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TRANSNATIONAL REPORT

Safer Path

System Action for the Empowerment of Refugees and
Protection against Trafficking in Human Beings

HOME/2009/ERFX/CA/1044



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Editing by Luigia Belli, Oriana De Caro and Micaela Maria Schincaglia

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Foreword

In the last decades the migration planet has changed phenomena and social groups, spaces and social infrastructure, areas of transit and flow, local communities, neighborhoods and places of aggregation, services and their possible accessibility.

The migrant groups have brought a number of dissonant variables that changed knowledge, paradigms and paths. We refer to interculturalization, to the cultures of migrants and ethnic minorities, to the valorization of the South and of the suburbs, considered both at geographical and mental level.

We refer to the construction of new paradigms focused on women (that are a great and sometimes unique source of care, both in the south and in the north) and on youth (that overcome the crystallization of elderly and conservative people that grip our Western society), who represent a large portion of migrants reaching our European countries. We refer to people who stake their roots, their family networks and neighbors, their little savings, their irrelevant security to bet on a different future and, hopefully, to improve their living conditions. Most of these migrants have to face many dissonances which are difficult to decline in a clear way.

We refer to the construction of concepts which are sometimes demagogic and ideological; we refer, for example, to terms such as *clandestine*, *illegal*, *non EU migrant*, etc... All these terms have meta-linguistic roots which undermine the relations among people.

We also refer to rights, relations and reciprocity, cooperation and development of diversities, all conditions that might be twisted, becoming prevarication, intolerance, racism. We thus refer to trafficking in persons for sexual and labour exploitation, to the lack of basic rights protection, to the marginalization of migrant groups.

Within this complex scenario the destiny of migrants draws up: they may become victims of trafficking, perhaps refugees and asylum seekers, illegal, almost certainly unemployed, fragile and definitely blackmailed.

In this respect, we need to set up interventions and typological actions that may offer hosting areas, places to protect migrants' rights, social inclusion and social citizenship programmes.

Very often such initiatives (eg. specific programmes for victims of trafficking or projects in favour of refugees and asylum seekers) are highly specialized for only one target, thereby running the risk to underestimate some evident correlations among different worlds, which are actually more and more integrated and tangential.

Our experience in the field (street working, hosting interventions and care in the shelters, education, training, social and working inclusion) addressed both victims of trafficking and refugees and asylum seekers, let us understand the need for a closer interconnection between these two phenomena and for a better integration of the related paths (welcoming, referral, empowerment, active citizenship) that means aiming at an ambitious goal: to make migrants autonomous persons, active controllers of their own lives, holder of their future.

In that sense, the research carried out for the present project (*Safer Path*) has been really interesting, since it aimed at catching dissonances, consonances and the all possible related factors to both target groups, as we are sure that they can face at the same time similar marginalization problems and disrespect of their rights.

Vincenzo Castelli

President

Associazione On the Road Onlus

Introduction and methodological note¹

The issue of migration, especially its asylum and trafficking dimensions, is an increasing concern for the European countries. While until recently the pressures were coming from the Eastern European boundaries - with the migration flows having as origin the Central Asian or Middle East countries - nowadays we are witnessing increasing pressures at the Southern boundaries as well.

Middle East and North Africa recent and current events and their potential - at least on medium term - implications regarding the migration dynamics toward the European territories will keep the issues of asylum and trafficking as high interest topics on the EU agenda for the next 10 years or more.

Therefore, the identification of trafficked persons amongst the asylum seekers and the development of proficient tools and training materials to be used in order to reach the goal of a “safer path” for the people in search of a “safe heaven” within the European territories will become a must for building a real trafficking-free European space.

The Safer Path project thus aims at studying the reality of victims of trafficking among asylum seekers. Together with the leading partner of the project Associazione On the Road ONLUS (ITALY), the partners Accem (Spain), ALC/SPRS Nice (France) and the London School of Hygiene and Tropical Medicine - Health Policy Unit (United Kingdom) worked jointly with a group of researchers.

Considering that, during the last decade, the national legislations of various European countries developed legal plans of action capable to protect effectively victims of trafficking, the project wishes to study what is the reality of a similar protection for the asylum seekers concerned by trafficking in human beings. Are they identified and identifiable? Are the authorities who identify them, able to refer them to the structures capa-

1. This section is made with the contribution of Romina Corsini, Clara Fringuello, Maria Teresa De Gasperis, Dominique Gelas and Audrey Isnard, Aurora Martin, Fabrizio Pesce, Stefania Scodanibbio

ble of providing them a specific support and guidance, in order to put in place the protective measures they are entitled to?

After a brief description of the Safer Path project's background, focusing in particular on its main objectives and activities (**Chapter 1**), this report outlines a deep national overview on the three project partners' countries (France, Spain and Italy), carried out on the basis of a Research Protocol elaborated by partners (**Chapter 2**). Such set of patterns has been sent to/used as plot for an interview with relevant national NGOs and institutions (working on trafficking in human beings and/or on international protection issues).

More specifically Chapter 2.1 is the outcome of the survey carried out from January until May 2011 in France, where 14 organizations were approached and 9 agreed to participate (OFFI, Cimade, Forum Réfugiés, CADA ALC l'Olivier, Les Amis du Bus des Femmes, IPPO, CCEM, The National System Ac. Sé, ALC Lucioles), providing the requested information during a personalized interview.

Chapter 2.2 refers to the investigation run in Italy where, besides a desk review, 21 personal interviews have been carried out, in the period June-September 2011, involving: NGOs working in the field of asylum seekers/refugees and trafficking in human beings (ARCI, On the Road, Caritas); Local Authorities' and Prefectures' social assistants; representatives from CIR - Consiglio Italiano per i Rifugiati (*Italian Council for Refugees*), UNCHR, CARA- Centri di Accoglienza per i Richiedenti Asilo (*Hosting Centres for Asylum Seekers*), CNCA - Coordinamento Nazionale Comunità di Accoglienza (*National Coordination of Hosting Centres*), SPRAR - Sistema di Protezione per i Rifugiati e Richiedenti Asilo (*National System for the Protection of Refugees and Asylum Seekers*) and Dipartimento Pari Opportunità della Presidenza del Consiglio dei Ministri (Department for Equal Opportunities - Presidency of the Council of Ministries).

Chapter 2.3 is the result of the investigation performed from January 2011 to May 2011 in Spain, where 21 NGOs/institutions have been con-

tacted and 9 out of them (Accem, UNHCR, Women's Link Worldwide, Universidad Pontificia Comillas - Instituto Universitario de Migraciones, OAR - Office for Asylum issues of the Ministry of Interior, the former Ministry of Labour and Immigration, CAR de Vallecas (Reception Centre for Refugees), Public Prosecutor Office for Foreign Affairs, Social Work Unit at OAR) provided the requested information throughout a personal interview.

Looking at the sample of interviewees involved, it is evident that the information contained in this report does not reflect the opinion and the perspective of all the relevant actors in each context, as many of them did not answer to the questionnaire sent or to the request of a personal interview. It is deemed necessary to underline that the report refers just to adults (both asylum seekers and trafficked persons), as the problematic related to minors in both contexts is quite complex and would have required a specific research and analysis on the existing situation and related concerns.

Besides the three national reports included in Chapter 2, the following **Chapter 3** outlines a snapshot of the other EU countries. In particular, these studies investigate the different identification criteria and referral procedures related to the targeting of trafficked victims among asylum seekers, in order to explore the ability of European Countries' asylum systems to detect trafficked persons among applicants for international protection and to refer them for appropriate care and support.

Research work has been based mostly on desk review and interviews to NGOs working on asylum and trafficking fields. Organizations, key actors and stakeholders that gave their contribution from EU countries assessed are: Corina Demetriou from Symfiliosi and Rita Superman (Head of Anti-Trafficking Unit in Cyprus Police) from Cyprus; Vassia Karkantzou from KMOP and Eva Savvopoulou from KEPAD-Human Rights Defence Centre-Athens from Greece; UNHCR Malta; Danish Centre against Human Trafficking from Denmark; Finnish Refugee Advice Centre from Finland; Immigrant Council of Ireland and Irish Refugee Council from Ireland; Foundation Safer Sweden; NGO Living for Tomorrow from Estonia; Missing Persons' Families Support Centre

from Lithuania; Marta Briviba Center from Latvia; KOK - Bundesweiter Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess e.V. from Germany; La Strada Foundation from Poland; APF- “Associação Para o Planeamento da Família” from Portugal. Unfortunately in some cases (Czech Republic, Slovakia and Slovenia) it has not been possible to collect any interview directly from a field expert. Therefore information on these countries is mostly taken from official and unofficial documents available on line.

Then, in the last section “**A final comparative review**”, an ultimate analysis of all reports’ results will be discussed, attempting to highlight some general conclusions and to provide some brief recommendations.

1. The Safer Path Project

Luigia Belli, Oriana De Caro

1.1 Project's inspiration and objectives

The present work has been realized within the project “*Safer Path - System Action for the Empowerment of Refugees and Protection Against Trafficking in Human Beings*” (HOME/2009/ERFX/CA/1044), a transnational initiative carried out under the contribution of the European Refugees Fund of the European Commission (Directorate General for Home Affairs).

The project particularly draws its inspiration from the Priority 2.1 of the 2009 Annual Work Programme, aiming at the “Promotion of common measures to address specific needs, including their educational needs, of vulnerable groups among asylum seekers and persons benefiting from international protection, such as victims of violence and torture, women at risk, minors and unaccompanied minors, elderly people, people kept in prolonged detention, and people with serious medical needs”.

The SAFER PATH project is in line with the current EU asylum and anti-trafficking policies, in particular with the Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities and the Council Directive 2005/85/EC on minimum standards on procedures for granting refugee status and with the Policy plan on asylum - an integrated approach to protection across the EU of 2008, which clearly state the need “to take into account the special needs of vulnerable group”.

The initiative, which is well linked to current practices in the field of protection of rights of asylum seekers and victims of trafficking, pays great attention also to the interesting Italian experience in the field of social protection of victims of trafficking, which provides a special residence permit (art. 18 D.lgs. 286/1998).

Moreover it is very important to underline that the project approach attempts to integrate and connect all those efforts aiming at creating and harmonizing policies and instruments in the fight of trafficking, under a human rights perspective.

As strongly recommended by the European Authorities², the Safer Path project in fact implements all its activities according to a human rights centered, holistic and integrated method.

In particular the present initiative aims at developing a common and effective approach to identify the specific needs of victims of trafficking among asylum seekers and refugees. The project reviews current practices for identification and assistance, analyzes information collected from all the ERF countries, shares collective results on existing practices for cases of trafficking among migrants and asylum-seeking population and defines guidelines and models of intervention focused on the empowerment of suspected trafficked persons.

More specifically, the present initiative aims at improving the conditions under which asylum seekers and refugees who may have been victims of trafficking, can effectively be identified and supported to present and pursue asylum claims and receive adequate responses to their psychosocial, cultural, legal and compensative needs and rights during the asylum seeking process.

As underlined in several UNHCR documents, the broader international human rights lobby has highlighted the particular vulnerability of women and children to trafficking for the purposes of sexual exploitation or forced labour. Such exploitation is growing up within Europe; as a matter of fact the trafficking involves an increasing amount of young women from Eastern Europe. The division that has emerged between 'smuggling' and 'trafficking', although extremely difficult to be distinguished, highlights the need of developing safeguards to protect the victims of trafficking. Yet, the EU countries still are unconcerned about the

2. "Report of the Experts Group on Trafficking in Human Beings of the European Commission" (2004), "Measuring Responses to Trafficking in Human Beings in the European Union: an Assessment Manual" (2007), the 2005 EU Action Plan on Trafficking

connection of the two phenomena: although many migrants enter trafficking in order to escape from persecution, there is still a lack of recognition of trafficking as a context which can be highly related to asylum³. The European asylum systems, both at national and transnational level, provide protection without integrating their actions and processes with harmonized and sensitive to the needs of victims of trafficking and exploitation knowledge and tools.

The present initiative and its scope has to be considered, thus, as a response to an urgent need expressed by NGOs', agencies' and institutions' practitioners who are willing to refer their approach and work to a common and shared set of information, capacities and tools, thereby improving the overall quality of the asylum seeking process and empowering asylum seekers and refugees.

More specifically the project's objectives are:

1. to map and analyze European asylum systems in order to identify their strengths and weaknesses in the identification and protection of suspected victims of trafficking and exploitation;
2. to provide European stakeholders with common screening tools in order to identify individuals who may have been trafficked or are particularly vulnerable or have special needs among asylum seekers;
3. to facilitate a specific training of stakeholders by elaborating, disseminating and running multidisciplinary and human rights centred training tools.

1.2 Actions

In relation to the above mentioned objectives, three set of activities have been designed.

As far as objective 1 is concerned, the project foresees a “**qualitative and quantitative analysis**”, which includes:

3. The *trafficking and smuggling of refugees: the end game in European asylum policy?*, Working Paper n. 39, pp. 1-2

- elaboration of a shared methodology in order to carry out three national researches (in Italy, Spain and France) and rapid surveys in the other European countries;
- elaboration and publication of three National Reports;
- elaboration of rapid surveys in the other 24 European countries;
- elaboration and publication of a Transnational Report;
- dissemination and mainstreaming of the main deliverables of the project in the final European workshop which took place in Rome on the 29th of May 2012.

In relation to objective 2 “**modeling and definition of guidelines**” the following activities are scheduled:

- elaboration of a Guide Document which outlines screening and identification obligations, opportunities and good practices and a set of screening tool;
- preliminary adoption of the screening tools in the partners’ countries;
- definition of transnational guidelines to be applied at a wider European level;
- publication of transnational guidelines;
- presentation of the Guidelines in the final European Workshop.

With regard to objective 3 “**elaboration of training tools - training of trainers**” the actions put in place are:

- elaboration of multi disciplinary and human rights centred training tools in favour of stakeholders who deal with the identification, protection and referral systems of victims of trafficking among refugees and asylum seekers;
- organization and implementation of National Training Courses in Italy, France and Spain;
- elaboration and dissemination of the Training Tools;
- presentation of the Training Tools in the conclusive European Workshop.

1.3 Results and deliverables

With respect to the first objective “qualitative and quantitative analysis” and related set of actions the main project’s result is a comprehensive,

integrated and comparable set of screening tools regarding victims of trafficking and exploitation which will be useful for analyzing practices, procedures and referral and for improving knowledge and competences within Member States' asylum systems.

In this perspective the following deliverables have been realized:

- 3 national reports (IT, ESP, FR);
- a transnational comparative report for the analysis of the national asylum systems operations in all of the 26 ERF countries (in the ERF countries other from partners' countries, it will be implemented a preliminary survey based on a rapid appraisal methodology).

Under the second set of actions (related to Objective 2 “modeling and definition of guidelines”) the project achieved a comparable and transferrable set of guidelines for the monitoring and improvement of responses to the needs of victims of trafficking and exploitation, within the European and national asylum systems.

The related deliverable is:

- the issue of the multidisciplinary set of guidelines for the monitoring and strengthening of responses to the needs of victims of trafficking and exploitation within the European and national asylum systems

The key result concerning the third objective (elaboration of training tools) and related actions, regards the realization of training courses and training tools on identification, protection and referral of victims of trafficking and exploitation; such courses and tools address practitioners and representatives of agencies and institutions working the field of asylum seekers.

The specific deliverables are:

- training courses, one in each partner country (Italy, France, Spain).

2. Asylum seekers and trafficked persons: parallel or integrated assistance frameworks?

The cases of France, Italy, and Spain

2.1 France

Dominique Gelas and Audrey Isnard

2.1.1 The National Legal Framework on Trafficking in Human Beings

2.1.1.1 *Conditionally protection*

The Internal Security Act of March 18, 2003 introduced the possibility for those victims of trafficking in human beings (hereinafter THB) who testify or lodge a complaint against their trafficker or their procurer to have a residence permit. Until July 24, 2006, this permit was a temporary residence permit, the validity of which can vary, depending on the Prefecture, from 1 to 6 months. Since the July 24, 2006 Law passed, this residence permit must be a temporary residence card valid for 6 months accompanied by a work permit.

Article 225-4-1: human trafficking is the recruitment, transport, transfer, accommodation, or reception of a person in exchange for remuneration or any other benefit or for the promise of remuneration or any other benefit, in order to put him/her at the disposal of a third party, whether identified or not, so as to permit the commission against that person of offences of procuring, sexual assault or attack, exploitation for begging, or the imposing of living or working conditions that affront human dignity, or to force this person to commit any felony or misdemeanour. Human trafficking is punished by seven years' imprisonment and by a fine of € 150,000.⁴

In the French definition, trafficking in human beings doesn't concern only the sexual exploitation. However, the labour exploitation is not

4. *On outrages upon human dignity*, Penal Code, Book II, Part II, Chapter 5

defined as slavery or servitude. What is mentioned is “working conditions inconsistent with human dignity.”

The Implementation Decree of the 2003 Internal Security Act (hereinafter ISA), expected for over 4 years, was published on September 13th, 2007. It clarifies the arrangements for applying the provisions of the law concerning residence, protection, reception and accommodation of foreign victims of trafficking in human beings. This decree brings together in a same document the measures that already existed as well as new ones, such as the possibility to benefit of a 30 days’ reflection period prior to lodge a complaint (see below) and a police protection for persons in danger during the judicial procedure. This decree strengthens the role of the police and gendarmerie in the identification of victims of trafficking. However, without an identification of victims, despite the diversity of protective provisions, the victims cannot get access to it unless they testify with the consequent risk of reprisals on them or their relatives.

A temporary residence card (valid 6 months) is granted for those persons who lodge a complaint or testify in a judicial procedure concerning trafficking in human beings or procuring.

Article L316-1 of the Code for the Entry and Residence of Foreigners and the Right of Asylum (hereinafter CESEDA): “Unless its presence is a threat to public order, a “private and family life” temporary residence card may be granted to victims who cooperate with the police services by acting as a witness, or lodge a complaint against those who have committed offences relating to in articles 225-4-1 to 225-4-6 [trafficking] and 225-5 to 225-10 [procuring] of the penal code, or testify in the criminal proceedings concerning a person prosecuted for the same offenses. The statutory condition laid down in article L. 311-7 [the fact of entering on a regular basis the French territory] is not required. This temporary residence card entitles legal right to exercise a professional activity.”

A residence card is granted to those persons who testified or lodged a complaint against their trafficker (or procurer) when the latter is condemned.

Article L316-1 of the Code for the Entry and Residence of Foreigners and the Right of Asylum (CESEDA): “...in case of final conviction of the defendant, a full residence permit may be issued to the foreign national who lodged a complaint or testified.”

30 days' reflection period: to allow the victims of trafficking in human beings or likely to be, to make an aware decision on their cooperation with the authorities.⁵

Decree no.2007-1352 of September 13th, 2007: in September 2007, France has introduced (see the September 13th Decree) the possibility for those likely to be victims of trafficking, to benefit from a reflection period of 30 days before taking a decision on their testimony or their lodging of a complaint against their trafficker or their procurer. This measure was adopted through the obligation which had been made to France to comply with the European directive 2004/81/EC on the residence permit granted to third-country nationals who are victims of trafficking in human beings.

2.1.1.2 Other types of residence permits

Depending on the situations, people can benefit of the following residence permits:

- ***Subsidiary or asylum protection for persons who are threatened in their countries of origin*** (see paragraph 2.1.3). The United Nation High Commission for Refugees (UNHCR) has issued Guidelines in which it is exposed how people who have been victim of trafficking in human beings or risk to become victim may be recognized as refugees.⁶

- ***Trafficking in human beings for purposes of forced prostitution or sexual exploitation*** is considered as a form of persecution. Some women or under-18, victims of trafficking in human beings, may submit justified applications based on the Convention of 1951. The forced or further to a deceit recruitment of women or under-18 for the purposes of forced

5. "Art. R. 316-2. - A foreigner to whom a police or gendarmerie service provides the information mentioned in the article R. 316-1 [relating to his rights] and who chooses to benefit of the 30 days' time to think period mentioned in the fifth paragraph of the same article is issued by the Prefect, in accordance with the provisions of the second paragraph laid down in article R311-4 with a **receipt** of the same duration. This period begins from the delivery of the receipt. During the reflexion period, no expulsion measure can be taken against the foreign national in the application of article L. 511-1, nor executed."

6. *GUIDELINES ON INTERNATIONAL PROTECTION The application of Article 1A (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked*, The UN Refugee Agency HCR / GIP / 06 / 07, 7 April, 2006

prostitution or sexual exploitation are all forms of violence or gender services that can even lead to death. These practices can be considered as a form of torture and cruel, inhuman or degrading treatment. It can also lead to serious restrictions on the right of women to move freely because of kidnapping, incarceration, and/or confiscation of passports or other identity documents. In addition, the women and the minors, victims of trafficking in human beings risk serious consequences after fleeing and/or returning to their countries, such as retaliation from traffickers or networks, real risks to be again victims of trafficking in human beings, serious family and community ostracism or serious discrimination. In some cases, the fact of being a victim of trafficking for the purposes of forced prostitution or sexual exploitation can therefore justify a request for refugee status when a State is not able to ensure the protection against such damage or threats of harm, or that he does not want to do so.⁷

As far as we know, **only one victim of trafficking in human beings has been recognized as a refugee in France, until now.** However, several victims of trafficking have been able to benefit from a subsidiary protection on the grounds that they were threatened in their countries of origin.

- ***Humanitarian Residence Permit*** for persons whose admission to residence responds to humanitarian considerations or is justified in terms of exceptional reasons that they argue. Articles L313-13 and L313-14 of the CESEDA
See also the Circular of 30 October 2005, which aims to remind the humanitarian concerns which should govern the consideration of applications for admission to the residence of foreign nationals in an illegal situation on French territory.

7. For the purposes of these Guidelines, the «trafficking in human beings » is defined according to the Article 3 of the United Nations' Protocol to prevent, suppress and punish the trafficking in human beings, especially women and children, supplementing the UN Convention against Transnational Organized Crime (2000). The Article 3 (1) stipulates that trafficking in human beings means “ 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”.

- **Other types of residence permits.** Depending on their situation victims of trafficking have furthermore access to all categories of residence permits provided by the current French law. See, in particular, article L313-11 of the CESEDA.

2.1.1.3 Available help and support for victims of trafficking

Third-country nationals who are beneficiaries of the subsidiary protection referred to in article L. 712-1 of the Code for the Entry and Residence of Foreigners and the Right of Asylum, as well as the foreign nationals admitted to residence pursuant to article L. 316-1 of the same code, can benefit from the Temporary Waiting Allowance (ATA) for a maximum period of twelve months⁸.

- **The reception in the CHRS.** Article L. 341⁹ of the Social Action and Family Code supplemented by the following paragraph: «CHRS Centres are opened to a secure reception of victims of trafficking in human beings “. (See Ac SéPlan of Action, par.2.1.4.2 below)

- **The right to medical cover.** If a person has no documents and doesn't have a medical cover in her/his country of origin nor has a European insurance, if he/she's not exceeding an amount of resources, and if he/she is in France for more than 3 months he/she can ask for the AME (State Medical Cover). If the person has not a medical cover in her/his country of origin nor has a European insurance, if he/she's not exceeding an amount of resources, and it is on a regular basis in France, he/she can be granted the CMU (Universal Medical Cover).

- **Compensation of victims of trafficking.** The trafficking and sexual assault victims may be entitled to a full compensation; on the other side, not all victims in cases of procuring, even within the framework of aggravated procuring, can claim these compensations.

8. Labour Code, Article R351-7, in force, Created by Decree nr.2006-1380 of 13 November 2006, art.1 III (Official Journal 15 November 2006); in force, version of 15 November 2006

9. Under the Order N 2007-1352 of 13 September, 2007, a victim of trafficking locally in danger can be directed “to the Nationwide Agency for the Reception and Protection of the Victims, implemented by convention between the Minister in charge of the social action and the association which assures the coordination of this plan of action”

Code of Criminal Procedure, Article 706-3 (Repairs - Compensation)
(last amendment: Act No. 2004-204 of March 9th, 2004 art. 169 Official
Journal of 10 March, 2004;current on 1st of January 2005)

2.1.2 The statuses of international protection¹⁰

2.1.2.1 The refugee status

Article L. 711-1 of the Code for the Entry and Residence of Foreigners and the Right of Asylum (CESEDA): “The quality of refugee is recognized to any person who is being persecuted due to its action in favour of freedom as well as to any person on which the UNHCR exercises its mandate under sections 6 and 7 of its statutes as adopted by the General Assembly of the United Nations on December 14th, 1950 or who meets the definitions in article 1 of the Geneva Convention of July 28th, 1951 relating to the refugee status. These people are governed by the measures applicable to refugees in accordance with the aforesaid Geneva Convention.”

The mandate of UNHCR: UNHCR determines the refugee status when the host country didn't ratify the Geneva Convention or didn't set up an internal procedure. The refugee is then put under mandate. In France, this placement under mandate is considered like automatically opening right to the status. Whatever the conditions of entry are (regular or irregular) the person has the right to be protected. On the other hand, if the person had the refugee's status by the authorities of another country, he/she can apply for asylum, but he/she must have entered the country regularly or be titular of a residence permit (transfer of protection).

The Geneva Convention: its 1st article gives the definition of what a refugee is: “Any person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particu-

10. With the permission of La Cimade [www.cimade.org/poles/defense-des-droits/rubriques/2-droit-dasile-?page_id=1751]

lar social group or political opinion, is outside the country of its nationality and is unable, or, owing to such fear, is unwilling to avail himself of the protection of this country.”

- ***The well-founded fear:*** the Geneva Convention requires the fear of persecution (it is not necessary to establish of having been persecuted) to be well- founded, that is to say, that the person’s declarations are judged credible towards the situation in the country of origin. The case law specifies that the fear to be persecuted is *personal* and *actual* except the case when the suffered persecutions are of an *exceptional gravity*.

- ***The concept of persecution:*** the jurisprudence considers like persecution the major attacks to the fundamental human rights (infringement to life, physical integrity, freedom, political and civil rights). It can be about genocide, crime against humanity, murder, imprisonment, torture but also systematic discrimination, moral and physical harassment, unjustified judicial relentlessness, on-going monitoring, rape, murder attempt, extra judicial imprisonment, excision.

- ***Grounds for persecution:*** there are five categories of reasons enlisted by the convention: race, religion, nationality, membership of a particular social group, political opinion

- ***Family unity of refugees:*** The benefit of the family unity of refugees allows certain members of the refugee’s family to obtain the status without having to prove that they personally meet to the definition of a refugee as set by Geneva Convention. It is about spouses, co-habitees and minor children (or placed under tutorship), having the same nationality so long that the family’ unity existed before the admission to the status.

- ***Absence of national protection:*** in order to be a refugee the person must not be able or do not willing to claim the protection of her/his country. Indeed, the international law says that States have the responsibility to ensure the protection (including consular) of their nationals.

- ***Cessation clauses:*** the refugee status is not recognized *ad vitam aeternam*. The clauses are mostly insisting on the voluntary nature of the cessation (the refugee is placed again under the protection of her/his country, he/she receives again the citizenship of origin, returns voluntarily

and permanently to her/his country or acquires another nationality) or if the circumstances in connection with which he/she has been recognized as a refugee have ceased to exist (regime change with a sufficiently lasting effect except if compelling reasons are invoked).

- **Exclusion clauses:** a) protection based on another mandate. Today this exclusion concerns mainly the Palestinian refugees whose protection is ensured by the *United Nations Relief and Works Agency* (UNRWA). It is considered by the Cour Nationale du Droit d'Asile (National Court of Asylum, CNDA) that when this protection is interrupted, people can automatically qualify for the refugee status. b). The equivalent protection: when a refugee is given the same rights as a national in a country.

- **Exclusion clauses for serious crime:** the Geneva Convention excludes from the benefit of the refugee status the persons who, before finding themselves in the situation of refugees, have committed serious violations of human rights or particularly flee justice of common law of their country (war crimes or genocide, serious crime of common law committed outside of the host country, acts contrary to the purposes and principles of the United Nations).

The Constitutional Asylum: “Any person persecuted because of their activity on behalf of freedom has the right of asylum within the territories of the Republic,” (paragraph 4 of the 1946 French Constitution).

The Constitutional asylum, directly emerged from the constitution is recognized to a freedom fighter. This relates to only a handful of people each year.

Whether it is by the application of the Geneva Convention or by that of the constitutional asylum, a refugee status in France allows the person recognized as a refugee, her/his spouse and their children to obtain a residence permit for ten years (article L314-11 -8° CESEDA). This title provides access to all social rights (the right to exercise any profession, Active Solidarity Income (RSA), social security benefits).

The Office Français de Protection des Réfugiés et Apatrides (hereinafter OFPRA) issues documents replacing acts of civil status (birth certificate, marriage certificate, etc.).

2.1.2.2 The Subsidiary Protection

The 1998 Law has introduced a second, alternative form of asylum: the territorial asylum. The latter was such a disaster that it was preferred to cancel and replace it by the subsidiary protection.

The subsidiary protection is granted in a simple review procedure by the OFPRA or CNDA if the persons' situation does not recover the refugee status.

Inclusion Clauses:

- *the death penalty*: not every person who may face the death penalty will be protected. Indeed, one of the exclusion clauses is the serious crime of common law. A murderer who would seek asylum in France could therefore obtain it. We must interpret the term of sentence when it takes place in a specific political background where the sentence is disproportionate (example: death penalty for adultery or homosexuality, although this may be covered by the Geneva Convention).

- *torture or inhuman and degrading treatment*: the OFPRA and the CNDA tend to range in this category slavery, forced marriage, excision or infibulation. It should be noted that CNDA estimates that threats from prostitution or mafia networks could be included.

- *threat due to a generalized violence*: since December 2005, this measure has had a beginning of application. It has been applied to a Sudanese from Darfur, to Iraqis and Palestinians and since June 2008, to Sri Lankan originating from the north of the country.

Exclusion clauses (Article L. 712-2 CESEDA)

The law provides exclusion clauses, that is to say, the possibility to refuse or withdraw at any time the benefit of the subsidiary protection, mainly for reasons of public order. If two of the clauses are the resumption of the exclusion clauses of the Geneva Convention (war crimes, actions contrary to the principles of the United Nations), another one diverges on a crucial point. In fact, the place where a serious crime of common law is committed is not specified (which allows to withdraw the subsidiary protection to a person suspected of an offence or a crime in France).

Cessation clauses (article L. 712-3 CESEDA)

The subsidiary protection is reviewed each year, and it is withdrawn if the circumstances which have justified its granting have ceased to exist or have experienced a change deep enough for that the latter is no longer required.

The subsidiary protection allows granting a residence permit for one year, which is renewed as long as the OFPRA has not decided to withdraw it. The same residence permit is issued to spouses and children under 18 years of age. If the protected subsidiary cannot request documents of civil status, the OFPRA can issue them.

Interpretation criteria

- *Persecution agents (Article L. 713-2 CESEDA)*: during 50 years, the case law has limited the notion of author of persecution only to state authorities. In 1983, it has been expanded to persecution encouraged or tolerated by the State but refugees were denied the status if the persecutor was not linked to the State (especially in Algeria or in Bosnia). Since 2004, the OFPRA and the Court take into consideration the non-state persecution that the State is unable to counter. The Persecutor may also be a de-facto authority who controls a significant part of the territory.

- *Protection Authorities (Article L. 713-2 CESEDA)* : the law recognizes as protection agents the States, but also the international organizations (such as the United Nations, but perhaps also the UN agencies) and the regional organizations (NATO, ECOWAS).

- *Internal asylum (Article L. 713-3 CESEDA)*: the board may reject an asylum request if it considers that the applicant can go to another place of her/his country where she/he would not be subject to persecutions and where she/he may have a normal life.

2.1.3 Identification process of people and asylum seekers victims of trafficking.

The application for asylum is a long and complex process which requires an advanced and rigorous monitoring of deadlines and approaches. Since it has for object to grant the asylum right to persons who fear persecution in their countries, the application for asylum must be carefully considered and the applicant should be in a position to explain her/his situation in front of the same person who will have to decide on this request. Similarly, in view of the precariousness of the situation in which these people are during the proceedings, its duration should be limited.

2.1.3.1 Outline of the asylum application procedure¹¹

First established in 1952, the French Office for the Protection of Refugees and Stateless Persons (OFPRA) is the public institution in charge of ensuring the implementation of the conventions, international agreements or arrangements relating to the protection of refugees. To seek asylum at OFPRA, the applicant must first go to the prefecture of her/his residence to solicit its admission to the residence, under asylum right. The prefect must decide on this request within fifteen days. According to the decision that is taken by the prefecture, two cases may arise:

- If the applicant is permitted to stay:

the application is being processed according to the ***normal procedure*** and the applicant is provided with a temporary residence permit. She/he must refer her/his case to OFPRA within a period of twenty-one days, by means of a form to be filled in French. She/he must then go back to the prefecture where she/he is issued a receipt which will be renewed until the final decision concerning the request for asylum. She/he can benefit from the temporary waiting allowance (ATA, 10.22 euros/day per adult) and seek admission to a Reception Center for Asylum Seekers (CADA). The OFPRA has two months (often much more in practice) to decide. If the decision is a rejection, the applicant can address an appeal to the administrative court or to the Refugee Appeals Board (RRC).

- If the prefect refuses the residence permit:

the prefect may formally decline the residence for four reasons:

1. According to the Dublin II Regulations, another European State is responsible for the request and the OFPRA is therefore not addressed to examine the asylum request.
2. The person comes from a country of origin said “safe”.
3. The person represents a serious threat to public policy.
4. The application for asylum is considered as fraudulent or abusive.

11. Excerpt from the Observation Report of La Cimade, *Resorting to asylum, the asylum right (mis)treated by the Prefects*, June 2007

In the last three cases, the residence permit is refused but the person can seek asylum at OFPRA according to the **priority procedure** (15 days to process an initial application, 96 hours for a review or for a request addressed from a detention center). The applicant is excluded from the benefit of the ATA and cannot enter CADA. The appeal to the CRR in case of refusal does not suspend the execution of a deportation order.

The OFPRA or the CRR can grant the status of refugee. The applicant may then qualify for a residence card authorizing her/him to reside and work in France for a period of ten years, and shall be renewable.

In case of rejection, the asylum seeker is “invited” to leave the French territory. She/he can also, especially if there are new elements, address the OFPRA a request for review, but this approach does not keep her/him from the possibility to be sent back to the country of origin.

2.1.4 Organizations involved in victims of trafficking and asylum seekers identification and support

2.1.4.1. Organizations supporting asylum seekers

The associative sector¹²

State supplied in its mission by associations. Human rights organizations, hospital services supporting the access to healthcare, as well as charities, widely contributed to try to supply by their diverse interventions, the clogging and the deficiencies of the national plan of actions on reception of the asylum seekers (DNA), drawing in this manner the outlines of a **parallel network of reception**. This network is generally working in complementary with the stakeholders of the DNA. The reception of the asylum seekers does not thus stop on the verge of the public policy planned for that purpose. It entails a sum of activities of social support, in the chink between the right of asylum and the common law.

12. The associations mentioned in this report are those which accepted to collaborate in the framework of this survey

Many of so developed activities are mainly based on the citizens' goodwill and a form of gleaning some public money to invest¹³.

ASSFAM, la Cimade, Forum Refugees, France Earth of Asylum and the Order of Malta France are the associations that are present at the CRA (Administrative Detention Centres).

Some of them legally organize the reception of newcomers (PADA) and CADA.

Particularly relevant is the working of Forum réfugiés and la Cimade.

- **Forum réfugiés** is a non-profit association under the law of 1901 working on the reception of the refugees and the defence of the asylum right. It organizes CADA (Reception Centre for Asylum Seekers) and Reception Platforms for Asylum seekers. Based in Lyon, it was created in 1982. With 100 employees and 9.6 million Euros budget in 2008, Forum réfugiés is a recognized actor in the asylum sector.

Today it is an important association of this sector and gets support from public and private partners: Ministries, Council of Europe, European Commission, Prefecture, French Office for the Protection of Refugees and Stateless persons (OFPRA), the United Nations High Commissioner for Refugees (UNHCR) and local authorities. Forum réfugiés works besides this with numerous associations, in particular within the framework of the CFDA (French Co-ordinating Body on the Right to Asylum) and of the ANAFE (National Association for Borders Assistance to Foreigners).

- **La Cimade** aims at showing an active solidarity with those who suffer, who are oppressed and exploited and to ensure their defence, without paying attention to their nationality, their political or religious position (Article 1 of the statutes). Every year, la Cimade receives and accompanies several tens of thousands migrants and asylum seekers in its offices. La Cimade contributes to their insertion by organizing specific trainings. It is sheltering 200 persons a year in its two CADA of Béziers and Massy.

13. *Sociological study carried out in Toulouse*, Observatory for receiving asylum seekers, February 2005- October 2007

Public sector

- OFII - French Office of Immigration and Integration

Public state administrative institution which implements the policy defined by the Ministry of Immigration, Integration and Identity. Placed under the supervision of the Ministry of the Interior, Overseas Territories, Local Authorities and Immigration, the OFII has today 4 main missions which the State delegated to it:

- management of regular immigration procedures in sides or for prefectures and diplomatic or consular offices;
- reception and integration of migrants authorized to stay durably in France and signatories as such of a contract of reception and integration with the State;
- reception of the asylum seekers;
- support for return and reintegration in the home State.

The OFII assures the first reception of the asylum seekers with its agents on a part of the national territory. On the rest of the territory, it signs financing agreements with service providers. ***It coordinates and leads the National Plan of Action on the Reception of Asylum Seekers and Refugees.*** As such, it manages on the national level the admission of the asylum seekers in Reception Centres for Asylum Seekers (CADA). He assures the reception in Temporary Accommodation Centres (CPH) of refugees who were admitted to residence within the framework of resettlement programs decided by the State.

In 2010, 44 975 asylum seekers (including minors) were taken care of by the National Plan of Reception. By comparison, OFPRA granted the refugee status to 10.864 persons in 2009.

2.1.4.2 Agencies accompanying victims of trafficking in human beings - IPPO: Information Local Prevention and Orientation

The association Information Local Prevention and Orientation that accompanies and defends the prostitutes in Bordeaux exists since 2003. Firmly committed to combating trafficking in human beings (613 persons encountered in 2009), the association helps the prostitutes who are parts of networks to be recognized as victims and to obtain a residence permit.

- CCEM: French Committee against Modern Slavery

The mission of CCEM is focused on the legal and administrative accompaniment of victims in the framework of procedures they wish or not to launch against their employers. In parallel with the legal accompanying provided to the supported people, the association has also established tools to meet their socio-educational and psychological needs. The hundreds of judicial procedures followed by the Committee, since its creation, give a thorough knowledge of the obstacles posed by the current legislation and judicial institution concerning the suppression of treaty acts and the repair of their harmful effects. Thanks to this expertise, the CCEM leads advocacy before public authorities, including the creation of police services and judicial personnel specialized in the study of cases of trafficking for purposes of labour exploitation.¹⁴

- *Le Bus des Femmes (The Bus of Women)*

The association “Friends of the Bus of Women” is a non-profit association under the 1901 Law created in 1994, having for purpose to work with and for the prostituted persons and fight against trafficking in human beings for the purposes of sexual exploitation.

The most important actions are the prevention of HIV, hepatitis and STI, reception and accompaniment, the fight against exclusions and discrimination as well as access to all fundamental rights.

- *The Nationwide Agency Ac.Se*

It relies on a network consisting of associations specialized in the accompaniment of victims of trafficking for the purposes of exploitation and of accommodation centres. It is coordinated by ALC association¹⁵.

The Ac.SeAgency provides a secure reception to major persons, French or foreign nationals, without distinction of gender, who are victims of trafficking in human beings for exploitation purposes, locally in danger and requiring a geographical remoteness. The victims are oriented towards the Ac.SeAgency through institutional or associative actors who are in direct contact with them. A national hotline has been set up for this purpose.

14. Excerpt from the Activity Report 2009 of CCEM (French Committee against Modern Slavery), page 1

15. Accompagnement Lieux d'accueil Carrefour éducatif et social (*Counselling and Rehabilitation, Educational and Social Crossroads*)

- *ALC CHRS Les Lucioles (The fireflies)*

The mission of the CHRS Les Lucioles (former SPRS) is to enhance access to an independent life and to prevent the exclusion of vulnerable individuals who are in danger of exploitation, and of people in prostitution. In particular ALC:

- implements a proactive approach, going to users and communities, and seeks partners;
- is always ready to listen to requests;
- establishes a diagnosis of the request based on what the person can or wants to bring out;
- anticipates the emergence of a request and the implementation of a response founded on our knowledge and understanding of situations;
- protects the victims of exploitation threatened in their physical and mental integrity;
- develops people's ability to act, accompany them achieving milestones;
- develops and implements a strategy to prevent behaviour, situations and mechanisms, by information, training and awareness of users, partners and public, political and legislative space, in order to develop the institutional framework;
- transmits knowledge and know-how developed within the SPRS in order to deconstruct public's representations;
- interacts with the intervention framework, enriches from experiences, and exchanges knowledge;
- experiments, thanks to the initiative of the establishment or at the request of a partner, new forms of intervention, information, awareness-raising and inquiry, in order to better meet the users' needs.

2.1.5 Tools used to identify persons and asylum seekers victims of trafficking in human beings

2.1.5.1 Tools developed by Ac.SeAgency

The following tools have been developed by the Resource Centre of the National Agency for Reception and Protection of Victims of Trafficking; they are available to any people on simple request.

- *The DVD “Making-Off”*

To increase professionals' awareness of and to inform victims...

In the first part, there is a film intended for professionals (in regular or occasional contact with victims) that introduces the phenomenon, the legal framework, the elements of identification and the care arrangements. In the second part, there are videos, in Bulgarian, Romanian, English, Russian, Spanish, classical Arabic, Hindi, Portuguese and French language, that explain to people identified as victims of trafficking in human beings the framework of the French law, the measures of protection and support in France, and the support for voluntary return to the country of origin.

It is distributed to social and health services, associations, institutes for training in social work, services and establishments of the national education, to judges and lawyers, police, gendarmerie and customs services, to the services responsible for immigration and asylum right, to labour inspectorates, trade unions and employers organizations...

This DVD is part of an information and training project led by a multidisciplinary working group, managed by the association ALC and Ac.Se Agency.

- *Identify - Receive - Accompany victims of the trafficking in human beings (2007)*

The practical guide was written by the National Agency in order to facilitate the protection and care of victims and endow them with greater visibility.

This handbook, for associative and institutional stakeholders, is based on the field experience of the National Agency Ac.Se's partners, as well as on that of other associations and French and foreign public institutions involved.

After a general overview of the phenomenon of trafficking in human beings, the guide details the routes, and the various forms of exploitation. It gives elements for the definition of the Trafficking and for the concept of victim. It proposes indicators for a procedure of victims' identification. All the stages are then reviewed, from the social assessment and cultural mediation, to the concept of security and the importance of a multidisciplinary cooperation. The added value of this guide arises

from the essential legal features in the approach of support and assistance to the victims. All situations are considered: police custody, various residence permits, access to health care, insertion, voluntary return to the country of origin and the residence in hosting centre. Case studies report the technical information in order to provide practical answers to the stakeholders on the ground.

- ***Training on victims of trafficking in human beings identification***

Animated by ALC association and the National Agency Ac.Sé, this training emerges from the background of AGIS II Project coordinated by the International Organization for Migration (IOM-Brussels).

The modules are the result of adaptation to the French national context of recommendations and best practices set forth by the professional associations, international organizations, police services and judicial institutions. The training focuses on a day-and-a-half and targets the representatives of associations, social and medical services, police services, and judicial institutions.

The presence of professionals from three stakeholders bodies involved in the fight against trafficking and the protection of victims allows to share experience and expertise and to acquire a better understanding of the role and responsibilities of each part.

Training Program [130 trained persons in 2010, several hundred since 2006]

- National and international legal framework on trafficking in human beings
- Various forms of exploitation related to trafficking in human beings
- The difference between trafficking and trafficking in migrants
- Victims profiling
- Criminal networks' profile
- Victim identification process
- Risk assessment
- Existing mechanisms for assistance and protection of victims in France
- Focus on post-traumatic stress

- ***Operating the network of partners***

The Ac.SeAgency organizes working and information seminars for the National Partners network several times a year. It includes a day of thematic study with experts and a half-day off-indings.

The seminars in 2010/2011 focused on:

- “Rights of foreigners, victims of trafficking in human beings” December 2 and 3, 2010
- “Forced marriages: support and coaching for victims” June 7 and 8, 2010
- “Nigeria and the trafficking in human beings” May 16 and 17, 2011

2.1.5.2 Tools developed by European and International Organizations

The following indicators have been mentioned during the investigation as that can be consulted by the stakeholders in charge of the identification.

- Effective indicators of trafficking in human beings elaborated by the International Labour Organization (ILO)¹⁶

The insight results consist of four sets of strategic indicators to identify the victims - adults and children - of the trafficking for sexual exploitation and work. Each set is a structured list of indicators concerning the following aspects of the trafficking definition:

- Deceptive recruitment (or disappointment during the recruitment, transfer and transportation): 10 indicators
- Coercive recruitment (or coercion during recruitment, transfer and transportation): 10 indicators
- Recruitment by abuse of vulnerability: 16 indicators
- Exploiting Working Conditions: 9 indicators
- Coercion at destination: 15 indicators
- Abuse of vulnerability at destination: 7 indicators

- Direct Assistance for Victims of Trafficking Guide elaborated by International Organization for Migration (IOM)¹⁷

The Chapter 2 of this handbook presents a guide to organizations to better distinguish the various forms of trafficking in human beings and proposes a methodology for tracking and identification.

16. Results of a Delphi survey implemented by the ILO and the European Commission. First published in March 2009; Updated version in September 2009 [www.ilo.org/wcmsp5/groups/public/ed_norm/declaration/documents/publication/wcms_105023.pdf]

17. Available in English

[www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/books/CT%20handbook.pdf] 137 pages

- *Guide elaborated by United Nations High Commissioner for Refugees Office*¹⁸
This guide provides indicators to identify trafficked persons and it is intended to recognize and help to resolve these issues by: defining the legal standards and the guidelines to apply, explaining how the tools can be used to identify women and girls to these risks as well as to ensure their protection (see chapters 3 and 4). The guide also indicates what actions can be undertaken to promote the respect of their rights (see chapter 5).

