Criminal Sciences, Law School, National and Kapodistrian University of Athens. It is a paper on the –legal or illicit– trading and collecting of antiquities and other cultural heritage objects, based on interviewed experts' information and opinion. The author distinguishes countries 'exporting' and 'importing' cultural goods, discusses the arguments invoked by both to justify their interests to keep and preserve cultural objects and raises the issue of their commodification. She presents also the approaches of 'cultural internationalism' and 'cultural nationalism' and points the criminogenic influences of cultural capitalism, neoliberalism and global power imbalance in the looting and trafficking of antiquities. Some of the findings of her empirical research, and specifically interviews conducted with a purposive, snowball sample of experts are selected and presented, enquiring their views about the Greek archaeological law and its implementation, especially the provisions related to cultural heritage protection and the influence of their opinion on cultural policy. The findings indicate the experts' ultimate alignment with policies dictated by international organisations and demonstrate ignorance or uncertainty, compatible with the widespread in the antiquities market 'culture of ignorance'.

The last contribution of the first part, *'Discipline and governmental strategies in the Greek prison system'*, authored by Dimitris Koros, Adjunct Lecturer, School of Law, Democritus University of Thrace and Tutor-Counselor, School of Social Sciences, Hellenic Open University, offers a critical approach of penality issues with an analysis of power relations and the exercise of disciplinary power in prisons. Discussing the 'disciplinary complex', a square of institutions regulating prisoners conduct (disciplinary procedures, work assignments, prison leaves and conditional release), which aim at both their in-prison adjustment and their reentry into society, the primarily disciplinary aspects of the interaction among the aforementioned institutions are questioned on the basis of the findings of an empirical research conducted in two prisons. The

research focuses on the operation of the Greek prison system according to the formal expressions (decisions of judicial and administrative bodies, views of judges, public prosecutors and prison officials) of dealing with prisoners as docile-warehoused individuals and populations and reveals the importance of a more complex process and locus of power relations where sovereignty, discipline and governmentality meet and mesh, the 'strategic co-modality of discipline and governmentality'.

In the second part of the issue, the report 'At Europe's Borders. Between Impunity and Criminalization', authored by Alkistis Agrafioti Chatzigianni, Lawyer, MA in Criminology and Kleio Nikolopoulou, Lawyer, LLM in International Human Rights Law, Advocacy Officer in the Greek Council for Refugees, is presented by the authors themselves with the contribution *'The Organised Illegal Practice of Pushbacks and the Criminalisation of Organisations Defending Victims'*. The original, presented here testimony-based report, raises issues of illegal activities perpetrated by the state or on its behalf pursuing a planned and systematic, though unofficial migration and border policy and its official denial and denunciation, namely (i) pushbacks, which violate the right of a person to seek asylum, often combined with arbitrary detention and violence, physical and, in some cases, sexual and (ii) intimidation of asylum seekers' human rights defenders. It provides detailed descriptions of pushback cases at the Greek – Türkiye land and sea borders, legally represented by GCR and submitted before the European Court of Human Rights (ECtHR) and/or the Greek Public Prosecutor. Moreover, it describes how the Greek state intimidates, targets and criminalises human rights defenders who support and provide legal aid to pushback victims, by linking NGOs to smugglers' networks and accusing them of undermining Greek national sovereignty, and labelling them enemies of the state. The report concludes with suggestions and recommendations for remedies in the EU and its member states, mainly the establishment of independent and effective border monitoring mechanisms and infringement proceedings when Member States systematically violate refugees' and asylum seekers rights, as well as the establishment of fair and mandatory solidarity mechanisms that prioritize relocation and safe and regular routes for individuals seeking protection in Europe.

The closing piece of the second part is an annotated synthesis of pre-trial detention and imprisonment issues, emerging from two recent, different in scope and nature EU documents. In *'The "self-reported" violations of the rights of people in custody. Reflections on two EU documents providing information and policy recommendations on imprisonment and pre-trial detention conditions'*, Nikolaos K. Koulouris, Associate Professor in Penitentiary Policy, Department of Social Policy, Democritus University of Thrace, elaborates on the study 'Prisons

and detention conditions in the EU' and the recommendation 'on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions'. The first document is a European Commission Recommendation of 8.12.2022, its first instrument laying down common (yet not binding) minimum standards as regards material detention conditions, with the purpose to set out guidance for Member States to strengthen the rights of all suspects and accused persons in criminal proceedings who are deprived of their liberty. The second document is a study commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the LIBE Committee, published in February 2023. It aims to provide background information and policy recommendations on the basis of European and national regulations, legislation, policies and practices regarding custodial institutions, to support effective compliance with existing European standards. Both documents refer to the challenges of poor detention conditions for the protection of prisoners' rights and more broadly for prison systems in general, but it seems that they approach existing breaches of the rights of pre-trial detainees and prisoners and inhuman or degrading treatment resulting from detention conditions from the angle of the practical consequences and problems they cause for judicial cooperation in criminal matters, affecting the principle of mutual trust between the involved member-States, without questioning the legitimacy of criminal justice institutions depriving liberty.

Summing up, the first attempt of 'Αντιγόνη, the question' to address an international audience has attracted the interest of the publishing authors working in different institutions and organisations in Greece and abroad, and resulted in the present collection of different thematically and methodologically papers. In these papers, on the one hand attention is paid to the definition of various forms of non-conventional crimes such as trafficking and smuggling in human beings and in cultural objects, state and state agencies illegal activities against asylum seekers and their defenders' defamation practices, the grey areas of related conducts, the policies which influence or determine the distinction or symbiosis of legality and illegality in the respective manifestations, the methods of relevant data recording etc. and, on the other hand penality and prison issues are looked at, ranging from the government of prisoners by disciplinary mechanisms of power to the inhuman and degrading prison conditions and the questions raised from the non-compliance of crucial aspects of prison life with existing regulatory standards. We hope that readers will find this array of topics interesting and we welcome their feedback and contributions to make the advance of this work possible.

Athens, June 2023
The Editorial Board

Uncovering Trends in Human Trafficking and Migrant Smuggling Activities: A Natural Language Processing Approach to UNODC SHERLOC Database

Maria Eirini Papadouka
Senior Lecturer in Quantitative Criminology,
Department of Criminology and Sociology, Middlesex University, UK

Abstract

Human trafficking affects every country of the world and it often occurs from less to more developed countries, where people are rendered vulnerable to trafficking by virtue of poverty, conflict or other conditions. A similar trend in human mobility is identified in migrant smuggling activities, which by definition differs in that it involves the procurement, in order to obtain a financial or other material benefit, of the illegal entry of a person into a state without however implementing the component of exploitation. However, when cases are manifested, these two issues have often been addressed through interchangeable legal frameworks depending on the country, the individual case and the political context.

In this project we bring together 2,284 collected case summaries of judicial decisions categorised either as human trafficking (n = 1490) or migrant smuggling cases (n = 755) or both from 133 different countries, as indexed in the UNODC SHERLOC database, in order to explore similarities and differences in the prevalent criminal activities while also focusing on the countries' geographical position and demography. The goal is to identify whether there is (or not) a trend in the manifestation of the involved criminal activities. The research pioneers the incorporation of methodological steps which include Natural Language Processing (NLP) techniques to identify topics in the mined text (topic modelling) on the UNODC SHERLOC's Case Law Database. We further identify and codify topics on the provided Fact Summaries (descriptions of the legal cases) in order to examine prevalence of criminal activities for each case and across countries.

Keywords: human trafficking, migrant smuggling, Sharing Electronic Resources and Laws on Crime Database, text mining, topic modelling, United Nations

1. Introduction

Human trafficking and migrant smuggling are two distinct but often intertwined issues that have been addressed through interchangeable legal frameworks in various countries (Gallagher, 2001). Both issues are prevalent in every country of the world and typically occur from less to more developed countries where people are rendered vulnerable due to poverty, conflict, or other conditions (Aronowitz, 2001, 2017). The lack of clear differentiation between these two criminal activities has led to confusion in legal proceedings, with many cases being misclassified or not addressed appropriately (Brachet, 2018; Kuschminder and Triandafyllidou, 2020).

In this project, we aim to shed light on the similarities and differences between human trafficking and migrant smuggling by examining over 2,000 collected case summaries of judicial decisions from 133 different countries. The cases are categorised as either human trafficking or migrant smuggling or both, and are indexed in the United Nations Office on Drugs and Crime's (UNODC) SHERLOC (Sharing Electronic Resources and Laws on Crime) database. Our research explores the geographic and demographic characteristics of the countries where these criminal activities are prevalent, in order to identify any trends in their manifestation. To achieve this, the project incorporates methodological steps that include the application of Natural Language Processing (NLP) techniques to identify topics in the mined text (topic modelling) on the UNODC SHERLOC's Case Law Database. The researchers further identify and codify topics on the provided Fact Summaries (descriptions of the legal cases) in order to examine the prevalence of criminal activities for each case and across countries.

The findings of this research have the potential to inform policy decisions and interventions aimed at preventing and combating human trafficking and migrant smuggling. By identifying the countries and regions where these crimes are most prevalent, policymakers can develop targeted strategies to address the root causes of human trafficking and migrant smuggling. Furthermore, the identification of the factors associated with these crimes can inform the development of prevention programs and interventions aimed at reducing the vulnerability of individuals to these crimes.

2. Literature review

2.1. On Human Trafficking (HT)

Human trafficking and migrant smuggling are two of the most pressing global issues of our time (Aronowitz, 2009; Gallagher, 2001, 2017; UNODC, 2023). Both

involve the exploitation of vulnerable individuals, often for the purpose of financial gain (Kelly and Regan, 2000; IOM, 2000). While the two terms are often used interchangeably (Aronowitz, 2001), they are distinct phenomena with different legal implications (Aronowitz, 2017).

Human trafficking is defined by the United Nations as '[...] *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.'* (United Nations Office on Drugs and Crime, 2004, article 3, paragraph a). It is often described as a form of modern-day slavery, and associated with the exploitation of women and children for the purpose of sexual exploitation, forced labour, or organ harvesting (Broad and Turnbull, 2019; Segrave et al., 2017; Davidson, 2010).

As per the latest pre-Covid19 trends and according to the United Nations Office on Drugs and Crime (UNODC), the top countries of origin for trafficking victims were Nigeria, India, Bangladesh, China, and Pakistan (UNODC, 2020). These countries are often characterized by high levels of poverty, political instability, and lack of opportunities, making their citizens vulnerable to exploitation. On the other side, the top countries of destination for trafficking victims vary by region, but the United States, Germany, Italy, and the United Kingdom are consistently among the top destinations globally (UNODC, 2020). These countries have robust economies and significant demand for cheap labour and commercial sex, making them attractive to traffickers.

Human trafficking can take many forms, including forced labour, sex trafficking, and organ trafficking. The types of trafficking that occur most frequently vary by region. For example, in Asia, labour trafficking is the most prevalent form of trafficking, while in Europe, sex trafficking is more common (UNODC, 2020). In Africa, trafficking for forced labour and sex trafficking occur at roughly the same rates. While there are some general trends in human trafficking globally, the specific patterns of trafficking vary by country. For example, in Thailand, trafficking for forced labour and sex trafficking occur at high rates, with many victims coming from neighbouring countries like Cambodia and Myanmar (UNODC, 2020). In Nigeria, trafficking is driven by the exploitation of children for forced labour, including domestic servitude, street vending, and agricultural work (UNODC, 2020). In Mexico, trafficking for forced labour in agriculture and manufacturing is prevalent, with a significant number of victims coming from Central America (UNODC, 2020).

The fact that we can currently discuss and present patterns on the different countries of origin and destinations and prevalent trends on the different forms of

human trafficking, it is partially to be awarded to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons (TIP), signed at the United Nations Convention against Transnational Organized Crime in Palermo, Italy, in December 2000 (Gallagher, 2010; UNODC, 2012; Stoyanova, 2015a). That is because over 90 per cent of countries (181 countries out of 195) among those covered by UNODC are part of the Protocol and thus, ratify the treaty by criminalizing human trafficking and developing anti-trafficking laws in line with the Protocol's legal provisions, as of 23 February 2023. Nevertheless, and despite the fact that the UNODC's definition has been widely adopted as the international legal standard for human trafficking, scholars and practitioners have fairly criticized it for its shortcomings, including its failure to adequately address the complexities of trafficking and its emphasis on force, fraud, and coercion (Aronowitz, 2017; Gallagher, 2001, 2017; Warren, 2007).

Pitfalls as such make it challenging to address the issue effectively; the particular example on the definitional focus on the use of force, fraud, or coercion overlooks the more nuanced forms of exploitation that often occur in trafficking situations (Warren, 2007). For example, many victims of trafficking are not only physically restrained or threatened, but rather, are psychologically manipulated or coerced into exploitation (Kara, 2010). These victims may not fit the traditional definition of trafficking, making it difficult for law enforcement officials to identify and prosecute their traffickers. Similarly, the UN definition fails to recognize the role that demand plays in perpetuating trafficking. The definition overweighs the supply side of trafficking by criminalizing the actions of traffickers. While this approach is essential, it fails to address the demand for trafficked persons. Traffickers engage in trafficking because there is a market for the exploitation of human beings. Until demand for exploitative labour and sex diminishes, trafficking will continue to thrive (Farrell, 2009). Additionally, the UN definition fails to account for the intersectionality of trafficking with other forms of oppression. Trafficking often presents as a conjunction of multiple forms of exploitation, such as forced labour, child labour, and domestic servitude: concrete examples of which include empirical work demonstrating the dangers of conflating independent child migration (Blazek and Esson, 2019; Boyden and Howard, 2013) and debt-financed migration (Lainez, 2020) with trafficking. Victims of trafficking may also experience discrimination based on their race, gender, or immigration status. The UN definition does not address these complex dynamics, making it difficult to address trafficking comprehensively (Chong, 2014; Truong, 2006).

2.2. On Migrant Smuggling (MS)

An official definition of the smuggling of migrants has been adopted in 2000 by the United Nations. This was part of the United Nations Convention against

Transnational Organized Crime, which was accompanied by a Smuggling of Migrants Protocol. According to this Protocol, the smuggling of migrants is 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. [Here] (b) "Illegal entry" shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State; (c) "Fraudulent travel or identity document" shall mean any travel or identity document [...] and (d) "Vessel" shall mean any type of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water [...]'* (Article 3, Smuggling of Migrants Protocol).

Migrant smuggling, similarly to human trafficking, is a complex and multi-dimensional issue that has been prevalent globally for many years. As seen from the definition, it involves the illegal transportation of people across national borders in return for financial gain. In recent years and due to various reasons, such as conflict in the country of origin, experiencing extreme discrimination and life-threatening conditions including extreme poverty (Koser, 2008; Skodo, 2018; Triantafyllidou, 2022), the phenomenon has become more widespread, and several trends have emerged in terms of countries of origin and destination, as well as ways of smuggling per country (UNODC, 2018).

In an attempt to provide an overview of the current trends, migrant smuggling has been observed to occur more commonly in countries with high levels of poverty, political instability, and conflict. The majority of people smuggled come from developing countries such as Syria, Afghanistan, Eritrea, Somalia, and Ethiopia (Europol, 2022). Across 2020 and 2021, the number of migrants smuggled from Africa, particularly from Libya and Tunisia, increased significantly (Frontex, 2021). Additionally, the number of migrants smuggled from Asia has also been rising steadily, with many coming from countries like Bangladesh, Pakistan, and India (Europol, 2022). Once again, the primary destination countries for smuggled migrants are those with high standards of living and advanced economies. In Europe, the most popular destinations are Germany, France, and the United Kingdom (Frontex, 2021). However, many migrants also seek to enter Spain, Italy, and Greece through the Mediterranean Sea (Europol, 2022). In North America, the United States and Canada are the most popular destinations for smuggled migrants, particularly from Central and South America (UNODC, 2020).

The ways of smuggling vary significantly depending on the country of origin and destination. In Europe, smuggling is often done by sea or land, with smugglers using inflatable boats, trucks, or hidden compartments in vehicles (Frontex, 2021). In North America, the majority of smuggling is done through land borders, often facilitated by organized criminal groups (UNODC, 2020). In Asia, smugglers often use sea routes to transport migrants, with many crossing the Bay of Bengal or the

Andaman Sea (UNODC, 2020). The characteristics of smugglers vary as well: in certain cases, smugglers may entail individuals who are only loosely associated to one another (if at all) and receive relatively small profits for providing smuggling services. These individuals may rely on the existence of the smuggling market in their communities for their livelihood and survival. On the other hand, there are cases where smuggling is one more activity in the agenda of sophisticated organized criminal groups that generate substantial profits (Aronowitz, 2001; Kuschminder and Triandafyllidou, 2020).

As with the UN definition on human trafficking, the United Nations (UN) definition of migrant smuggling is widely used in international legal and policy frameworks even though with a slightly narrower international response: 151 countries as of 15 March 2023 (77% of all countries). This definition has also been criticised for its narrow focus on criminalizing the act of assisting irregular migration, which fails to address the root causes and complexities of migration (Doomernik and Kyle, 2004; Sanchez, 2015; Achilli, 2018; Campana and Gelsthorpe, 2021).

One potential issue is the ambiguity of the term 'smuggling of migrants,' which can lead to confusion in the interpretation and application of the law. For example, there may be cases where individuals are assisting migrants in their movement across borders for humanitarian reasons, but are still at risk of being charged with migrant smuggling under the law (Bilger et al., 2006). This has been highlighted by scholars such as Achilli (2018), who exposed narratives from involved members of a smuggling network experiencing and presenting their participation as a moral duty to facilitate people reach their destination. Another concern is the potential for unintended consequences, such as increased human rights abuses and vulnerability for migrants. By criminalizing migrant smuggling, the law may drive smugglers to resort to more dangerous and risky methods, putting migrants at greater risk of harm (Bilger et al., 2006; Campana and Gelsthorpe, 2021). This has been noted by scholars such as Gallagher (2001) who argues that the law should focus on addressing the root causes of migration rather than criminalizing those who facilitate it.

2.3. Interchangeability of HT and MS definitions and scope of the study

The literature on human trafficking and migrant smuggling is vast and varied and several studies account for the complex picture of these two prevalent but different phenomena. While both involve the exploitation of vulnerable individuals, the forms of exploitation associated with each are distinct. Similarly, from the law enforcement and other practitioners' perspectives, most countries comply with the European Union and Council of Europe normative frameworks to deal with human trafficking and migrant smuggling and consider the established dichotomy between the two

crimes since the adoption of the United Nation Convention against Organized Crime (UNTOC) and its two additional protocols (Palermo Protocols) in 2000.

Nevertheless, many are the instances where human trafficking and migrant smuggling have been addressed through interchangeable legal frameworks depending on the country, the individual case and the political context (Brachet, 2018; Kuschminder and Triandafyllidou, 2020). These instances have been noted and the current framework has then been highlighted for its failure to provide a concrete basis for dealing with these issues, especially in the much needed cross-national and international cooperation (Dandurand and Jahn, 2020). In reality, migrant smuggling and human trafficking are not always easily distinguishable (Dandurand and Jahn, 2020; Brunovskis and Surtees, 2019; Baird, 2016) and approaching these two topics interchangeably risks glossing over the important nuances between them and can create confusion when considering what policies and interventions will be most effective at addressing them.

Considering this conceptual framework, the current study aims to identify the topics where this interchangeability is observed. In particular, the paper adopts an exploratory approach attempting to extract whether there are any particular trends, as well as similarities and differences in the manifestation of the involved criminal activities (topics) as emerged in human trafficking and migrant smuggling complete legal cases. Using 2,284 collected legal cases categorised either as human trafficking or migrant smuggling cases (or both) from 133 different countries, as indexed in the UNODC SHERLOC database and by applying Natural Language Processing (NLP) techniques and namely the Latent Dirichlet Allocation (LDA) algorithm to identify topics in the mined text (topic modelling), the aim is to answer the following research questions:

– What are the similarities and differences in the prevalent criminal activities (topics) emerged in human trafficking and migrant smuggling cases as indexed in the UN SHERLOC database?

– Is there a particular trend in the manifestation of the involved criminal activities (topics) when accounting for the countries' geographic and demographic characteristic?

3. Methodology

3.1. Data Collection (Text Mining)

To begin collecting the data for the study, we first located the UNODC SHERLOC database which would offer the basis for our analysis. As per the website's information, SHERLOC is a cooperative initiative of multiple divisions, branches and

sections of the United Nations Office on Drugs and Crime (UNODC) coordinated by the Conference Support Section of the Organized Crime Branch (CSS), with substantive and financial support from the Human Trafficking and Migrant Smuggling Section (HTMSS), Terrorism Prevention Branch (TPB), Global Programme for Combating Wildlife and Forest Crime (WLFC), Cybercrime and Money Laundering Section (CMLS), Global Firearms Programme (GFP), and Corruption and Economic Crime Branch (CEB).

The UN SHERLOC Platform (SHERLOC) was created with the aim of assisting countries in their efforts against increasing criminal activity by facilitating better cooperation and interaction between them. This platform enables nations to access and share information on organized criminal activities more efficiently. Essentially, UN SHERLOC is a joint effort among states to enhance cooperation within their own territories and across borders while establishing arrangements for information sharing between governments at all levels, from law enforcement agencies to international organizations like Interpol. The platform offers secure exchanges of data related to crime scene operations, such as terrorist attacks or kidnappings. By providing various search capabilities based on geographical criteria, date and time stamps, or sources used, it supports investigators in different locations.

From a structural perspective, the SHERLOC platform comprises a collection of databases (Figure 1). Each database consists of well-documented, detailed case studies based on a specific crime type. For each case study several information (such as the summary of the legal case, countries involved in the crime, verdict and sentence date, demographic information on the victims and the defendants) are available, leading to a database with a big number of endpoints related to different organised criminal activities. For the scope of this particular study, the extracted data focused on the indexed cases related to trafficking of humans and smuggling of migrants.

Figure 1. SHERLOC crime types

The data were extracted using web scraping techniques through Python (Van Rossum et al., 2009), on the 26th of February 2022. In order to retrieve the data, we developed a pseudo-client that requests the URLs from the server and using the Beautiful Soup and Selenium Python packages we extracted the information needed (Ashiwal et al., 2016; Mustika, 2018). For this present study we have collected 2,284 legal cases categorised either as human trafficking or migrant smuggling cases (or both) from 133 different countries, as indexed in the UNODC SHERLOC database, in order to explore similarities and differences of the prevalent criminal activities in each case. From these 2,284 collected legal cases: 1,490 cases were indexed as human trafficking and 755 migrant smuggling cases while 39 cases of them were categorised as both.

3.2. Topic modelling

In order to identify similarities and differences in the prevalent topics, we performed topic modelling by testing and evaluating three different models of unsupervised text classification (Pathan and Prakash 2021; Teh et al., 2004) on the corpus, namely the Latent Semantic Analysis (LSA), Latent Dirichlet Allocation (LDA) and Hierarchical Dirichlet Process (HDP) models (Blei, 2003; Evangelopoulos, 2013; Papadouka et al., 2016).

Topic modelling is a method used in text mining that has gained popularity among researchers in social sciences and humanities. Traditionally, content analysis has been the most commonly used method in social sciences (Mayring, 2021), but topic modelling, particularly through automated techniques such as LSA and LDA, is increasingly replacing the manual reading and coding steps in the content analysis process due to its ability to handle large text corpora (Chuang et al., 2014; DiMaggio et al., 2013). Topic modelling involves automated procedures to categorize documents into meaningful topics based on word clusters, with minimal human intervention, making it more inductive than other approaches to text analysis (DiMaggio et al., 2013). Topic models assume that meanings are relational and that topics of conversation can be understood as a set of word clusters. However, topic models are more effective at uncovering meaning at the discourse or corpus level rather than within individual documents. There are two main approaches to topic modelling, probabilistic and non-probabilistic, with each having its own advantages and limitations. For the extraction of the topics for this study we have examined three probabilistic models: namely the Latent Semantic Analysis (LSA), Latent Dirichlet Allocation (LDA) and Hierarchical Dirichlet Process (HDP) models.

In a nutshell, Latent Dirichlet Allocation (LDA) uses statistical inference to model topics as probability distributions over words. LDA assumes that each document is a mixture of topics, and each word in the document is gener-

ated by one of the topics with a certain probability (Blei, 2003). LSA (Latent Semantic Analysis) uses singular value decomposition (SVD) to extract latent semantic dimensions from a term-document matrix and represent each document as a linear combination of these dimensions (Abdi, 2007). The dimensions or topics discovered by LSA are probabilistic in nature and represent the underlying semantic structure of the text corpus (Evangelopoulos, 2013; Papadouka et al., 2016). Finally, Hierarchical Dirichlet Process (HDP) is a hierarchical extension of the Dirichlet process which works by assuming that the words in a document are generated from a hierarchy of topics, where each level of the hierarchy corresponds to a different level of abstraction. At the lowest level, there are specific words associated with each topic, while at higher levels, there are broader topics that cover multiple lower-level topics (Ren et al., 2008).

3.3a. Data pre-processing

Before performing any form of text analysis (topic modelling), an intermediate pre-processing step between data extraction and the modelling is needed so that the analysis can produce meaningful results. Therefore, the 2,284 case summaries extracted were tokenized through the following 3 steps presented in Table 1. Step 1 involved the removal of special and punctuation characters. In Step 2 we used a lemmatizer from the Python NTLK package to extract the lemma of the words (Wang and Fu, 2021). Finally, our work showed the need of further text cleaning due to typographic mistakes and irregularities (e.g. accomodation, acomodation etc.) which led to Step 3, a manual cleaning of some words.

