



activate

Enhancing the anti-Trafficking Identification,
prevention and support mechanisms



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Trainer's Manual for Lawyers Working with victims of trafficking

PXX_DXX_Name_Country

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List of Abbreviations

AMIF	Asylum, Migration and Integration Fund
BA	<i>Bundeskriminalamt</i> (Federal Criminal Police Office)
CEDAW	Committee on the Elimination of Discrimination Against Woman
CJEU	Court of Justice of the European Union
CPS	Crown Prosecution Service
CRC	Convention on the Rights of the Child
EC	European Commission
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
EUCPN	European Crime Prevention Network
GBV	Gender-Based Violence
GRETA	Group of Experts on Action against Trafficking in Human Beings
ILO	International Labour Organisation
IOM	International Organization for Migration

NGO	Non-Governmental Organisation
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
UAM	Unaccompanied Minor
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organized Crime
TCN	Third Country National
THB	Trafficking in Human Beings
VoT	Victim of Trafficking

Introduction

Lawyers supporting migrants, asylum seekers and refugees play a crucial role in securing the rights of Victims of Trafficking (VoT). Lawyers use both criminal law and employment regulations to bring traffickers to justice. They further support VoT to safeguard their rights, receive compensation, secure their residence status, etc. (Harris & Goncalves, 2017:3). The recent study by the Organization for Security and Co-operation in Europe's Office on the Special Representative and Co-ordinator for Combating Trafficking in Human Beings indicates that there is a lack of gender-sensitivity and sufficient training on Trafficking in Human Beings (THB) among criminal justice practitioners, such as lawyers (OSCE 2021). As trainings on THB and gender-sensitivity are not obligatory at EU Member State level, lawyers often do not have the opportunity to undergo such trainings at state level and to e.g. prevent secondary victimisation during investigation and in criminal proceedings. Capacity-building in the form of training therefore remains an ongoing need, which is still missing in many EU Member States (Ibid.:49). Within the framework of project ACTIVATE- enhancing the anti-Trafficking Identification, prevention And support mechanisms, funded by the EU's AMIF (Asylum, Migration and Integration Fund), the Consortium seeks to fill the above mentioned gaps.

ACTIVATE aims at enhancing the prevention, identification and support mechanisms against THB with a special focus on VoT for sexual exploitation. The present manual, developed under Work Package 2 (WP2) – *Capacity-Building to enhance identification and support of VoT* –, provides training materials that can be used in order to enhance the competences of lawyers working with (potential) VoT. The training manual aims at providing a modern training package for lawyers who may come across VoT in the course of their work. The training manual shall be used by trainers for the implementation of capacity-building trainings for the enhancement of prevention mechanisms as well as formal and informal identification procedures, and the implementation of legislation in line with agreed European and international standards amongst lawyers.

A multi-disciplinary approach is the key underlining principle of this training. In order to be effective, this anti-trafficking training was developed and carried out by multi-disciplinary teams composed of lawyers, social workers, psychologists and criminologists with experience in trafficking cases and providing assistance to VoT. The manual was created by the project consortium between June – September 2021 and tested in eight trainings in Italy, Greece, Germany and Bulgaria. Based on the lesson learnt reports issued by the project partners in

months xx (xx add reference to lessons learnt report & include in list of references), the training manual was revised by incorporating the feedback collected by the trainers and xx nr. training participants. This training manual serves as a source for the development of an E-learning tool for lawyers, which will be published on ACTIVATE's website: <https://www.activateproject.eu/>.

PART I: THE MANUAL

1.1 Conceptual framework

This manual has been written based on the premise that well-trained lawyers are an indispensable part of the response to anti-trafficking measures and have a pivotal role in countering THB (Harris and Goncalves 2017, 8-9). International and EU legislation obliges States to ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that they might be a victim or survivor of trafficking. Based on their individual needs, support should include appropriate and safe accommodation, material assistance, medical treatment, psychological support, counselling, as well as information, translation, interpretation services and legal advice. Special treatment is needed for particularly vulnerable victims and survivors, including children, pregnant women and persons with disabilities.

According to the EU Strategy towards the Eradication of Trafficking in Human Beings, identifying victims efficiently and at an early stage is the first step towards making sure they are treated as rights holders, have access and can exercise their rights effectively, which includes receiving appropriate assistance and protection.

As concluded in the report on the transposition of Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, and replacing the Council Framework (hereinafter Directive 2011/36/EU), national authorities have made substantial efforts to enact the Directive in national law. Yet, there is still inadequate access to information about victims' rights and ineffective referral mechanisms at national and transnational level, coupled with failure to identify all those who fall

victims of THB, including those in mixed migration flows. The aforementioned issues continue to prevent VoT from actually benefiting from the rights to which they are entitled.