2.1.6 The interviews with the services or organizations

The interviews with the departments receiving the target audience of the project were conducted on approximately four weeks. Five interviews were held in live; the other four were done by telephone.

- 4 agencies generally receiving asylum seekers:

- OFII- French Office for Immigration and Integration: it is the governing body for all the other private organizations receiving asylum seekers.
- Forum Réfugiés: PADA-Plateforme d'Accueil des Demandeurs d'Asile (*Reception Platform for asylum seekers*)
- CIMADE: PADA and CADA- Centre d'Accueil pour les Demandeurs d'Asile (*Reception Centre for Asylum Seekers*)
- ALC l'Olivier: CADA

- 5 agencies generally receiving victims of trafficking:

- Le Bus des Femmes (The Bus of Women), Paris
- IPPO (Bordeaux)
- CUMC (Paris)
- ALC Les Lucioles (Nice)
- Ac.SeAgency- National Safety Action Plan

2.1.6.1 Agencies generally receiving asylum seekers

We should note that for the services generally receiving the asylum seekers, whether they are State services or associations to which the State has

18. First edition January 2008 [www.unhcr.org]

assigned this mission, the identification of victims of trafficking is not a priority during their missions. For reasons related to the public control, other criteria are overarching:

- Health
- Children's schooling
- Primary needs
- Housing

In addition, the subject "victim of trafficking in human beings" is not listed in the statistics required by the OFII, the Governing Body of all PADAs and CADAs. It completes the mission strictly assigned by the public control. The priority, in terms of mission, focuses on administrative regularization; the flow is important, and even if a social support is provided, time is short and the tasks to be carried out are too numerous. The interviewed PADA has only a social worker for over 150 people they accompany. The asylum-seekers in CADA (mainly families with children) benefit from a long-term social support. Trafficked persons are more often isolated adults, low priority for a shelter in CADA. When the identification is possible, there is a problem of orientation, the concerned victims being in denial.

On the 4 agencies receiving mainly asylum seekers, only the CIMADE organizes on its Paris site, a specific help desk for women victims of violence, which are also able to identify victims of trafficking for exploitation purposes.

This help desk exists since 2004; it is held once a week and only via phone orientation by other offices of La CIMADE or associated partners. The interest of such a help desk appeared further to the increased number of violence situations experienced by foreign women, violence related to polygamy, domestic violence, sustaining networks; the victims of trafficking are subsumed in victims of violence.

The stakeholders of La CIMADE practically don't appeal to the National Protection under article 316-1 of the CESEDA, because of the victims' obligation to lodge a complaint, limitation periods, the risk associated with the abandonment of the procedure by the police services and especially the risk of retribution in the country of origin and on the national territory. The same is true for the testimony, considering the risks to be identified by the network that they denounce and the absence of protection outside of the geographical remoteness.

However La CIMADE, specialized in the legal accompaniment of foreigners, needs to rely on the partnership with the accompanying social services providing victims with a response to their needs and if necessary with safety through the National Agency Ac.Sé.

La CIMADE aims to disseminate information and awareness of the phenomenon to other offices at the national level.

2.1.6.2 Identified needs

During the interviews held with the agencies mainly receiving asylum seekers, some of them recognized feeling helpless to identify people who may be victims of trafficking. Their identification process is based on informal concepts such as:

- intuition,
- tracking by citizenship,
- current events
- person's investment in its approach
- general overview: sad, tired...
- mentioning of prostitution or another form of exploitation
- isolation, apparent vulnerability.

Except La CIMADE, which created its own identification tool and also uses the Ac.Sé's one, the others say they do not to use a specific tool and do not refer to any documentation in particular. However, all services receiving asylum seekers recognized that it would be interesting for their teams to be trained on victims' identification.

Does it mean that the identification by a service, at a time T, is enough to obtain a real protection of the person traced as a victim?

2.1.6.3 Agencies receiving mainly victims of trafficking¹⁹

All the interviewed services are specialized and receive persons in situations of prostitution and/or of domestic slavery encountered in the context of their activities (street work) or oriented to the office

19. See Annex 1, *Identifying the number and the demographic characteristics of human trafficking victims seeking asylum*

by various partners (hospitals, social services) or more rarely by police services.

The identification of trafficking for these persons is not an issue and do not arise from the point of view of the organizations that receive them. They have tools to identify the victims of trafficking; such tools were created by themselves²⁰ or made available to them by the Ac.SeAgency or tools available on the websites of IOM, BIT-Bureau International du Travail (International Labour Office), UNODC- United Nations Office of Drugs and Crime. They also support their knowledge of the phenomenon on a considerable and long experience dealing with vulnerable people. ***The question arises from the people themselves; are they capable to identify that they are trafficked victims and if so, are they able to talk about it, when and with which consequences?***

All the interviewed specialized agencies confirm that it takes time to accompany the approach of these persons, some of them are unable to put any words on what they have lived, others are under compulsion and pressure of the networks who exploit them and do not have the courage to betray their commitment about the latter.

The work on a story for facts of trafficking requires up to 12 hours of interview by a social worker assisted by a cultural mediator. The delays may be considerably decreased in the case of proceedings before the CNDA or in case of priority procedure.

Most of the young women identified as victims of trafficking are obliged by the network itself to apply for asylum assuming a story often dictated by the organizers of their exploitation. It will often be needed to wait all the steps of asylum procedure to be done and the rejection by the CNDA for that they are willing to talk about the operating system in which they are trapped in. Their confidence is sometimes linked to their debt repayment or to the birth of a child.

However, this indicates the limits set by the asylum rules in force, and especially those of “Dublin II.” Indeed, the young women victims of trafficking almost always transit by many countries before arriving in France

20. It is the case of CCEM, Cimade, IPPO

and in particular, by European countries, such as Greece, Italy, Spain... the risk of not being able to apply for asylum in France is real. In addition, even though the subsidiary protection exempts the victim of collaborating with the police services, it does not exempt the victims of trafficking to tell the OFPRA or the CNDA, a detailed and documented description of their lives.

2.1.7. Statistical data²¹

2.1.7.1 OFPRA's figures on subsidiary protection

The number of agreements under subsidiary protection has been constantly increasing between 2004 and 2009 since the entry into force of the Act of 10 December, 2003. For the first time in 2010, these decisions are on the decline and account for no more than 19,7 % of all the positive decisions in comparison with 23,6 % in 2009. This trend concerns both decisions of the Office and those of the CNDA (National Court of Asylum Right). One of the key factors in the increase of subsidiary protections in 2008 and 2009 was excision issues. However, this request is in decrease since the end of 2009.

The subsidiary protection granted under subparagraph (b) in article L. 712-1 of the CESEDA (torture, punishment and inhuman or degrading treatment) owns a majority stake (69%). The remaining share is divided between: the extension of the subsidiary protection to parents of children threatened with excision (20%); the implementation of the paragraph (c) of article (generalized violence resulting from a conflict situation) with 3% of admissions under subsidiary protection; the transfer of subsidiary protection for people resettled from Malta (3%). Constant since the beginning of the implementation of the subsidiary protection, the part of women is widely preponderant (61%, National Court of Asylum Right included).

21. All figures mentioned in this paragraph come from the OFPRA's annual report 2010 [www.ofpra.gouv.fr/documents/RA_2010_Ofpra.pdf]

2.1.7.2 OFPRA and CNDA faced with the subsidiary protection

In 2010, a total of 2.035 decisions recognizing the beneficiaries of subsidiary protection status have been taken by the OFPRA and the National Court of Asylum Right (versus 8.305 decisions recognizing the refugee status). On these 2.035 decisions, 1.015 were rendered in the lower court and 1.020 following an appeal: at this level, the balance is almost perfect between the OFPRA and the National Court of Asylum Right.

The distribution of the decisions on subsidiary protection according to the continent of origin of the persons who were granted this status in 2010 revealed that 88% of the decisions rendered by the OFPRA concern persons having the nationality of an African country (5,3 % nationals of the American continent, 3,7 % of a European country and 3% of an Asian country). On the other hand, the decisions on qualification for subsidiary protection taken by the National Court of Asylum Right in 2010 have concerned: 42,4 % of nationals of African countries, 32,5 % of people from Europe, 23% of nationals of an Asian country and 2,1 % of applicants from America.

The study by gender distribution of the decisions on subsidiary protection rendered by the OFPRA in 2010 reveals that about 68,4 % of these decisions were for women. The decisions pronounced by the National Court of Asylum Right in 2010 are distributed in a way a little more balanced between men and women: 53,6 % of these decisions were for women.

Finally, the first five nationalities that have been granted most of the decisions for admission to the subsidiary protection status in 2010 (both in low court and on appeal) are: Mali, Guinea, Sri Lanka, Kosovo and Somalia. For these five countries, there are important differences between the share of positive decisions taken by OFPRA and those taken by the National Court for Asylum Right. In this way, 95,5 % of the Somalis who had been granted the subsidiary protection in 2010 were carried out by OFPRA. In the same way, 70% of decisions for subsidiary protection concerning the nationals of Mali and 67% of decisions granting the Guineans the benefits of the subsidiary protection are rendered by the OFPRA. On the other hand, 93% of Sri-Lankans (as the Kosovars) recognized beneficiaries of subsidiary protection in 2010 were admitted to this status by the National Court of Asylum Right.

2.1.7.3 The subsidiary protection requests relating to trafficking in human beings

These cases represent less than 1% of all applications. It emerges from the investigation that the victims of trafficking in human beings who receive a favourable answer obtain it by the subsidiary protection²² and further to an appeal to the CNDA. A single case was reported to us concerning its obtaining in first instance, thus by OFPRA.

It is however impossible for the CNDA, to quantify the exact number of protection requests or concerning cases of trafficking in human beings. Moreover, the research tool is technically difficult to exploit because there is no classification; only keyword search is available, on condition that the word *trafficking* was used in the pronounced decision.

According to Mister Laurent DUFOUR, interviewed within the framework of this survey, manager of the Centre of Legal Information of the CNDA, trafficking is not object to a specific study, as well as there are no statistics on Women or gender issues. The usual persecutions (excisions, forced marriages) drew gradually, for approximately 3 years, the outlines of a “social group” definition in the Geneva Convention sense.

Nevertheless, its application remains relatively difficult, considering the French definition of the social group: “completely persecuted group” which slows down the case law construction allowing supporting future decisions. As regards social group, behavioural social groups are privileged as well as the ethnic patterns. The reference to the trafficking as such could not be a motive for decision; indeed, it is not the theme which heralds the result, but the reality of the retaliation risk in case of return to the country of origin. The court of the CNDA leans on a fragmented jurisdiction consisting of 70 to 80 part-time magistrates or retired judges, thus leading to a big freedom of appreciation, including on identical subjects, as well as a case law which can be perceived as contradictory because of the informal functioning of this court. The subsidiary protection is applied from recent times (2005), the trafficking, prostitution and forced labour issues were approached with

22. See Annex 1 *Identifying the number and the demographic characteristics of human trafficking victims seeking asylum*

reticence until 2009. The Geneva Convention of 1951 is a constantly evolving right, arbitrated by a Court, which, by interpreting texts, develops them towards a different understanding of the phenomenon.

2.1.7.4 Persons having been granted of the protection by virtue of article 316-1 of the CESEDA

The Immigration Department has updated its software in July 2008 in order to collect data concerning the nation wide application of article L 316-1 of the CESEDA. Between July and December 2008, 22 temporary resident permits have been granted to foreigners who cooperated in cases of trafficking or procuring and 7 renewed.

In 2009 56 resident permits have been granted, and 43 renewed.

Only the administrative authority (prefectures of departments) is competent to decide on the appropriateness of issuing such a residence document; its decision is mainly based on the opinion that may formulate on this point the law-enforcement authorities, police and OCRTEH (represent less than 1% of all applications).

At the same time, the figures of the Ministry of Justice show an average of 1000 condemnations a year for the last 4 years for facts of simple and aggravated procuring. When we know the prevalence of the third-country nationals, EU citizens or not, in the prostitution in France, we have to admit that a restricted number of victims benefits from measures of protection and support which they are entitled to claim.

NUMBER OF ANNUAL CONDEMNATIONS PRONOUNCED FOR PROCURING AND AGGRAVATED PROCURING FROM 2000 TO 2009

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Total procuring	501	436	370	373	388	371	395	423	457	434
Total aggravated procuring	319	225	305	711	592	627	705	669	512	498
TOTAL	820	661	675	1084	980	998	1100	1092	969	932

Source: Ministry of Justice's Directorate for Criminal Matters and Pardons (data for 2009 is temporary)²³

23. Figures from the *Information report of the National Assembly*, Nr.3334, presented on 13 April 2011 by Guy GEOFFROY, MP [www.assemblee-nationale.fr/13/rap-info/i3334.asp#P1948_380444]

2.1.7.5 The access to National Protection

The plan of action set up in 2003 provides the possibility of granting a residence permit only to the foreigners who lodge a complaint or testify within the framework of criminal procedures launched against people committing trafficking or sexual traffic offences. Even though this plan of action turns out to be efficient to maintain in the territory the foreign victims whose testimony is considered highly important, it does not allow to guarantee an effective access to the justice to every foreign victims of trafficking or exploitation.

Not all persons can benefit from it because of their nationality; as a rule, are excluded the community nationals because they are no more subject to have a resident permit to remain on the territory. Then, all victims susceptible to be concerned cannot benefit from it in reason either of the nature of exploitation, or of the nature of the legal proceeding in which they participate.

Therefore, we have victims of trafficking in human beings having the right to stay freely on the territory, but not being able to contact the Employment Agency, nor to benefit from a minimal income such as the TWA (Temporary Waiting Allowance)²⁴, granted only to beneficiaries of a regularization under article L 316-1 of the CESEDA, nor to attend a linguistic training. The victims then become simple “nationals of the European Union” without taking into account their lives and without particular arrangement to ensure their reintegration²⁵.

Therefore, the forms of exploitation others than prostitution exploitation cannot *a-priori* lead to a granting of a residence permit on this foundation, unless being accompanied with facts of trafficking.

This last offence is, however, little-known and little used by the departments of detection and repression and by the public prosecutor’s departments. Thus, it rarely appears in official documents concerning the complaint lodged by the victim or her testimony.

The qualification of trafficking in human beings seems underused by the justice today. Indeed, according to the information communicated by the

24. Decree 2006-1380 of 13 November 2006

25. Activity Report 2010, ALC

Ministry of Justice, only three condemnations for trafficking in human beings were pronounced by the repressive courts in 2009. Among these, it is impossible to determine the part of the condemnations due to the trafficking having prostitution purposes. This figure seems particularly low due to the nearness of this offence with certain forms of procuring²⁶.

**NUMBER OF JUDGMENTS HAVING GIVEN RISE TO A SENTENCE
IN HUMAN TRAFFICKING from 2006 until 2010**

2006	2007	2008	2009	2010
2	4	2	3	3

Source: Ministry of Justice’s Directorate for Criminal Matters and Pardons(data for 2010 is provisional)

The main difficulty seems to lie, for the courts, in the fact that certain elements of the offence, in particular, the recruitment, the remuneration or the advantage, are often realized outside the French territory, what supposes the deployment of a relatively important international cooperation. If this last one is facilitated by the qualification of human trafficking, it can, however, meet obstacles in practice.

2.1.7.6 Residence right and discretionary power of the Prefects

Granting a residence permit under article 316-1 of the CESEDA remains widely subjected to the discretionary power of the prefects. Their requirement concerns the fact of stopping any prostitution activity, demonstrating the initiatives for their social (French language learning, accommodation, livelihoods) and professional reintegration (internships, employment, etc.). Sometimes prefectures do not decline the issuing but conditions it by providing the passport (while this one was seized by the network) or by having a personal address (refusing the addresses at the headquarters of the associations which accompany them).

Most of the exploited victims, other than exploitation for prostitution purposes, which obtain a residence permit, have it on grounds of differ-

26. *Information report of the National Assembly*, Nr.3334, presented on 13 April 2011 by Guy GEOFFROY, MP [www.assemblee-nationale.fr/13/rap-info/i3334.asp#P1948_380444]

ent measures: humanitarian or exceptional reasons, or on the ground of the common law for reasons of health, because of the links tied in France. Many people do not see their situation settled²⁷.

Finally lodging complaints or testimony cannot be enough to start or win a criminal proceeding, the opportunity of pursuits being left to the appreciation of the public prosecutor. More often the victims are not informed about and learn it only when they receive the decision refusing renewal or when an obligation to leave the country is notified.

2007 was marked by the testimony of two victims within the framework of a network dismantling and by a surprise confrontation between the victim and the author of the offence in the office of investigating judge who totally called into question the protective measures of these victims. In spite of the definitive condemnation of the questioned, one of the victims had to wait until November 2010 to be regularized after years of legal battle and finally did not obtain regularization under article L316-1.²⁸

The financial support supposed to allow the victim to wait for the end of the trial, (the temporary waiting allowance) is far from being sufficient. First of all, the misunderstanding of this plan of action by the prefectural services delays and even undermines the entitlement of rights. Besides, this allowance of an amount of 300 Euros per-month is paid during the validity of the resident's permit only (maximum 1 year). Consequently, the allowance, paid during the procedure only, does not still allow the prostituted persons to reconstruct and begin their reintegration. There is no other plan of action to support the reintegration apart its payment. Actually, the low amount of the TWA still does not allow prostituted persons to stop this activity. This allowance is not able to mitigate the existence of a debt, the difficulties to find another activity or the necessity of sending some money to her/his family²⁹.

27. Johanne Vernier, *La traite et l'exploitation des êtres humains en France, (Trafficking and human exploitation in France)* La Documentation Française, Paris 2010

28. Activity Report 2010, ALC

29. *Information report of the National Assembly*, Nr.3334, presented on 13 April 2011 by Guy GEOFFROY, MP, [www.assemblee-nationale.fr/13/rap-info/i3334.asp#P1948_380444]

After years of legal battle, continued failures, sunk situations and absence of protection, the “way” of the subsidiary protection offers more possibilities (in any case more justice because the victim can be heard, even in a contradictory way) by asserting a right that is not conditioned by lodging complaints and thus more adequate to the complex situation of the victims of trafficking.

2.1.8 Main characteristics of the International Protection statutes granted on the basis of trafficking in human beings.

This analysis³⁰ is focused on decisions to grant or reject the benefit of the subsidiary protection, concerning victims of trafficking in human beings or of domestic slavery:

- 37 favourable decisions, covering the years 2007 to 2010, of which only 5 situations of domestic slavery;
- 26 adverse decisions, covering the years 2004 to 2011, of which only one situation of domestic slavery.

It is not about to compare the number of favourable or adverse decisions, since these decisions have been selected by the legal service of the National Court of Asylum Right, without indicating how many other decisions were made in one direction or the other. It is about to study by comparison the favourable and adverse decisions in order to raise the common and divergent elements, and establish the chance factors of getting the subsidiary protection, and the grounds set forth by the Court to justify its decision.

This analysis allowed raising common elements for these decisions, without necessarily asserting that they will systematically obtain the subsidiary protection, or that the list of these elements is exhaustive. In fact, to make such assertions, we should be able to perform a more in-depth work, covering the whole range of decisions in recent years.

Thus emerged from this analysis, including:

- the importance of the network;
- the behaviour of the applicant on the day of the hearing;

30. Analysis and summary of the CNDA's decisions

- the lodging of complaint;
- the documents and testimony provided.

Through this analysis, it is then possible to emphasize that the Court considered three main points:

- the existence of a threat, the latter to be serious, current and personal;
- the appreciation of the implementation risk of the threat;
- the behaviour of the complainant at the hearing.

2.1.8.1 A serious, present and personal threat

The article L 712-1 sets forth the need to establish the existence of a serious threat in order to permit the granting of the subsidiary protection, but it is to the Court, through its various decisions, to clarify that in order to establish this existence it must consider the serious, current and personal nature of the threat. It normally specifies the missing character to justify its decision of refusal, but is not explicit in all its favourable decisions about the meeting of each of these elements.

- A serious threat

Even if it is not always the case, the National Court for Asylum Right had, however, in certain decisions, specified in what could consist these inhuman treatments, which the victim may fear in case of return in her/his country of origin. The latter could, in particular, be the fact of:

- “falling back in the hands of the network”;
- being “again the target of procurers”;
- the fact to see carried out the “threats” issued by the members of the network;
- the risk of being “rejected by her/his family who sees him/her as responsible for the debt” of the latter.

Concerning the reasons justifying the affirming of a real fear, the Court does not specify systematically, but it gave a few examples in its decisions, such as the fact that:

- the victim has suffered “serious threats” from the mafia group or the “death threat” on him/her and her/his family;
- the network claims the money it judges be still due and that her uncle wants to force her to marry an influential man;
- the victim has allowed the dismantling of the network with ramifications in her/his country of origin and in particular, within the authorities;

- the victim has allowed, by its complaint, the conviction of certain members of the network;
- the individuals who “transgress the customary norms of their country of origin, are exposed to this fact of violence,” which seems to be then the assertion that any transgression of customary norms of the country of origin exposes the person to the threats justifying the subsidiary protection, since the Court has relied on this only ground to grant the subsidiary protection, and having granted it to the children, has even extended it to the mother of the latter (United Sections, 12 March 2009);
- the concerned person has “established to be exposed in her/his country to one of the serious threats referred by the provisions of (b) of article 712-1 of the CESEDA without being able to benefit from the protection of authorities”, without specifying more elements to make such an assertion.

It would seem that the importance of the network can have a role in taking into account the reality of the fear of being subject to inhuman treatment in case of return to the country of origin, the Court specifying in some of its decisions that the network “has a relay in the country of origin,” or that it is about “international crime” or “transnational network.” If the Court does not specify more details when it grants the subsidiary protection, however, it points out when it refuses it, the fact that this threat is not current or personal.

- *A current threat*

To establish the existence of a threat, it must be current. In fact, the Court does not grant the subsidiary protection to a person against whom a threat has been proven at a given time but no longer is. And when it considers that the threat is no more actual, it does not consider whether this threat was real before. Thus, the threat which is not present systematically gives rise to a rejection.

Thus, the Court could say that a threat was not present when the person:

- said he/she was threatened by the authorities because of her/his membership in a community of transgender, whereas her/his last arrest was seven years before, and that he/she had in the meantime obtained the support of the representatives of the State in her/his activities in order to come and work in France;

- he/she has been able to leave her/his country legally (absence of a current threat from authorities);
- was no longer in relationship with the individual who threatened him/her;
- he/she has lived with relatives for several years without suffering any aggression or threat, and that the threats are uttered (for example) eight years after;
- he/she waited several years before asking for asylum, allowing the possibility to return to her/his country of origin, for example.

- ***A personal threat***

If the applicant is not concerned personally by the threat to which he/she said being exposed, her/his demand may only lead to: “it results from the investigation that the applicant is not personally exposed to persecution.”

Will not be retained the facts for:

- a minor explaining that she has left her country for France, with a man who then entrusted her to a friend, which lived with persons that she suspected of being prostitutes, and that this friend has advised the applicant to submit to the police, in order to assert “fear for her safety, in case she should return to her country,” being “a single woman” and “without family ties,” “exposed without protection”;
- an applicant saying being persecuted for his activism and having been subject to a search in the hotel where he boarded, if this search does not concern him personally;
- relatives of the applicant to endure threats, she does not suffer directly and personally, do not allow to characterize “a personal exposure to threats of persecution”.

After the existence of a serious, present and personal threat is established, the Court examines evidences that make believe that these threats will be implemented.

2.1.8.2 The threat implementation risk appreciation

In order to examine the threat implementation risks to the applicant, the Court takes into considerations some elements, in particular:

- the meeting of some elements to establish the inability of the authorities of the country of origin to protect the victim;
- the probative value of documents and testimonies;
- the lodging of a complaint.

- *The inability of the authorities of the country of origin to protect the victim*

Even though the article 712-1 does not specify it, the National Court for Asylum Right systematically specifies in the last paragraph of its favourable decisions on subsidiary protection for victims of trafficking in human beings, that the authorities are in the inability to protect the victim with more or less detail on the elements which allow to do such an assertion.

Thus, the Court states, for example, that the protection by the authorities in her or his country may not be effective because of:

- the “corruption” of agents;
- their “involvement” in the network;
- “a conspiracy of customs officers” that helped enter illegally the victim in a country;
- the “links” between the authorities and “the network” or “ransom seekers”;
- “support within the security services” in favour of the network;
- kidnapping and abuse organized at the request of a local community leader;
- former military personnel having forced the victim to hide weapons have become police officers;
- the network has a “relay” in her/his country and has “death threatened”;
- the security of a “single witness” cannot be “guaranteed by the authorities [...] in a survey targeting organized crime”;
- the victim is the subject of a notice of research in her/his country, or wrongly involved as an accomplice of criminal acts, that her/his brother (for example) has been taken in for questioning by the forces of order at the request of the network;
- her/his complaint has been refused by the police;
- one of the police officers who helped him/her has been muted in a conflict zone.

The Court also examines the complainant’s evidences to prove the existence of a persecution threat, and it looks then on the convincing value of documents and evidences in favour of the applicant.

- *The documents and evidence convincing value*

The Court examines the authenticity of the documents, and their probative value as to the specific situation, but it seems that it is also importantly attached to the lodging of a complaint.

If the Court approved the psychological fragility of an applicant based on medical certificates, to assert that “in the highly specific circumstances of the case” the exhibition “in case of return to the country of origin to one of the serious threats” is established, it has also affirmed, in another decision, that a medical certificate was “without probative value as to the origin of the findings that it sets out.”

- *The importance of lodging a complaint*

The refugee status may be granted to victims of trafficking in human beings, when they lodge a complaint or testify against the members of the network for which they work, but in principle, the subsidiary protection is not conditioned by the lodging of a complaint or testimony. It can, however, be observed that in various cases, the Court states that the victims have filed complaints or that their testimony has permitted the “dismantling of a part of the network for which she worked”.

In addition, at the time of refusal of the subsidiary protection, the Court has said on several occasions “considering that those young women who subtracted from the grip of a prostitution network and which, furthermore, intend to denounce the organizers of such a network may, under certain conditions, be exposed in their country of origin to serious threats of inhuman and degrading treatment can entail the benefit of the subsidiary protection; it is especially the case when the nature, scope and power of the concerned criminal networks are such as to make fruitless the protection that the victims of such networks would be entitled to expect from the authorities of their country [...], however, it is constant that the applicant has refrained from denouncing to the judicial authorities [...] the facts which it claims to have been the victim.”

Thus, this formulation of the “refusal of subsidiary protection “ by explicitly specifying that the fact to lodge a complaint justifies the existence of a threat in the country of origin, and that not having done so, the applicant is not exposed, questions the idea of being able to obtain the subsidiary protection in the absence of a complaint.

2.1.8.3 *The leading role of the complainant’s behaviour at the hearing*

It seems that the applicant’s behaviour plays an important role in the assessment of the reality to a threat exposure, especially in its statements

on the day of the hearing. This observation highlights the need for the applicants to prepare to this hearing, so that they can meet the expectations of the Court and get the subsidiary protection. Unfortunately, it seems that the Court is not sensitive to the issues of dissociations after a trauma, or to issues of language and cultural barriers.

- ***The applicant's absence***

The court affirmed in an adverse decision concerning subsidiary protection, that “in the absence of the applicant, who did not appear in Court, no accuracy to assess the based character of his allegations have been made, both on its identity, and in regard to the grounds and the perpetrators of the persecution whose subject he/she claims to have been”. Thus, the absence of the applicant seems to be a ground for refusal of the subsidiary protection, since in absence, it is impossible to specify the allegations made. This positioning seems to be consistent with the majority of the decisions of refusal, which seem to hold their grounds for refusal, for the most part, in the conduct of the applicant on the day of the hearing, based mainly on his statements.

- ***The applicant's statements***

A lot of decisions refer to the applicant's statements, based only on the “vague” character of the latter to dismiss the person and reject her/his application for asylum or subsidiary protection.

Thus, the Court stated that “the statements made by the applicant in a public hearing in face of the Court had, in spite of the questions and repeated prompts of the latter, an extremely evasive character on all matters pertaining to the nature, organization and the actors in the network of prostitution, of which [he/she] said fear reprisals, and the Court was deprived of any possibility of assessing [...] the well-founded fears stated by the applicant, as well, the resort can only be rejected”. On the other hand, the Court stated that “considering that it follows from [...] accurate and convincing statements made in closed session, before the court that [the applicant] has suffered [...] of ill-treatment and abuse [...] that when [he/she] is founded to obtain subsidiary protection”.

We can only raise the importance of the applicants' statements on the day of the hearing, noting that these favourable and unfavourable decisions, are motivated in part by the persuasive degree and nature of the

statements made in hearing; the complainant's statements must "win the conviction" of the Court.

The employed terms are diverse but always expressing the same idea:

- "non-explicit and non-convincing oral statements of the interested";
- "confusing and unfounded explanations";
- "the contracting party related its approaches to the police in inconsistent terms";
- "the insufficient and evasive comments didn't allow to carry out the conviction";
- "the outlined fears in general terms cannot be held for based";
- "unconvincing in its description";
- "notably vague statements";
- "vague and not trustworthy declarations";
- the use of terms such as "confused declarations", "not sincere", "evasive", "summary" or "approximate"...

2.1.9 Key issues after analysis of decisions

- Even though the complaint is not required to obtain the subsidiary protection, it is, nevertheless, a facilitating factor;
- some consideration to the importance of the network and its links with the authorities in order to assess the existence of a threat and the inability of the authorities to protect the applicant in the case of return to her/his country of origin;
- the transgression of a customary norm of country of origin seems to ensure the granting of the subsidiary protection, but the point is to be able to verify that no refusal has been opposed in such circumstances;
- if some of the documents or testimony can facilitate the benefit of the subsidiary protection, the fact remains that the Court considers the authenticity and probative value and that in the absence of another evidence to support, they are not sufficient;
- the elapsed time between the entry on the territory and the application for asylum, or between the facts of human trafficking and threats, are taken into consideration to examine the actuality of the threat;

- threats made to family members are not enough;
- the behavior of the applicant during the hearing and the persuasive nature of her/his statements are vital elements in the evaluation by the Court of the reality of the threats and the risk of their implementation. Even though the Court has often specified the evasiveness of the complainant's statements to justify its refusal, by affirming that the existence of a threat could not be established, it cannot be said that it is based on these grounds alone. Even so, this, however, raises the importance of the training of applicants prior to the hearing, in order to help them tell their story and the threats to them in the most clear, credible and convincing way as possible, in order "to win the trust of the Court" and obtain the subsidiary protection.

2.1.10 Conclusion

The victims of trafficking in human beings seeking asylum meet several particular difficulties: if a threat could not be established, it cannot be said that it is based on these grounds alone. In this regards, as mentioned above, it seems fundamental to arrange training of applicants prior to the hearing in order to convince the Court.

Furthermore it must be observed that they are generally forced by their network to submit an initial application for asylum under a wrong identity, to temporarily have a regular residence, during the time when their request is examined. Once taken out the hold of network, sometimes they want to submit a second petition. But in this case, they benefit from much less important guarantees (priority procedure, no suspensive effect of appeals). The specific nature of their situation isn't therefore taken into account.

Moreover the fact to be condemned, notably for soliciting, is sometimes considered, under the article L. 712-2, (d) of CESEDA, as a ground for refusal of subsidiary protection.

Thirdly, in some prefectures, the issuing of a residence permit under the article L. 316-1 of CESEDA is conceived as a barrier for an asylum request.

Finally, in accordance with Dublin II Regulation, these victims can be delayed to another Member State of the European Union. This can, however, expose them to retaliation in this new State, where victims have no links with the associations which assisted them in France. It would be necessary then, for the victims of trafficking in human beings, the humanitarian clause of this Regulation³¹.

Identification can't be done only by specialised organisms. In order to protect the victims of trafficking in human beings it is still necessary to be able to identify them. Indeed, these last seldom solicit in a spontaneous way police forces or social services and sometimes don't consider themselves to be victims. Not all of them meet specialised services present on the exploitation place. In a general way, services in charge of investigating their asylum request have not enough time to accompany their stories. Moreover, the absence of identification has not only the effect of not admitting these persons to victim's status, but it can lead also to removal orders or criminal proceedings towards them, notably for acts of solicitation.

The seminars organised by Ac.Sé Agency allowed to exchange on practices and tools used by associations in order to optimise assistance to the victims of trafficking in human beings. It emerged from these exchanges that CNDA was waiting for a positioning of associations concerning victims benefiting from a social monitoring. That's how the Bus of Women was heard by the Court to support the request for protection of a young woman and could carry a speech on the individual background of the interested but also a more global expertise on the question of trafficking. The trafficking in human beings represents only an insignificant part of cases introduced to the Court and requires to be explained and defended by people in the field who fight along with the victims to asserting their rights. At a time when the victims are asked to stop prostitution even before having given them the means for surviving, we are persuaded more than ever that a lobby is necessary to all authorities, furthermore, to those who have power to give to these victims «the licence to exist»³².

31. *National Assembly Information Report*, op.cit

32. Activity Report 2010, CHRS Les Lucioles, ALC Nice

The national and international legislations tending to penalize the trafficking in human beings in Europe increased these last years. Therefore, the victims of human trafficking systematically don't have access to measures of protection or to recognition of their status. The deficiency of the national plan of action to the advantage of measures of international protection takes shape for about two years now; however, the victims of trafficking in human beings are not considered as social group and their access to a protection, if nowadays they are not subjected to lodge a complaint, remain complex to implement in the absence of an identification process shared by all stakeholders.

2.2 Italy

Stefania Scodanibbio

2.2.1 Legislative framework on trafficking in human beings

2.2.1.1 Article 18 of the Legislative Decree 286/98

In Italy, the legislature has been leader at international level, affirming by law the principle of protection of victims and of promotion of their rights³³ by the introduction of Article No.18 of the Legislative Decree 286/1998 (Aliens Consolidate Act on provisions concerning the discipline on immigration and rules on the status of foreigners).

The article provides the granting of a residence permit for reasons of social protection, in order to allow the foreigner to avoid violence and conditioning by a criminal organization and to participate to a programme of assistance and integration (paragraph 1).

Victims are provided with two “paths”: a judicial one, in case the victim denounces the exploiter, and a social one, that can also be given without a claim, only showing the condition of exploitation and danger the victim

33. The Member States of the Council of Europe (Warsaw 2005) signed a Convention on action against trafficking in persons with the aim to combat national or international trafficking, based on principles of human rights and on the absence of discriminations in the attention to protect victims.

is living. The residence permit for social protection lasts six months, it is renewable for one year and can be converted to a study or work permit. Actually, our legal system contains a set of rules satisfying the logic of an anti-trafficking approach under the perspective of human rights respect of trafficked persons. Thus overcoming the reward logic that lacks in effectiveness (article No.5 of the DL 13 September 1996, No.477), through Article 18 the Government has applied international legal instruments, combining the strengthening of the repressive actions against human trafficking and the protection of victims' rights³⁴. The path of social protection is really a weapon both in the fight against the exploitation of foreigners and in the trafficking in human beings; it is an example of the beneficial interrelationship among Securities bodies and non-profit organizations and social services. Actually, the different skills, attitudes, and operating modes contribute substantially to the achievement of a common goal: protection of victims and prosecution of crime. Such rule presents very peculiar aspects and represents a model in Europe, because it states a special regulation for the protection of persons that are victims of violence and involved in serious exploitation³⁵. After years from its publication, the law is still meeting difficulties in its interpretation and application, with an uneven trend in its submission, as repeatedly reported by the organizations dealing with trafficking related issues. In some cases, for example, the granting of residence permits on humanitarian grounds is subject to a claim, with a clear underestimation of the requirements of "violence and serious exploitation" and "seri-

34. M.G. Giammarinaro, *L'innovazione, le prospettive ed i limiti dell'art. 18 del d.lgs.n. 268/98 (Innovation, perspectives and limitations of Article 18 of the Legislative Decree No. 268/98)*, in *On the Road Association* (edited by), *Prostituzione e tratta. Manuale di intervento sociale (Prostitution and trafficking. Handbook of social intervention)*, Franco Angeli, Milan, 2002.

35. Giammarinaro MG, *Il permesso di soggiorno per motivi di protezione sociale previsto dall'art. 18 del T.U. sull'immigrazione (The residence permit for social protection provided in the article No.18 of the Consolidation Act on immigration)*, in *Diritto, immigrazione e cittadinanza (Law, Immigration and Citizenship)* 4, 1999; V. Tola, *La tratta di esseri umani: esperienza italiana e strumenti internazionali (Trafficking in human beings: the Italian experience and international instruments)*, in *Secondo Rapporto sull'integrazione degli immigrati in Italia (in Second Report on integration of immigrants in Italy)*, Rome, 2000.

ous, actual and concrete danger³⁶”; moreover, even when permission is granted, the time for its release is unnecessarily long.

To support the legitimacy of a social course, however, despite the difficulties of interpretation, there are studies that assert the central role of the victim towards the success of the case of traffic events and smuggling, whose declarations are of primary importance³⁷.

“The application of our article No. 18, that has allowed the judicial investigation - otherwise impossible - on serious conducts, the identification of their authors and their condemn, has demonstrated once more the effectiveness, in the fight against organized crime, of the investigation instruments and forms of investigation related to reward forms of collaboration, which consent the acquisition of specific items as evidence of cognitive criminal events, with the strength of the narration of those who personally lived those events. However, the added value of this rule is the overcoming of the strictly rewarding vision (typical of the system of justice collaborators) and the planning of an intervention for the reinstatement and enhancement of the fundamental rights of persons”³⁸.

2.2.1.2 Smuggling and Trafficking

The border controls’ protectionist attitude has contributed to strengthen the organized crime, which has increasingly invested in illegal management of migratory flows, offering real illegal transportation agencies, which with an appropriate charge, transfer those who need to abandon, their country to industrialized ones. In addition, the process of both

36. As claimed by On the Road Association’s Lawyers M. Permanent, G. Talarico in their interviews

37. Various authors on the subject, see Articolo 18. Tutela delle vittime del traffico di esseri umani e lotta alla criminalità. L’Italia e gli scenari europei- research-report (*Article 18. Protection of victims of human trafficking and fight against crime. Italy and the European scenarios - research report*) - On the Road Edizioni, Martinsicuro (TE), 2002; M.G. Gianmarinaro’s report in Various Authors, Stop tratta, Atti del convegno internazionale (*Stop Trafficking, International Proceedings*), On the Road Edizioni, Martinsicuro (TE), 2002. *Stolen Smiles: Rapporto di ricerca sulle conseguenze psico-fisiche di donne e adolescenti vittime di tratta in Italia (Stolen Smiles: Research Report on psycho-physical consequences of trafficked women and adolescents in Italy)*, 2006 on the site www.ontheroadonlus.it.

38. D. Mancini, *Smuggling and trafficking in persons*, Franco Angeli, Milan, 2008.

smuggling and trafficking have become more and more complex³⁹, with an evolution among the parties: nowadays we don't find individual *entrepreneurs* who manage trafficking any longer, but a network that is able to act in more countries, moving people and goods, granting logistical support and transnational connections⁴⁰, keeping the organizations leaders well protected⁴¹. When the *illegal immigrant* relies on the smuggler, he/she loses any power in making decisions either on her/his life or on her/his destiny. The goal can be any country, because the border can change for safety and opportunity reasons. Sometimes, the concept of "abroad" can be represented by the transit country, in consideration of the long period of residence. *Smuggling of migrants*⁴² means the answer to the need of emigration satisfied by international criminal organizations through the payment of fees; those organization grant the applicant an illegal access to Italy or to a country of destination selected by the migrant.

Trafficking means, instead, the exploitation of human beings, in particular of women and children, who were kidnapped or baited by deception in their countries of origin, then they are sold as slaves by international criminal organizations. Trafficking is based on trade and it means the movement of persons against their will, from the place of origin to another country, in order to exploit their labour or body. Trafficking and smuggling are different phenomena, which often tend to be confounded because of their unclear distinction.

Since the illegal paths coincide and entrepreneurs often coincide too, it may happen that a person, if an especially vulnerable one, purchases a service of the illegal transfer, during the way or when in the country of

39. International Conference on Trafficking in Human Beings, 2007, Rome, within the project Agis (Save the Children) and the Equal project Observatory on Trafficking (On the Road Association).

40. Report of the Parliamentary Commission of Inquiry on the phenomenon of organized crime, mafia or similar, XIV legislature, *Relazione sul traffico di esseri umani (Report on trafficking in human beings)*, Sen. T.De Zulueta, document XXIII, No. 49 of December 5, 2000; F. Spiezia, F. Frezza, N.M. Pace, *Il traffico e lo sfruttamento di esseri umani (Trafficking and exploitation of human beings)*, Giuffrè Editore, Milan, 2002.

41. Transcrime (edited by) *Tratta di persone a scopo di sfruttamento e traffico di migranti (Trafficking in persons for sexual exploitation and smuggling)*, Ministry of Justice, Rome, 2004.

42. Definition of its Additional Protocol of the UN Convention of December 2000 of Palermo.

destination, he/she will become a trafficked object with the purpose of exploitation. In that case, it is clear that we are talking of *trafficking* rather than pure *smuggling*.

2.2.2 The legislative framework on international protection

The legislation on asylum has never been developed coherently in Italy, it is based on a series of subsequent legislative measures aimed at the modification of the given norms and basically stamped with immigration emergencies⁴³. Despite the changes occurred, it is necessary an organic law to regulate the entire asylum matter and to make a substantial improvement on the situation of refugees and asylum seekers - Italy is still the unique country in the European Union that hasn't got any kind of law of this kind -, to ensure access to a structured and functional protection, assistance and integration to those who seek for their protection in Italy, and to reduce the operational difficulties for local governments, the voluntary sector, police and all operators working in this field. In addition to the legislative gaps, Italy needs organic policies and a national system of reception, protection and integration according to real needs.

2.2.2.1 The Art. 10 of the Italian Constitution

The Italian Constitution gives a very advanced formulation of the right of asylum through the art. 10, paragraph 3: *“the foreigner who is denied democratic freedom in his the country, which is guaranteed by the Italian Constitution indeed, has the right of asylum in the territory of the Republic, under the conditions established by law”*.

Differently from the Geneva Convention, therefore, in Italy, it is not necessary to be a victim of individual persecution to be entitle of the right of asylum, but an actual impediment to the exercise of democratic freedom

43. Some flows have invested our country during international crisis, for example: the flow of refugees in '90 and '91, following the crisis in Albania, Somalia, that started during the 80s and that had its peak in '92 and finally from the former Yugoslavia before and Kosovo later, during the second half of the 90's.

is enough (except a substantial assessment of the non-democracy situation and of the absence of individual rights in the foreigner's country). However, Italy doesn't have a framework law on asylum yet, although the Constitution requires it; in addition, until 1997, although much of the doctrine recognized the different size of "constitutional" Asylum concerning refugees, according to the Geneva Convention, and asserted its applicability, the constitutional provision remained unfulfilled, as the right of asylum is limited to what is provided in compliance with the provision of Geneva. Only in 1997, the Court of Cassation (United Civil Sections, 12:12.06, No.04674/97) has recognized "*the character of perception and immediate application of the constitutional provision*", excluding that the provisions in force can be considered application rules of the art.10, paragraph 3 of the Constitution; as the Supreme Court concludes, the right of "constitutional" asylum can be recognized directly by the Ordinary Judge. The ordinary court has also directly grant the right of asylum to the person concerned without following the administrative procedure for the recognition of a refugee status (the first and best-known application of this rule concerned the case of Abdullah Ocalan, the Kurdish PKK leader). There was, however, an unexplained step back when a part of the jurisprudence of the Cassation (Civil Section, judgement 25028/05) has made the ruling that the constitutional right of asylum guarantees only the right to be admitted in Italy, in order to apply for a refugee status, therefore after the submission of this application, the right expires, and the subject may only invoke refugee status according to the Geneva Convention (so he/she can't directly ask a Judge for the recognition of "constitutional" asylum)⁴⁴.

2.2.2.2 From Martelli Law ...

The first Italian law that rules the migration phenomenon is the No. 943 issued in 1986, which recognizes the right of family reunification and introduces the concept of indemnity; but it is the law No. 39 issued in 1990

44. One could ask the Court to ascertain the ordinary constitutional asylum (Article 10) which differs from international protection, since it is based on non-compliance of rights and freedoms, guaranteed by the Italian Constitution instead, and not on individual persecution.

which constitutes the first attempt to regulate and programme the migration flow. Till then, the Italian law on refugees was the law of ratification of the Geneva Convention dated 1951, which, however, did not define the procedure to get the recognition of the refugee status. With the law No. 39, better known as “Martelli Law” (the Parliament Member that proposed it), in article 1 there is an attempt to discipline the procedure, at least, by introducing the concept of expulsion. The Act provides as follows:

- 1) a foreigner submits an application for asylum at a border post or at a police station;
- 2) the situation is evaluated by a committee situated in Rome (Central Commission for the Recognition of Refugees);
- 3) pending the Commission’s response, the applicant is granted with a permit, which however does not allow access to employment⁴⁵;
- 4) conditions in which foreigners cannot apply for asylum:
 - if they have stayed in a country that has accepted the Convention Geneva and in which they could have asked for protection and didn’t do that (the criterion of *a safe third country*);
 - if they have been condemned for particularly serious crimes (crimes in which the mandatory arrest in flagrante *delicto* is provided for) or are considered dangerous to national security;
 - have been condemned for acts contrary to the principles and purposes of the United Nations or for war crimes or crimes against humanity.

It should be noted, moreover, that until Martelli Law, Italy had not yet abolished the geographical reservation⁴⁶ to the Geneva Convention dated 1951, concerning the status of refugees. In fact, due also to the presence of a small number of asylum seekers in our country, Italy continues to be considered as a transit country and not as a country of asylum seekers, so it has adopted a legislation that has regulated only partially the asylum matter⁴⁷.

45. With last Migration Law, the so-called Bossi-Fini, according to its extensors (Law 189/02), the procedure has been profoundly modified.

46. The geographical reservation provided that political asylum was granted only to applicants coming from European countries

47. At the end of 1988, Refugees living in Italy, under the Geneva Convention, were 7895 - and 2662 under the mandate of UNHCR.

