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

Training

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The international protection of victims of human trafficking. The Charter of Fundamental Rights of the EU and the CoE Anti-trafficking Convention and the Refugee Convention

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According with the United Nations Office on Drugs and Crime (UNODC) Global Report on Trafficking in Persons, globally more than 6 in 10 of all victims had been trafficked across at least one international border. From the Eurostat data results that annually about 60% of the registered victims in the European Union come from the Member States. Unfortunately it doesn't exist yet a proper centralization at European level of victims of trafficking that were identified in reception systems or during asylum procedures. The GRETA¹ country reports underline that there were still problems in the identification process of victims in the countries reception systems and asylum procedures. The interaction between the trafficking domain and the refugee protection domain could benefit from improvements in the collection of such data.

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.

At EU level, trafficking in human beings is recognized as a violation of fundamental rights and is explicitly prohibited by the EU Charter of Fundamental Rights. Many efforts have been made to step up the fight against trafficking, and since 2009 these efforts have been coordinated by an EU anti-trafficking 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

¹ the Group of Experts on Action against Trafficking in Human Beings, which is responsible for monitoring the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the States Parties

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

Persons who have been trafficked across an international border, in transit or at destination, may be in need of international protection as refugees on the basis of this experience. Ensuring protection against their *refoulement* and access to procedures that can determine their refugee status is therefore critical. While not all victims of trafficking are refugees, depending on the circumstances, some victims of trafficking qualify for refugee status. UNHCR Guidelines on International Protection²

A major source of guidance for UNHCR, other UN agencies, governments and civil society to address mixed migratory movements is UNHCR's 10-Point Plan of Action on Refugee Protection and Mixed Movements, first published in 2007³ (chapter 1 cooperation among key partners; chapter 2 data collection and analysis; chapter 3 protection-sensitive entry systems; chapter 4 reception arrangements; chapter 5 mechanisms for screening and referral; chapter 6 differentiated processes and procedures; chapter 7 solutions for refugees; chapter 8 addressing onwards movements; chapter 9 return arrangements for non-refugees and alternative migration options; chapter 10 information strategy).

1. Asylum claims according to the Geneva Convention of 1951 for refugee status

It is a fact that there are certain links between cross-border trafficking and the mixed migration and refugee flows. A person may already be a victim of human trafficking in the country of origin and become an asylum seeker on these grounds, but it is also true that many factors can increase a person's vulnerability to human trafficking during the asylum seeking process.

Refugees' vulnerability to human trafficking is a fact that was also underlined in the GRETA Reports, especially starting with the year 2015. GRETA expressed deep concern that victims of human trafficking are often denied international protection in Europe. 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. GRETA recalls that the human rights approach enshrined in the Council of Europe's Anti-Trafficking Convention requires States Parties to take into account the risk of persecutions of victims of human 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 procedure.

- While most of the refugees and migrants are being transported by smugglers who do not seek their exploitation, many of them are at high risk of becoming victims to human trafficking in the process. These people 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. Unaccompanied and separated children are particularly vulnerable to being caught up in the web of traffickers and are less likely to be identified as victims of human trafficking in screening procedures for asylum. Further, the increasing proportion of women and girls among asylum seekers heightens the risk of trafficking for the purpose of sexual exploitation⁴

² Available at <https://www.refworld.org/docid/443679fa4.html>

³ Available at <https://www.unhcr.org/the-10-point-plan-in-action.html>

⁴ UNHCR, "Report warns refugee women on the move in Europe are at risk of sexual and gender-based violence", http://data.unhcr.org/mediterranean/flash_read.php?ID=84

- There is a “structural vulnerability” of migrants and refugees and thus a vulnerability to the trafficking process. Away from their country of origin they encounter difficulties because of problems with language, custom and culture. A newly arrived refugee will also lack a network of social support and it is easy to enter a circle of exploitation from which it is very difficult to extricate themselves.
- Victims of human trafficking could under certain circumstances therefore constitute a “particular social group” under the 1951 Convention.