In order to grant an early identification of VoT and prevent re-trafficking and secondary victimisation, all lawyers who come into contact with migrants, shall have common tools and procedures which highlight a prompt identification of persons exposed to forms of victimisation during the migration paths and to enable them to claim their victims' rights. Independent legal assistance is thereby central for successful recovery. Lawyers will very likely experience that VoT have a wide range of legal needs (Harris and Goncalves 2017, 11-12). As a first step, it is important to inform VoT about their right to benefit from a recovery and reflection period (Art. 6 EU Directive 2004/81/EC). In general, a holistic approach needs to be taken with regard to legal empowerment as "[t]he access to social benefits for migrant victims is not always ensured by default, and legal representation is needed to unblock important aspects of material supports, such as social entitlements, eligibility to housing, work and others" (Yonkova 2020, 7). Trainers will learn how to teach their training participants to put such a holistic approach into practice throughout this training manual.

1.2 Who is this manual for?

The purpose of this training manual is twofold: to serve

1. As a resource for trainers to carry out THB trainings;
2. And as a tool to improve professionals' capacities on identifying and supporting VoT.

It may be used by trainers that want to train lawyers supporting migrant, refugee and asylum seeking populations. This target group might include professionals with different background, skills and competences, but are involved in providing legal counselling and/or services to migrants, refugees and asylum seekers. The training participants can thereby be lawyers working as pro bono, defense or plaintiff trial attorneys or are specialist lawyers in immigration, family law, etc. The manual makes an invaluable contribution to understanding THB and will be an important guide not only for lawyers who represent VoT, but also for other legal professionals such as judges, prosecutors, government agencies that can also be included in the training target group. Beyond the training environment, the manual can serve as a handbook for legal practitioners in the course of their daily work

investigating, defending and supporting VoT. As THB occurs globally, while migrant and refugee movements are a matter of international concern, this manual can also be used by professionals beyond the EU, who are confronted with similar problems, as a learning resource for background theoretical and practical information.

1.3 Aims and objectives of the manual

This manual intends to offer a practical guide for trainers to train lawyers who encounter migrant, refugee and asylum-seeking populations on different approaches, the legal framework, the identification of VoTs and the protection and provision of support. Its chapters describe the nature of sex-, labour- and other forms of trafficking. It addresses the legal remedies at the disposal of prosecutors, lawyers defending victims on criminal charges, family law practitioners, and immigration advocates helping victims to rebuild their lives. It explores the relation of trafficking laws to other social justice concerns, such as gender-based violence (GBV), and it spotlights particular groups of victims, such as children VoT. This manual further offers a tool for enabling capacity-building with an emphasis on gender-sensitivity to ensure that gender specific obstacles which stand in the way of VoT's access to justice could be overcome.

This manual aims at offering a flexible tool for continued training of legal professionals working with VoT in order to achieve the following objectives: to

1. Offer a training guide for trainers that want to offer training for lawyers;
2. Enhance the prompt and early identification of VoT with particular attention to the gender-based forms of exploitation and their impacts as well as consequences;
3. Foster the capacity of lawyers to address VoT's legal issues and needs in a gender-sensitive and victim-centred approach
4. Enable the provision of victim-centred and gender-sensitive legal services to VoT
5. Prevent the starting and/or the continuation of the exploitation in the destination country;
6. Strengthen the access to justice, including the access to protection measures, compensation and reparation measures;

7. Prevent the risk of re-trafficking, including trans-European trafficking, and repatriation and pushbacks, in violation of the non-refoulement principle.

Finally, the present curriculum aims at defining new forms of relationship among lawyers and VoTs by enhancing sharing an effective approach that is open to active listening of individual experiences, avoiding procedures that risk looking at them as standardised objects of intervention, and considering VoT as individual right holders.

1.4 Methodology

This manual follows a multi-faceted approach and incorporates a gender-based perspective and victim-centred approach (see Module II subchapters 2.1-2.4), to meet ACTIVATE's overall objective to enable the prompt, early and effective identification of VoTs and grant them the full access to justice and effectiveness of their rights. It follows a participatory approach, as it encompasses theoretical background as well as practical exercises. The training topics of the present manual were selected based on the international and European legal obligations binding EU Member States in the protection of the rights of the victims and survivors of THB (see Module I). This training manual helps trainers to facilitate the delivery of training workshops, promoting cooperative, experience-based, and problem-based learning. The modular approach built in these materials allows trainers to easily adapt their training to the specific needs, time frame and conditions of each training course. The manual intends to help trainers to reflect on different legal issues in the field of THB and to apply them to their national context. The manual also guides them to help participants identify the potential opportunities and challenges that they face in working with (potential) VoT.

Finally, the proposed methodology develops an intersectional view that helps to analyse the existence of multiple risk factors and vulnerabilities with the aim of removing the multiple discriminations that hinder the access to rights (see Module II subchapter 2.3).

1.5 How to use the manual

This training manual should not be viewed as an academic treatise, but a practical guide for trainers focusing on legal matters. It integrates and contextualises training materials, resources, and best practices. Trainers may use the manual to tailor their training sessions

according to the needs and interests of their training participants. The training should result in participants being able to see the problem and complexity of THB in the migration and refugee context and its underlying issues and be a source of reflection and support for professionals working with (potential) VoT.

