

The interface between human trafficking and asylum. The application of the EU Charter of Fundamental Rights to victims requesting asylum in Europe

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The identification of victims of trafficking in asylum procedures

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TRAFFICKING IN HUMAN BEINGS AND MIGRATION

According to the UN, trafficking in human beings occurs in every country in the world and, notwithstanding significant variations across countries and regions, trafficking for the purpose of sexual exploitation is the most commonly detected form of exploitation, followed by forced labour. Other forms of trafficking include forced marriage (more commonly detected in south-east Asia), trafficking of children for illegal adoption (recorded in Central and South America), trafficking for forced criminality (mainly reported in western and southern Europe), trafficking for organ removal (primarily detected in north Africa, central and south-eastern Europe, and eastern Europe), and trafficking for exploitation in begging or for the production of pornographic material (reported in various parts of the world).

In Europe, sexual exploitation is the most widespread form of trafficking, followed by forced labour. Women and girls comprise the majority of all victims of trafficking. At EU level, most victims of trafficking are detected in their countries of citizenship. However, trafficking can also have strong cross-border dimensions.

In the context of the ongoing migration crisis, it is more than likely that among the migrants and refugees seeking international protection after reaching EU shores by sea (a large number of whom come from conflict zones), many have been victims of trafficking already in their countries of origin. Furthermore, during their journeys to Europe, asylum-seekers and migrants are exposed to additional risks of exploitation.

While in theory this stage in a migrant or refugee's arrival in Europe provides the first opportunity to detect victims of trafficking and ensure an adequate follow-up procedure, the task of detecting victims of trafficking is fraught with many practical difficulties. Furthermore, the risks of trafficking do not disappear when migrants and refugees reach EU soil. While waiting in hotspots for their papers to be processed, they are still at risk of falling victim to exploitative individuals and/or networks. Most of the hotspots are not designed in a protection-

sensitive manner and all people staying in hotspot facilities, but especially women and children, can end up in dangerous situations.

EUROPEAN LEGISLATION

Many efforts have been made to step up the fight against trafficking, and since 2009 these efforts have been coordinated by an EU antitrafficking coordinator. In the specific context of hotspots, Member States have full responsibility for setting up and managing reception and registration infrastructure. When it comes to the detection of victims of trafficking, they nonetheless have to comply with a number of EU requirements, as set out in the Anti-Trafficking Directive, the Reception Conditions Directive and the Qualification Directive. In practice, a considerable number of actors are involved in the procedures for identifying vulnerabilities. These include national authorities, non-governmental organisations (NGOs), EU agencies and international organisations. As the hotspot is usually the first place where migrants have a chance to have their vulnerability recognised, the roles of the actors involved in the process of vulnerability screening is key. The identification and referral of vulnerable people is thus a shared responsibility of all actors operating in the hotspots.

The main instrument at EU level for tackling trafficking in human beings is Directive 2011/36/EU⁵ (hereafter referred to as the Anti-trafficking Directive), adopted in 2011. The directive was intended to extend the scope of Framework Decision 2002/629/JHA⁶ and of the two key international legal instruments in this field: the 2000 United Nations (UN) Palermo Protocol and the 2005 Council of Europe Convention. Indeed, the international and European framework before the entry into force of the 2011 directive allowed for reservations in crucial areas such as extraterritorial jurisdiction. It was also insufficient when it came to ensuring that criminals were brought to justice and that victims received adequate assistance, protection and compensation. The Anti-trafficking Directive established minimum standards (notably in the definition of criminal offences and sanctions) and introduced common provisions to strengthen the prevention of the crime and the protection of victims. It also reinforced the role and mandate of the EU Anti-trafficking Coordinator (EU ATC, established as part of the Stockholm programme). The EU ATC is responsible for improving coordination and coherence among EU institutions, EU agencies, Member States and international actors, and for developing existing and new EU policies to address trafficking in human beings.

THE BULGARIAN EXAMPLE

Bulgaria is mainly a country of origin of human trafficking (THB) and to a lesser degree a transit country. The main countries of destination for Bulgarian victims of trafficking are Western European Member States of the European Union, Greece, the Czech Republic, Switzerland and Norway.

In a European Union context, Bulgaria continues to be a major country of origin of victims of trafficking. According to the Europol Situation Report on trafficking in Human Beings in the EU of February 2016, human trafficking for the purpose of sexual exploitation continues to be the most reported form of THB in the EU, where most reported victims are female nationals from Central and Eastern Europe, including Bulgaria.