For a valid claim for refugee status, several circumstances and elements must be taken into account in order for the victim of human trafficking to be granted an international form of protection. A claim for international protection presented by a victim or potential victim of trafficking can arise in a number of distinct sets of circumstances:

- The victim was trafficked in her/his country of origin / habitual residence country, may have escaped her/his traffickers and may seek the protection of the State where she/he now is.
- The victim may have been trafficked abroad, may have escaped her/his traffickers and may seek the protection of the State where she/he now is.
- The individual concerned may not have been trafficked but may fear becoming a victim of trafficking and may have fled abroad in search of international protection.

In all these instances, the individual concerned must be found to have a “well-founded fear of persecution” linked to one or more of the Convention grounds in order to be recognized as a refugee.

Trafficked persons may therefore qualify for international protection under the Refugee Convention but they are required to satisfy a number of criteria according to article 1A (2) of the 1951 Convention, which are the following:

- **Be outside the country of origin or former habitual residence.** The 1951 Convention requires that the refugee demonstrates a well-founded fear of persecution with regard to her or his country of nationality or habitual residence. The circumstances in the applicant’s country of origin or habitual residence are the main point of reference against which to determine the existence of a well-founded fear of persecution. But in cases of transnational human trafficking, the victim might have fear of harm in a number of locations (transit country, the country in which the asylum application is submitted and the country of origin). In such circumstances, the existence of a well-founded fear of persecution is to be evaluated in relation to the country of origin of the applicant⁵. It is possible that the applicant didn’t have a fear of persecution at the time he/she left her/his country, but this fear is present at the time her/his application for asylum or her/his appeal is examined.
- **Well-founded fear of persecution.** There is no universally defined or accepted definition of the concept of well-founded fear of being persecuted. According to the UNHCR Handbook it may be inferred *that a threat to life or freedom on account of race, religion, nationality, political opinion or membership of a particular social group is always persecution*. It is further outlined that other serious violations of human rights – for the same reasons – would also constitute persecution: Sexual exploitation as a form of gender-based violence might constitute persecution.
- Persecution can be considered to involve serious human rights violations, including a threat to life or freedom, as well as other kinds of serious harm or intolerable predicament, as assessed in the light of the opinions, feelings and psychological make-up of the asylum applicant. Serious violations of human

⁵ UNHCR, GUIDELINES ON INTERNATIONAL PROTECTION: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked, 07-04-2006 <http://www.refworld.org/pdfid/4ad317bc2.pdf>

rights can be considered as persecution, for example forms of severe exploitation as abduction, incarceration, rape, sexual enslavement, enforced prostitution, forced labour, removal of organs, physical beatings, starvation, the deprivation of medical treatment. As far as the agents of persecution are concerned, it must be noted that there can be State and non-State agents of persecution (“knowingly tolerated by the authorities or if the authorities refuse, or prove unable to offer effective protection”)

- **The victim must be “unwilling or unable, owing to the fear of persecution, to avail himself or herself of the protection of that country of nationality or former habitual residence”.**

2. The principle of non-refoulement

The principle originates from the *1951 Refugee Convention* where it was first implemented in *Article 33* and is today codified in a number of international and regional treaties of both migratory and human rights character⁶. *Article 40 paragraph 4 of the Council of Europe Anti-Trafficking Convention* also affirms this principle, “(...) Nothing in this Convention shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein”. The obligation of European Union Member States to consider the international protection needs of victims of trafficking is strengthened by paragraph 377 of the Explanatory Report accompanying the Council of Europe Convention against Trafficking, to which all Member States are party. The principle *prohibits states from transferring any person from the state territory when there are substantial grounds to believe that the person would risk being subject to violations of certain fundamental rights*; primarily referring to severe ill-treatment, arbitrary deprivation of life or persecution on account of race, religion, nationality, membership of a particular social group or political opinion.