The training curriculum is divided into two parts and six modules that can either be used together or separately during your training. The modules are designed to provide trainers with structured training sessions, covering theoretical and practical elements intended to strengthen your professional capabilities for the implementation of THB trainings for lawyers. This first part is dedicated to defining the target groups of this manual, its aims and objectives, its methodology and structure. The six modules in Part II cover different aspects around the topic of THB in the migration context.

If you are looking at these materials for the first time, you may wish to look through them all in a sequential order. The modules are broken into subchapters. This means that you can also choose to deliver a training only on those subchapters that hold the most relevance to your training audience. Sometimes the subchapters might be slightly repetitive since the different forms of THB and legal problems affecting VoT are interrelated as well as the legal instruments that address them. Each module contains an introduction to the given topic, subchapters with more details on the subject and exercises. Trainers are encouraged to keep the learning objectives of each module in mind when working through the content. General principles and guidance are contained throughout each module, with a view to increasing theoretical understanding of the training participants and offering practical instruction which can be applied to their work. The practical exercises are aimed at raising awareness and promoting participant engagement with the purpose of helping them to identify their own attitudes and prejudices in their daily work with (potential) VoT.

The second part is opened by Module I, which offers an overview of THB as emerging from recent data of identified victims and survivors, including background information on the international, European and national legal frameworks defining the THB. This module also underlines the intersection of many axes of discrimination and the complexity of migration and refugee flows, as well as trafficking has an increasingly producing a serious impact on migrants, refugees and asylum seekers. The module aims to allow the understanding of the effects of this impact and to suggest a framework that combines the different forms of legal protection in order to better protect against the risk of refoulement, which is one of

the major risk factors for re-trafficking. Module II offers the elements to enhance a gender-based perspective, which lawyers need to support VoT. It offers elements to invest in a tailored response, which entails: restoring the human rights of VoTs; focusing on the needs and concerns of VoT to ensure a sensitive delivery of services in a non-judgmental manner, seeking to minimise retraumatisation associated with the criminal justice process; and recognising the multiple discriminatory factors that intersect in the experience of individuals (sex, gender, class, race, etc.) and understand their impact on the victimisation within trafficking (intersectional approach). This Module further addresses the role of lawyers in identifying, protecting and supporting VoT, while also paying attention to possible barriers in interviewing and assisting VoT and how these can be circumvented.

Module III addresses several aspects of the phenomenon, identifying risks and vulnerabilities to THB. It will help lawyers, supported by other professionals, to recognise subjective and objective circumstances in the individual stories, which allow a better understanding of the experience shared by VoT and an in-depth analysis of the damages caused by the violation of fundamental rights. Module IV is dedicated to the matter of representing and defending VoT in criminal proceedings. The Module thereby covers victims' needs in criminal court, trafficking investigations and prosecution, the right to compensation and the topic of secondary exploitation. Aspects of immigration remedies are addressed in Module V, in which the right to residency, international protection and borders as risk factors for THB are discussed. In the last Module, other legal defence needs ranging from the links to other forms of GBV as well as labour exploitation, custody issues, and the legal protection of children VoT are described.

1.6 How to carry out a THB training

Before developing a training plan and carrying out a training, you as a trainer should be aware of the following issues that you will be confronted with as a trainer on the topic of THB: gender paradox; ethical issues, diversity and the principle of non-discrimination; and intercultural competence (see Module II) (Wells, et al. 2019, 6).

How to become a trainer on THB is a valuable question that is not easy to answer. As you know the national circumstances you are working in best, this training manual is flexible in enabling you to decide on what training you want to carry out. If time is limited, rather than rushing superficially through the whole content, set training priorities. It is also important to

consider participants' existing knowledge, attitudes and skills. Adults do not want to be taught things they already know (ICMPD 2006, 9). We suggest that you do a needs assessment on the THB training demand for the lawyers you are carrying out the training for (see Tool n. 1).

Once you have chosen your topics, you can start designing your training plan. You can use the information and exercises provided in the chapters for your own training. Then you could e.g. simply prepare the materials needed, as described in this manual. It is also a very good idea for trainers to research country specific resources, legal information and data to support the development of the training plan. Highlighting the relevance for your own national context in this way is highly likely to increase the credibility of the training received (Wells, et al. 2019, 6-7).