Table 1. Steps of tokenization

Step 1	Remove punctuation and stopwords
Step 2	Lemmatize the words
Step 3	Further manual text cleaning

3.3b. Selection of the number of topics

To select a number of topics in the summaries, an unsupervised clustering model was trained on bigrams created from the corpus. This method was selected as the most appropriate, since the corpus had already two strongly separated topics, the smuggling of migrants and the trafficking of people. Hence, in order to avoid classical approaches that could lead to stating the obvious, we selected the number of topics based on a most-common-words approach.

In more details, we trained a Word2Vec model on bigrams created from the processed summaries of the corpus (Ling et al., 2015). After training the model, a 700-dimensional vector was assigned to each word and bigram of the corpus. Using Principal Component Analysis (PCA), we reduced the dimensionality of the vectors, keeping the first two principal components and almost 90% of the initial variance (a plot displaying the cumulative percentage of variance relative to the number of components is included in the SI).

Finally, a KMeans model was trained on the PCA-transformed dataset resulting into five clusters/topics. The selection of the clusters was made based on three metrics, the Sum of Squared Errors (SSE), the Silhouette score and the Davis-Bouldin index (DBI), calculated between the datapoints and the clusters' centres.

The plots of Figure 2 indicate that there are five clusters of words (or five topics). Figure 3 presents a scatter plot of the PCA-transformed word vectors, with different colours according to the cluster they were assigned.

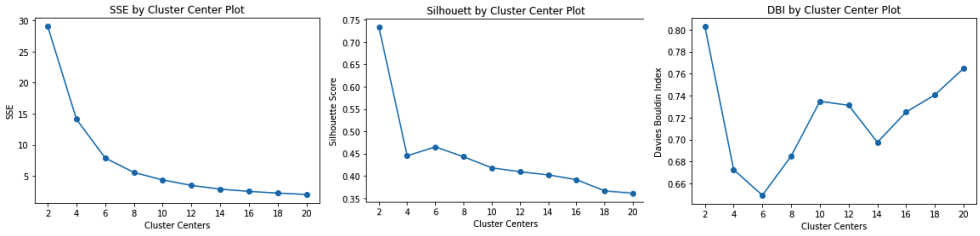

Figure 2. Plots of metrics used to select the number of topics

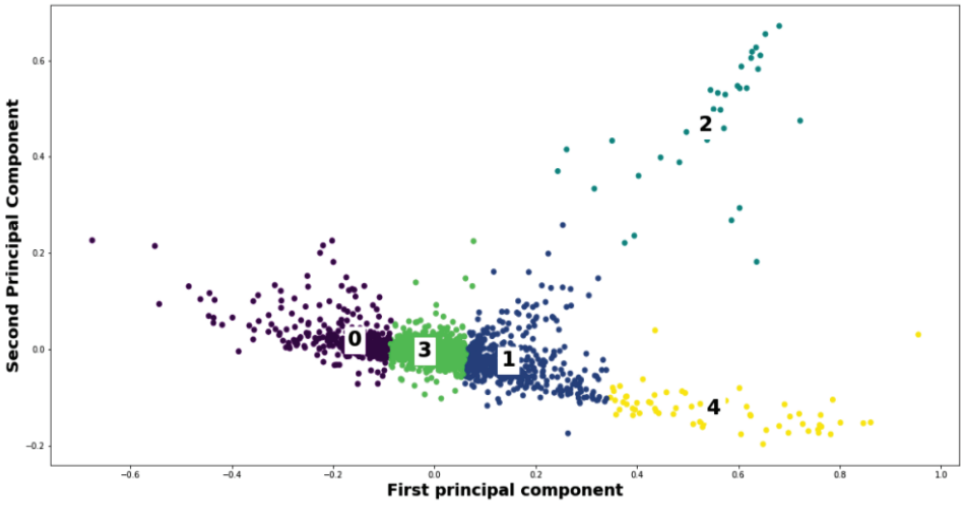

Figure 3. Scatter plot of word vectors with colors according to the clusters

3.4. Data Analysis – Modelling Strategy

In order to identify the most informative topic model we followed a model comparing approach. All three models (LSA, LDA and HDP) were trained and evaluated on the corpus to identify five underlying topics in the corpus.

Having trained the models, the 50 most significant words of each topic were extracted and saved in excel sheets for further analysis. In addition, the coherence score was used as a measure of goodness of each models topics. This score takes values between 0 and 1 and the higher the score value the more coherent the topics are considered. Table 2 displays the coherence scores of the models.

Table 2. Values of the models' coherence scores

Model	Coherence Score
LSA	0.285
LDA	0.623
HDP	0.568

4. Findings

4.1. Produced Topics

Based on the each of the model's coherence score, we decided to use the topics produced by the LDA. As per the Table 3, the emerged topics were presented in the form of a sequence of 52 weighted terms for each topic (please note that in the table only the first 13 words per each topic are visible). The Topics were then manually coded from two coders and percentage of agreement on the words selected to represent the topics (88%) was calculated to ensure Intercoder reliability.

Table 3. Emerged topics based on term weighting

Topic 1		Topic 2		Topic 3		Topic 4		Topic 5	
smuggling through sea		illegal cross-border entry		child traffcking		CJ response / court case		prostitution	
Words	**Weights**	**Words**	**Weights**	**Words**	**Weights**	**Words**	**Weights**	**Words**	**Weights**
vessel	0.020735	appellant	0.010473	ms	0.007014	court	0.009142	prostitution	0.006776
crew	0.010227	france	0.006615	girl	0.00578	section	0.007925	anonymous	0.006562
siev	0.010206	irregular	0.006244	tell	0.004979	petitioner	0.006994	prostitute	0.005163
australia	0.007473	group	0.00476	sex	0.004714	article	0.006309	sexual	0.005092
venture	0.00738	spain	0.004558	house	0.004146	code	0.006232	transport	0.005063
board	0.006785	italy	0.004417	mr	0.004102	respondent	0.005902	available	0.004776
mr	0.006624	criminal	0.004402	complainant	0.003837	state	0.005691	information	0.0044
indonesian	0.006562	legal	0.004366	brothel	0.003562	human	0.005532	exploitation	0.004382
later	0.006211	illegal	0.004356	customer	0.003525	law	0.005471	force	0.004237
member	0.005825	entry	0.004258	day	0.003428	act	0.005335	criminal	0.003991
passenger	0.005532	organise	0.004106	police	0.003353	traffic	0.005303	money	0.003963
case	0.00537	finding	0.003986	worker	0.003317	petition	0.005164	recruit	0.003814
indonesia	0.005361	commentary	0.00388	bar	0.003295	child	0.005152	czech	0.003781

Once topic modelling and coding were completed, we performed juxtaposition of each topic per case summary to identify prevalence of the topic. Considering the SHERLOC's indexation techniques we were not surprised on the fact that certain topics (like Topic 3 and Topic 4) were more likely to be juxtaposed to case studies indexed as human trafficking, whereas Topics 1 and 2 were more likely to be associated with migrant smuggling cases.

Indeed, as per the Table 4 and Figure 4 below, 461 Migrant Smuggling cases were represented by Topic 1 (smuggling through the sea) and 266 were represented by Topic 2 (illegal cross-border entry) and have been indexed as MS in the SHERLOC database. Similarly, 671 cases were represented by Topic 3 (Child trafficking) and 690 cases by Topic 5 (Prostitution) and have been indexed as HT in the SHERLOC database. As various scholars and global reports suggest, both child trafficking and prostitution are forms of human trafficking adhering to the related UN definition (UNODC, 2022; Aronowitz, 2001, 2017).

Table 4. Topic prevalence per SHERLOC case indexed either as HT or MS or both

Emerged Topics	Human Trafficking	Migrant Smuggling	Both HT and MS
Topic 1: Smuggling through the sea	3	461	0
Topic 2: Illegal cross-border entry	12	266	22
Topic 3: Child trafficking	671	9	8
Topic 4: CJ response / court case	114	10	2
Topic 5: Prostitution	690	9	7
Total N of cases	**1490**	**755**	**39**

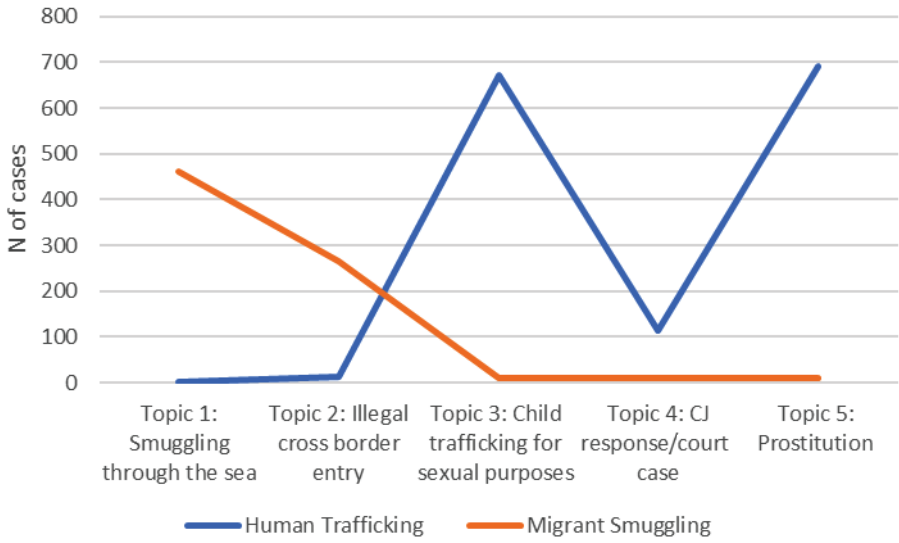

Figure 4. Emerged topics per n of indexed SHERLOC cases

4.2. SHERLOC 39 cases indexed as both HT and MS

What interested us next was to examine topic prevalence to the 39 cases that have been indexed as both Migrant Smuggling and Human Trafficking. Results suggested that majority of these cases (56%) were represented by Topic 2 (Illegal cross-border Entry), 20% were represented by Topic 3 (Child trafficking), 18% were represented by Topic 5 (Prostitution) and a remaining 7% were represented by Topic 4 (CJ response/court case). Interestingly, none of these 39 cases were represented by Topic 1 (Smuggling through the sea), regardless of the immediate relation of the topic with migrant smuggling.

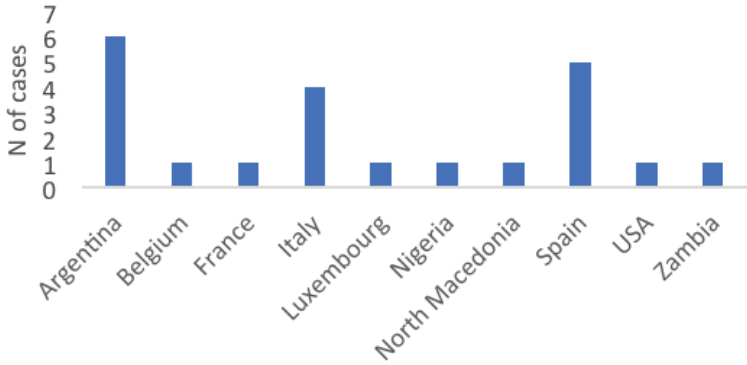

Figure 5. Number of Topic 2 (Illegal Entry) prevalence per country (n = 22) indexed as both HT and MS

Zooming in to each on these topics, we were able to identify that out of the 22 cases that have been indexed as both human trafficking and migrant smuggling and were represented by Topic 2 (Illegal cross-border Entry), 6 of them were cases located in Argentina, 5 of them in Spain, 4 in Italy and the remaining 7 were each scattered amongst Belgium, France, Italy, Luxembourg, Nigeria, North Macedonia, Spain, United States of America and Zambia (Figure 5). When it comes to the Topic 3 (Child trafficking), USA presented 2 cases and the remaining 6 were each distributed amongst Argentina, Belgium, Italy, Malaysia, Nigeria and New Zealand. Topic 5 (Prostitution) was prevalent in 4 cases from Italy and 3 from Belgium while Topic 4 (CJ Response) was prevalent in 2 cases from France and North Macedonia.

This double indexation may be indicative of either the complexity of the particular cases *per se* or the absence of the legal clarity in the national legal frameworks in the particular countries. Indeed, taking as an example one of the Argentinian cases sentenced in 2007 that has been indexed as both MS and HT represented by Topic 2 (Illegal cross-border Entry),

> *'The Court of Appeal proceeded to acknowledge that the remaining appellants indeed employed some irregular migrants. However, it concluded that the facts proven did not integrate the crime-type of migrant smuggling, in the modality of "facilitating illegal stay". Specifically: Article 117 Law Nº 25871 introduced some confusion into the Argentinean legal system given the potential overlap with administrative offences. Thus, it is crucial to clearly distinguish the scope of application of Article 117 Law Nº 25871 (SHERLOC Appeal-Case Nr 40985)* [...] *Accordingly, the Court of Appeal reversed the appealed decision and ordered the immediate release of the appellants.'*

This case was initially addressed under both the Migrant Smuggling definition since it involved the enabling of Bolivian irregular migrants' illegal stay in Argentina as well as the Human Trafficking definition since these migrants were subjected to forced labour under exploitative work conditions, notably very long working days, extremely low salaries and no social security benefits. Nevertheless, and after a long legal procedure, no charges were pressed against the defendants due to insufficient evidence.

Another case where illegal cross-border entry prevailed as a topic in a double indexation was the Spanish case entitled Resolución 658/2015. In this case, four Thai women approached a group of people in Thailand for assistance in illegally entering Spain. The group provided them with visas, plane tickets, hotel reservations, and cash so that they could appear financially stable during border control proceedings. The women incurred debts between 15,000 and 17,000 Euros to cover their travel and documentation costs, which they were supposed to pay back with their earnings in Spain. Two of the women intended to work as prostitutes, while the third initially agreed to work as a masseuse but later agreed to work in prostitution as well. The fourth woman intended to work as a waitress and did not engage in prostitution. However, a police operation the day after her arrival in Spain resulted in the women being arrested (SHERLOC Resolución 658/2015).

In this particular case and as also noted in the SHERLOC website, the Supreme Court maintained the conviction of the defendants for aggravated migrant smuggling (and not human trafficking) and it applied a penalty of imprisonment lower than that asked by the Prosecution. Overall, the defendants were benefited from the fact that the Prosecution did not charge them with human trafficking. If they had been charged with trafficking, it would have required a completely different evaluation, investigation, and legal assessment. This approach is indicative of how national legal frameworks are escaping the traditional dichotomy between human trafficking and migrant smuggling by approaching individual cases of migratory vulnerabilities under the umbrella of aggravated migrant smuggling definition (Gallagher, 2015).

A different approach is observed in cases of double indexation under both Human Trafficking and Migrant Smuggling which involve child victimization. In all 8 cases identified, charges were imposed under the umbrella of Human Trafficking and defendants received the strictest conviction possible under each country's legislation.

In the case where prostitution prevailed as a topic, legal approaches varied: in all 3 cases from Belgium (which essentially represented versions of the same criminal case), most of the defendants were Nigerian women who have been working as prostitutes and were convicted for trafficking in human beings for the purpose of sexual exploitation. As per the SHERLOC description, the Court's decision adhered that the girls were brought into Belgium with the intention to be sexually exploited themselves dismissing however the claim that their statements were sufficient

to claim the status of human trafficking victims. One of the defendants, who was romantically involved with another defendant and had a child with them, was also recognized as a victim in the case. Nonetheless, the Court concluded that this did not negate the fact that she had later also engaged in human trafficking and sexual exploitation of others (SHERLOC B637.L6.961-X7-DF). Interestingly in 2 of the Italian cases with double indexation where prostitution prevailed as a topic, defendants in collaboration with organised criminal groups operating transnationally, were involved in the recruitment, transportation and harbouring of Nigerian girls in order to employ them in the Italian prostitution market and profit from them financially. In these cases the Nigerian girls were treated as victims, since they had not yet established their status in Italy (ex: SHERLOC Sentence 1081/2019). The remaining two cases referred to an established organised criminal group by –predominantly– Egyptian men who run an illegal prison in Libya with hundreds of victims. The three suspects were accused of various crimes including human trafficking, torture, murder, sexual assault, facilitating clandestine migration, and kidnapping of hundreds of men, women, and children in Libya (ex: SHERLOC Proc. No. 12809/2019).

Finally, in the 2 case where the CJ response/court case prevailed as topic on cases of double indexation, these had minimum information on the cases themselves and focused particularly on the difficulties the courts faced in reaching meaningful decisions, ending in reversing the initial charges due to legal loop halls between the international and national legal frameworks.

4.3. SHERLOC cases indexed as HT while incorporating MS practices

Continuing our investigation towards identifying similarities and differences in the prevalent criminal activities (topics) emerged in human trafficking and migrant smuggling cases as indexed in the UN SHERLOC database, we turned our focus on to the cases which even though have been indexed as Human Trafficking only, our topic modelling revealed the incorporation of migrant smuggling practices.

As a starting point, we identified the top 10 countries with most Human Trafficking judicial cases indexed in SHERLOC (Table 5). Some of these counties (like Brazil, the USA and Argentina) were expected to be in this list not only due to their large population number but also due to their close adherence to the UN Protocols and definitions (all three became Founding Members of the UN from as early as June 1945). Nevertheless, and because of their relatively small population size, Republic of Moldova, Slovakia, and Serbia drew our attention with an overall number of SHERLOC indexed cases as human trafficking of 65, 49 and 38 respectively. Particularly in the case of the Republic of Moldova, the ratio of indexed human trafficking cases in SHERLOC per 1 million population was 16.2 which might be indicative either of a large number of human trafficking cases or perhaps more

possible a more attentive legal response towards human trafficking; indeed as per the latest UNODC GlOTiP report (2022) the Republic of Moldova presented the 2nd highest percentage change (157%) in the number of detected human trafficking victims, per 100,000 population from 2020 to 2021, following Brazil with a 250% percentage change.

Table 5. Top 10 countries with most Human Trafficking judicial cases indexed in SHERLOC

Countries	HT cases	Population (2023)	Ratio per 1 million people
Republic of Moldova	65	4,013,239	16.20
Slovakia	49	5,465,481	8.97
Serbia	38	8,659,587	4.39
Romania	55	18,954,115	2.90
Argentina	77	46,113,074	1.67
Colombia	40	52,082,511	0.77
Philippines	85	112,807,396	0.75
Brazil	130	215,901,119	0.60
USA	181	335,295,170	0.51
India	33	1,606,907,278,704	0.00

Juxtaposing these top 10 countries with our emerged topics, it was revealed that neither Topic 1: Smuggling through the sea nor Topic 2: Illegal cross-border entry, were prevalent in any of these 755 (in total) cases, apart from a Romanian one. That might be indicative of the straightforwardness of the particular cases in regards to human trafficking practices.

Looking closer to this particular case from Romania which was indexed as Human Trafficking but the topic of illegal cross-border entry prevailed (Operation EUROPA), a unique pattern of behaviour was exposed: essentially, a significant number of minors were trafficked from their parents. This made it very difficult to gather evidence against the network members since when it comes to human trafficking legal practices in Romania, the victim's testimony stands as the most critical evidence in an investigation. However, in this case, it was especially challenging for a minor to acknowledge that their own parent had smuggled them.

Since this pathway (going with the ten most prevalent countries indexed as HT) did not reveal much information, we juxtaposed all countries in the dataset with the emerged topics and have identified 12 cases more where even though indexed as HT, illegal cross-border entry (Topic 2) was the prevalent topic with 3 more cases where Topic 1: smuggling through the sea prevailed (Table 6).

Table 6. Human Trafficking cases with indicative MS practices

Country	Illegal cross-border entry	Smuggling through sea
Belgium	1	
Belize		1
Bolivia (Plurinational State of)	1	
El Salvador	1	
France	2	
Greece	1	
Guatemala	1	
Indonesia		1
Italy	1	
Peru	1	
Romania	1	
United Kingdom	2	
Zambia		1
Grand Total	**12**	**3**

Across the 12 cases there were three main patterns identified that explained the prevalence of illegal cross-border entry. In five of the cases victims have initially consented to their transportation from one country to another (illegal cross-border entry) but because the element of exploitation dominated (for labour trafficking or sexual exploitation), the smuggling element was not even considered in the legal procedures (Belgium, France1, Greece, UK1, UK2). Four of the cases involved minors who were trafficked either for the purpose of labour exploitation or forced marriage (Italy, El Salvador, France and Romania) and the final three (Peru, Bolivia and Guatemala) involved more complicated cases that as per the SHERLOC fact summaries, were reversed or approached with ambiguity due to national legal loopholes. For instance, in the Peruvian case, there were complications between the constitutional and the penal codes since the Haitian migrants were initially alleged with charges of illegal migration but their claims, supported by the UN, suggested the involvement of Peruvian officials in their transportation, which contained harassment and maltreatment (SHERLOC EXP. N° 02297-2008-PHC/TC). In regards to the three indexed as HT cases where Topic 1: smuggling through the sea prevailed, in all three cases the victims were male and the cases were much more reflecting incidents of aggravated smuggling rather than human trafficking.

4.4. SHERLOC cases indexed as MS but incorporate HT practices

Following a similar pattern as before, we first examined the top 10 countries with most Migrant Smuggling judicial cases indexed in SHERLOC (Table 7). Without surprise Greece, Italy and Spain were all included in the list due to their geographical location indicating their role as the first points of entry to the EU (Europol 2022). Interestingly Austria presented the largest ratio of 6.91 of reported migrant smuggling legal cases per million population, which is probably indicative of a highly attentive judicial system to the particular type of crime rather than in indication of a large number of migrant smuggling cases. Indeed, and as per the Global Organised Crime Index, when it comes to migrant smuggling Austria has the 89th position out of 193 countries with about a 5.0 criminality score (scale ranging from 1 to 10 on different types of organised criminal activities) (GOCI 2021).

Table 7. Top 10 countries with most Migrant Smuggling judicial cases indexed in SHERLOC

Country	N of MS cases	Population (2023)	Ratio per 1 million people
Austria	63	9,119,903	6.91
Australia	180	26,153,529	6.88
El Salvador	27	6,558,491	4.12
Greece	37	10,310,953	3.59
Spain	56	46,794,766	1.20
United Kingdom	75	68,673,654	1.09
France	67	65,592,869	1.02
Italy	48	60,265,295	0.80
Canada	28	38,474,069	0.73
USA	40	335,300,463	0.12

Repeating the same steps as with the human trafficking cases, we then investigated all countries in the dataset with the emerged topics and have identified 9 cases where even though were indexed as cases of Migrant Smuggling (MS), the human trafficking practices child trafficking (Topic 3) and prostitution (Topic 5) emerged (Table 8).

Table 8. Migrant Smuggling cases with indicative HT practices

Row Labels	child trafficking	prostitution	Grand Total
Argentina	1		1
Austria		1	1
Belgium		1	1
Costa Rica	2	1	3
Ecuador	1		1
Georgia		1	1
New Zealand	2		2
Niger		1	1
Russian Federation		1	1
Spain		1	1
Switzerland		2	2
United Kingdom	1		1
United States of America	2		2
Grand Total	**9**	**9**	**18**

Across the 9 –indexed as HT– cases where child trafficking was identified as a topic, 6 of them focused on migrant smuggling as per their index while incorporating incidents of minors who were victimised alongside their parents. Even though these cases did not incorporate human trafficking, our topic modelling categorised these cases as child trafficking ones due to the age of some victims. In the remaining 3 (Argentina, Costa Rica and Ecuador) the victims of migrant smuggling were either minors identified travelling without their parents – inside car trunks (Argentina), or parents attempted to smuggle their children to the USA (Ecuador) or minors identified as part of larger migrant smuggled groups where the defendants were then convicted for their participation in an organized criminal group (Costa Rica).

When it comes to the 9 cases that have been indexed as migrant smuggling while the topic of prostitution was prevalent, there were 3 cases where prostitution was mentioned in the legal procedures/documentation but was not identified in the particular cases *per se* (Nigeria, Georgia and Austria). In 4 more cases (from Costa Rica, Belgium, Switzerland and Russia), prostitution was suggested to be the intended purpose for the smuggled victims – nevertheless this was never materialised and therefore convictions reflected only the element of migrant smuggling.

The final 3 cases evidenced clearly the legal loopholes under which the defendants received a more lenient verdict as migrant smugglers instead of being prosecuted for human smuggling: In the case of Spain (Resólucion 411/2005), the defend-

ants recruited young women from Romania, with the intention of transferring them illegally into Spain and exploiting them for prostitution. The Audiencia Provincial de Alicante found the defendants guilty of migrant smuggling for facilitating the women's illegal entry and stay, as well as of sexual abuse and crimes against their physical integrity, but acquitted them of unlawful detention. The crime of human trafficking was never acknowledged as such for this particular case even though some of the victims were clearly sexually exploited. Similarly, in the case from Switzerland (6B_486/2010) an organised criminal organisation involved in the operation was found to be recruiting women from Hungary to Zurich, providing them with accommodation, exploiting them for financial gain while forcing them into sex work at a brothel. The primary defendant, who worked as a receptionist at the brothel, was accused of trafficking and supporting prostitution, but was ultimately acquitted of these charges. He was then found guilty of smuggling migrants and received a reduced sentence upon appeal. Although there is no information on how the female migrants were smuggled from Hungary to Switzerland, the case showcased how charges of migrant smuggling complement charges of trafficking in cases where there is insufficient evidence to support a trafficking conviction.

5. Discussion

Our findings revealed that the United Nations classification system seems to offer a guiding framework for categorizing relevant legal cases in most countries. The 5 topics emerged through our text mining and topic modelling highlighted the manifestation of the following most prevalent topics: smuggling through the sea (Topic 1), illegal cross-border entry (Topic 2), child trafficking (Topic 3), criminal justice response/court case (Topic 4), and prostitution (Topic 5). When these topics were juxtaposed to our corpus of 2,284 legal cases, we were able to identify the prevalence of certain criminal activities in all individual cases. We then investigated whether typical human trafficking practices (such as child trafficking and prostitution) were manifested in migrant smuggling cases and vice versa, whether the topics of illegal cross-border entry and smuggling through the sea appeared in human trafficking cases.