2.2.2.3 ...to Turco-Napolitano Law

In 1998 the Law No.40 (proposed by the Parliament Members Livia Turco and Giorgio Napolitano) was approved; such rule decreased the risk of expulsion, but it increased the accompaniments at the border for public order or “state security”. A residence card has been introduced for immigrants that have been living in Italy for 5 years, family reunifications are simpler; also the institution of a sponsor and forms of guarantee on labour and social security benefits and health are developed, but at the same time, even CPT (Centres for Temporary Residence) are established for foreigners who do not have valid documents, or for those who are believed to possibly escape deportation. Amnesty International Report, titled “*Italy- temporary Presence, permanent rights. The treatment and maintenance of foreigners detained in the centres of temporary permanence (CPTA)*” expresses significant concerns about the situation of irregular migrants and asylum seekers also affected by the orders of expulsion or refolement and “detained” in the CPT, awaiting expulsion from Italy.

2.2.2.4 ...to Bossi-Fini Law...

The Law No.185 issued in 2002 (Bossi-Fini), while retaining the causes of exclusion and the reference to the Geneva Convention, however, introduced important new issues in relation to the recognition of a status. These changes became operational in 2005, following the entry into force of the Presidential Decree No. 303/04 (*Regulation on procedures for detection of recognition of the refugee status*).

First, in almost all cases, the asylum seeker “may or must be held at a detention centre (CPT)” for the time necessary to decide on her/his application. If, previously, the applicant could move freely within the territory, now he/she is detected in a first reception centre for, according to the cases, asylum seekers or for illegal foreigners waiting for expulsion. The “prisoners” detained in the CPT (afterwards called CIE-Centri di Identificazione ed Espulsione, *Centres of Identification and Expulsion*) are not considered as normal prisoners but they are euphemistically called *guests* Moving from the centre without permission, however, means renouncing the application for asylum. This anomaly, in addi-

tion to the violation of humanitarian norms, has provoked sharp criticism on these structures⁴⁸.

In two other cases the mandatory detention is expected: when a foreigner is stopped in a position of illegal residence, as he/she has not submitted a voluntary application at the police station, or when the application is made by a foreigner who has already received a refusal of entry or expulsion at the border. In particular, an optional detention is contemplated in an identification centre (CIE)⁴⁹, in the case the identity of the applicant is not clear (lack of documents or false identification). In that case, the permanence lasts for the time necessary to ascertain the identity and origin of the foreigner, to check the elements on which the application is based and the eventual occurrence of impediments to the application for asylum.

The permanence is not finalized to the submission of the application. After the assessment period, the applicant should be granted of a residence permit pending the approval status.

2.2.2.5 The current legislation in Italy

Although in the absence of a structured corpus⁵⁰ the rules governing refugees between 2008 and 2009, were modified by further and broader legislative acts on immigration and safety (the so called *security package* measures). The legislation oscillates between two extremes: on the one hand, the need to accept the European Union legislation, which tends to

48. Rovelli M., *Lager italiani (Italian Lager)*, Rizzoli, Rome, 2006, p. 194. S. Paone, *Città in frantumi. Sicurezza, emergenza e produzione dello spazio (Shattered Cities. Security, Emergency and space production)*, Franco Angeli, Milan, 2008. The CPT and their management were the focus of many open discussions and have repeatedly been object of complaints by national and international bodies.

49. Legislative Decree No.25/2008 abolishes the CPT, established by Law 189/2002, and in their place it introduced the CIE, Identification and Expulsion Centres, placed in Brindisi, Caltanissetta, Catanzaro and Lamezia Terme - Crotona, S. Anna-Gorizia, Gradisca d'Isonzo - Milan, Modena, Rome, Turin, Trapani, Bologna, Bari.

50. After Martelli Law, which brought changes on the matter, the main legislative action is the so-called "Law Puglia" 563/95, that first established immigrants and asylum seekers first reception centres in the area and included the use of the Army in active control of the maritime border of the region Puglia and the "Turco-Napolitano" Law 40/98.

strengthen overall protection in favour of asylum seekers and refugees within a framework of progressive European standardization, and on the other hand, the changes to regulations that have strengthened measures to combat illegal immigration in Italy.

2.2.2.6 The European directives accepted by Italy

- The qualifications directive

The Decree 251/2007 accepts the Directive 2004/83/EC that defines the minimum criteria for granting the status of refugee and the minimum standards on the content of the protection granted, the so-called *Qualification Directive*.

With that decree, the *application for asylum* is replaced by the application for *international protection*, e.g. the application for a refugee status or subsidiary protection; consequently also the definition *asylum seeker* is replaced by the “*applicant for international protection*” although traces of the first definition remains not only in the common language (25/2008 Legislative Decree regulates the CARA, Asylum Seekers Reception Centres).

Moreover, the criteria for the recognition of subsidiary protection (Legislative Decree 251/2007) have been defined: “*A foreign citizen who is ineligible to be recognized as a refugee but in respect of whom there are reasonable reasons for believing that he/she would face a real risk of suffering serious harm if he/she returns to the country of origin or in the case of a stateless person, if he/she returns to the country in which he/she had previously habitual residence*”.

In that context, death sentence, torture and must be considered a *serious harm*, in her/his own country, and the same for other bad treatments considered degrading to the detriment of the subject asking for asylum, for the individual threat to life or to person deriving from indiscriminate violence in situations of war (both in the cases of civil and international conflict). The right of protection of a family unit, as bound to criteria of income and housing, is also guaranteed to beneficiaries of international protection equating it to a refugee status.

- Residence permits

A refugee status or subsidiary protection is applied with the application for international protection. The residence permit, in that case has a tem-

porary validity and, although renewable for the time of the procedure, it cannot be converted. In case the applicant, after he/she passes the Commission's opinion, is considered refugee (e.g. he/she has achieved the recognition of the status) he/she obtains a residence permit that lasts five years and that is renewable on expiration.

The humanitarian residence permit (RPs), prior to the qualification decree (that is issued before January 2008), is converted into a subsidiary protection, so the residence permit for humanitarian reasons, while still active, becomes increasingly residual. The subsidiary protection is valid for three years. It is renewable if the conditions that led to the subsidiary protection persist and consent its convertibility into a residence permit for work, if the person has a contract, has a valid document (passport or travel document) and, of course, submits an application before the expiry date of the permit itself.

- The Procedures Directive

The so-called "Procedures Directive" (legislation decree No. 25 January 2008) accepted the Directive 2005/85/EC concerning the procedures and standards pertaining to the revocation or the recognition of the status. This decree establishes procedures for the appraisal of applications for international protection submitted by non-EU citizens or stateless persons, and defines the criteria for revocation or termination of the status granted. This Directive is extended to all the Members States that have received an application for international protection, including border areas or transit areas. Some guarantees are provided as follows:

- an application cannot be rejected if not submitted in a well-timed manner;
- the applicants are allowed to stay in the territory until a decision is taken and an answer is send;
- in all Member States an objective analysis of motivation and an impartial evaluation of the request for protection must be carried out.

The introduction of further legislative actions have brought fundamental changes to existing measures; anyway the most significant change concerns compulsory residence in a CIE (Centre for Identification and Expulsion) for applicants and holders of international protection which already received an administrative order ofexpulsion In those cases, of course, the possibility to stay in a CARA is excluded.

The Law Decree October 3rd, 2008 No. 160⁵¹ acts, however, on the family reunification, narrowing the categories of family members that can be reunified:

- a spouse, who must be over age (no more just a spouse);
- minor children, spouse's ones or born out of wedlock, but not married yet, only under agreement given by the other parent, if he/she exists;
- adult sons/daughters, which, objectively, for their total disability, are unable to support themselves (previously the status of disability was not requested);
- dependent parents (older than 65), with no sons/daughters in the country of origin, unable to provide themselves for their support (previously the law considered an inadequate family support only).

In the event that the family state is not demonstrated by appropriate certificates, the applicant can be required the DNA analysis; instead, the amount of the applicant's income is independent from the number of the family members to reunite, in the case of subsidiary protection.

Finally, in the so-called "security package", the Law 94 of 2009 was approved which resulted in changes to the procedures package, in particular for what concerns the action in case of rejection of a person⁵².

The "security package" also included the crime of "illegal immigration" which has also had a tremendous impact on applicants for international protection.

2.2.3 The refugee system in Italy: from volunteering to SPRAR

Despite the changes, in order to adjust the whole asylum matter and make a substantial improvement of the situation of refugees and asylum

51. It modifies the Legislative Decree 5/2007 which, in turn, changed the articles of the law included in the "Testo Unico (Consolidation Act) on Immigration" legislative decree No.286/1998.

52. The appeal and the decree setting the action are sent to the person involved, and are also sent to the Ministry of the Interior, that may sue and be sued through a representative appointed by the National and local Commission which adopted the measure contested by the Ministry of the Interior; the applicant the Public prosecutor and Minister of the Interior itself may submit a claim to Court of Appeal.

seekers, however, an organic law is more and more necessary - Italy is still the only country among the EU Member States with no acts of this kind -; such rules which would guarantee to all people asking for protection in Italy the access to a structured and functional system for their protection, assistance and integration; also it would reduce operational difficulties to local governments, voluntary sector, police and all operators working in this field. In addition to the legislative gaps, in Italy an organic policy and a national reception, protection and integration system is still lacking as well. The State should have the responsibility for reception of applicants for international protection; however, actually very slowly in Italy and still remains largely disregarded. Only in the late '90s, in fact, the first project of "integrated" reception was developed (run by Municipalities and NGOs)⁵³, formerly held just by voluntary associations⁵⁴.

In 2001, the PNA-National Plan on Asylum was established on the basis of an agreement between the Ministry of the Interior, UNHCR and ANCI⁵⁵. With the appliance of the Law No.189/2002, the reception system receives its "institutionalization"⁵⁶. Article 32 asserts the institution of the "Protection System for Asylum Seekers and Refugees"(SPRAR), within which the leading role, as well as in the former PNA, is played by ANCI, to which the Ministry of the Interior assigns the responsibility for the "Central Service which provides information, promotion, consultancy, monitoring and technical support". Moreover, the same law establishes a "National Fund for policies and services on asylum", managed by the Ministry of the Interior, which grants Local authorities who present reception projects for:

53. With the "Joint Action" project, for the first time it is assumed a system of National reception for asylum seekers and refugees, run by the CIR-Centro Italiano Rifugiati (Italian Centre for Refugees) with the participation of various local authorities. And for the first time it sets the aim to provide the applicant not only with food and housing, but also with tools useful to for her/his social integration.

54. It was the law No.40 of 1998 to recognize the local authorities a structural role in reception and in social integration of foreigners.

55. National Association of Italian Municipalities.

56. Bossi-Fini Law recognizes the validity of a project that passes from an experimental step to a stable situation with the creation also of a Fund for the establishment of policies and services.

- asylum seekers pending a decision of the Territorial Commission;
- holders of a “refugee status”;
- holders of a subsidiary protection.

It is the Local Authority, in fact, the holder of political and managerial responsibility of the reception project; Municipality is also in charge of accepting and integrating the applicant for international protection, refugee⁵⁷. The activated system intended to provide not only a network of reception able to support the applicants during the whole process of recognition of the status but also to support the integration of refugees; nevertheless the majority of applicants for international protection remains excluded from the system and without assistance. Currently the system SPRAR has 151 territorial projects; in 2010 there were 3.146 housing solutions (beds): 2.499 of them where ordinary person and 647 extreme vulnerable persons.

Including also further initiatives, the total number of receptions in Italy was, for the same year, 6.855, of which 86, 4% were accepted in the category of ordinary and 13,6% in the vulnerable one.

The European Fund for Refugees (ERF) concerns Asylum policies and systems within the Member States and promotes best practices in that field. The ultimate goal is to create a uniform system of asylum, characterized by the principle of equal treatment, which guarantees to disadvantage people a high level of protection, at the same conditions in all the Member States. From 2001 to 2006 European Funds have converged on the chapter for the National Fund for Asylum Policies and Services, joining the funding for SPRAR territorial projects. In 2006 and 2007, funding from the European Refugee Fund, still within the SPRAR, were specifically intended for local projects for vulnerable groups. The ERF III, for the period 2008-2013 established by Decision 573/2007/EC, however, has assumed a destination entirely independent from the national Fund for asylum.

57. However, there is no requirement for local authorities to join the project. In fact, the law provides a National Fund for Asylum Policies and Services to fund reception projects in the territory through calls to which the Local Authority chooses freely to participate.

2.2.4 A comparison among protection measures in favour of refugees and victims of trafficking

If policies establish the status of a migrant and her/his politic recognition (economic, protection applicant, refugee), however there are paradoxically other places where their fates and qualification are decided⁵⁸. Migrants have, in their own diversity, common characteristics: they flee from situations where they have no hope of survival (hunger, violence, and starvation), using means and modes of access often “illegal”, they are willing to do anything to leave and not to go back. As well known, Italy is a land of recent immigration and more recently a land of asylum. In fact, although presenting an advanced legislation on trafficking matter, it misses a structural corpus designed on international protection, thus, apart from article No.10 of the Constitution, Italy simply adheres to the Geneva Convention and EU standards.

As regards trafficking of human beings and exploitation, Italy has the article 18 of the “National Law on Immigration No. 286”, which is, after more than ten years from its enactment, an object of study for European legislation. In this respect it is necessary, as already said, to enable a process of protection and social integration which is supported by an educational programme, shared with an accredited institution (both private and public), without which the person cannot have a residence permit; nevertheless in case it’s impossible to have sufficient evidence to demonstrate the exploitation, a person can be removed from the programme itself.

For applicants and beneficiaries of international protection, instead, it is sufficiently enough to submit a protection application to remain in the territory until he/she is called by the Commission in charge of the appeal’s assessment. Therefore, the applicant and the person granted of international protection doesn’t have to submit a structured report of her/his sit-

58. Dramatically, the final destination of the migrant is actually decided during transport, whilst the possibility to apply for protection or, on the contrary, the risk of being intercepted by illegal markets (trafficking, begging, organ trafficking) raise.

uation (this document is required for victims of trafficking); in other words he/she can, more simply, submit the application to suspend her/his state of irregularity, and successively complete her/his application.

The appeal cancels and suspends the expulsion and entitle the applicant to stay legitimately in the territory. The refugee and asylum seeker thus cannot be expelled and have a temporary residence permit which, however, do not allow him/her to work for at least six months. At this stage, he/she can still be hosted by friends or in a SPRAR center, according to the availability of the reception network.

The structure of article 18 needs, instead, a very long and bureaucratically uncertain process: only the Quaestor (Head of the Police) will establish whether the person can access a protection path⁵⁹; moreover in the presence of a serious sexual or labour exploitation, an examination is required by the Public Prosecutor, the police and the association that is in charge of the protection programme. As evident, the threshold for the access to the article 18 programme is much higher than the one proposed to the asylum applicant. In such cases, in fact, the decision is made by a Commission consisting of different institutional figures and it is based on an interview, which is validated and built on well structured and shared guidelines. In addition, in order to collect the historical path, the person shall only go to the police station and submit an application, by which he/her will enter a protection programme. The verification of the facts will take place in a second phase.

In this regards some interviewees suggested to have a single Commission for the protection of asylum seekers and victims of trafficking. This would give the chance to overcome even the subjective interpretations of the Police Headquarters on applications; if there was, therefore, a national body in charge of the recognition, or validity of the social path, there would be a huge success for the practical and concrete application of the Article 18, as well as more guarantees in the field of protection for asylum seekers and victims of trafficking. This single body would have the

59. These remarks emerged in the interviews with Guido Talarico and Michela Manente, lawyers from Associazione On the Road

chance to collect more data and maybe even send them to the judicial authorities that are responsible for initiating criminal proceedings against traffickers⁶⁰. A single Commission would guarantee greater transparency, reducing subjectivity; the convergence of data on a commission would increase the potentiality to protect victims, the sharing of data would broaden the knowledge of the phenomenon (more than what an individual police stations can do).

The permit obtained under Article 18 programme is comparable to a subsidiary permit for the international permit applicant. The paths, while similar, however, provide different guarantees of protection to beneficiaries. The victim of trafficking, though denouncing the exploiter, ensures a contribution to the State in terms of Crime Fighting; moreover he/she has fewer protections and guarantees in comparison of refugees and asylum seekers; this discrepancy shows an imbalance in favour of the international protection system. The Article 18 of the Aliens Consolidate Act remains, however, a rule of great importance in the recognition of individual rights and in terms of protecting the victim and fighting crime.

TYPE OF PROTECTION AND RIGHTS

<i>Type of protection</i>	<i>Definition</i>	<i>Residence permit</i>	<i>It also allows access to:</i>
International protection applicant	Application to obtain the status of refugee or international protection (Legislative Decree No. 25/2008)	Its validity is temporary, it may be renewed for throughout the procedure, but cannot be converted	<ul style="list-style-type: none"> • Work activity, if six months after the submission of a protection, there has been no decision on the matter; • Health care; • Social assistance; • Language courses and training; • Legal aid for jurisdictional protection.

60. These remarks emerged in the interviews with Michela Manente and Guido Talarico, lawyers from Associazione On the Road

Refugee Status	Person who is recognized the status according to the Geneva Convention 28.07.1958	Duration of 5 years, renewable at expiry. Work permit. Protection against refoulement.	Fundamental human rights are equivalent to the Italian citizens' ones. Specifically: <ul style="list-style-type: none"> • Identity documents; • Travel Documents; • Public Employment Services; • Education; • Health care; • Social Assistance; • Integration programs; • Programmes for voluntary repatriation; • Family reunification; • The right to move freely within the territory of the European Union (except Denmark and Great Britain) without a visa, for a period not exceeding 3 months; • Right to apply for Italian citizenship after 5 years of residence in Italy; • Right to marry (the clearance is released by the UNHCR after having carried out an affidavit at the civil court in volunteers jurisdiction).
Subsidiary protection	Granted to a non-EU citizen or stateless person who is not eligible to be recognized	It has a duration of 3 years. It can be converted for work reasons provided that: <ul style="list-style-type: none"> • the request for the conversion is presented by the 	Fundamental human rights are equivalent to those of Italian citizens' ones. Specifically: <ul style="list-style-type: none"> • Identity documents;

	<p>as a refugee, but against whom there are reasonable reasons to believe that, if he/she returns to the country of origin or where he/she established the dwelling, would run a real risk of suffering serious damage⁶¹ and therefore he/she does not want and can not, because of this risk, use the protection of the country. (Legislative Decree No. 25/2007)</p>	<p>validity of expiry;</p> <ul style="list-style-type: none"> • the person concerned possesses an identity document: travel document or passport; • the person has a job contract or a business according to the requisites provided by the law, but with flexibility for what concerns documents attesting family ties. 	<ul style="list-style-type: none"> • Travel Documents; • Public Employment Services; • Education, • Health care; • Social Assistance; • integration programs; • Programs for voluntary return; • family reunification⁶²; • The right to move freely within the territory of the European Union (except Denmark and Great Britain) without a visa, for a period not exceeding 3 months; • Right to marry, but without the prediction of clearance by UNHCR.
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61. For granting a subsidiary protection, the serious damage are as follows:

- a) condemn to death or execution of the condemn to death;
- b) torture or other forms of inhuman or degrading treatment damaging the applicant in his country of origin;
- c) serious and individual threat to life or to the person deriving from indiscriminate violence in situation of civil, international or internal armed conflict.

62. The beneficiaries of international protection, for the family reunification procedure, are applied the provisions for economic migrants (as in article 29 of Legislative Decree No. 286/1998).

That implies the need to demonstrate the availability of income and housing, commitment from which refugees are exempted . The owner of subsidiary protection shall be treated the same way as beneficiaries of international protection in the case of possibility to go on with the certification of family status with the support of Italian diplomatic or consular representatives posts, as well as through the documents issued by international bodies, considered suitable by the Ministry of Foreign Affairs (Article 29 b, paragraph 2 of Legislative Decree No. 286/2998).

Humanitarian protection	It is released at all police stations each time the territorial Commissions, when not recognizing the condition for international protection, detect “serious grounds of humanitarian evidence “ on the applicant for and international protection holder.	It lasts one year and cannot be renewed if the conditions are not the same. It can be converted for reasons of work as for the International protection. After Legislative Decree 251/2007, all permits issued on humanitarian grounds under the previous legislation, at the time of renewal, were converted into residence permits for subsidiary protection, but there must be the issue of a new measure of recognition of a subsidiary protection status by the Commission which expressed its decision on the first application.	As well as benefiting human fundamental rights, it is permitted: <ul style="list-style-type: none"> • Right to work in the Italian territory; • Health care; • Social Assistance; • Right to a travel title, if it is not possible to obtain or renew the passport⁶³
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	Trafficking and sexual exploitation	International protection
Who it is for:	For foreigners, who are victims of violence and exploitation.	For a foreigner who is persecuted in one’s own country.
What it contemplates	Participation in a social and assistance protection programme, which is essential for a residence permit of 6 months, which is renewable.	The recognition of the status of a form of protection and the non-refoulement to other country.
How it works	There are two possible paths: 1. Judicial path: the person makes declarations at the police and enters a protection programme;	Within 6 months, the person should be called by the Territorial Commission of reference; the person will be

63. Ministry of the Interior (February 24th 2003), which accepts the circular from the Ministry of Foreign Affairs dated 31 October 1961 No. 48 “*Titolo di viaggio per stranieri*” (*Travel title for foreigners*).

	2. Social path: the person asks for protection for escaping from the racket control. On proposal of the Prosecutor of the Republic, the commissioner may issue a permit without asking for further opinions.	issued a residence permit that allows to live legally within the territory; after 6 months if the person (applicant for and owner of international protection) has not been called by the Commission, he/she can work. In case of refusal, the person may forward a claim and that consent a legal residence in the territory up to the definition of the claim.
Foreigners management	The projects are territorial and the management is direct, in accordance with the territorial network and/or on sending through the network of national toll free number.	The network is coordinated by a central system that handles sendings, arrivals and departures and lays down the criteria in accordance with the demands of the prefectures.
Protection	Residence permit of 6 months, renewable.	Refugee status: 5 years, renewable; Subsidiary protection: 3 years, renewable.
Criticality	It allowed the possibility of returning to the country of origin without losing residence permit.	It is not allowed to make visits to the country of origin, otherwise the protection is lost.

The asylum path, thus, seems providing a greater protection to people. The decision on asylum, in fact, is made by special Commissions that jointly evaluate a variety of information that the applicant must provide; on the contrary, as regards the granting of residence permit according to the article 18, the decision has a greater discretion margin (the decision on an eventual social path must be taken by the Head of police) and, sometimes, there is a lack of elements or instruments to decide for the best, especially in the case of a social path. Even victims of trafficking, in some cases, are suggested to submit an asylum application (both by lawyers themselves and, sometimes, by the criminal organizations), because this path ensures greater stability to the person: the applicant's staying in the territory in fact is immediately regular and remains legal

even if the application fails; that is, if the person receives a denial, there'll be at least another year of time to make an appeal against such denial. Moreover, conversely to the system of protection of refugees and asylum seekers (SPRAR), measures established by Article 18 are carried out with no national coordination, as regards both data and programmes: projects are developed separately throughout the Italian territory and the access to such programmes is conditional on Police's willingness to agree about a social path. This circumstance leads to real different treatments, not only in the field of trafficking, but also between the two protection programmes for asylum seekers and victims of trafficking. Therefore, we need to refine the Article 18 programme and strongly support it, not only for the innovativeness of the rule, but also for the empowerment perspective it contains, which provides persons with a real chance towards the citizen status; this means, that the victim becomes also an active actor in fighting the crimes committed in our territory.

2.2.5 The procedures of identification of trafficked persons

2.2.5.1 Indicators of smuggling and trafficking

The tendency to repatriate migrants, with no procedure aiming at the identification of the person, in particular in emergency situations, produces, as we have seen, many irregularities in the expulsions.

For that reason, in the drafting of protocols, some general **indicators** have been established, with the joint contribution of social workers and security bodies, which consent to identify victims of trafficking or other severe forms of exploitation (prostitution, forced labour, begging) taking into account also places of practising (road, premises, etc.) gender, geographic and cultural characteristics of the victims.

A person is considered a victim of trafficking if he/she:

- is subject to a situation of violence; runs a serious and current danger for the attempts to escape the conditioning of a criminal organization;
- faces the same danger for the declaration made by the victim during preliminary investigations or criminal proceedings;
- cannot freely dispose of the revenue deriving from one's own activities;

- cannot handle the timing and manner of performance;
- is under threat of personal safety or family safety;
- cannot move freely within the territory and towards her/his country of origin;
- cannot have identity documents.

Also the living conditions of the victim must be considered:

- displacement, isolation, lack of knowledge of the language;
- need to pay the debt bondage;
- extreme poverty in the country of origin;
- failure of the her/his migration project;
- ritualized forms of control (that is Voodoo for Nigerian women).

For what concerns forced labour⁶⁴ and domestic servitude, parameters have been identified by the ILO (International Labour Organization); also in that case it is fundamental to investigate on how voluntary or coerced a performance of work is, in order to define precisely the situations in which irregular jobs turns into slavery, according to the regulatory parameters of the Article 600 of the Penal Code.

2.2.5.2 Protocols for identifying victims of trafficking

On the one hand, there is the difficulty for the victims to seek for help and rely/feeling safe, on the other hand there is the risk that the competent operators on that field, during interviews, due to the frequent reluctance (for shame, sense of guilt or just for psychological difficulties)⁶⁵ do not identify the victims as such, but consider them the same way as those devoted to criminal activities or persons not entitled of protection. The definition of tools and protocols for the profiling of groups at risk, of indicators and tools for the identification and protection of the victims, allows security bodies, magistrates and operators to identify the target group in a consistent and common way.

64. See F. Carchedi, F. Sore, T. Bianchini, A. Marsden, *La tratta a scopo di grave sfruttamento lavorativo (Trafficking with a serious labour exploitation)* in F. Carchedi, I. Orfano (edited by) *La tratta di persone in Italia. Il fenomeno e gli ambiti di sfruttamento (Trafficking in persons in Italy. The phenomenon and the areas of exploitation)*, Franco Angeli, Milan, 2007.

65. Post-traumatic stress syndromes are widely described in literature.

Different protocols for the identification and support of exploitation and trafficking victims (both minors and adults)⁶⁶ have been prepared, in an attempt to make the regulation on protection of vulnerable groups more effective and efficient; they are available to security bodies, judiciary and social operators. In a constant confrontation among securities bodies, Immigration Department, Magistrature, social workers and accredited associations, the protocols establish the criteria for identification, recognition and coordination of the various stages of approach to potential victims, preparatory to subsequent investigations on the matter. Those good practices aim at enhancing the synergic interaction of contrasting actions among the different involved parties, with the final goal to achieve the best possible judicial response, in respect of the victim. On the matter of protecting victims of trafficking (assistance, protection and compensation, regardless of the value as a witness), Europe currently has an insufficient system⁶⁷.

2.2.6 The identification of applicants for and people granted of international protection

The applicant for and beneficiary of international protection must follow an administrative process that begins with the submission of the application for international protection at the border police station, or at the police station which is closest to the place where he/she lives. The applicant for and person granted of international protection, in case he/she has got a passport, must leave it to police officers and he/she is not entitled to have travel titles.

66. On the Road Association with the Prosecutor's Office of Teramo, drafted the so-called "*Teramo Protocol*" within the workshop "Integrated Actions combating trafficking in human beings and protection of victims in the province of Teramo" in 2005, updated and expanded in 2010. The Association, jointly with Save the Children, also drafted a behavioral handbook, able to activate a path of investigation and simultaneously a process of protection of victims as correct as possible ("*Identification Protocol and support of children victims of trafficking and exploitation*" AGIS Project 2003).

67. Report of the Expert Group on trafficking appointed by the European Commission, cited above.

The Police informs the applicant on the asylum procedure, then he/she receives and formalizes the asylum application, that has to be sent to the responsible Commission (in charge of the decision on the application), as the Police has neither the power to examine the question nor to assess any obstacle against the entry of foreigners into the country; it must only identify the person and then transfer him/her to a government reception centre. The applicant is granted of a residence permit for “international protection application”, which lasts 3 months and can be replicated till the decision of the Territorial Commission, or the Judge’s decision, in case of claim. Further the submission of the asylum application, the Police, if the person has no means, contacts the Prefecture, that will provide hosting in one of the centres set up by Local bodies within the SPRAR System⁶⁸ or will give the applicant a contribution of primary care⁶⁹.

2.2.6.1 The examination of the asylum application

The asylum application is to be reviewed by the Territorial Commission for granting international protection, which, through the competent Police Headquarters, calls the applicant on the day fixed for the hearing. If it is not possible to run the notification or the applicant fails to appear without justification, in any case the Commission decides on the application, even in the absence of the applicant and on the basis of the documentation available. The National Commission for the right of asylum is competent, instead, for the removal and termination of the international protection status.

68. To evaluate the acceptance criteria refer to the guidelines SPRAR, www.serviziocentrale.it

69. If the police have a central role among the institutional parties (they release the residence permit, its renewal, collect and forward applications to the appropriate Commission, issue a travel document, send the concerned person the call and the action of the Commission, the measures of expulsion issued by the Prefect, and intimate expulsion), the prefecture acts as a Local Government: it is responsible for providing initial assistance to applicants, it evaluates the means of subsistence, sends any reception application to the SPRAR database, provides the transfer to the headquarters, notifies the structure of the applicant’s submission to the Police and the competent Territorial Commission and issues possible expulsion order.

- *Territorial Commissions*

There are 10 currently active Commissions in Italy. The Legislative Decree 3/10/2008 No. 159 assigns to these Commissions the task of assessing the need for international protection of asylum seekers. These administrative authorities (currently established in the Prefectures of the cities of Turin, Milan, Gorizia, Rome, Caserta, Foggia, Bari, Crotone, Siracusa and Trapani, and competent for different geographical areas) operating in a collegial manner are made of four members: an official of the Prefecture, performing the functions of chairman, a representative of the State Police, a representative of local government and a representative designated by UNCHR.

- *The National Commission for the Right to Asylum*

The National Commission for the Right of Asylum is at the top of the administrative system formed by the Territorial Commissions; it has competence in matter of revocation and termination of the recognized protection status, as well as competence in guidance and coordination of the Territorial Commissions, particularly in:

- training and upgrading of the Commissions members;
- setting up and updating a computerized database containing information useful for the monitoring of asylum applications;
- setting up and updating a documentation centre on the socio-political and economic conditions of applicants' origin countries;
- monitoring the flow of applicants for asylum⁷⁰.

- *The hearing of the applicant*

The interview takes place privately without the presence of relatives, unless the Commission decides otherwise. The lawyer of the applicant may be admitted to the hearing. The information acquired during the hearing is strictly confidential. In the case of a minor, however, the con-

70. The decisions of the Territorial Commissions for granting international protection and those regarding termination and revocation of the status adopted by the National Commission for the right of asylum may be appealed before the ordinary courts, whose rulings on the matter can then possibly be the subject of a claim before the Court of Appeal and, ultimately an appeal to the Supreme Court of Appeal.

versation is made in the presence of the parent, of the person that has parental responsibility, or of the guardian. The procedure of recognition of asylum may be terminated when:

- the applicant is convicted and punished for crimes envisaged by the Article No.380 and 381 of the Criminal Code (arrest mandatory or optional in *flagrante delicto*);
- an applicant leaves the Italian territory before the end of the process of recognition of international protection.

- The conversation- interview

The hearing in the Territorial Commission has the following features:

- takes place privately;
- a minute is written and a copy is delivered to the foreigner;
- it is desirable to produce a documentation that proves the validity of the application;
- the applicant can speak her/his own language or a known language;
- if necessary, the Commission shall appoint an interpreter;
- the applicant is entitled to be assisted by a lawyer;
- the Commission takes appropriate measures to ensure confidentiality of the data regarding the identity and statements of the applicants, and of the conditions of persons with special needs as specified in the article No. 8, paragraph 1 of the Presidential Decree 303/2004;
- opportunity to submit statements and documentation at each stage of the proceeding.

The applicant may consider appropriate to submit a written statement, even in her/his own language, to facilitate the historical reconstruction of the path and reduce the emotional reactions. In case of vulnerabilities, the application is subject to a prior examination⁷¹.

The interview concerns: personal data of the applicant and her/his family (parents, children, partner); the reasons of persecution and the reasons of escape from the country; news on the journey and the reasons for which

71. One can ask to postpone the hearing for health reasons, which must be certified or for other serious reasons, and also to support the interview with a members of the Commission of the same gender.

the person does not want to or cannot return to the country of origin. There will be an evaluation of any documentation that the asylum applicant will produce in support of well-founded fear of persecution (newspaper articles, political membership cards, medical records, and so on).

EXAMPLE OF DOCUMENTATION

Instance motivation	Subjective condition	Objective situation	Documentation
Religious discrimination	Member of a church	Religious guerrilla	Certificate of Baptism
Ethnic discrimination	Belonging to a determined ethnic minority	Ethnic war	Symbolic identification of belonging to a particular ethnic group
Political persecution	Member of an opposition political party	Internal political crisis	Political membership card
Victim of Torture	Obvious signs of torture	The law provides for the torture	Documentation related to incarceration
Sexual Discrimination	Being of a certain sex or to have a clear sexual orientation	The law provides for sex discrimination	Documentation of discrimination acts

- *Decisions and possible outcomes*

The Territorial Commission for granting of the international protection, as a result of the hearing, may recognize a form of protection, such as:

- the *refugee status*, if an applicant has the requirements established by the Geneva Convention (1951);
- the *status* of subsidiary protection, if an applicant, while not in possession of the requirements of the Geneva Convention, needs international protection⁷²;

72. The law is very precise about the definition of: *acts of persecution and the reasons for persecution* that, if recognized, will allow the applicant to be granted the status of refugee, or a *serious harm* that, if recognized, allows an applicant the recognition of a subsidiary protection. Both forms of protection, unlike what happened with the previous provisions, are status, then the revocation may be ordered only after a verification of the individual situation.

- it can ask the police to grant a permit for humanitarian reasons (*for reasons not attributable to the safety of the person but to serious humanitarian motives*), that does not allow, however, to leave the country (note that it is different from the humanitarian residence permits released until January 2008, equalized to subsidiary protection);

- reject the application as manifestly unfounded, if the applicant does not have the above mentioned requisites, or the application is inadmissible, because it has been already assessed by other European country (for example the Dublin cases). In those circumstances, applicants are required to leave the national territory, except in those cases he/she is granted a residence permit for another condition. The decisions of the Commissions are always notified in writing and, if negative, they are accompanied by reasons of fact and laws and by the indication of the mode of appeal.

In case of rejection of an application, the applicant may appeal the Court. It is entitled to access legal aid by the State when the applicant cannot afford the trial costs. The appeal is eligible if submitted within 30 days from the notification of the measure. The term is 15 days if the applicant is in a CIE .The Commission declared inadmissible the application and proceeds in the assessment if the person is a recognized refugee or the application has been refused and newly submitted without any new facts or events occurred.

The Commission may decide to suspend or postpone the hearing, when:

- it needs more time to decide or needs further documentation;
- it is impossible to support the hearing;
- there are communication problems with the interpreter.

The appeal to the denial automatically suspends the effectiveness of the measure contested (“suspensive effect of the appeal “). The applicant is granted a residence permit from the Police for the application of political asylum, until the outcome of the appeal.

- Measures of reception of asylum seekers

Foreigners who have been granted a residence permit for “asylum seekers” and don’t have sufficient means for their own subsistence and their families’, have the right to access, with their families, to reception measures. To that purpose, the applicants may apply for access the reception measures when submitting the application for asylum.

The Prefecture, after assessing the lack of means of subsistence, ensures availability of places within the SPRAR.

During the period of recognition, applicants are guaranteed, as it is for Italian citizens, the following services:

- access to health services, extended also to legally residing relatives;
- access to social services of the Municipality (grants and assistance for children and other specific services);
- the release of the tax code;
- enrolment in the Registry as a local resident and, subsequently, entitlement to receive identity cards.

They are not entitled, however, to:

- family reunification before the positive decision of the Commission or of the Court;
- get married. They can do it in Italy only if they have all the documents required by the Registry of residence. “The wedding clearance” is released by the UNHCR only to already recognized refugees.

For what concerns the access to employment: if the decision on the application for asylum is not taken within six months from its submission and the delay is not depending on the applicant, the residence permit is renewed for further six months and it enables the applicant to work until the conclusion of the recognition of the status of international protection (Refugee status or subsidiary protection status). This kind of residence permit - which mentions “*for asylum-job activity application*”- it cannot be converted into a permit for “job reasons”. If generally, the rights of asylum seekers are recognized to victims of trafficking, for what concerns employment, instead, the victim of trafficking can work and convert the permit only after obtaining clearance from the Public Prosecutor. Such a residence permit, however, may be renewed for three times (each renewal has a duration of six months), to facilitate job search, prior to conversion for job reason.

2.2.6.2 Remarks on the identification system

The interview does not provide a specific intervention to determine whether the person is a victim of trafficking, although there are specific indicators in such a way. In general, all the interviewed persons

complained that there isn't a common list of indicators that is constantly used by operators, in the process of national identification, and also assert that the use of such instruments would be particularly relevant and desirable. Obviously, the main difficulty that prevents proper identification of trafficking victims in asylum seekers is the fact that the asylum system and the trafficking system never meet, actually the two institutions are conceived as two completely separate systems. On the contrary, as pointed out by many parties, particularly NGOs, the two systems should be interconnected in order to ensure that the protection needs of individuals are considered and safeguarded adequately in their application.

The pattern of interview adopted during the hearing aims at the identification of the international protection condition, but does not provide any indicator of traffic (expected as judicial process). Therefore, the identification of a victim of trafficking, which, however, is never identified as such, is defined on the personal experience that different members of the Commission have on the asylum matter. And it is also easier to reach identification if in the Commission there are members trained in both legal and social fields on wide themes. According to some lawyers of the ASVI⁷³, there were cases where the Commission, suspecting a case of trafficking, suspended consideration of the case and invited the person to start an alternative security path (Article No.18). Some cases, identified as victims of trafficking, were treated by the Commissions with residence permits for subsidiary reasons, but still there isn't a structured process and a protocol of joint work that allows proper identification of victims of trafficking who apply for asylum, and a uniform treatment in the various Commissions. It is clear, therefore, the need to develop more defined protocols for the identification and a shared training of the professionals involved. That would ensure an appropriate protection and a more adequate definition of paths for trafficking victims who may be excluded from the programs of international protection.

73. Agenzia per lo sviluppo del volontariato (Agency for the development of non profit)

2.2.7 Overview on statistics related to the possible correlation between asylum seekers and victims of trafficking

With this regard we do not have much information, since there are no disaggregated data on the paths (related to asylum seekers and victims of trafficking) that, as we have seen, are separated and follow different and not tangential processes.

We will try to analyze some statistics in order to understand possible correlations: we refer to the data that we have on asylum seekers and on victims of trafficking.

2.2.7.1 *The flows in Europe and Italy of the applicants for and holders of international protection*

In the last decade, the flows have changed in terms of numbers, countries of origin and routes followed to reach Europe. From the year 2000 to 2005, they had a steady decline over the time of approximately the 25% less than previous years, reaching the minimum value of instances in 2005: 9.436 applications submitted. It must be underlined, however, that in 2005 entered into force the application rules of Bossi-Fini Law on procedures for the recognition of refugee status. Since 2006 there has been, however, an increase in applications for asylum in our country (Table 1).

Table 1

Year	2005	2006	2007	2008	2009	2010
Applications submitted	9.346	10.348	14.053	30.145	17.140	10.100
% variation	-4.6%	10.7%	35.8%	121.3%	-56.2%	-42.9%

SOURCE: EUROSTAT till March 2011

In the first six months of 2008, the refugees in Italy were about 47.000⁷⁴. However, between June and August of that year, there was an upsurge in number of new asylum applications, mainly linked to the intense flows arriv-

74. UNHCR. These data do not include minors and refugees before 1990.

ing by sea recorded during summer: in those months, in fact, there was a submission of 31.097 applications, an increase of 121%⁷⁵. An extraordinary flow, which has overcome the applications submitted in 2007 and has more than tripled the ones in 2006. A trend even higher to the demands submitted during the conflict in the former Yugoslavia. An unprecedented growth, which placed Italy at the 4th place among the major destinations of applicants and beneficiaries of international protection in the industrialized world⁷⁶.

However, after the peak registered in 2008⁷⁷, in Italy there is a very strong decline (-72% vs. 2008), while in the EU there is a reduction of the 5% compared to 2009 (about 358.000 asylum applications).

According to the SPRAR data, the number of instances submitted in Italy in the last 10 years has performed a discontinuous trend⁷⁸. From the analysis of the data it emerges, in fact, that the phenomenon has not registered a significant change from a quantitative point of view in the last decade, even scoring significant fluctuations. Profound changes, however, were observed for what concerns countries of origin and the routes used to arrive in Italy. In 2006, in response to more than 10 thousand examined applications, almost the 60% of the asylum seekers (about 9.400) was granted a protection. In the 9% of cases, the applicant has been recognized as a refugee; in the 46% of cases, instead, there has been recognition of humanitarian protection⁷⁹. In Italy, as evidenced by the data, it appears that more than 57% of all the asylum applications, examined during 2007, have obtained an international protection, with a further slight increase compared to 2006 (which was of about the 56%). Vice versa, the

75. Data provided by the Ministry of the Interior and processed by Cittalia

76. *Annual Report of the Protection System for Asylum Seekers and refugees*. Years 2008/09

77. Data provided by UCNHR till the 28.03.11

78. Diminishing from 2000 to 2005. With a peak determined by the applications submitted in '99 by individuals from the former Yugoslavia, with a significant increasing trend until 2008, to return in 2009 to a level similar to the one recorded in 2001.

79. Excerpt Section, working since 2005, aims at defining quickly the instances pending at the former Central Commission for the recognition of a refugee status regarding the application for asylum prior to 2006; over 5.000 were the applications examined in 2006. In Europe, however, after the Somalis, the largest group that has been granted protection is represented by the Iraqis (13,100, equal to the 17%, 6,200 of whom received in Germany) and, then, by the Afghans (7,100, 1,800 of which are accepted in the UK, while Italy has granted protection to 700 people).

denial of their need for international protection was decreed against just a little over a third of the total number of asylum seekers. The Excerpt Section commission has continued its work from 2005 throughout the 2007. In 2010, in comparison with the 11.325 decisions taken (the data concerns also some applications submitted in 2009), 4.305 persons obtained a form of protection, about the 38% of applicants.

Starting from May 2009, Italy is the EU country that has registered the largest decrease of refugees, flexion due to the restrictive policies activated in the Strait of Sicily by Italian and Libyan authorities, which determined a lower stream of immigrants from the southern Mediterranean Sea. The decrease of admissions, due mostly to policy of refolement, is confirmed by the UNCHR data; so the decrease of applications in countries such as Malta (-49%), Greece (-36%) and Italy (-53%), that practice those policies, is followed by an increase of application in countries like Germany (+49%), Sweden (+32%), Denmark (+30%), Turkey (+18%), Belgium (+16%) and France (+13%).

Therefore, the perception the Italians have of *invasion by uncontrolled flows* is incorrect if we compare it with Europe in terms of numbers. Regarding to the number of refugees, Italy has very low figures compared to other EU countries, both in absolute terms and relative ones. In 2009, refugees in Italy are approximately 55.000 (including holders of international and humanitarian protection), against 160.000 in France, 580.000 in Germany, 290.000 in the United Kingdom. In addition, our country is confirmed on the third last place in the European rating of host countries for number of inhabitants. Between asylum applicants registered in the territory and population resident, in fact, the ratio is 0,7 refugees to 1.000 residents, unlike Sweden, which has a ratio of 8,8, Germany more than 0,7, or the United Kingdom, which has, however, a ratio of 5 applicants and beneficiaries of international protection to every 1.000 inhabitants. In Italy, according to Istat, there are about 4.2 million of legal immigrants, including both EU-citizens (1.2 million) and the new Italian citizens, approximately 7% of the total population. As the causes of forced migration in countries of origin have not been eliminated, the inflecting trend of protection application does not depends on the reduction of push factors, but on the difficulties that the potential beneficiaries of international protection meet exercising their right, determined by the increase of stricter control of migration in asylum countries.

2.2.7.2 Refugees and asylum seekers' nationalities more represented in Italy

At the end of the last decade, the majority of asylum applications was presented by individuals from the former Yugoslavia or Kurds from Iraq and Turkey, who arrived by sea or by land through the Italian-Slovenian border. In the years 2009/10, however, according to the data provided by SPRAR, most instances of protection were applied by citizens from Africa and Asia, who entered the northern Italy along the northern Balkan, the Turkish or Greek routes or experimenting new routes (such as, for example, from Tunisia towards Sardinia). The countries of the Horn of Africa and Afghanistan are the main source area of the accepted beneficiaries. In particular, among these Eritrea (17%), Somalia (9.6%), Afghanistan (8.4 %) and Ethiopia (5.8%) are included. Men are definitely more than women, although the presence of families has increased.

In 2009, asylum seekers were mainly from Africa (60% of the total, mainly from Eritrea, Nigeria, Ivory Coast, Somalia and Ghana), from Europe (22%, mostly from Serbia-Montenegro) and from Asia (17% firstly from Afghanistan). A refugee status has been recognized especially to people who come from Eritrea, Somalia and Afghanistan, who also represent the largest number of beneficiaries of subsidiary protection, but in that context, Somalia (2.193) has exceeded by far Eritrea (914) and Afghanistan (501).