Dealing with the subject of THB confronts trainers with a diversity of attitudes ranging from hostility, misconceptions and lack of understanding to empathy. Therefore, it is important to include methods that promote awareness and empathy (ICMPD 2006, 10). Here are some training tools you could implement into your trainings:

- Group discussion on the participants' own experiences and their understanding of certain definitions;
- Individual or group exercises;
- Legal case studies, fostering the active participation of the training audience to enhance their problem-solving skills;
- Brainstorming sessions (individually or in a group setting);
- Lectures, in which the trainer shares information or knowledge with the training participants who are expected to listen carefully, comprehend and retain such knowledge;
- Training materials: e.g. PowerPoint Presentation, copy of the lawyer training manual;
- You can also decide to do some more research by yourself and find new exercises, video clips, etc. Be creative! Do not forget to provide your participants with training materials (e.g. a printed version of the PowerPoint presentation or training handouts) during the training (Wells, et al. 2019, 6-7) (Petrosya and Khachatryan 2013, 63-103).

If you should use the mentioned exercises, please note that you may have to adjust the recommended time frame according to the size of your training group. At the end of your training, it is recommended to distribute evaluation questionnaires for the participants to fill out. This can help you to find out what content was particularly interesting to your participants, what exercises they liked best, what you can improve and adapt for your next training, etc.

Here are some further recommended reads, to set-up and develop your THB training plan:

- ICMPD (2006) – Annex D – Tips for Trainers, Anti-Trafficking Training Material for Judges and Prosecutors Curriculum - Training Guide in EU Member States and Accession and Candidate Countries: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/icmpd_curriculum_2006_en_1.pdf
- Abrams, D. M. & Mahar-Piersma, C. (2010): Training for the Non-Trainer: Tips and Tools, Cultural Orientation. Resource Centre: Washington
- Dirksen, J. (2011). Design for How People Learn. New Riders Publishing: Indianapolis.

TOOL No.1- QUESTIONNAIRES FOR PARTICIPANTS

The proposed questionnaire may be a useful tool to be filled in by the participants before the training. As mentioned in subchapter 2, your training participants can have different personal, professional and training backgrounds. Collecting information on participants' data, job position and previous training experiences can provide you useful inputs in order for you to design a training programme tailored to your participants' needs and interests and select the relevant topics from this manual.

____ <i>Insert your email address</i> ____				
Age				
<input type="checkbox"/> 18-24	<input type="checkbox"/> 25-34	<input type="checkbox"/> 35-44	<input type="checkbox"/> 45-54	<input type="checkbox"/> >55

2.	Gender
<input type="checkbox"/> M <input type="checkbox"/> F <input type="checkbox"/> Other	
3.	Specify the legal area you work in <i>You can choose more than 1 option</i>
<input type="checkbox"/> Criminal Law <input type="checkbox"/> Civil law <input type="checkbox"/> Immigration law <input type="checkbox"/> Family law <input type="checkbox"/> Other <input type="checkbox"/> None	
4.	What is your legal profession?
<input type="checkbox"/> attorney <input type="checkbox"/> immigration lawyer <input type="checkbox"/> family lawyer <input type="checkbox"/> prosecutor <input type="checkbox"/> judge <input type="checkbox"/> governmental agencies <input type="checkbox"/> NGO (e.g. refugee councils) <input type="checkbox"/> Other	
5.	In which city/region do you mainly work?
____ <i>Insert text</i> ____	
6.	Have you ever participated in training on Trafficking in Human Beings?
<input type="checkbox"/> Yes <input type="checkbox"/> No	
7.	Have you ever participated in training on Gender Based Violence?
<input type="checkbox"/> Yes <input type="checkbox"/> No	
8.	Have you ever participated in training on migration/immigration law?
<input type="checkbox"/> Yes <input type="checkbox"/> No	
9.	How do you estimate your knowledge on Trafficking in Human Beings? <i>Please indicate a number from 1 to 5, where 5 is the maximum</i>
<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5	
10.	How do you estimate your knowledge on Gender Based Violence? <i>Please indicate a number from 1 to 5, where 5 is the maximum</i>
<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5	
11.	How do you estimate your knowledge on migration/immigration law?

<i>Please indicate a number from 1 to 5, where 5 is the maximum</i>	
<input type="checkbox"/> 1	<input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5
12. How do you rate yourself: could you identify a victim of human trafficking? <i>Please indicate a number from 1 to 5, where 5 is the maximum</i>	
<input type="checkbox"/> 1	<input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5
12. Which topics would you be most interested in learning more about? <i>You can choose more than 1 option</i>	
<input type="checkbox"/> Trafficking in Human Beings and forms of exploitation <input type="checkbox"/> Gender/intersectional/victim-centered Approaches <input type="checkbox"/> Identification of victims of THB <input type="checkbox"/> Identification of vulnerabilities to THB <input type="checkbox"/> Protection, Support and Assistance of victims <input type="checkbox"/> Legal framework <input type="checkbox"/> Criminal Proceedings and Victim's Rights <input type="checkbox"/> International Co-operation in Criminal Matter <input type="checkbox"/> Compensation <input type="checkbox"/> Protection victims from secondary exploitation <input type="checkbox"/> Immigration Remedies for Victims of Human Trafficking <input type="checkbox"/> Interlinkages to other forms of Gender-based violence	
13. Please, write below if there are other specific topics concerning THB in which you will be interested in learning more about	
___ <i>Insert text</i> ___	

PART II - TRAINING MODULES

MODULE I: INTRODUCING TRAFFICKING IN HUMAN BEINGS: LEGAL FRAMEWORK AND POLICIES

1.1. What is Trafficking in Human Beings?

As defined in the Directive 2011/36/EU, THB consists on the recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those 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 (Official Journal of the European Union 2011).