High-risk groups in Bulgaria vis-à-vis potential involvement in trafficking are women involved in the sex industry, residents of rural and less developed regions, unemployed people, those illiterate or with lower levels of education, the Roma minority, and disadvantaged people (physically and mentally). Since the beginning of the refugee and migrant crisis in the early 2010s, a high-risk group have also been unaccompanied minors and asylum seekers and migrants among third-country nationals passing through the territory of Bulgaria. Some noticeable trends regarding vulnerable groups include a rising risk for young and educated people in big cities due to the increased use of internet and social networks by traffickers, for

pregnant women in certain regions, for women potential victims of trafficking for sham marriages with non-EU nationals and for men and boys to be trafficked for sexual exploitation. High-risk sectors for THB for labour exploitation abroad are agriculture, construction, the hospitality industry, pair services and care for the elderly. Often potential victims of sexual exploitation are recruited to work for nominal modelling agencies. For domestic trafficking, a high risk area is the hospitality business in seaside resorts. There is an increased number of foreign nationals employed at Black Sea resort hotels in the summer, suggesting a potential risk for Bulgaria to become a destination country in this particular sphere.

In 2017, Bulgaria almost doubled the capacity of specialised state-owned services for victims of human trafficking. At present, there is a total of eight specialised services: five residential services (three shelters for temporary accommodation; one shelter for long-term reintegration; and one crisis centre for children) in Sofia, Varna and Burgas, as well as three counselling services in each of these cities. Currently the state finances and manages through the institutions, municipalities and through strategic partnership with NGOs the largest number of services for victims of trafficking. The total capacity of the specialised services launched with funding NCCTHB and under its methodological guidance is 34 persons. Also in 2017, a tenth local structure – a Local Commission for Combating THB in Pleven, Northern Bulgaria, opened. Thus the unique network of local, decentralised anti-trafficking bodies in the country increased by one.

RELEVANT BULGARIAN LEGISLATION

Bulgaria is party to all major international agreements in the sphere of human trafficking. It was one of the first countries to ratify the United Nations' Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (the Palermo Protocol) and the Council of Europe Convention on Action against Trafficking in Human Beings. As part of its EU accession process in the 2000s, Bulgaria reformed and upgraded thoroughly its legislation in order to fulfil the EU political criteria in the sphere of human trafficking and is now regularly reporting on progress along the transposed Directive 2011/36/EU. Bulgaria is party to all major human rights- and crime-related international and EU documents linked to human trafficking. The national anti-trafficking and victim protection policy is regulated in the Combatting Trafficking in Human Beings Act, adopted in 2003 and last amended and supplemented in 2015. Another key strategic document is the National Anti-Trafficking Strategy 2017 – 2021, adopted in 2017, which is implemented through annual National Anti-Trafficking and Victim Protection Programmes.

Trafficking in human beings is further regulated in the Criminal Code: Articles 16a, 159a, 159b, 159c and 227.

On the basis of Article 4 of the Anti-Trafficking Act, the National Commission for Combatting Trafficking in Human Beings (NCCTHB; National Anti-Trafficking Commission) was established in 2004, and gradually Local Commissions for Combatting Trafficking in Human Beings (LCCTHB) were set up with ten municipalities in the country. Under the methodological guidance of the National Anti-Trafficking Commission, LCCTHB operate in the cities of Blagoevgrad, Burgas, Montana, Pazardzhik, Pleven, Plovdiv, Ruse, Varna, Sliven and Veliko Tarnovo. The National Anti-Trafficking Commission acts under the Council of Ministers as national coordinator ensuring the interaction of the individual authorities, institutions and organisations, including NGOs, for the implementation of the Anti-Trafficking Act.

The responsibilities of the NCCTHB include organising and conducting information and education campaigns for risk groups as regards trafficking in human beings; managing and supervising the work of the local anti-trafficking commissions, shelters and support and

protection centres for victims of trafficking; and taking part in international cooperation for preventing and counteracting trafficking in human beings.

On national level, in its capacity as a national rapporteur or equivalent mechanism, the NCCTHB initiates regular studies on topics related to the different aspects of human trafficking and periodically submitted information to the competent authorities and relevant stakeholders. In addition, the NCCTHB collects information about the offence of human trafficking submitted by public authorities such as the Supreme Prosecutor's Office of Cassation, Ministry of Interior, Ministry of Foreign Affairs, State Agency for Child Protection, Social Assistance Agency etc., as well as information provided by NGOs, foreign missions to Bulgaria, international organisations and natural persons (victims of trafficking or their relatives). On the basis of these data, reports similar to the European ones are compiled and presented to the international and European anti-trafficking institutions and organisations as well as to the Bulgarian institutions, organisations and stakeholders. The reports and available information are accessible to the general public through the NCCTHB website (<http://antitraffic.government.bg/en/>).