From the 1,490 cases that were indexed as human trafficking, only an approximate 1% (15 cases) showcased migrant smuggling practices. Similarly, within the 755 migrant smuggling cases, only a 2.5% (19 cases) presented human trafficking practices. Nevertheless, and even though these numbers seem miniscule, they are indicative of the potential misinterpretation of the UN definitional dichotomy. This was further emphasised in the 39 cases that were indexed under both human trafficking and migrant smuggling. Therefore, further examination and attention should be given by researchers and policy makers to the legal framework and its imple-

mentation in these countries, as a one size fits all approach may overlook certain factors and create legal gaps.

From our analysis, we were able to observe that one of the primary incompetence of national legal systems in prosecuting migrant smuggling and human trafficking cases is their tendency to conflate the two crimes. This can result in migrant smuggling cases being treated as human trafficking cases, which can have serious consequences for both the defendants and the victims (Palmer and Missbach, 2017). For example, a person who has paid for the services of a smuggler may be charged with human trafficking themselves if they are found to have been complicit in the exploitation of the smuggled person, even if they did not know that exploitation was taking place. On the other hand, a victim of human trafficking may be treated as a migrant smuggler themselves if they have paid for their own transportation or have assisted in the transportation of others.

Another incompetence of national legal systems is their failure to adequately protect victims of both crimes (Stoyanova, 2017; Kuschminder and Triandafyllidou, 2020). Victims of migrant smuggling and human trafficking are often vulnerable and may not have legal status in the countries where they are being exploited. As a result, they may be hesitant to come forward and report the crimes, for fear of being arrested or deported. National legal systems may also fail to provide adequate support and assistance to victims, such as access to healthcare, housing, and legal representation.

In order to address this incompetence, and in line with the recent works of de Rebetz and Ölçer (2022), we propose the adoption of aggravated migrant smuggling as a third clear definitional category to be embedded in each country's national legislation. As it currently stands aggravated migrant smuggling is defined by article 6 (3) of the UNODC Protocol against the Smuggling of Migrants *as acts '(a) That endanger, or are likely to endanger, the lives or safety of the migrants concerned; or (b) That entail inhuman or degrading treatment, including for exploitation, of such migrants.'* (Gallagher, 2015), but does not have its own clarified space within the international legal framework.

Aggravated migrant smuggling would involve cases where the smuggler has put the lives or physical integrity of the smuggled persons at risk, or where the smuggled persons are subject to particularly harsh or dangerous conditions during transportation. This definition would allow for a more nuanced approach to the crime of migrant smuggling, recognizing that not all cases are the same and that some may involve more serious risks or harms than others (de Rebetz and Ölçer, 2022). By adopting aggravated migrant smuggling as a third definitional category, national legal systems would be better equipped to distinguish between cases of consensual smuggling and cases where the smuggled persons are at risk of harm or further exploitation. This would help to prevent cases of consensual smuggling

from being treated as human trafficking, while also ensuring that cases of aggravated migrant smuggling are prosecuted more effectively. This would also help to ensure that victims of both crimes are more adequately protected, by providing them with the support and assistance they need to come forward and report the crimes.

5.1. Limitations and Recommendations

Even though the study evidenced the innovative application of Natural Language Processing (NLP) techniques through text mining and topic modelling on a large dataset of legal documents, we should be aware and mindful on the embedded limitations. First of all, the study relies solely on data from the UNODC SHERLOC database, which may not capture all instances of human trafficking and migrant smuggling cases. Therefore, the findings may not be representative of the global picture and a future approach could consider incorporating data from other sources, such as governmental reports, NGOs, or survivor testimonies. Alongside this, the study includes case summaries of judicial decisions, which may not provide a comprehensive understanding of the complexities and nuances of each case. However, it does complement the affluence of existing qualitative studies with key stakeholders, such as law enforcement officials (Farrel et al., 2019), prosecutors, survivors (Farrell and Pfeffer, 2014) and offenders (Winterdyk and Antonopoulos, 2005).

From a technical point of view, the use of Natural Language Processing (NLP) techniques may not always accurately identify the relevant topics in the text, leading to a potential skewed analysis. Even though the selection of the number of topics was computed through the related trained KMeans model, further testing and topic extractions on the subgroups of human trafficking-indexed only and the migrant smuggling-indexed only cases might have provided of a larger quantity of topics or of a more dominant clustering.

In conclusion, despite the fact that the UN dichotomous definition has provided some guidance in targeting and addressing the issues of human trafficking and migrant smuggling, there are still instances where the national legal systems cannot adequately respond to the complexity of certain cases leading to incompetence in prosecuting perpetrators and protecting victims. To combat human trafficking, a range of holistic responses, including protection measures and access to justice for victims, are needed in addition to traditional anti-smuggling policies (Miller and Baumeister, 2013; Stoyanova, 2017). Although human trafficking and migrant smuggling share some similarities, they require distinct approaches for effective combat, both independently and within an interconnected framework. By recognizing the nuances of migrant smuggling and adopting aggravated migrant smuggling as a third category in national legislation, legal systems can better address these crimes and protect their victims, ultimately helping to disrupt the underground industry.

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Arguments and posture of 'market' and 'source' countries on illicit or not trade and collection of cultural objects: Reflections on the information and data deficit from and to 'source' countries

Maria P. Kranidioti
Retired Associate Professor, Department of Criminal Sciences,
Law School, National and Kapodistrian University of Athens

Abstract

The well-known schematic distinction between 'market' and 'source' countries, serves as a framework for enquiry into the relevant posture and arguments of these countries' actors with respect to the discourse on collection and trade of cultural objects, Traders and collectors in market countries try to 'override' their liabilities towards source countries, based on arguments related to the proposition of 'cultural internationalism', e.g. by use of 'neutralization techniques', such as claiming that they are above the law. In source countries, actors establish prohibitions against the export of cultural goods, and their arguments relate to 'cultural nationalism', e.g. 'artworks belong where they are found' – to those well-disposed towards them ('oikeiôsis'). In this discourse, the role of the archaeologists (especially of source countries), is considered crucial.

Accordingly, certain findings revealed by interviewing experts in Greece –mainly archaeologists– in research work, are noteworthy. In this work data processing was carried out in two phases, namely, by first and second level data analysis, while the second level involved the metaphorical application of the concept 'specific gravity'. In this way, the influence of each expert opinion on cultural policy was taken into account.

In general, research findings have revealed that the experts who exercise the greatest influence on policies for cultural objects tend to support the cultural institutions more than the detailed work, which is done at source, this being indicative of their ultimate alignment with polices dictated by international organisations. Moreover, the data is rich in responses demonstrating ignorance or uncertainty, compatible with the 'culture of ignorance', widespread in the antiquities market. The responses map out an emerging pattern, described as a 'flow of ignorance

downwards', from market towards source of antiquities and cultural objects. This pattern, held up to the mirror of the widespread 'culture of ignorance', implies the watering down of the source countries arguments, providing in parallel advantages to market countries arguments. Furthermore, this pattern and the research findings overall call for more enquiry on the stance and role, mainly of the archaeologists, but also those of citizens in cultural heritage protection.

Keywords: archaeological/archaeologists/Archaeology, market/source countries, collection/collectors [of cultural heritage objects/objects], commercialization/commodification, second level data analysis, smugglers/smuggling [of cultural heritage objects/objects], trade/trafficking [of cultural heritage objects/objects]

1. Discourse on illicit or not trade and collection of cultural objects

The discourse on the trafficking and collection of cultural objects, as antiquities or works of art, requires the perception and understanding of a pattern, which is formed or it is implied to be formed by the global environment of this trafficking: On the one side, there are countries from which cultural objects are 'exported', namely 'source', 'art-rich' or 'export' countries and on the other, countries to which these objects are 'imported', that is, 'market', 'host', 'art-poor' or 'import' countries (Merryman, 1985, 1986; Borodkin, 1995; Mackenzie, 2009, 2011a and 2011b; Taylor, 2014; Brodie, 2015; Mylonopoulos, 2015 and 2021; Howlett-Martin, 2017 etc.). Source countries are normally located at the southeast part of the globe, and they are dependent from the point of view of economy and politics, without any significant industrial production, but with a rich cultural heritage (e.g. Egypt, Mexico, India, Peru, Nigeria and also, Greece). These countries generally establish prohibitions against the export of cultural goods and raise repatriation demands for them. Market countries are usually, but not always, located at the northwest part of the globe (e.g. Germany, USA, the U.K., Switzerland and the Scandinavian countries); they are economically robust, have a thriving industry and react negatively against the repatriations and the prohibitions posited by source countries (Mylonopoulos, 2015 and more thoroughly, Mylonopoulos, 2021). The claims of the latter are considered to be related to the proposition of 'cultural internationalism', while these of the source countries to be related to 'cultural nationalism'.[1]

1. In brief, cultural property internationalism is shorthand for the proposition that everyone has an interest in the preservation and enjoyment of cultural property, wherever it is situated, from whatever cultural or geographic source it derives (Merryman, 2005). Cultural nationalism has a broader meaning, as it refers to movements of group allegiance, based on a shared herit-

The above distinction between countries is sometimes considered *very schematic*. For instance, it is observed that China, which traditionally has been a 'source' country, is gradually transforming into a 'market' one (Adewumi, 2015; Yates et al., 2017). On the other hand, there are 'market' countries, such as Switzerland, which have adopted strict legislation for the protection of cultural objects on behalf of the source countries (Chechi, 2015). Furthermore, it has been argued that the commonly used terms 'source', 'export', 'market' etc. (hereafter with quotation marks omitted) have led to conceptual bias with respect to the international art trade; first, they do not adequately describe nations of 'hybrid' nature (e.g. Japan, the United States, Italy and Canada); second, 'they result in "political branding", which portrays market nations as colonist-conquerers and source nations as exploited victims' (Borodkin, 1995: 385). Nevertheless, irrespective of the disputed accuracy of this distinction, as far as the location and nature of countries, states and nations is concerned, one issue is clear, that arguments deriving from the so defined and designated market countries have for centuries been and still are the dominant in this discourse.

1.1. Arguments emanating from market countries

The literature in Criminology has been particularly enriched by studies of Simon Mackenzie and his colleagues, who focus on arguments, decisions and the concomitant actions of market countries traders and collectors (see indicatively, Mackenzie, 2005, 2006, 2011b; Mackenzie and Yates, 2016a, 2016b). Some of their contentions are based on the old and classical study of Gresham G. Sykes and David Matza (1957), about the 'neutralization techniques' of juvenile delinquents, with respect to their access and participation in subcultures. These techniques are rationalizations which delinquents use in order to reconcile their deviant behaviour with their consciousness and the values of the society at large and they are viewed as protecting the individual from self-blame and the blame of others after the act (Sykes and Matza, 1957: 666; Courakis, 2015: 154 and note 93).

age as in language, history, literature, songs, religion, ideology, symbols, land, or monuments (Encyclopedia, available at: https://www.encyclopedia.com/social-sciences/encyclopedias-almanacs-transcripts-and-maps/nationalism-and-ethnicity-cultural-nationalism). These groups' identification via symbols of national pride may be contrasted with the ascribed characteristics surrounding race and ethnicity, since they adopt a moderate stance in ideological terms as opposed to the belligerent approach of ethnic nationalism (Tutor2u, Politics, available at: https://www.tutor2u.net/politics/topics/cultural-nationalism). See also Mylonopoulos, 2021, according to whom, the expressions 'cultural nationalism' and 'cultural internationalism' originate with Professor Merryman of Stanford University, during the 1980s (255-257). However, since the term 'nationalism' itself has negative connotations in English, one may think that this might also have as a result the 'political branding' of source countries (respectively, for market countries, see in text, at the end of section 1)

Similarly, market countries dealers (i.e. those at the high end of the antiquities and artworks trading chain, or even chain network) 'override' their liabilities towards the source countries, via two of the five 'neutralization techniques', namely 'The Denial of the Victim' and 'The Condemnation of the Condemners' (Sykes and Matza, 1957: 668). For instance, they make condemnations of corruption and improper preservative conditions in source countries and they accuse their archaeologists, that they, as well as looters, cause destruction, and that they are insufficiently funded to be able to carry out a full and expeditious excavation program (Mackenzie, 2006: 229). Moreover, dealers consistently report that most antiquities are 'chance finds' rather than products of organised looting and 'they perceive it as their cultural duty to "save" these discoveries from future loss or destruction, by buying them' (Mackenzie, 2006: 225). With those 'techniques' they manage to dislocate themselves from the harm their actions may be causing, and minimize the 'liability value' of the moral objections to their trade, by archaeologists or any actor of source countries (Mackenzie, 2006: 234). An additional example can be based on the reference by Ortiz, to the '...fact that we have witnessed vast destruction by nations of their own patrimony' (2006: 15). This 'fact' serves as a ground for both techniques, namely, blaming the victim as well as denying its existence, by its transformation to a 'perpetrator' ('wrong-doer', according to Sykes and Matza, 1957: 669).

Furthermore, according to a subsequent study of Mackenzie and Yates, the collectors of orchids and antiquities are mainly using the last of the five techniques of neutralization, namely, the 'appeal to higher loyalties' (2016a: 340-341). The authors clarify that this is not a technique as the others, by which the delinquents try to reconcile their illegal behavior with the values of society at large; there is anyhow no evidence for such a reconciliation, as that for the juvenile delinquents of the 1950s, many of whom seemed to experience a sense of guilt or shame when apprehended or confined because of transgressing the laws (Sykes and Matza, 1957: 664-665). On the contrary, the collectors appear to believe that they are *above the law* and seem not to feel any guilt or shame in breaking it (Mackenzie and Yates, 2016a: 341, my italics). The authors relevantly note that their 'conventional' normativity in the collecting world seems to include within it norms approving of illicit acquisition of orchids or antiquities. This means that 'the appeal to higher loyalties' is not only a 'neutralization technique', which dissociates them from a vague rule of obeying the law; the collecting markets propagate a value system that emphasizes goals that legal regulation interferes with, and the capacity to ignore or circumvent the law in such a context appears to be a feature of successful membership of these 'high-end' collecting groups (Mackenzie and Yates, 2016a: 342 – the word in quotation marks, in the last sentence, is added by me).

Moreover, arguments of market dealers and collectors have a long-lasting historical background, which supports not only claims about 'rescuing' antiquities, but also about

highlighting their importance and enhancing their value at an international level. A distinctive statement here, with respect to Parthenon Sculptures, is Merrymans': 'Elgin was convinced of the superiority of Greek over Roman art, and through his actions and the resulting acquisition of the Marbles by the British Museum, the rest of the world came to share his opinion' (1985: 1908). All the more, he concludes that 'the argument from cultural nationalism fails to make the case for the return of the Marbles... because it expresses values not clearly entitled to respect, because it is founded on sentiment and mysticism rather than reason...' (1985: 1916).

Even later, this long-lasting tradition of market countries' argumentation is revealed by assessments with similar implications: '...I am not in favour of the UNESCO Convention, which attacks collecting, because it is flawed, ideological and simplistic, and... disregards the vital role played by dissemination in the sharing and safeguarding of the past, by holding that each nation is the best depository of objects originating in its territory...' (Ortiz, 2006: 15). Interestingly then, market countries' collectors appear to try to refute the moral as much as the legal arguments deriving from and on behalf of the source countries: '...collecting is becoming illegal, if it is not already; but surely it is this recently enforced illegality that *is itself wholly unethical*' (2006: 31, my italics). Finally, all the above argumentation could be summarized by a question of Merryman (1985: 1918), who had wondered: 'What reason would there be to expect that [the Marbles] would be safer in Athens, over the next 170 years, than they have been in London, over the past 170 years?'.

1.2. Arguments deriving from source countries

As already mentioned (section 1.), source countries are usually dependent from the point of view of economy and politics, therefore, the international dissemination of any information about them is poor. Nevertheless, even in arguments deriving from market counties, which focus on emotional aspects and ethical issues about demands of source countries, one may trace the matrix of the latters' fundamental argumentation. This matrix appears already, in a negative sense, through statements of Merriman or Ortiz (section 1.1.). In a positive sense though, it is expressed e.g. by Striker, as related to the notion of cultural heritage 'oikeiôsis'; what the latter means can perhaps be rendered as 'recognition and appreciation of something as belonging to one' or as 'coming to be (or being made to be) well-disposed towards something' (Striker, 1996: 281). In other words, for the people of the source countries, cultural objects are often viewed as part of their identity and the meaning of their self-determination; then this matrix raises reflections on questions like what is the point of cultural elements to be in places where the people cannot reach their meaning from this emotional viewpoint and moreover, such remote and distant people to be considered their owners. In any case, collectors, both private

and institutional (i.e., museums), acquire archaeological objects for their artistic, aesthetic, and investment values and these values may be appreciated *without regard for the contextual information* required by archaeologists (Elia, 1997: 87, my italics). Interestingly, Howlett-Martin, concerning Parthenon Sculptures, notes that 'the pieces are known in Britain as the Elgin Marbles, not even a mention of the Parthenon where they belonged' (2017: 50, author's italics).

Furthermore, some findings of the social anthropologist Cristiana Panella (2014), in the realm of her research on farmer-diggers in Mali of West Africa and their involvement with art and antiquities trade, are quite revealing of contradictions inherent in the discourse on trafficking and collecting cultural objects in source countries. The perception of these diggers about themselves and their deeds, as presented by her ethnographic data, is noteworthy: Mastery in discovering cultural objects constitutes an important element of their identity and they would proudly describe assemblages of famous objects that they had excavated and sold; the majority of them perceive the earlier periods of digging as the 'golden age' of their life; between the early 1970s and 1980s, digging ancient sites was not forbidden and they were working freely and openly; old diggers perceive their retirement from digging as the hardest moment of their life because of the loss of technical and intuitive skills as well as decline in income (Panella, 2014: 498). More generally, her ethnographic research revealed that they consider mastery of digging techniques to be an ethical value, since it requires experience, patience and endurance, whereas ethics of physical suffering are a major leitmotiv of West African farmer cultures (2014: 492). In sum, by examining the perceptions of her subjects under study about themselves and their work, Panella has shown how they act in order to constitute the 'self-representation of a "heroic" ethic, drawing upon values of knowledge, endurance, risk and marginality'; she also states though that 'the self-conception of "hero" stands in stark contrast to the official portrayal of "looter"' (ibid).

In the late 1990s, new considerations of illegal digging had appeared, taking place within the social contexts of survival economies. Accordingly, in certain instances, the term 'subsistence digging', as a form of 'undocumented excavation', was preferably used (Hollowell, 2006: 69) and claims were raised even for the 'right to loot' in the name of 'economic justice' (Panella, 2014: 491; Hardy, 2015: 229 etc.). The main assessment supporting this right is that the phenomenon of looting, in a society impoverished by war and political repression, cannot be judged with the same ethical standards as in other situations, since, 'sometimes "looting" is the only thing that *does* feed the "looters"' (Hardy, 2015: 235, author's italics). More particularly, it has been argued that it is unjust to treat subsistence digging as a criminal activity when and so long as there is no viable alternative economic means for subsistence diggers to access their human rights to clean water, food and medicine (2015: 236). However, according to Mackenzie and Yates, a troublesome aspect of the debate about local

people's rights to their cultural heritage comes in the question, whether this extends to destroying the found object, or selling it after having dug, chiselled, chainsawed or otherwise removed it from its archaeological context (2016b: 225). In any case, the 'human right to loot' has been proposed only in very restricted circumstances (e.g. in the 5th World Archaeological Congress, June 21-26, 2003).

Finally, not only were the arguments supporting this right just marginally accepted, but even the counter-arguments have strongly prevailed in this discourse. From the beginning of the 1990s, the international aid towards good governance and 'development from below' was re-oriented so that it came to include the fight against looting, while the relevant policies called for stronger campaigns against illicit excavations. This new orientation of policies has resulted in a negative stereotyping of antiquities' diggers and traders, in source countries, and has contributed to the creation of the 'plunder phenomenon', by highlighting and disseminating it through Media (e.g. by presentations of the farmers being depicted with hidden faces, work tools at hand, described as 'looters caught red-handed' – Panella, 2014: 489 ff, 492).

Furthermore, the re-orientation of the international strategies was escorted by constraining the purchasing policies of museums as well as affecting their display of looted objects and sharpening the concept of archaeological loss caused by the destruction of archaeological stratigraphy. The manifesto of archaeology engaged against plundering provoked urgent calls to stop the illegal digging of archaeological sites, which was portrayed as 'cultural genocide' (Panella, 2014: 490-491). In this context, as it is aptly pointed out, the archaeologists came to constitute *the main 'flywheel'* of public and academic discourse on the 'plunder phenomenon' (ibid, my italics). This can be considered as the main role of the archaeologists, being used, in a way, as mediators among international organizations and authorities in source countries, the first dictating the policies accepted by the second. In any case though, from the late 1960s, the archaeologists had already started becoming concerned about the increasing amounts of damage being caused to archaeological sites and to question the role played by western museums in supporting the market, even if only indirectly (Brodie et al., 2000: 10). Therefore, their opinion, estimations and information for the protection of cultural heritage are crucial.

2. The research project

Some of the data and findings of research work on the archaeological law (3028/2002), which was conducted in Athens, during summer and autumn 2014, are relevant to the role of the archaeologists in the protection of cultural objects. For this work, a semi-structured questionnaire was used, drafted in three versions, according to the expertise and the characteristics (status) of the interviewees; it contains 107

questions, main and sub-questions, open or closed, of cognitive or of assessment type[2]; the interviews, on the average, have lasted more than 2 hours and the data collection draft consists of more than 100.000 words (Kranidioti, 2021: 17, 87 ff. and 93 ff., 97). In terms of its style (numerical or verbal), which was considered to be the main aspect of a project identity, this research can be positioned in between qualitative and quantitative method (Jacques, 2014).[3]

Furthermore, a *sample of experts* was used, which can be characterized as *snowball sample*, concerning the targeting of the subjects under study, but it can also fall under the more general category of *purposive samples* (see, indicatively, Smith, 1975: 115, 118 and 129; Ritchie et al., 2003: 94; Heckathorn, 2011: 355 ff. – my italics). It consists mostly of archaeologists, either in active employment or retired, normally holders of an undergraduate or postgraduate degree, or a PhD of a Higher Education Institution in Greece or foreign country. The data analysis, processing and interpretation were carried out in two phases: first, the interviewees were considered 'equal', while, by the second level data analysis, the influence of each respondent's opinion was taken into account. The latter was expressed by the term 'specific gravity' (after natural sciences, see e.g. Helmenstine, 2019), which was used in a metaphorical sense,[4] this constituting an innovative element of the research project. Consequently, the 'specific gravity' was estimated according to scales of ranking, constituted by sets of criteria. For instance, one criterion was the educational level of the expert (Post.Doc ≈ 50, PhD ≈ 40, with a non-relevant to culture PhD ≈ 30, MPhil or MA ≈ 20 and graduate diploma ≈ 10 units); the 20 units were the minimum units a person should aggregate, to be accepted for interview as an expert.[5] By this way, *the power of each expert and*

2. The latter distinction is mine. The first term ('cognitive') is meant according to its second definition in online Merriam Webster Dictionary available at: https://www.merriam-webster.com/dictionary/cognitive, namely, by the question's wording it is expected that the interviewees' replies are 'based on empirical factual knowledge'. The second term ('assessment') is meant according to its first definition in the same Dictionary, and it denotes 'the act of assessing something'.
3. Jacques describes three key aspects of research methods: strategy, procedure and style. The methods do not vary in strategy because all of them seek to increase understanding of reality by informed knowledge through the collection and analysis of data. The procedure is not a precise determinant of a research work either, since e.g. qualitative interviews can be done with persons who are randomly sampled and surveys with persons who are snowball sampled. Therefore, what makes a method quantitative or qualitative is the style in which the data on a subject are communicated by researchers to an audience. Qualitative research employs a verbal style, while quantitative research a numerical, and these two styles, are best thought of as resting at opposite sides of a language continuum, not as a dichotomy (Jacques, 2014: 324-325).
4. The term's meaning corresponds to the minimum value of a first set of criteria for assessing each expert' opinion.
5. It should be noted here that the scales by which the specific gravity was estimated were three, the first two being individual, while the third welds together the sum of units of both. The example presented in the text involves criteria of the first scale, whereas the criteria of the second

mainly, whether and to what extend his/her opinion, irrespective of its wide endorsement or scientific validity, as well as his/her action in praxis, determine the strategies for the protection of cultural elements in Greece. This ranking has enabled tracing the *comparatively more prevalent opinions* on the provisions of the archaeological law and the phenomena of illegal trade and collecting (Kranidioti, 2021: 91-93, 103).

The general aim of this project was the enquiry of the experts' information, knowledge, attitudes and opinion about the archaeological law's provisions and their implementation and especially, the penal and the related to cultural heritage protection provisions. A more specific aim, but also more difficult to reach was the drawing on data and information about the law's actual functioning in praxis as well as on the phenomenon of cultural objects smuggling (Kranidioti, 2021: 88). Hereto then, some findings which resulted from data, mainly collected in relation to the second aim, are presented and analyzed below.