In all cases, the above-mentioned acts are punishable even if none of the coercion means has been used when the conduct involves a child, (i.e., any person below the age of 18).

A **position of vulnerability** means a situation in which a person has no real or acceptable alternative but to submit to the abuse involved.

Exploitation includes, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.

The consent of a VoT to exploitation, whether intended or actual, shall be irrelevant.

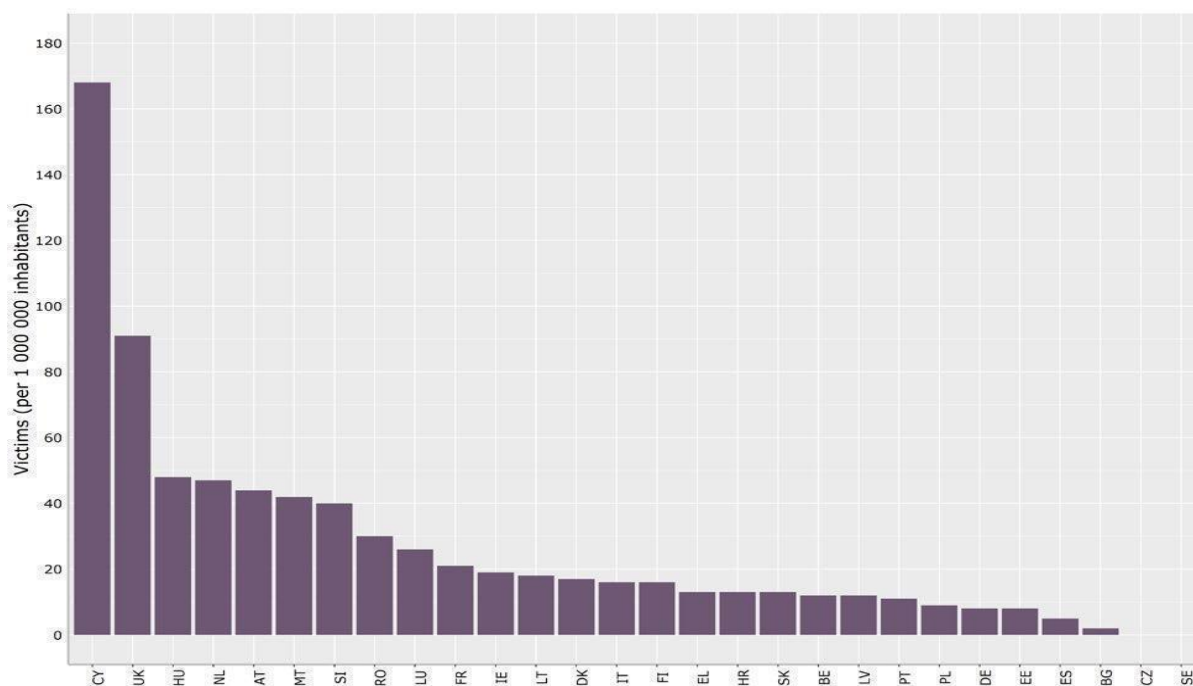
Contrary to THB which is a crime against a person, smuggling constitutes a crime against a country's border, as it pertains the illegal border crossing. Human smuggling includes the facilitation, transportation attempted transportation or illegal entry of a person or persons across an international border, in violation of one or more countries laws, either

clandestinely or through deception, such as the use of fraudulent documents (American Bar Association - Task Force on Human Trafficking 2019).

1.2. EU DATA on trafficking: identified victims of trafficking and forms of exploitation

According to information reported by the Member States with respect to VoTs who have been registered by authorities and/or other agencies and organizations, for the overall period of 2017-2018, **26,268** victims were registered in the EU-28; **12,514** victims were registered in the EU-28 in 2017, and **13,754** in 2018 (European Commission 2020).

For 2017-2018, the five Member States in the EU-28 with the largest number of registered victims were the United Kingdom (12,123), France (2,846), Italy (1,988), the Netherlands (1,624) and Germany (1,380). In the EU-27, Romania (1,159) was the fifth Member State registering the most victims.



Registered victims of trafficking per Member State per 1 000 000 inhabitants for 2017-2018 (Source: European Commission, 2020).

Comparing these numbers with the dimension of migration and refugee flows to EU Member States during the same years and having in mind the prevalent origin countries, it is made visible that the rate of identification of trafficked persons is still unsatisfactory; also, in the light of the priority given to the objective of prompt identification in the framework of the relevant legislation on THB (Committee on the Elimination of Discrimination against Women 2020).

