

Protection of asylum-seekers and refugees with specific needs

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Identification and access to procedures - challenges and good practices

The Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) pays particular attention to the identification and protection of victims of trafficking among asylum seekers, refugees and migrants, who frequently face barriers in accessing assistance, making them an easy prey for traffickers and exploiters in the countries where they seek asylum or in transit countries. GRETA has also paid attention to the interface between trafficking in human beings and asylum, and issued in June 2020, a Guidance Note on the entitlement of victims of trafficking, and persons at risk of being trafficked, to international protection.

Many trafficked people do not identify themselves as “victims” and are not aware of the legal meaning behind the term “trafficking in human beings”. Therefore, the onus of identification lies with the authorities, working in close collaboration with civil society organisations.

The Council of Europe Convention on Action against Trafficking in Human Beings contains a provision - Article 10 - which requires States parties to adopt measures to **identify victims**.

Identifying a trafficking victim may take time and effort and therefore Article 10 the Convention provides that identification shall be performed in collaboration between different authorities and relevant support organisations. When there are reasonable grounds to believe that a person has been a victim of trafficking, he/she must not be removed from the country until the identification process is completed, be granted a recovery and reflection period of at least 30 days, and receive the assistance envisaged under Article 12, paragraphs 1 and 2, of the Convention.

The Convention also provides that **no link should be made between co-operation with the authorities** in the investigation and/or criminal proceedings and identification as a victims and the provision of assistance.

GRETA’s monitoring of the implementation of the Convention has highlighted important gaps in the identification and protection of victims of trafficking among asylum seekers and irregular migrants. In many countries, identification seems to be **down to chance** rather than the outcome of a comprehensive and systematic identification effort.

Law enforcement efforts to combat irregular migration are too often disconnected from the legal obligation to identify victims of trafficking in human beings, with negative consequences for the protection of such victims **and the prosecution of traffickers**.

Failure to identify victims of human trafficking may lead to a violation of Article 4 of the European Convention on Human Rights, as illustrated by the case-law of the European Court of Human Rights.¹

Even though some countries still have no data collected/available on the number of victims of trafficking identified amongst asylum seekers, an increasing number of State Parties (24) report having identified trafficked persons amongst asylum seekers. For example, in **Italy**, following the adoption of the Guidelines for the identification of victims of trafficking amongst applicants for international protection and referral procedures, the number of victims of trafficking identified by the territorial commissions examining requests for international protection increased to 404 in 2019, 276 in 2020 and 244 in 2021.

Several countries (e.g. Finland, France, Germany) have set up focal points specialising in identifying possible victims of trafficking within the asylum system.

GRETA has recommended that the authorities ensure access of NGOs to asylum facilities and immigration detention centres, as well as provide funding to NGOs to enable them to carry out visits to such establishments.

In **Spain**, the formal identification of victims of THB continues to be exclusively the remit of law enforcement agencies and in practice depends on the presence of sufficient evidence for the initiation of criminal proceedings. There is no specific procedure for the identification of victims of trafficking among asylum seekers. On the positive side, a "Procedure for the referral of potential victims of trafficking in human beings seeking international protection" was introduced at Madrid-Barajas airport in 2019. According to it, when there is a suspicion that a person seeking international protection might be a victim of human trafficking, specialised NGOs are contacted and interview the potential victims and assess if there are indicators of trafficking or other vulnerabilities. A similar practice exists in Barcelona El Prat airport. However, this welcome procedure has apparently been rarely activated. **It is important to have a nation-wide procedure (protocol) for identification of victims of THB, on "reasonable grounds", i.e. a low threshold, involving specialised NGOs.**

Article 14 of the Convention allows Parties to make the issuing of a temporary residence permit conditional on the victims' co-operation in the investigation/prosecution and/or to grant it on account of the personal situation of the victim. The Convention also requires Parties to ensure that the granting of a residence permit is without prejudice to the **right to seek and enjoy asylum**. The human rights approach enshrined in the Convention requires Parties to take into account the risk of persecutions of victims of trafficking, as well as to ensure that all foreign nationals identified as victims of trafficking are informed about their right to request international protection and have access to fair and efficient asylum procedures.

¹ *Rantsev v. Cyprus and Russia*, application No. 25965/04, judgment of 7 January 2010; *L.E. v. Greece*, application No. 71545/12, judgment of 21 January 2016; *Chowdury and Others v. Greece*, application no. 21884/15, judgement of 30 March 2017; *V.C.L and A.N. v. United Kingdom*, judgement of 16 February 2021.