2.1. Findings

In the Introductory Report of the archaeological law (Ι D΄ V) reference is made to the principle of 'complementarity among the State's and the citizens' duties', as far as the protection of cultural heritage is concerned. With respect to this principle, the experts were asked if and to what extend the citizens are in line with the State (Table 1, A). Only three of them gave affirmative answers (15.8% of the total), while most of the rest have replied that State and citizens are not in line (7/19), a considerable number of their replies fall on average (5/19), while some of them (4/19) could not estimate if and to what extend such a complementarity exists. After the second level data analysis, positive and neutral replies were reinforced, while negative ones were weakened (A, 3rd and 4th column); this somehow indicates that the experts with the greatest influence over policies for cultural objects are more optimistic for this complementarity, as opposed to less influential ones. Nevertheless, the validity of the last finding is questionable in view of the negligible number of affirmative answers.

correspond to particular qualities or specializations of the experts, being uneven and leading to accumulation of considerably bigger amounts of units for some experts, not all of them. Therefore, given also the fact that the association which publishes the journal to which the present paper is submitted, is located in the same country, where the research was conducted, it was decided not to present an example of the second scale. Otherwise, the risk that the identity of some interviewee/s would be revealed or discovered would have been very high.

Table 1. Protection of cultural heritage: alignment and contribution of the state and its citizens

A. Duties on protection of cultural heritage: Alignment of State and citizens						
Replies		**Alignment**			**%**	**SDA%***
Yes		3			15.8	21.8
So and so (sometimes yes, sometimes no)		5			26.3	30.9
No		7			36.8	30.1
I do not know/ No Reply		4			21	17.1
TOTAL		**19**			**100.0**	**100.0**
B. Contribution of the State and its citizens to cultural heritage protection						
Replies	**State**	**%**	**SDA%**	**citizens**	**%**	**SDA%***
Very much (maximum)	***6***	***31.6***	***35.5***	-	-	-
Much	*7*	*36.8*	*39.8*	*2*	*10.5*	18.2
Very much/ much (total)	13	68.4	75.4	2	10.5	18.2
So and so	4	21	19	11	57.9	51
Little	2	10.5	5.8	6	31.6	30.8
Not at all	-	-	-	-	-	-
GENERAL TOTAL	19	100.0	100.0	19	100.0	100.0

Source/Explication: Maria P. Kranidioti (2021). *Spirit and implementation of the archaeological law (3028/2002)*, Syros: Typokladiki SA: 179-180 and in the appendix: 246, Table 18 (selection and new processing of data).

* SDA%: Percentages after the second level data analysis.

The estimated contribution of the State to cultural heritage protection is encouraging (Table 1, B.), with far more experts stating that the State contributes much or very much to protection (13/19), far less that it contributes 'so and so' (4/19) and only two that it contributes little to it (B, 2nd column). Overall, positive replies were reinforced after the second level data analysis, but only limitedly and this differentiation did not change significantly the data distributional pattern (B, 3rd and 4th column). With respect to citizens though, findings are disappointing: most experts replied that the citizens contribute 'so and so' to the protection of cultural heritage (11/19), a considerable number that they contribute little (6/19), while only two estimated that the contribution of citizens is big; neither of the two experts replied 'very much' (maximum contribution – B, 5th column, 3rd line). By the second level data analysis the positive replies were reinforced, but their percentage remained far less than that of the negative replies, while the estimation of the citizens' contribution as average, though weakened, remained prevalent (B, 6th and 7th column).

These data are to some extent compatible with some of the findings revealed by another question, that is, whether the archaeological law in force has *indeed* functioned better in practice than the previous legislation, in terms of active participation of citizens in cultural heritage protection (Table 2). On this question, the majority of the experts have replied affirmatively (11/19), most of their replies though are given with reservation or based on approximate estimations (7/11). In view of these reservations and the uncertainty expressed by them, replies appear dispersed and do not lead in clear inferences. Sometimes, they are supported by arguments relating to issues of maladministration and administrative 'gaps': 'We do not have consular instructions. We do not have "weapons"... We rather do not have "bullets"; we have the "weapon"... [but it is] "without bullets". That is, everybody has a... perception about what the law rightly says, but the law is the law...' (Kranidioti, 2021: 116, note 89). According to another reply, it is inferred that the citizens' concerns and worries are very far from protection and enhancement of works of art and monuments: '...somebody finds in his/her plot of land, a monument of [his/her] cultural heritage and faces... the following dilemma: should I lose my plot or get "mixed up" with Archaeology for twenty years or [should I] destroy it?...' (ibid).

Table 2. Active citizen participation in cultural heritage protection

Replies		%
Yes	**11**	**57.9**
Without reservation	*4*	*36.4*
With reservation/ approximately	*7*	*63.6*
TOTAL	*11*	*100.0*
Partly affirmative	**1**	**5.3**
NO/rather not	**5**	**26.3**
I do not know/No Reply	**2**	**10.6**
GENERAL TOTAL	**19**	100.0

Source/Explication: As above, under Table 1, in the text: 116, Table 8.2.2.

Moreover, when the experts were asked to describe the way of speculation on whether a cultural object is a product of theft or illegal excavation or acquired in violation of the legislation of the country of origin, only three of them replied in detail. From the rest, five did not reply and eleven gave general and mostly vague answers (Table 3, 2nd column). Indicatively, some of those who gave general answers (4/11) referred only to after the law requirements of possession of such objects and the exclusion of cases in which the objects were illegally acquired, or they approached this issue by 'common logic'. The reply of one of them is characteristic: 'I cannot

answer for theft. For illegal excavation, [I would say that] objects of a considerable size are not usually found when we walk on the street; a prerequisite is that somebody has dug…' (Kranidioti, 2021: 166, note 201). The results though, after the second level data analysis, are of note: The three detailed replies are weakened, while the general and uncertain ones are strengthened; specifically, the replies focusing on typical processes (e.g. certificates of provenance) are reinforced, whereas the references to concrete traces of illegal excavations observed by archaeologists and to direct cooperation of the curators with the Ministry of Culture (MC), are weakened (same Table, 3rd and 4th column). These results are open to differing interpretations: They might indicate that the experts in general and especially, the most influential of them, are not *essentially* interested about culture and cultural heritage; they might also indicate that those who exercise the greatest influence on policies for cultural objects, trust the law and the institutions of cultural matters and support the latter more than the detailed work, which is done at source, where cultural objects are found. It should be reminded here that institutional policies are ultimately dictated by international organizations.

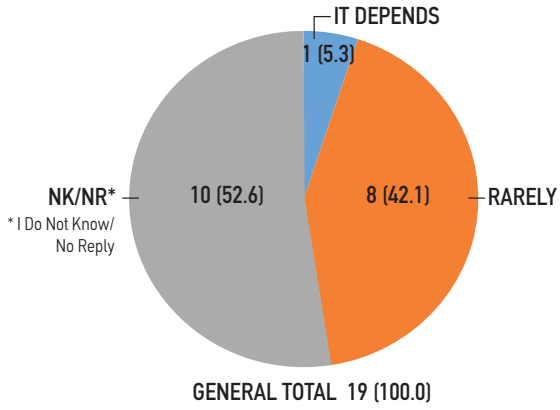
With respect to this question, it is noteworthy to point out that not a single expert has referred in one or more *concrete* examples of cultural objects' theft or illegal excavation, despite the fact that they were explicitly asked by the researchers to do so (Table 3, 6th line). In any case, the experts' reluctance to reply or give concrete answers in the present research work, appears to be common ground with that of the interviewees of another work, who were involved with the protection of monuments and cultural objects, namely the museums' guards; these interviewees have given more detailed answers about incidents of theft or damage, which happened in their workplace; on the other hand, as expected, they were often reluctant or even refused to respond to crucial questions about the protection of antiquities at a national level (Kranidioti and Chionis, 2020: 111; Kranidioti et al., 2018: 270). Additionally, such reluctance or vagueness in the replies of both experts and museum guards, appears to reflect the so-called 'don't ask, don't tell culture' or 'culture of ignorance', which is widespread in the antiquities market, as far as object provenance is concerned (Mackenzie, 2011b: 74; Apostolides 2006: 60 ff and thoroughly, after a case study, by Tsirogiannis et al., 2022).

Table 3. Tracing and reporting theft of illicit/illegal possession: experts' viewpoint

Replies	**Tracking/ ascertaining**	**%**	**SDA%**
Quite detailed reply	3	15.7	8.9
Brief and vague reply/ uncertainty	11	57.9	67.9
I do not know	5	26.3	23.2
TOTAL	19	100.0	100.0
EXPERTS' REFERENCES			
Traces and direct cooperation with MC	4	25	40
Need of typical processes	6	74.8	60
Concrete examples	***None***	-	-
TOTAL	10	100.0	100.0

Source/Explication: As above, under Table 1, appendix: 256, Table 11 (selection and new processing of data).

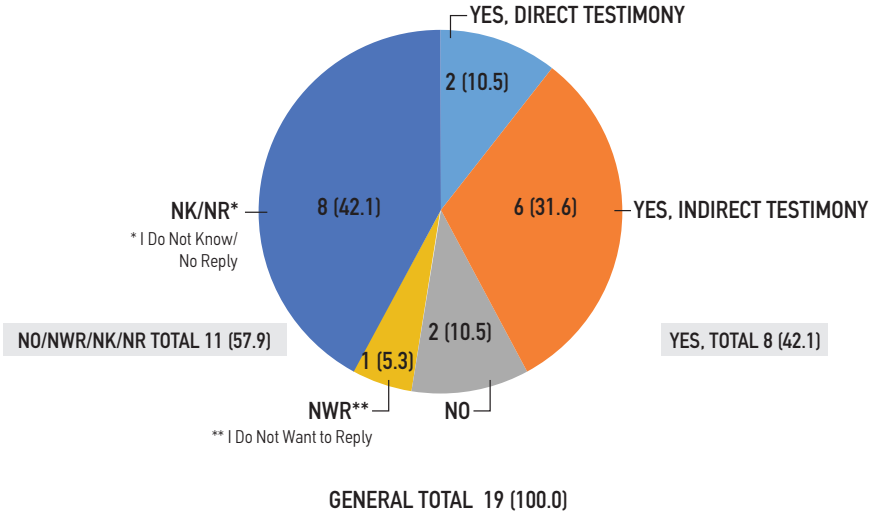
Furthermore, the experts' opinion to another question, with regard to the nature of collecting activity, as their few replies indicate, is that the collectors *rarely* report illegal diggers and smugglers to the authorities, for the latter to be arrested (figure 1, my italics). Almost all experts have either replied negatively to this question or said that they do not know or remember any such incident (10/19), whereas the reply of one of them is as follows: 'Yes, [the collectors denounce illegal diggers and smugglers], when they are displeased. Didn't you know that? ... the "snitching" happens that way' (Kranidioti, 2021: 169, note 227). More specifically, less than half of the experts replied that they know concrete cases of smuggling or illegal digging detection by a collector's aid (8/19) and only two of them that they were direct witnesses of such events – 'direct or not' witnessing being the main point of the relevant question (figure 2). The rest have replied in vague and general terms again and have referred to incidents which they knew by hearsay. Nevertheless, some of their narratives reveal non-acceptable and illegal transactions of collectors with illicit diggers or traders. Here, the comments of one expert, who is not an archaeologist, are pertinent: 'To start with, most of the collectors are smugglers... I knew a collector who had acquired some objects... Two years had passed and they did not go [from the Ministry of Culture] to record them... and he had changed them, three-four times; albeit they costed ten, he was selling them fifty... [Therefore], it is the State itself... that gives him the right to be a cultural objects' smuggler...' (Kranidioti, 2021: 171, note 236).



Source: As above, under Table 1, in the text: 170, figure 9.3.2g.

Figure 1. Smuggling and illegal excavations: reporting by collectors.

Moreover, the comments of another interviewee, archaeologist, are also of note: '...therefore... a mobility around this was created, that is, a business deal. Then they have "placed this" in a "plexus of romanticism". I have called it "romanticism" and it ended up to be trafficking...' (Kranidioti, 2021: 109, note 33). Finally, the 'side information', in connection with another question, is also notable; in respect of the Amphipolis grave, an expert states the following: '...the significance of the findings is enhanced... but in parallel, attention is also given to the potential advantages of the growth of tourism. Even more [in this case], since in that region, *there exists one of the biggest centers of antiquities' smugglers* ...' (2021: 123, note 130, my italics).



Source: As above, under Table 1, in the text: 170, figure 9.3.2d.

Figure 2. Knowledge on cases of detection by a collector's aid

According to the data and comments briefly presented above, smuggling of cultural objectsseems not to take place only and exclusively in certain regions or countries, or at certain times and historical circumstances, while the phenomenon of the 'accumulation of cultural capital' from source, by market counties, appears to be the rule everywhere. Thus, it should not be seen as strange the inference, as reported in the relevant literature, that one of the reasons why the aforementioned farmer diggers of Mali are disappointed by the high resale prices asked for 'their' cultural objects by urban dealers is that the dealers *have not taken any risk in searching for and excavating the objects* (Panella, 2014: 498 – author' question marks, my italics). Additionally, there is an all the more pertinent remark, that the desire and the importance of the cultural objects' purchase, possession and acquirement for those who can afford them economically, namely, the traders of the import countries, confers a special structure to the antiquities' market; this structure involves the layering of cultural power onto capitalist economic power and, in this respect, those who acquire forms of cultural capital can be characterized as 'cultural capitalists' (Yates et al., 2017: 3). The last remark is also indirectly related to inferences about neoliberalism and commercialization or preferably, commodification[6]; the latter briefly implies a process of 'converting everything into alienable property' (2017: 5), since, as it has been noted, globalization and neoliberalism spread similar criminogenic processes that were once unique to the U. S. culture of the American Dream in a context of structural inequalities (Passas, 2000: 38). In this dominating neoliberal context, it appears that cases of antiquities looting and trafficking become a simulacrum of global power imbalance (Yates et al., 2017: 2).

3. 'Discourse' of experts, contradictions and justice policy

From the above data and findings (section 2.), one may draw the conclusion, that experts are generally aligned with the formal policy of the State – the latter reflecting the decisions of the international organizations. In any case, this is also revealed by additional data of the present research work. For instance, the punitive tendencies against looting reach a very high level (Kranidioti, 2021: 139-144, 199) and, in turn,

6. This concept is similar to 'commercialization', but also distinct from it. Harvey for instance, has chosen the term 'commodification', while referring to 'unbridled commercialism' and 'structures of commercial exploitation' (2005: 50, 56). Commercialization is a more general and multidimensional concept, which denotes the organization of something in a way intended to make a profit (available at: https://dictionary.cambridge.org/dictionary/english/commercialization); the process of commercialization is nowadays conceived as related to globalization and neoliberalism, being dominant everywhere, after the 1980s and especially the 1990s (see in text).

they reflect the object-oriented policy of protection and the concept of archaeological loss, as described by Panella (2014: 490-491 and 498-499). As a matter of fact, one may conclude further, that the archaeologists are indeed the 'main flywheel or driver' of public and academic discourse of the plunder phenomenon (see above, section 1.2.). Such a conclusion though, should be qualified by pointing out that the ones usually incriminated and sentenced, appear to be, at least, according to the narratives of some experts –to use the World Bank's phrase, as applied to the farmer diggers of Mali, by Panella (2014: 499)–, 'the poorest of the poor'*, in Greece too*. This discouraging image, is anyhow uncovered by some experts' comments, as the following: '...I remember... the X collection was created this way... A. was not giving money. He said to the farmers, if they found something, to give it to him. These people were not necessarily smugglers. We ought not to "cram with each other" everything. They were digging and they might have found something ... [nevertheless] the collection of antique works in good part means smuggling or even theft...' (Kranidioti, 2021: 170, note 231).

Moreover, when experts were asked directly about their stance on the imposition of a special tax on citizens and on the protection of monuments and cultural heritage in general, their replies, according to my interpretation and opinion, were even more discouraging (Table 4, B, 2nd column): Only one third of those who have replied to the relevant question (5/15), were in favour of tax imposition, while the rest were against up to very against it and, almost half of those who replied negatively, have completely rejected taxation. Maybe a fact that moderates the lack of sensitivity for cultural heritage issues here is that the research was conducted within the context of deep financial crisis, therefore, it was expected that their replies would oppose taxing. Nevertheless, most of these negative answers were given by experts who had replied positively to a more general question, namely, if they consider the cultural environments' protection, not only to be a right, as prescribed by the Constitution (article 24 § 1), but also an obligation of citizens.[7] More specifically, most of those who had replied in this question, had given affirmative answers (9/15), while only three of them had expressed reservation, in terms of the prerequisites for the fulfillment of this obligation (same Table, A, 2nd column). Interestingly, by the second level data analysis, the negative attitudes towards taxing were reinforced and, on the other hand, the positive replies for the obligation of the citizens to protect their heritage were weakened (A and B, 3rd and 4th column). In short, the experts with greater influence over cultural policies tend to reject both taxing and the obligation

7. In the Introductory Report of the archaeological law (D΄ III, § 3, passages 2 and 3) explicit reference is made to 'liability of everyone' for protection of cultural heritage. The respective question preceded that about taxing and the latter renders 'liability' to 'obligation' (for the terms' difference, see e.g. https://www.allazo.gr/index.php/article2/197-analipsi-efthynis).

of citizens to protect their cultural heritage,[8] more than those who exercise limited influence over these policies. This finding is not strange; it rather reveals once again, a stance in accordance with the spirit of the archaeological law, in so far as it reflects neoliberalism and the commercial processes, which are dominant all over the world, as dictated by international organizations to the source countries. However, the general pattern of reply distribution has not changed significantly after second level data analysis; this means that the contradiction remains, namely, the percentages are still considerably larger for the positive answers on the obligation of protection and for the negative on taxing.

Table 4. Protection according to the contitution (article 24 § 1) and imposition of special tax to the citizens

Replies	No	%	SDA%
A. Right / Obligation of cultural heritage protection			
States' obligation and citizens' right	6	31.6	40.2
States' obligation and citizens' right, but also obligation	9	47.4	42.2
No Reply	4	21.1.	17.6
Total	19	100.0	100.0
B. Imposition of a special tax to the citizens			
No/ rather not	**10**	**66.7**	**70.8**
Negative reply inferred	*4*	*26.7*	*42.52*
Intensive skepticism about tax imposition	*1*	*6.7*	*3.9*
Absolute rejection	*5*	*33.3*	*24.34*
Rather yes (inferred)	**5**	**33.3**	**29.2**
OUT OF THE TOTAL OF REPLES ABOUT TAXING	15	100.0	100.0
Total negative attitudes*	**14**	**73.7**	**75.9**
GENERAL TOTAL	19	100.0	100.0

Source/Explication: As above, under Table 1, in the text: 174, Table 10.2a and in the appendix: 239, Table 5 (selection and new processing of data).
* Some of the negative attitudes are inferred by replies to other questions.

Finally, as regards the above two questions, an even stronger contradiction is revealed by the replies of the fifteen archaeologists of the research sample: Seven out of nine experts, who have supported the view that protection should also be an obligation (77.7%) and nine out of ten who have rejected tax imposition (90%) were archaeologists,[9] while

8. This tendency though is not that strong, with regard to taxing, since most of their negative replies have been inferred and responses of absolute rejection have weakened.
9. In the broad sense, e.g. they had an undergraduate or postgraduate degree of Archaeology, and some of them had a degree from another School as well.

for the rest four experts, the contrast is smaller and the outcome of disputed validity, as only one was against taxing (Kranidioti, 2021, in the appendix: 264, section 3.4. Table 1). The reason of this contradiction, but also, to some extent, its justification, are revealed by the replies of two archaeologists, the first of whom has a high prestige in their scientific community: '...It should be our obligation [to be taxed] if the State had given us the appropriate education...' and '...If I saw that there is work which is done with this money, that is, learning, educational work, in the broad sense, I would agree, yes...' (Kranidioti, 2021: 114, note 77).

4. Conclusion

The last finding, on contradictory replies for the citizens' obligation of cultural heritage protection and taxing, appears due to the predominance of archaeologists, who were the majority in the research sample. This contradiction seems to be resolved positively, in light of some qualitative information, which is not the case, for quantitative estimations; the most influential experts were rather disposed against both. This leads to further reflections on the role of the archaeologists, as being the 'driver', not only of public and academic discourse on plundering, but also, more generally, of the policies dictated by international organizations. Relevant thoughts are scattered in the literature, as those around the twofold question, whether they are the 'flywheel' of these policies (see above, section 1.2.) or on the contrary, 'they try to salvage whatever monuments or other objects they can, for the sake of their country's patrimony' (Kranidioti, 2021, after an expert's reply on collectors: 200, note 120).

Most of the findings in the present research appear to support the first stage of this dilemma. For instance, the most influential experts seem to trust institutions of cultural matters more than the detailed work done on the 'spot', where cultural objects are found. Moreover, expert estimations overall, have led to a view of poor complementarity among the State and the citizens duties in the protection of cultural heritage, but the most influential ones seem to be somewhat more optimistic, regarding this complementarity, while overall, their attitudes tend to be strongly punitive against looting. At the same time, the most influential of them as well as the experts overall, recognize the State's contribution to the protection of cultural heritage, but have strong reservations about the citizens' contribution. They also seem to disregard the citizens' role and their active participation in this protection.

However, the data is rich in responses manifesting ignorance or uncertainty, but also sometimes is poor in validity and consequently, some of the findings are questionable. More enquiry is needed in Greece, an important source country, around the state of the citizens 'oikeiôsis' with their cultural heritage. Furthermore,

in this enquiry, it should be taken into account that citizens of any State have to adapt to a situation, where, 'as the world supposedly became freer, wealthier, more democratic, more enjoyable and more equal, people find themselves poorer, more exploited, and facing increased hardships' (Passas, 2000: 38). In this contemporary, neoliberal environment, cultural objects are commodified and recontextualizated, while the cultural heritage resources of poor countries are exploited 'to feed the prerogatives of the world of high culture which has developed predominantly in rich countries' (Yates et al., 2017: 2).

On the other hand, the main issue discussed in this paper, namely, the experts' information with regard to illegal or not trading and collecting of cultural objects, is enriched by evidence, ostensibly compatible with the widespread 'culture of ignorance' in the antiquities market: As stated above (section 2), only three experts have described in detail the way of speculation on whether a cultural object is a product of theft or illegal excavation and *none* of them has referred to one or more *concrete* examples. Moreover, only two of them were *direct* witnesses of concrete cases of smuggling or illegal digging detection by a collector's aid. These findings reveal a distinct pattern, which is contrasted to the dissemination and flow upwards of the 'don't ask, don't tell' culture', in the market (Mackenzie, 2011b: 74): it is *the 'flow of ignorance downwards', towards the source of antiquities and cultural objects.* Then the deficit of information and data from and to 'source' countries *functions as a barrier against their demands.* It shadows and weakens the persuasive power of their arguments, providing in parallel an additional argumentation advantage to the dominant market countries. Thus, the uncertainty and ignorance manifested by the experts' replies, calls for more enquiry on the archaeologists' stance and role in these crucial matters of cultural heritage protection. This enquiry should be done in view of tackling the dilemma, if and to what extent they are either the 'flywheel' of international organizations policies or the 'rescuer' of their cultural patrimony.

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Data availability statement

The data associated with this paper were selected by its author, Maria P. Kranidioti, in Athens (from 24/7 until 10/11/2014). She was assisted by the postgraduate students attending the taught by her course 'Research Methods in Criminology'. During the lessons, all students participated in sampling procedure and construction of the questionnaire of the research project and later, most of them in data collection. The students interviewed the experts before the principal investigator (author) and, according to the guidelines, transcribed and recorded the interview and gave a copy of it to the interviewee. Student participation was voluntary and unpaid. The first presentation, analysis and processing of data is found in the text and appendix of the book Maria P. Kranidioti (2021). *Spirit and implementation of the archaeological law (3028/2002): A study in the light of theoretical approaches in Criminology and after conducting research on experts*, Syros: Typokladiki SA.

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Discipline and governmental strategies in the Greek prison system

Dimitris Koros
Adjunct Lecturer, School of Law, Democritus University of Thrace
Tutor-Counselor, School of Social Sciences, Hellenic Open University

Abstract

The paper examines the extent to which power relations in the Greek prison system can be described mainly in terms of disciplinary power, as the latter is exercised through the legal provisions of inmates' conduct, which aim both at the discipline-normalisation of inmates as well as the preparation of their reentry into society. It discusses the research conducted in two prison establishments and respective courts, aiming to explore the application of what was termed 'disciplinary complex' (the interplay of the official disciplinary system with prisoners' leaves, prison work and conditional release, producing an instrumental government of the inmate's behaviour). Following the critical utilisation of the data acquired from archive research and interviews, it is suggested that discipline alone does not suffice for an analytics of power relations in the Greek prison system, and thus an alternative approach is proposed, that of a strategic co-modality of discipline and governmentality for the management of docile-warehoused bodies within a penitentiary system in perpetual crisis.

Keywords: Greek prison system, conditional release, prison leaves, prison work, discipline, governmentality

1. Introduction

Since the adoption of the Penitentiary Code of 1999 the Greek prison system has abandoned the rehabilitative objectives that previous legislation set as institutional rationale for its existence. Rather, the official approach is centered upon the execution of the custodial sentence while respecting prisoners' rights (Koulouris, 2009a: 106). It's recent comprehensive amendment, though, has brought again to the forefront the concept of 'correction', thus introducing anachronistic elements to the liberal orientation of the Code (Greek Society for the Study of Crime and Social Control, 2022). Greek penitentiary policy does not stem from a carefully and scientifically organised correctional programme (Courakis, 2009: 333-336). The interplay of the

two prominent characteristics of severity and leniency is mostly driven by political dynamics, electoral politics, the wider penal climate in society as it is influenced by media, public opinion (Cheliotis, 2014: 541), and, to some extent, by prisoners' riots and hunger strikes, which sometimes lead to occasional interventions aiming to reduce overpopulation (Kosmatos, 2008).