The National Anti-Trafficking Commission has taken specific action for the amendment of the Anti-Trafficking Act. The amendments aim to harmonise the Bulgarian legislation with the international regulation of the reflection and recovery period for victims and potential victims of trafficking by introducing a definition of the reflection and recovery period and regulating its functions and duration, in line with Bulgaria's international commitments.

IDENTIFICATION OF THE VICTIMS, PROTECTION AND ACCESS TO RIGHTS

The Council of Ministers adopted, by a decision of 20 June 2016, the National Referral Mechanism for Support of Trafficked Persons (NRM), a document regulating the steps and procedures to be followed with a view to rendering immediate and adequate assistance and support to victims of human trafficking. The document is binding and is an updated version of the NRM developed as guidelines in 2010. In addition, the National Referral Mechanism outlines an algorithm of timely and comprehensive interagency communication and coordination. The National Anti-Trafficking Commission is the coordinating body under the NRM.

At the end of 2017, after two new services were launched with the NCCTHB in July, there is a total of eight specialised services for victims of human trafficking: five residential services (three shelters for temporary accommodation; one shelter for subsequent reintegration; and one crisis centre for children) in Sofia, Varna and Burgas, as well as three counselling services in Varna, Burgas and Sofia. Currently the State finances and manages through the institutions, municipalities and through strategic partnership with civil society organisations (CSOs) the largest number of services for victims of trafficking. The total capacity of the specialized services launched with funding of the NCCTHB and under its methodological guidance is 34 persons. In the period 2014 – 2016 a total of 58 persons were accommodated and provided assistance and support. In the first nine months of 2017 the number of people accommodated and assisted was 22. The crisis centre for child victims of trafficking in Sofia is the first profiled service in Bulgaria addressing the needs of this particular target group. The shelter for subsequent re-integration of victims of trafficking is also the first one in the country that serves as an economic measure to support victims of trafficking in providing the possibility for long-term integration through empowerment.

In addition, as of 31 October 2017, 18 crisis centres for child victims of violence (incl. human trafficking) with a total capacity of 196 persons and eight crisis centres for adult victims of violence with a capacity of 66 operate as state-delegated activity, sometimes managed by NGOs. Where necessary children accommodated in a crisis centre may benefit from accompanying social services for community support according to their individual needs. The

Centres for Community Support are the most developed counselling social service in the country. They perform a set of activities, including prevention, and specialists work to support children accommodated in crisis centres. The trend persists of most users of the social services for victims of trafficking being female. Male victims who are willing to be accommodated, are referred to appropriate services that take account of their needs, including services provided by the Ministry of Labour and Social Policy (MLSP) and/or hospices, since most of those who seek accommodation are in complicated health condition, including dependencies.

A whole range of actors, both specialised and non-specialised in trafficking in Human Beings, can be involved in first level identification. Front-line officers who may be in contact with possible victims must be able to recognise signs of trafficking, to go beyond the first obvious signs and be able to link them to indicators of trafficking. During their interaction with possible victims, even if this is limited to a short period of time, they should be able to relate to the possible victim following strong ethical rules, to offer access to urgent needs, to answer to the questions of the possible victim about what will happen next and eventually, if agreed by the person, to refer him / her to the competent authorities in charge of formal identification. First level identification covers all these elements. This process leads to an assessment of the possibility that the person may be a victim of trafficking, and continues with the referral of that possible victim to the relevant authorities in charge of formally identifying as a victim of trafficking, and, if this is the case, in charge of providing various forms of support to the person. The whole set of actions related to formal identification and protection of the possible victims is coordinated at national level by a body called Referral Mechanism. Formal identification of victims of trafficking, generally takes place as part of proceedings or process, and in most jurisdictions, only authorised authorities can officially designate a person as "Victim of trafficking". Formal identification is performed by specialised officers, who are specifically trained in identifying trafficking and appointed within their organisations with specific tasks. First level identification of possible victims of trafficking by a wide range of front line officers is critical as, contrary to many other crimes, self-reporting is quite rare. Self-reporting of victims is the norm for many other crimes, where victims call for help and assistance soon after the crime is committed and the offender is far enough for the victim not to be afraid of direct and immediate reprisals. But in the case of trafficking, self-identification is not possible (as explained before, only authorised authorities can declare that a person is a victim of trafficking) and self-reporting is still rare.