In line with previous data collections, in 2017-2018, trafficking for the purpose of sexual exploitation was reported as the main form of exploitation in the EU-27 and EU-28. Close to two thirds (60%) of the registered victims were trafficked for sexual exploitation in the EU-27; 46% of all registered victims were trafficked for sexual exploitation in the EU-28.

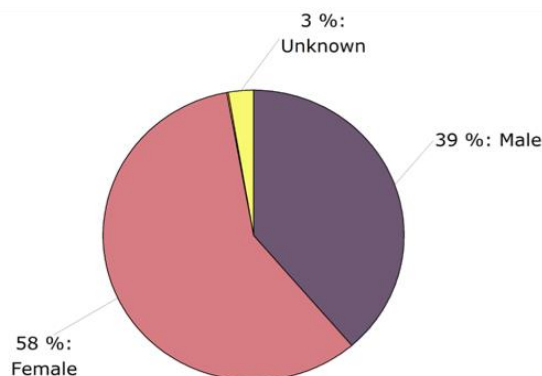
Member States were requested to provide data on all forms of exploitation, including criminal activities, exploitation of begging, domestic servitude, benefit fraud and removal of organs.

The findings of the data collection indicate that, in the EU-28, in 2017-2018, trafficking for criminal activities corresponded to 11% of the forms of exploitation that came to the attention of registering organisations, followed by domestic servitude (5%) and exploitation of begging (1%). Additionally, 49 VoTs for benefit fraud and 17 VoTs for organ removal were registered in the EU-28, representing statistically '0%' of the total number of registered victims by form of exploitation.

Women and girls remained the majority of the victims of THB in 2017-2018.¹ In the EU-28, 58% of all registered victims were female (women and girls), whilst males (men and boys)

¹ According to the [GRETA report \(2018\)](#) in Italy in 2017 there were 1050 of identified and assisted THB survivors and 121 children, and the majority of them (85.6%) were female, mostly exploited for sexual purposes (78 % in 2017, 90 % in 2018, succeeded by labour exploitation (13 % in 2017, 7 % in 2018), forced begging (1.9 % in 2017, 1.5 % in 2018) and forced criminality (0.2 % in 2018, 2.7 % in 2017).

represented 39% of all registered victims. Over half (6,941 out of 10,163) of the male registered VoTs in the EU-28 were found in the United Kingdom.



(Source: European Commission, 2020).

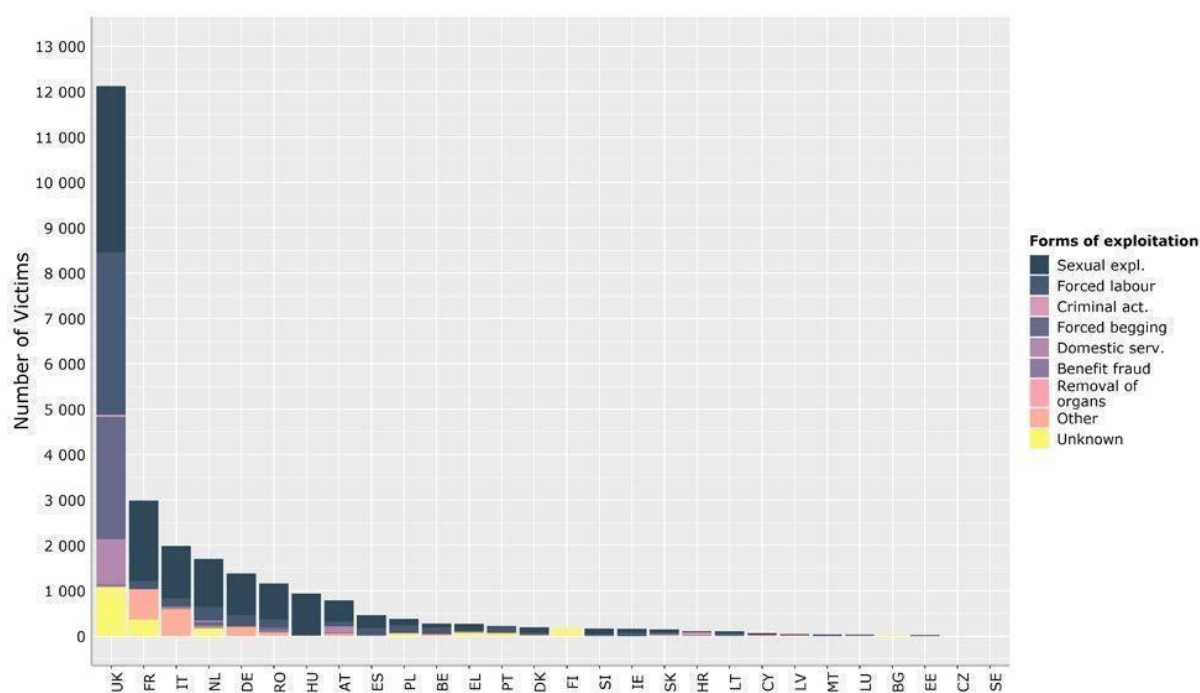
Women were the vast majority (92%) of the victims of trafficking for sexual exploitation in the EU-27 in 2017-2018, whilst men represented 6% of victims for this form of exploitation. In the EU-28, the proportion of female VoTs for sexual exploitation is identical (92%) to the one in the EU-27. Men accounted for a higher share of the registered VoTs for labour exploitation in the EU-27 (80%) than in the EU-28. In both, around two thirds (63%) of the VoTs for other forms of exploitation were female.