However, States do not always recognise that the identification of victims of THB and the asylum protection mechanisms can and should run in parallel. Not all States Parties to the Convention allow for asylum applications to be made while potential victims of trafficking are in an identification procedure, which amounts to a violation of their international protection obligations. In the context of victims of trafficking, asylum procedures are still largely approached as a 'fallback option'. This is particularly the case in situations where assistance to victims is dependent upon co-operation with law enforcement and ceases due to the closure of the case.

The determination that someone is not a victim of THB has negative implications for subsequent asylum procedures. Firstly, a formal determination of non-victimhood by one state agency may be binding on decision making of other state agencies and, secondly, refusal to identify a person as a victim of THB may have negative implications on the assessment of the credibility of the victim in the context of future asylum procedures.

In **Spain**, although the asylum application procedure and the procedure for the identification of victim of trafficking are compatible, the authorities would tend to only assess the asylum application, even if there is an additional claim from the applicant that he/she is a victim of trafficking. It is important to adopt a specific procedure (guidelines or protocol) on how to assess asylum applications of victims of THB, taking into account their specific needs and vulnerabilities, and refer them to specific assistance. These guidelines should also be applied in asylum border procedures

In Spain, since 2016, **woman victims** of trafficking for the purpose of **sexual** exploitation are granted refugee status when they are well-founded fear of persecution in case of return to the country of origin. This is a welcome development. However, men and boys may also be victims of trafficking for the purpose of sexual exploitation, including in conflict situations. It is also essential to recognise that the trafficking definition applies to other forms of exploitation that may also give rise to an asylum claim. The risk of being exposed to trafficking for labour exploitation may also found claims to asylum. A trafficked Vietnamese man in the UK was exploited in the production of cannabis and was granted asylum due to the fear of being re-trafficked upon return to Vietnam.

Risks to trafficked persons arise through the **misuse of expedited removal procedures (pushbacks)**. By their very nature, they allow only limited time to assess each individual case. There may not be enough time to identify the trafficked person. Even if identified as such, they may nevertheless be wrongfully removed because of a failure adequately to assess the risks to them of return. Pushbacks impede the detection of victims of THB amongst irregular migrants and asylum seekers and are contrary to the positive obligations to identify victims of trafficking and to refer them to assistance, and to conduct a pre-removal risk assessment to ensure compliance with the obligation of *non-refoulement*.

GRETA was informed that no victim of trafficking had been identified among the hundreds of thousands of migrants who have arrived in Spain by sea or through Ceuta and Melilla. There is no formal mechanisms in place for the systematic assessment of vulnerabilities upon arrival as well as for the provision of information about the risks of THB and the rights of victims of trafficking to migrants. There are not enough capacities and resources, including interpreters and cultural mediators, to effectively perform the early assessment of vulnerabilities.

To avoid the risks of re-victimisation and re-trafficking, it is essential to conduct individual risk assessments prior to forced removals from Spain, taking full account of the UNHCR guidelines on the application of the Convention relating to refugee status to victims of trafficking, and to GRETA's Guidance Note on the entitlement of victims of human trafficking, and persons at risk of being trafficked, to international protection.

The Convention provides for special measures and procedures for **children** in the context of victim identification, such as in case of age disputes and in respect of unaccompanied children, who should be appointed a legal guardian. Unaccompanied children who seek refuge in Europe are at a heightened risk of falling victim to trafficking and exploitation. In general, GRETA's monitoring of the Convention has revealed important gaps in the fulfilment of obligations under the Convention related to children. Significant numbers of unaccompanied children go missing within a short time after arrival. Such patterns of disappearance indicate that children may be at risk of trafficking and re-trafficking. In the context of quick disappearances, it is also not possible to establish whether the child is already in the process of being trafficked and what are his/her concrete individual protection needs.

The risks of the increased arrival of migrants and asylum seekers in Europe being exploited by criminal networks to target vulnerable people and subject them to trafficking and exploitation are high. States Parties to the CoE Anti-Trafficking Convention must put in place reception and screening mechanisms which enable the identification of victims of trafficking among asylum seekers and migrants, and to adequately train the competent authorities, including at immigration detention centres and reception centres for asylum seekers. It is essential for State Parties to uphold their commitment to protecting victims of trafficking, following a gender-sensitive and human-rights based approach, and ensure that migration policies and measures to combat migrant smuggling do not put at risk the lives and safety of trafficked people and do not prejudice the application of the protection and assistance measures provided by the Convention.