Table 2 - Top 5 nationalities among asylum applications 2000/10

1990-2000	2006	2007	2008	2009	2010
Albania 21.300	Eritrea 2.151	Eritrea 2.260	Nigeria 5.333	Nigeria 3.720	Nigeria 1.165
RF Yugoslavia	Nigeria 830	Nigeria 1.336	Somalia 4.473	Somalia 1.495	Pakistan 1.057
Iraq 12.132	Togo 584	Serbia and Montenegro 1.100	Eritrea 2.739	Pakistan 1.250	Turkey 770
Romania 6.114	Serbia and Montenegro 597	Ivory Coast 982	Afghanistan 2.500	Bangladesh 1.200	Afghanistan 706
Turkey 4.250	Ghana 530	Somalia 757	Ivory Coast 1.844	Eritrea 865	Serbia 522

SOURCE: UNHCR Asylum Levels and Trends in Industrialized Country

With regards to the approximately 30 thousand applications submitted to the Territorial Commissions in 2008, the 39.9% had the recognition of a form of international protection; in the 7,7% of cases, there was a recognition of a refugee status (1.695 cases), according to the Geneva Convention; while the remaining 32%, was granted a subsidiary protection (7.054). If those cases are then added to the number of applications for the recognition of some form of humanitarian protection, the protection is near to the 50%.

In Europe, in 2009, asylum seekers were particularly of Eritrean and Nigerian origin. Only the 12% obtained a refugee status, while about 75% of applications for political asylum were rejected in the same years. It should also be noted that further to the acceptance of European Directives and the adoption of the Legislative Decree No. 251 dated 19 November 2007, the application for the recognition of a refugee status is in fact replaced by the application for an international protection, considered as an instance to obtaining a refugee status or a status of subsidiary protection. That has resulted in a change in the type of status of the people hosted in the reception services: the 74% tend to differentiate in other forms of protection (refugee status, humanitarian and subsidiary protection) changing actually even the type of the services beneficiaries.

2.2.7.3 The entry borders

According to the changing of the source of entry flows there is also a change in the pressure on the different crossing borders invested by the flows themselves. So the entry of asylum seekers gradually shifted towards the south-western coast of the Italian peninsula. During the early to mid 90's, the borders which were mostly invested by the pressure of asylum seekers were the Slovene-Italian border, and more generally, the Adriatic coast. This geography of entries corresponded to a large flow of people coming from the Balkans: the homeless from the former Yugoslavia, the Albanians and Kosovars. From the second half of the 90's on, the entrance channels gradually shifted, at first towards the Calabria coast, mainly due to the arrival of Kurds from Turkey and Iraq and from other Middle Eastern countries, then towards the Sicilian coast, invested by flows of people coming from sub-Saharan Africa and North Africa,

who found favourable ports in Libya. An example: in 2006, there was a reduction of 4.5% of illegal entry by sea in the Italian territory compared to 2005, the majority of landings took place on the coast of Sicily, with the arrival of 21.400 non-EU immigrant (22.824 in 2005), while only 243 (19 in 2005) arrived in Apulia, and 282 (88 in 2005) arrived in Calabria (65). The landed immigrants are: 8.146 from Morocco, 4.200 from Egypt, 2.859 from Eritrea and 2.288 from Tunisia. The drastic decrease of the numbers related to migrants arriving by sea on the Italian coast in 2009 (-90%), affected the decrease in asylum applications, interrupting a positive trend that had been continuing without interruption since 2004. The data provided by the Territorial Commissions appear to confirm this change, although it must be said that the point of arrival of asylum seekers doesn't necessarily correspond to the place where the application is submitted and then examined.

Finally, we point out that Italy collects the 20% of applications applied by the Somalis in Europe⁸⁰ and also hosts the 40% of Nigerian asylum applicants in the world.

2.2.7.4 The extent of the trafficking phenomenon

The phenomenon of trafficking in Italy is still submerged and not much visible. The official sources are, in fact, able to detect only sector data: from the one hand, the Commission on Article 18 of the Department for Equal Opportunities (DPO) collects data from projects of social protection for victims of trafficking, on the other hand, the National Anti-Mafia Directorate processes the data coming from the District Attorney on crimes which show victims of sexual exploitation, among the victims. In both cases, the data are partial and do not reflect the total universe of reference, as they are limited to the data of the population coming into contact with social protection services or with the police. The most reliable information, thus, concerned with the residence of permit issued according to Art.18 provisions.

80. Somalia is on the second place in the ranking of asylum applications and shows an increased migration (77%) compared to 2007 in the 44 most industrialized countries. In Italy, that increase was 491% (UNHCR 2008).

Table 3 - Residence permit article No.18

	2001	2002	2003	2004	2005	2006	2007
Rp required	1.148	1.386	1.082	1.081	1.217	1.234	1.158
Rp released	833	1062	962	927	942	927	1009
	73%	77%	89%	86%	77%	75%	87%

SOURCE: Department for Equal Opportunities (2007)

The National Observatory on Trafficking⁸¹ within the Equal Opportunities Department has closed its operations in 2010 without having submitted any compiled data useful to our research work. The 80/85% of the women involved in the phenomenon of trafficking consists of 5 national groups: Nigeria 30.9%, Albania 6.9%, 7.5% Moldova, Romania 27.8%, Ukraine 7%⁸² in an age between 25 and 34. For what concerns the presence of children, recent research (see Save the Children - On the Road, 2011) can attest the phenomenon at around 8-10% of the total trafficking victims.

2.2.8 Asylum seekers victims of trafficking

At the moment we have neither reliable and defined data on trafficking of human beings and on the kind of exploitation that suffer, nor on the number of people that, even being victims of trafficking, have applied to enter an asylum path. Thanks to the interviews brought together with the social operators working in SPRAR projects and with specialized NGOs, and to the comments coming from the discussion with operators working in information counters for migrants or for the Mobile Units which intercept trafficked victims, we have the feeling that many people are orientated to choose the refuge path, as an alternative to the failure of Article 18 path. Let us try, then, to identify the variables that may offer some useful elements to this working hypothesis.

81. www.osservatorionazionaletratta.it

82. The percentages, which date back to 2008, refers to women who, between 2005 and 2006, were in the system of a social protection at the local services. "The estimates are mostly indicative ... "(Carchedi, Tola, 2008:78).

2.2.8.1 The policies in support of women's rights

The international community recognizes the specific reasons that can push women to forced migration.

The persecution of gender is a distinct form of persecution that may fall under the definition of “refugee” given by the Geneva Convention for the recognition of the “refugee status” in 1951. The General Assembly of the United Nations defined violence against women “*a form of persecution connected to the female gender and that is manifested through violent actions of physical, psychological or sexual type or in any way intended to cause pain in women, also including threats, coercion or arbitrary deprivation of liberty, either in a private or public sphere*”.

The last decades have highlighted a new international awareness on women's condition⁸³ and the existence of gender persecution that is also defined in the EU asylum policies, largely through the UNCHR efforts, that has always supported the need to provide specific protections to migrant women. In conflicting countries, in addition to violence concealed by cultural processes (genital mutilation, forced marriages, etc.), rapes were recognized as a genuine ethnic war weapon, used on women's bodies. That crime, which took place in the war in Yugoslavia and in the conflict in Rwanda, has been explicitly connected to the gender. The victims of this persecution may be identified as specifically belonging to a “particular social group”, so one is able to enter the 5 cases identified by the Geneva Convention (race, religion, nationality or political opinions). In 1996, the EU Council legislation on additional guarantees decided that Member States must include the presence of qualified female interpreters in the procedures of women's asylum application, and that especially in cases where, for experienced events or cultural origin, the applicants have difficulties to explain fully their reasons.

2.2.8.2 The SPRAR system and women

In 2008, there was a peak number of women (21 thousand) in line with the arrival flows, but their percentage remains consistently below the

83. From the World Conference in Beijing in 1995 to the Conference on Violence against women of 2009, many are the publications supporting the need for a gender policy to reduce the escalation of violence against women.

30% compared to men's, while it tends to rise (45%) in projects for vulnerable categories⁸⁴, for the presence of women who are pregnant or single-parent families with children. The majority of women, accepted in SPRAR network, is aged between 18 and 25 (32%) and between 26 and 30 (19%), this datum increases when we talk of services for vulnerable groups (38.6%) girls up to the age of 5 are the 15% of people accepted (203), while there are only 86 women over 40.

Table 4 - Women- age by type of SPRAR reception June 2009

Age	Ordinary		Vulnerable		Total	
	V.A	%	V.A	%	V.A	%
0-5	161	15.5%	42	16.7%	203	15.7%
6-10	39	3.7%	12	4.8%	51	3.9%
18-25	319	30.6%	97	38.6%	416	32.2%
26-30	218	20.9%	31	12.4%	249	19.3%
31-40	192	18.4%	35	13.9%	227	17.6%

SOURCE: Based on Cittalia procession, on Central Service data

The area of origin is the Horn of Africa: Eritrea (17.3%), Somalia (14%), Nigeria (12%), Ethiopia (9%), countries which have maintained the sad record of being the main area of origin in recent years; those nationalities alone represent the 58% of women seeking for international protection, and represent the 76% of the accepted in vulnerable category. The decrease of the average age is a phenomenon that generally concerns women migration in Italy, but if this phenomenon is connected to the diversification of the flows and to demographic trends of the countries concerned, in some cases young age is a factor that raises some concern, especially when we started to observe the osmotic process between smuggling and trafficking in particular with respect to arrivals from Nigeria.

84. The SPRAR system has produced particular projects specialized for the reception and support of people with specific vulnerabilities, that also includes people with disabilities or health problems (physical and mental), unaccompanied minors, torture victims, single parents and single women who are pregnant.

2.2.9 A case study: the Nigerian matter

The choice to speak of the Nigerian matter and to make it a case study was determined by the symbolic nature of the case itself, both in terms of international protection and trafficking, and for the tangential dimension of the phenomena. In fact, although there are no data and certifications, some connections and contamination among smuggling, trafficking and international protection are recognized in the field of Nigeria trafficking, particularly according to the declarations of organizations that deal with management and reception.

The UN Convention for the African region grants the condition as a refugee to the one who escapes from situations of war and violence. So, Nigerian trafficked women fall within this definition, even if that sometimes is not the best possible condition to protect⁸⁵.

According to the data published by the National Anti-Mafia Directorate in 2008, Nigerian women were second only to Romanian in the crime of reduction into slavery. The Nigerian prostitution is traditionally a “Street” one and is characterized by a tendency to form a homogeneous and isolated group, which does not integrate into the social and territorial contest outside one’s own community; however, the community is very well organized and rooted in the area (places of worship, ethnic shops, hairdressers, which are suspected to be also the sites of management and trafficking control). Specifically, the organization can rely on the dynamics of awe and control of the victims, who are tied to the organization through religious rituals that make the victims cooperating accomplices of the Nigerian community: our country, in fact, does not offer job opportunities qualitatively significant to foreigners, even when they are in possession of qualifications acquired in Italy. Moreover, there are neither cultural proximity and /nor language, nor a colonial tradition that could justify such a high ethnic concentration.

Among the possible hypotheses, there are: the dimension of national boundaries which is difficult to be controlled by the police, as they are

85. The decision to enter the international protection may increase the potential risk offamilies in the countries of origin.

easily accessible for illegal organizations that deal with smuggling; the perception of impunity of illegality (for example, the inability to carry out all the expulsions), which, together with the immigrant amnesties that have occurred over the years, could encourage irregular migration; and finally, as the Nigerian researcher P.AWETA Eze in a recent essay says “*organized crime, which has always been part of Italian history and culture, has found a synergy and a perfect meeting point with the organized network of women trafficking in Nigeria*”⁸⁶. Moreover, beside trafficking, Nigerian clans manage cocaine trafficking in the main regions of the Italian peninsula, going along the same routes used to move people and goods. The use of many couriers, men and women forced to swallow ovules containing drugs, minimizes the risk of loss in case of controls and arrests. Although considered a pillar of the family for the strong, enterprising and autonomous character, the Nigerian woman is subjected to both politically and culturally discrimination and that is what determines her decision to emigrate. Nigerian women are people who flee from violence of their country, as stated by the UN Convention, or are even victims of trafficking. In their country they already suffer the condition of gender: as women they are considered inferior and subject to the rules of the family clan; the majority of them have little opportunity for choice and decisions concerning them, the decisions are taken within the clan, and they are only later communicated to her⁸⁷.

The 40% of women are illiterate, slave to fathers and husbands and, in case of widowhood, they may be inherited by the older relative, they are not entitled to inheritance, but they are assured a place in their husband’s house. They are victims of polygamy, really widespread and based on women subordination. Domestic violence is really widespread and socially accepted: in fact, insubordination and disobedience to her husband cause a social

86. *L’esperienza della Nigeria: il dilemma odierno e le prospettive future (The experience of Nigeria: today’s dilemma and future perspectives)*, in Rapporto annuale del sistema di protezione per richiedenti asilo e rifugiati 2009/2010 (Annual report of the protection system for asylum seekers and refugees 2009/2010), SPRAR page 174

87. In the north, in Muslim areas, ruled by the Sharia or koranic law, women live in a semi-seclusion state, while in non-Muslim areas, in the southern (Ibo and Yoruba), women have a more equal role

stigmatization. Still, female genital mutilation, or, also, arranged marriages are some of the pushing factors for women to try a different life somewhere else, “abroad”. Once entered the trafficking circuit, the system of awe perpetuates, it forces women to a constant state of alert (voodoo), which cancels the person’s intention to act and allows the control on the victim even at a distance. Once arrived at their destination, they discover they have been deceived by the sponsors on the real working conditions they will face to pay the debt, plus the unimaginable violence of the impact of the street work. To all this, there is the additional physical and mental stress of adapting to an unknown world, with an incomprehensible language, with behaviour, habits, climate, food and ways of living so far from the known ones, and all those facts are just instruments of alienation. The perception of violence is amplified by the loss of confidence; the inevitability of events makes women passive and weakens any possible alternative hypothesis. Violence perpetrated by those who should ensure safety and that, instead, break the contract (their mother, stepmother, sister) produces an even bigger explosion, so it is sometimes difficult to trust even those who might be an alternative to loneliness⁸⁸. By some observations on the field made by female operators of SPRAR Immigrant Reception Centres and by operators of Mobile Units operating in trafficking and smuggling areas, we find a perceptual datum (not supported by numerical and statistical data) on the request for international protection by “trafficked” women, in particular from Nigeria, which turns out to be increasing. In several interviews we registered cases of people who, while being victims of trafficking and sexual exploitation, opted for a *double binary*, that is, they submit an application as an applicant for international protection and simultaneously enter a protection circuit of Article 18.

88. S. Scodanibbio, C. Bolanos, *Percorsi di uscita e accompagnamento verso l'autonomia*, in On The Road (a cura di) *Manuale di intervento sociale nella prostituzione di strada, (Exit paths and support for autonomy, in On the road (curated by), Handbook of social intervention in street prostitution)* Comunità Edizioni, 1998. It is believed, in fact, that as it is increasingly difficult to be regularized with the social path of article 18 (there is an increase of claim request after an initial Residence Permit obtained through a social path), many women apply for asylum seekers, not being able to make a claim. In that way, they get immediate reception and a guarantee of permanence in the territory, for at least one year after the application, and that even after a denial for social protection.

2.2.10 Conclusions

At the end of our work in desk review and research-action (through interviews to target groups) some important trends emerge clearly to be kept in mind:

- there is a clear awareness of the great “*métissage*” (crossbreeding) among migrants’ different problems, and particularly on asylum application. There are few reliable data in that sense, but, certainly, there are compelling factors that lead us on that perspective;
- therefore, we believe it is essential to promote the development of a larger coordination and collaboration among all the involved parties in the field of human trafficking and international protection so to ensure that trafficked victims and refugees have guaranteed the conditions of protection recognized by the Geneva Convention;
- e need to strengthen the case assessments and intensify the cooperation among the various key parties in the identification process, involving NGOs and specialized agencies of the sector (including UNHCR) in the detection and assessment of needs, as well as in the management of (alleged) victims, who may need international protection. If a person is not recognized as a trafficked victim, one can be exposed to a revenge risk of exploitation organizations;
- the SPRAR system highlights positive aspects. Firstly, the promotion of a widespread decentralized system of spread reception which is based on the involvement of the local bodies⁸⁹; secondly, it has “*favoured the consolidation of a modus operandi no longer focused only on solidarity, but oriented on having an integrated protection system which sees reception as only the first step in a path. The aim of the programme, in fact, was to*

89. The estimated funds for the management of local projects are, as mentioned, for the territorial body that is the responsible and which in turn distributes them to the management body of the reception project, an association of the third sector. On the matter of the importance of that synergy, between the institution and third sector/voluntary sector, the responsible for the ANCI states that exchange has involved the major national associations (CIR, Caritas, ICS), but also local associations, and demonstrates as thanks to the exchange, both the third sector and the local bodies have grown.

*enable genuinely cross services, that is, following the user in the phase of application submission and of the termination of the pending procedure, and, finally, to the eventual stabilization and integration, or, otherwise, to voluntary return to the country of origin*⁹⁰;

- article 18 is positive in our country, even if it is not evenly applied;
- among the critical problems emerged, however, the main one is the scarcity and uncertainty of funding sources. The funds available for reception are largely insufficient to ensure a reception of all asylum seekers who arrive in the area each year. As highlighted by the responsible for asylum of the ANCI, money spent on integration in Italy is less than a quarter of what is spent to combat illegal immigration. The other problem is the uncertainty of funds themselves, which makes extremely difficult the management of asylum seekers reception project for the associations. The associations interviewed all reported a cut of almost 50% of the funds from 2002;
- in Italy, the reality of the reception of applicants for international protection has two speeds: on the one hand there is a reception system (SPRAR Network) which aims at providing the instruments for social inclusion, but on the other hand, there are those who are excluded from this system and are without assistance. The reception capacity within the SPRAR system, although it was increased (2011) and brought to 3.000 beneficiaries; it is still small in comparison to the real demands and needs of persons seeking to enter the program, and especially, if the funds remain the same, there will be no possibility for any type of improvement⁹¹;
- unfortunately, there is no uniform agreement that makes the process of protection of the trafficking and asylum seeker victim as an integrated approach.

90. International Political Study Center, *Dal programma Nazionale Asilo al Sistema di protezione per richiedenti asilo e rifugiati* (From the National Asylum Program to the Protection System for asylum seekers and refugees), October 2004, page 32

91. Furthermore, for all those who are excluded from the SPRAR network, the only help provided was the economic contribution of Martelli Law, abolished *de facto* by Bossi-Fini Law. Considering this great majority, it should be noted that the researches and studies carried out are few, that is an element that continues to fuel the vicious cycle of invisibility of that phenomenon.

2.3 Spain

Maria Teresa De Gasperis

2.3.1 National legislative framework on Trafficking in Human Beings⁹² and International Protection

2.3.1.1 Legislative framework on Trafficking in Human Beings

Trafficking in human beings (hereinafter “THB”) in Spain represents a growing and rooted phenomenon, producing a very deep concern among the NGOs and some of the institutions working on the matter, particularly because of the lack of adequate institutional measures and legal instruments, along with appropriate protection and assistance State responses⁹³.

The main current anti-trafficking legal instruments in Spain are:

- Organic Law 10/1995, November 23, modified by Organic Law 5/2010, June 22: it is the Spanish Criminal Code (hereinafter “CC”), which entered into force in its reformed version on 23 of December 2010⁹⁴;
- Organic Law 4/2000, January 11, on rights and freedoms of foreigners in Spain and their social integration, modified by Organic Laws 8/2000, 11/2003, 14/2003 and 2/2009 (hereinafter “Immigration Law”)⁹⁵;

92. In the present report the part regarding Trafficking in Human Beings has been fulfilled also considering the results of the mapping activity performed in the context of the EU-funded MIRROR Project (“*Developing agreed methodology of identification and referral for trafficking for labour exploitation: guaranteeing the victims the access to protection*”), led by Accem. In addition, also the information gathered during the investigation on THB in Spain carried out by Accem in May and June 2010, in the context of the EU-funded E-NOTES Project (“*European NGOs: Observatory on Trafficking, Exploitation and Slavery*”), in which Accem participated as partner, has been taken into consideration in order to design some paragraphs of the present report. The report has been finalized on July 2011 and updated on May 2012.

93. Amnesty International, *Amnesty International Report 2010 - Spain, 28 May 2010*, available at [www.unhcr.org/refworld/docid/4c03a7ff4a.html]

94. [www.boe.es/boe/consultas/bases_datos/act.php?id=BOE-A-1995-25444]

95. [www.mir.es/SGACAVT/derecho/lo/lo04-2000.html]

- Regulation of the Organic Law 4/2000 (as amended by Law 2/2009), adopted by Royal Decree 557/2011, of 20 of April (hereinafter the “Immigration Regulation”)⁹⁶, published in the Official Bulletin of the State (BOE - *Boletín Oficial del Estado*) on 30 of April 2011, entered into force on 30 of June 2011 (2 months after its publication);
- Organic Law 19/1994 of 23 December on the protection of witnesses and Experts in criminal cases (hereinafter “Law on Protection of Witnesses”)⁹⁷;
- Framework Protocol for the Protection of Trafficked Persons, adopted in October 2011 by the competent governmental bodies (hereinafter referred to as the “Protocol”)⁹⁸.

The CC is the law that addresses various aspects and forms of exploitation associated with THB. On the 9th of June 2010, the law modifying the Spanish CC was adopted and a new Chapter titled “Trafficking in Human Beings” has been introduced: the reform entered into force on 23 of December 2010. The amendment represents a very important step forward in the Spanish Criminal Law system, considering that, until its adoption, the prosecution of THB has been realized pursuant Article 318-bis of the CC⁹⁹, which solely defines smuggling of migrants in general as well as smuggling of migrants for sexual exploitation. Thus, the prosecution of trafficking in the Spanish context has been realized throughout a

96. [www.boe.es/boe/dias/2011/04/30/pdfs/BOE-A-2011-7703.pdf]

97. [www.noticias.juridicas.com/base_datos/Penal/lo19-1994.html]

98. *Protocolo Marco de Protección de las Víctimas de Trata de Seres Humanos*, http://www.fiscal.es/cs/Satellite?cid=1240559967741&language=es&pagename=PFiscal%2FPa-ge%2FFGE_buscadorDocEspecialista

99. Art. 318-bis CC: persons who “directly or indirectly, promote, favour or facilitate the smuggling or clandestine migration of persons from, in transit or destined to Spain, will be sentenced for a period of 4 to 8 years of prison.” According to par. 2 of the same Art., “if the purpose of the smuggling or clandestine migration was the sexual exploitation of the persons, will be sentenced for a period of 5 to 10 years.” Higher penalties will be applied when such acts are carried out through the use of violence, intimidation, deceit or abuse of the victim’s state of vulnerability or when if the life or health of the victim is endangered. Increased penalties are foreseen for aggravated circumstances such as when the victim is a child, when there was abuse of authority by a public servant, or when the offender is a member of a criminal organization” (par. 3, 4, 5 of the same Art. 318-bis).

set of norms dedicated, from one side, to the “Crimes relating prostitution and corruption of minors” (Chapter V of the CC), criminalizing forced prostitution (Art. 188), sexual exploitation of children (Art. 187 and 189), child pornography (Art. 189). Also Article 221 related to the crime of illegal adoptions and Article 232 criminalizing smuggling of children for begging and forced begging of children, have so far been used to persecute and punish some forms of exploitation connected to THB.

In addition, also the conducts foreseen in the context of the “Crimes against the Rights of Workers” (Chapter XV of the CC) and to the “Crimes against the Rights of Foreigners” (Chapter XV-bis of the CC), criminalizing the labour exploitation (Art. 311 CC), the abetting of clandestine working migration (Articles 312 and 313 CC), the labour discrimination (Art. 314 CC), the limitation to trade union rights (Art. 315 CC), the infringement of safety and health rules (Articles 316 and 317 CC) and the smuggling of migrants (Art. 318-bis CC) have been used in order to fight against the phenomenon of THB¹⁰⁰.

As evident, such lack of juridical certainty has always created a wide confusion on the distinction of the two different phenomena (THB and smuggling of migrants). In some cases it also has prevented a correct functioning of the criminal juridical system, besides representing a very strong juridical lack and a failure of part of the international and European obligations that Spain has undertaken. Moreover, because of the described legal framework in Spain whereby trafficking has been dealt with as an aggravating of smuggling, it has always been also extraordinary difficult to get precise information on THB.

In light of the above considerations, and as a result of the mentioned investigations conducted among the different actors involved in the phenomenon of THB, the inconsistency of the Spanish legal framework to

100. Most of the mentioned dispositions have been modified in accordance to the introduction of the provision of the new crime of trafficking in human beings [www.boe.es/boe/dias/2011/04/30/pdfs/BOE-A-2011-7703.pdf]

prevent and to fight against THB has been always unanimously claimed. In general, it can be considered that the new introduced Article 177-bis defines THB in accordance with the definition contained in the international and European instruments on the matter. In particular, the new introduced Article 177-bis applies both in case the victim is Spanish and foreigner and it establishes that trafficker is punishable by five to eight years of imprisonment. Referring to the conducts typifying the crime of trafficking, Article 177-bis is in line with the international and European instruments on the issue. On the contrary, referring to the means generally used for trafficking, it has to be noted that the above-mentioned article does not include the “giving or receiving payments or benefits to achieve the consent of a person having control over another person”. In addition, it includes “violence”, without any specification, and it does not refer to “coercion” and to “force”. In relation to the purpose of the trafficking, Article 177-bis includes “sexual exploitation, including pornography”, but it does not refer to the “exploitation of prostitution of others”, as well as it does not incorporate the “exploitation of criminal activities”, as set forth in the newly adopted Directive of the CC 2011/36/EU of the European Parliament and of the Council of 5 April 2011, on preventing and combating trafficking in human beings and protecting its victims (replacing Council Framework Decision 2002/629/JHA)¹⁰¹.

It is deemed appropriate to underline that the mentioned reform of the Spanish CC has been put in place pursuing the transposition of the now abrogated Council Framework Decision 2002/629/JHA into the Spanish legal system. Subsequently, it is expected that by the 6 of April 2013 (the deadline established by the Directive 2011/36/EU for its transposition into the EU Member States’ legislative frameworks) the Spanish legislator will fully comply with the obligation to introduce the new European instrument, adapting the definition of the crime of trafficking to the definition contained in the mentioned recently adopted Directive.

Regarding the **protection and assistance to trafficked persons**, the modification of the Immigration Law adopted on 2009 has introduced a

101. [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF]

new Article 59-bis addressing identification, recovery and reflection period, assistance and protection to trafficked persons that are in an irregular migratory situation. As mentioned above, on 20 of April 2011 the competent authorities have adopted the Immigration Regulation that develops and details most of the dispositions contained in the mentioned Immigration Law, among others the one related to THB. It has to be pointed out that the Immigration Law does not apply to EU citizens or to Spanish nationals. This gap has finally been solved thanks to the modification of the CC, as well as by the Unique Additional Disposition (*Disposición Adicional Única*) of the Immigration Regulation, which establishes that the disposition contained in Article 140 of the same Regulation will apply also to presumed trafficked persons who are nationals of an EU Member State¹⁰².

The Law on Protection of Witnesses is the one that can be applied to protect witnesses in Spain. This law is very short with only four articles and its full implementation is still lacking, due to the fact that its Regulation has not been adopted yet, despite its Second Additional Disposition establishes that the implementing Regulation should have been approved in 1995. According to this law, a judge shall decide if a person is considered as a protected witness, upon the victims' request or under her/his own initiative. Protection and security needs of the witness and her/his collaboration with justice are decisive in taking such decision, and not the severity or type of offence. There are no other specific dispositions regarding witness victims of THB, nor on minors victims of such crime. Such Law obviously does not satisfy any of the trafficked persons' basic needs, neither when the threats are directed not only to them, but to their family members, who are totally unprotected.

When witness protection is granted, victims are entitled to physical protection, relocation, identity change and assistance in obtaining jobs as well as appropriate protection from potential retaliation or intimidation. Finally, as established by the Immigration Law, in October 2011 the Pro-

102. For a detailed description of the content of the Immigration Law and of its recently adopted implementing Regulation, see below par. 2.1

tolcol has been adopted by the following competent governmental bodies: Ministry of Health, Social Policy and Equality, Ministry of Interior, Ministry of Justice, Ministry of Employment and Immigration, Public Prosecutor Office and General Council of Judiciary. The main purpose of the Protocol is to provide practical hints for detection, identification, assistance and protection to trafficked persons for any form of exploitation. It also aims at enhancing the coordination among all the institutions working on THB issues and at establishing the coordination mechanisms among those governmental bodies and the NGOs who provide assistance and protection to trafficked persons.

Even though the core aim of the Protocol is to provide more specific guidelines aiming at implementing the protection measures set forth in Article 59-bis of the Immigration Law (i.e. detection and identification procedures, coordination mechanisms, issuance of permits, etc.), as also the Spanish Network against trafficking in Persons¹⁰³ has claimed, it still lacks of a victim-centered and human rights based approach. In addition, it does not contain key definitions and criteria necessary to produce significant improvements.

In this context, it is deemed appropriate to mention also the *Comprehensive Plan to Combat Trafficking in Human Beings for the Purpose of Sexual Exploitation* (hereinafter “Action Plan”), adopted by the Council of Ministries on December 2008 (in force until December 2011 and extended until December 2012)¹⁰⁴, with the purpose to provide for a national structure to coordinate anti-trafficking responses. Such act stipulates, *inter alia*, the creation of two structures: one called *Inter-ministerial Coordination Group*¹⁰⁵, in which the relevant Ministries partici-

103. *Red Española contra la Trata de Personas* [www.redcontralatrata.org/spip.php]

104. [www.migualdad.es/ss/Satellite?cid=1244647282488&pagename=MinisterioIgualdad%2FPage%2FMIGU_SinContenido]

105. The Inter-ministerial Coordination Group was created to monitor and evaluate the Plan by monitoring and evaluating the actions forming part of the Plan; drafting of proposals; communication with the Social Forum against THB for the purpose of sexual exploitation; tabling of proposals and conclusions to the Monitoring Committee of the Human Rights Plan; and approval of an Annual Report for submission to the Executive Committee for Equality and to the Cabinet of Ministers.

pate¹⁰⁶ and another called *Social Forum against Trafficking in Human Beings for the purpose of Sexual Exploitation*¹⁰⁷, composed of Public Administrations, NGOs and other relevant institutions. Unfortunately, such Plan of Action refers exclusively to trafficking with the purpose of sexual exploitation¹⁰⁸.

As reported by different NGOs, the coordination of anti-trafficking measures through the two above-mentioned structures is insufficient in practice. Subsequently, from the outlined framework, it derives that in Spain there is no structure or formal system that can be described as a National Referral Mechanism. As clearly pointed out, there have been good practices of collaboration between police officers, other involved institutions and NGOs in several places of the Spanish territory. However, such collaboration is not generalised and is not developed in all the Spanish territory to the same extent. Moreover, as stated, the current policies and strategies for the identification and referral of victims are focused on victims of sexual exploitation and especially adult women (in line with the purpose of the Action Plan).

The need for establishing mechanisms that can ensure an effective protection of victims of trafficking through precise instructions has been repeatedly recommended by the Ombudsman's Office and the Spanish Network against Trafficking in Persons. In that sense certain efforts have been made to improve the legal framework on the establishment of a national referral mechanism, with the purpose to refer presumed trafficked persons to the services they require. In fact, the Immigration Law

106. Ministry of Labour and Immigration, Ministry of Foreign Affairs and Cooperation, Ministry of Justice, Ministry of Interior, Ministry of Health and Social Policy and Ministry of Equality (chairing the Group). *Informe sobre el Estado de la Situación del Plan Integral de Lucha contra la Trata con Fines de Explotación Sexual*, pp. 13-14. [www.migualdad.es/ss/Satellite?blobcol=url-data&blobheader=application/pdf&blobheadername1=Content-disposition&blobheadervalue1=inline&blobkey=id&blobtable=MungoBlobs&blobwhere=1244653112130&ssbinary=true]

107. The Social Forum against Trafficking in Human Beings for the purpose of Sexual Exploitation has been created as an instrument of cooperation, collaboration and exchange between public administration, institutions and civil society in order to achieve coordination and coherence from an integral perspective and rights of the victims.

108. Regarding THB for labour exploitation a national action plan still does not exist.

has incorporated specific provisions, according to which identification of victims will be done according to the *Council of Europe Convention on Action against Trafficking in Human Beings*¹⁰⁹ and a recovery and reflection period has been established for presumed victims of trafficking.

In the last years Spain has achieved important improvements in combating THB and in implementing the main international and European instruments on the matter. Even though the national anti-THB legislative framework has been reformed so far with the adoption of effective legal tools, many difficulties still remain in its practical implementation. In particular, despite the protection mechanisms are slowly turning to a human rights and victim-centred approach, the fight against illegal immigration is still prevailing in the decision policy making and in the practical implementation of the immigration provisions. Thus, the mentioned reforms are deemed still insufficient in guaranteeing an effective enforcement of a focus on victims' rights. In addition, currently in Spain there is not a National Rapporteur or any other equivalent body dedicated to assuring the fulfilment of trafficked persons' rights.

It is expected that all the mentioned problems will be addressed and solved with the transposition of the Directive of the CC 2011/36/EU and thus with the adoption of a comprehensive law for the protection of trafficked persons.

2.3.1.2 The legislative framework on International Protection

Article 13 of the Spanish Constitution¹¹⁰ explicitly guarantees the right of asylum. The fundamental instrument currently in place to apply this constitutional mandate is the Law 12/2009¹¹¹, of 30 of October 2009, governing the right of asylum and subsidiary protection (hereinafter the

109. Council of Europe, *Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report* (Warsaw, 16.V.2005) *Council of Europe Treaty Series - No. 197* [www.coe.int/t/dghl/monitoring/trafficking/Docs/Convntn/CETS197_en.asp#TopOfPage]

110. Article 13.4 of the Constitution: "La Ley establecerá los términos en que los ciudadanos de otros países y los apátridas podrán gozar del derecho de asilo en España" [www.noticias.juridicas.com/base_datos/Admin/constitucion.t1.html#a11]

111. *Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria* [www.boe.es/boe/dias/2009/10/31/pdfs/BOE-A-2009-17242.pdf]

“International Protection Law”). It has been adopted along with the Immigration Law in order to conform the Spanish system to the corresponding EU legislative framework.

The International Protection Law substitutes the previous Law 5/1984 on Asylum, by introducing important reforms and implementing the European Union’s legislation and policies on the matter. Moreover, it introduces the notion of subsidiary protection and broadens the grounds for granting refugee or subsidiary protection status, as it foresees the fear of persecution on the grounds of gender or sexual orientation. Subsequently, it is deemed that the new mentioned legislative instrument fully comply with the so-called “Asylum Procedures Directive”¹¹² and, compared with the previous legislation, it introduces more specific articles regarding acts of persecution, reasons of persecution, agents of persecution or serious harm and agents of protection, all of which are in line also with the so-called “Qualification Directive”¹¹³.

Though, many provisions contained in the International Protection Law need to be developed by a regulation that, up to date, has not been adopted yet, despite the same law establishes a period of 6 months for its adoption. Due to such lack, many unclear issues in the interpretation of the mentioned law are constantly detected during its practical application. So, in the meanwhile, the previous Regulation is still in force (Royal Decree 203/1995, of 10 of February¹¹⁴), to the extent and within the limit of its compatibility with the new International Protection Law.

Regarding the **grounds of persecution**, it seems relevant the fact that Article 7 includes, into the particular social group’s ground, also those

112. Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status [www.europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33140_en.htm]

113. Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals and stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted [www.europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33176_en.htm]

114. *Reglamento de aplicación de la ley 5/1984, de 26 de marzo reguladora del derecho de Asilo y de la condición de refugiado, aprobada por Real Decreto 203/1995* [www.boe.es/aeboe/consultas/-bases_datos/doc.php?id=BOE-A-1995-5542]

persons fleeing their country due to a well-founded gender-based and/or age-based fear of persecution. But the same disposition specifies that those two mentioned reasons are not sufficient, *per se*, to found an international protection application¹¹⁵.

In relation to **procedural issues**, the International Protection Law establishes an *Admission Procedure* and then, in the event the case is declared admissible, it is submitted to a second stage, the *Determination Procedure*, in which the content of the request is analysed. Thus, the first phase pursues and is limited to the examination of the procedural elements, while the second phase is envisaged to examine the content of the application. It is deemed appropriate to underline that in relation to the admissibility phase, the International Protection Law establishes two different procedures, according to the place in which the asylum application has been lodged (inside the territory or at the borders). Furthermore, during the second stage it provides two types of procedures, an accelerated and an ordinary one, in order to process those claims that have been declared admissible.

In relation to the **Admission Procedure**, when the application is lodged at the territory (the so-called “*in country procedure*”) its admissibility/inadmissibility must be decided within 1 month from the date of the asylum application. The inadmissibility of the claim has the same effect of the rejection of the international protection (hereinafter “IP”) request.

The inadmissibility criteria for the applications lodged at the territory have been reduced in the new Law to the following ones:

- *Lack of competence* of the Spanish authorities to assess the claim which, according to Article 20 of the International Protection Law, comprises: Dublin II cases¹¹⁶;

115. *Artículo 7. Motivos de persecución.* “(...) Asimismo, en función de las circunstancias imperantes en el país de origen, se incluye a las personas que huyen de sus países de origen debido a fundados temores de sufrir persecución por motivos de género y, o, edad, sin que estos aspectos por sí solos puedan dar lugar a la aplicación del presente artículo (...)”.

116. *Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national* (the so-called Dublin II Regulation) [www.europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33153_en.htm]

- When it is not Spain's responsibility to examine the claim in accordance with the International Conventions to which Spain may be party. (Conditions for this are express acceptance by the responsible country and sufficient guarantees to life freedom and physical integrity and respect to the rest of the 1951 Geneva Convention principles).

• *Lack of requirements:*

- When the applicant has been granted the refugee status and has the rights to reside or to obtain an effective form of international protection in a third country (in reference to Article 25.2b and Article 26 of the Asylum Procedure Directive);

- When the claimant comes from a safe third country (in reference to Article 27 of the Asylum Procedure Directive);

Regarding the so-called "*border procedure*"¹¹⁷, when the application is filed at a border point (airports and harbours) or in an Internment Centre for Foreigners, besides the mentioned inadmissibility criteria deriving from the lack of requirements, the International Protection Law adds also the following ones:

- Reiteration of a previously rejected claim in Spain or presentation of a new application with different personal data but without alleging new relevant circumstances in relation to the particular conditions or the situation in the country of origin.

- The claimant is a national of an EU Member State.

In addition, just for the "*border procedure*", Article 21 of the International Protection Law establishes also the possibility for the competent authorities to deny the application in case it falls under any of the following grounds:

- if the applicant exclusively claims grounds unrelated to the examination of the requirements for the recognition of the refugee status or the subsidiary protection;

- if the applicant's country of origin can be considered safe, in the terms of art. 20.1 d), in case she/he is a national of such country, or if stateless she/he has her/his habitual residence there;

117. When speaking about "*border procedure*" or "*border point*", the International Protection Law refers also to applications filed at the Internment Centres for Foreigners (CIE - *Centro de Internamiento de Extranjeros*).

- if the applicant incurs in any of the articles regulating the exclusion or the denial clauses of refugee status (the same clauses set forth in Article 33.2 of the Geneva Convention);
- if the claim is based upon allegations that can be considered inconsistent, contradictory, improbable or insufficient or contradicting reliable information on the applicant's country of origin that has been sufficiently corroborated, making her/his claim clearly unfounded.

For the applications lodged at the borders, it is established that the admissibility, inadmissibility or the denegation must be decided within 4 days from the date of the asylum application. When the competent authorities communicate their intention to apply an exclusion or denial clause (as defined in Articles 8, 9, 11 and 12 of the International Protection Law), the mentioned period can be prolonged up to a maximum of 10 working days following the day of the application, in case a positive decision on the extension is issued by the Minister of Interior upon UNHCR's motivated request.

Regarding the **Determination Procedure** and in relation to the applications lodged at the Spanish territory, once claims are admitted they can be evaluated and processed through the accelerated procedure or the ordinary procedure, according to the conditions provided by the International Protection Law. The main difference among the two procedures is the applicable terms, as with the accelerated procedure the evaluation of the application is supposed to finish within 3 months from the presentation of the application, whilst with the ordinary procedure the term is 6 months.

During the processing of the claim the applicant will remain in the specific premises for asylum seekers at the airport. If after the administrative appeal (re-examination) the case is still rejected or not admitted, the claimant can lodge an appeal, requesting the suspensive effect before the National High Court (*Audiencia Nacional*) that must decide within three days.

As already mentioned, applications filed in an internment centre for foreigners will be processed under the accelerated procedure once they have been declared admissible. Furthermore, legal assistance during the border procedure is compulsory and cannot be renounced.

When the Asylum Officers' proposal¹¹⁸ is to deny refugee status (or in the event an exclusion clause applies), UNHCR will be given a term of 10 working days to assess the application that has been determined to be processed under this accelerated procedure, with the purpose to issue a written opinion on the claim and its processing. Such opinion is a recommendation and it has not binding force for the competent institution. If none of the above circumstance applies, the claim is processed under the **ordinary procedure** (“*procedimiento ordinario*”).

The general rule governing all the administrative procedures is that if the term foreseen by the law elapses and the competent administration body has not taken any decision, the decision can be considered to be negative. This opens the possibility to challenge it at the competent courts (the so-called figure of “negative silence”). Furthermore, in consideration of the particular legal characteristics of such mechanism and with the purpose to render the decision legally effective, the competent administration body does not have the obligation to issue any resolution on the negative decision and notify it to the applicant accordingly. As consequence, it may be possible that the time for the adoption of the decisions under any of the two described procedures is longer than the one envisaged by the International Protection Law, as the negative silence is applicable in both cases. In any case, there is a legal obligation for the administration to adopt a decision even after the established term.

During both procedures the investigatory phase is carried out by the competent asylum officer and it includes an in depth interview (or several ones) with the asylum seeker. Once the case is considered complete, it is presented for its final evaluation before the eligibility commission, the so-called CIAR (“*Comisión Interministerial de Asilo y Refugio*”¹¹⁹), composed by Ministerial officials and a UNHCR Representative as observer.

The International Protection Law foresees specific **remedies** in case the refugee status or the subsidiary protection status have been denied. In

118. Asylum Officers (“*instructores*”) assess the application at the first stage of the procedure. They are part of the OAR (*Oficina de Asilo y Refugio - the Office for Asylum and Refugee issues*), an Office which falls under the responsibility of the Ministry of Interior.

119. The Interministerial Committee on Asylum and Refugee matters.

detail, an appeal against a negative decision on the merits of the claim can be lodged in front of the Administrative Chamber of the National High Court (“*Audiencia Nacional*”). This appeal is not limited to questions of law, but it also extends to the facts, therefore the Court may re-examine evidences submitted at first instance. If the Court finds that the applicant should be granted of any form of international protection, it has the power to grant itself the proper protection status to the applicant and it is not necessary to return the case to the Ministry of Interior for its review. In case of rejection of the appeal, the denied applicant has the right to lodge a further appeal at the Supreme Court (“*Tribunal Supremo*”), which in case of a positive finding has the power to grant the applicant with an international protection status.

Regarding the border procedure, in the event of a decision declaring the inadmissibility of the application or in case of denial of refugee status, the applicant can lodge an administrative appeal (re-examination with automatic suspensive effect) within the two working days following the day in which the decision has been issued. The decision on the appeal will be taken by the same authority that decided at the first instance, within two working days following the day in which the appeal was lodged.

If the term established for the decision-making during the border procedure (four days, which can be prolonged up to ten days if any exclusion or denial clause applies), adding two days for the appeal and adding two more days for the decision (those are all working days) is not respected, then the claim will be automatically processed under the ordinary procedure and the applicant is authorized to enter into the Spanish territory (the so-called “positive silence”).

In conclusion, the favourable resolution by the competent institution consists in granting the **refugee status** to the applicant, according to the Geneva Convention. Besides, in case the applicant does not meet the requirements established by the law to be granted the refugee status, he/she can be granted **subsidiary protection** (Article 4) if there are founded reasons to consider that in case of return to her/his country of origin, the applicant can face a real risk to suffer a serious harm.

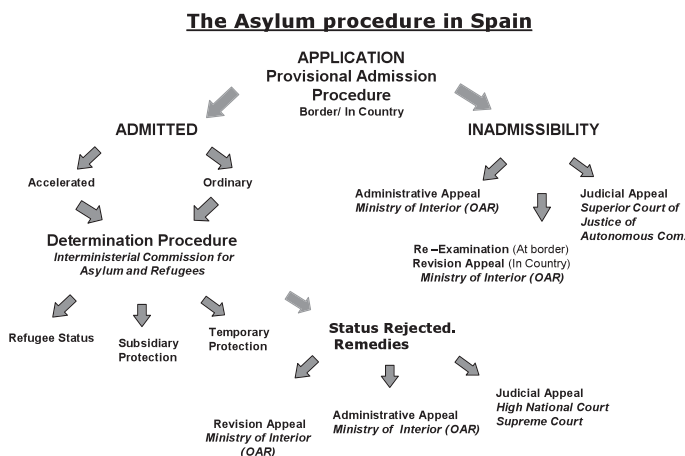
Moreover, in case the asylum application is declared not admissible or any international protection status is denied, Article 37 provides, *inter*

alia, that the claimant can be authorized to stay or reside in the Spanish territory for **humanitarian reasons**, according to the conditions set forth in the legislation in force (and especially according to the provisions established by the Immigration Law).

Finally, it has to be mentioned that, according to Article 36 of the International Protection Law, the kind of protection guaranteed to refugees and beneficiaries of subsidiary protection is almost exactly the same, such as, *inter alia*:

- *no-refoulement*;
- information on her/his rights and obligations deriving from the international protection status recognized;
- residence and work permit;
- identity and travel documents;
- access to the public services for employment;
- access to education, sanitary assistance, housing, social assistance, to integration programs, to the rights recognized by the legislation applicable to victims of gender violence, in the same conditions of Spanish nationals;
- freedom of movement;
- access to voluntary return's programs;
- right to maintain family unit and access to the related support programs;
- reduction of the time currently required to foreigners in order to obtain the Spanish nationality.