During 2015-2019 the country's penitentiary policy to some extent attempted to address the constant problem of prison inflation -considering it a major human rights issue that needs to be considered as an important aspect of crime policy- (Poulou, 2022: 151), on the one hand by resorting once again to temporary means to decongest the prison system with de facto legislation, a recurring practice that will be discussed later, and on the other aiming to intervene at the core of the problem, with the establishment of the new Penal Code, towards rationalising the penalty system, decriminalising actions that do not consist a threat to society and public order, clarifying the legal provisions and designing a thorough legislation, discharged from its distortion due to fragmentary amendments of the past (Explanatory Report in the Bill 'Ratification of the New Penal Code', 2019: 1; Cheliotis and Xenakis, 2021: 84, 94-95).

The post 2019 period marks a shift to conservative over-punitive approaches to crime and punishment, driven by a punitive populist rhetoric (Fytrakis, 2020) thus rendering the prison system a responsibility of the Ministry of Citizen Protection instead of the Ministry of Justice (Kosmatos, 2021: 10), promoting an expansionist penitentiary policy (Koulouris, 2022), tightening the criminal sanctions for certain crimes, overemphasising security over treatment in the prison establishments and introducing amendments that cause an "institutional disfigurement" of the main characteristics of the country's prison policy -a return to correction as the purpose of prison, an attack to prison leaves, the re-introduction of maximum security establishments, etc. (Greek Society for the Study of Crime and Social Control, 2022).

Imprisonment in Greece is characterised by poor infrastructure, limited space, shortage of staff and lack of proper medical care (Sykiotou, 2013: 73-82; National Preventive Mechanism Against Torture and Ill-treatment 2016: 11, 13; 2017: 19; CPT, 2022: 30-38; Poulou, 2022: 127-143). Furthermore, the conditions under which prison staff provide their services are notoriously poor, with no collaboration or contact with other criminal justice or community actors, emphasising security and narrow custodial considerations, while they also perform other duties, such as medical, due to their small numbers (Karydis & Koulouris, 2013: 275-276; Koulouris et al., 2018: 4; National Preventive Mechanism Against Torture and Ill-treatment 2016: 11, 13; 2017: 19; Palma et al., 2019: 23; Petsas, 2020: 29; CPT, 2022: 12, 29).

The contradictory polarisation between severity and leniency in the country's penal policy has been reflected in the prison population: higher prison sentences are imposed by the judiciary as an outcome of tougher penal policies and greater

reliance on prison is shown to satisfy 'an increasingly anxious and punitive public opinion' (Karydis & Koulouris, 2013: 270, 283). At the same time, judges also take more cautious approaches to sentencing as a response to policies targeting to reduce prison population, such as earlier conditional release, alternatives to long prison sentences and so on. Such contradictions are notable as they exist in a system addressing crime rates that are lower or equal to European average (Karydis & Koulouris, 2013: 265-268; Papanicolaou, 2021: 50-57). This phenomenon is described as 'strategy for the indirect reduction of sentences' by Tzannetakis (2016), who discusses the legislator's long observed practice of using a series of penal and correctional institutions with the aim to reduce prison overcrowding, something which poses serious challenges to the general principles of the Greek sanctions system and penal law in general, distorting them with the creation of a parallel system of provisions, without which the penitentiary system would not be able to function normally.

Overpopulation is a defining feature of the Greek penitentiary system as prison population has constantly risen in the last 30 years (with the exception of a small drop during 2015-2018). A number of factors may account for this, including the prolongation of the imposed penalties and the increase in the numbers of admissions, the 'upgrade' of a number of misdemeanours to felonies (Pavlou, 2012: 924; Symeonidou-Kastanidou & Naziris, 2020: 81; Kosmatos, 2023: 14), the overuse of pretrial detention, which is the highest among Council of Europe country-members (Palma et al., 2019); finally a key factor has been the overrepresentation of foreign prisoners, despite the fact that migrant populations do not contribute respectively to recorded criminality (Koros, 2021: 68). Indeed, the latter have constantly comprised more than half of the prison population throughout the 2010s, peaking at just over 60% in 2013 and 2021.[1]

The permanent overcrowding has been officially acknowledged, among others, by the 1994 and 2001 Inter-parliamentary Committee Reports (Karydis & Koulouris, 2013: 265-268). A range of harms against prisoners is attributed to the inflation of the prison population, such as bad detention conditions, radicalisation, health and quality of life deterioration, minimisation of the possibilities of social reintegration, self-harm and violent behaviours (Dimopoulos, 2021: 252-253). Also, overpopulation compromises prison management and poses serious obstacles to implementing welfare-reintegrative programmes (Dimopoulos, 1998: 131). The present outlook of the system amounts to warehousing: it is deeply problematic in terms of the respect of the prisoners' dignity and violates art. 3 of ECHR (prohibition of torture

1. According to the statistics published by the Ministry of Citizen Protection (available at: https://www.ggap.gov.gr/statistika-stoixeia-kratoumenon/). The numbers represent the situation in Greek prisons on January 1st.

and inhuman and degrading treatment or punishment), as has been repeatedly observed by national and regional human rights institutions and the ECtHR (Sykiotou, 2013: 73-82; Koros, 2020: 208; Christoforidou, 2021: 283-352). The harsh and aimless confinement in inhuman and degrading conditions produces an inert and socially disadvantaged prison population (Koulouris, 2009b).

A combined reading of the provisions regarding i) the official disciplinary system, ii) prison leaves, iii) prison work and iv) conditional release points towards a primacy of disciplinary rules for the assessment of the conduct of prisoners and the enjoyment of the benefits of 'good behaviour'. Therefore, the aim of this research has been to explore the extent to which *discipline*, in the sense employed and elaborated by Foucault (1989), can be considered the dominant modality of power in the Greek prison system. To explore that, the critical examination of the aforementioned institutions (provided for in the Penitentiary Code and the Penal Code) has been chosen, given the fact that, according to their provisions, they communicate and impact one another having as common ground the assessment of the prisoners' conduct. Thus, the practical connection and interrelation of the above penitentiary and penal institutions has been examined. The research has been conducted before the amendment of the Greek Penal Code in 2019, but the provisions for conditional release remained in essence the same concerning its spirit and preconditions, until its rather strict amendment, that will be analysed in the conclusion.

In order to explore the interrelation of these four prisoners' management areas in terms of their disciplinary (and para-disciplinary) effects, the term 'disciplinary complex' is employed (Koros, 2020). 'Complex' describes the interplay between the official disciplinary system with the other institutions of prisoners' time management, because of their more or less rehabilitative direction and their para-disciplinary aspects, since their official function is complemented by their disciplinary effects towards what governmentality studies have termed the 'conduct of conduct' (Lemke, 2001: 191) of prisoners. Discussing the double effect of the 'government of the self' and the 'government of the others', it refers to both, the way someone is governed ('conducted') and the way they act as a result of this 'conduct' (Foucault, 2004: 67).

While the institutions comprising the disciplinary complex have been examined extensively in the extant literature, the prison system in Greece has not been studied under the prism of a constellation of rules that aim at the preservation of prison order and the successful reentry of prisoners into society. The approach adopted in this paper converses with the extant literature while it specifically aims to offer an original understanding of power relations in the Greek prison system. More specifically, it focuses on the latter and how they are manifested 'from the above', as a consequence of the institutions that are examined.

This is attempted by considering the specific relevance of the Foucauldian concepts of discipline (1989) and governmentality (2004) in the Greek context, by exploring

the extent to which power relations in the Greek prison system can be described through the prism of discipline and whether they may support a novel understanding of the workings of power in the country's penitentiary system through the lens of a co-modality of disciplinary and governmental power. The limits of disciplinary power as a mode of comprehending prison experience have been discussed, among others, by Chantraine (2006), who directs his attention to a post-discipline constellation of power relations. Equally, the role of governmentality has been elaborated by Franzén (2015) and Franzén and Holmqvist (2014), who point towards governmentality working in collaboration with discipline for the responsibilisation of the confined subject. In the present paper, following this body of work, it is argued that studying the co-modality of discipline and governmentality in the Greek prison context leads to a satisfactory understanding of the state's permanent inability regarding the management of the flows of prisoners in a permanently overcrowded prison system.

In section 2 the disciplinary complex is briefly unfolded, with the analysis of each of its comprising elements, aiming to show the interplay of the main formal institutions that produce discipline in the Greek prison system. In the third section the methodology of the empirical research is discussed, conducted in two prisons (archive research and interviews with staff) and respective courts (interviews with judges). The fourth section is a presentation of the research findings, regarding each of the custodial institutions examined and the overall disciplinary complex scheme, showing the limits of discussing power relations in prison mainly in terms of disciplinary power. The last section takes stock of the conclusions of the research, highlighting the strategic co-modality of discipline and governmentality in the Greek prison system and problematising the findings in regard to the more strict penal and penitentiary policies that have been adopted recently.

2. The disciplinary complex in the Greek prison system

As mentioned above, the scheme used to explore the extent to which the aspect of discipline, namely the 'disciplinary complex', comprising of the official discipline system, prison leaves, prison work and conditional release, is appropriate as the main prism to describe power relations in the Greek prison system. All the institutions-elements of the disciplinary complex aim at the inmates' social adjustment or normalisation, as they are providing for either their control or their reentry into society, or both, bringing to mind the foucauldian disciplinary arrangement of bodies. Disciplinary power in prisons, of course, is not expressed merely through legal provisions for prisoners' conduct, but the study is focusing on this aspect of discipline, expressed via the provisions of the rules and regulations concerning conduct

prohibitions and their infringement, eligibility and access to work and its prison time reducing effects and the possibility to spend part of a custodial sentence out of prison. Therefore, disciplinary power is explored as it is expressed via the disciplinary complex, however not limited to that.

Disciplinary offences in the Greek Penitentiary Code are divided into three categories (A, B and C), according to their seriousness. The relevant penalties are: i) solitary confinement in a single cell; ii) transfer to another prison; iii) penalty points (which, according to the last amendment vary from 10 to 100, according to their category); and iv) deprivation of the possibility to work or to participate in vocational training programmes. Prison work is of paramount importance to prisoners, as each day of work or participation in vocational training programmes is counted as additional prison days 'served', according to relevant detailed provisions, depending on the specific work position (more or less 'demanding') and the type of the prison (closed or open) where prisoners serve their sentence.

Disciplinary penalties are deleted from a prisoner's file after a specific period (6 months, 1 year or 2 years, depending on the seriousness of the disciplinary offence). Also, it is a common practice for disciplinary penalties to be deleted by legislation facilitating conditional release with the aim to reduce prison overpopulation (Pavlou, 2012; Skandamis, 2016: 144-145; Poulou, 2022: 99). Valid (not 'deleted' from the prisoner's record) disciplinary penalties have repercussions for a prisoner's correctional and penal future (Koros, 2020: 27): they are taken into consideration in decision making to grand or to refuse conditional release, prison leaves and the beneficial calculation of sentence time due to work or participation in other constructive activities, while in the case that the disciplinary penalty points are more than 100, the enjoyment of these beneficiary provisions is allowed only exceptionally. Moreover, a 'hidden' disciplinary penalty (not stated as such and not included in the list of penalties) is the Public Prosecutor's power to refuse the beneficial calculation of work time or to recall relevant past decisions in case of a disciplinary infraction. This is a controversial power that essentially violates the principle of legality in the treatment of prisoners as explicitly instituted in the Penitentiary Code (Kosmatos, 2002).

Furthermore, the decision to grant a prison leave depends, among other criteria, on the conduct of the prisoner, which to a large extent is assessed according to their disciplinary record. Finally, the conditional release of the prisoner after serving a part of the sentence according to the provisions of the Penal Code depends, as the institution is applied in practice, solely on the existence or not of a (valid) disciplinary penalty. More specifically, conditional release is granted obligatorily, unless the conduct of the prisoner justifies custody as necessary to prevent the commission of further criminal offences. In practice, that provision entitles prisoners to an almost automatic granting of conditional release when their disciplinary record is 'clean'. However, the last amendment of the relevant article of the Penal Code has

created a problematic categorisation: those who fall under the 'normal' procedures, entitled to conditional release with the 'traditional' preconditions of the institution, and those whose release is subject to a more restrictive regime, an exception that was "transferred" in the field of prison leaves (Kasapoglou & Koros, 2022: 3).

The scheme described above as 'disciplinary complex', along with the very detailed accounts of permissible and prohibited behaviours provided in the Internal Regulation for the Operation of Prisons, points to the organisation of correctional time on the grounds of discipline, which is regulated by institutions that render conduct their main field of assessment. Conduct is to be recorded, analysed, assessed and used as a criterion to decide if time will have regular "intervals" (prison leave) and if the execution of the custodial sentence will end "early" with its remaining part being served in the community (conditional release). Therefore, an institutional background is emerging where every aspect of the prisoners' time and space is arranged in terms of deciding if their conduct is appropriate enough to enjoy the benefits of disciplined behaviour. It should be noted that conduct is not expected to be 'good' –in terms of proving the beneficial effect of prison time– as it is usually mistaken in literature and in case law, but instead 'not bad', in terms of not disrupting prison order or otherwise infracting the Penitentiary Code or the Internal Regulation of prisons (Karydis & Koulouris, 2002).

Regarding the disciplinary aspects of the prison leave scheme, Cheliotis (2005) has pointed towards applications of the institution that indeed bring discipline to the forefront of the administration's concerns: his research in the Male Prison of Korydallos, the largest prison establishment in Greece, shows that the prisoners' behaviour in custody is of major importance, therefore a valid disciplinary penalty leads to the automatic rejection of the application for a leave, while past disciplinary penalties, although 'deleted', are taken into consideration in terms of the prisoner being characterised as 'high risk'. Also, prisoners with valid disciplinary penalties seem to be avoiding applying for a leave, fearing that a record with negative decisions refusing it would influence their possible future efforts (Cheliotis, 2006: 181). This practice is criticised, as it leads to a 'law and order' approach of leaves, which inevitably distorts its rehabilitative aspects (Cheliotis, 2005: 212). Prisoners see in that practice a punitive approach of the authorities, rather than a risk management procedure, while the administration's 'deviation' from the strict application of the preconditions to prevent 'excessively unjust decisions' that would 'jeopardize institutional order in the long run' leads to a differential assessment of disciplinary penalties, producing feelings of unfairness to prisoners (Cheliotis, 2005: 212). Such arbitrary practices are also observed by the National Preventive Mechanism Against Torture and Ill-treatment, which expresses concerns over the problematic reactions of prison administrations, adopting punitive approaches in the cases of violations of leaves, affecting all prisoners entitled to be granted a leave of absence (2017: 31).

Moreover, Cheliotis argues that the pains of imprisonment, inherent in the Greek prison system, and especially the overwhelmingly poor conditions often provoke incidents of non-compliance by prisoners, leading up to serious unrest and even riots, which in change promote 'softer' strategies from the authorities in order to pursue cooperation and compliance; thus, prison leaves serve as a mechanism for achieving this end, as incentive for respecting prison order (Cheliotis, 2014: 530), at first glance as a 'carrot-and-stick' mechanism. Moreover, Cheliotis maintains that the concept of *philotimo*, or honour, is also of importance, as it functions towards prisoners' self-responsibilisation, incarnating the –approached in terms of the masculinity-originating– properties of orderliness and predictability, as something expected to be shown from prisoners (both Greeks and foreigners), despite the limitations of this aspect due to the politics of punitiveness and the effect of public opinion on prison policies and practices (ibid, 2014: 539-541). However, this approach problematically adopts the responses of prison officers, who emphasise their intention to be fair if the prisoner shows (good) 'character' (i.e. willingness to cooperate), something, on the other hand, not backed up by further findings based on the actual application of prison leaves.

Furthermore, the disciplinary dimension of conditional release is not new: already in 1917, when first introduced in the Greek criminal justice system, it aimed at the control of prisoners' behaviour. The amendments of the institution that followed adopted a similar approach, while conditional release was being transformed according to whether the system prioritised a disciplinary mechanism or an early release system (Massouri, 2006). According to Massouri, all amendments of the conditional release system from 1920 until 1974 were the outcomes of governments' interference with the sentences imposed by the courts; on the contrary, conditional release has now lost its autonomous role in the criminal justice system and has failed to perform as a rehabilitative tool, having become a multifunctional institution, serving latent goals different from the officially declared ones, having been subjected to amendments that render its rehabilitative aspects less obvious, as it mostly works to control the prisoners and to temporary solve the problem of overcrowding (Massouri, 2006: 320, 324; also Skandamis, 2016: 137-138). Similarly, Cheliotis' research (2011) analysed the conditional release system in the Male Prison of Korydallos as a mechanism for the control of the prisoners' behaviour, through their rewarding for disciplined behaviour, even if the latter is hypocritical and to the knowledge of the prison administration.

A review of the case law regarding the above institutions reveals that the local judicial councils conclude that the prisoner was essentially 'corrected' judging only by the lack of a valid disciplinary penalty. Also, prison work is of concern mostly regarding the beneficial calculation of prison time and is seldom used in order to indicate a positive change in the prisoner, and prison leaves are mostly mentioned in case of their infraction, since no published ruling using prison leaves as proof of the prisoner's positive change was found (Koros, 2020: 320-330).

Therefore, on the one hand, the interrelation of the institutions of the disciplinary complex reminds Goffman's (1961: 52) description of the 'privilege system' and the use of the individual's conduct as an instrument for the management of correctional time, through the facilitation of a minimum accepted conduct. However, Cheliotis' assessment of Goffman's scheme shows that, despite the seeming resemblance of the two systems, prison leaves as 'reinforcers' of prisoners' compliance cannot 'fit' into this behaviourist automatisation that the privilege system implies, as they may not be available to all, or even be totally unavailable for some prisoners, due to extra-legal obstacles posed by 'electoral politics and punitive public opinion' (2014: 533). Such obstacles have recently given rise to two amendments of the institution of leaves, the first (Law 4760/2020) tightening the preconditions and limiting the duration of leaves (Kosmatos, 2021: 13-17), as a result of a punitive populist discourse overemphasising the (statistically insignificant) violations of leaves, despite the scientific discourse (Fytrakis, 2020; Nikolopoulos, 2020; Skandamis, 2020; Koulouris, 2020a) and the Ombudsperson's observations (National Preventive Mechanism Against Torture and Ill-treatment, 2022: 27-32) pointing towards the success of the institution; the second (Law 4985/2022) introducing important changes in fundamental aspects of the Correctional Code, among which the severe restriction of certain categories of prisoners' eligibility for leaves (Greek Society for the Study of Crime and Social Control, 2022).

A thorough analysis of the relevant published case law raises a series of further questions: does this complex of institutions produce a disciplinary control of every aspect of a prisoner's life, as could be implied by the legal provisions and to some extent by judicial judgements? Does it constitute a detailed and exhausting assessment of the prisoner's conduct? How does this institutional complex shape the expression of power relations in prison?

The remainder of the paper explains how these questions have been dealt with by the above-mentioned research. Having outlined the framework in which the disciplinary complex in the Greek prison system works, the next section will briefly discuss the methods used to explore the way this complex emerges in practice.

3. The empirical research: archive research and interviews

A two-pronged approach was chosen to understand the unfolding of power relations in the Greek prison system in terms of the institutional and para-institutional collaboration of the elements of the disciplinary complex: first, an examination of the implementation of the competent authorities and bodies constituting the

aforementioned scheme and, secondly, the institutional discourse, the views of the members of the penitentiary administration. Some inherent limitations of the study are that it does not discuss the variables of sex and age –since the empirical research was conducted in two adult male prisons–, nor does it take into consideration the unfolding of discipline in terms of its unofficial expressions, while the perceptions of the prisoners are not taken into account.

Regarding archive research, it was considered that the study of the files of prisoners who were released on conditional release could allow a full account of the documents that would offer a better view of the institutionally recorded penal-penitentiary history of each released prisoner and, most importantly, each one's disciplinary record. Studying the available files, the research could consider the decisions and proceedings of the Prison Disciplinary Council regarding reported disciplinary offences and filed applications for prison leaves, decisions of the Judicial Council of the Misdemeanours Court following an appeal against the imposition of a disciplinary sanction or a rejection of a leave, work allocation and respective sentence time calculated beneficially, the attendance of a Second Chance School or the participation in any other activities or programme and the decision of the competent judicial council (of the Misdemeanours or Appeals Court, in case of an appeal) regarding the refusal of conditional release.

Furthermore, the additional empirical research component (interviews with prison staff) was based on the assumption that the views of the staff, especially members of two bodies crucial for the operation of prisons and the treatment of prisoners, the Disciplinary Council and the Prisoners' Work Council, would be of great importance for a wider view of the disciplinary complex, beyond, or "behind" the official sources of prison administration.

For the purposes of the research, two prisons in Northern Greece were selected, named P1 and P2; the reason for that was that, despite the anonymity of the participants, the non-disclosure of the two prisons would further protect the participants from having their identities revealed. The files of 59 ex-prisoners in P1 and 75 of files in P2[2] were studied, while 16 interviews (8 in P1 and 8 in P2) were conducted with the Public Prosecutors serving at both establishments, the Directors of the two prisons, the heads and other members of the custodial staff, social workers of both prisons and the psychologist of P2. The questions pivoted on the participants' general views regarding the institution of prison, the implementation of the institutions comprising the disciplinary complex and their perceptions on the importance of the role of the latter for prisoners and the penitentiary system.

2. All files were randomly chosen from the total of the files of the period of interest (January 2010-September 2013, since the research was conducted in September 2013-2016), one third was selected, by choosing the first, the fourth, the seventh, the tenth, etc. file.

The course of the research and the initial findings from P1 led to the decision of complementing the research plan with one more tool. The lengthy reasonings of the decisions on conditional release found in the ex-prisoners' files, the emphasis in the welfare-rehabilitative aim of prison and the nonetheless routinisation in the granting of the release, as it will be discussed below, created a confusion regarding the reasons for the divergence between the theoretical-legal substantiation of conditional release and the automatic positive outcome in most of the studied cases.

To achieve a better understanding of how decisions are made in practice, interviews were conducted with judges who participated in the Judicial Councils of the Misdemeanours Courts, competent to decide on the conditional release applications and on the appeals of prisoners regarding disciplinary penalties and rejected leave applications in the two prisons that were the original research target (named C1 and C2).[3] The aim was to explore the views of the judges who decide on the above matters of concern to prisoners, regarding the institutions of interest as well as their views on custodial sanctions and their objectives; that was considered important with a view to enriching the data acquired according to the main research plan, something that would deepen the understanding of the way the disciplinary complex operates. The participation of the judges was limited, as only two of the totally six judges- members of the Judicial Councils of the Misdemeanours Court in C1, and six of the totally thirteen in C2 agreed to respond to the research questionnaire; despite the low participation of judges, the research analysis was not compromised, as the role of the questionnaire was merely to supplement the data collected with the primary two methods and offered interesting insights that are evaluated in the analysis below.

Having showed the research methods employed for the exploration of the disciplinary complex, the findings of the study are now discussed.

4. Research outcomes: discipline and its limits

The research conducted in the two prison establishments and respective courts, involving archive research and interviews with prison staff and judges, produced rich results regarding the role of disciplinary power in the Greek prison system, as the latter is expressed via the complex of the four penitentiary and penal institutions that were explored. In this section an overall view of the main findings is given, further assessed in the concluding part of the paper.

3. Court 1 and Court 2.

I. Disciplinary penalties

Regarding the general role of the official disciplinary system, the findings show that a rehabilitative role of disciplinary penalties is not considered important, as all participants mentioned the importance of disciplinary penalties solely for the improvement of prisoners' self-control and the prevention of actions that threaten prison order, for the benefit of order and the prisoners', as they will not have to face the negative consequences of their actions, namely the loss of the advantages of working, getting leaves and being granted conditional release. The first correctional officer of P2 mentioned that '*this is the basic criterion in order not to break the rules, so that he [the prisoner] does not lose his work position and in order to be able to apply for leave*', while the first correctional officer from P1 stated that '*a gram of prevention is a thousand kilos of repression*'.

Nevertheless, the research showed that the plethora of rules stemming from the Penitentiary Code and the Internal Regulation that seem to govern every aspect of prisoners' lives in an exhausting manner were not applied. Instead, the official disciplinary mechanism was mostly employed in cases of violence, disobedience to the personnel, or possession of contraband.

As such, the interviews in prisons do not reveal perceptions concerning the role of disciplinary penalties as a means for the correction of the prisoners; regarding the judges, most emphasised their role for the prevention of violent behaviours in prison, except for two participants, who emphasised correctional aspects.

II. Prison work

Regarding prison work, the findings suggest that the latter has disciplinary characteristics to the extent that access to it by each prisoner in practice depends on i) the good conduct they show and their relationship with the administration, ii) the disparity between work positions' supply and demand, which, according to most participants, is very serious, and iii) the long wait for the assignment of a work position, which deepens the warehousing-discipline experience. In P1, 38 out of the 59 prisoners whose records were studied worked for some period, which means that 21 prisoners did not work at all, while in P2 49 prisoners worked out of 75, meaning that 26 did not work. While this contradicts the assertions of the participants who responded to the questionnaire regarding equality in access to work assignments, it cannot be argued that all those prisoners were denied work, since the prisoners' applications for a work placement are not kept in their individual files, and it was not possible to check whether they applied at all. The files suggest that prisoners serving small sentences do not have the same opportunities to be assigned work as those serving longer ones (see also Koulouris, 2004). These two aspects suggest that the procedures followed for

prison work placements are characterised by relevant invisibility, and thus it is difficult to examine the level of respect of the legal preconditions.

Furthermore, only one participant from the two prisons (the public prosecutor of P2) mentioned that the prisoners' good behaviour in their work position is considered as positive element for the granting of leave. The views of judges regarding the importance of prison work reflect the generic views expressed by them about the correctional and rehabilitative purposes of prison. Thus, with the exception of the first judge of C1, who restricts the utility of prison work only to its served sentence time reduction effects, the majority see work in terms of rehabilitation and education, as serving a utilitarian function of prison (which is, unfortunately, according to their criticism, not reflected in the current situation of the penitentiary system); this 'idealistic' view fails to see the actual main utility of prison work in practice, which is the reduction of the time actually served before conditional release, for the alleviation of the permanently overpopulated prison system.