Forty-one per cent of registered victims in the EU-28 were EU citizens, and 56% were third country nationals (TCN). Amongst the EU victims, 27% were registered in their country of citizenship. The majority (57%) of the children victims registered in the EU-28 were EU citizens (out of which nearly half (49%) were trafficked in their own country) and 41% of the trafficked children were TCN.

The vast majority (94%) of the victims with EU citizenship in 2017-2018 were from 10 EU Member States. The top five EU countries of citizenship of registered VoTs in absolute numbers were Romania (2,880), the United Kingdom (2,449), Hungary (1,250), France (1,049) and Poland (675). In the EU-27, the top EU countries of citizenship of registered victims were Romania (2,194), Hungary (1,170), France (1,041), the Netherlands (510) and Bulgaria (507). The main countries of citizenship of TCN registered in the EU were Nigeria TCN as VoTs registered in the EU in 2017-2018 were trafficked mainly for sexual exploitation (41%), forced labour (24%) and other forms of THB (24%).

The five non-EU citizenships with the highest proportion of VoTs for sexual exploitation in the EU-28, in 2017-2018, were Nigeria (68%), Albania (58%), China (52%), Iraq (15%) and Pakistan (14%). Other non-EU citizenship represented half (41%) of the total of non-EU VoTs for sexual exploitation. For labour exploitation, these citizenships were Sudan (88%), Eritrea (54%), India (53%), Bangladesh (46%) and Pakistan (39%).

Collected data confirm the **gender-based characteristics** of trafficking in EU Member States both of EU citizens and TCN: **women and girls are the majority of victims and they are still mostly exposed to sexual exploitation.**



Source (European Commission , 2020)

1.3 The Legislative Framework

1.3.1 Palermo Protocol (2000)

The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (UNTOC), also known as the Palermo Protocol, was adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000.

It entered into force in December 2003 and its key objectives include the prevention and tackling of THB, paying particular attention to women and children; the support of victims with full respect of their human rights; and the promotion of States Parties' collaboration to meet these objectives.

The Protocol includes the clarification of the use of basic terms, as follows:

- *“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;*
- *The consent of a victim of trafficking (VoT) in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;*
- *The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;*
- *“Child” shall mean any person under eighteen years of age.*

The Palermo Protocol foresees the assistance and protection of VoTs in terms of the protection of their privacy and identity, and, thus, the confidentiality of the legal proceedings. The Protocol also states that the domestic legal or administrative system shall ensure the information provision to victims on court and administrative proceedings, as well as support to enable *‘their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.’* The Protocol foresees that States Parties shall implement measures for the physical, psychological and social recovery of the VoTs, also in collaboration with NGOs, CSOs and other organisations, ensuring accommodation, counselling and information – in a language that the VoTs understand – medical, psychological and material assistance, as well as employment, educational and training opportunities.

The Palermo Protocol further stipulates the importance of age, gender and special needs of VoTs in the context of the support provision, as well as other measures. The protocol provides for the physical safety of VoTs and compensation for damage suffered. Furthermore, it encourages States to include provisions in the context of the domestic law for the temporal or permanent residence permit in the hosting country, as well as the repatriation of VoTs.

In terms of prevention of the phenomenon, the Palermo Protocol foresees that States Parties shall establish relevant policies, programmes and measures, not only for the prevention of THB, but also for the protection of VoTs, especially women and children, from revictimisation.

1.3.2 *The Warsaw Convention (2005)*

The Council of Europe Convention on Action against Trafficking in Human Beings, also known as the Warsaw Convention, was adopted in 2005. The Convention focuses on the prevention and tackling of THB, the development of a comprehensive framework for the protection of victims and witnesses, while focusing on gender equality. At the same time, it aims to promote international cooperation against the phenomenon. The above objectives and principles of the law should be applied without any discrimination based on any ground (Council of Europe 2005).

The Convention defines the following key notions:

- *"Trafficking in human beings" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;*
- *The consent of a victim of "trafficking in human beings" to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;*
- *The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in human beings" even if this does not involve any of the means set forth in subparagraph (a) of this article;*
- *"Child" shall mean any person under eighteen years of age;*
- *"Victim" shall mean any natural person who is subject to trafficking in human beings as defined in this article.*

The Convention instructs that each Party shall take measures to better coordinate national agencies working on the prevention and tackling of the phenomenon and establish relevant programmes and policies. The Convention also stresses and promotes the importance of a Human Rights-based and child sensitive approach, as well as the gender perspective.