Hereby follows a table resuming the international protection procedure in Spain:



2.3.2 The identification procedure of trafficked persons and asylum seekers

2.3.2.1 Different stakeholders involved in identification and referral of trafficked persons and persons in need for international protection

The following table resumes the main national stakeholders involved in the field of International Protection and of Trafficking in Human Beings. Nevertheless, it is deemed essential to underline that it is not an exhaustive list, as many other no specialized agencies could in practice detect signs of international protection's needs and of THB (i.e. rescue mobile units, social services, immigrants' organization, hospitals, religious communities/organizations, etc.):

ANTI-TRAFFICKING SYSTEM	ASYLUM SYSTEM
State Secretary for Equal Opportunities (of the Ministry of Health, Social Affairs and Equal Opportunities); Public Prosecutor for Foreign Affairs; NGOs; Law enforcement agencies; C.I.E. (Foreigners' Internment Centres); Border Police; Labour inspectorate*; Trade unions*; Health and social services; The judiciary.	Ministry of Interior; OAR (Office for Asylum issues of the Ministry of Interior); CIAR (Interministerial Committee on Asylum issues); UNHCR; NGOs; C.A.R. (Reception Centres for Refugees); Border Police; C.I.E. (Foreigners' Internment Centres); The judiciary.
<i>*Relevant for THB for the purpose of labour exploitation</i>	

In details, and referring to the THB system, Article 59-bis of the Immigration Law, in combination with the corresponding dispositions contained in the Immigration Regulation, establishes the procedure for the formal process of identification. As indicated by some of the interviewees, even though in theory article 59-bis deals with all forms of THB, in practice it seems to be designed and to address only trafficking for sexual exploitation. Anyway, the reform of the CC, the Immigration Regulation and the recently adopted Protocol finally introduced a comprehensive legal framework for THB for any kind of exploitation.

In detail, Article 59-bis of the Immigration Law, in combination with Article 141 of the Immigration Regulation, identifies the **security forces** with a specialized expertise on identification of trafficked persons and on the persecution of the crime, as the institution in charge for the formal identification of trafficked persons. As indicated by the law, the Immigration Units (*Unidades de Extranjería*) of the police will be in charge for the formal identification of trafficked persons.

In particular, when a foreign person in an irregular (migratory) situation is identified as a presumed victim of trafficking by the competent security forces, the person will be informed in writing, in a language she/he understands, about the provisions established by Article 59-bis of the Immigration Law. In addition, when the identification requires to take a declaration of the presumed victim, a personal interview will be carried out respecting the personal circumstances of the person, guaranteeing the absence of persons connected to traffickers and, as far as possible, providing her/him the proper juridical, psychological and assistance support. Besides, as set forth in Article 141 of the Immigration Regulation, during the whole identification phase, the sanctioning file against the presumed victim or the execution of devolution or expulsion orders will be immediately suspended.

By the 48 hours following the identification and with the previous consent of the victim, the competent Immigration Unit will submit a request to the competent **Delegate or Vice-Delegate of the Government** (*Delegado o Subdelegado de Gobierno*) who will take a decision, within 5 days, on the concession of a recovery and reflection period for a minimum period of 30 days and in any case sufficient for the trafficked person to recover and decide on her/his collaboration in the investigation of the crime and

in the criminal proceedings. In case such authority does not issue a decision on the mentioned term established by the law, the recovery and reflection period is automatically granted to the victim, according to the length contained in the request (the so-called “administrative silence”). Moreover, Article 142 of the Immigration Regulation establishes that in case the victim has been identified by other police units, they will submit, as soon as possible, to the competent Immigration Unit (the competence is determined according to the place in which the identification has been carried out) a motivated report on the existence of reasonable signs that the person could have been trafficked, together with the request for the granting of the reflection period, as well as the relevant information and documentation. So the Immigration Unit of the police will submit all the documentation to the Delegate or Vice-Delegate of the Government requesting a recovery and reflection period accordingly. Finally, Article 144 of the Immigration Regulation establishes the possibility for the trafficked person who has been declared exempt from any liability for her/his irregular stay in Spain, to apply for a residence and work permit for collaboration in the investigation of the crime or for her/his personal situation.

It is deemed appropriate to underline that, in relation to the collaboration of specialized NGOs along the entire identification, protection and assistance mechanisms, Article 59-bis of the Immigration Law just indicates that the Regulation will establish the conditions of collaboration of NGOs specialized in the protection and assistance of trafficked persons with the competent institutions. While, as already mentioned, Article 140 of the Immigration Regulation determines that the competent authorities (the State Secretaries of Immigration and Emigration, of Justice, of Security and of Equal Opportunities) will promote the elaboration of a General Protocol for the protection of trafficked persons which, *inter alia*, will define the extent and the manner in which NGOs working on THB will be involved in the entire described system.

As mentioned above, the Protocol adopted in October 2011 establishes, *inter alia*, the coordination mechanisms among the competent anti-THB governmental bodies and the NGOs who provide assistance and protection to trafficked persons. Against this background, the Spanish Network

against Trafficking in Persons has claimed that, up to date, the Protocol does not assure in practice an effective and appropriate coordination mechanisms involving NGOs, neither clearly defines the role of NGOs. The main concern is that the Protocol does not bind over the competent governmental authorities to collaborate and coordinate with specialized NGOs. On the contrary, all the Protocol's provisions establishing the participation of NGOs in the identification process leave to the discretion of the competent institutions deciding if, when and to which extent involving them. As a consequence, in practice specialized organizations do not play an important or determining role in the identification of trafficked persons.

Thus, a preliminary assessment of the first implementation period of the Protocol suggests that it does not provide for an effective formal and institutionalized National Referral Mechanism involving NGOs, despite the main international and European instruments on the matter consider the collaboration of NGOs (together with other stakeholders) as crucial in order to foster an inter-institutional, multi-disciplinary, coherent and comprehensive approach against trafficking in human beings.

An analysis of the new anti-THB legislative instruments adopted so far and of their implementation in practice leads to the following main considerations:

- the identification depends exclusively on the specialized police units, as the collaboration with specialized NGOs is not binding;
- there is a lack of definition of crucial notions, as “reasonable grounds”, “personal situation of the victim”, “collaboration with NGOs”¹²⁰;
- the competent authorities are using very strict criteria when identifying trafficked persons, in order to grant the recovery and reflection period. Instead of granting the recovery and reflection period when detecting signs of trafficking, many authorities demand certainty and proof;
- the competent authorities are also conditioning the lodging for and granting of the recovery and reflection period on the trafficked persons' willingness to collaborate in the investigation and prosecution of traffickers;

120. The same concerns have been repeatedly expressed also by the Spanish Network against Trafficking in Persons in many documents and in the context of different *fora*.

- many presumed trafficked persons have been deported due to their irregular administrative situation, despite the existence of reasonable grounds to believe they had been trafficked.

Finally, in this context and for the purpose of the present investigation, it is deemed essential to remark the provision contained in Article 144.8 of the Immigration Regulation which, within the disposition regulating the residence and work permit for trafficked persons, establishes that “the content of such rule will not affect the right of the foreigner to apply for and to benefit of the international protection”. So an interpretation of such disposition leads to the consideration that there is not incompatibility among the “immigration pathway” and the “asylum pathway”, and especially that the protection provided for trafficked persons by the Immigration Law is not exclusive in order to assure them the proper form of protection and assistance, in consistency to the victim’s concrete needs. According to most of the interviewees, the principal actors in detecting/identifying both persons in need of international protection and (presumed) trafficked persons are **NGOs**, which have not only the proper expertise, but also the necessary human rights perspective. The work carried out in these contexts by NGOs is vital, as they can advice institutions in the identification and referral of both vulnerable groups, in order to address adequately their protection and assistance specific needs. Regarding the **police forces**, and in particular the border police, as most of the interviewees indicated, they could help in the identification of both persons in need of international protection and (presumed) victims of THB, but in practice they do not identify at all, as they are only in charge to execute expulsion orders. On the other side, the police force specialized in THB issues (UCRIF) does not assess the international protection needs of identified trafficked persons.

As said by the interviewees, also *pro bono lawyers* of the Bar Association can help in the identification of (presumed) victims of THB when assisting persons charged with expulsion orders in the CIEs (Internment Centres for Foreigners). In this context, there have been reported cases (especially in Madrid) in which is the same **Director/Officer of the CIE** which detects some signs of THB while interviewing a person and requires for the counselling of a specialized NGO in order to have an in-depth inter-

view with him/her and to carry out a proper identification and possibly to assess her/his international protection needs.

According to the information gathered, there have been cases on THB issues in which the **Public Prosecutor for Foreign Affairs** (*Fiscal de Extranjería*)¹²¹, while examining the documents and records related to an internment order or while interviewing the foreigner, identified such person as a victim of THB. Consequently, the Public Prosecutor has activated the proper protection mechanisms. On the contrary, the Public Prosecutor Office has not competence on IP issues, unless the case in which the international protection's application is rejected during the administrative phases of the procedure (in front of the OAR and the CIAR) and the claimant decides to lodge an appeal against it (so when the administrative-contentious starts). As indicated above, according to the Spanish legislative framework on IP, the **OAR** and the **CIAR** play a crucial role for the assessment of the application and the granting of any form of international protection. In particular the asylum officers who interview asylum seekers while lodging their claim could be relevant also for the identification of (presumed) trafficked persons. According to the information provided by some NGOs assisting asylum seekers, in practice asylum officers have not the appropriate training on identification of trafficked persons. Aware of such lack and in order to guarantee presumed trafficked persons the adequate forms of assistance and protection, as affirmed by an officer working at the OAR, since the beginning of 2011 they started to communicate to the police officers present in the office (the *Brigada de Extranjería*) the cases in which they detect a possible case of THB while interviewing asylum seekers¹²². As stated, by the implementation of such channel of communication with the police force competent on THB issues (the UCRIF), the OAR has started to acti-

121. The Public Prosecutor for Foreign Affairs is competent, *inter alia*, for the prosecution of the crime of THB. The institution has especially the function to guarantee the application of Article 59-bis of the Immigration Law [www.fiscal.es/cs/Satellite?cid=1240559967657&language=es&pagina=PFiscal%2FPages%2FFGE_subHomeFiscalias]

122. The same information is also contained in the annual report issued by the Spanish Ombudswoman. See: Defensor del Pueblo, *Informe anual a las Cortes Generales año 2010*, p. 404 [www.defensordelpueblo.es/es/Documentacion/Publicaciones/anual/Documentos/InformeAnualCortesGenerales2010.pdf]

vate a (still informal) referral mechanism for trafficked persons, also when such cases are detected during the border procedure (at borders and at CIEs), also in case the asylum seeker application is not admitted.

Such coordination mechanism has been formally institutionalized by Article V.D.3. of the Protocol, which establishes that, while assessing an asylum application, if the OAR detects signs of trafficking, the office has to refer the case to the competent police unit, in order to activate, if applicable, the procedure set forth in Article 59-bis of the Immigration Law. However, despite such disposition, up-to-date the competent asylum authorities in practice have only referred those cases exceptionally. In addition, in such few cases where a coordination protocol has been put in place, the competent anti-THB authorities who have interviewed the presumed trafficked person have demonstrated to have not the required appropriate expertise to carry out the interview and to identify the (presumed) victim. This is particularly concerning especially when a presumed trafficked person applies for asylum at the borders or at a CIE, where he/she is waiting to be expelled or returned to her/his country of origin and an adequate assessment of the possible risks is not carried out. In addition, it is essential to underline that, apart from such coordination among THB and IP institutions, the Protocol does not contain any reference to the possible international protection needs of trafficked persons. It not even establishes the necessity to assess which form of protection (the international protection or the immigration pathway) could be the most suitable for a trafficked person, taking in due consideration the individual circumstances of the person and evaluating the risks she/he could face in case of return, in accordance with the principle of *non-refoulement*. Thus, the Protocol does not envisage that some trafficked persons might be in need of international protection and that they cannot return to their countries of origin.

Furthermore, the Protocol does not establish that a trafficked person should be informed about her/his right to apply for international protection and enjoy the corresponding status and rights.

In the context of the entire international protection procedure, the **UNHCR** plays an essential role, in order to guarantee the fully implementation of the

principles defined in the 1951 Geneva Convention relating to the Status of Refugees. In particular, besides having the full expertise in identifying both persons in need of international protection and (presumed) trafficked persons, in practice the involvement of the UNHCR in all the following phases of the IP procedure allows the organization to detect both vulnerable groups and to compensate possible lacks of the system.

In the context of the IP system, also the **CAR system** (*Centros de Acogida a Refugiados - Reception Centres for Refugees*)¹²³ represents a relevant actor. In particular, CAREs are the public facilities used to provide shelter, maintenance and psychological assistance, as well as social services to asylum seekers, refugees and stateless persons, with the purpose to facilitate their integration in the community. Besides such centres directly run by the competent Ministry, such institution also funds centre and other kind of accommodations (i.e. apartments) run by specialized NGOs (as for example Accem).

Finally, it seems essential to mention the **CETIs** (*Centros de Estancia Temporal de Inmigrantes - Centres for the Temporary Stay of Immigrants*)¹²⁴ which are public facilities conceived as first reception centres to provide immigrants basic social assistance. Regarding such structures, many actors interviewed reported the worrying information according to which in such facilities is quite frequent that traffickers and trafficked persons coexist, as they arrive there together.

Finally, a mention as to be made to the **Unit of Social Work** (*Unidad de trabajo social - UTS*) of the former Ministry of Labour and Immigration¹²⁵ at the OAR which is in charge for addressing the social needs of asylum seekers, as they represent the link between the OAR and the CAR

123. They depend on the Ministry of Labour and Immigration, in particular on the State Secretary of Integration of Immigrants. There are 4 CAREs in Spain: 2 in Madrid, 1 in Valencia and 1 in Sevilla [www.mtin.es/es/sec_emi/IntegraInmigrantes/contenidos/CentrosAcogidaCAR.htm]

124. They depend on the Ministry of Labour and Immigration, in particular on the State Secretary of Integration of Immigrants. There are 2 CETIs in Spain, located in Ceuta and Melilla which are the 2 Spanish Autonomous Cities in the Moroccan territory [www.mtin.es/es/guia/texto/guia_8/contenidos/guia_8_22_4.htm]

125. After the anticipated elections held in Spain in October 2011, some changes have been made at governmental level, thus the then Ministry of Labour and Immigration has been renamed as “Ministry of Employment and Social Security” (*Ministerio de Empleo y Seguridad Social*).

system. As soon as an IP application is lodged, the UTS' social workers carry out a couple of interviews with the applicant in order to assess their needs (if the applicant is willing to do it) and to detect signs of THB.

2.3.2.2 Current screening tools used for the identification of trafficked persons and asylum seekers

On the basis of information gathered during the research, the OAR seems to use a basic guideline but just addressed to identify asylum seekers, as there are not specific screening questions addressed to detect trafficked persons. Moreover, as indicated by the same office, they need to be trained about identification of trafficked persons and on the use of indicators, as at the moment they can detect presumed victims of THB just basing on their experience (i.e. Nigeria as the main country of origin of trafficked persons, the typical routes trafficked persons follow to reach Spain, the information provided by trafficked Nigerian women about their situation is always almost the same, etc.). Also, the OAR's officers are acquainted about their relevance in the identification of trafficked persons and on the necessity to refer them to the proper mechanisms in order to address their needs and to guaranteeing their protection and assistance. For this purpose since January 2011 they inform the police when they detect presumed trafficked persons; and in this line, they are intentioned also to start collaborating with specialized NGOs.

On the other side, NGOs assisting migrants and especially asylum seekers use the guidelines designed by UNHCR¹²⁶ in order to detect also if the interviewee/applicant has been trafficked and to assess the case, as well as the applicant's needs, accordingly.

126. *Inter alia*: UNHCR, *Refugee Protection and Human Trafficking*, 2008 [www.unhcr.org/4986fd6b2.html]; UN Economic and Social Council, *Recommended Principles and Guidelines on Human Rights and Human Trafficking - Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council*, E/2002/68/Add.1, 20 May 2002 [www.unhcr.org/refworld/docid/3f1fc60f4.html]; 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*, 7 April 2006 [www.unhcr.org/refworld/docid/443679fa4.html]

In relation to the identification of trafficked persons, according to the information at disposal, the security forces (which, as stated, are in charge for the formal identification of trafficked persons) do have a list of indicators to identify trafficked persons that has been elaborated by the Intelligence Centre for Organised Crime (CICO)¹²⁷. Such indicators are part of the interview/process of identification, but they have not been made public. As stressed by some of the interviewees, police officers do not assess the international protection needs of (presumed) trafficked persons and in fact the indicators they use address just THB issues.

Moreover, from the analysis of the information gathered, it is possible to highlight that all the interviewees reported that there is not a common agreed list of indicators constantly used by all relevant actors in the identification process at national level and they stressed that the use of such tool is deemed essential to support them in such procedure.

Other relevant actors (as the Public Prosecutor Office, trade unions, some NGOs) use the indicators elaborated by ILO (International Labour Organization)¹²⁸ and by UNODC (United Nations Office on Drugs and Crime)¹²⁹: the latter tool has been designed considering the kind of exploitation (sexual exploitation, labour exploitation, domestic servitude, begging and petty crimes) and it also includes a list of indicators specifically referred to children. In addition, some relevant actors are accustomed to use the guidelines on identification and referral of trafficked persons elaborated by the Spanish Network against Trafficking in Persons (*Red Española contra la Trata de Personas*)¹³⁰, which has been designed for those professionals (i.e. health centres, hospitals, law enforcement agencies, OAR, CETI's, CIEs, NGOs, etc.) who, from different perspectives and in performing their functions, enter in contact with

127. [www.mir.es/SES/CICO/]

128. ILO, *Operational indicators of trafficking in human beings* [www.ilo.org/sapfl/Informationresources/Factsheetsandbrochures/lang—en/docName—WCMS_105023/index.htm]

129. United Nations Office on Drugs and Crime, *Human Trafficking Indicators* [www.unodc.org/pdf/HT_indicators_E_LOWRES.pdf]

130. Red Española Contra la Trata de Personas, *Guía básica para la identificación, derivación y protección de las víctimas de trata*, 2009 [www.redcontralatrata.org/spip.php?article37]

trafficked persons. *Inter alia*, such guidelines suggest some indispensable criteria in order to assess the international protection needs of trafficked persons, first of all the necessity of a case-by-case evaluation, as not for all trafficked persons the international protection pathways respond to their needs¹³¹. In particular, when assessing the IP needs of a trafficked person, it is vital to evaluate in depth the future risk she/he can suffer in case of return to her/his country of origin and, among others, the risk to be re-trafficked, the possibility that traffickers undertake reprisals against the victim and/or her/his family, the possible social stigmatization or ostracism in enjoying her/his rights. Pursuant such assessment, it is crucial to give special relevance to the human rights abuses already suffered by the person, as they can clearly reveal the future risks the victim could face. Similarly, the evaluation of the context of impunity in which traffickers can operate, as well as the concrete and effective level of protection that the country of origin can assure the victim plays an essential role. Thus, the fact that a country has adopted an anti-trafficking legislation and/or a national action plan against TBH is not sufficient if such legislative framework is not effectively implemented.

As evident, **the main difficulty and concern that impedes a correct identification of trafficked persons among asylum seekers and to properly address their protection and assistance needs, as well as to guarantee their rights, is the fact that the anti-trafficking system and the asylum system never intercepts, and that the different institutions conceive them as completely separated.** On the contrary, as repeatedly stressed also by many interviewees (especially NGOs), national legislations have the obligation to link the anti-trafficking and the IP systems¹³², with the purpose to guarantee that all the actors involved in the identification of the two vulnerable groups (trafficked persons and asylum seekers) are able to assess the real needs of trafficked persons (possibly also their international protection needs) and to refer them to the proper

131. Ibidem, pp. 66-77.

132. UNHCR, *The identification and referral of trafficked persons to procedures for determining international protection needs*, October 2009, p. 13. [www.unhcr.org/refworld/docid/4ad317bc2.html]

protection mechanism. Similarly, actors in charge for the identification of asylum seekers need to have the tools to detect if a person has been (presumably) trafficked and subsequently assess her/his assistance and protection needs accordingly. In particular, it is deemed essential to establish a THB protection system, as it is judged that trafficked persons are properly identified and referred if such mechanism is put in place, due to the fact that it is rare that trafficked persons identify themselves, thus specialized expertise in the identification process is vital. Whereas the asylum system is required, as the effective protection of trafficked persons further than the emergency and the short term situation, necessitates also a system allowing a scrupulous case-by-case assessment of the appropriate durable solution and therefore a corresponding wide spectrum of options (including repatriation, asylum, as well as other forms of protection), in order to address accurately the victims' needs¹³³. Finally, even though, as also some of the interviewees pointed out, indicators are just one of the tools necessary to identify trafficked persons (and that consequently they do not represent the unique mean employed to identify trafficked persons), agreeing on common screening tools facilitating also the detection and an adequate assessment of the international protection needs of trafficked persons can represent a starting point in order to encourage the cooperation and coordination between all relevant actors, as well as to design a proper and functioning identification and referral mechanism.

2.3.2.3 The interview

Article 17 (together with Article 46) of the International Protection Law disposes that the IP application is formalized through a personal individual interview, guarantying a different treatment in case gender issues require so or in case of minors, unaccompanied minors, disabled persons, elders, pregnant women, one-parent families with children, victims of torture or of other violations or serious forms of psychological, physical or sexual violence, **victims of trafficking in human beings**.

133. Ibidem, p. 13.

Also during the ordinary procedure, Article 24 sets forth the possibility to carry out another interview with the asylum seekers, in case the conditions foreseen by Article 17 apply.

In practice, the questionnaire the OAR uses is just referred to check the elements that found an IP claim, but it does not contain any kind of indicators related to screen the THB experience. As referred, OAR's officers can detect signs of THB just according to their experience on asylum issues (i.e. in relation to the applicant's country of origin). Subsequently, as the same Office stated, they need to be trained on THB issues and to strengthen the collaboration with the relevant actors working in this field, in order to refer presumed cases of trafficked persons.

As mentioned above, according to Article 35 of the International Protection Law, as soon as an application is lodged, the UNHCR must be immediately informed and it can have an interview with the asylum seeker. As evident, thanks to such possibility, the UNCHR plays a relevant role in the identification of trafficked persons among the asylum seekers, even though in many cases the OAR disregarded the opinion expressed by the expert office in assessing the international protection's needs of trafficked persons, especially considering the UNHCR's deep evaluation of the risks the applicant could face in case of return to her/his country of origin.

Referring to THB, Article 59-bis of the Immigration Law does not contain any reference to the interview necessary to proceed to the identification of trafficked persons, while the Immigration Regulation (in particular Article 141) just establishes that when the identification requires to take a declaration of the presumed victim, a personal interview will be carried out respecting the personal circumstances of the person, guaranteeing the absence of persons connected to traffickers and, as far as possible, providing her/him the proper juridical, psychological and assistance support.

In addition, Article VI.B. of the Protocol foresees the minimum conditions to carry out an interview with a (presumed) trafficked person, for the purpose of her/his formal identification. As already underlined, the police are the competent institution in charge for such process and the collaboration of NGOs in the identification mechanism depends on

their will and discretion. Thus, the Spanish Network against Trafficking in Persons repeatedly claimed for allowing shared responsibility in the identification of trafficked persons amongst other institutions and organizations (i.e. creating rescue units).

In particular, the Spanish Network against Trafficking in Persons judges that more victims would be identified if NGOs would be allowed supporting the competent law enforcement agencies in carrying out identification interviews in a more appropriate setting, with more time and specialized support. In fact, the competent authorities often do not take into account that the identification process takes time and they usually adopt an approach aiming at combating illegal immigration, instead of a victim-centred and human rights based approach. This means that they do not take into proper consideration the multiple barriers that trafficked persons face when sharing their story with police, such as the general fear of law enforcement agencies, the lack of knowledge of their rights, the distrust of the authorities and the traffickers, the mental and emotional blocks they suffer due to the devastating experience had, etc. These factors, along with many other elements, often render trafficked persons' accounts incoherent and not detailed. As a consequence, the police doubt about their credibility. Thus, without previous appropriate support and orientation, many trafficked persons are unable to recognize themselves as victims of a crime.

Thus, it is recommendable an implementation of the Protocol fostering an effective proactive collaboration of specialized NGOs in the identification mechanism, in line with international standards, in particular focusing the procedure on a human rights perspective¹³⁴.

According to the information gathered, generally it is the interview with asylum seekers that leads to the detection of signs that the person has been trafficked. Consequently, if the interviewer is a specialized NGO or the UNHCR, the person's assistance and protection needs are assessed on the perspective of the IP pathway and of the pathway foreseen by the

134. For more details, see: Red Española contra la Trata de Personas, *Guía básica para la identificación, derivación y protección de las víctimas de trata*, 2009, p. 41 ss. [www.redcontralatrata.org/spip.php?article37]

Immigration Law for trafficked persons. On the contrary, as stated by some interviewers, when the identification of trafficked persons is carried out by the police, they do not assess the IP protection needs.

2.3.3 Overview on some data

According to the latest numbers provided by EUROSTAT¹³⁵, in **2010 Spain received 2.740 asylum applications**, a further drop from 2009 when 3.005 IP applications were received¹³⁶. In 2010, less than 30% of applicants were female and about 14% were minors. The first five nationalities of asylum seekers were: Cuba, Nigeria, Algeria, Guinea and Cameroon.

In addition, according to such statistics, in 2010 Spain granted international protection to 610 out of 2.785 total decisions at first instance (therefore with a recognition rate of 22%), disaggregated as follows:

- 245 refugee status;
- 350 subsidiary protections;
- 15 humanitarian reasons.

So for 2.175 out of the mentioned 2.785 total decisions the claims were rejected.

Referring to trafficked persons, according to figures released by the Ministry of Interior¹³⁷, **in 2009** in Spain there were **1.301 identified victims of trafficking in human beings for the purpose of sexual exploitation** (during the first year of implementation of the National Action Plan

135. EUROSTAT, Anthony Albertinelli, *Asylum applicants and first instance decisions on asylum applications in 2010*, 2011 [www.epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-11-005/EN/KS-QA-11-005-EN.PDF]

136. EUROSTAT, Anthony Albertinelli, Piotr Juchno, *Asylum applicants and first instance decisions on asylum applications in Q4 2009*, 2010. [www.epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-10-018/EN/KS-QA-10-018-EN.PDF]

137. Dirección General de Relaciones Informativas y Sociales - Gabinete de Prensa, *Balance del primer año del Plan Integral de Lucha contra la Trata de Seres Humanos con fines de explotación sexual - 1.300 víctimas de trata de seres humanos han sido identificadas y atendidas en 2009*, 24.3.2010. [www.mir.es/DGRIS/Notas_Prensa/Ministerio_Interior/2010/np032407.html]

against Trafficking for the purpose of sexual exploitation), of whom 95% were reportedly female victims of trafficking for the purpose of sexual exploitation, about half of them were aged between 23 and 32, 13 of them were minors and around the 50% of them were in an irregular migratory situation¹³⁸. According to the information contained in that Action Plan¹³⁹, the main countries of origin of trafficked persons were Colombia, Dominican Republic, Nigeria, Russia, Ukraine, Morocco, Bulgaria, Brazil, Croatia, Czech Republic, Hungary and Poland.

In addition, according to the report recently released by the State Secretary of Equal Opportunities¹⁴⁰, **in 2010 1.641 persons were identified as victims of trafficking for the purpose of sexual exploitation.** Among them:

- 1.605 had signs to have been trafficked;
- 93% were foreigners;
- 32,5% in irregular migratory position;
- 92% were women;
- they were aged among 23 and 32 (50%);
- the principal nationalities were Romanian, Brazilian, Paraguayan, and Dominican;
- 13 victims were minors.

Also in this case, many information are lacking (i.e. how many of the identified victims were expelled, how many were granted protection as witnesses, etc.). Moreover, even though the report includes information about the reflexion and recovery period, indicating that 523 presumed

138. Regarding the data provided by the Ministry of Interior, the Spanish Network against Trafficking in Persons expressed some concerns, especially because the competent authorities did not provide some relevant information regarding how many of the mentioned identified victims were granted the reflexion period, how many have decided to collaborate in the investigation, how many were expelled, etc.

139. Gobierno de España - Ministerio de Igualdad, *Plan Integral de Lucha contra la trata de seres humanos por fines de explotación sexual*, 2008
[www.migualdad.es/ss/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobheader-name1=Content-disposition&blobheadervalue1=inline&blobkey=id&blobtable=MungoBlobs&blobwhere=1244653025136&ssbinary=true]

140. Ministerio de Sanidad, Política Social e Igualdad - Secretaría de Estado de Igualdad, *II Informe sobre el estado de situación del Plan Integral de Lucha contra la Trata de Seres Humanos con Fines de Explotación Sexual. Año 2010*, June 2011, Annex I, p. 44-45.

victims of THB in irregular administrative position who were offered in 2010 a recovery and reflection period, just 43 accepted to process the related request¹⁴¹, it does not inform about how many trafficked persons were granted such recovery and reflection period.

As evident, data contained in the report are based exclusively on police interventions and they lack of information related to the protection of victims and presumed trafficked persons.

On the other side, it is deemed appropriate to underline that the current statistics provided by the Ministry of Interior do not correspond to the statistics provided by the General Prosecutor's Office¹⁴², neither to those released by the CICO (*Centro de Inteligencia contra el Crimen Organizado - Intelligence Centre for Organized Crime*)¹⁴³, as the legal provisions used by each institution in order to collect data are different.

Consequently, at the moment there are not univocal data on THB for any purpose of exploitation, neither there is official data on asylum claims and on decisions on refugee status/subsidiary protection, disaggregated according to the grounds to which the IP has been claimed and granted. So the only disaggregated information at disposal about IP applications founded on persecution based on THB grounds is that provided by the UNHCR Office in Madrid. According to the information provided by them, from January 2009 to April 2011 there have been 19 cases of presumed trafficked persons who applied for international protection at the CIEs, at the border premises and in the Spanish territory, on behalf of which the UNHCR issued a supporting opinion asking for their admission and/or informing the Ministry of Interior about the situation of risk

141. Ibidem, p. 39.

142. Memorias de la Fiscalía General del Estado 2009, Vol. I. Cap. III. Actividad del Ministerio Fiscal. G) Fiscales de Sala Coordinadores y Delegados para Materias Específicas y Secciones o Delegaciones Territoriales Especializadas. 4. Fiscal de Sala Coordinador de Extranjería, p. 717-718 [www.fiscal.es/ficheros/memorias/1018/998/40_v1c2fdext.pdf]; Memorias de la Fiscalía General del Estado 2010, Vol. I. Cap. III. Actividad del Ministerio Fiscal. G) Fiscales de Sala Coordinadores y Delegados para Materias Específicas y Secciones o Delegaciones Territoriales Especializadas. 4. Fiscal de Sala Coordinador de Extranjería, p. 852 et ss. [www.fiscal.es/ficheros/memorias/1001/677/vol1_amf_10.pdf]

143. [www.mir.es/SES/CICO/]

of the applicants. 10 out of those cases were not admitted during the provisional admission procedure, while the other 9 were admitted during such stage (most of them for administrative silence).

2.3.4 Main characteristics of cases of IP based on trafficking grounds

Hereby follows a brief description of the main characteristics of the 19 mentioned cases reported by the UNHCR Office in Madrid (taking into consideration that some of them have been processed according to the previous legislation), disaggregated per year:

CIEs	10 applications (9 in Madrid, 1 in Valencia)
Borders	6 (Barajas airport in Madrid)
Territory	3 applications

Year	Nº of applications lodged	Admitted	No admitted/ Denied
2009	8	7	1
2010	6	2 ¹⁴⁴	4
2011	5	0	5

According to the information at disposal, most of the applicants were young women (aged 20 to 30), coming from Sub-Saharan Africa (13 from Nigeria, 2 from RDC Congo, 1 from Dominican Republic and 2 from Brazil).

In addition, in relation to those cases with the UNHCR’s favourable opinion processed by the CIAR during the second stage of the procedure (the “eligibility stage”), it can be highlighted that:

144. On this regard, it has to be underlined that one of the applications has been admitted because, besides trafficking arguments, the applicant alleged problems related to her sexual identity (she was a Brazilian transgender person). The other case has been admitted because it was a case processed according to the Council Regulation (EC) No 343/2003 of 18 February 2003 (the so-called Dublin II Regulation).

- in the period 2006-2009, 3 cases (for which the UNHCR asked the granting of refugee status) has been processed by the CIAR;
- in 2010, 10 cases have been processed by the CIAR;
- until April 2011, 3 cases have been processed by the CIAR (for 2 cases the UNHCR asked an additional interview, while for 1 case the granting of refugee status).

It is surprising that only in one out of the above-reported cases (the one dating 2006) the claimant has been granted the possibility to stay in Spain based on humanitarian reasons (after the 2009 reform of the International Protection Law, such form of IP currently corresponds to the “subsidiary protection”)¹⁴⁵.

Considering the mentioned data, it has been pointed out that the situation has become more restrictive since the new International Protection Law has entered into force, as the UNHCR has lost the “right of veto” at borders that the organization had according to the previous legislative framework. This provision has led to the conclusion that the competent authorities are not admitting/denying practically the whole cases, despite the UNHCR’s favourable opinion in admitting the application at the first stage, in order to allow a deeper assessment of it during the ordinary procedure.

An assessment of the grounds of the decisions issued by the competent institutions regarding the mentioned cases (and also many other asylum applications founded on persecution deriving from trafficking arguments), as well as on the basis of the interviews had with relevant institutions involved on the IP procedure, all the governmental institutions consider that the dispositions on THB contained in the Immigration Law does not fit with the International Protection Law. In practice, according to such perspective, one pathway of protection excludes the

145. According to the information at disposal, all those mentioned cases have been appealed in front of the National High Court (*Audiencia Nacional*) and for all of them but one a sentence has not been issued yet. This means that in the judicial context and in the elaboration of jurisprudential principles and guiding criteria many steps have still to be undertaken. On the contrary, the mentioned case of July 2006 has been rejected by the National High Court and it has been appealed in front of the Constitutional Tribunal.

other one. And, as stated, this interpretation of the whole legislative system depends primarily on the consideration that THB is an organized crime (like trafficking in drugs or in weapons), so it has to be dealt according to such perspective and any consideration to the fact that it involves human beings seems to be irrelevant.

Subsequently, even though each case is assessed on an individual basis, the competent institutions require, beside arguments connected to THB, also at least another ground of persecution provided by the Geneva Convention.

First of all, such perspective seems not to be in line with the same International Protection Law, which expressly recognizes gender persecution as a possible ground for granting any form of international protection. It is not even in accordance with Article 46 which establishes that, in the application of the same entire law (and its future regulation) a particular consideration has to be given to the special conditions of those asylum seekers in a situation of vulnerability, such as, among others, trafficked persons. In fact, while processing applications lodged by trafficked persons, Spanish asylum authorities consider that such cases should be handled within the immigration framework, being the immigration pathway the unique form of protection of trafficked persons. Thus, many asylum applications based on the fear of persecution deriving from a trafficking situation have been rejected so far. Hence the granting of any form of international protection has been excluded just on a formal basis, which means without a proper and in depth assessment of the individual claim. In addition, the mentioned interpretation is not in accordance with the opinion and the recommendations issued by the main international bodies, such as the UN Special Rapporteur on trafficking in persons. In one of the latest reports she issued¹⁴⁶, besides expressing concern that trafficked persons are often treated as “instruments” of criminal investigation, rather than people with rights, she strongly recommends that “States should also provide trafficked persons with temporary or perma-

146. Joy Ngozi Ezeilo, *Report of the Special Rapporteur on trafficking in persons, especially women and children*, 13 April 2011, p. 19 [www.ohchr.org/english/bodies/hrcouncil/docs/17session/A-HRC-17-35.pdf]

ment residence permits on social and humanitarian grounds, where a safe return to the country of origin is not guaranteed or a return would not otherwise be in the best interests of the trafficked person for reasons related to his or her personal circumstances, such as the loss of citizenship or cultural and social identity in the country of origin. **States should also independently consider trafficked persons' claims for asylum, giving due consideration to any risks of reprisals and retaliation by traffickers which could constitute persecution within the meaning of the 1951 Convention relating to the Status of Refugees**".

Apart from the cases reported by the UNHCR Office (which is part of the IP Spanish procedure), it seems interesting also to briefly mention the cases regarding trafficked persons who applied for asylum, followed and supported by some Spanish NGOs, as they show particular concerns that it is frequent to detect in Spain about our matter of interest. In particular, from January 2010 to April 2011, the NGO *Women's link Worldwide*¹⁴⁷ followed and supported 6 cases regarding trafficked persons. Among them, 3 persons applied for international protection and all 3 applications have been denied. This testifies the bad practice adopted in the protection of trafficked persons by competent institutions, despite the favourable supporting opinion of the UNHCR¹⁴⁸ as well as a lack of an adequate assessment of the identified signs of trafficking.

Against this background, the Ombudswoman recommended to the OAR that, in case the UNHCR issues a favourable opinion supporting the asylum claim of a (presumed) trafficked person, a communication protocol between the OAR and the police regarding the possible status of the claimant as victim of THB should be put in place, in order to assess properly the possibility to grant the presumed trafficked person the recovery and reflection period before her/his expulsion.

147. Women's Link Worldwide is an international human rights non-profit organization working to ensure that gender equality is a reality worldwide [www.womenslinkworldwide.org/]

148. Susana Hidalgo, *La trata se vuelve invisible. Las ONG exigen que se atienda a las explotadas como víctimas y no como irregulares // Una menor pasó un mes recluida porque la Policía no detectó su caso*, 8.5.2011 [www.publico.es/espana/374953/la-trata-se-vuelve-invisible]

Concluding, *the Ombudswoman denounced the same inadequacy of the Spanish legal system to tackle and to give an effective protection's answer to trafficked persons, especially if they have applied for asylum basing their claims on THB grounds.*

As unanimously stated by the NGOs consulted, the system is focused on the investigation and on the persecution of the crime, as well as on the fight against the illegal immigration, instead of the effective protection of the victims. In practice, the law requires a report from the victim, in order to avoid her/his deportation.

For this purpose, the NGOs claim that the identification should not be carried out exclusively by the law enforcement agencies, but that a multidisciplinary team interviews the persons that supposedly have been trafficked, in order to proceed to their identification and to assess their assistance and protection's needs, also on the light of the international protection system. An analysis of the cases reported above, together with the opinion expressed by some interviewees (especially the UNHCR), indicates the following as the main concerns existing in the context of the international protection procedure regarding trafficked persons:

Lack of a protection-sensitive national protocol for the identification and referral of trafficked persons (including children), which is also able to identify international protection needs for later assessment. Lack of a referral protocol at airports and border areas.

Despite the disposition contained in article 59-bis of the Immigration Law¹⁴⁹ and the Protocol recently adopted, currently a national identification and referral mechanism for trafficked persons in Spain does not exist. The NGOs taking part to the Spanish Network against Trafficking in Persons¹⁵⁰ try to cover this gap on *ad-hoc* collaboration mechanisms, but the authorities tend to only refer those victims who are willing to cooperate with criminal proceedings. Thus the implementation of the Protocol through a protection-sensitive referral approach is deemed necessary.

149. See also comments on paragraph 3 below.

150. Red Española contra la Trata de Personas [www.redcontralatrata.org/]

On this regard, as the UNHCR denounces, in the framework of the international protection procedure, it is frequent to detect potential victims of trafficking who seek asylum under false claims, because they are encouraged or forced to do so by the traffickers and exploiters as a manner to obtain a temporary residence permit. While some of these persons (generally women) may have a valid asylum claim, the false stories they are obliged to report almost inevitably lead to rejection. UNHCR has observed a recent increase of this phenomenon in asylum applications lodged at the Madrid Airport where, if the application is rejected, there is a high possibility that those persons are sent back without having been adequately identified as victims of trafficking and without any kind of assessment of their actual protection needs.

Moreover, also the devolution at borders of undocumented foreigners (some of them rejected asylum seekers) to third countries or to their countries of origin is another stressed concern. Such practice is especially worrying in case of returning women (some of them rejected asylum seekers) who might be victims of human trafficking to third countries (such as Morocco), without carrying out a previous correct identification and a proper assessment of the risk of such returns, with a probable danger of the person to be re-trafficked.

Considering the mentioned practice and also that, up to date, there is not a national identification and referral mechanism set in place, it is considered urgent and essential the establishment of an identification and referral procedure of (presumed) victims of trafficking in the context of the international procedure at airports and border areas (including internment centres), with the purpose to identify as soon as possible persons who might have been trafficked and could be in need of international protection.

A stronger coordination and collaboration between all the actors involved in the field of THB and IP is strongly encouraged and deemed appropriate, for the purpose to guarantee trafficked persons the proper form of protection and assistance. In effect, the UNHCR is observing a lack of coordination and collaboration among all those actors, as well as the lack of involvement of specialized NGOs and other specialized agencies (as the UNHCR) in the identification, assessment's needs and refer-

ral of (presumed) trafficked persons who might be in need of international protection.

As constantly highlighted by the present report, the general situation demonstrates, *inter alia*, the following: **the lack of coordination and of a fluid communication among all the actors working on THB and IP issues and the vital necessity to establish a national referral mechanism involving both fields; the lack of application of the principle of the best interest of the child; the discrepancy of the tools and criteria used by the different institutions and organizations in identifying trafficked persons (and the consequent urgent need to unify criteria and instruments); the need to interpret and implement the anti-trafficking legislation and the legislative system on asylum according to a human rights sensitive perspective, with a focus on responding in an adequate manner to the person's needs of assistance and protection; the imperative to activate the protection measures as soon as "reasonable grounds" to suspect the person has been trafficked are detected.**

Considering the mentioned crucial and concerning issues, it is advisable that the desirable comprehensive law on THB (necessary for the transposition of the Directive 2011/36/EU) will tackle and solve also such critical matter and that the Protocol will be amended accordingly. Thus, it is recommendable that such legal instruments tackle the situation of trafficked persons who might be in need of international protection and cannot return to their country of origin, with the purpose to refer those persons to the international protection procedure. Also, it is deemed fundamental to ensure that information on the right to apply for international protection is provided to (and understood by) trafficked persons. Consequently, it is advisable to manifestly pinpoint the interception between the international protection system and the immigration pathway, as two complementary protection's mechanisms for trafficked persons.

In addition, it would also be essential to clearly establish obligations for asylum authorities to refer asylum seekers with detected signs of having been (presumably) trafficked to the competent authorities, in order to carry out the proper identification.

Moreover, such mechanism would also be useful in assessing in the appropriate manner the situation of the person (throughout the asylum

procedure or throughout the immigration pathway), in order to respond appropriately to the trafficked person's protection and assistance needs.

Lack of proper training to border police, asylum officials and all civil servants so as to guarantee the identification of trafficked persons, as well as to ensure access to the asylum procedure and the protection it offers to foreign victims of trafficking who articulate a well-founded fear of persecution in their country of origin or who, due to the situation they have experienced, cannot return to their country of origin because their lives or physical integrity would be at risk.

The general lack of expertise and proper training on human trafficking issues, as well as on international protection topics and on relevant aspects of the refugee status determination procedure by most of the professionals¹⁵¹ that come in contact with women and girls who might be victims of THB has been claimed as another principal concern in our matter of interest. Those professionals are therefore unable to identify possible trafficked persons, as well as their potential international protection needs.

Lack of proper recognition of victims of THB as persons in need of international protection (exclusion of trafficked persons from the international protection status).

Despite significant progress has been achieved in processing gender-based asylum claims, one of the most controversial issues continues to be THB. The general perception is that some authorities appear to be afraid of admitting claims founded on THB grounds, as they believe that it might result in a pull-factor for irregular migration in the future, especially in consideration of the European trend of hardening the migration policies, due also to an intensification of the migration flows in the last years.

151. I.e. border police, asylum officials (including interviewers), interpreters and social workers at the OAR, legal practitioners, pro-bono lawyers, NGOs and persons in contact with immigrant women (i.e. staff in asylum seekers reception centres; staff working in the Ceuta's and Melilla's Centres for the Temporary Stay of Immigrants, in which a lot of Sub-Saharan women might be in a trafficking situation; personnel at the internment centres for foreigners, in which women are waiting to be expelled), as well as the judicial bodies responsible for issuing expulsion orders.

According to the information provided by the UNHCR, during the admissibility procedure (actually only at borders or internment centres) the UN Agency has been supporting asylum claims based on the existence of signs of THB. Thus the specialized agency recommended the admission of the application into the IP procedure, with the purpose to carry out an in depth study and assessment of the applicant's international protection needs. Nevertheless, these kinds of asylum claims have generally been rejected by the competent authorities.

In the context of the refugee status determination procedure (at the CIAR, the Eligibility Commission), the UNHCR has reported that since 2006 it has asked for 6 cases the necessity to grant the refugee status to an identified trafficked person¹⁵² and that the Spanish asylum authorities have argued that these cases should have been handled in the framework of the immigration legislation. As already stated, the asylum authorities consider that the protection mechanism foreseen by the immigration legislation offer trafficked persons an "effective protection", which, according to this perspective, is the only and unique protection's pathway addressing trafficked persons' protection needs. Basing on such considerations, the asylum authorities have therefore denied any form of international protection to victims of THB exclusively on a formal basis. As denounced by different specialized NGOs, the existing practice is to deny the right to claim and obtain a form of IP to a group of persons (victims of THB) as such, instead of assessing the claims on an individual basis. The lack of recognition of THB as a ground for claiming and obtaining any form of IP and the consequent perspective based on considering the protection set forth in the Immigration Law as the only pathway to address trafficked person's needs, derives from the manner in which the phenomenon of THB is tackled by the Spanish authorities and by most of the EU countries. In particular, EU and national legislations and policies are elaborated, developed and implemented considering THB just as a crime that has to be investigated and prosecuted, thus the collaboration

152. Whilst for 10 other applications, the UNHCR asked for an interviewee with the applicant in order to deepen the assessment of the claims, before their inadmission at the first stage of the procedure.

of the victims appears relevant exclusively for this purpose. On the contrary, such policies, legislations and practices lack a human rights centred-approach, so that the personal (physical, emotional and psychological) situation of trafficked persons plays a secondary and complementary role and it is not taken into due consideration while assessing their protection needs.

The most representative and appalling case that shows the incapacity of the Spanish State to offer an adequate protection to a trafficked person is the case of a Nigerian woman who arrived to Spain in 2002 (when she was 23 years old) and was identified as victim of THB. The legal assistance to Grace¹⁵³ has been guaranteed by the legal department of the NGO *Accem*¹⁵⁴.