III. Prison leaves

Concerning prison leaves, except for few perceptions of the interviewees accepting that they serve as a rehabilitative method to soften the punitive aspects of the prison sentence and to prevent the prisoners' mental health and well-being deterioration, it is found that the expected acceptance of an application has more or less disciplinary characteristics, in terms of motivating prisoners to refrain from illegal activities. In prison staff, public prosecutors and judges responses, a direct link between the disciplinary status and the decision to grant or refuse a prison leave was spotted, since all participants mentioned that a disciplinary penalty is seriously taken into consideration or that it automatically results in the rejection of the application as long as it is valid, as has been mentioned by other researchers too (among others Cheliotis, 2014). This emerges from the views of several respondents; for example, they stated: '*if you have an active [:valid] disciplinary penalty, you cannot avail a prison leave until it is deleted*' (social worker from P1); '*...it functions as a motive for them not to commit disciplinary offences...*' (director of P2); leaves '*favour the prevention of social exclusion and prepare for the expected conditional release and, most importantly, that, awaiting leave, they do not commit disciplinary offences*' (first judge of C1). The second judge of C1 and the second judge of C2 also discussed prison leaves in terms of promoting orderly conduct with their amplifying nature and in terms of them being granted ideally as rewards to well-behaved prisoners.

Furthermore, the findings suggest that except for the disciplinary record, factors such as age, the criminal record, the existence of family environment outside of prison and interactions with the society are taken into consideration by the Disciplinary Council, despite them not being stated in the relevant article of the Penitentiary Code as

criteria justifying a positive decision. This is problematic per se, and also leads to a differential treatment of foreign prisoners, who are more or less excluded from enjoying periods of absence from prison, except for few well-integrated inmates, despite approaches arguing that all (Greeks and foreigners) are expected to behave under the same code of conduct in order to enjoy leaves (Cheliotis, 2014: 540), something that is also reported by the Ombudsperson (Karydis & Fytrakis, 2011: 136). However, both Mavris' (2005: 40, 46-47) and the present research have found that foreigners enjoy prison leaves significantly less than Greek nationals, something based on quantitative data as much as on the studied official narrative. Thus, in the present research, Greek nationals comprised the majority of prisoners who were granted leaves in both penitentiary institutions (6 from the 9 who received leaves in P1 and 9 from the 14 in P2). As the Director of P1 stated: '*foreigners... don't have families here and declare that they will be hosted by friends... they are availed much less leaves, of course*'.

Finally, a highly problematic practice that was observed by examining the ex-prisoners' records, confirmed by the interviewees in the two prisons, is the automatic rejection of all first applications, on the grounds of '*the small [:insufficient to get to know a prisoner] period of time spent in prison*' and '*the need for more time spent, in order to reach a safe judgement*', which is alarming as it is not provided for in the Penitentiary Code and, also, as, before being eligible for a leave, a prisoner has to spent a significant length of time in prison, therefore their conduct is known to the authorities.

IV. Conditional release

As for conditional release, the findings of the research suggest that the disciplinary record of the prisoner is the only element that the judicial council takes into consideration in the majority of the cases. The existence of a valid disciplinary penalty results in the rejection of the conditional release application, solely on the grounds of a non-conforming, non-disciplined conduct, which proves, in the judges' views, the need for the extension of the prisoner's stay in prison, to prevent the commission of further crimes, except for some rulings that approved the release of the prisoner where the disciplinary offence was considered of minor importance. Also, no cases were found where information other than the existence of a valid disciplinary penalty, such as the good use of a prison leave, the attendance of an educational or drug rehabilitation program, was considered by the judicial council; in the only 3 cases in which the 'good conduct' during a prison leave was considered as an important aspect for the assessment of the applicants' personalities, there was no such information in the individual files of the prisoners concerned, as they had not even applied for leave. This finding shows that consideration for conditional release is a procedure utilising standardised templates of public prosecutors' proposals and copying former judicial council decisions. In addition, despite the perceptions expressed by most

of the respondent judges concerning the importance of prison work as an essential element for the rehabilitation of the offender, only two cases were found where the prisoner's permanent occupation was taken into consideration in terms of conduct that is praiseworthy and should be taken into consideration for conditional release.

As mentioned, the competent Judicial Councils' judgements on conditional release use stereotypical wordings and repeat public prosecutors' stereotypical proposals ascertaining that the concerned prisoners meet the formal legal requirements, without any in depth individualising assessment. The rulings researched, while they suggest that the purpose of prison and conditional release is the correction, the improvement and rehabilitation of the prisoner, they abruptly jump to the conclusion that, since no valid disciplinary penalty is found in the prisoners' record, '*the purpose aimed by the correctional treatment in prisons was succeeded*', or that '*it is concluded that his stay in prison so far has transformed his character to the better, to the extent that we can anticipate an honorable life in the future*', or that '*he has shown elements of moral improvement which suggest his desire to return to society*', and so on. Such wordings might suggest that the prisoner's conduct must be perfect and not just 'acceptable', as the Penal Code requires, but, in practice, the automatic acceptance of the applications for conditional release suggests that they mainly function as efforts to hide the managerial implementation of the institution.

This distance between the views of the interviewed judges and the practice that the research of ex-prisoners' records revealed supports the analysis that the conditional release procedures have become a standardised routine. That was also the view of some of the responded judges who criticised the justice system, first, for the degradation of conditional release from an important aspect of the treatment of offenders to an obligatory early release mechanism, and second, for their provision with inadequate information on the prisoners' actual conduct, which leaves them no choice but to use 'standardised rulings'. Despite the mostly routinised management of conditional release from the competent councils, the judges were critical towards these standardised procedures, as part of the widespread discontent to subsequent governments' attempts for temporarily dealing with prison overcrowding by eliminating the barriers to early release, something that is against their mainly reformatory perceptions on prison and conditional release, and has led to a constant tension between the legislator and the judiciary (Koulouris, 2020b: 859), which, in practice, leads to the imposition of higher sentences (Karydis & Koulouris, 2002: 504).

Indeed, as mentioned already, a very common intervention used by governments for the temporary relief of the overcrowded penitentiary system is the simplification of the conditional release procedures and the one-off deletion of valid disciplinary penalties, so that they will not impede the competent Councils to release prisoners: from 1993 until 2017 such provisions were included in 11 different pieces of legislation, introduced by all the governing political parties.

A very interesting aspect of the managerial function of conditional release is its automatic granting upon the deletion of the disciplinary penalty from the prisoner's record, possibly just within a few months after it was previously rejected on the grounds of it being valid. It is as if the rehabilitation of the prisoner depends on the expiration of the time that the disciplinary penalty is 'active', or –even more ironically– on the early deletion of the latter by a law aiming solely to relieve the overpopulated prison system; the prisoner is considered as 'incorrigible' when the disciplinary penalty is valid, and, immediately after the latter is deleted, he is considered as having shown the proper conduct, rendering the execution of the remaining of the sentence unnecessary .

What was most surprising and supportive of this conclusion was the public prosecutors' proposals in 27 of the 75 researched cases in P2 in favour of the release of the prisoner due to '*the attached Opinion of the Scientific Council of the Prison that proposes the granting of the conditional release*', which was accepted with no further justification from the competent Councils '*to avoid unnecessary repetitions*'. The irony here is that this Scientific Council was provided for in the Code of Basic Rules for the Treatment of Prisoners (Law 1851/1989), and was abolished in 1994, before the enactment of the current Penitentiary Code (1999).

The presentation of the main findings of the conducted research point towards the importance of disciplinary power, which, however, does not constitute the dominant modality of power relations in the Greek prison system.

5. Conclusion: the strategic co-modality of discipline and governmentality in the Greek prison system

Following the presentation of the main findings of the research, the concluding part of the paper attempts to move from the 'dethroning' of discipline towards an understanding of the workings of power via a co-modality of discipline and governmentality.

The examination of how the disciplinary complex functions in Greek prisons does not support an explanation of power relations based on the primacy of disciplinary power. The implementation of the institutions examined show that discipline at an institutional level plays its part in the government of prisoners' conduct but is also instrumentalised as a tool for the management of a penitentiary system in a permanent crisis. Therefore, the findings cannot support a view of the prison experience as dominated by a disciplinary arrangement of every aspect of prison life, assessing and controlling every move and punishing every little infraction, isolating and enclosing, allowing nothing to escape ['...its principle is that things, the smallest

infraction of discipline must be taken up with all the more care for it being small' (Foucault, 2004: 44-45)].

Indeed, the cases of prisoners having disciplinary penalties in their records were few (only 10 out of the 59 cases of P1 and 11 of the 75 cases of P2), while the invasive and extremely strict disciplinary rules, aiming to control every aspect of prison life, seem to be only exceptionally applied (one case in P2, regarding self-harm aiming to achieve beneficiary treatment); this may be attributed to their obsolescence as techniques to control prisoners' conduct. The scheme is more complex: power does not always unfold with clarity, as aspects of the triangle modality of power relations –sovereignty, discipline, governmentality (Foucault, 2004: 107)– are possibly manifesting their qualities, potentially in an intertwined manner, especially when the Greek penitentiary system is in a perpetual crisis and constantly blamed for its failures and its unreliability.

Disciplinary systems use means such as the 'hierarchical observation, normalising judgement and their combination in a procedure that is specific to it, the examination' (Foucault, 1989: 289). The examination is a basic element of disciplinary power, as punishment and discipline produce a close relation between knowledge and power: files and reports are techniques of disciplinary power for the constant recording and supervision of the confined population (Karalis, 2014). The disciplinary complex functions by creating a field of constant recording, with the employment of disciplinary archives where the information deemed important for the assessment of each prisoner is collected and classified (a 'power of documents', a political function of the written narrative that aims at the creation of documents for future use) (Metafas, 2010: 172-173).

Discipline is not related to the 'pompous' sovereign power, but is expressed as a careful use of the knowledge created and collected (Foucault, 1989: 289), as the power of bureaucratic gaze, the exercise of which is of minimum cost, avoids the most obvious expressions of violence and material coercions and produces an internalisation of prison rules and a supervision of the subject 'over, and against, themselves' (Foucault, 1994: 198).

The findings of the research, discussed in the previous section, suggest that the Greek prison system cannot be described solely neither in terms of material violence nor in terms of discipline and correction; the disciplinary complex aims to manage docile and idle bodies (Koulouris, 2009b), who were punished with long prison sentences, but can anticipate their early release if they show the appropriate conduct –which, in the vast majority of cases, is limited to them not having a valid disciplinary penalty at the time of the application for conditional release– and produces results both at the individual level and at the level of population.

What is concluded from the research is that disciplinary power alone is only one aspect of the power relations in the Greek prison system: parallelly to disciplinarian

arrangements, an expression of governmental power is identified that 'transfers' its comprising elements of political economy –as its major form of knowledge–, population –as the target–, and mechanisms of security –as 'essential technical instrument' (Foucault, 2004: 108)– to the 'prison world'; in that, it is expressed in terms of the government of the economy of prison time (i.e. of the prison sentence imposed by the court, its termination with conditional release and periodical interruption with leaves) and targets the management of the prison population by using disciplinary sanctions as a risk-management mechanism (risk being an element of the grand spectrum of security).

Therefore, the manifestation of disciplinary power takes place outside of, despite and to some extent against the officially declared aims of the penal-penitentiary system and the enforcement of penitentiary legislation solely at the individual level, in a co-dependency with a correctional-governmental-like modality of power. This collaboration works towards the government of the length of the sentence with the possibility to influence it by showing the appropriate conduct, within the institutions that constitute the disciplinary complex, as its implementation is reflected in the perpetual penitentiary crisis and the 'regular' ('normal' legal system) and 'irregular' (ad hoc legislation) arrangement of the actual duration of prison experience; a parallel, co-operative activation of techniques of micro- and macro-power for the construction of the possible field of action of the prison population[4] (assessing individual conduct and the needs of the penitentiary system at the same time), the regulation of behaviours and the transformation of inert people (Koulouris 2009b) to governable subjects (Jessop, 2007: 40).

Thus, for the analysis of the prison institution and the practices of power exercised therein, we can use tools that concern both an individualising (disciplinary) power and techniques and practices for the government of the population, as there is 'no methodological or material discontinuity between... microphysical and macrophysical approaches to the study of power' (Gordon, 1991: 4). It seems that governmentality co-operates with discipline and discipline puts governmentality in motion: governmentality transcends the dichotomous analysis of freedom and oppression (Dean, 2010: 17-19) and allows the balancing of techniques that secure discipline with procedures where the subjects can freely modify or construct their conduct, since the government of the self and the government of the population are essentially 'two sides of the same coin' (Häkli, 2009).

Even deprived of its correctional dimension, despite the elaborate wordings of the council decisions, maybe even 'empty of content' within the deep despair of the perpetual penitentiary crisis, discipline remains the central characteristic of the

4. Power being not something someone possesses, but 'action upon the actions of others' (Foucault, 1982: 790).

warehousing prison experience, however without being able to cover the whole spectrum of power relations. According to Chantraine (2006), we can no longer discuss prison in terms of its domination by discipline, but in terms of a post-discipline experience, where elements of risk assessment and categorisation of dangerous individuals are present. Disciplinary power has not lost its role, but new functions have risen that do not relate to it and lead to a post-disciplinary, governmental prison. Consequently, sovereignty and discipline are being re-examined within a complex and polymorphic collection of governmental tactics aiming, on the one hand, at the construction of a responsible subject and, on the other, at the encouragement –through disciplinary procedures, but also through a governmental strategy emphasising security– of a responsible conduct, a project going hand in hand with a formation of a knowledge of each subject, in terms of a risk assessment both regarding the individual characteristics of the subject (Chantraine, 2006) and the needs of the government of the prisoners as population.

Therefore, the actuality of a co-existence and co-operation of a disciplinary power is witnessed, aiming at the creation of obedient bodies through surveillance-supervision and disciplinary arrangements (as the clearly disciplinary aspects of the researched institutions show), with a modality of power emphasising control and with the purpose to create the terms for self-government and self-responsibilisation of the prisoners, who can freely choose the conduct which will lead them to early release; this, according to the study of Franzén and Holmqvist, points to a (further) neoliberalisation of the government of prisoners, in terms of techniques included in correctional programs where prisoners are treated as free subjects, who, within their freedom, are encouraged to choose their way to rehabilitation; an expression of power in prison aiming at the 'subjectivation' rather than the 'objectivation' of the prisoner (Franzén & Holmqvist, 2014: 544-5).

These correctional tactics point to a strategic co-modality of discipline and governmentality for the formation of the moral subject, without coercion, but by offering techniques of self-government to prisoners. Franzén, in her study of a youth detention home (2015), highlights how young detainees, instead of being treated solely as lawbreakers who cannot overcome their criminal past without an institutional obsession to disciplinary normalisation, are considered as subjects who are able to act in a given field of institutional possibilities towards self-responsibilisation, thus being able to influence the duration of their sentence and to constitute themselves as moral subjects. The moral reconstruction of the young detainees, thus, leads to self-government and self-discipline, producing subjects who are both disciplined-submissive and self-governed, thus not fully subjected to power (Franzén, 2015: 272).

The disciplinary complex in the Greek context is not approached as a tool aiming at the correction of the prisoner, but as a strategy of penitentiary management, a

strategy for creating and managing correctional time; a production of a (governmental-like) individual strategy for the government of correctional time through self-discipline. Therefore, a 'different kind' of discipline is observed, not the 'declarative', univocal and usefully resonant formulation of legal discourse regarding punishment, but the government of conduct through a vague commitment for early release. Thus, while, at first impression, the disciplinary complex bears the weight of the individual arrangement of the body, the activation of governmentality, having as field of action a more macro-physic aspect of power (aiming to a collective subject –the population), retains 'from discipline a concern with a "multiplicity of often minor processes [which]... gradually produce the blueprint for a more general method"' (Foucault, 1989: 138-139).

In the above-mentioned Foucauldian triangle modality of power relations (:sovereignty, discipline, governmentality, Foucault, 2004: 107) there are not only cross sections and overlaps, but also common characteristics. Therefore, the disciplinary complex and the governmental modality of power are placed within an analytics of a 'strategy of inclusion' of power's expressions, in an effort to examine 'what conjunction and what force relationship make their utilization necessary in a given episode of the various confrontations that occur' (Foucault, 1990: 151). The disciplinary complex does not work solely based on the principle of law, but it runs through the complicated and mobile 'mesh' of power (Foucault, 1976) and the steady and unsteady relations and positions in the constant battle within its field, with a strategic inclusion of rational and fluid expressions of it (Foucault, 1990: 138).

The result of this strategic co-operation between discipline and governmentality and the overcoming of the dichotomy between micro- and macro-power, is a form of government and strategic codification of power relations as a bridge between micro-diversion and macro-necessity (Jessop, 2007). Thus, a correctional time –disciplinary, soothing and motivational– emerges, which is vague in terms of its flow (if it will be continuous or with regular intervals) and its duration (when it will end). This takes place not so much through the provided prohibitions but through the motivational of the desired conduct aspects of the researched institutions, through the appealing promise for automatic conditional release by the showing of the appropriate conduct.

Eventually, the state's inability to manage its own (penitentiary) affairs leads to an 'easy conditional release' policy with permanent and exceptional measures for reducing overcrowding and eventually to a 'de-disciplinisation' of prison. Therefore, the case is not governmentality at the service of discipline, encouraging the subject to construct itself as moral or to choose the path to rehabilitation (Franzén & Holmqvist, 2014; Franzén, 2015); on the contrary, a governmentality of a permanent state inability and puzzlement is featured, an inability consisting in the constant

flow of prisoners, who enter prison very easily and are also easily released. In such a context, the disciplinary compliance brings in mind what Weber called 'obedience': '...the action of the person obeying follows in essentials such a course that the content of the command may be taken to have become the basis of action for its own sake... without regard to the actor's own attitude to the value or lack of values of the content of the command as such' (Weber, 2001: 19).

The issue here is not the moral subject, but the *disciplinary and governmental subject*; disciplinary, as it must obey a minimum code and show the appropriate conduct in order to benefit from the relevant 'privileges'; and governmental as it is constructed as a field of initiatives and self-government, beyond the dichotomous perceptions of consent and oppression (Dean, 2010: 17-19). Hence, arguably, a special incarcerated subject is observed: on the one hand on the watch for release (alert to show good conduct), and on the other forced to inactivity, abandoned in a warehousing indifference of an aimless penitentiary system, capable only to incapacitate; a weird encouragement, an incitement to inaction. This scheme of power relations targets the individual prisoner not as a subject to be trained, but restrained, and prisoners as a population in despair, for the construction of their possible field of (non) action.

The aim of the study was an analytics of power relations in the Greek prison system. The research, conducted in two prison establishments and respective courts, involving both interviews of prison staff, public prosecutors and judges as well as the records of ex-prisoners, allows a clear account of the whole spectrum of the legal provisions and their actual practical application; this in turn offers rich insights regarding the initial question of the role of disciplinary power and its limits, towards a need to appreciate the importance of the effects of governmentality on the workings of power in the Greek prison system. It seems that prison's raw material, discipline, is in distress and, thus, further exploration is needed, as the understanding of the *how* of power, a better visibility, is a precondition of solid critical analyses and critical theoretical and practical approaches to prisons and punishment.

This strategic co-modality of discipline and governmentality, as approached in the present paper, is not a pre-determined set of rules and practices that results in this specific view of power relations in the Greek prison system; rather, in accordance with the foucauldian perception of the fluidity of the modes of exercising power, it is approached as being shaped and re-shaped, influenced by institutional and para-institutional factors. As discussed briefly in the introduction and sporadically in the paper, the post-2019 crime policy is driven by a penal populist rhetoric, that has long been cultivated, especially as critique -based on the distortion of truth and fake news- to the previous government's approaches, considered to be too 'soft' on crime in its sentencing policy and the prison decongestion policy as a means to protect human rights in custody (Poulou, 2022).

Therefore, this (pre and post) electoral-sentimental approach to crime and punishment has led to fragmentary policies aiming to misdirect public opinion from other, dire problems of society, and consequently to a toughening of the Penal and the Penitentiary Code, with extensive amendments of the former and the overall revision of the latter, promoting authoritarian and abandoned features, such as:

- the transfer of the competency for penitentiary policy from the Ministry of Justice to the Ministry of Citizen's Protection,
- the unjustified re-introduction of 'correction' as the aim of custodial sentences,
- the toughening of disciplinary sanctions,
- the re-introduction of maximum security prisons, currently named 'increased security' penitentiary institutions,
- the curtailment of the right to prison leave and
- the provision for a different (overall or regarding specific aspects) custodial regime for certain categories of prisoners, according to their crime or their conduct in prison which can be selectively used for their classification as 'particularly dangerous'.

Thus, the element of discipline is boosted by a penitentiary policy that favours the construction of various categories of prisoners in two fields. First, in the field of the custodial condition reserved for each prisoner, the law provides for several different types of prison (prisons for work, prisons for perpetrators of economic crimes, prisons for sex offenders). The most problematic of this typology is the 'increased' (:maximum) security facilities, designated for prisoners on the basis either of the crime for which they are convicted or their discipline record. Such prisoners are eligible for a stricter custodial regime, having less or no access to institutions that render prison experience in the warehousing penitentiary system less overwhelming. Secondly, in the field of leaves and conditional release, the construction of a "two-speed" system is favoured, where some prisoners are qualified for the "normal" procedures and preconditions (which have been amended to either more lenient or more strict directions) while those who have committed particular violent or sexual crimes, are subject to more restrictions hindering their access to these institutions.

Therefore, the scheme of co-modality of discipline and governmentality, the theoretical prism that drove the research on which this study is based, remains an important perception of the expression of power relations in the Greek prison system and retains its value under the new, anachronistic and disciplinarian prison policy, although with the disciplinary aspect amplified. Such a claim is seconded by the observations that (i) 'increased' security' prisons are not introduced solely for the treatment of certain crimes perpetrators, but also to manage prisoners' conduct, and (ii) grant of leaves and conditional release for those that have committed specific crimes is not prohibited but deferred and restricted. On the other hand, since governmentality emphasises government via the offering of 'choices' instead of

resorting to the raw prohibitive function of prison rules, it can be observed that the element of 'freedom' is withering; however, it would still be interesting to discover how the 'mixture', or the strategic co-modality, of discipline and governmentality are affected, researching the actual application of the new provisions in practice, as the latter is shaped within the constant interaction of the individual and collective conducts with the legislative and practical dimensions of power relations and the extra-legal factors that play an important role in the formation of the penitentiary experience. The field of such an exploration is a prison system that fosters violence, due to its suffocating features that diminish any hope for the improvement of prisoners' lives, who will probably 'succumb to the informal rules for the social organisation of prison and adjust to the conditions of a barbaric institutional environment' (Greek Society for the Study of Crime and Social Control, 2022), that is warned with a second humiliating Public Statement from the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT, 2022).

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The Organised Illegal Practice of Pushbacks and the Criminalisation of Organisations Defending Victims

Presentation of the report 'At Europe's Borders: Between Impunity and Criminalization',
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Alkistis Agrafioti Chatzigianni
Lawyer/MA Criminology, Advocacy Officer in GCR

Kleio Nikolopoulou
Lawyer/LLM International Human Rights Law, Advocacy Officer in GCR

Abstract

The report contributes to a body of extensive evidence of the Greek state's illegal pushbacks practice, by providing particularly detailed descriptions of eleven push-back cases at the Evros border region and the Aegean islands, and two cases of pullbacks by the Turkish authorities in Evros. All cases included in this report are legally represented by GCR and submitted before the European Court of Human Rights (ECtHR) and/or the Greek Public Prosecutor. These testimonies, which all share very similar descriptions of what people had to endure during a pushback operation, offer a disturbing insight into the organized and systematic nature of these illegal practices. The report also describes how the Greek state intimidates, stigmatizes and criminalizes human rights defenders (HRDs) who support pushback victims. Statements of senior Greek government officials are highlighted, wherein NGOs, including the Greek Council for Refugees, are linked to smuggler networks, accused of cooperation with Turkey asserting that said NGOs are undermining Greek national sovereignty, and labelled as enemies of the state. These false accusations have created a repressive environment wherein the support for asylum seekers and their rights has become incredibly difficult.

Keywords: asylum seekers, borders, criminalization, Evros, Greece, human rights defenders, islands, pullbacks, pushbacks, refugees, state, Turkey, violence

1. Introduction

Recent years have seen countless reports of pushbacks at Greece's land and sea borders with Turkey. The Greek state continuously fails to launch adequate investigations or accept responsibility despite their complicity in these illegal operations being well-documented. The findings of this report demonstrate that pushback operations and the concomitant targeting of those working to defend the rights of victims in Greece are not isolated incidents, but an unofficial migration and border policy implemented by Greek state actors and their auxiliaries.

To shed light on this systematic state policy, the report firstly recounts pushback cases in the Evros border region, brought before the European Court of Human Rights (ECtHR) between March 2022 and October 2022. The report then presents two pushback cases that occurred in the Eastern Aegean islands, that are significant as in both cases some of the pushback victims managed to re-enter Greece and file official complaints before the Public Prosecutor. The details presented in the report are based on the testimonies of the pushback victims.

By detailing the multiple similar testimonies of pushback victims in Greece, combined with evidence of pushbacks outlined in relevant reports and publications, the report aims to firstly demonstrate that said illegal practices constitute a systematic, meticulously planned and comprehensive policy of the Greek state, involving multiple actors and operational steps. Moreover, the report aims to counteract the argument perpetuated by Greek and EU authorities, that there is a lack of evidence on the existence and/or perpetrators of pushbacks, which has led to a situation of chronic impunity for the perpetrators and a lack of access to justice for victims of these rights violations at Europe's borders. Furthermore, the report sheds light on the Turkish authorities' involvement in the violent management of asylum seekers in the Evros region.