3. The European Union legal framework against trafficking

In many respects, the law on human trafficking and refugee law converge in terms of enhancing the protection standards. Victims of human trafficking can qualify for refugee status and other forms of protection against refoulement, which complements the possibilities offered under the human trafficking regime for averting deportation. Victims of human trafficking who have applied for international protection might be eligible for special reception and procedural guarantees due to their particular vulnerabilities. In the context of determining their international protection needs, victims of human trafficking might be shielded from the application of such restrictive rules as the ‘safe third country’ rule. They might be also shielded from punishment not only on account of their illegal entry or presence, a guarantee provided by refugee law, but also in relation to crimes correlated with their trafficking. Finally, special consideration is due to asylum-seeking children who are victims of human trafficking. Both refugee law and the law on human trafficking acknowledge their special situation and contain norms to this effect.

The EU States have committed to establishing a Common European Asylum System. EU Member States have a shared responsibility to welcome asylum seekers in a dignified manner, ensuring they are treated

⁶ Convention relating to the Status of Refugees (art.33), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 3) available at <https://www.unhcr.org/protection/migration/49e479d10/convention-against-torture-other-cruel-inhuman-degrading-treatment-punishment.html>

fairly and that their case is examined to uniform standards so that, no matter where an applicant applies, the outcome will be similar.

- a) The revised Asylum Procedures Directive⁷ aims at fairer, quicker and better quality asylum decisions. Asylum seekers with special needs will receive the necessary support to explain their claim and in particular there will be greater protection of unaccompanied minors and victims of torture.
- b) The revised Reception Conditions Directive⁸ ensures that there are humane material reception conditions (such as housing) for asylum seekers across the EU and that the fundamental rights of the concerned persons are fully respected. It also ensures that detention is only applied as a measure of last resort.
- c) The revised Qualification Directive⁹ clarifies the grounds for granting international protection and therefore will make asylum decisions more robust. It will also improve the access to rights and integration measures for beneficiaries of international protection.
- d) The revised Dublin Regulation enhances the protection of asylum seekers during the process of establishing the State responsible for examining the application, and clarifies the rules governing the relations between states. It creates a system to detect early problems in national asylum or reception systems, and address their root causes before they develop into fully fledged crises.
- e) The revised EURODAC Regulation¹⁰ will allow law enforcement access to the EU database of the fingerprints of asylum seekers under strictly limited circumstances in order to prevent, detect or investigate the most serious crimes, such as murder, and terrorism.

- **Article 83 of the Treaty on the Functioning of the EU:**

The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis. These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.

- **Charter of Fundamental Rights of the European Union**

Trafficking in human beings is specifically prohibited by Article 5 (Prohibition of slavery and forced labour) of the Charter of Fundamental Rights of the European Union where it is stated that 1. No one

⁷ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, available at <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32013L0032>

⁸ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0033>

⁹ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0095>

¹⁰ Available at <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32013R0603>

shall be held in slavery or servitude. 2. No one shall be required to perform forced or compulsory labour. 3. Trafficking in human beings is prohibited¹¹. Article 5 contains a positive right and is strongly interrelated with other articles of the Charter. Measures to protect victims of human trafficking may include the right to asylum (Article 18).

Article 18 is based on Article 78 Treaty on the functioning of the European Union¹² which provides that the EU's policy on asylum must be based on the 1951 Geneva Convention for Refugees and its Protocol.

Given the binding character of the Charter, asylum practitioners can use its standards to enhance the protection afforded to those who are seeking international protection. Improving the understanding as to how the standards of the Charter can be used in asylum proceedings is essential for the proper implementation of the EU asylum *acquis* and ultimately to ensure that the rights of those seeking international protection are respected.

- **European Convention on Human Rights**

In Article 4 "Prohibition of slavery and forced labour" it is stated that 1. No one shall be held in slavery or servitude. 2. No one shall be required to perform forced or compulsory labour.

- **Convention on Action against Trafficking in Human Beings**

When the Council of Europe implemented its Convention on Action against Trafficking in Human Beings on 16 May 2005 it recognized that human trafficking is a human rights violation and that any strategy or policy designed to combat this offence must not be discriminatory and shall ensure gender equality and the protection of children's rights. In order to restore their integrity and dignity, a number of measures to protect and promote the rights of victims have been introduced. Among these are the issuance of (temporary) residence permits, the prohibition of deportation of presumed victims and the assistance to victims in form of psychological and physical therapy.