Grace reached Spain because of a (false) job offer as childcare and she was submitted to voodoo rituals with the purpose to guarantee her silence, as well as her subjection to traffickers in order to guarantee the payment-back of the debt. She has been recruited by a known person, who profited of her family's particular situation of vulnerability. This fact, together with the posterior threats the family received, demonstrates that traffickers were well acquainted about her family's residence in Nigeria. When in Spain, Grace was forced to exercise prostitution and all the money she gained was retained by the *Madame* with the purpose to pay the contracted debt, as well as the accommodation and the maintenance. During this entire period, Grace was subjected to any kind of physical and psychological humiliation and abuse, testified also by different medical, psychological, psychiatric and social reports. In the context of the described inhuman treatments she suffered, Grace was also locked in a room for different months without receiving food, beverage and with restricted use of the bathroom. Moreover, in order to reinforce the ties of subjection over Grace, traffickers continued in practicing voodoo rituals and showed her

153. Fictitious name.

154. *Accem* is an N.G.O., a Non-profit Making Organisation that provides attention and reception to refugees and immigrants in Spain, promoting their social and labour integration, as well as equal rights and duties of everyone regardless of his/her origin, sex, race, religion, opinions or social group.

different images of the aggression her family in Nigeria received when she did not gain enough money to pay-back her debt.

Even though she finally could escape from that situation of exploitation and detention, the severity of the abuses and the different forms of torture Grace have suffered, produced relevant and strong consequences on her physical and psychological health (reaching a diagnosis of schizophrenia).

As soon as Grace managed to escape from the apartment where she was detained, and before applying for asylum, she reported her case to the police, providing many details about the situation she suffered, the names of traffickers, information about the place where she was detained, showing clear physical and psychological signs of the inhuman treatments she was subjected. But she did not obtain any kind of protection throughout the THB pathway, as foreseen by the Immigration Law. Regarding the international protection application she lodged, the OAR denied it affirming that the protection remedies specifically addressing trafficked persons' needs foreseen in the Immigration Law represent the unique and adequate pathway in order to protect the applicant. In addition, according to the institution, the Spanish legislative system foresees a protection mechanism for trafficked persons different from the IP pathway: thus, from the motivation of the decision, it can be inferred that each way of protection excludes the other and, above all, that the IP pathway is not compatible with a claim based on THB grounds of persecution.

In addition, the decision affirms that as the applicant claimed asylum 5 years after her arrival in Spain, such fact excludes a real need for the IP protection and a well-founded fear of persecution in case of return. Moreover, the decision affirms that as the victim had contacted with the Nigerian embassy in Spain in order to get a passport, there is no persecution by the Nigerian State.

Also during the second stage of the IP administrative procedure (in front of the CIAR), the application has been denied. The case has been appealed at the *Audiencia Nacional* and at present is pending in front of this National Court: and in July 2011 Grace was still staying in Spain with an irregular migratory situation... (!)

Concluding, in light of the existing situation, for most of asylum seekers who have been trafficked and which claim has been rejected in the context of the IP procedure, even the so-called “immigration pathway” (the one foreseen by the immigration legislation) results in practice inadequate in order to address their needs and guarantee them the appropriate form of protection and assistance, as well as the possibility to stay in the Spanish territory in a regular situation and to obtain a work permit¹⁵⁵.

2.3.5 Conclusions

The main international and European legal instruments on trafficking in human beings and on international protection (either binding or not binding) evidently guarantee trafficked persons the right to apply for asylum and to enjoy the corresponding status, whenever the applicant has a founded fear of persecution in case of return to her/his country of origin. In detail, Article 40.4 of the Council of Europe Convention on Action against Trafficking in Human Beings¹⁵⁶ explicitly and clearly declares that “*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*”. Considering that the “Convention intends to strengthen victims’ protection and assistance”, the explicit purpose of the mentioned disposition is to “ensure greater protection and assistance for victims of traffick-

155. Considering the described situation, the Spanish Office of UNHCR has informed the different UN Committees and also the competent Committees of the Council of Europe for the protection of human rights (CEDAW, CAT, CDN, CESCR, etc.). In their final observations, many of those bodies reflected the concerns expressed by the UNHCR about THB issues in the context of the IP procedure.

156. Council of Europe, *Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report*, Warsaw 16.5.2005. [www.coe.int/T/E/human_rights/trafficking/PDF_Conv_197_Trafficking_E.pdf]

ing”¹⁵⁷. In addition, paragraph 377 of the Explanatory Report of such fundamental legal binding instrument states that “the exercise of fundamental rights should not be prevented on the pretext of taking action against trafficking in human beings. This paragraph is particularly concerned with the 1951 Convention and 1967 Protocol relating to the Status of Refugees. **The fact of being a victim of trafficking in human beings cannot preclude the right to seek and enjoy asylum and Parties shall ensure that victims of trafficking have appropriate access to fair and efficient asylum procedures. Parties shall also take whatever steps are necessary to ensure full respect for the principle of non-refoulement**”¹⁵⁸.

The same principle is solemnly declared by Article 14 of the Palermo Protocol¹⁵⁹ which sets forth a “saving clause” that considers international protection as one of the forms of protection that States are obliged to assure and guarantee to trafficked persons, under the conditions determined by the 1951 Geneva Convention. In practice such disposition envisages the possibility that the situation of trafficking can represent a form of persecution within the meaning and the connotation established by the Refugee Convention. In fact, the trafficking experience generally involves many 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. Such acts constitute serious violations of human rights which will generally amount to persecution”¹⁶⁰. Therefore some trafficked persons or presumed trafficked persons can fall within the definition of refugee as set forth in Article 1A(2) of the 1951 Geneva Convention. As a consequence, they are entitled to the international refugee protection.

157. Ibidem, par. 373, p. 78.

158. Ibidem, par. 377, p. 78-79.

159. United Nations, Office on Drugs and Crimes (UNODC), *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, 2000 [www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf]

160. 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*, 7 April 2006, p. 6 [www.unhcr.org/refworld/docid/443679fa.html]

Thus, as evident, under international law States have the responsibility to operate with due diligence not only in the prevention, investigation and prosecution of trafficking, but also in order to guarantee assistance and protection to trafficked persons. This means that States have the obligation to ensure that “anti-trafficking laws, policies, programmes and interventions do not affect the right of all persons, including trafficked persons, to seek and enjoy asylum from persecution in accordance with international refugee law, in particular through the effective application of the principle of *non-refoulement*” and to ensure “that procedures and processes are in place for receipt and consideration of asylum claims from both trafficked persons and smuggled asylum seekers and that the principle of *non-refoulement* is respected and upheld at all times”¹⁶¹.

The principle of due diligence in combating trafficking and protecting victims (in terms of pursuing, *inter alia*, her/his physical, psychological and social recovery, as well as the protection of her/his privacy and identity with any of the all provided remedies) has been stated also by the jurisprudence of the European Court of Human Rights (ECtHR)¹⁶². In particular, the ECtHR has repeatedly, unanimously and firmly affirmed that States have not only the negative obligation of not interfering in the enjoyment of human rights, but also the positive obligation to act for guaranteeing such enjoyment.

As stated in *Rantsev v. Cyprus and Russia*¹⁶³, this means that “a State has positive obligations to put in place an appropriate legislative and administrative framework to combat human trafficking; it has positive obligations to take protective measures on behalf of human trafficking victims; and it also has procedural obligations to investigate human traffick-

161. UN Economic and Social Council, *Recommended Principles and Guidelines on Human Rights and Human Trafficking - Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council*, E/2002/68/Add.1, 20 May 2002 [[www.unhcr.ch/huridocda/huridoca.nsf/e06a5300f90fa0238025668700518ca4/caf3deb2b05d4f35c1256bf30051a003/\\$FILE/N0240168.pdf](http://www.unhcr.ch/huridocda/huridoca.nsf/e06a5300f90fa0238025668700518ca4/caf3deb2b05d4f35c1256bf30051a003/$FILE/N0240168.pdf)]

162. [www.echr.coe.int/ECHR/EN/Header/Case-Law/Decisions+and+judgments/HUDOC+database/]

163. *Rantsev v. Cyprus and Russia*, Application No. 25965/04, Judgement on 7.1.2010, [www.cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=73115326&skin=hudoc-en&action=request]

ing”¹⁶⁴. Furthermore, State’s protection positive obligation does not consist only in criminalizing THB on paper, since such positive obligation “also includes administrative and legislative measures to ensure fair labour standards, minimum wages, adequate working conditions, access to health care and standards of health care services, prohibition of child labour, access to food and fair food pricing, access to decent shelter and a healthy environment, access to movement without improper restrictions, fair and non-discriminatory immigration policy and law, and more. Creating these protections reduces the vulnerability and potentiality of trafficking”¹⁶⁵.

According to international law rules and principles as codified both in customary law and in other international legal instruments, “States have a duty to prevent a third-party private wrong and when it has already happened, the State has a duty to redress such wrong”. Thus, as pointed out, State “as protector, has an imperative function in combating trafficking in persons”¹⁶⁶. As a result, the existence of criminalized acts and their respective penalties do not ensure, *per se*, to guarantee the rights of the protected groups, as the State has the obligation to assure that its whole machinery is effective in countering human rights violations and abuses. Indeed, in many countries the problem seems to be represented by the lack of clearness of some laws, the lack of appropriate and effective regulations implementing such laws, the lack of proper enforcement mechanisms and especially the lack of the political will to exercise accountability¹⁶⁷.

Regarding the Spanish context and referring to women who have been trafficked for the purpose of sexual exploitation, the practical difficulty and impossibility to obtain a legal status both through the immigration pathway and the international protection pathway expose those women to a serious and concrete risk of being deported and consequently to fall

164. Pati Roza, *States’ positive obligations with respect to human trafficking: the European court of human rights breaks new ground in Rantsev v. Cyprus and Russia*, Boston University International Law Journal, [Vol. 29:79, 2011], p. 131.

165. *Ibidem*, pp. 134-135.

166. *Ibidem*, p. 134.

167. *Ibidem*, p. 134

again into the hands of traffickers, and/or to be returned to their families which might have sold them to the trafficking network. In addition, it is highly probable that in case of return they face the rejection by their families, their communities and in general the society to which they belong when it is known that such women exercised prostitution. At the same time, it is very likely that they have to cope with several situations that can expose them to further discrimination, violence and abuses¹⁶⁸. Concluding, it is evident that the lack of a comprehensive legal framework in Spain, as well as the inexistence of effective instruments and remedies to protect trafficked persons leads to a further vulnerability and to additional violations of these persons. As acutely pointed out¹⁶⁹, despite the “theoretically available protections and remedies... in practice victims of trafficking in Spain are left for the most part without any access to legal residency. This leaves them unprotected in highly vulnerable situations and without the ability to seek remedies for the violations previously suffered at the hands of their traffickers.

2.3.6 Recommendations

- It is recommendable that the national legislation links the anti-trafficking and the international protection systems, with the purpose to guarantee that all the actors involved in the identification of the two vulnerable groups (trafficked persons and asylum seekers) would be able to assess the real needs of trafficked persons, as well as their international protection needs, with the aim to refer them to the proper protection mechanism. Reversely, actors in charge for the identification of asylum seekers need to have the tools to detect if a person has been (presumably) trafficked and subsequently assess her/his assistance and protection needs accordingly;

168. Waisman Viviana, *Human trafficking: State obligations to protect victims' rights, the current framework and a new due diligence standard*, Hastings International and Comparative Law Review, Volume 33, n° 2, Summer 2010, p. 424.

169. Ibidem, p. 395.

- It is advisable to guarantee trafficked persons the access to and the enforcement of their right to apply for asylum and to enjoy the corresponding status, whenever the applicant has a founded fear of persecution in case of return to her/his country of origin, in line with the international and European legal instruments;
- It is recommendable to assure the respect of the *non-refoulement* principle and thus to carry out a risk assessment evaluation in the applicant's country of origin, before any return to it or to third countries;
- It is desirable to end the practice that leads the competent authorities to exclude the possibility that trafficked persons apply for and enjoy the refugee status, alleging that they can regularize their situation throughout the immigration pathway;
- It is advisable to guarantee that the evaluation of an asylum claim is carried out on an individual case assessment and that is not denied *a priori* basing on the motivation of the existence of other protection mechanisms in the Spanish Immigration Law;
- It is desirable that the identification won't be carried out exclusively by the law enforcement agencies, but by a multidisciplinary team (including specialized NGOs) that may carry out the interview with persons that supposedly have been trafficked, in order to proceed to their identification and to assess their assistance and protection's needs, also on the light of the international protection system;
- It is recommendable a constant training of all relevant actors involved in any stage of the processes both on trafficking and on international protection issues.

3. A snapshot of the other 24 EU countries

3.1 Austria, Belgium, Bulgaria, Luxembourg, the Netherlands and Romania

Aurora Martin

3.1.1 Austria

3.1.1.1 Legal framework and identification systems

There was a significant decrease in the asylum applications for 2010 compared to 2009¹⁷⁰. However out of the approximately 11,000 requests, there is a rate of 25 % of acceptance for the applications¹⁷¹.

Concerning asylum procedure in general, Austria has a two step-system¹⁷². In the same time, the asylum application procedure has been split into an admission and a substantive asylum procedure; additionally, the responsibility of care for asylum seekers has been distributed between the federal state of Austria and its provinces. The admission procedure must take place in one of the three Initial Reception Centres. Once the admission procedure ends with a positive decision, the applicant enters the regular asylum procedure and starts to be subject of the Basic Welfare Support Agreement (Grundversorgungsvereinbarung)¹⁷³, which lays the principles for the basic care for asylum seekers. Apart from the government, there is also a significant number of NGOs involved in the asylum procedure.

Overall, Austria provides five reception centres, with an estimated total capacity of 1810 - 2010 persons¹⁷⁴. Beyond that, hotels, private hostels and hostels run by NGOs also provide accommodation, but their capacity is limited.

170. 11.020 compared to 15.820.

171. [www.epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-29032011-AP/EN/3-29032011-AP-N.PDF]

172. The Federal Asylum Office (Bundesasylamt) as first instance and the Independent Federal Senate for Asylum (Unabhängiger Bundesasylsenat) as instance for Appeals.

173. An agreement between the Austrian Federal State and its provinces.

174. Since there are no official numbers concerning the reception capacities of Austrian Federal Care Centres available, only estimations of NGOs can be given.

Austria is a destination and transit country for women, men, and children subjected to sex trafficking and forced labour, with the victims originating from Eastern Europe, Africa, and Asia. There are indications that traffickers abuse the legal prostitution and asylum processes to control their victims. In 2010, the Austrian government convicted an increased number of trafficking offenders¹⁷⁵ and strengthened the severity of some of the sentences imposed on them, but most traffickers continued to receive less than one year in prison.

The Austrian government is funding a specialized anti-trafficking NGO, which provides open shelter accommodations and assistance to female trafficking victims in Vienna, and also the City of Vienna's specialist centre for unaccompanied minors.

3.1.1.2 Referral systems

However, the Austrian government does not yet employ formal and systematic procedures for the identification and referral of victims within labour or legal and illegal prostitution sectors.

The main barriers in trafficking victims' identification are connected to the inadequate provision of the 30 days reflection period, as well as to the restriction in obtaining a residence permit only for cases in which criminal proceedings or claims at the civil court are being carried out.

3.1.2 Belgium

3.1.2.1 Legal framework and identification systems

There was a slight increase in the asylum applications for 2010 compared to 2009¹⁷⁶, but a significant increase compared to the previous years¹⁷⁷. However out of the approximately 20.000 requests, there is a

175. The Austrian government prohibits trafficking for both sexual exploitation and forced labour under Article 104(a) of the Austrian Criminal Code, but continued to primarily use Article 217, which prohibits cross border trafficking for the purpose of prostitution, to prosecute traffickers.

176. 19.940 compared to 17.190.

177. 11.590 in 2006 compared to 19.940 in 2010.

rate of 20 % of acceptance for the applications¹⁷⁸. As regards the origin of the asylum-seekers in the case of Belgium, in 2010 the top three sources are: Serbia, Iraq, and the Russian Federation.

The Belgian asylum procedure is a two-stage process: an “eligibility” screening (by the Immigration Department of the Ministry of Interior) followed by a hearing on the merits of the claim (by The Office of the Commissioner General for Refugees and Stateless Persons / CGRA).

The reception network for asylum seekers comprises around 30 centres, and The Federal Agency for the Reception of Asylum Seekers (Fedasil) directly manages 20% of the total capacity (open federal centres), the rest being covered by partners’ contributions. The reception system in Belgium provides, in principle, for a 2-step process¹⁷⁹. Owing to the permanent saturation of the reception network, this two-step reception model was difficult to apply in 2010¹⁸⁰.

Since 2007, state support for asylum seekers has shifted from financial to material aid. As such, asylum seekers no longer receive a monthly allowance. Instead, asylum seekers who are not detained at the border are entitled to stay at the above mentioned open reception centres for the duration of the asylum procedure.

Belgium is a source, destination, and transit country for men, women, and children subjected to trafficking in persons, specifically forced labour and forced prostitution, with victims originating in Eastern Europe, Africa, East Asia, as well as Brazil and India.

The government is funding three NGOs that provide shelter and comprehensive assistance to these trafficking victims.

3.1.2.2 Referral systems

The government reportedly uses proactive procedures to identify victims of trafficking based on a 2008 interagency directive on coordination and assistance to trafficking victims.

178. [www.epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-29032011-AP/EN/3-29032011-AP-N.PDF]

179. Asylum seekers start by staying in a group reception structure (a centre), then, after a four-month stay, they are able to request a transfer to individual housing subject to availability.

180. FEDASIL Annual Report 2010.

Surya, one of the three government-funded NGOs, continues a pilot project to improve detection of trafficking victims at the Liege University Hospital, to assess both the feasibility and the efficiency of using medical staff to improve victim identification. Preliminary findings from the pilot project verified that trafficking victims are more willing to talk to medical staff than police; the government reported it continued to review the project before expanding it to the national level.

3.1.3 Bulgaria

3.1.3.1 Legal framework and identification systems

There was a slight increase in the asylum applications for 2010 compared to 2009¹⁸¹. However out of the approximately 1,000 requests, there is a rate of 27 % of acceptance for the applications¹⁸². As regards the origin of the asylum-seekers in the case of Bulgaria, in 2010 the top three sources are: Iraq, Armenia and Iran. Until 2006 the Republic of Bulgaria was mainly a transit country for migrants and asylum-seekers. Since 2007 Bulgaria is becoming gradually a country of destination in connection with the routes for trafficking in migrants and refugees. Aliens with respect to whom a temporary protection has been granted have the right to: reside in the country for the entire duration of the temporary protection; an identity document; social security contributions; food, shelter and clothing, work, medical care and services under the procedure and conditions set in the act whereby temporary protection is granted. The asylum process is managed by the State Agency for Refugees with the Council of Ministers, which is also coordinating an Integration Centre in the capital of Sofia, two Registration-and-reception Centres, as well as a Transit Centre.

Bulgaria is a source and, to a lesser extent, a transit and destination country for women and children who are subjected to sex trafficking, and men, women, and children subjected to conditions of forced labour.

181. 1.030 compared to 850.

182. [www.epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-29032011-AP/EN/3-29032011-AP-N.PDF]

The national government, in cooperation with local governments, is funding one state-run trafficking shelter for adults and opened a second state-run trafficking shelter for adults in February 2011. Government also funded child centres.

Meanwhile, government complicity in human trafficking remained a problem. There are continuous reports of trafficking related complicity of government officials, including reports of government officials who provided sensitive law enforcement information to traffickers and intentionally hindered the investigations of high-level traffickers.

3.1.3.2 Referral systems

The government also adopts a national referral mechanism to coordinate state actors and civil society for the protection and support of trafficking victims. The mechanism divides victim identification into formal and informal stages, allowing victims to be identified and provided with assistance regardless of their readiness to cooperate with police investigations.

3.1.4 Luxembourg

3.1.4.1 Legal framework and identification systems

There was a significant increase in the asylum applications for 2010 compared to 2009¹⁸³. However out of the 750 requests, there is a rate of 15 % of acceptance for the applications¹⁸⁴. As regards the origin of the asylum-seekers in the case of Luxembourg, in 2010 the top three sources are: Serbia, Iraq, and Algeria.

The Luxembourg Reception and Integration Agency (Office luxembourgeois de l'accueil et de l'intégration/OLAI) is in charge of providing support and supervision to the applicants for international protection. The 8 OLAI reception centres are housing either families or bachelors and there are also 5 reception centres provided by NGOs, as well as hotels or private housing.

183. 750 compared to 480.

184. [www.epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-29032011-AP/EN/3-29032011-AP-EN.PDF]

Luxembourg is a destination country for women from Africa (primarily Nigeria) as well as Kazakhstan, Bulgaria, Russia, Ukraine, Brazil, France, and Belgium who are subjected to forced prostitution.

The government continues to fund two NGOs providing services for women in distress, including adult female trafficking victims. However, in 2010 the NGOs could not benefit from the assistance system, the parliamentary approval of the government's implementing regulation of the 2009 law being necessary. Another significant problem is that Luxembourg does not have a concrete set of measures in place to deal with trafficked children; there were no specialized services or shelters available specifically for child victims. The national coordination of anti-trafficking policies is currently done on an ad-hoc basis. However, the law establishing a framework of protection and assistance for victims of human trafficking adopted in 2009 proposes to establish a Committee to monitor trafficking in human beings. In order to become effective, the proposal of subordinate legislation to this act concerning the structure and the missions of the Committee has to be adopted by the Parliament.

3.1.4.2 Referral systems

Although the government adopted a law to codify victim identification and referral procedures and comprehensive assistance for trafficking victims in 2009, it has yet to pass subordinate legislation to begin implementing a formalized referral process. The government has not adopted formal procedures for government personnel to use in the proactive identification of victims; this remained a problem.

3.1.5 The Netherlands

3.1.5.1 Legal framework and identification systems

There was a slight decrease in the asylum applications for 2010 compared to 2009¹⁸⁵. However out of the approximately 13.300 requests, there is a

185. 13.330 compared to 14.910.

rate of 45 % of acceptance for the applications¹⁸⁶. As regards the origin of the asylum-seekers in the case of the Netherlands, in 2010 the top three sources are: Somalia, Iraq, and Afghanistan.

The new asylum procedure, the “Improved Asylum Procedure”, entered into force on July 2010, being meant to ensure a faster and more careful completion of asylum applications.

The Immigration and Naturalisation Service (INS) is the department of the Ministry of Justice responsible for the implementation of the immigration policy in the Netherlands.

The Central Agency for the Reception of Asylum Seekers (COA), is responsible for the reception and housing of asylum seekers. At present, COA manages reception centres of two kinds - Asylum Seekers Centres (AZCs) focused on Orientation & Integration, and AZCs focused on Repatriation - throughout the Netherlands divided into 12 clusters.

The Netherlands is a source, destination, and transit country for men, women, and children subjected to sex trafficking and forced labour¹⁸⁷. Women from the Netherlands, Nigeria, Hungary, Bulgaria, Romania, and Sierra Leone were the top six countries of origin for identified female victims of forced prostitution in 2010. The Government of the Netherlands has an extensive network of facilities providing a full range of trafficking specialized services for children, women, and men.

In January 2011, the Judiciary Council adopted a taskforce proposal to limit litigation of trafficking cases to four specialized courts in the country in order to build necessary expertise among judges and to promote a uniform interpretation of the law.

3.1.5.2 Referral systems

In the Netherlands, the Coordination Centre for Human Trafficking (CoMensha) is the focal point for initial assistance to and registration of

186. [www.epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-29032011-AP/EN/3-29032011-AP-EN.PDF]

187. Approximately 113 victims identified last year in the Netherlands were male; these men and boys were subjected to sex trafficking and various forms of forced labour, including in agriculture, horticulture, catering, food processing, cleaning, and illegal narcotics trafficking. These male victims were primarily from Nigeria, Slovakia, India, the Netherlands, and Ghana.

possible victims of trafficking. CoMensha is an NGO that receives government funding, and closely collaborates with police and other national authorities. As soon as these partners suspect a person is a victim of trafficking, they have to notify CoMensha. Victims can also approach CoMensha directly.

3.1.6 Romania

3.1.6.1 Legal framework and identification systems

There was an extremely slight increase in the asylum applications for 2010 compared to 2009¹⁸⁸. However out of the 860 requests, there is a rate of 15 % of acceptance for the applications¹⁸⁹. As regards the origin of the asylum-seekers in the case of Romania, in 2010 the top three sources are: Afghanistan, Moldova, and Iraq.

The Romanian Immigration Office (RIO) is a department of the Ministry of Interior, responsible for the implementation of the immigration policy in Romania. RIO is managing 5 Regional Reception/Accommodation Centres. According to asylum legislation, asylum application is lodged at Romanian border points or after the applicant enters the territory of Romania. Asylum Law provides that the asylum applications lodged outside the territory of Romania shall not be accepted. If the application is rejected, the complaint shall be resolved by the Court whose territorial jurisdiction includes the RIO competent body that issued the decision.

Aliens with respect to whom a temporary protection has been granted have the right to: reside in the country for the entire duration of the temporary protection; an identity document; social security contributions; food, shelter and clothing, work, medical care and services under the procedure and conditions set in the act whereby temporary protection is granted.

Romania is a source, transit, and destination country for men, women, and children subjected to forced labour and women and children sub-

188. 860 compared to 840.

189. [epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-29032011-AP/EN/3-29032011-AP-EN.PDF]

jected to sex trafficking. Romanian men, women, and children are subjected to forced labour in agriculture and manufacturing, as well as some forced begging in Spain, Italy, the Czech Republic, Greece, Finland, Israel, Germany, Slovenia, the United Kingdom (UK), Cyprus, Australia, France, Belgium, and the United States.

The Government of Romania demonstrates mixed efforts to protect and assist victims of trafficking in 2010. For a second consecutive year, the government failed to provide funding to NGOs providing victim protection services, jeopardizing victim care. The hiatus in funding forced the closure of several trafficking shelters across the country.

3.1.6.2 Referral systems

The Government of Romania operates a National Identification and Referral Mechanism, which provides a formal protocol for referrals between law enforcement and other institutions. It also coordinated its anti-trafficking efforts through the National Agency against Trafficking in Persons; its activities includes overseeing prevention and protection efforts and publishing a quarterly report on Romania's anti-trafficking efforts.

3.1.7 Conclusions

An overall assessment of the 6 studied countries is leading to the conclusion that **proper legislation is in place**. However, there are still problems generated by the **lack of clear and coherent procedures** for the implementation of the law.

The main problems have as centre of gravity the **lack of a coherent referral mechanism** (Austria, Belgium, or Luxembourg) **or, even worse, government complicity** in human trafficking (Bulgaria). Therefore the measures to be envisioned should be directed more toward **cultural awareness instruction and institutional networking**, but also in **updating legislation**.

Nevertheless the key would be to find **innovative approaches in dealing with identification of the trafficking victims**, such as the Austrian project using medical staff for that purpose.

3.2 Cyprus, Czech Republic, Greece, Malta, Slovakia, Slovenia

Romina Corsini

3.2.1 Cyprus

3.2.1.1 Legal framework and identification systems

The first law on asylum adopted from Cyprus is dated only 2000¹⁹⁰; its effective application is actually dated 2002 when the Implementation Regulation has been issued. Law specifies procedures for refugee's status recognition and give competencies to Refugees Authority concerning the deportation of asylum seekers who do not fulfil the relevant criteria for the status obtainment. This matter on asylum seekers' detention deserves a close examination. Article 7 (4) (a) of Refugee Law dated 2000 forbids asylum seekers' detention for the sole reason of being asylum seekers. Judges shall actually authorize detention only in such cases as identity verification, examination of new elements related to asylum request, application reject on first and second instance. However, the NGO named Symfiliosi has discovered, throughout a research conducted within the DEVAS¹⁹¹ project, that in fact asylum seekers entering the country illegally are transferred in detention centres during the whole recognition procedure. Symfiliosi discovered also that there have been cases of asylum seekers being unjustifiably detained and also cases of deportation occurred with asylum application pending¹⁹². Detention centres are besides accessible only to police authorities and access permit to NGOs is generally forbidden with the exception of special cases.

Asylum seekers who entered legally the country are instead transferred to Kofinou's Reception Centre, the only centre in the whole country. 2005 Refugee Regulations established that this centre shall represent a

190. Law 6 (I)/2000

191. The Devas Project (Detention of Vulnerable Asylum-seekers in the European Union) is partly funded by the EU Commission and it has been implemented in 23 EU Member States.

192. Some of these cases are recorded in the Ombudsman's Annual Report for 2005, issued in December 2006, pp. 50-56.

temporary accommodation before getting access to support services foreseen by law. In practical facts, asylum seekers lodges in that centre end up remaining there for several years because of the lack of a properly-structured assistance program for those asylum seekers about to leave the Centre¹⁹³.

Crime of trafficking in human beings for sexual exploitation exists in Cyprus from 2000. On 2007, Law 87 (I) has besides foreseen offence of trafficking for labour exploitation together with other victims' protection measures. Moreover, a Plan of Action for the coordination of actions on combating trafficking in human beings and sexual exploitation of children was adopted in 2005. Victims' identification is demanded to police authorities specialized in these sort of crimes but they don't come in contact with asylum seekers, so that it becomes hard to identify trafficked victims among asylum seekers. NGO Symfiliosi, again, believes that although Refugee Law foresees protection measures for trafficking victims, these are often uninformed upon the possibilities of asylum seeking. Asylum system is indeed still inefficient in Cyprus and it is not calibrated on vulnerable groups' particular needs. Symfiliosi believes that potential trafficking victims very often avoid any contact with police authorities because of the involvement of some of them into crimes connected to trafficking¹⁹⁴.

3.2.1.2 Referral systems

Although the Refugee Law foresees a system of support services for asylum seekers, in practices many sectorial NGOs report a series of huge lacks. For instance, asylum seekers are not guaranteed of legal assistance during their application course resulting in a poor representation in front of administrative or legal authorities. Also for what concerns the housing right, Cyprus Government declares that this right is ensured through the provision of a "rent supplement" which can be accessed by asylum seekers. As a matter of facts, asylum seekers encounter huge difficulties to grant them-

193. See Report of Kisa Steering Committee available at [www.kisa.org]

194. See European Court of Human Rights case of Ratseva V. Cyprus.

selves of a proper arrangement¹⁹⁵. Asylum seekers have the right to public assistance since they cannot access to job market for the first six months. Once six months have passed after the asylum seeking application, asylum seekers could work but they actually may get access to farming and agricultural sector¹⁹⁶. Access to sanitary service is free and totally costless. Regarding to trafficked victims, State authorities should provide legal assistance, medical and psychosocial services, housing and shelter, access to the labour market and welfare benefits¹⁹⁷. In fact, also for trafficked victims major sectorial NGOs report poor enforcement of legal provisions and hence an inadequate victims' ward. Support services are in fact almost totally demanded to NGOs which are actually furnished with continuously decreasing funds. Besides, law foresees the so called "reflection period" only for trafficking victims who have already been identified as such and hence not for presume victims. Additionally, victims are not informed in details about their rights, such as the right to free legal aid or the right to lodge an asylum application, that is why very few victims have claimed the specific rights¹⁹⁸.

3.2.2 Czech Republic

3.2.2.1 Legal framework and identification systems

Czech Republic has adopted in 1999 the Asylum Act that fully respects international obligations, namely the Geneva Convention and the European Asylum Acquis.

195. According to Kisa, the Welfare Services approve the rent benefit only if the person can provide the services with a valid copy of the officially stamped letting agreement (contract of the house rent), as well as a copy of the receipt of the last payment of the rent. This is very difficult for the majority of asylum seekers, because they usually don't have enough money to make this payment in advance [www.kisa.org]

196. A report by the office of the Ombudsman (21.12.2007) considers the decision of the "Ministerial Committee for the Employment of Aliens" of 31.03.2005 and the practices followed by the Labour District Offices as unlawful and calls on the government to revise it.

197. UN Office on Drugs and Crime, *Global Report on Trafficking in Persons*, February 2009

198. [www.e-notes-observatory.org/legislation/cyprus/3/]

Before joining the European Union's Schengen area in January 2008, Czech Republic made several changes to its legislation to bring it in line with EU standards on the administration and processing of irregular migrants and asylum seekers. These changes sanctioned the detention of asylum seekers and unidentified immigrants until their deportation¹⁹⁹. Official and non-governmental sources report a number of positive developments in recent years, including improvements in living conditions within detention centres, better processing procedures, and improved access to legal assistance. For what concern asylum facilities, the Ministry of Interior's Refugee Administration Facility (hereinafter RAF) has under its competences the operation of asylum facilities and facilities for foreigners detention. The RAF provides accommodation and other services to asylum seekers and recognized refugees. It also identifies victims of trafficking within asylum facilities, reception centres or detention centres²⁰⁰. There are three types of facilities:

- reception centres, where newly arrived applicants are accommodated until the basic entry procedures have been completed;
- residential centres, where asylum seekers can reside for the duration of the proceedings related to the application;
- integration asylum centres, where persons who have been granted international protection can have a temporary accommodation in order to enter the Government Integration Program.

For what concerns trafficking in human beings, Czech Republic has adopted the new Penal Code in 2010. The new code contains provisions in line with the Palermo Protocol and the Council of Europe Convention. Moreover, since 2004 the Ministry of Interior established and institutionalized the "Program of Support and Protection of the Victims of Trafficking in Human Beings". The Program is implemented through a "National Referral Mechanism for Trafficked Victims": the mechanism establishes those procedures by which trafficking victims are identified

199. Counseling center for refugee [www.uprchlici.cz/en/index.html]

200. [www.ec.europa.eu/anti-trafficking/showNIPsection.action?sectionId=35ecbde7-84fb-482-f-849b-7b32728c3aba]

and granted of assistance and protection²⁰¹. First trafficking victims' identification is substantially controlled by Police Force and two NGOs (La Strada and Czech Catholic Charity) which help the presumed victims to go through the process of formal recognition which is within the scope of the Ministry of Interior - Crime Prevention Department. The Program foresees the so-called "reflection period" of 60 days during which the victim is provided of basic crisis intervention, entailing psychological and social assistance.

3.2.2.2 Referral systems

For what concerns asylum seekers' support services, RAF foresees that they are hosted for the first period within reception centres where applicants have the rights of free medical assistance and legal advices together with accommodation. These centres are closed and managed by social workers. Once the first asylum request's procedures are accomplished, applicants may avail themselves (but they are not forced to do so) of residential centres where such services as socio-educational support, accommodation and legal advice are granted. These centres are open and asylum seekers may leave also for long periods. The so-called Integration Centres host only those immigrants who have already been granted of a whatsoever form of international protection and for the sole period of 18 months. During this period, immigrants may attend language courses and integration programs together with benefiting of social workers support. These centres are with fee.

Trafficked victims receive assistance during the reflection period of 60 days. This may include asylum accommodation, health care, financial assistance, additional social care, psychological and social advisory services, psychotherapeutic services, legal advisory services, assistance with voluntary return to the country of origin and follow up social assistance,

201. National referral mechanism is formalized by directive of Ministry of Interior (obligatory for police bodies) and by agreements between Ministry of Interior and NGOs that provide the social services. There is also an agreement between Ministry of Interior and IOM regarding returns [www.e-notes-observatory.org/legislation/czech-republic/2/]

long-term social integration, support in job-seeking, re-qualifying training courses, option of being included in the witness protection program, etc. Victims who cooperate in criminal proceedings are granted temporary residence and work visas for the duration of the relevant legal proceedings.

3.2.3 Greece

3.2.3.1 *Legal framework and identification systems*

Greece has adopted on 2010 the Presidential Decree No.114, which deals with asylum rights and the subsequent protection system, that has brought the country in line with the two European directives on reception²⁰² and procedures²⁰³ for asylum recognition.

Besides, on January 2011 Law No.3907 has instituted the Asylum Agency and the First Reception Centre which started their peculiar activities in November 2011. Before that time, procedures for refugee's status recognition were ruled by Presidential Decree 114/2010. Despite the recent legislative efforts carried out from Greece in order to comply with the minimum European standards, procedures for asylum recognition still show serious issues concerning mostly asylum seekers' legal and social ward due to the poor administrative efficiency and to the lack of a ward seekers' national plan²⁰⁴.

Moreover the CPT (European Committee for the Prevention of Torture) considers as absolutely insufficient the number of specialized facilities for asylum seekers and the existing facilities suffer from overcrowding, poor hygienic-sanitary conditions, deficiency in access to legal assistance and to medical aid and lack of segregation of men, women and children.

With the scope of remedying this worrying situation, on April 2011 the European Committee has approved an operative plan for the institu-

202. Council Directive 2004/83/CE

203. Council Directive 2004/85/CE

204. United States Department of State, 2011 *Trafficking in Persons Report - Greece*, 27 June 2011

tion of an Asylum Support Team from the European Asylum Support Office (EASO)²⁰⁵. Asylum Support Team shall aim to contribute to the asylum system efficiency increase giving support on screening procedures, expertise on vulnerable groups, interpreting services and backlog management²⁰⁶.

For what concerns trafficking on human beings, Greece has ratified the UN 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol) and the 2005 Council of Europe Convention on Action against Trafficking in Human Beings. Main legislative references are Law 3064/2002 and Presidential Decree 233/2003 that prohibit trafficking for both sexual and labour exploitation and prescribe imprisonment up to 10 years. Law 3386/2005 introduced a “reflection period” of 30 days for the victims in order to decide whether they want to cooperate with the law enforcement authorities providing at the same time for the relevant legal aid and the necessary residential permits. Victims who decide to collaborate in criminal proceedings are granted with a temporary, renewable residence permit. Moreover they have access to social services and healthcare, once their status have been recognized. Law No.3625/2007 attempts to make criminal proceedings easier for child victims by providing an appointment with an attorney, assistance from a child psychologist or child psychiatrist during the interrogation and the electronic entry of the minor victim’s testimony.

In practice, the Government of Greece does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so and has enacted comprehensive victim-centred legislation that includes stronger tools²⁰⁷. Moreover Greece adopted in 2005 the first National Action Plan on Trafficking

205. [www.ocmc.eu/english/news/european-commission-approved-operating-plan-for-asylum-support-teams-by-easo/]

206. The Asylum Support Teams in Greece will consist of 40-50 experts from several EU Member States that will revise the asylum system. This deployment will be the first operational challenge of EASO, which co-finances the mission.

207. UN Office on Drugs and Crime, *Global Report on Trafficking in Persons*, February 2009

in the framework of an inter-ministerial committee of eight competent Secretaries General.

Among other matters, it stipulated screening procedures and tools to identify victims; screening tools contain key questions law-enforcement officers should consider asking to determine whether someone is a victim of trafficking in human being.

3.2.3.2 Referral systems

For what concerns support and assistance systems foreseen for asylum seekers and victims of trafficking, it is important to clarify that these services are almost totally delegated to NGOs²⁰⁸. Unique exception is made for asylum seekers to whom law foresees the compulsory accommodation in ad-hoc structures but without ensuring legal nor linguistic assistance and foreseeing medical assistance only in case they are not able to pay for themselves.

For what concerns trafficked victims it is important to highlight that, due to the Presidential Decree 233/2003, victims assistance (including police protection, housing, education, medical aid, legal and linguistic assistance) is given only if a prosecution has been brought against the suspected traffickers or if the trafficked individual has sought the service listed in an Annex to the Decree (with stated institutions and shelters)²⁰⁹.

Nevertheless, in January 2011, the new asylum legislation stipulated that even if victims of trafficking do not cooperate with police, they are entitled to receive residency permits subject to the prosecutor's victim certification. The Ministry of Interior reported that it granted legal residency permits to 87 trafficked victims - 21 were new permits and 66 were renewals²¹⁰.

208. There are several free NGO hotlines and also one state hotline (197) in Greece that offer telephone counseling for all kinds of social problems, psychological health, social exclusion and human rights issues and refer to services of others [<http://www.e-notes-observatory.org/legislation/greece/2/>]

209. [www.e-notes-observatory.org/legislation/greece/2/]

210 [www.unhcr.org/refworld/country,,,GRC,4562d8b62,4e12ee7ac,0.html]

3.2.4 Malta

3.2.4.1 Legal framework and identification systems

The Refugees Act (Cap. 420) of 25th July 2000, amended for transposing provisions of the Qualification and Procedures Directives, introduced a national asylum system in Malta which provides a local asylum determination procedure. Also the Immigration Act features relevant provisions to asylum seekers, such as those related to reception conditions²¹¹.

It is necessary to clarify that one of the most debated and controversial issues is related to the mandatory of administrative detention not only for irregular migrants but also for asylum seekers. Once landed in Malta, asylum seekers are sent to one of the three immigrants dedicated detention facilities where they may be kept up to 12 months²¹². These centres are carried out by the Detention Service²¹³ and they are mostly closed²¹⁴. At the end of their detention, migrants - including refugees, beneficiaries of subsidiary protection, asylum seekers and persons whose asylum claims have been rejected - are accommodated in open centres around Malta run by private contractors. Conditions prevailing in these centres vary greatly, with adequate arrangements reported in smaller centres where accommodation is generally granted to vulnerable groups such as families with children or unaccompanied minors, while bigger centres²¹⁵ show much more difficult conditions.

For what concerns trafficking in human beings, Malta has ratified the Palermo Protocol, the Council of Europe Convention and has transposed the Victims of Trafficking EU Directive through the enactment of Sub-

211. Subsidiary legislation 420.06 “*Reception of asylum seekers (minimum standards) regulations*”.

212. See ECHR case *Louled Massoud v Malta*. In this case, the Court noted that there were grave doubts as to whether the grounds for the applicant’s detention (i.e. action with a view to deportation) remained valid for the whole period of his detention, due to the probable lack of a realistic prospect of his expulsion and the possible failure of the domestic authorities to conduct the proceedings with due diligence available [www.wcd.coe.int/wcd/ViewDoc.jsp?id=1797917#P87_18585]

213. [www.globaldetentionproject.org/countries/europe/malta/introduction.html]

214. See the National Report Malta “*Becoming vulnerable in detention*” by Jesuit Refugee Service Malta available at [www.jrsmalta.org/content.aspx?id=225267]

215. See Report by the LIBE Committee delegation on its visit to the administrative detention centers in Malta available at [www.jrsmalta.org/content.aspx?id=225267]

subsidiary Legislation 217.07. Maltese legislation on trafficking crime is very strict so as the respective sanctions to those guilty of trafficking crime on sexual or labour exploitation. However, despite the fairly strong normative frame, the number of detected trafficking victims remains very low. Indeed, the latest Trafficking on Persons Report²¹⁶ does not identify in 2010 any trafficking victim nor trafficking cases inquiry. Besides, for what concerns victims' protection, Malta has not yet adopted a referral system through which identifying and ensuring victims' ward. Lack of a structured system implies that the only body aimed to victims identification is Malta Police Force²¹⁷, which does not utilize identification specific indicators but only general indicators suggested by international organizations. Nevertheless, it has to be reported that Maltese authorities are seeking to develop procedures for identifying victims of trafficking among potential asylum seekers by involving immigration officers.

3.2.4.2 Referral systems

Maltese legislation foresees a series of obligations (i.e. housing, medical care, legal assistance etc.) for asylum seekers and trafficking victims' guaranteed support services but they are actually not always ensured. In particular, support services management for victims of trafficking is delegated uniquely to Appogg Agency, a governmental body occupied in furnishing day-care, psychological assistance and other services to trafficking victims²¹⁸. Besides, Maltese law foresees a 60-days "reflection period" to victims which in practice has never been granted with the exception for those willing to collaborate. Failure of addressing protection needs to those not willing to collaborate is a matter of concern. Even if asylum is an available option, it has never been used by persons trafficked into Malta: asylum seeking and trafficking issues seem to be kept distinct from one another.

216. See the TIP Report 2011 by the U.S Department of State, available at [www.state.gov/g/tip/rls/tiprpt/2011/]

217. [www.e-notes-observatory.org/legislation/malta/2/]

218. Although Appogg has a 16-bed mixed-use shelter for women, only one trafficking victim was referred to this shelter in 2010; no trafficking victims were cared for at temporary shelters operated by NGOs and religious institutions [www.state.gov/g/tip/rls/tiprpt/2011/]

3.2.5 Slovakia

3.2.5.1 Legal framework and identification systems

As a member of the EU, Slovak Republic had to transpose the so-called Qualification Directive into the Slovak legislation. The amendment to the Asylum Act was adopted with Act No. 692 dated 6th December 2006 and entered into force on 1st January 2007²¹⁹.

According to the Asylum Act, asylum seekers who are admitted into the Refugee Status Determination (hereinafter RSD) procedure are accommodated for approximately thirty days under medical quarantine in a closed reception centre²²⁰. Once quarantine is completed they are transferred to another reception centre in Western Slovakia, where they remain until the final determination of their respective claims. These centres are open but asylum seekers are not allowed to work. All five reception centres are managed by the Ministry of Interior Affairs' Migration Office.

Under the new Asylum Law amendments, they may enter the labour market if the decision on their cases has not been issued by the Migration Office within one year. National police, immigration authorities and social workers are the main authorities likely to be in contact with asylum seekers.

For what concerns trafficking in human beings, the Slovak Criminal Code prohibits all forms of trafficking in human beings since 2002. The Slovak Republic also signed the Palermo Protocol on 15th November 2001 and ratified it on 25th August 2004. Foreign victims of human trafficking are granted an initial 40-day reflection period to consider whether assisting law enforcement in criminal proceedings. Foreign vic-

219. Before the amendment was adopted, the subsidiary protection was partially covered by the institute of a tolerated stay established by the Act No 48/2002 Coll. on Stay of Aliens and on Amending and Supplementing of Certain Acts as amended which, however, contained neither all the reasons for providing such a protection, nor the entire ambit of competences that pertained to foreigners in compliance with the so-called qualification regulation.

220. There are four reception centers in Slovakia: Adamov-Gbely (with a 200-bed capacity), in Rohovce (140-bed capacity) in western Slovakia, or in Liptovsk? Vlachy (100-bed capacity) or Opatovsk? Nov? Ves (180-bed capacity) in central Slovakia.

tims who cooperate with law enforcement are permitted to remain in Slovakia and work for the duration of the investigation or trial.