Lastly, the report also highlights another aspect of the Greek state's policy of deterrence and violence against those seeking protection at its borders, i.e. the systematic targeting of human rights defenders (HRDs), by presenting in detail the intimidation and attempted criminalisation of HRDs involved in legal actions to support the pushback victims of the cases presented in the report.

2. Pushbacks as an established state policy

A pushback occurs when a state actor informally and forcefully removes a person or a group out of the country's territory without assessing their individual applications for international protection.[1] Pushbacks not only violate the right to seek asylum, but

1. See relatively the definition of "pushbacks" provided by ECCHR, European Center for Constitutional and Human Rights, available at: https://www.ecchr.eu/en/glossary/push-back/.

often also involve arbitrary detention, physical violence and, in some cases, sexual violence. Pushbacks violate the EU Charter of Fundamental Rights, the European Convention on Human Rights, the EU Directive on common procedures for granting and withdrawing international protection as well as the 1951 Refugee Convention and other international human rights law. Pushbacks are in violation of the main principle of asylum and refugee law, the principle of non-refoulement.[2] Pushback operations take place both at land and sea borders and can be conducted not only during the crossing of the border, but even after the arrival of the individual or the group to the territory.[3] Furthermore, pushback operations in Greece include arbitrary arrest and detention, theft and damage of personal items, abduction, verbal, psychological and/or physical violence, sexual violence, torture, exposure to risk likely to cause harm or death, all criminal offenses under the Greek Penal Code.

Pushbacks of asylum seekers take place mostly in the Evros region and the Aegean islands. There have also been reports regarding incidents including informal arrests of persons in Greek territory, mainland and islands, who have been pushed back, even though some possessed documents proving their legal presence in Greece.[4] In recent years, reports of pushback operations both at the land and the sea border

2. In particular, according to Article 33 (1) of the 1951 Refugee Convention: No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. The principle of non-refoulement is part of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection. The Court of Justice of the European Union (CJEU) has also recognized the principle of non-refoulement, specifically under article 4 (prohibition of torture and inhuman or degrading treatment or punishment) and article 18 (right to asylum) of the EU Charter. The ECtHR has recognized the same core principle, namely under article 3 (prohibition of torture, and inhuman or degrading treatment or punishment) of the European Convention of Human Rights. The principle of non- refoulement has been reaffirmed in a series of international conventions, among others the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 10 December 1984 by the General Assembly resolution 39/46 prohibits refoulement in Article 3, according to which: 'No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.' According to UNHCR, the principle of non-refoulement has become a norm of customary international law.
3. UN Human Rights Council, Special Rapporteur on the human rights of migrants, Report on means to address the human rights impact of pushbacks of migrants on land and at sea, 12 May 2021, available at: https://bit.ly/3GRUOnt.
4. One of the most characteristic cases of such an operation concerns an Afghan national, legally residing in the European Union and employed by the E.U. border agency, Frontex as an interpreter. He has reported how Greek border guards mistook him for an asylum seeker and forcibly and illegally expelled him to Turkey: The New York Times, E.U. Interpreter Says Greece Expelled Him to Turkey in Migrant Roundup, 1 December, 2021, available at: https://www.nytimes.com/2021/12/01/world/europe/greece-migrants-interpreter-expelled.html.

of Greece with Turkey have been increasing.[5] During 2020-2021, UNHCR recorded 539 incidents of 'informal enforced return' at land and sea borders (referred to as pushback or driftback), involving at least 17,000 people, during which potential violations of a number of rights were reported.[6] Between early 2020 and February 2022, UNHCR formally submitted 59 cases of informal enforced returns at land and sea borders through 17 official letters addressed to the Greek authorities, requesting investigations.[7] Moreover, in December 2021, 32 applications of pushback incidents from Evros, Crete, Kos, Kalymnos, Lesvos, Samos or the sea before the victims reached any island were communicated by the ECtHR to the Greek Government.[8]

However, pushbacks at the borders is not a recent phenomenon. On the contrary, such operations have been reported for a long time.[9] A milestone ECtHR case concerns the tragic shipwreck off Farmakonisi in the Eastern Aegean on 20 January 2014, where 8 children and 3 women died. The survivors reported that the boat sank during a pushback operation conducted by the Greek Coast Guard. Unfortunately, the case was quickly closed and filed. On 7 July 2022 the ECtHR finally issued the landmark decision on the application that was lodged by human rights organizations on behalf of the survivors.[10] The ECtHR found a violation of the right to life, due to the authorities' failure to responsibly and effectively investigate such serious allegations. Moreover,

5. See indicatively: Joint Statement on pushback practices in Greece, 1 February 2021, available at: https://bit.ly/3GZOr8d, The Greek Ombudsman, Alleged pushbacks to Turkey of foreign nationals who had arrived in Greece seeking international protection- Interim report (updated up to 31 December 2020), available at: https://bit.ly/3GGZLnQ, EU Agency for Fundamental Right (FRA), Migration: Fundamental rights issues at land borders, 8 December 2020, available at: https://bit.ly/3kfkZBA.
6. UNHCR, Submission by the Office of the United Nations High Commissioner for Refugees in the case of S.A.A. and Others v. Greece (No. 22146/21) before the European Court of Human Rights, available at: https://www.refworld.org/pdfid/62f39cb44.pdf.
7. Ibid.
8. ECRE, AIDA Report – Greece 2021, p.33, available at: https://asylumineurope.org/wp-content/uploads/2022/05/AIDA-GR_2021update.pdf.
9. See indicatively past reports of previous years on the issue of pushbacks in Greece: Human Rights Watch, Greece: Investigate Pushbacks, Summary Expulsions, 30 January 2014, available at: http://bit.ly/3khSinW, PICUM, EU Migration Policy: A Push Back for Migrants' Rights in Greece?, June 2014, https://bit.ly/3w22Gm6, ECRE, AIDA Country Report-Greece, November 2015, pp. 30-33 available at: https://bit.ly/3ClHp4A, GCR, Reports of systematic pushbacks in the Evros region, 20 February 2018, available at: http://bit.ly/3X6UXiM, GCR, The new normality: Continuous push-backs of third country nationals on the Evros river, 12 December 2018, available at: http://bit.ly/3ZB6h8g, European Center for Constitutional and Human Rights, (ECCHR), Analyzing Greek Pushbacks: Over 20 Years of Concealed State Policy Without Accountability, available at: https://bit.ly/3iwwZhV.
10. The organizations that represented the case before the Court are the Greek Council for Refugees, Refugee Support Aegean (RSA)/PRO ASYL, Network of Social Support to Refugees and Migrants, the Hellenic League for Human Rights and the Group of Lawyers for the Rights of Refugees and Migrants.

the ECtHR found a violation of the right to life due to the omission of actions that the Greek authorities should and could have taken to protect human lives and prevent the tragic incident. The Court also held that Coast Guard officers had inflicted degrading and inhuman treatment against shipwreck survivors.[11]

Recently, a series of reports were issued on the systematic conduct of pushback operations mainly at the land border of Greece with Turkey, in the Evros region. In June 2021, Amnesty International published a new report on pushbacks in Greece documenting 21 incidents of unlawful and violent returns from Greece to Turkey.[12] In March 2022, Human Rights Watch published a revealing report about Greek security forces and unidentified men who assaulted, detained, robbed asylum seekers and forced them to return to Turkey.[13] In August 2022, Medecins sans Frontieres (MsF) published a report thoroughly documenting violent pushbacks in the North Eastern Aegean island of Samos against people seeking international protection.[14] In October 2022, MsF reported findings of a group of newly arrived asylum seekers handcuffed and injured from beatings in Lesvos.[15]

In early 2022, ECRE (the European Council on Refugees and Exiles) issued a briefing on Greece for the year 2021, stressing that pushbacks prevent arrivals and push people towards more deadly routes.[16] The European Commissioner for Home Affairs, Ylva Johannson, has also urged Greece to promptly and thoroughly investigate all pushback allegations. The Commissioner, during her speech at the Plenary debate on pushbacks at the EU external borders, stated that: *'Violence at our borders is never acceptable. Especially if it is structural and organized'*.[17]

11. ECtHR, Safi and Others v Greece, App No 5418/15, Judgment of 7.7.2022, available at: https://bit.ly/3FFgzv9.
12. Amnesty International, Greece: Violence, lies, and pushbacks – Refugees and migrants still denied safety and asylum at Europe's borders, 23 June 2021, available at: https://www.amnesty.org/en/documents/eur25/4307/2021/en/. Needs to be noted that already 8 years ago, in 2013, Amnesty International reported for the first time that the Greek authorities put the lives of refugees in danger by unlawfully returning them to Turkey: Amnesty International, Greek authorities put lives in danger by pushing refugees and migrants back to Turkey, 9 July 2013, available at: http://bit.ly/3P7tk65.
13. Human Rights Watch, Greece: Violence Against Asylum Seekers at Border Detained, Assaulted, Stripped, Summarily Deported, 17 March 2022, available at: https://www.hrw.org/news/2020/03/17/greece-violence-against-asylum-seekers-border.
14. MsF, Fear, beatings and forced returns for people seeking safety on Greek island of Samos, 9 August 2022, available at: https://www.msf.org/fear-beatings-and-pushbacks-people-seeking-safety-greek-island-samos.
15. MSF, People found handcuffed and injured on the Greek Island of Lesvos, 25 October 2022, available at: https://bit.ly/3ukUz3e.
16. ECRE, Greece: Deadly End to 2021, Pushbacks Prevent Arrivals and Drive People Towards More Deadly Routes, Closed Controlled Camps Again Face Legal Scrutiny and Criticism, 14 June 2022, available at: http://bit.ly/3igH8hZ.
17. European Commission, Commissioner Johansson's speech at the Plenary debate on pushbacks at the EU external border, 20 October 2021, available at: http://bit.ly/3Uvj9t6.

3. The main characteristics of the pushback operations

Between 16 March 2022 and 22 October 2022, GCR successfully filed interim measures at the European Court of Human Rights (ECtHR) under Rule 39 of the Rules of the Court for 21 groups of asylum seekers that arrived in the Evros region, following ineffective written interventions made by GCR towards the Greek authorities for the search and rescue of these particular groups of people[18]; the authorities either did not respond to the interventions or they responded claiming that they could not locate said groups. Despite the Court's order to the Greek government not to remove the asylum seekers from the country's territory and provide them with food, water and proper medical care, most of these people were pushed back to Turkey. Furthermore, GCR filed applications before the Court for violation of the ECHR articles for 11 pushback incidents.

In addition to this, the report presents two pushback cases of asylum seekers and recognised refugees long after the stage of the crossing of the border. The first case concerns a group of asylum seekers who were pushed back to Turkey after their landing on Lesvos island and their entry to a government-run facility that was operating as a quarantine area in February 2021, while the second case concerns the abduction and illegal, violent return of two recognised refugees, who were legally residing on Kos island. In both of these cases, some of the victims of the violent pushback operations managed to re-enter Greece in 2022 and they submitted a complaint before the Public Prosecutor. In both of these cases, the victims were initially terrified to submit an official complaint and testify before the Greek authorities while they were waiting for the decision on their asylum applications or for their travel documents, that would allow them to leave the island, where they had suffered the pushback operation. The victims felt safe to testify only after they received a positive decision on their asylum applications or their travel documents and they only testified before the Public Prosecutor and not before the Greek police. The report focuses on the presentation of the above cases and demonstrates their common characteristics:

– ***Violence and Pushbacks instead of Rescue and Protection:*** The asylum seekers located on the islets of the Evros river, are often left there for many days, even after the Greek authorities have been informed by HRDs and NGOs regarding the location of these groups and the need for immediate protection. On the islets there is no food, shelter and clean water. In most of these cases, it took days before the Greek authorities transferred the refugees from the islet

18. GCR, Information Note on interventions and on interim measures granted by the ECtHR in cases regarding pushbacks, available at: http://bit.ly/3fmraBB.

to the Greek shore, in order to proceed to their pushback to Turkey after a period of arbitrary and violent detention.

- ***Perpetrators of Pushbacks:*** In the Evros region, uniformed and armed personnel are apparently the first to locate the asylum seekers. The Greek police reportedly trace and unofficially apprehend the victims in the Evros mainland. Individuals with covered faces, dressed in black and carrying weapons, usually participate in multiple stages of the pushback operation, as in the initial violent transfer (instead of rescue) from the islets, during the transfer to a place of informal detention, during the transfer from the place of detention to the riverbank and right before the final stage of the pushback to the Turkish shore. These perpetrators who operate on the islets and the Evros mainland are often described by the victims as "commandos". Arabic speaking collaborators of the authorities are involved in the final stage of the pushback operations, usually driving the boats and physically pushing back the asylum seekers to Turkey, following the orders of Greek authorities. In all instances, official police and port authorities collaborated with the masked men dressed in black, at various stages of the pushback operations.
- ***Means of transfer during the various stages of pushback operations:*** According to the testimonies of the victims, during the pushback operations various means of transfer are being used. In particular, the asylum seekers that are located on the islets report that they were taken to the river coast via unsafe, small, inflatable watercrafts**.** After they reach the river coast, they report being transferred to the place of their informal detention either via minivans or via military vehicles. In certain cases they report the use of both means. Asylum seekers that are located on the mainland report being transported to places of unofficial detention through police vehicles**.** They all report police vehicles or minivans as means for their transfer from the place that they have been informally detained to the place of the conduct of the final stage of the pushback operation. However, in cases where a significant number of people are transferred to the riverbank before being pushed back, victims report that large trucks are used with a capacity to carry over 100 people.
- ***Illegal seizure of victims' personal belongings:*** In all cases presented, people reported the illegal and sometimes violent seizure of their mobile phones, usually upon arrest. In almost all of the cases, people also reported the illegal seizure of their money and other valuable items, such as watches and jewelry, usually after the arrest and before the pushback to the Turkish side.
- ***Arbitrary and illegal detention in official state and informal facilities:*** In all cases detailed in the report, asylum seekers were arbitrarily held in official or unofficial detention sites, for periods ranging from a few hours to a full day before eventually being pushed back. Official detention procedures are not fol-

lowed, no one is officially registered, and asylum seekers do not have access to water, food, phone calls or lawyers. In three cases, people identified the Neo Cheimonio Border Guard Station as the site of their informal detention. It is noteworthy that the last visit of the Council of Europe's European Committee for the Prevention of Torture (CPT) to Police and border guard sites in the Evros region, including the Neo Cheimonio Police and Border Guard Station, took place between 13 and 17 March 2020, more than 3 years ago. According to the CPT report (published in November 2020) to the Greek Government *'At the time of the visit, Soufli and Neo Cheimonio stations were not holding any migrants. Both had, however, held significant numbers of persons in the two weeks prior to the visit. It was noticeable that at Neo Cheimonio, in particular, the sanitary annexes were very dirty, with human faeces smeared on the floor in several of them'*. The report further highlights that '*the CPT again received consistent and credible allegations of migrants being pushed back across the Evros River border to Turkey*', also it referred to '*a number of allegations by migrants that they had been ill-treated by members of the Hellenic Police and/or Coast Guard either upon apprehension or after being brought to a place of detention*'. The findings of the report show that 3 years later, the Neo Cheimonio Border Guard Station continues to be used as a place of detention where human rights are being violated and crimes are being committed against the detained asylum seekers.

- ***Physical and Psychological Violence:*** The report provides graphic details of physical and mental abuse that victims of pushbacks suffer at the hands of the persons conducting them. Said abuse includes beatings and the threat of and actual use of electroshock batons and other weapons. In one of the cases presented, the guards in the unofficial detention site drag the bodies of the refugees on the floor, tie their legs and leave them in this state for approximately 6-7 hours. In several cases the beatings take place in front of children and in one of the cases men in military uniforms beat children on their heads and backs.
- ***Sexual Violence and Torture:*** In all the reported cases, asylum seekers were subjected to strip search during their unofficial detention. Strip search is illegal and when conducted within the framework of informal detention and illegal operations it may correspond to torture. The groping of women, that was reported in the pushback case on Lesvos island is traumatic and is considered to be torture, according to the Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Forced nudity that was reported in one of the pushback cases involving Turkish asylum seekers and in the case of the Palestinian recognised refugees is also considered to be torture: 'an individual is never as vulnerable as when naked and helpless'. In at least three cases, people reported incidents of sexual violence, ranging from humiliation to sexual assault and rape. In another

case, women and men were ridiculed and harassed by approximately four men in military uniforms who used a stick to scratch their genitalia. Afterwards, they used the same stick to rape the men, while they used their fingers to rape the women in front of the children. One of the reported rape incidents appears to have occurred inside the Neo Cheimonio Border Guard Station.

- ***Violent treatment of asylum seekers at Evros border by the Turkish authorities:*** In certain of the cases presented, the pushback victims' testimonies describe the involvement of the Turkish authorities in the violent management of asylum seekers in Evros in various ways, including: a) the placement of the asylum seekers on the islet or with assisting their transfer to the islet in the Evros river, b) the pullback of asylum seekers from the Evros islets to Turkey, c) the use of intimidation/threats of refoulement to Syria in case of the Syrian asylum seekers' return to Turkey. These testimonies confirm the role of the Turkish authorities in the overall situation in Evros in support of previous relative research reports. During said "pullback" operations, the asylum seekers were pulled back from islets in the Evros river to Turkey by Turkish border guards, with the use of tree trunks, the use of physical violence even against children and the use of sexual violence against women.
- ***Further persecution in Turkey after the pushbacks:*** In many cases, the victims of pushbacks managed to re-enter Greece a few days or weeks later. In almost half the cases, individuals were arrested after their pushback to Turkey and detained by the Turkish authorities, while in two of the cases, the Turkish asylum seekers ended up in Turkish prisons. The cases that were not arrested and detained or imprisoned were the ones that managed to escape the arrest by the Turkish authorities. Victims of pushbacks are in grave danger of persecution upon their return to Turkey. The situation is particularly serious with regards to the Turkish asylum seekers, who face the risk of immediate arrest and detention and even imprisonment by the Turkish authorities. It is a direct violation of the principle of non refoulement, when a State through its actions, hands over asylum seekers to their persecutor. Naturally, pushbacks of other nationalities apart from Turkish citizens, is also in direct breach of the principle of non refoulement, as they face the risk of being arrested, detained and eventually returned from Turkey to their country of origin, the very same country that they have escaped from, as it is often the case according to numerous reports that question the concept of Turkey as a safe third country for asylum seekers.

4. Criminalization of NGOs assisting the newly arrived asylum seekers in Evros

The pushbacks mentioned in this report are part of a wider context in which those who are defending the rights of refugees, asylum seekers and migrants are targeted and increasingly under severe pressure from the Greek state. This criminalization of human rights defenders comes in different forms and stages. Criminalization can involve the use of legal frameworks, political and (quasi) legal actions with the intention of treating the defense and protection of human rights as illegitimate and illegal. Criminalization aims to delegitimize the actions of persons who promote, protect and defend human rights. We therefore understand criminalization to derive from the intent to discredit, sabotage or impede the important work of HRDs through the abuse of the legal system and a targeted manipulation of the public discourse.[19]

The criminalization of HRDs is not a new phenomenon. However, in the past years, it has become significantly worse. The UN Special Rapporteur on Human Rights Defenders, Mary Lawlor, expressed in her preliminary observations following a visit to Greece, her concern about the '*reports of human rights defenders, in particular those supporting migrants, refugees and asylum seekers, being targeted by hostile comments, including by key stakeholders in the government. They are described as traitors, enemies of the state, Turkish agents, criminals and smugglers and traffickers*'.[20] The UN Special Rapporteur's final report that was published in March 2023, reaffirmed the deep concern that she had already expressed, by stating among others: '*Human rights defenders promoting and protecting the rights of migrants, asylum-seekers and refugees, including human rights lawyers, humanitarian workers, volunteers and journalists, have been subjected to smear campaigns, a changing regulatory environment, threats and attacks and the misuse of criminal law against them to a shocking degree.*'[21]

The above mentioned conclusions of the Special Rapporteur confirm the findings of the GCR report. Indicatively, the report presents public statements of government officials that target the organizations operating at the Greek – Turkish bor-

19. For criminalization of human rights defenders, in general, see: IACHR (Inter-American Commission on Human Rights), Criminalization of Human Rights Defenders, 2015, available at: https://bit.ly/3J1pgD4, Criminalization of Human Rights Defenders, Human rights defenders and civic space – the business & human rights dimension.
20. UN Special Rapporteur on Human Rights Defenders, Statement on preliminary observations and recommendations following official visit to Greece, 22 June 2022, available at: https://bit.ly/3iAOaAh.
21. UN Special Rapporteur on Human Rights Defenders, Visit to Greece, Report of the Special Rapporteur on the situation of human rights defenders, Mary Lawlor, March 2023, available at: https://srdefenders.org/country-visit-report-greece/.

ders offering legal assistance to newly arrived asylum seekers, describing them as collaborators with smuggling networks or with the Turkish authorities and acting against the Greek national interests.[22]

The report illustrates how the Greek government stigmatizes and publicly defames organizations that operate in defense of asylum seekers and who denounce the illegal policies and practices of the Greek authorities at the Evros border. The Greek government does so by: i. manipulating the public opinion against NGOs through the systematic use of misinformation, ii. linking their human rights work to hidden political motives, iii. presenting them as traitors, enemies of the State and threats to national security, or iv. ascribing them a 'criminal status' and/or initiating criminal investigations against them. The creation of this hostile environment is seriously hampering the work of these important organizations. Where legal assistance is targeted and criminalized by any means, directly or indirectly, it prevents asylum seekers and migrants from accessing courts to claim their rights or seek redress for violations.

5. Conclusions

A detailed analysis of victims' testimonies on pushback cases in Greece over the period of one year, sheds light on these illegal activities as a comprehensive, systematic, and carefully planned and denied migration and border policy of the Greek government. This becomes evident through the consistent patterns and characteristics of these complex operations as described by victims, which contradict the narrative of 'lack of evidence' on these crimes that are still perpetuated by the Greek authorities.

Pushbacks are committed both against asylum seekers and recognized refugees and involve the Greek and Turkish authorities. Numerous Greek authorities participate in the perpetration of pushbacks, from Greek police, uniformed and armed personnel, to Arabic speaking collaborators or 'police auxiliaries', Greek port authorities as well as masked men dressed in black. The operations involve considerable state resources, such as the means of transport used to forcibly transfer victims throughout various stages of the pushback operation – from dinghies to minivans, military and police vehicles to trucks. In addition to forced transfers, the pushback operations always involve periods of arbitrary detention during which victims are illegally detained without registration, information or access to rights and without

22. Indicatively: Greek Minister of Migration and Asylum, Speech before the LIBE Committee, 27 June 2022, available at: http://bit.ly/3Vtn8al, SKAI FM, (in Greek): Sophia Voultepsi in SKAI 100,3 FM radio, minutes: 6:40- 7:54, 3 Οκτωβρίου 2022, available at: https://www.youtube.com/watch?v=bNawvv6MelU&ab_channel=SKAIRADIO100%2C3FM.

basic supplies such as food and water. In some cases, it has been possible to identify one of the unofficial detention sites as the Neo Cheimonio Border Guard Station. This was made possible when people managed to reenter Greece and were formally arrested by the Greek authorities; they were detained in the same detention site where they were detained before their pushback to Turkey. All pushbacks involve degradation, physical violence, intimidation, arbitrary confiscations of personal belongings as well as gender-based violence against victims – from strip searching to groping, forced nudity and rape. Violence and intimidation similarly characterize the testimonies of asylum seekers regarding their treatment by Turkish authorities in the Evros region.

This illegal migration and border policy evolves over time, as the Greek state adjusts its operational strategy in the perpetration of pushbacks in an attempt to circumvent relevant Court rulings, rather than ending the illegal practice. For example, since the ECtHR issued its first interim measures decision ordering Greece to rescue stranded asylum seekers on an Evros islet, the Greek authorities began pushing people back to the Turkish riverbank instead. A further evolution of this illegal border policy has been the recent expansion of its targets: where asylum seekers and refugees themselves are met with severe violence and denial of their right to seek asylum, human rights defenders working to support them and hold the Greek state accountable are met with intimidation, defamation and criminalization. This takes the form of systematic public misinformation, often through media or government announcements. The government's narratives frame human rights defenders as traitors, security threats and enemies of the State; or as criminals involved in smuggling and organized crime.

The research shows that unless EU and Greek authorities finally put an end to these illegal migration and border policies, they will only become more violent and widespread. Just like pushbacks and criminalization of HRDs, impunity, institutional inaction and lack of accountability undermine the rule of law and international law. In the short term, swift action must be taken to end these illegal practices, including the establishment of truly independent and effective border monitoring mechanisms as well as infringement proceedings when Member States systematically violate refugees' and asylum seekers rights.

In the same direction, the European Commission should control transparently and with scrutiny the Greek authorities' use of EU funds for migration management purposes, to ensure that EU funds are not being misused to fund illegal operations that endanger migrants and refugees or violate EU law. Additionally, it should not establish non-transparent and ineffective migration 'agreements' with non-EU countries that undermine the adherence of the EU and its member states to their human rights obligations. At the same time, the Greek judicial authorities should assume their responsibilities by initiating effective investigations on the basis of

information they receive on criminal acts within their jurisdiction and guarantee access to justice for victims of pushbacks who manage to re-enter Greece, with regard to the violations of their rights during the pushback operations. Lastly, HRDs and the legal representatives of the victims should be able to operate without undue interference and provide legal assistance without hindrance and ensure individuals' access to judicial protection and redress before domestic and international courts, without the risk of arbitrary persecution.