- **Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims**

One of the core features of this Directive is that it expands the definition of human trafficking provided in the UN Convention to also include forced begging, particularly in cases involving children, as well as other forms of 'exploitation of criminal activities' such as pick-pocketing, shop-lifting and drug trafficking. Additionally, forced marriage, illegal adoptions and trafficking for the purpose of organ removal are now regarded as activities which violate human integrity and dignity and hence constitute human trafficking. The Directive acknowledges the diversity of human trafficking and suggests a gender specific approach to assisting and supporting victims of human trafficking, since men and women come into contact with perpetrators for different reasons and are trafficked for different purposes into an array of employment sectors.

¹¹ Available at http://www.europarl.europa.eu/charter/pdf/text_en.pdf

¹² Article 78 TFUE The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.

4. The Romanian national legal framework (foreigners' victims of human trafficking)

Emergency Ordinance (OUG) 194/2002 on the regime of foreigners in Romania, with subsequent amendments and completions

Article 130 The right of temporary residence for foreigners who were victims of crimes - is granted by the General Inspectorate for Immigration for victims of trafficking in human beings / victims of trafficking in minors (according with the legal provisions stipulated in the Criminal Code). The right of temporary residence is granted for a period of 6 months, without the obligation to obtain a visa and even if foreigners have entered Romania illegally, at the request of the prosecutor or the court, if the following conditions are met cumulatively:

- a) Foreigners show a clear intention to cooperate with the competent authorities in order to facilitate the identification and prosecution of participants in the commission of crimes.
- b) The granting of the right of residence is opportune for judicial investigations.
- c) The stay of foreigners in Romania does not present a danger for public order or national security.

The right of temporary residence is extended by the General Inspectorate for Immigration successively for new periods of 6 months, at the request of the prosecutor or the court.

Law 122/2006 on asylum in Romania, with subsequent amendments and completions

Article 5 (index 1) The application of the provisions of this law is made taking into account the special needs of vulnerable persons, in this category being included also the victims of human trafficking.

Law 678/2001 on preventing and combating human trafficking

Foreign citizens (requesting an international form of protection) can be accommodated in centers specially designed for asylum seekers and refugees, according to the provisions of Law 122/2004 Foreign citizens benefit from a recovery and reflection period of up to 90 days, in order to recover, to get out from under the influence of the perpetrators and to decide in an informed manner regarding the cooperation with the competent authorities.

Foreign citizens have the right to be informed in a language they understand, they have the right to benefit from counseling and assistance (legal, social, psychological) during their stay in Romania.

5. CASE-LAW

- **Siliadin v. France** (ECHR, application no. 73316/01. Judgement 2005)
- **Rantsev v. Cyprus and Russia** (ECHR, application no. 25965/04. Judgment 2010)
- **O.G.O. v. the United Kingdom** (ECHR no. 13950/12, Judgment 2014)¹³
- **L.E. v. Greece** (ECHR application no. 71545/12, Judgement 2016)¹⁴
- **G.J. v. Spain** (ECHR application no. 59172/12, Judgment 2016)
- **J and Others v. Austria** (ECHR application no. 58216/12, Judgment 2017)¹⁵

¹³ Available at [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-141830%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-141830%22]})

¹⁴ Available at [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-160218%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-160218%22]})

¹⁵ Available at <https://www.echr.coe.int/Pages/home.aspx?p=caselaw/HUDOC&c>

Siliadin v. France (ECHR, application no. 73316/01. Judgement 2005)

In the case of *Siliadin v. France*, trafficking in human beings was considered by the European Court of Human Rights for the first time. The applicant, a female Togolese national who lived in Paris, had served as an unpaid servant for several years as minor and her passport was confiscated. Relying on Article 4 of the European Convention (Prohibition of slavery and forced labour), the applicant submitted that French criminal law did not provide her sufficient and effective protection against the "servitude", or at the very least against the "forced and compulsory" labour which in practice had made her a domestic slave. In this case the Court considered that the applicant had, at the least, been subjected to forced labour and held in servitude within the meaning of Article 4 of the Convention.