A National Rapporteur has not been established in Slovakia; the Information Centre for Crime and Human Trafficking Prevention, established in 2009, fulfils similar tasks to a National Rapporteur. This Centre was established with the aim of collecting information on trafficking victims, providing analysis and evaluation of activities, sharing information at national and international level²²¹.

3.2.5.2 Referral systems

In relation to support services provided to asylum seekers and refugees in Slovakia, integration-related assistance is provided only by NGOs, funded mostly by the United Nations High Commissioner for Refugees (UNHCR), although it is formally declared by the state as a provision²²². Non-governmental sector covers such activities as providing social assistance, psychological and legal counselling, language training, vocational training, support in education and material support.

The Slovak Act on the Residence of Foreigners No. 48/2002 Coll. of Laws, transposing the Council Directive 2004/81/EC of 29th April 2004, aims to ensure a tolerated residency, including the reflection period of 90 days to trafficked persons who decide to cooperate with the authorities. Support services (i.e. housing, medical and legal assistance) are delegated to NGOs that are financed by the Slovak Government²²³. These NGOs provide comprehensive assistance to victims who are eligible to participate to Government's National Program; these victims receive financial support for a minimum of 180 days, although social support is provided throughout the criminal process duration.

221. [www.ec.europa.eu/antitrafficking/showNIPsection.action;jsessionid=pBvMNnkTyWhnn1-TyGG21D9C6j2xlGCK92qZy1 ts7GL2GkzbPMpGy!855818409?sectionId=a7c44327-16a2-431a-92fd-d23f04e58d7c]

222. See the article by Martina Novakova "*Integration of refugees in Slovakia*" available at [www.koed.hu/serpent/novakova.pdf]

223. In 2010, the Slovak government provided \$298,000 to NGOs for anti-trafficking activities, an increase from \$ 275,000 provided in 2009 [www.unhcr.org/refworld/country,,,SVK,4562-d8b62,4e12ee4b37,0.html]

3.2.6 Slovenia

3.2.6.1 Legal framework and identification systems

Slovenia adopted a new Asylum Act in March 2006 which transposed into the national law those provisions given by the Reception Directive and Qualification Directive. This new Act brought great changes to the Slovene asylum legislation and practice as it lowered the asylum standards in Slovenia. According to Slovenian NGOs and UNHCR's regional representative, the New Act provisions are actually violating those international instruments which safeguard the rights of asylum seekers as well as breaching some provisions of Slovene Constitution²²⁴.

In the first half of 2005 several changes in the Slovene reception system were made. Firstly, the Ministry of Interior adopted a measure which foresees that people waiting for their application to be lodged are locked into a pre-reception area in order to prevent them from escaping to other states (EU members) before lodging the application. Once the application is lodged, asylum seekers are accommodated into the Asylum Home²²⁵ which they cannot leave till the procedure is completed²²⁶.

For what concerns trafficking in human beings, Slovenia has planned several actions such as the arrangement of an Interdepartmental Working Group in 2001 followed by the appointment of a National Coordinator, the adoption of Four National Action Plans have in 2004 and also the administration of a project by Ministry of Interior, UNHCR and local NGOs which deals with trafficking and gender-based violence by providing information and assistance to asylum seekers at greatest risk of being trafficked, particularly women and unaccompanied children²²⁷.

224. [www.humanrightspoint.si/node/6]

225. The "asylum home" is currently the only operated reception and accommodation centre for asylum seekers

226. Asylum seekers can be moved in private accommodation in two special cases, that is for medical reasons or if they belongs to vulnerable groups.

227. The Ministry of Foreign Affairs has financed the project '*Introducing the mechanism for recognition, assistance and protection of victims of trafficking in human beings and/or sexual violence in asylum procedures in Slovenia*' (PATS) for four years. The project originally only included Slovenia but has expanded to also include Croatia and Bosnia and Herzegovina [www.ec.europa.eu/anti-trafficking/index.action?breadCrumbReset=true]

Formal identification of trafficked victims is carried out uniquely by the Police. In practice the identification process occurs at various levels; it is partially carried out as regular police work but there is also the possibility that victim identification is given through consultancy services within protected shelters. Besides, there is a third possibility consisting in the self-identification but it occurs rarely. There is no standard formal identification procedure for presumed victims of human trafficking; police have made no specific list of indicators for identifying trafficked people: they use an internal manual which covers also the identification process²²⁸ among other procedures.

An independent National Rapporteur has not been established in Slovenia; however the National Coordinator exercises the role of an equivalent mechanism.

3.2.6.2 Referral systems

Support services for asylum seekers in Slovenia are regulated through the Regulations on Matters and Conditions to Guarantee the Rights of Asylum Applicants²²⁹ which defines criteria and procedures for asylum seekers to access basic assistance, accommodation, education, housing and health services. Amendments to the Asylum Act also brought changes in the area of social benefits: accommodation in the Asylum Home is compulsory (except for specific cases such as medical reasons and vulnerable groups identification)²³⁰; pocket money was completely abolished; access to the labour market is possible only after one year from the asylum application; free legal assistance is not provided; health care services are still mostly limited to urgent cases.

The only improvements registered are the provisions related to vulnerable groups including trafficked victims. The government funded victim protection through two NGOs that provide comprehensive assistance includ-

228. See the E-Notes Project report available at [www.e-notes-observatory.org/]

229. See the report *Reception Conditions and the Impact of the EU Directive in Slovenia*, ICF II - Cross-Border Asylum Action available at [pomocprawna.home.pl/.../ICF/8.Slovenia.pdf]

230. If it is proved that an asylum seeker has left the asylum home and has not returned within three days, the asylum procedure will be abandoned (Art. 42 Asylum Act).

ing health care, psychological care, accommodation, and physical security. Contrary to what occurs for asylum seekers and persons who have been recognized as refugees which are granted of two different forms of assistance, presumed trafficked persons are entitled to all the forms of assistance available to individuals who are formally identified as trafficked²³¹.

3.2.7 Conclusions

Conditions of refugees and asylum seekers are still quite complex, especially in Cyprus, Greece and Malta where they continue to experience enormous difficulties in gaining access to asylum procedures.

In Greece, the UNHCR alleged that in the past two years most AS were not identified as such and did not receive any assistance, ending up with living on the streets. Amnesty International again, together with other NGOs, stated that in some cases authorities deported asylum seekers without due process. In Malta the fact that asylum seekers can be detained up to 18 months in closed detention centres while their cases are processed is still a matter of concern.

In Cyprus, moreover, NGOs and asylum seekers alleged that the Nicosia District Welfare Office continues to be inconsistent in the delivery of benefits to eligible asylum seekers, despite the recent efforts to improve procedures and protection system.

Although in Slovakia, Slovenia and Czech Republic the situation is not so serious, the conditions of refugees and AS remain difficult for what concerns at least the issue of integration.

In relation to trafficking in human beings, it has to be noticed that all the analyzed countries did important efforts to put their legislation in line with the International Treaties, Conventions and EU legal acts. Besides, most of them adopted a National Action Plan (with the exception of Malta) throughout develop strategies to combat trafficking and protect victims. Furthermore, in many cases a National Rapporteur or an equiv-

231. [www.unhcr.org/refworld/country,,,,SVN,4562d8b62,4e12ee4bc,0.html]

alent mechanism has been appointed, with the exception of Cyprus, Greece and Malta.

According to the annual Trafficking in Persons Report of the US Department of State, these countries have to still undertake more efforts, in particular for what concerns prosecuting trafficking offenders, ensuring adequate protection and assistance to victims, implementing training for all front-line responders who outline identification, referral, and protection procedures for potential trafficking victims; improving partnerships with NGOs in protecting and assisting victims and intensifying efforts to proactively identify trafficked victims among vulnerable populations.

Generally, procedures for trafficking victims identification and the asylum systems seem to be going on parallel lines without a proper link, even if in Malta and Czech Republic some improvements on this matter are developing. In Czech Republic the Refugee Administration Facility, which is a governmental organizational unit with the scope of providing accommodation, catering and other social services for AS and refugees, has also the task to identify victims of trafficking within asylum facilities, reception centres and detention centres. In Malta, public authorities are developing procedures for the identification of potential victims of THB among asylum seekers throughout the involvement of immigration officers.

In conclusion, it seems to be quite clear that the issue of THB victims' identification among asylum seekers is not considered as a priority for the majority of the selected countries. In facts, the research has shown that many of the analyzed countries lack of adequate instruments especially related to the expertise of police officers dealing with asylum seekers and potential trafficking victims.

High consideration shall hence be given to develop more efficient training tools on this field, not limited to police officials but also for NGOs, social workers, volunteers and all other involved key figures.

In addition, since NGOs are generally the most involved and aware figures on this issue, collaboration between NGOs and Police Authorities shall certainly be implemented and encouraged together with foreseeing more adequate funding for those NGOs working directly on identification, assistance and protection of victims.

3.3 Denmark, Finland, Hungary, Ireland, Sweden, United Kingdom²³²

Clara Fringuello

3.3.1 Denmark

3.3.1.1 Legal framework and identification systems

Denmark is a State party to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol. In the context of the EU harmonisation, Denmark has opted out from the EU *acquis* on asylum and immigration and is therefore not bound by the legal framework established by the EU in this area. The country nevertheless has adopted a domestic legislation granting protection to almost the same categories of people protected by the EU Directives on asylum (refugees and subsidiary protection status holders)²³³. The Aliens Act²³⁴, the main relevant text on asylum, establishes the existence of the refugee status as well as protection status. While the first refers to grounds for protection as set in the 1951 Refugee Convention, the latter refers to individuals who don't qualify for refugee status but, in case of return to the country of origin, risk being subjected to death penalty or to torture or inhuman or degrading treatment or punishment²³⁵.

232. This report reflects the situation as on 30th September 2011.

233. Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (hereinafter "Qualification Directive"); Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status; Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (hereinafter "Qualification Directive"); Directive 2003/9/EC of 27 January 2003 on minimum standards for the reception of asylum seekers (hereinafter "Reception Directive").

234. Aliens Consolidation Act No. 785 of 10 August 2009. Since 2002 Denmark has frequently made legislative changes to this Act, mostly introducing restrictive measures.

235. Aliens Act, Section 7 (1) and Section 7 (2). The grounds for "protection status" are narrower than those established by the EU Qualification Directive for the subsidiary protection. In this last case protection is also accorded to asylum seekers who face a real risk of serious harm in the sense of a "serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict".

In 2010 Denmark received 4.970 new applications for asylum²³⁶. Asylum seekers are generally not detained in Denmark. Instead they are usually required to reside in one of the Danish Immigration Service's non-secure accommodation centres. Less commonly, in certain cases, the Immigration Service can grant asylum seekers permission to stay outside the centres²³⁷.

Denmark ratified the main international conventions relating to trafficking in human beings: the 2000 UN Protocol to Prevent, Suppress and Punish Trafficking in Person Persons, Especially Women and Children²³⁸ and the 2005 Council of Europe Convention on Action against Trafficking in Human Beings²³⁹.

As for the area of asylum, Denmark is not bound by EU Directives on human trafficking.

The main domestic relevant legal provisions relating to human trafficking are the Danish Penal Code (Section 262) and the Danish Aliens Act (Section 26(a), Section 33(14), Section 33(15)). In 2011 the Danish government adopted the "Action Plan to Combat Human Trafficking 2011- 2014"²⁴⁰. Danish Immigration Service is the national authority responsible for formal identification of victim of trafficking. In 2010, 52 cases of trafficked persons have been detected²⁴¹.

3.3.1.2 Referral systems

Aliens who apply for asylum to the Danish Immigration Service or to the police are referred to Sandholm accommodation centre where they are

236. UNHCR, *Asylum Levels and Trends in Industrialised Countries 2010*, 20 March 2011, p. 15.

237. [www.nyidanmark.dk/en-us/coming_to_dk/asylum/accomodation_centres/private-accommodation.htm]

238. UN Protocol to Prevent, Suppress and Punish Trafficking in Person Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, New York, 15 November 2000.

239. Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 26 May 2005.

240. A first National Action Plan was already adopted in 2002 and a second one in 2007.

241. United States Department of State, *2011 Trafficking in Persons Report - Denmark*, 27 June 2011, [www.unhcr.org/refworld/docid/4e12ee8337.html]

registered and offered accommodation²⁴². Asylum seekers are generally housed at an accommodation centre. However, some asylum seekers have the option of private accommodation²⁴³.

The Danish Immigration Service covers healthcare expenses for adult asylum seekers, provided it is necessary, urgent and pain-relieving. Asylum seekers under the age of 18, they are entitled to the same healthcare as children who are residents of Denmark²⁴⁴.

In case of a negative output of the asylum application the asylum seeker is granted a lawyer to represent him/her before the Refugees Appeals Board²⁴⁵.

In addition to these basic services, asylum seekers also receive a cash allowance from the Danish Immigration Service covering their basic expenses.

Asylum seekers over the age of 18, who have not received a final rejection of their application for asylum, must participate in courses designed to maintain and improve both their general skills, as well as their trade or professional skills. Children between the ages of 6 and 17 are offered special courses.

Asylum seekers are not entitled to work while their application is pending unless they have a residence and work permit²⁴⁶.

After a formal identification as victim of trafficking by the Danish Immigration Service has taken place, victims of trafficking can benefit from different kind of services.²⁴⁷

Victims of trafficking can reside in women's shelters where they can receive assistance, including medical, psychological and social support

242. [www.nyidanmark.dk/en-us/coming_to_dk/asylum/application_for_asylum/applying_for_asylum.html]

243. [www.nyidanmark.dk/en-us/coming_to_dk/asylum/accomodation_centres/accomodation_centres.html]

244. [www.nyidanmark.dk/en-us/coming_to_dk/asylum/conditions_for_asylum_applicants/-conditions_for_asylum_applicants.html]

245. Danish Refugee Council, *Dublin Brochure* [www.dublin-project.eu/dublin/Danemark]

246. [www.nyidanmark.dk/en-us/coming_to_dk/asylum/conditions_for_asylum_applicants/-conditions_for_asylum_applicants.html]

247. [www.e-notes-observatory.org/legislation/denmark/2/]

and legal assistance. Prepared repatriation programmes as well as contact with families, network and social organizations in the country of origin are also available²⁴⁸.

Victims of trafficking are granted healthcare and harm-reduction services, including counselling, referral and, in case of necessity, accompaniment to medical care, psychological treatment and dental care²⁴⁹.

Legal advice is offered by the Danish Centre against Human Trafficking in collaboration with the Danish Centre of Prostitution and some NGOs (such as the Nest International and Pro Vest)²⁵⁰.

Victims of trafficking can participate in vocational training courses. In special cases support staff can be appointed.

Trafficked people who do not meet all of the requirements needed to acquire a residence permit in Denmark are offered a prepared repatriation to their country of origin²⁵¹.

In relation to victims of trafficking's legal status, Danish legislation doesn't foresee the possibility to grant them any specific typology of residence permit.

Instead victims of trafficking are granted a 30-day reflection period that, upon request and if particular reasons make it appropriate or if the person is cooperating concerning a prepared return, may be extended up to a maximum of 100 days²⁵².

248. [www.centermodmenneskehandel.dk/in-english/assistance-offered-to-victims-of-human-trafficking/women-shelter]. At the time when this report was written three shelters for trafficked persons were available. The Danish Centre against Human Trafficking, in collaboration with the private organization the Nest International, operated a 24-hour staffed women's shelter, which can accommodate up to 12 women. LOKK (the national organisation of women's shelters) runs two additional shelters that also accommodated victims of human trafficking under protection.

249. [www.centermodmenneskehandel.dk/in-english/assistance-offered-to-victims-of-human-trafficking/healthcare]

250. [www.centermodmenneskehandel.dk/in-english/assistance-offered-to-victims-of-human-trafficking/legal-aid]

251. [www.centermodmenneskehandel.dk/in-english/assistance-offered-to-victims-of-human-trafficking]

252. Danish Aliens Act, Section 33(14).

3.3.2 Finland

3.3.2.1 Legal framework and identification systems

Finland is a State party to the 1951 Convention Relating to the Status of Refugees and to the 1967 Protocol. As a Member State of the EU Finland is also bound by the EU Directives on asylum.

Domestic relevant provisions are included in the Aliens Act (Chapter 6)²⁵³, the Integration Act²⁵⁴; the Act on Reception of Persons Seeking International Protection (Chapter 3, Sections 13 - 32)²⁵⁵, the Act on Detention of Foreigners and Detention Unit²⁵⁶ and the Administration Act²⁵⁷.

In 2010 Finland received 4.020 new applications for international protection²⁵⁸.

Asylum seekers maybe detained upon arrival in Finland if their identity is unclear or in case there's the risk of absconding or if there are grounds to believe that the person will commit a crime²⁵⁹. Asylum seekers that are not subject to detention are housed at reception centres run by State in cooperation with Finnish municipalities and the Finnish Red Cross. Asylum seekers can also live in private accommodation but in this case they will have to pay by their own all the expenses.

Finland ratified the 2000 UN Protocol to Prevent, Suppress and Punish Trafficking in Person Persons, Especially Women and Children. Finland

253. Law 301/2004 (as following amended).

254. Law 1386/2010.

255. Law 746/2011. The act entered into force in September 2011 and no English translation is available.

256. Law 116/2002.

257. Law 434/2003.

258. UNHCR, *Asylum Levels and Trends in Industrialised Countries 2010*, 20 March 2011, [www.unhcr.org/4d8c5b109.htm, p. 15]

259. Aliens Act, Chapter 5, Section 121. Detainees may be held in border guard facilities for a maximum of 48 hours and in police facilities for a maximum of 4 days, after which they are to be transferred to a detention centre in Metsälä. However the UNHCR reported the practice of holding migrants (including asylum seekers) in police and border guard detention facilities for periods exceeding four days. This is mainly due to fact that the Metsälä detention centre is usually overcrowded (UN High Commissioner for Refugees, *Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review: Finland*, November 2011 [www.unhcr.org/refworld/docid/4ecb7d2c.html])

has also signed but not ratified the 2005 Council of Europe Convention on Action against Trafficking in Human Beings. As a Member of the EU Finland is also bound by the EU Directives on human trafficking²⁶⁰.

Domestic legislation on trafficking is included in the Finnish Penal Code (Chapter 25, Section 3-3a)²⁶¹ and in the Aliens Act (Chapter 4, Section 52a-53). In 2005 Finland published the first National Plan of Action against Trafficking in Human Beings and in 2008 a revised National Plan was elaborated.

Officials (including the National Reporter), private or public service providers (including NGOs), victims themselves, or any private person may file a motion for the acceptance of the presumed victim of trafficking to the system of assistance. The competent authorities to take this decision are the directors of the reception centres of Joutseno and Oulu²⁶². In 2010 52 cases of trafficked persons have been identified by State officials²⁶³.

3.3.2.2 Referral systems

Pending the asylum application asylum seekers in Finland enjoy the following services: accommodation, reception and spending allowances, social welfare and health services, interpreter and translator services, opportunities to work and study and, if necessary, legal aid²⁶⁴.

The Finnish Immigration Service is responsible for the management, planning and monitoring of the operation of the reception centres and the management of the Metsälä detention centre²⁶⁵.

260. Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities; Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

261. Law 39/1889 as following amended.

262. [www.e-notes-observatory.org/legislation/finland/2/]

263. United States Department of State, *2011 Trafficking in Persons Report - Finland*, 27 June 2011, [www.unhcr.org/refworld/docid/4e12ee7d37.html]

264. [www.213.138.145.18/netcomm/content.asp?path=8,2476,2791,2792&language=EN]

265. [www.213.138.145.18/netcomm/content.asp?path=8,2476,2791,2793]

Asylum seekers have the right to work after three months since the submission of the application for asylum if they have a travel document entitling them to international travel. In absence of such documentation asylum seekers are allowed to work for pay in Finland once they have been in the country for six months²⁶⁶.

Assistance to trafficking victims is provided within the System of Victim Assistance. The Finnish Immigration Service is responsible for the supervision of the implementation of the system for helping victims of human trafficking²⁶⁷. The System of Victim Assistance is administrated in the refugee reception centres of Joutseno and Oulu. The decision to refer a person to the System of Victim Assistance or to remove him/her from the system is taken by the director of the of the reception centre. Once referral is made the System of Victim Assistance is obliged to report cases to the Police²⁶⁸.

Once in the System of Victims Assistance victims of trafficking in human beings may be provided with services and support measures, which include legal and other advice services, crisis therapy, social and health care services, accommodation or housing, interpretation services and other support services, social assistance and other necessary care. Support for a safe return is also available²⁶⁹.

A Reflection period may be granted to victims of human trafficking. The length of the reflection period may range from 30 days to six months²⁷⁰. In addition to the reflection period a person suspected with good reasons to be a victim of trafficking in persons may be granted a temporary residence permit under three different conditions: the victim's residence in Finland is based on pre-trial investigation or court proceedings concerning trafficking in persons; the victim is prepared to cooperate with the

266. [www.213.138.145.18/netcomm/content.asp?path=8,2476,2791,2792&language=EN]

267. [www.213.138.145.18/netcomm/content.asp?path=8,2476,2791,2793]

268. As a consequence of this assistance given to victims is conditional to the referral made by the reception centre's director and linked to criminal proceedings even at an early stage. On this point see: <http://www.e-notes-observatory.org/phenomenon/finland/>.

269. [www.humantrafficking.fi/in_english]

270. Aliens Act, Chapter 4, Section 52b.

authorities in the process of apprehending those suspected of trafficking in persons; the victim of trafficking in persons no longer has any ties with those suspected of trafficking²⁷¹.

Victims of trafficking who are in a particularly vulnerable position may be granted a continuous residence permit, independently from the willingness to cooperate with authorities, the only condition being that the victim must no longer have ties with those suspected of trafficking in persons²⁷².

Lastly victims of trafficking can be issued with a permit of continuous nature on compassionate grounds under section 52 of the Aliens Act²⁷³.

3.3.3 Hungary

3.3.3.1 Legal framework and identification systems

Hungary is a State party to the 1951 Convention Relating to the Status of Refugees and to the 1967 Protocol. As a Member State of the EU Hungary is also bound by the EU Directives in the area of asylum.

Domestic provisions relevant in this field are included in the Asylum Act²⁷⁴; the Act II of 2007 on the Admission and Right of Residence of Third- Country Nationals (Section 2 (f), Section 51 (1)) and in the Government Decree 301/2007 (XI. 9.) on the execution of Act LXXX of 2007. In 2010 Hungary received 2.460 new applications for international protection²⁷⁵.

A large proportion of asylum-seekers are held in detention throughout the entire asylum procedure. If the asylum seeker entered Hungary ille-

271. Aliens Act, Chapter 4, Section 52a (1).

272. Aliens Act, Chapter 4, Section 52a (2).

273. [www.poliisi.fi/intermin/vvt/home.nsf/pages/0C464DB69A79BF6CC22576C500399293?open-document]

274. The Asylum Act has been amended in December 2010. At the time of writing this report no English version of the new law was available.

275. UNHCR, *Asylum Levels and Trends in Industrialised Countries 2010*, 20 March 2011, [www.unhcr.org/4d8c5b109.htm, p. 15]

gally, the immigration authorities will start an expulsion procedure and the person will be held in detention for the whole duration of the application. Those who are not in detention are accommodated in an open reception centre in Debrecen. Unaccompanied minors asking asylum are hosted in the Children's home in Fót²⁷⁶.

Hungary ratified the 2000 UN Protocol to Prevent, Suppress and Punish Trafficking in Person Persons, Especially Women and Children. Hungary has also signed but not ratified the 2005 Council of Europe Convention on Action against Trafficking in Human Beings.

As a Member of the EU Hungary is also bound by the EU Directives on human trafficking.

Domestic legislation on trafficking is included the Aliens Act²⁷⁷ (Section 175/B), the Act II of 2007 on the Admission and Right of Residence of Third- Country Nationals [Section 29, Section 29 (2)(a)(b), Section 29(4), Section 30(1)(e)]. In 2008 Hungary published a National Strategy against Trafficking in Human Beings for the period 2008-2012.

In 2010, 22 trafficked persons were identified by authorities and other 22 by NGOs²⁷⁸.

3.3.3.2 Referral systems

During the admissibility procedure asylum seekers are hosted either in the open refugee camp in Debrecen or in a detention centre (this may happen in case the asylum seeker received an expulsion order). If the asylum seeker was detained during the admissibility procedure, during the in-merit procedure, he/she will remain in the jail for a maximum of 12 months. If the asylum seeker was not detained he/she will be able to stay in the Debrecen open refugee camp or in private accommodation.

Pending the asylum application, asylum seekers have the right to basic medical care and emergency medical assistance (doctors visit the refugee

276. Hungarian Helsinki Committee, *Dublin Procedure Brochure Hungary* [www.dublin-project.eu/dublin/Hungary]

277. Act IV of 1978 on the Criminal Code.

278. United States Department of State, *2011 Trafficking in Persons Report - Hungary*, 27 June 2011 [www.unhcr.org/refworld/docid/4e12ee752d.html]

camp and detention centres a few times a week) and free legal assistance from a lawyer and/or from a non-governmental organization. In addition to this asylum seekers who are referred to the in-merit procedure have a right to a monthly allowance.

Asylum seekers can work only if they are staying in the refugee camp and only inside the camp. However, if the asylum procedure takes longer than a year, they have the right to work outside the camp. In this case asylum seekers' children have the right to go to school²⁷⁹.

Precondition for State support for victims of trafficking is that person can be considered a "victim of crime". This means that in order to get assistance, prosecution in relation to the crime of trafficking has to take place and that the trafficked person has to testify²⁸⁰.

Victim assistance is provided by the county offices of the Office of the Justice Victim Support Service. It covers monetary and legal aid as well as State compensation to victims of crime when individuals suffered severe physical or mental damage as a direct consequence of the crime²⁸¹. The Victim Support Service can also secure psychological assistance²⁸².

As to accommodation there is no State support. There is a shelter for trafficked persons run by the Hungarian Baptist Aid a non-governmental organisation. In the shelter physical and mental health treatments as well as counselling and information services are available²⁸³.

According to Section 30 (1)(e) of the Aliens Act, victims of trafficking are entitled to a reflection period of 30 days. Once the reflection period is over

279. The source of all the information included in this section is the following: Hungarian Helsinki Committee, *Dublin Procedure Brochure Hungary* [www.dublin-project.eu/dublin/Hungary, p. 10]

280. It has been reported that the Hungarian Baptist Aid, an NGO running the only existing shelter for trafficked persons, has offered support to presumed trafficked person even before the competent authorities had the slightest indication that he/she had been a victim of trafficking [www.e-notes-observatory.org/legislation/hungary/2/]

281. It has been reported that in reality, compensation is rarely granted [www.e-notes-observatory.org/phenomenon/hungary/]

282. [www.e-notes-observatory.org/phenomenon/hungary/]

283. [www.e-notes-observatory.org/legislation/hungary/3/]. NGOs can also provide reintegration, educational and other kind of services and assistance by running projects supported by grant application. However these services are not always available.

the trafficked person can be issued a humanitarian residence permit for substantial national security or law enforcement reasons, upon the initiative of a public prosecutor, a judge or the National Security Service²⁸⁴.

3.3.4 Ireland

3.3.4.1 Legal framework and identification systems

Ireland is a State party to the 1951 Convention Relating to the Status of Refugees and to the 1967 Protocol. Ireland, as a Member State of the European Union, is also bound by the EU treaties. However reservations were made to these treaties and Ireland has to opt in, on a case-by-case basis, on the EU Directives in the area of asylum.

So far Ireland has opted in on both the Qualification and Procedure Directive. While the former was transposed with the European Communities (Eligibility for Protection) Regulations 2006, the latter is still to be transposed²⁸⁵. Domestic legal provisions relating to asylum are contained in the Refugee Act 1996 and in the European Communities (Eligibility for Protection) Regulations 2006²⁸⁶.

In 2010 Ireland received 1.920 new applications for international protection²⁸⁷. While there is no detention *per se* of asylum-seekers, asylum-seekers can be detained on grounds related to lack of documentation, need to establishing identity and to issue relating to national security²⁸⁸. In most of cases asylum seekers are accommodated in direct provision accommodation centres.

284. Aliens Act, Section 29 (1)(e).

285. In June 2010 the Immigration, Residence and Protection Bill 2010 which is designed to replace current immigration legislation was published. Its provisions also include changes to current asylum and trafficking legislation. At the time when this research was conducted the Bill was still under discussion.

286. European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006), S.I. No. 518 of 2006, 10 October 2006, available at: [www.unhcr.org/refworld/docid/45e59d242]

287. Eurostat [www.epp.eurostat.ec.europa.eu/portal/page/portal/population/data/database]

288. Grounds for detention of asylum seekers over the age of 18 are listed in Section 9(8) of the Refugee Act 1996.

Ireland ratified the main international conventions relating to trafficking in human being: the 2000 UN Protocol to Prevent, Suppress and Punish Trafficking in Person Persons, Especially Women and Children and the 2005 Council of Europe Convention on Action against Trafficking in Human Beings.

Ireland opted out from the 2004 EU Directive on trafficking. However Ireland notified its wish to take part in the application of the newly adopted EU Directive on preventing and combating trafficking in human beings and protecting its victims.

The main domestic relevant legal provisions relating to human trafficking include the Criminal Law (Human Trafficking) Act 2008, the Child Trafficking and Pornography Act 1998 and the Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking of 2011. In 2009 a National Action Plan to Prevent and Combat Trafficking in Human Beings for years 2009 - 2012 has been adopted.

Garda Síochána, Ireland's National Police Service, is the national authority responsible for formal identification of victim of trafficking.

In 2010, 69 cases of alleged trafficking in human beings involving 78 alleged victims were reported to Garda Síochána²⁸⁹. Only 5 of these individuals were positively identified and considered "suspected" trafficking victims and granted residency permits²⁹⁰. Of the 78 alleged victims 36 were asylum seekers²⁹¹. However in these cases a formal identification as victim of trafficking couldn't take place because, as a practice, a precondition for formal identification to take place is that the individual migratory status is "illegal"²⁹².

289. Anti-Human Trafficking Unit Department of Justice and Equality, *Annual Report on Trafficking in Human Beings in Ireland for 2010*

[www.justice.ie/en/JELR/AHTU%202010%20Annual%20Report.pdf/Files/AHTU%202010%20Annual%20Report.pdf]

290. United States Department of State, *2011 Trafficking in Persons Report - Ireland*, 27 June 2011, [www.unhcr.org/refworld/docid/4e12ee72c.html]

291. [www.justice.ie/en/JELR/AHTU%202010%20Annual%20Report.pdf/Files/AHTU%202010%20Annual%20Report.pdf]

292. Interview with Immigrant Council of Ireland, August 2011. Please note that in this case the possibility to identify trafficked persons among asylum seekers is made impossible by the system itself.

3.3.4.2 Referral systems

After asylum seekers make their application for asylum in the Office of the Refugee Applications Commissioner (ORAC), they are accommodated by the Reception and Integration Agency (RIA) in a reception centre in Dublin for a period of approximately ten to fourteen days. During this period asylum seekers are given access to health (including health screening), legal and welfare services. Asylum seekers are then relocated to an accommodation centre outside the Dublin area for stay up to six months. Accommodation granted to asylum seekers is referred to as “direct provision” meaning that accommodation is provided on a full-board basis. Asylum seekers in direct provision enjoy the following services: weekly direct provision allowance (€19.10 per adult; €9.60 per child) regional pre-school facilities (only at larger centres), free primary and post-primary education, additional resources for schools with special needs in the area of English Language, medical card entitling asylum seekers to receive a wide range of health services on the same basis as for Irish citizens, designated psychological service, Exceptional Needs Payments (made at discretion of the Community Welfare Service), back to school clothing and footwear allowance and other Community Welfare Payments²⁹³. Asylum seekers under the age of 16 are required to attend primary and secondary school and may stay in school until they reach the age of 18. Asylum seekers over 18 can take part in any course provided by private or voluntary groups but cannot participate in State funded third level education²⁹⁴.

In relation to the asylum application asylum seekers are provided free legal aid to assist asylum seekers in²⁹⁵.

Asylum seekers are not entitled to work while their application is pending²⁹⁶. A person who has been identified by a member of the Garda Síochána as a suspected victim of human trafficking is entitled to receive assistance.

293. [www.ria.gov.ie/en/RIA/Pages/Reception_Dispersal_Accommodation]

294. [www.ria.gov.ie/en/RIA/Pages/Education_While_In_RIA_Accommodation]

295. [www.legalaidboard.ie/lab/publishing.nsf/Content/Refugee_Legal_Service]

296. 1996 Refugee Act, Art. 9.4 b).

Support services for victims of trafficking include psychological support and material assistance, medical screening (provided by HSE Anti-Human Trafficking Team), access to translation and interpretation services and access to counselling and information. In case of return voluntary, return to country of origin might be arranged with the assistance of the International Organization for Migration²⁹⁷.

Suspected victims of trafficking are referred to the Reception and Integration Agency by the Garda National Immigration Bureau and they are given the same accommodation as that provided to any newly arrived asylum seekers in direct provision²⁹⁸.

A person who has been identified by a member of the Garda Síochána as a suspected victim of human trafficking is granted permission to remain lawfully in the State for a period of 60 days recovery and reflection. During the Recovery and Reflection period suspected victims will not have access to the labour market. However in case a six months temporary residence permit has been granted suspected victims of trafficking, who are not within the asylum process, will have unrestricted access to the labour market²⁹⁹. Administrative arrangements are also in place to allow the suspected victim to continue to assist the Garda Síochána or other relevant authorities in relation to an investigation or prosecution arising in relation to the trafficking³⁰⁰.

According to immigration rules trafficking persons could be also granted a residence permit (leave to remain). This is the case if the trafficked persons made an application to be declared a refugee and was refused such a declaration. In this case the fact that the person has been identified as a suspected victim of human trafficking may be taken into account in considering the opportunity to deport him/her³⁰¹.

297. Legal Aid Board, *Information Leaflet for Potential Victims of Human Trafficking*, [www.legalaidboard.ie/lab/publishing.nsf/650f3eec0dfb990fca25692100069854/6613bfb1e9c425c8025791e0054724c/\$FILE/INFORMATION%20LEAFLET%20SEPT%2011.pdf]

298. [www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/victimsupportcontacts-stateorganisations-en]

299. Department of Justice, Equality and Law Reform, *National Action Plan to Prevent and Combat Trafficking in Human Beings for years 2009 - 2012*, 10 June, 2009, p. 14.

300. Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking of 2011, paragraph 18.

301. Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking of 2011, paragraph 16).

3.3.5 Sweden

3.3.5.1 Legal framework and identification systems

Sweden is a State party to the 1951 Convention Relating to the Status of Refugees Convention and the 1967 Protocol. As a Member State of the EU Sweden is also bound by the EU Directives in the area of asylum.

The main national instrument relating to international protection is the 2005 Swedish Aliens Act³⁰².

In 2010 Sweden received 31.870 new applications for asylum³⁰³.

Asylum seekers can be detained only in case it's necessary to establish their identity, in order prevent them from absconding or in case it is deemed possible that the person will be refused entry or expelled or in order to enforce a refusal-of-entry or expulsion order³⁰⁴. Asylum seekers who are not subjected to detention are usually accommodated by the Migration Board (the authority which receives applications from people seeking asylum) in normal blocks of flats on average housing estates in medium and small towns across Sweden³⁰⁵.

Sweden ratified the main international conventions relating to trafficking in human being: the 2000 UN Protocol to Prevent, Suppress and Punish Trafficking in Person Persons, Especially Women and Children and the 2005 Council of Europe Convention on Action against Trafficking in Human Beings. As a Member of the EU Sweden is also bound by the EU Directives on human trafficking.

The main domestic relevant legal provision relating to human trafficking is the Swedish Penal Code (Chapter 4, Section 1a, Chapter 6, Section 11 - Section 12)³⁰⁶. In 2008 Sweden adopted a National Action Plan against Prostitution and Trafficking in Human Beings for Sexual Purposes.

Identification of victim of trafficking is carried out by different stakeholders (Swedish National Police Board, National Criminal Police, Spe-

302. Aliens Act (2005:716).

303. Eurostat [epp.eurostat.ec.europa.eu/portal/page/portal/population/data/database]

304. 2005 Swedish Aliens Act, Chapter 10, Section 1.

305. [www.migrationsverket.se/info/464_en.html]

306. Swedish Penal Code (Law 1962:700).

cialised Police Units on human trafficking, Border Police, Migration Board, Prosecutors Chambers and Social Welfare Authorities). Procedurally the legal identification of a victim of trafficking in persons is carried out by the prosecutor³⁰⁷.

In 2010 the government identified 84 victims of trafficking³⁰⁸. In the same year according to an internal report revealed by Swedish media 250 persons were identified as suspect victims of trafficking by the Swedish Migration Board³⁰⁹.

3.3.5.2 Referral systems

The Swedish Migration Board is responsible for arranging asylum seekers suitable accommodation. Accommodation provided by the Migration Board is usually in normal blocks of flats on average housing estates in medium and small towns across Sweden. Asylum seekers can also choose to arrange their own accommodation, for example living with friends or relatives³¹⁰.

Adult asylum seekers are entitled to a free medical examination. They also have the right to emergency or urgent medical and dental care. In addition to this asylum seekers are entitled a LMA card (Asylum Seeker Card showing that the person is an asylum seeker) guaranteeing them discount for medical care and medications. Women enjoy gynaecological and prenatal care. Depending on the county, asylum seekers may be also entitled to different kind of extra care. Asylum-seeking children are offered the same health and medical care as children who are resident in the country³¹¹.

Asylum seekers who have not an income or assets of their own are entitled to a daily allowance to cover the costs of food, clothes and shoes,

307. UNDOC, *Human Trafficking in the Baltic Sea Region: State and Civil Society Cooperation on Victims' Assistance and Protection*, 2010, [www.unodc.org/documents/human-trafficking/CBSS-UNODC_final_assessment_report.pdf, p. 163- 164]

308. United States Department of State, *2011 Trafficking in Persons Report - Sweden*, 27 June 2011, [www.unhcr.org/refworld/docid/4e12ee45c.html]

309. Interview with Foundation Safer Sweden, August 2011.

310. [www.migrationsverket.se/info/464_en.html]

311. [www.migrationsverket.se/info/1630_en.html]

leisure activities, hygiene products, expenses for health and medical care, dental care and medicines³¹².

Organised activities, consisting mainly of Swedish lessons, English and IT lessons, are offered to asylum seekers aged between 18 and 64. Children and young people are entitled to education, pre-school activities and school-age childcare on the same terms as children who are registered as residents in Sweden³¹³.

Asylum seekers can work only if they can obtain a certificate exempting them from the obligation to have a work permit (the issuing of such certificate is made conditional of the following circumstances: the identity of the asylum seekers could be established; on the base of to Dublin Regulation II Sweden is the State responsible for examining the asylum claim; the asylum application is found to be well founded)³¹⁴.

Presumed victims who either self-report or are identified by any stakeholder have access to support and assistance services. However, the legal identification of a person as trafficked persons and the possibility to benefit from the resident permit for people involved in court proceedings can only be carried out by the prosecutor³¹⁵.

Protection and assistance to victims of human trafficking are provided mostly by the State and the municipalities in Sweden. According to the Swedish Social Services Act, the municipalities are responsible for providing support to victims of crime, such as medical support, psychological support, shelter and other forms of social assistance³¹⁶.

Services offered are for victims of crime in general. In relation to accommodation, for example, trafficked persons are usually hosted in a shelter

312. [www.migrationsverket.se/info/1631_en.html]

313. [www.sweden.gov.se/sb/d/11901/a/125266]

314. [www.migrationsverket.se/info/465_en.html]

315. United Nations Office on Drugs and Crime, *Human Trafficking in the Baltic Sea Region: State and Civil Society Cooperation on Victims' Assistance and Protection*, April 2010 [www.unodc.org/documents/human-trafficking/CBSS-UNODC_final_assessment_report.pdf]

316. United Nations Office on Drugs and Crime, *Human Trafficking in the Baltic Sea Region: State and Civil Society Cooperation on Victims' Assistance and Protection*, April 2010. [www.unodc.org/documents/human-trafficking/CBSS-UNODC_final_assessment_report.pdf]

for abused women or in case of men among homeless men. Children are usually accommodated in detention facilities for children³¹⁷.

There are also some specific services targeted on special needs of victims of human trafficking. Victims of trafficking for sexual purposes get assistance from specialized prostitution units in the big cities³¹⁸.

Victims of trafficking are entitled to a reflection period of 30 days in order to be able to take a decision on whether he or she wants to cooperate with the investigating authorities³¹⁹.

According to the Aliens Act victims of trafficking in Sweden can be issued a temporary residence permit. The permit is for six months and may be extended upon application by the prosecutor based on investigation needs³²⁰.

Lastly trafficked persons could also benefit from the provisions of Section 6, Chapter 5 of the Aliens Act providing for the issuing of a residence permit if it is found upon overall assessment of the person's situation that the circumstances are to stay in Sweden.

3.3.6 United Kingdom

3.3.6.1 Legal framework and identification systems

The United Kingdom (UK) is a State party to the 1951 Convention Relating to the Status of Refugees and to the 1967 Protocol. UK, as a Member

317. Interview with Foundation Safer Sweden, August 2011.

318. United Nations Office on Drugs and Crime, *Human Trafficking in the Baltic Sea Region: State and Civil Society Cooperation on Victims' Assistance and Protection*, April 2010, [www.unodc.org/documents/human-trafficking/CBSS-UNODC_final_assessment_report.pdf]

319. Aliens Act, Chapter 5, Section 15.4. The reflection period has rarely been used (United Nations Office on Drugs and Crime, *Human Trafficking in the Baltic Sea Region: State and Civil Society Cooperation on Victims' Assistance and Protection*, April 2010, http://www.unodc.org/documents/human-trafficking/CBSS-UNODC_final_assessment_report.pdf, p. 165).

320. Aliens Act, Chapter 5, Section 15.4. This provision has been criticized for not focusing on victim's protection but being a mean to collect evidence for the juridical procedure. Critics have also been raised in relation to the fact that only the prosecutor and not the victim can apply for a reflection period or a temporary residence permit (<http://www.e-notes-observatory.org/legislation/sweden/3>).

Stated of the EU, is also bound by the EU treaties. However, UK made reservations to these treaties. As a consequence of these reservations, UK has to opt in, on a case-by-case basis, on EU Directives in the area of asylum. So far UK has opted in the three EU Directives on asylum³²¹.

Main domestic provisions on asylum are the Immigration rules (par. 326 A- 352, par. 357- 361) and the Refugee or Person in Need of International Protection (Qualification) Regulations 2006.

In 2010 UK received 22.090 new applications for international protection³²². Asylum seekers may be detained at different stages in the asylum process. A common reason for detention is a reasonable fear that the person will abscond or if he/she fails to attend appointments as required. The same happens if the immigration officer at the screening stage believes he/she can fast-track the application³²³.

UK ratified the main international conventions relating to trafficking in human beings: the 2000 UN Protocol to Prevent, Suppress and Punish Trafficking in Person Persons, Especially Women and Children and the 2005 Council of Europe Convention on Action against Trafficking in Human Beings. UK opted out from the 2004 EU Directive on trafficking and didn't take part in the adoption of new EU Directive on preventing and combating trafficking in human beings and protecting its victims.

Main domestic relevant legal provisions relating to human trafficking include the Sexual Offences Act 2003 (Section 57-60C), the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 (Section 4), The Borders Citizenship and Immigration Act 2009 (Section 54) and the Criminal Justice (Scotland) Act 2003 (Part 3).

In 2007 UK published the Action Plan on Tackling Human Trafficking and in 2009 an updated version was released. Finally in 2011 the "Human trafficking: the government's strategy" was also published.

321. However, in the framework of the ongoing process of recast of the EU directives UK announced it won't opt in the amended text of the Qualification and Reception Directives.

322. UNHCR, *Asylum Levels and Trends in Industrialised Countries 2010*, 20 March 2011, [www.unhcr.org/4d8c5b109.html]

323. [www.rcis.org.uk/asylum_process/detention]

Competent authorities for formal identification of victim of trafficking are the UK Border Agency and the UK Human Trafficking Centre. During the period from 1st April 2009 to 31st March 2011 1.481 persons were referred as presumed victim of trafficking to the National Referral Mechanism³²⁴. In relation to the interaction between the asylum system and the system of protection of victims of trafficking two relevant factors must be highlighted.

It has been reported that some trafficking victims applying for asylum are routed through a detained “fast track” procedure³²⁵. This accelerated procedure is not equipped to deal with complex trafficking cases and it does not allow enough time for a victim to recover and to explain case circumstances to an immigration official before adjudication and possible deportation. Concerns have also been raised in relation to the possibility that the referral as trafficked persons may be reducing the chances of success for presumed trafficked persons who apply for asylum. As far as for both processes it’s the same authority who interviews the person and takes the decision (UK Border Agency) there’s the risk that these two separate processes for reaching decisions, each with their own criteria and standards of proof, merge³²⁶.

3.3.6.2 Referral systems

The UK Border Agency provides housing to asylum seekers who are homeless or without economic resources to buy food³²⁷. In addition to housing, if the asylum seeker is homeless or without money, he may qualify for financial help³²⁸.

324. In relation to 895 cases a positive “reasonable grounds” decision was taken while in relation to 497 cases a positive “conclusive grounds” decision was adopted [www.soca.gov.uk/about-soca/about-the-ukhtc/statistical-data]

325. Human Rights Watch, *Fast-Tracked Unfairness: Detention and Denial of Women Asylum Seekers in the UK*, 23 February 2010 [www.unhcr.org/refworld/docid/4b8553742.html]

326. Anti-Trafficking Monitoring Group, “*Wrong kind of victim?*”, 2010, [www.antislavery.org/includes/documents/cm_docs/2010/a/1_atmg_report_for_web.pdf]

327. [www.ukba.homeoffice.gov.uk/asylum/support/accommodation/]

328. Pregnant women or women with children under the age of three are entitled to extra money [www.ukba.homeoffice.gov.uk/asylum/support/cashsupport/]

Asylum seekers and their dependants can receive healthcare from the National Health Service (NHS) and qualify for extra free healthcare such as NHS prescriptions, dental care, sight tests and vouchers for glasses. In case of victims of torture extra support is also available³²⁹. Asylum seekers benefits also from legal aid³³⁰.