The ‘self-reported’ violations of the rights of people in custody. Reflections on two EU documents providing information and policy recommendations on imprisonment and pre-trial detention conditions

Nikolaos K. Koulouris
Associate Professor in Penitentiary Policy,
Department of Social Policy, Democritus University of Thrace

Abstract

Two recent EU documents on deprivation of liberty as a pre-trial measure and as a penal sanction are presented and commented in the present paper. One of these is the 8.12.2022 Recommendation of the European Commission ‘on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions’, the first soft law instrument of the EC with guidance to Member States for the observance of material detention conditions minimum standards. The other document, the study ‘Prisons and detention conditions in the EU’ published shortly after the above mentioned Recommendation, in February 2023, is commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs. It includes background information and policy recommendations on the basis of European and national prison regulations, legislation, policies and practices, to support effective compliance with existing European standards. The common denominator of these documents is poor detention conditions and the awareness raised thereof for prisoners’ rights and the overall operation of prison systems. Despite this, it is argued that both documents express the EU concerns not mainly for the breaches of the rights of remanded and sentenced prisoners and the prison legitimacy issues stemming from them, but particularly focusing on the difficulties such breaches cause as regards Member States judicial cooperation in criminal matters.

1. Poor and degrading detention conditions: An insult on human dignity, an obstacle to judicial cooperation or both?

Deprivation of liberty in the form of a penal sanction and its institutional incarnation, the prison, are popular issues for lawyers, sociologists, philosophers, politicians, journalists and the public. Public discussions, academic discourses and political rhetoric many times converge or meet, other times differ or contradict, depending on the underlying beliefs and purposes inspiring prison talk and guiding practice, the proper content given to deprivation of liberty and the acceptability limits set, the mindsets and beliefs of the declaimers and the writers, etc. Among lots of possible criteria available to circumscribe the multitude of approaches, whether influential or not, one can refer to the positive or negative attitude of the involved parts towards the legitimacy of penal custody, the faith or disbelief in its potential to achieve the goals assigned to it and the discovery or rejection of latent functions performed by it. All these interact with justice, reformation, rehabilitation, incapacitation, desistance and reentry-oriented and other expectations or frustrations and call for either more or less prisons, in terms of the frequency of its use, the length of time spent in custody, the normalized or restrictive detention regimes and so on, so forth. Much of the support and enthusiasm invested in prisons or the skepticism and criticisms surrounding them merge with questions and answers regarding the legal status of people in pre-trial and post-conviction custody, and the value of their rights and dignity as human beings, reflected in prisoners' living standards and respective actual conditions behind prison walls and bars.

As time passes by, the latter (prison conditions) have attracted the attention of the European Court of Human Rights and the Court of Justice of the European Union. In many (EU Member) States prisoners' and civil society organisations' allegations and prison inspection and monitoring bodies' reports have shown persistent and degrading shortcomings having a significant negative impact on life in detention, not only in material terms, namely insufficient space, limited access to health care, poor sanitary conditions, monitoring gaps but, also, as regards other related issues, such as the use and length of remand custody. These problems may result in breach of the rights guaranteed by the EU Charter of Fundamental Rights and the European Convention on Human Rights of the Council of Europe. Moreover, though, the relevance of these issues for the EU legal order have got another dimension, as it seems that they impede the smooth functioning of judicial cooperation in criminal matters, which is based on the 'mutual recognition principle'. This principle and the corresponding idea of mutual trust between the EU Member States imply that judicial decisions are recognised as equivalent and executed throughout the EU, no matter where a decision was taken. In this context, it is presumed that EU

Member States' criminal justice systems, despite their differences, are equivalent and comply with EU law, respecting and protecting fundamental rights of remanded and convicted prisoners. When this is not the case, namely when detention conditions in one Member State result in an another Member State's assessment that there is a real risk of inhuman or degrading treatment of a prisoner in the prisons of the former State, the implementation of several mutual recognition instruments facilitating the execution of pre-trial detention orders or of custodial sentences[1] is negatively affected and trust is undermined. The EU, being aware of this consequence, is undertaking action to manage the relevant issues, improving the existing background information and making policy recommendations concerning prisons and detention conditions in its Member States. Two examples of relevant initiatives are the Recommendation of the European Commission 'on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions' issued on 8.12.2022[2] and the document 'Prisons and detention conditions in the EU', a study commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the Committee on Civil Liberties, Justice and Home Affairs (LIBE), published in February 2023.[3]

2. The European Commission Recommendation on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions

The background of this Recommendation, published in the Official Journal on 24 March 2023, is presented in the 8.12.2022 press release of the European Commission:[4] 'At the Justice and Home Affairs Council of October 2021, where detention was on the agenda, Ministers asked the Commission to opt for recommendations or guidelines aiming to improve detention conditions and to enhance the use of alternative measures

1. Such as the Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States, OJ L 190/1, 18 July 2002 and the Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, OJ L 327/27, 5 December 2008, also referred to as the 'Framework Decision on the transfer of prisoners'.
2. Available at: https://commission.europa.eu/system/files/2022-12/1_1_201158_rec_pro_det_en.pdf.
3. Available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2023/741374/IPOL_STU(2023)741374_EN.pdf.
4. 'European Commission puts forward recommendations related to detention conditions', Brussels, 8 December 2022.

instead of EU legislation'. The Recommendation 'complements the procedural rights set by the Directives on the right to interpretation and translation; to information; access to a lawyer; presumption of innocence; procedural safeguards for children and on legal aid. Furthermore, the Recommendation complements also the Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons'. Member States are urged to take steps at national level to align their practices with the recommendations. As it is noted in the same press release, 'Although all Member States must comply with the European Convention on Human Rights (ECHR), in practice, there are significant differences in relation to pre-trial detention, and material detention conditions vary enormously'. In some Member States pre-trial detention is treated less as an exceptional measure than as a normal part of the process of prosecuting suspected offenders. Significant variations are also observed in maximum time limits set for pre-trial detention, the average length of pre-trial detention and the number of pre-trial detainees as a proportion of the total prison population. Similarly, diverse is the picture as regards prison density, material detention conditions and the cost of imprisonment. In a 'Non-paper from the Commission services in the context of the adoption of the Recommendation on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions' accompanying the Recommendation,[5] it is shown that across the EU:

– eight Member States have a prison density of more than 100 immates per 100 places, and five experience overcrowding with rates of more than 105 immates per 100 places,

– the average length of pre-trial detention across the EU, varies from 2.4 months to 12.9 months,

– the cost of pre-trial detention ranges from 6.50 euros per day per prisoner to 332.63 euros per day.

Diversity raises concerns reported by prison-monitoring bodies across the EU and confirmed by the ECtHR case law. The press release continues: 'In 2021, there were 81 findings of violations of Article 3 ECHR (Inhuman and degrading treatment) involving 14 Member States, and 46 cases of violations of Article 5 ECHR (Right to Liberty and Security), involving 12 Member States'. By the same token, one of these concerns captures the attention to the impact the substantial divergences observed between Member States have 'on mutual trust and judicial cooperation in criminal matters, for instance in the context of mutual recognition and the operation of the European Arrest Warrant (EAW)'. Providing evidence to corroborate this concern, the press release refers that 'Since 2016, execution of an EAW has been delayed or refused on grounds of real risk of breach of fundamental rights in nearly

5. Available at: https://commission.europa.eu/system/files/2022-12/JHA%20Non-paper%20st15292%20en22.pdf.

300 cases'. As a consequence, delays and suspensions of executions and a practice of seeking assurances from the requesting judicial authorities are also observed.

This Recommendation is the first 'soft law' (not binding) European Commission instrument. It lays down a set of minimum standard measures, as regards the use of pre-trial detention as a 'last resort' option, the introduction of periodic reviews where its use is justified, the establishment of cell size-standards, outdoors time, nutrition and healthcare conditions and the promotion of initiatives with a view to reintegration and social rehabilitation of remanded prisoners. Part of the document is reserved for the management of radicalisation in prisons. Importantly, this a particularly underlined in the Recommendation, where Member States are encouraged 'to carry out an initial risk assessment to determine the appropriate regime applicable to detainees suspected or convicted of terrorist and violent extremist offences' and, in the same context the competent authorities are instructed 'to prevent these same suspects from having direct contact with particularly vulnerable detainees'. Other points of the Recommendation focus on women and girls, LGBTIQ persons, foreign nationals, persons with disabilities and other vulnerable detainees, including access to professional interpretation services. Many of these measures are well known and presented in other instruments; they cultivate the breeding ground for 87 specific guidance topics, divided in the following six parts:

(i) purpose of the recommendation (rec. 1-3),

(ii) definitions (rec. 4-9),

(iii) general principles (rec. 10-13),

(iv) minimum standards for procedural rights of suspects and accused persons subject to pre-trial detention (rec. 14-33), subdivided in eight sections (pre-trial detention as a measure of last resort and alternatives to detention, reasonable suspicion and grounds for pre-trial detention, reasoning of pre-trial detention decisions, periodic review of pre-trial detention, hearing of the suspect or accused person, effective remedies and the right to appeal, length of pre-trial detention, deduction of time spent in pre-trial detention from the final sentence),

(v) minimum standards for material detention conditions (rec. 34-86), subdivided in eighteen sections (accommodation, allocation, hygiene and sanitary conditions, nutrition, time spent outside the cell and outdoors, work and education of detainees to promote their social reintegration, healthcare, prevention of violence and ill-treatment, contact with the outside world, legal assistance, requests and complaints, special measures for women and girls, special measures for foreign nationals, special measures for children and young adults, special measures for persons with disabilities or serious medical conditions, special measures to protect other detainees with special needs or vulnerabilities, inspections and monitoring, specific measures to address radicalisation in prisons) and

(vi) monitoring (rec. 87).

In the first, introductory part of the recommendation, the legal, institutional and actual-practical bases considered to justify and explain the necessity of the intervention of the European Commission on pre-trial detention are mentioned, starting from the Treaty on the Functioning of the European Union. In this part the principles, values, priorities, commitments incorporated in various hard and soft law international and European instruments, decisions, judgments, guidelines, reports etc. are included. Interestingly, particular attention is paid on (i) 'the vast number of recommendations developed by international organisations in the area of criminal detention', which may be not always easily accessible for judicial authorities of the Member States who are competent to assess detention conditions, either in the context of a European arrest warrant or at national level and (ii) the request of these authorities for more concrete guidance on how to deal with cases where risks of fundamental rights breaches are pinpointed, identifying 'lack of harmonisation, dispersion and lack of clarity of detention standards across the Union as a challenge for judicial cooperation in criminal matters' (paras. 11, 12, 17). The worries, then, expressed within the area of freedom, security and justice of the European Union as regards the respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights persons who have been deprived of their liberty and the minimum standards required and applicable to all Member States' detention systems alike (para. 18), are not an end in itself; they seem to serve the purpose to strengthen mutual trust between Member States and facilitate mutual recognition of judgments and judicial decisions. Consequently, the 'persistence of certain serious problems in some Member States, such as ill-treatment, the unsuitability of detention facilities as well as a lack of meaningful activities and of appropriate provision of healthcare' reported by the CPT (para. 15), the violations of Articles 3 and 5 of the ECHR in the context of detention found by the European Court of Human Rights (para. 16) back down under the importance given to the improvement of mutual recognition of decisions in criminal matters, the Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings (OJ C 378, 24.12.2013) and six measures on procedural rights in criminal proceedings, the Directives:

– 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010),

– 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012),

– 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013),

– 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65, 11.3.2016),

– 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132, 21.5.2016).

– 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297, 4.11.2016).

Overall, these are stated in the Recommendation, where it is mentioned that it:

'...respects and promotes fundamental rights recognised by the Charter of Fundamental Rights of the European Union. In particular, this Recommendation seeks to promote respect for human dignity, the right to liberty, the right to family life, the rights of the child, the right to an effective remedy and to a fair trial as well as the presumption of innocence and the right of defence' (para. 33)[6]) and

'...should also facilitate the execution of European arrest warrants under Framework Decision 2002/584/JHA on the European arrest warrant , as well as the recognition of judgments and the enforcement of sentences under Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments imposing custodial sentences or measures involving deprivation of liberty' (para. 32).[7]

3. The European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs study 'Prisons and detention conditions in the EU'

Shortly after the Recommendation presented in the previous section, the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs published the study 'Prisons and detention conditions in the EU' upon the request of the Committee on Civil Liberties, Justice and Home Affairs (LIBE), authored by Dr. Julia Burchett, Université Libre de Bruxelles Prof. Anne Weyembergh, Université Libre de Bruxelles In collaboration with Marta Ramat, Intern, Centre de droit européen, Université Libre de Bruxelles. The declared aim of the study is to provide information and policy recommendations concerning prisons and detention conditions in the EU, taking into consideration regulations, legislation, policies and practices adopted, implemented and reported in the Member States. The picture of the situation in the EU given in

6. See also, Purpose of the Recommendation, rec. 1.
7. See also, Purpose of the Recommendation, rec. 2.

the study is based on a range of relevant sources, and assess the initiatives taken to support compliance with existing standards bringing forth policy inputs and options for the future direction of the EU's work in the field of penal custody.

The information and data used in the study are stemming from (i) desk research encompassing various sources and documents from the EU, the CoE and various national institutions, including national transposition law and related case-law, and (ii) interviews with representatives/officials from the EU and CoE, national policy makers and professionals working in the prison and judicial sectors.

Desk research was conducted on the EU primary and secondary legislation applicable to the areas covered by the study, policy documents such as Council conclusions setting out priorities related to the issues of prisons and alternative measures to detention, discussion papers and recommendations produced by the European Commission and the relevant resolutions from the European Parliament. Another source is the jurisprudence of the Court of Justice of the European Union (CJEU), especially the clarifications regarding the findings which justify the suspension or the refusal of the execution of an EAW due to the risk of human rights infringements resulting from degrading detention conditions.

Relevant CoE general and sectoral legal and political instruments dealing with prisons are also among the sources used for the purposes of the study. The European Convention on Human Rights (ECHR) as interpreted by the European Court of Human Rights (ECtHR) and the selected relevant case-law of the Court dealing with detention conditions and the treatment of detainees, as well as the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the preventive work (reports and standards) of the body monitoring compliance with it, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) are among these sources. A number of relevant policy instruments of various bodies working in the field of prisons and prison policy are also taken into account, such as documentation produced by the European Committee on Crime Problems (CDPC), the Council for Penological Co-operation (PC-CP) and a series of rules, recommendations and guidelines adopted by the Committee of Ministers and the Parliamentary Assembly of the CoE. In addition, the existing literature discussing the challenges raised by prisons and detention conditions in the EU is reviewed and other resources such as the assessments carried out by the Fundamental Rights Agency (FRA), Eurojust reports (e.g. Report of the College on "The EAW and Prison Conditions"), statistical reports on prison populations and persons under the supervision of probation agencies (e.g. 'Council of Europe Annual Penal Statistics' – SPACE I and II) and relevant reports from nongovernmental organisations (NGOs) are taken into consideration.

The documentary research is enriched and complemented by several interviews conducted with officials working in the EU institutions and agencies and practi-

tioners at national level, asked to contribute their concrete insights on the issues and challenges raised by prisons, such as the control of the prison population, the improvement of mutual trust between Member States etc.

The persistent and often shielded from the public eye shortcomings affecting prisons and life inside them are found at the background of the study. Such shortcomings have attracted the growing attention of the European Court of Human Rights and the Court of Justice of the European Union. Prison conditions in many EU Member States, having been characterised 'degrading', are quite relevant for the EU legal order in terms of the study, in two aspects. On the one hand they are approached as breaches of the rights guaranteed by the EU Charter of Fundamental Rights. On the other hand they become a serious obstacle to the smooth functioning of 'mutual recognition', the basis of judicial cooperation in criminal matters. The pressing fundamental rights concerns stemming from degrading prison conditions, their detrimental effects on mutual recognition and the recent adoption of an EU Recommendation make the issue of prison conditions 'particularly topical' and worth to be examined from an EU-law perspective. As it is clarified in the study, detention conditions should be understood in a broad sense, to include not only 'stricto sensu' daily routines of prison life but, also, other issues having a significant impact on life in detention, such as the excessive use and length of pre-trial detention, which is one of the issues raised in the above presented Recommendation of the European Commission.

The study is structured in five main parts. In Chapter 1 ('Prisons and detention conditions in the EU', pp. 13-30) background information is provided on some critical issues faced by the EU as well as by particular Member States in relation to detention conditions. Admitting that a comprehensive review of all detention subjects is not possible, the study focuses on two 'most pressing' issues, namely prison overcrowding and prison radicalisation. In respect of the first issue, prison overcrowding, on the one hand its scale is recognised, but on the other hand it is mentioned that the identified lack of common measurement indicators does not allow for certain cross-national comparisons. On the second issue, radicalisation in prison, the study finds that the challenges posed by it refer to the usually more restrictive conditions of detention that apply to prisoners classified as radicalised, as illustrated in some Member States, particularly Belgium and France. Respective custodial regimes have attracted the attention of European and national prison monitoring bodies in view of their potential impact on fundamental rights.

The 'Impact of poor detention conditions on mutual trust and mutual recognition instruments' in criminal matters is assessed in Chapter 2 (pp. 30-60). Particular attention is paid to the implementation of the EAW Framework Decision and the Framework Decision on the transfer of prisoners. Shifting the focus on the cross-border context, the study has sought to assess the concrete impact of

poor detention conditions on several mutual recognition instruments involving a measure depriving liberty, namely the Framework Decision 2002/584/JHA on the European Arrest Warrant and the Framework Decision 2008/909 on the transfer of prisoners. In this respect, it was found that considerations of detention conditions do not come into play in the same way in these two instruments; on the one hand the Framework Decision on the transfer of prisoner has led to a very limited body of case-law, on the other hand it is evident that in several preliminary rulings involving the use of the EAW detention conditions cast serious doubts as regards the principle of mutual recognition and the existence of mutual trust.

Chapter 3 ('European standards regulating prison conditions', pp. 60-80) includes a map of the most relevant prison conditions standards, highlighting the shortcomings which emerge as regards their implementation. This chapter focuses on European standards, taking also into account some international standards insofar as they create important obligations for EU Member States. Light is shed on the multiple sources and standards that intertwine in the penitentiary field and the way they influence each other and national legal systems in order to strengthen the protection of detainees. Recognising the considerable authority of the Council of Europe on these matters, an overview of the scope of its standard-setting action on detention is presented. First a review of the many non-binding standards adopted by the Committee of Ministers of the CoE is provided, followed by the key contribution of the CPT in the prevention of inhuman or degrading treatment in prisons. Then, the contribution of the ECtHR is examined in the establishment of complementary yet important criteria for assessing the compatibility of the conditions of detention with the rights protected by the European Convention for the Protection of Human Rights and Fundamental Freedoms. It is referred that the adoption of minimum standards at EU level in this area seems to be at hand, for this reason the analysis provides a synthesis of the discussions held and the initiatives taken in this regard. Finally, a place is reserved for the standards for establishing effective monitoring mechanisms over places of detention. With no ambition to exhaustively analyse the examined standards produced by the above mentioned European actors or bodies, the study offers a view of the key role played by these actors in ensuring that conditions of detention meet minimum standards and revealing certain deficiencies which should be dealt with.

Chapter 4 ('The importance of considering alternatives to detention', pp. 81-101) discusses the use of alternatives to detention and intends to examine the potential levers put forward to reduce the use of custodial sentence 'for the sake of completeness' of the study. Although this approach is not so praising for alternative measures and sanctions, these are perceived as a key component of a prison policy, although not directly related to detention conditions, filtering incarceration flows and reducing the prison population, thus improving mutual trust between Member States. At

this point, the study highlights the wide variety of legal cultures and practices as regards pre- and post-trial alternative-to-detention schemes at the EU, identifying good practices and possible obstacles affecting their use. Directing the research to a cross-border context, as in Chapter 2, a general lack of awareness of several mutual recognition instruments is identified, which could be used as alternatives to the EAW and reduce deprivation of liberty. These instruments are the Framework Decision 2009/829/JHA on the European Supervision Order, the Framework Decision 2008/947/JHA (on probation measures and alternative sanctions) and the Directive 2014/41/EU (on the European Investigation Order). These instruments, although important for judges, prosecutors and defence lawyers, are neglected as scholars recognise. The general observations made in the study are that alternative measures do not suffice to tackle poor detention conditions and that they should be accompanied by coherent penal policies, taking into consideration all relevant criminal law measures that impact the use of imprisonment.

Chapter 5 ('Policy recommendations', pp. 101-106) provides a general conclusion with a summary of the main findings of the study[8] and respective policy recommendations. The research identifies a wide range of issues at EU level and particularly acute problems affecting many EU countries. Accordingly, it is recommended to:

a. Better protect the fundamental rights of detainees and develop long-term reforms to address the root causes of poor prison conditions, through a comprehensive/holistic approach including all criminal justice measures which have a decisive influence on the use of detention and involving all relevant actors. In this context the barriers which make it more difficult for prisoners to exercise their rights and the detention regimes applicable to certain categories of detainees labelled as the most dangerous (i.e. the 'radicalised') should be taken into account.
b. Consider the added value of adopting EU minimum standards of detention conditions through a legislative instrument, complementary with existing standards adopted at CoE level, to avoid the risk of double standards. It is believed that such legislative action at EU level is desirable and justified to achieve building the high level of trust between judicial authorities required by the principle of mutual recognition. Moreover, it is suggested that the adoption of binding minimum standards at EU level 'could also help to strengthen the protection of detainees' rights on crucial issues that are insufficiently covered by the CoE standards'.
c. Develop common indicators to measure prison overcrowding and improve data accessibility on alternatives to custodial sentences, to allow for accurate and reliable cross-national comparisons. The lack of common measurement indicators is highlighted in particular regarding prison overcrowding. The adoption of guidelines

8. Available also at the Executive Summary, at https://www.europarl.europa.eu/RegData/etudes/STUD/2023/741374/IPOL_STU(2023)741374(SUM01)_EN.pdf.

to help national authorities produce a more uniform method for the calculation of prison capacity is proposed, taking due account of the standards of the CPT and the ECtHR ('totality of conditions' test). The same shortcoming is observed and the same solution is proposed as regards the use and implementation of non-custodial measures and the different methods of collecting relevant data.

d. Ensure that the practical tools already available to national authorities to help them interpret and apply the case-law of the CJEU (e.g. the Commission's handbook on EAW, Eurojust report on EAW case-law, FRA criminal detention database, etc.) in compliance with the case-law of the CJEU are sufficient and regularly updated. Accordingly, it is stated that there is no need to concentrate efforts on the development of new relevant resources; instead, it is important to make easily accessible to practitioners the existing ones and help them address practical challenges which impede mutual recognition of EAWs.
e. Continue efforts to develop training and other awareness-raising activities, and improve knowledge about the relationship between the various mutual recognition instruments, with a view to foster mutual trust in cross-border proceedings and to sensitise authorities of Member States other jurisdictions' systems and practices. It is documented that in the decision to issue a request for a sentenced person's transfer, considerations relating to the detention conditions to which this person will be subjected are not usually taken into account, while the question of whether the same should be a criterion in assessing the prospects of the sentenced person's social rehabilitation, the core objective of the Framework Decision 2008/909 'On the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union', is not answered consistently in different States. Additionally, this policy recommendation is deemed necessary due to the identified lack of awareness of several mutual recognition instruments that could be used as alternatives to the EAW, the Framework Decision 2009/829/JHA (on the European Supervision Order), the Framework Decision 2008/947/JHA (on probation measures and alternative sanctions) and the Directive on the European investigation order (EIO), thus preventing un unnecessary custodial measure.
f. Improve the financial support provided by the EU to help Member States tackle the issue of poor material detention conditions, having in mind that financial resources allocated to national prison services vary significantly and in some cases funding has been negatively affected by the recent economic crisis. While the financial support mobilised by the EU to improve detention conditions is too limited, EU-funded projects contributing directly or indirectly to this aim are not easily identified and a consolidated document containing relevant information is needed.

The lack of effective implementation of international and European standards governing crucial aspects of detention conditions (e.g. cell-space, access to health care, sanitary conditions, prison monitoring, etc.) is one of the worth noting key findings of the study. Additionally, although is it accepted that detention issues are the responsibility of Member States, there is also wide consensus on the need for EU action to secure a higher degree of compliance with these standards.

4. The EU admits that detention conditions violate prisoners' rights. So what?

The two above presented documents of the EU, the December 2022 European Commission's Recommendation 'on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions' and the European Parliament study 'Prisons and detention conditions in the EU' published in February 2023, are an official EU and its Member States' admission that life conditions, or at least some of its aspects, fall short of the still incomplete standards set by the European technocratic penological community and its preventive, monitoring and control mechanisms, either consisting confirmed violations of prisoners' human rights or being assessed as real risks of such violations. The same documents validate the CoE approach of the prison as a last resort option and favour the respective reductionist policy limiting its use, acknowledging that deprivation of liberty should not be the regular measure or sanction for persons accused for or convicted of criminal acts. Furthermore, in both texts various diversities, inconsistencies and incompatibilities are identified, not allowing for comparisons between different Member States and harmonisation of national practices. All these, though, neither affect the European institutions' trust in prison per se, nor question its legitimacy and the reliability of its justifications. On the contrary, prisoners' rights based concerns stemming from conditions insulting their human dignity seem to sensitize European penological reflexes in relation to the blow it effectuates on mutual trust and mutual recognition instruments' in judicial cooperation in criminal matters. In this sense criminal justice cooperation needs become paramount and claim a central position in the agenda of the EU, leading to some contradictory purposes and orientations, simultaneously investing in less and more prisons; less in terms of their use and restrictive regimes, more in terms of resources and functions. In both sides of the coin, the lost balance of trust in the how's and why's of prison is not ready to be restored.