Rantsev v. Cyprus and Russia (ECHR, application no. 25965/04. Judgment 2010)

The case concerned the death of Oxana Rantseva and was brought by her father. Oxana moved from Russia to Cyprus and started to work as a 'cabaret artiste', as one of thousands of women coming to Cyprus. It was widely known that these 'artistes' were in practice mostly working as prostitutes. Within a few weeks she left the place where she worked, but was traced by her employer who brought her to the police with the aim of having her detained and extradited. The police noted that she was not illegally staying in Cyprus, but had a work permit and made her go back with her employer. Later that night, she tried to escape from the apartment where her employer was keeping her and in doing so fell off a balcony and died. In spite of the mysterious circumstances of her death, the context of possible human trafficking was never looked into by the authorities.

The Court found, unanimously, that trafficking in human beings, although not explicitly mentioned in the ECHR, fell within the scope of Article 4 (prohibition of slavery, servitude and forced labour). The judgment not only represents a milestone in the combat against human trafficking, but more generally elucidates state obligations in the battle against transnational crime.

The Court considers that the spectrum of safeguards set out in national legislation must be adequate to ensure the practical and effective protection of the rights of victims or potential victims of human trafficking. Furthermore, a State's immigration rules must address relevant concerns relating to human trafficking. Cyprus had violated Article 4 in multiple respects, including the obligation to operate an effective administrative framework to prevent trafficking in general and the obligation to take protective measures in the case of Ms Rantseva in particular. Russia had violated Article 4 ECHR by failing to investigate the alleged human trafficking and its potential start in Russia itself, once the Russian authorities had become aware of Ms. Rantseva's case. The Court found that Cyprus had violated Ms. Rantseva's right to liberty. This was obvious concerning her detention at the police station, even if short, for which there was no legal basis. But the Court also found, that the forced stay of Ms. Rantseva at the apartment violated Article 5, since the authorities had failed to observe their positive obligation to protect her from arbitrary detention by a third party.

O.G.O. v. the United Kingdom (ECHR no. 13950/12, Judgment 2014)

The applicant claimed that at the age of seven she was forced to work as a domestic servant on a farm. When she was eleven she was given to a family in Lagos, who forced her to do domestic labour without pay. She was ill-treated and beaten on occasion. In 2004 the same family arranged for the applicant to travel to the United Kingdom with them. The family arranged the applicant's travel documents and promised her that she would be able to study in the United Kingdom. On arrival in the United Kingdom,

the applicant was forced to work full-time for the family in London as a domestic servant without pay. She was prohibited from leaving the home except in the course of her duties and did not attend school. The family kept her identity and travel documents. They regularly beat her and threatened that, if she left the home, she would be sent back to Nigeria. At an unknown date the applicant left the family's home. At some point in 2009 the applicant submitted an application for a residence permit. The application was refused by the United Kingdom Border Agency in January 2010. In April 2010 the applicant was detained as an illegal entrant. She lodged an asylum application on the same day. She claimed that she had been placed in a situation of domestic servitude at a very young age; had been trafficked to the United Kingdom; and had a fear of destitution and forced labour in Nigeria. In May 2010 the United Kingdom Border Agency refused her asylum application. It concluded that, even if the applicant had been trafficked, that would not engage the United Kingdom's obligations under the Refugee Convention. Furthermore, it considered that there would be a sufficiency of protection available to her in Nigeria and if necessary she could internally relocate for safety.

The applicant complained that:

- her proposed expulsion to Nigeria would expose her to treatment contrary to Article 3 of the Convention both because of the conditions that she would face as a victim of trafficking without any protection and because she would be at real risk of ill-treatment from her traffickers and their affiliates;
- the applicant had further complained that her expulsion would breach Article 4 of the Convention both because it would expose her to a real risk of re-trafficking in Nigeria and because it would make it impossible for the British police to conduct an effective criminal investigation into her trafficking claims as required by the Trafficking Convention;
- the applicant had also complained that her expulsion would be a disproportionate interference with her rights to moral and physical integrity under Article 8 of the Convention given her vulnerability as a trafficking victim and ongoing mental health problems; and
- finally, the applicant had complained that the failure of the domestic authorities to identify her as a victim of trafficking deprived her of an effective remedy under Article 13 of the Convention taken with Articles 3(prohibition of torture), 4 (prohibition of torture and forced labour) and 8 (right to respect for private and family life) of the Convention.