There are several reasons for this low level of self-reporting :

- Victims may not see themselves as such – even if they feel exploited, they may believe that they were simply unlucky in falling into the hands of bad recruiters or employers.
- Victims may not be aware that there are laws to protect them and that they can call for help, support and assistance.
- Foreign victims may not speak any local language and thus feel unable to communicate with relevant authorities.
- Victims may not trust or may even fear law enforcement and not know whom to call for help.
- Victims may fear the direct negative consequences impacting their situation, such as losing money or being deported.
- Finally, victims may fear reprisal from traffickers against them or their family, in the place of work or in their place of origin.

Why is it important to detect and identify victims of trafficking? First level identification is only a first step of a long and comprehensive framework set up to offer short and long-term

protection of victims. Front-line officers are not responsible for the following steps of the process described in this paragraph, but it is important for all actors to have a comprehensive view of the existing mechanisms set up to protect the victims.

Protection and referral to competent authorities

Victims of trafficking should be detected as such as soon as possible in order to be rescued from their situation of exploitation and given protection. Once detected, possible victims should be referred to specialised bodies, such as National Referral Mechanisms, or any competent authority, in charge of formally identifying the person as victim of trafficking and coordinating all actions and services dedicated to victims. Identification is crucial as, once identified as a presumed victim of trafficking, the person is granted specific rights to protection under both international and domestic laws. Benefits for presumed victims include being granted a recovery and reflection period during which they are provided with support and assistance and can decide whether or not to cooperate with the relevant authorities. Early identification of victims of trafficking is very important and includes also ensuring firstly that the presumed victim is informed about his / her rights and options in a language he / she understands and also that he / she is offered immediate support and protection relevant to his / her needs. This is done based on a gender-sensitive approach. It is essential to ensure that the possible victim is safe and feels as comfortable and secure as possible. This is why it is recommended that the presumed victim and the officer in charge of identification can understand each other, either directly or through an interpreter. Interpreters dealing with adults and children should be specifically trained and sensitised to the issue of trafficking. In addition, the organisation in charge of identification may offer the assistance of cultural mediators to enhance mutual understanding and respond to the fears and anxieties of the person who may be a victim of trafficking. Gender dimensions and ethnic specificities should be taken into account in the profile of the officer who will be in charge of interviewing the presumed victim. In all cases, this phase cannot take place without the informed consent of the presumed victim nor if there is any doubt regarding his / her safety and security. The officer, along with the mediator if necessary, must explain to the presumed victim what is going to happen, how long it will take, where, by whom and above all, why. In addition, the officer should not begin talking with the person before offering him / her water, food, clothing, emergency medical care or any other urgent support. According to Recommendations on Identification and Referral to Services of Victims of Trafficking in Human Beings from the European Commission, during all of these procedures, from the moment the competent authorities have an indication that the person has been subject to the crime of trafficking, the presumed victims should be considered and treated as a victim. A recovery and reflection period at a minimum of 30 days according to the CoE Convention should be granted by the competent authorities to presumed victims during which they are protected from immediate deportation, they can start their recovery process, and they are protected from possible reprisal from traffickers and can escape their influence, so that they can take an informed decision on whether or not to cooperate with the competent authorities and whether or not to participate in available social assistance programmes. In cases of unaccompanied minors and children who are possible victims of trafficking, they automatically have the right to protection as minors. Once recognised as a victim of trafficking, the person has a right to legal redress. According to the Articles 12 and 15 of the CoE Convention, presumed victims should receive information about the relevant judicial and administrative proceedings in a language they understand right as from their first contact with the competent authorities. Access to legal redress, including compensation, and the prosecution of traffickers often depend upon the information and evidence that is collected

during the first level identification of victims. This is why the detection of the signs of trafficking should be accompanied by the collection of relevant evidence whenever it is possible.