Children of asylum applicants have the same right to education as all other children in the United Kingdom and they must receive full-time education if they are between 5 and 16 (compulsory school age)³³¹.

Asylum seekers are not normally allowed to work while their asylum application is under evaluation. However, if the person waited longer than 12 months for the initial decision on the asylum application, he may request permission to work. In this last case asylum seekers are allowed to take up only a job that is included on the list of shortage occupations published by the UK Border Agency³³².

In UK assistance to victim of trafficking is conditional on the existence of a positive 'reasonable grounds' decision assessment taken by the Competent Authority (UK Border Agency and the UK Human Trafficking Centre)³³³.

Victims of trafficking who received a positive decision can access safe accommodation, advocacy, living expenses, access to counselling, support through the criminal justice process, access to independent legal advice (where required), access to interpretative services and help with resettlement. They can also benefit from the roll out of other initiatives like sexual assault referral centres and independent sexual violence advisors.

329. [www.ukba.homeoffice.gov.uk/asylum/support/health/]

330. At time when this research was conducted reforms to the legal aid scheme were under consideration [www.asylumaid.org.uk/data/files/publications/166/LegalAidLetter.pdf]

331. [www.ukba.homeoffice.gov.uk/asylum/support/education/]

332. [www.ukba.homeoffice.gov.uk/asylum/support/employment/]

333. [www.soca.gov.uk/about-soca/about-the-ukhtc/national-referral-mechanism]. It has been reported that only a few NGOs have negotiated funding arrangements with government departments, which allow them to pay the costs of assistance before someone is the subject of a 'reasonable grounds' decision. This circumstance, particularly in those cases where the reasonable grounds' decisions takes much longer than foreseen (two or three days before submitting a referral and a further five days for a decision to be made) creates a problem in paying for the first week of assistance, at the very time when a trafficked person's needs may be most acute. On this point see Anti-Trafficking Monitoring Group, "Wrong kind of victim?" op.cit.

Victims of trafficking are also eligible to apply for voluntary assistance returns³³⁴. Trafficked persons may be housed in shelters for trafficked persons, in accommodations intended for asylum seekers or in other typologies of accommodations (private houses, housed with friends or relatives, housed by employers)³³⁵.

After a presumed trafficked person is referred from First Responders (authorised agency such as police forces, the UK Border Agency, social services or certain NGOs) to the Competent Authority, the Competent Authority decides if there are ‘reasonable grounds’ to suspect that the person concerned has been trafficked. In this case a positive ‘reasonable grounds’ decision is issued granting the persons a 45-day recovery and reflection period. During this period the Competent Authority gathers further information relating to the referral from the First Responder and from multi-agency colleagues. This additional information is necessary to make a full and conclusive decision on whether the referred person is a victim of human trafficking. In case of a final positive decision, the victim may be granted discretionary leave to remain in the UK for one year to allow him/her to co-operate fully in any police investigation and subsequent prosecution. The period of discretionary leave can be extended if required³³⁶.

If a victim of trafficking is not involved in the criminal justice process, the UK Border Agency may consider a grant of discretionary leave to remain in the UK, depending on the victim’s personal circumstances³³⁷.

3.3.7 Conclusions

All six countries analysed in this chapter have ratified the two main international conventions for the protection of refugee rights: the 1951

334. Criminal Justice System, *Trafficking toolkit: Tackling Trafficking* [www.falkirk.gov.uk/services/social_work/children_and_family_services/child_protection/child_protection_committee/hild_trafficking_docs/11_toolkit_tackling_trafficking.pdf]

335. Anti-Trafficking Monitoring Group, “*Wrong kind of victim?*”, op.cit.

336. [www.soca.gov.uk/about-soca/about-the-ukhtc/national-referral-mechanism]

337. [www.soca.gov.uk/about-soca/about-the-ukhtc/national-referral-mechanism]

Refugee Convention and the 1967 Protocol. These countries are also bound by the EU directives on asylum, with the only exception of Denmark that opted out from the EU *acquis* on asylum. The country nevertheless has adopted national legislation on asylum, granting protection to same categories of people protected by the EU directives.

The six countries also grant additional forms of complementary protection, which refers to other forms of protection created by national law, different from the above-mentioned status, conferred on persons whose return is impossible or undesirable³³⁸. The existence of complementary protection is particularly important as in some countries it might provide ground for residence permit to victims of trafficking.

All six countries are bound by the main conventions relating to trafficking: the 2000 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. Furthermore, Denmark, Ireland, Sweden and United Kingdom, have also ratified the 2005 Council of Europe Convention on Action against Trafficking in Human Beings while Finland and Hungary have only signed it. Additionally Finland, Hungary and Sweden are also bound by the EU Directives on human trafficking. Denmark, Ireland and UK, have opted out from the EU Directives in this area. All six countries have enacted national legislation necessary to comply with the mentioned international conventions.

Holding asylum seekers in detention is possible under different conditions in all six states. In Denmark, Finland, Hungary and Ireland, the majority of asylum seekers are hosted in accommodation centres, while in Sweden and the United Kingdom, they are usually provided with housing. In all six countries national police and immigration authorities are the key actors of both the asylum and anti-trafficking systems, thus the key actors in identifying victims of trafficking amongst asylum seekers. The research showed that training has been provided to relevant stakeholders in most of the countries in order to increase the capacity of authorities in human trafficking identification. It is however difficult to estimate

338. ECRE, *Complementary Protection in Europe*, July 2009, <http://www.ecre.org/topics/areas-of-work/protection-in-europe/149.html>, p. 4.

whether relevant stakeholders consider the issue of trafficking when dealing with asylum seekers as the data on the number asylum seekers identified as trafficked is in general not available. The only exception is Sweden where the Swedish media reported that the Swedish Migration Board identified 250 people as suspected victims of trafficking in 2010. Another (negative) exception is the case of Ireland where, as a practice, a precondition for identification is the 'illegal' status of the individual; making it impossible to identify victims of trafficking by the system itself.

One preliminary observation regarding the support systems available for asylum seekers and victims of trafficking is the accessibility to services. Once a person has submitted its asylum application he/she has automatically access to support services for asylum seekers. This however is not applicable for victims of trafficking.

A person who either perceives him/herself as a victim of trafficking or who has been identified as a potential victim of trafficking needs to go through a process where relevant authorities officialises her/his status prior to grant him/her access to services. Only Sweden, UK and Hungary provide services prior to a formal identification, and, in the last two countries, assistance is provided by private NGOs.

The research showed that services such as accommodation, medical and legal services are usually guaranteed both for asylum seekers and trafficked persons. Additional services such as daily allowance, language classes or education for children are also provided to asylum seekers. An important observation must be made in relation to the nature of these services: services such as accommodation are specifically tailored for asylum seekers while victims of trafficking usually benefit from facilities and services designed for other groups, such as asylum seekers or victim of crimes in general. For example in Sweden victims of trafficking benefit mostly from the assistance granted to victims of crime. In Ireland and Finland they are usually hosted in the same reception centres for asylum seekers; these places have proven not to be ideal as the risk of re-victimization, particularly in cases of trafficking for sexual exploitation, is deemed rather high.

Lastly the research showed that all six analysed countries enacted national legislation recognizing refugee status, subsidiary protection status and

some forms of complementary protection; consequently, at least in theory, the asylum systems are able to meet the protection needs of a wide group of individuals. This does not apply to victims of trafficking. All six states provide the possibility to grant a reflection and recovery period to victims of trafficking but the possibility of issuing a residence permit is not recognized in every country. Moreover the conditions and characteristics of the residence permit that may be granted to victims of trafficking are not homogeneous.

3.4 Estonia, Lithuania, Latvia, Poland, Germany and Portugal³³⁹

Fabrizio Pesce

3.4.1 Estonia

3.4.1.1 *Legal framework and identification systems*

The number of asylum seekers (hereinafter ASs) in Estonia is generally very low. The UNHCR Universal Periodic Review of the country's refugee practices suggests that the "remarkably low number" of registered ASs at the border is due to a possible lack of access to asylum procedures for individuals in need of international protection who are being turned away at the border. According to the data collected in this research and the opinion of the *NGO Living for Tomorrow*, some women applying for asylum in Estonia and accommodated at Illuka Reception Centre were likely to be victims of trafficking. However, without an adequate mechanism for indentifying victims, gathering and analyzing information, it is possible that statistics are either inflated or minimized. In addition, it is possible that trafficking cases are "hidden" among other criminal cases, or ASs victims of trafficking are not recognized at all because of Estonia's inadequate legislation in relation to trafficking. Another obstacle for identifying the number of victims of trafficking (hereinafter VOTs) is related to the lack of data on people seeking international protection (IP). In Estonia, statistics track only information on issues of residence permits without indication of cases of granted international protection.

3.4.1.2 *Referral systems*

The problem of trafficking in persons for purpose of sexual and other forms of exploitation is not new in Estonia, but regional and national attention to VOTs among ASs is poor. According to Sirle Blumberg (from Living for Tomorrow organization), there is a good network between

339. This report reflects the situation as on August 2011.

NGOs, border guards and police officers dealing with VOTs. Unfortunately no one has experience with asylum seekers identified as VOTs though. As she said, *Living for Tomorrow* is learning about this phenomenon on a case by case basis. In fact, the Estonian network led by this organization generally focuses on Estonian victims of trafficking rather than ASs. The current network has established an effective National Referral Mechanism (hereinafter NRM), but it only addresses issues related to Estonian citizens, particularly women, involved in human trafficking. At the moment, it does not include either VOTs from other countries or ASs.

In general, the bibliography and the reports collected do not bring relevant information on this issue. However, it seems that this is due more to a lack of tools for identifying the phenomenon rather than the fact that the phenomenon does not exist.

Finally, in Sirle Blumberg's opinion, the identification of victims of human trafficking amongst asylum seekers requires adequate training, in depth knowledge of the topic and the existence of an effective NRM. These elements are currently missing in the country.

3.4.2 Lithuania

3.4.2.1 Legal framework and identification systems

In Lithuania, the phenomenon of human trafficking within asylum seekers is totally new. Only in the last few years the trafficking in women has been recognized and received more attention in the country. Lithuanian women are usually taken to other countries and forced into prostitution upon arriving. Women from neighbour countries are also brought to Lithuania for the same purpose. Similarly, local women are engaged in prostitution as well. However, it is very difficult to know the number of people seeking for IP identified as VOTs due to the lack of a formal identification system and no reflection period provided by the legislation for people identified as VOTs. At the same time, the number of asylum seekers is low in Lithuania compared with Poland or Germany.

Being the most southern of the three Baltic republics, Lithuania serves as a transit country for undocumented migration. It is also a country of

origin for trafficking of women. However, this does not apparently indicate any connection between human trafficking and ASs.

As pointed out by Giedrė Blažytė (from *Missing persons' families support centre*), in Lithuania it is “*better to be identified as a VOT than an asylum seeker, because you are supposed to be provided with security, you will get permission to work and also free medical assistance. With regards to ASs there are not so many benefits*”. On the other hand, VOTs have to testify in a trial and this can take a very long time. Moreover, when the trial has concluded, VOTs have to come back to their country of origin. *Missing persons' families support centre* is working as a network in Lithuania. However, this NGO registered only one case of asylum seeker who was a VOT in 2010.

3.4.3 Latvia

3.4.3.1 Legal framework and identification systems

In 2008, there was an increase in the number of asylum applicants in the country, but in general the number is relatively small. As in January 2011, the total number amounted to only 68. It is worth noting that each application is assessed individually and the few cases available do not allow to identify trends on reasons behind rejection. Moreover, in 2008 very few cases of VOTs have been detected in Latvia. There has been none in 2009. With regards to human trafficking legislation, it should be highlighted that there is a strict provision for VOTs. In fact, the law establishes a reflection period of 30 days, which is not enough for victims to make decisions on collaborating with the police. As a matter of fact, in almost all cases, VOTs are deported after this reflection period. According to the expert interviewed, the assisted return procedures for trafficked persons are unclear to both service providers and victims. However, cases of good collaboration between public institutions and NGOs exist, even though they are not based on formal agreements.

In general, the bibliography and the reports collected do not provide valuable information about the topic. It might indicate that human trafficking related to asylum seekers is still unrevealed in Latvia.

3.4.4 Poland

3.4.4.1 Legal framework and identification systems

Over recent years, the majority of ASs has transited through Poland to reach Western EU states, especially Germany and the Czech Republic. For many reasons, Poland is still considered as a transit country. Difficulties for ASs to integrate in the Polish society, as well as impossibility to receive a number of social benefits make them exclude Poland as the first country of choice to apply for asylum.

Furthermore, it should be pointed out that the national Act on Aliens introduced detention for all ASs who cross or have crossed the border without valid travel documents. Poland is actually enforcing the most restrictive application of the European Directive on admissibility/inadmissibility procedures: all asylum seekers, who had no right to enter Poland or were crossing the border illegally, or were intercepted inside the territory of Poland without visa or travel document, must be detained regardless of their wish to seek protection. Despite of this restrictive national legislation, the number of ASs in Poland is relatively high compared with Baltic republics such as Estonia, Lithuania and Latvia.

With regards to human trafficking, Poland is a country of origin of victims. The highest rate of criminal activities to recruit women (from Poland) to work illegally in Western Europe is concentrated along the border with Germany (i.e. in the areas in the proximity of Szczecin, Poznań and Gorzów Wielkopolski). Moreover, almost all penal proceedings against trafficking in humans that have been conducted in Poland are connected with the market for sexual services. Poland is not only a country of origin but it is also considered a transit country for victims coming from other countries, such as Lithuania, Latvia and Moldova, and going to Germany.

According to the expert from La Strada Foundation, there is a good network between NGOs, border guards and police officers dealing with VOTs. However, as in the case of Estonia, they have no experience in identifying VOTs amongst ASs.

According to the bibliography collected and some experts' opinion, human trafficking related to asylum seekers is still an unknown phenom-

enon. Some of the experts interviewed express the belief that there might be more cases of VOTs amongst ASs as it is currently recognized. Nevertheless, relevant data is not available in the documentation and information analyzed in the research.

3.4.5 Germany

3.4.5.1 Legal framework and identification systems

In 2010, 359.000 foreigners applied for asylum in industrial countries, representing a five percent decrease from 2009 and 40 percent decline from the peak of the past decade (i.e. 620.000 in 2001). In Europe, France received the first-most asylum seekers, (i.e. 47.800 in 2010), followed by Germany (i.e. 41.300), and Sweden (i.e. 23.200) (Migration Dialogue, 2011)³⁴⁰. Since irregular immigration into Germany has been growing, German asylum law and policy have been changed in the last few years. It has to be noted that there seem to be a sort of use of the current legislation on reception conditions to deter potential ASs from applying. In Germany, detention is an administrative, rather than a penal measure. Any person in the German territory without permission is liable to be detained as are those whose asylum claims have been rejected and are subjected to deportation. However, according to the expert interviewed, some individuals have been detained immediately on arrival in Germany when they have asked for asylum. It seems that suspicion of escape is considered as a sufficient reason to be detained.

On the other hand, as Zigler³⁴¹ pointed out, in Germany cases of trafficking are often not discovered in their full gravity due to the factual situation of entanglement between smuggling and human trafficking. There is a high number of potential VOTs cases that remains unrecorded or comes

340. [www.migration.ucdavis.edu]

341. Ziegler, K. S. (2005) “*Criminal Victims/Witnesses of Crime: The Criminal Offences of Smuggling and Trafficking of Human Beings in Germany: Discretionary Residence Rights, and Other ways to Protecting Victims*” in *German Law Journal* 6 (3): 605-648.

out “only” as smuggling instead of trafficking. Within this context, the phenomenon of human trafficking amongst asylum seekers is even more complex to be identified. According to Bundeskriminalamt’s reports³⁴², there is no data available with regards to this topic. Moreover, the German counter trafficking legislation is more focused on law enforcement- based on the German Criminal Code than on protecting victims. Thus, it does not provide trafficked persons with relevant support.

3.4.5.2 Referral systems

In 1999, the first *Federal Cooperation Concept* (hereinafter FCC) was developed for promoting collaboration between specialized counseling centers and the police, and better protection of the victims of human trafficking who testify in court. In 2007, the agreement and relevant documentation have been updated. The FCC can be regarded as a “best-practice” model as well as an effective NRM able to identify and protect rights of VOTs. However, with regards to human trafficking amongst ASs, a similar mechanism to the FCC has not been set up yet. This is why in Germany it is currently very difficult to collect relevant information on this issue. Similarly to other countries, there seem to be a lack of tools for identifying the phenomenon rather than evidence that it does not exist.

3.4.6 Portugal

3.4.6.1 Legal framework and identification systems

In Portugal, there are few cases of asylum seekers. The inadmissibility procedure is the major barrier to deter refugees to seek asylum in this country.

Since June 2008, any NGO, welfare institution and individual, including the victims themselves, can report cases of human trafficking to a multi-disciplinary team composed by members of two organizations (i.e. Fam-

342. Bundeskriminalamt (2009) “*Law Enforcement Strategies to Combat Human Trafficking*”. Available at [www.bka.de/]

ily Planning Association and Gender and Equality Citizen Commission). In addition, the law enforcement agencies are required to report any case of human trafficking to specialized police units (i.e. OPCs Focal Point). When reporting cases of trafficking, the law enforcement agencies must fill in a Unified Register Form, while NGOs must complete a Signaling Guide. Both will then send the records to the Observatory on Trafficking in Human Beings.

The adoption of a standardized registration guide, the creation of an observatory in relation to trafficking issues and the development of an annual forum helped increase the number of identified cases of trafficking. However, it remains difficult to determine if the identified cases represent only a tip of an iceberg or if they are actually a good proxy of existing incidents of trafficking for sexual exploitation. Moreover, there are not available national indicators for cases of human trafficking amongst asylum seekers, therefore it is hard to collect relevant information on the topic.

According to the NGO's operator interviewed, the phenomenon seems to be totally new. The interviewee thinks that there is anecdotal evidence of VOTs amongst ASs, but at the moment quantitative data is not available. For example, there is perception that some women applying for asylum in Portugal were likely to be victims of trafficking. Nevertheless, without adequate identification mechanisms and tools to recognize the victims, it is not possible to measure the phenomenon.

3.4.7 Conclusions

In general, research in the field of human trafficking is difficult for multiple reasons. Statistically, VOTs are usually hidden populations, policies related to human trafficking are highly politicized and sources of information are inevitably segmented and biased. In addition, in such a complex context of human trafficking, anti-trafficking NGOs and governmental institutions even do not seem to have adequate knowledge and tools for identifying cases of VOTs amongst ASs.

Moreover, the routine practice of detaining ASs in continental Europe, especially in the countries analyzed in this research, it is supported by a

general criminalization process that marginalizes those pursuing asylum. In many instances, those seeking sanctuary are perceived as a threat and not entitled to asylum. Because of these strict policies, it is believed that in many cases refugees and ASs are forced to use smugglers and traffickers to receive assistance and escape from persecution.

The general conditions of refugees and asylum seekers thus seem to become increasingly complex and difficult because of more and more severe border controls and European asylum policies. German Asylum Legislation is an interesting case confirming these trends. In Germany, the right to seek asylum is enshrined in the constitutional Basic Law (Welch and Shuster, 2005). However, there is evidence that current legislation on reception conditions is used as an instrument to deter potential asylum seekers (ASs), to save public money and to impede the effective integration of applicants. In fact, the new German anti-terrorism legislation in response to September 11 attacks led to an extension of exclusionary rules in all areas with the only exception of schooling (Bank, 2000).

Similar trends are evident in other countries analyzed in the research, in particular in Poland and Portugal. In Poland, a lot of ASs is detained at the beginning of the asylum procedure. In Portugal, inadmissibility procedures are still an important barrier for refugees seeking asylum, even if the country has ratified international and European legislation on refugees' protection. In Estonia, despite the fact that ASs are now granted the right to work in the country due to the introduction of temporary protection into Estonian legislation in 2006, a few number of issues remain at variance with international and European standards and principles. In Lithuania and Latvia, it appears that the low number of ASs is due to inadmissibility procedures similar to the ones existing in Portugal. Each country analyzed shows real challenges to identify the number of VOTs among ASs. This is due to lack of data on the number of VOTs and the presence of a clear distinction and separation between Human Trafficking Identification Tools and Asylum procedures. Moreover, it has to be noted that this distinction reflects the existing separation in the NGOs' world: in general, a counter-trafficking NGO does not deal with ASs and vice versa a refugee NGO is usually not exposed to human trafficking issue. Interviews seem to confirm this assumption.

Most of the official and un-official documents consulted do not show any connection between ASs and VOTs. Despite the fact that some experts interviewed suspect that there are more VOTs among ASs than it is currently known, at the moment punctual and numeric information is not available in the countries analyzed in the research. This gap between perception and available data seems to be related to the inexistence of National Referral Identification Mechanisms (NRMs), which also imply guidance and training for law enforcement institutions and NGOs dealing with VOTs or ASs.

All experts interviewed deemed necessary to set up referral mechanisms to identify VOTs among ASs, to enhance the ability of NGOs and governmental institutions in dealing with VOTs among ASs, and to detect and protect them effectively. However, it should be highlighted that the research was still short off interviews with representatives from NGOs, think tanks, and the UNHCR dealing with ASs. In particular, difficulties to interview UNHCR representatives and asylum institutions were a serious obstacle to develop a comprehensive overview of the phenomenon in focus countries. In addition, it has to be pointed out that it is very difficult to find some (official and un-official) documentation relating to the phenomenon of VOTs amongst ASs when relying only on desk research.

Because of their geographical proximity and historical ties, the research's findings show a strong connection regarding the phenomenon amongst most of the countries analyzed. In fact, Germany is a country of destination for Polish, Lithuanian and Estonian HTPs, as well as Poland is a country of transit for HTPs coming from the Baltic republics. For this reason, it appears necessary to fully empower present networks of NGOs and governmental institutions in the area and implement efficient regional, in addition to national, mechanisms able to indentify VOTs among ASs.

4. A final comparative review

Gianluca Cardi

4.1 The human rights' perspective

4.1.1 The need for a common system of protection for human rights

Research carried out within the Safer Path project has allowed us to outline some interesting questions in relation to those aims that should be achieved in the predisposition of instruments to combat the phenomena which overwhelm human rights³⁴³.

Such present day widely known tools must be assigned a strategic position, which means that they must be included in any paper/place/path/meeting related to the huge target group comprising all those people, mainly foreigners, living in hardship or difficult conditions due to their political or religious beliefs, sexual orientation, culture and so on.

The human rights' perspective, which has been confidently adopted by the present research, should orientate towards further cultural and methodological efforts. Firstly, there is an urgent need to get involved at both local and national levels in order to achieve some common transnational tools, able to establish a European and International common system of protection of human rights. This means that not only local and National jurisdictions must be involved, but above all the European and International decision-makers, in view of establishing some general legal instruments able to go beyond national constraints and to outline such common system to ensure full respect for the rights of individuals.

343. In this regard see also the recommendations issued by the transnational network working within the "SAVIIV-Social inclusion and vocational integration of Asylum seekers and Victims of human trafficking" project [www.ec.europa.eu/employment_social/esf/docs/transitional/asylum_seekers_en.pdf]

Actually many relevant European attempts under this perspective are in force, even if still linked to specific target groups (asylum seekers, victims of trafficking and so on); the next desirable step is to make an integrated system of protection for human beings, as recommended by the Commission in the last Annual Report on Immigration and Asylum³⁴⁴.

In fact there are already several legal instruments, which are valid at transnational level and specifically focused on human rights' defence: the Palermo Protocol³⁴⁵, the Geneva Convention³⁴⁶, the UNCHR Recommendations³⁴⁷ are good examples of international common corpus legal tools aimed at the protection of individuals, regardless of the specific target group they belong to.

Unfortunately these requirements are short lived when we look at how they are concretely applied in each country.

According to evidence shown by research carried out within the Safer Path project, **national legal instruments** adopted by States in favour of refugees and victims of trafficking appear often incomplete, uncertain and contradictory. In other words such tools **do not attain the European recommendation nor international agreements**.

The present project offers a comparative review, that can therefore only be made on the basis of the European rules, used as a magnifying glass, since they are nowadays the most sensitive and receptive instruments in the development of concrete measures aimed at defending asylum seekers' and trafficked persons' violated rights. Therefore, if European

344. Communication from the Commission to the European Parliament and the Council 3rd *Annual Report on Immigration and Asylum* (2011)_{SWD(2012) 139 final} COM(2012). 250 final Brussels, 30.5.2012 [www.ec.europa.eu/home-affairs/doc_centre/immigration/docs/COM%202012%20250-%20final%201_EN_ACT_part1_v5.pdf]

345. United Nation *Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the united nations convention against transnational organized crime*, 2000

346. UNHCR Convention and protocol related to the status of refugees, 1951

347. UNHCR Guidelines on international protection N.7: 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, 2006

decisions impact on national jurisdictions³⁴⁸, it is therefore extremely interesting to investigate to what extent Member States accomplish such decisions and obligations they agreed.

Surely the Safer Path project is a good chance to make such an appraisal.

4.1.2 European legal instruments as a basis of comparison

The present comparative review may be done on the basis of an assessment frame which is actually already available; more specifically the most appropriate benchmarks to be used are some current European decisions such as the Directive 2011/36/EU on preventing and combating trafficking in human beings³⁴⁹ and the Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection that reshaped the former “qualification directive”.³⁵⁰

These two well known fundamental acts, which contain essential principles that Member States agreed to include in their National legislation by the end of 2013, will direct the following review.

348. See for example the European Court of Justice’s Decision on the appeal of Mr. Hassen El Dridi, against the Italian Appeals Court of Trento (28.04.2011). The Algerian citizen entered Italy illegally in 2010; then the Italian government issued an order requiring that Mr. El-Dridi leave Italy within five days because he had no identification documents. El-Dridi ignored the court order, so he was subsequently detained. When El-Dridi appealed his prison sentence, the Italian Appeals Court in Trento turned to the European Court of Justice for guidance on the matter, asking whether jailing an illegal migrant contradicts the EU Directive. At the end of April, the European Court ruled that it did; in particular the Court declared In particular, the Court declared incompatible the criminal penalty provided for in Article 14 paragraph 5 ter of Legislative Decree 286/98, [Aliens Consolidate Act] with which the violation of the order to leave the territory of the State was punishable by imprisonment

349. Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

350. 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

4.2 A comparative review of national legislative frameworks on trafficking and asylum seekers

As outlined above, two EU directives will be used as assessment tools in order to better understand how Member States concretely unite the European acts on the protection of human rights; nevertheless it must be underlined that even these two Directives do not converge between themselves, in the sense that they remain strictly linked to a specific target group (Directive 2011/36/EU on victims of trafficking, while Directive 2011/95/EU on asylum seekers).

4.2.1 Review of national legislative frameworks on trafficking

Offences concerning trafficking in human beings and related penalties (Art. 2 and 4 - Directive 2011/36/UE)

Criminal justice systems in France, Italy and Spain, as well as those assessed in other Member States by the present research, correctly denounce all offences concerning trafficking in human beings and adopt proper penalties related to those crimes.

In other words there is a general agreement and then a common exchange of commitments made under the Palermo Protocol (2000).

Notably the French system doesn't distinguish between smuggling and trafficking, even though penalties for both offences are provided.

Assistance and support for victims of trafficking in human beings (Art. 11 Paragraph 3 Directive 2011/36/UE)

This article contains some rules which are unfulfilled by the majority of Member States. The most tricky issue concerns Paragraph 3, which recommends Member States to take "...the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial...".

In this view the European legal system *de facto* embraces the Italian model of protection of victims of trafficking, which, as well known, ensures

full respect for the rights of those people and relieves them from the affliction of prosecution or participation in trials³⁵¹.

Research carried out in France and Spain testifies how arduous the trafficked victims conditions are and that they indeed cannot rely on a residence permit mainly focused on their assistance/protection.

Recently Spain has made some further adjustments to its legislative framework, providing victims of trafficking with another special residence permit, that can be granted under particular conditions; nevertheless there are still no clear indications about the correct appliance of the law.

In some countries (Finland, Sweden and United Kingdom) a residence permit for extraordinary reasons may be granted, when there is absolutely clear evidence of the severe conditions afflicting victims, because of the violence suffered.

Greece has also introduced in its Migration Law a procedure similar to the Italian Art.18.

With the exception of the States mentioned above, however, the majority of European countries do not implement a protection and assistance system which is untied to the judicial requirements. The most common approach used by States in fact consists of granting a temporary residence permit, which entitles victims to stay in the country for a short time (“reflection period”); this period should be functional to achieve a calm and conscious decision to cooperate in the prosecution. In case of a negative outcome, at the end of the “reflection period” the victim is

351. Article 18 (Legislative Decree no. 286/98 - Aliens Consolidate Act) applies to foreign citizens in situations of abuse or severe exploitation where their safety is seen to be endangered as a consequence of attempts to escape from the conditioning of a criminal organisation or as a result of pursuing criminal action against the traffickers. People granted Article 18 permit are obliged to participate in a social assistance and integration programme offered by various local NGOs and local public authorities. They are also afforded access to social services and educational institutions, enrolment with the State’s employment bureau and are provided access to employment. Two separate ways of obtaining the residence permit actually exist. The first one is a judicial procedure (“judicial path”) which implies that the victim will cooperate with the police and the prosecutor. She/he will be instrumental in bringing charges against the perpetrator by filling of a complaint. The second one is a social procedure (“social path”) that doesn’t require the formal report to the Police but the submission of a “statement” (containing provable key-information) by an accredited NGO or by the public social services of a City Council on the behalf of the victim.

required to leave the country, while a positive response makes the person a witness, subsequently putting him/her into the uncertainty of a trial. The granting of a residence permit under these conditions, as properly outlined in the French and Spanish reports, is obviously a complete failure for any kind of assistance programme for victims of trafficking. Moreover such an approach, which so strictly links protection to criminal investigation, actually excludes all those cases in which Community victims are involved. Since the severe and strict laws on residence of Member States do not affect EU citizens, they can avoid the dangerous and painful role of witnesses.

Despite this general unfavourable context, some relevant efforts have been made with the aim of finding innovative solutions by making the best use of available resources: this is the case in Spain, where there is increasing knowledge of the concept of severe harm, required for the subsidiary protection, in order to include in such cases victims of trafficking.

Assistance and support for victims of trafficking in human beings (Art. 11 Paragraph 4 Directive 2011/36/UE)

The adequacy of a National referral plan addressing victims of trafficking is a priority often required by the European Government and research has highlighted this as a relevant topic in their reports.

Actually only few Member States have established a National referral plan against trafficking: there are some good practices, like those carried out in Romania, some others less successful, as in France. Also Cyprus, Czech Republic, Greece, Slovakia and Slovenia have made some attempts in this perspective. Italy is working on a National plan as well.

In general it must be said that the vitality of Italian NGOs, the legislative instruments that have given those organizations a relevant role in the arrangement of effective assistance programmes in favour of victims of trafficking, as well as the capability of Local Public Authorities in paying great attention to such practices, are all essential factors that lead to the creation of interesting referral mechanisms, able to integrate the best resources in broad areas.

The establishment of many protocols must also be underlined: we refer to agreements that involve key-actors and significant stakeholders, aim-

ing at the development of strategic networks, which are able to fulfil the needs of victims of trafficking.

The situation in Spain is quite different: the dialogue among NGOs and the State is much more complicated, so that the quality of services in favour of victims is biased in a very negative way.

The shortage of adequate referral mechanisms is also testified in Austria, Belgium and Luxemburg; the situation is even worse in Bulgaria, where NGOs are completely isolated, because of a very scarce interest and a lack of involvement by Government on issues related to trafficking.

Assistance and support for victims of trafficking in human beings (Art. 11 Paragraph 6 Directive 2011/36/UE)

All research shows the urgent need to establish common legal tools aimed at protecting both victims of trafficking and asylum seekers. Such flexibility and the referral approach is not well cemented in National laws yet, even if, by now, it is well documented that many victims of trafficking experience gross violations of their human rights, as well as many asylum seekers. The acknowledgment of this would allow victims to be granted refugee status.

The Directive on trafficking attempted to enforce this , by means of Paragraphs 5 and 6, which refer to EU rules on international protection³⁵².

Assistance and support for victims of trafficking in human beings (Art. 18 Directive 2011/36/UE)

Safer Path research also pays great attention to prevention. In relation to such a topic the EU Legislation clearly affirms that a proper

352. More specifically the Paragraph 6 asserts that “The information referred to in paragraph 5 shall cover, where relevant, information on a reflection and recovery period pursuant to Directive 2004/81/EC, and information on the possibility of granting international protection pursuant to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (1) and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (2) or pursuant to other international instruments or other similar national rules”

training of all persons involved in the identification and assistance to victims of trafficking, is an approach that must be particularly encouraged, since it plays a fundamental role in the fight against this awful phenomenon.

Under this perspective, the Safer Path project strongly emphasized the need for effective methodologies aiming at providing persons involved in this field with proper tools which may enable them to identify and deal with the target group.

Unfortunately the general context described by the research seems quite inadequate: in fact there are several cases in which officials working with asylum seekers or refugees are not able to use standards or other tools by which it might be possible to determine whether a person could presumably be a victim of trafficking.

All national reports point out a shared and strong demand for training, which should be compulsory for all those people that, as representatives of an Authority, strongly influence people's lives. The role of Spanish border police, for instance, is an emblematic case, as is the possibility of applying for international protection conditional on its decision. Also in all other National jurisdictions the fragile situation of trafficked people is shaped by many different professions, such as: magistrates, lawyers, social assistants, doctors...

In this scenario, the lack of regular training for officials likely to come into contact with victims or potential victims of trafficking in human beings, is definitely of grave concern.

Assistance and support for victims of trafficking in human beings (Art. 19 and 20 Directive 2011/36/UE)

The National Rapporteur seems to be another key actor in the fight against trafficking. The tasks of this mechanism, which has been tested in France, Czech Republic, Slovakia and Slovenia, should include the carrying out of coordination, assessment, research; such work is a fundamental element of the European strategy against trafficking and it would also be functional to the development of a flexible and broader approach, which, as mentioned before, could make the best use of existing opportunities in favour of victims of trafficking.

4.2.2 Review of national legislative frameworks on international protection

In relation to the phenomenon of asylum seekers the Safer Path research underlined the following remarks, to which the European legislation already paid attention to³⁵³.

Purpose and definitions of the International protection (Chapter 1 Directive 2011/95/UE, “Qualification Directive”)

At this point of our discussion, going to the level of general principles and assumptions could seem prosaic, but it indeed isn't as such fundamental ideas, like those stated in the previous “Qualification Directive”³⁵⁴ and “Procedure Directive”³⁵⁵ actually solved many tricky issues, being helpful in clarifying national debates on international protection's related issues. For instance in Italy and France, the Constitutional Charters contain the concept of constitutional asylum, a disposition totally human rights-centered, that is actually completely unsatisfied by national jurisdictions and policies, which on the contrary implement restrictive measures in the area of assistance of third-country nationals.

To those fundamental principles, asserted by European Directives, must be given great gratitude for having imposed on National frameworks some legal instruments aimed at the recognition of the refugee status, despite the general trend of adopting very restrictive policies.

353. In order to comment on research outputs concerning the trafficking in human beings, the Directive 2011/36/UE has been analyzed article by article, since it contains some innovative and significative elements that must be necessarily discussed on the basis of Safer Path results. The Directive 2011/95/UE, which regards the International protection, do not introduce new elements, instead, since it recasts previous decisions. It has been analyzed paying attention to its general principles and enforcement.

354. *Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals and stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted*

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML]

355. *Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status*

[www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF]

Safer Path research gives another significant example of the important impact of EU decisions on National jurisdiction: this is the case of Greece, that for a long time was completely unconcerned about asylum seeker related issues and treated third-countries nationals in a very severe way; after that, thanks to agreements with Europe (2010), the Greek legal framework has been strongly revised, taking into account European principles on international protection.

Assessment of applications for International protection (Chapter II Directive 2011/95/UE)

This Chapter describes clearly the criteria for the assessment of applications for international protection, according to the Tampere conclusions³⁵⁶ which recommend to work towards establishing a Common European Asylum System. Such conclusions, agreed by the European Council, have been followed by the so-called “Qualification directive” (2004) and “Procedures directives” (2005) on the application of which the European Commission made a specific study³⁵⁷.

The Safer Path research outlines that such rules are widely unfulfilled: firstly because of a strong recast while National legislations tried to adapt those laws to the internal frameworks, which are, as already mentioned, quite restrictive and repressive towards third-country nationals.

As well described by researchers, the legal instruments often provided by Member States actually discourage asylum seekers: procedures implemented for the application for international protection are very complicated, while the negative consequences of the application’s refusal are much more prone towards sending people away. Germany, Poland and Portugal are significant examples of such restricted policies.

356. Tampere European Council 15-16/10/1999: Presidency conclusions
[www.europarl.europa.eu/summits/tam_en.htm]

357. *Report from the Commission to the European Parliament and the Council on the application of Directive 2004/83/EC of 29 april 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection*, European Commission, Brussels, 16a.6.2010 COM(2010)314 final

Another great concern regards the scarce awareness and preparation of people and officers that, within those Institutions which are in charge of assessing applications for international protection, concretely make such appraisals.

In Spain this task is entirely assigned to Police officers; in Italy to Territorial Commissions, administrative authorities which often give a negative response with no motive. As a consequence the Magistrature is overwhelmed with a huge amount of appeals made by asylum seekers against such denials. In some cases, as in France, such appeals must tackle another obstacle: the extreme inflexibility of Courts which is also due to the asylum seekers' difficulty in demonstrating without doubt a well-founded fear of persecution. This general situation obviously requires greater attention to the urgent need of training in favour of all administrative officers, and also necessitates a greater effort by NGOs working in this field, as they have the task of accompanying asylum seekers to the delicate phase of interview.

Qualification for being refugee or for subsidiary protection, refugee or subsidiary protection status (Chapter III, IV, V, VI Directive 2011/95/UE)

Member States investigated show a complete symmetry with regard to the granting of refugee status and of the subsidiary protection status; most of them also offer the opportunity of conceding a special type of residence permit for humanitarian reasons.

The qualification for subsidiary protection, on the contrary, seems much more complicated; as is well known this condition is often regimented with the granting of transitory residence permits, by means of which the person is entitled to stay in the country only for a very short time, with a significant limitation on his/her rights; as a matter of fact the chances offered in these cases are therefore much lower than those guaranteed when a person is granted refugee status.

Such questions emerged in Safer Path research, that also testified the awful attitude of some Member States of granting subsidiary protection as a way to reduce State's obligations towards asylum seekers.

As well stressed by the French report, particularly crucial is also the need of achieving a clear interpretation of Art.15 of the "qualification directive" about the concept of "serious harm". This rule asserts that serious harm consists of:

“...a) death penalty or execution; b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict”.

In particular this last condition should benefit all those people escaping from wars, like citizens from Afghanistan, Iraq or Somalia that entered Europe while their countries were still under conflict.

Art.15 (c) as a consequence should lead Member States to grant such people whatever form of international protection they require; nevertheless EU countries unfulfill such rules.

In regard to the European Court of Justice, the case of “Elgafaji”³⁵⁸ as well as UNHCR³⁵⁹ expressed very favourable decisions, towards the general idea that the degree of indiscriminate violence in the applicant’s country of origin should be enough for the competent authorities to decide that an applicant, if returned to his/her country of origin, would face a real risk of being subject to serious and individual threats; yet a common interpretation and a wide application of such a concept is still lacking.

358. European Court of Justice’s Decision (C-456/07) on the appeal of Meki and Noor Elgafaji against the Dutch State Secretary of Justice (17th Feb. 2009). Mr. and Mrs. Elgafaji submitted applications for temporary residence in The Netherlands, along with evidence seeking to prove the real risk to which they would face if they were expelled back to their country of origin (in this case, Iraq). The competent Minister refused their application, and ruled that they did not establish a real risk of serious and individual threat in Iraq. Mr. and Mrs. Elgafaji brought actions before a higher court. This court referred a question to the Court of Justice, concerning Article 15(c) of the Qualification Directive and asked whether the applicant had to show that there are specific and serious threats to his life. In response, the Court of Justice ruled that applicants for subsidiary protection are not required to establish evidence of a specific threat to their lives. Instead, the existence of such a threat can be considered if the indiscriminate violence reaches such a high level that if an individual is returned to the relevant country or region, he would face a real risk of being subject to a serious and individual threat. [www.curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-465/07]

359. *UNHCR Statement on Subsidiary Protection Under the EC Qualification Directive for People Threatened by Indiscriminate Violence*, January 2008

[www.qualificationdirective.eu/images/web/Module_3/Article_15c/Documentation/2008_01_01_UNHCR_Statement_on_Subsidiary_Protection_Under_the_EC_Qualification_Directive_for_People_Threatened_by_Indiscriminate_Violence.pdf]

Content of international protection (Chapter VII Directive 2011/95/UE)

This section of the Directive dictates the necessary services Member States should guarantee in favour of beneficiaries (information, education, healthcare...).

Everyone knows that the identification process is transient; the real concern is about social integration and access to the labour market.

All research reports describe the difficulties in establishing concrete models of intervention and effective instruments aimed at providing people with real opportunities.

A preliminary and fundamental step must surely consist of professional and linguistic training; also the recognition of skills and qualifications acquired in the country of origin would be very helpful, but Member States unfortunately seem reluctant about such an issue.

4.2.3 Conclusions and recommendations

According to many international observers' comments the Safer Path project also supports evidence that many victims of trafficking experience gross violations of their human rights that can entitle them to be granted international protection status, as well as many asylum seekers are trafficked.

Looking at such phenomena, which nowadays are more and more complex and interconnected it is therefore recommendable to set up an integrated set of measures and legal instruments, which will go further than national approaches, or a specific target-centered perspective, aimed at creating a **common and integrated system for the protection of human rights**.

This general approach takes its origins from the European Council in Tampere and from the European Directives mentioned above (that hopefully all Member States will ratify by 2013) which made good attempts to set up European Systems of protection of human rights, although still addressing specific targets. The present proposal tries to further these former efforts, towards an integrated corpus of rules, able to ensure the respect of individuals' rights, regardless of the target group they belong to.

Under this view many obligations are still unfulfilled or scarcely accomplished. The Safer Path project in fact testifies a general gap among International and European policies, on the one hand, and National policies, on the other hand, contributing towards the protection of individuals; although EU positive measures in favour of asylum seekers and victims of trafficking are already in force, many European countries still adopt very restrictive national policies, aimed at discouraging third-country nationals, rather than giving them a chance to improve their lives.

The research's conclusions, besides proving such disparity, could also be helpful in designing a set of working pathways and recommendations. On the basis of the project's results, therefore, it could be claimed that it is desirable that Member States shall:

- go beyond a national perspective as well as a target-centered approach;
- adopt correlation mechanisms ("legal referral") or any other kind of procedure able to integrate the best European legal instruments of protection of individuals;
- enhance cooperation among institutions/public authorities and NGOs, which can be a great resources in order to better understand the phenomena emerging and fulfilled the third-country nationals' needs;
- guarantee regular training in favour of all actors working in the field of anti-trafficking in human beings or international protection (police officers, members of Authorities in charge of assessing the international protection applications and so on);
- establish concrete models of intervention and effective instruments aimed at providing people with real integration opportunities in the destination/asylum country.

In other words, if national legislative frameworks would better fulfill international and EU obligations, and if the asylum system would be better linked to the anti-trafficking one, then the final aim to arrange a common system of protection in order to ensure full respect for the rights of individuals, would be more likely accomplished at European level.

Moreover such systems, strictly based on a human rights' perspective, would also be able to protect third-country nationals in case of rules' discrepancies or misinterpretation of regulations as well as in the case of a complete lack of a law.

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Acronyms

AS	Asylum Seeker
CAR	Reception Centres for Refugees
CC	Criminal Code
CIE	Foreigners' Internment Centres
EC	European Commission
EU	European Union
HIV	Human Immunodeficiency Virus
IOL	International Labour Organization
IOM	International Organization for Migration
IP	International protection
MS	Member States
THB	Trafficking in Human Beings
UNHCR	United Nations High Commissioner for Refugees
UNODC	United Nations Office of Drugs and Crime
UNRWA	<i>United Nations Relief and Works Agency</i>
VOT	<i>Victim of trafficking</i>

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[www.coa.nl/eng]

Council of Europe

[www.coe.int]

Counseling center for refugee

[www.uprchlici.cz/en/index.html]

Detention on vulnerable asylum seekers

[www.jrseurope.org/DEVAS/intro.htm]

EMN European Migration Network

[<http://emn.intrasoft-intl.com/html/index.html>]

End Child Prostitution, Abuse and Trafficking (ECPAT)

[www.ecpat.net/EI/index.asp]

European Council of Refugees and Exiles (webpage on detention)

[www.ecre.org/topics/areas-of-work/protection-in-europe/82-detention.htm*]

European Court of Human Rights

[www.echr.coe.int/echr/]

European NGOs Observatory on Trafficking, Exploitation and Slavery

[www.e-notes-observatory.org]

European Reintegration Support Organizations (ERSO)

[www.erso-project.eu]

EUROSTAT

[www.epp.eurostat.ec.europa.eu/]

Federal Agency for the Reception of Asylum Seekers

[www.fedasil.be/en/]

GAATW Global Alliance Against Traffic in Women
[www.gaatw.org/]

Global Detention Project
[www.globaldetentionproject.org]

Human Rights Press Point
[www.humanrightspoint.si]

International Labour Organization
[<http://www.ilo.org/>]

International Organization for Migrations
[www.iom.int/jahia/jsp/index.jsp]

Luxembourg Reception and Integration Agency
[www.olai.public.lu/en/]

OSCE Organization for Security and Co-operation in Europe
[<http://www.osce.org/>]

Romanian Immigration Office
[www.ori.mai.gov.ro]

State Agency for Refugees of Bulgaria
[www.aref.government.bg/?cat=2]

Together against Trafficking in Human Beings (UE webpage on trafficking)
[ec.europa.eu/anti-trafficking/]

UN News Centre
[www.un.org/apps/news/infocus/]

UNHCR United Nations High Commissioner for Refugees
[www.unhcr.org]