The European Court of Human Rights decided to strike the case out, in accordance with article 37 § 1. It considered that these matters have been resolved. It noted that the applicant is no longer at risk of being removed from the United Kingdom as she has been granted the right to remain on the UK territory.

G.J. v. Spain (ECHR application no. 59172/12, Judgment 2016)

G.J. is a Nigerian woman who arrived in Spain in 2006 and requested asylum for religious persecution (first asylum proceedings). While that decision was pending, a deportation order was issued in 2007. In 2009, her claim for asylum was refused and in 2010 she was put in a detention centre for migrants for lack of documents. Whilst in the centre she filed a second asylum request as a victim of human trafficking. Although the UNHCR supported the claim and considered G.J. to be a potential victim of human trafficking, the competent Spanish administrative body declared the claim inadmissible. At the same time, the applicant requested the assistance of an NGO, Women's Link Worldwide (WLW) and instructed them to apply for a grant of a period of reflection as a victim of trafficking, signing on March 2010 a written authority to act. On March 2010 G.J. is deported. From that moment on, the legal battle has focused on whether G.J. had given powers to WLW to act on her behalf in any legal proceeding or just for the application of the reflection period.

The European Court of Human Rights was asked to consider whether the inexistence of effective remedy within the Spanish legal system in respect of the identification of victims of human trafficking was a breach of Spain's positive obligations under article 4 and in relation with article 3 (prohibition of torture) and 13 (right to an effective remedy). It was claimed by the applicant that the Spanish authorities did not evaluate the risks that G.J. faced if deported to Nigeria, as a pregnant woman victim of human trafficking. Since trafficking for sexual exploitation disproportionately affects women, failures in the identification process specially impact their access to protection and remedies. Thus, the European Court was asked to determine if the Spanish authorities focus more on border control and criminal proceedings, rather than on victim's rights, and if this approach was a violation of article 4 and of the prohibition of discrimination. Article 10(2) of the Council of Europe Convention on Action against Trafficking is clear to the effect that upon reasonable grounds to believe that a person is a victim of human trafficking, the deportation proceedings have to be suspended until the completion of the identification process. Such a requirement appears to be absent in the Spanish legislation, which had a negative impact on G.J.'s situation. However after analyzing the case, the European Court of Human Rights concluded that the NGO (Women's Link Worldwide /WLW) was not eligible to lodge the application on the behalf of G.J. Consequently, in the circumstances of the case the application must be rejected for being incompatible *ratione personae*, pursuant to Article 35 § 3 and 4 of the Convention. The Court found that a non-governmental organisation did not have standing to lodge an application on behalf of the G.J. an asylum-seeker, after her expulsion, as it had not presented a written authority to act as her representative, contrary to the requirements of Rule 36 § 1 (representation of applicants) of the Rules of Court.

L.E. v. Greece (ECHR application no. 71545/12, Judgement 2016)

The Applicant was a Nigerian national living in Athens. She was brought to Greece in 2004 by a certain K. A., who had promised to find her work in bars and nightclubs in exchange for €40,000 and on condition that she not tell the police about her activities. On arrival in Greece, K. A. confiscated her passport and forced her into prostitution, which she did for approximately two years in order to pay him the debt. On 12 July 2004, she applied for asylum but did not go to the reception centre allocated to her.