Legal provisions and recommendations on the type and content of specialised and comprehensive assistance to be offered to presumed victims have been detailed in the official documents from the directive 2011/36/EU of the European Parliament and of the Council, OSCE and the EC Experts Group on trafficking (recommendations 99-103). They include provisions for medical, psychological, social, financial, legal assistance and information concerning their rights in administrative and judicial proceedings, education and information on employment opportunities. In cases where the victim does not reside legally in the Member State concerned, assistance and support should be provided unconditionally at least during the recovery and reflection period. All these measures aim at protecting the presumed victims and responding to their immediate and basic needs, as well as preparing them for their reintegration into society according to their needs and wishes. Possible victims of trafficking should not be treated as perpetrators.

Victims should be identified using a gender-sensitive approach in all stages, as the patterns of trafficking are often gender-based. Abusive recruiters do not approach men and women in the same way, false promises are not similar and means of coercion may differ. Quantitative studies have also consistently shown that men and women are not exploited in the same sectors. The detection process should take into account these differences in order to be more effective and efficient. Once identified as possible victims as part of the first level identification process, men and women should be provided with assistance and care that takes into account their particular needs. In particular, female victims of sexual exploitation may prefer to share their experience with women, while men may prefer to discuss with other men, but, in order to avoid creating more stress for the victim, the choice of the gender of the officer should be left to him / her. The specific needs of women should be taken into consideration when offering protection and support measures, in particular in relation to health and shelter services.

Identification of one possible victim may lead to other victims being identified and freed. This can be a direct consequence of the identification of the first victim if he / she is able to provide information about persons in the same situation that he / she has just escaped. But identification can also help to promote more targeted, long-term prevention programmes, which could be specifically designed, for example, to tackle the recruitment mechanisms used to deceive or coerce the identified victim. Knowledge about the cycle of trafficking is enriched by each case, for the benefit of all.

GOOD PRACTICES

Helpline in Bulgaria

National Commission for Combating Trafficking in Human Beings
(<http://antitraffic.government.bg/>) Telephone: +359 2 807 80 50

National hotline for combating trafficking in human beings: <https://080020100.bg/> Hotline: 0800 20 100

<https://antitraffic.government.bg/en/about>

Good practices:

1. The Council of Refugee Women in Bulgaria helps all refugees and asylum seekers in the process of their integration in Bulgarian society. We support the right of choice each person has in securing a better future for themselves and their family, regardless of gender, race, nationality, religious or ethnic origin.

The Council of Refugee Women in Bulgaria works actively toward building tolerance, ethnic acceptance, understanding and support from local society to the problems of refugees.

The Council of Refugee Women believes the existence of Peace is a natural requirement and prerequisite for positive development and prosperity of each human being.

www.crw-bg.org/en/who-we-are/

2. The 'St Anna' centre for integration of refugees and migrants managed by Caritas Sofia organizes an annual big job fair for migrants and refugees. In 2018, eight employers and ninety job seekers took part in the event and the feedback from both sides was positive. So much so, that the first contracts were signed at the beginning of June 2018. The need for organizing such events comes from the lack of information among employers about the potential and opportunities for hiring migrants and refugees and from the difficulties that the latter experience regarding the labour market integration in their new country. Some of the participants at the job fair went through an initial financial training where they learned about the benefits of working with an employment contract, what the average salaries in the different sectors of the economy are and how to conduct oneself at a job interview. Caritas Sofia continues its mission to support asylum seekers and beneficiaries of international protection in their integration in Bulgaria, and finding a job is one of the most important aspects of this process.

www.caritas-sofia.org/en/news/job-fair-omi

3. The document below includes good practices from Bulgaria and globally on efforts to integrate refugees and migrants. It traces a wide variety of practices – from socio-economic and educational to health and cultural initiatives. The report presents a good overview aimed at creating effective mechanisms to work with refugee status in the Republic of Bulgaria.

www.bcrm-bg.org/docs/Dobri-praktiki-za-integracia-na-bejanci.pdf

4. The Bulgarian Council for Refugees and Migrants has developed www.refugee-integration.bg under the project "Advocacy for the Integration of Refugees in Bulgaria, financed by the UNHCR Representation in Bulgaria.

The platform offers access to user-friendly information resources facilitating the work of municipal staff and other stakeholders involved in the process of refugee integration. The website is developed with the support of Bulgarian governmental institutions and non-

governmental organizations working on the issues of the integration of refugee or humanitarian status holders. The platform contains comprehensive information on the integration, rights, and obligations of beneficiaries of international protection in Bulgaria, compiled on the basis of the legal regulatory framework and practice. The site is intended for the employees of the municipalities, state institutions and organizations in Bulgaria who, with their work and commitment, protect and support the integration of refugees in Bulgarian society.

www.refugee-integration.bg