The Applicant was arrested a number of times for prostitution, being acquitted each time. In light of her irregular status in Greece, on November 2006 she was placed into detention for a period of three months pending deportation. While in detention, she filed a criminal complaint against K. A. and his wife, D. J., whom she claimed had trafficked her and forced her into prostitution, along with two other Nigerian women. The claim was dismissed by the Athens Criminal Court, the judge noting that there was nothing in the case file to indicate that she had been a victim of human trafficking. The Applicant joined proceedings as a civil party in January 2007 and later applied for re-examination of the criminal complaint. On 21 August 2007, the public prosecutor brought criminal proceedings against K. A. and D. J. On the same day, the Applicant was officially recognised as a victim of human trafficking and in August her deportation order was suspended.

In July 2009, the hearing in the case against K. A. and D. J. was suspended as they could not be located. May 2011, D. J. was arrested and remanded in custody, and in April 2012, the court found that she was not an accomplice but rather another victim of K. A., who had been forced into prostitution and also sexually abused. The relevant administrative authorities renewed the Applicant's residence permit until 2 November 2014.

Before the ECtHR, the Applicant alleged that Greece had failed to comply with its positive obligations towards her as a victim of human trafficking and prostitution under Article 4. Furthermore, relying on Article 6(1) and Article 13, she complained about the length of the criminal proceedings in which she was claiming civil damages, and submitted that at the relevant time no effective remedy was available in Greece in respect of complaints concerning the length of proceedings.

The European Court of Human Rights found that Articles 4 (prohibition of slavery and forced labour), 6(1) (right to a fair trial within a reasonable time) and 13 (right to an effective remedy) had been violated.

The Court identified a breach here due to the delay in formally recognising that the Applicant was a victim of human trafficking. Specifically, nine months had lapsed between the date on which the Applicant explicitly informed the authorities of her situation, and the conferral of victim status. The Court found a breach, identifying multiple failings by both the courts and police to ensure effective investigations and criminal proceedings in due time. The Court found that delays in the length of proceedings, amounting to two and a half years from the time the Applicant joined proceedings as a civil party, were unreasonable, constituting a breach of Article 6(1). In addition, it held that Article 13 had been violated because the Greek legal system did not provide an effective remedy for the Applicant to complain about the length of proceedings.

J and Others v. Austria (ECHR application no. 58216/12, Judgment 2017)

This case concerned the Austrian authorities' investigation into an allegation of human trafficking. The applicants, two Filipino nationals, who had gone to work as maids or au pairs in the United Arab Emirates, alleged that their employers had taken their passports away from them and exploited them. They claimed that this treatment had continued during a short stay in Vienna where their employers had taken them and where they had eventually managed to escape. Following a criminal complaint filed by the applicants against their employers in Austria, the authorities found that they did not have jurisdiction over the alleged offences committed abroad and decided to discontinue the investigation into the applicants' case concerning the events in Austria. The applicants maintained that they had been subjected to forced labour and human trafficking, and that the Austrian authorities had failed to carry out an effective and exhaustive investigation into their allegations. They argued in particular that what had happened to them in Austria could not be viewed in isolation, and that the Austrian authorities had a duty under international law to investigate also those events which had occurred abroad.

The Court, finding that the Austrian authorities had complied with their duty to protect the applicants as (potential) victims of human trafficking, held that there had been no violation of Article 4 (prohibition of forced labour) and no violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention. It notably noted that there had been no obligation under the Convention to investigate the applicants' recruitment in the Philippines or their alleged exploitation in the United Arab Emirates, as States are not required under Article 4 of the Convention to provide for universal jurisdiction over trafficking offences committed abroad. Turning to the events in Austria, the Court concluded that the authorities had taken all steps which could have reasonably been expected in the situation. The applicants, supported by a government-funded NGO, had been interviewed by specially trained police officers, had been granted residence and work permits in order to regularise their stay in Austria, and a personal data disclosure ban had been imposed for their protection. Moreover, the investigation into the applicants' allegations about their stay in Vienna had been sufficient and the authorities' resulting assessment, given the facts of the case and the evidence available, had been reasonable. Any further steps

in the case – such as confronting the applicants’ employers – would not have had any reasonable prospect of success, as no mutual legal assistance agreement existed between Austria and the United Arab Emirates, and as the applicants had only turned to the police approximately one year after the events in question, when their employers had long left the country.