Apart from the border measures and the measures to reduce the demand, the Warsaw Convention stipulates measures to protect and promote the rights of VoTs, focusing on gender equality. In terms of victim identification, it is foreseen that authorities shall be equipped with trained professionals and that pathways of collaboration amongst services should be established. Confidentiality, emphasising on the protection of the victim's identity and personal data, is also envisaged by the Convention.

Regarding the victims' physical, psychological, and social recovery, assistance should be provided in relation to accommodation, psychological and material support, medical care, information provision, access to education for children, as well as translation and interpretation services, if needed. Furthermore, the Convention foresees a recovery and reflection period of 30 days, so as for the victims to escape the influence of their traffickers. At the same time, it includes provisions for the residence permit, compensation and legal redress, and repatriation. In the context of the Convention, a monitoring mechanism is established: the Group of experts on action against trafficking in human beings (GRETA), which monitors the implementation of the Convention by the parties (Council of Europe 2005).

1.3.3 EU Directives 2011/36/EU and 2012/29/EU

The 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 (Official Journal of the European Union, 2011), adopts an integrated, holistic, and human rights approach towards the fight against THB, notwithstanding the gender-specific aspects of the phenomenon.

The Directive makes provision for the criminalisation of the following intentional acts: *'The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those 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.'*

At the same time, it sets the following definitions:

- *A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.*
- *Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.*

- *The consent of a VoT in human beings to the exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 has been used.*
- *When the conduct referred to in paragraph 1 involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used.*
- *For the purpose of this Directive, ‘child’ shall mean any person below 18 years of age.*

The provisions of this Directive encompass, amongst others, the non-prosecution or non-application of penalties to the victim, the ex officio prosecution of the offences and the provision of assistance and support to VoTs as soon as competent authorities have indicators of victimisation. The Directive makes a clear reference to the protection of VoTs in criminal investigation and proceedings, as well as in the assistance and support of children victims. The right of compensation is ensured in Article 17, whilst Article 19 stipulates the establishment of National Rapporteurs or equivalent mechanisms in Member States, which shall be responsible for the assessment of the phenomenon at a national level, the evaluation of anti-trafficking actions and reporting.

The Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support, and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (Official Journal of the European Union 2012) aims to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings, while their rights are protected in a non-discriminatory manner. The Directive adds to the definition of ‘victim’ the *‘family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person’s death’*. The notion of family members includes spouses, co-habitants that are in a committed intimate relationship, relatives in direct line, siblings and persons who are dependent on the victim. It further defines restorative justice as *‘any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party’*.

In the context of information provision and support, the Directive stipulates that communications should be made in a simple and accessible language to the victim, taking

under consideration the victim's personal characteristics. The necessary information, such as support they are entitled to, services that provide such support and the procedure for making complaints, should be provided to the victim from the first contact with a competent authority. Victims should also be notified about the progress of their case, while special reference is made on their right for translation and interpretation. Support services shall be accessible and free of charge, paying particular attention to the specific needs of the victims.

In relation to their participation in criminal proceedings, all victims have the right to be heard. Member States are responsible for protecting the victim from secondary and repeat victimisation, intimidation and retaliation when providing restorative justice services, that should always be in the interest of the victim, who has received proper and unbiased information about the process. Victims of crime also have the right to legal aid, reimbursement of expenses caused by their active participation in criminal proceedings and compensation from the offender in the course of criminal proceedings. Plus, the right to avoid contact with the offender, to secure their privacy and be protected during criminal investigations. At the same time, they are entitled to individual assessment for the identification of specific protection needs. Finally, the Directive stipulates that professionals and practitioners who are likely to come into contact with VoTs shall receive general and specialist training regarding the needs of the victims and ways to handle such cases.

At this point, it is important for you to stress in your training that directives should be implemented in national law and – other than European ordinances – they do not have any direct legal effect. But: In case the directive is not implemented in a timely manner or is not implemented properly, it can still take effect immediately and be applied by the authorities.

1.3.4 Impact of other EU law provisions on VoT

VoT may be severely impacted by EU and national provisions regulating transfer, removal and repatriation of migrants. Direct relevance for victims of trafficking derives from:

- Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, which is aimed at ensuring better standards of reception conditions for asylum-seekers throughout the Union;

- 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;
- Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals;
- Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

Article 21 Directive 2013/33/EU explicitly recognizes victims of trafficking as 'vulnerable groups'. While disparities remain across the EU in the definition of vulnerability in the asylum process, victims of trafficking are recognized by law as being particularly vulnerable and relevant national authorities are expected to carry out all the procedural steps aimed at detecting presumed victims of trafficking at the earliest possible stage. Same obligations derive from article 20 Directive 2011/95/EU, providing that Member States shall take into account the specific situation of vulnerable persons, such as VoT.

Article 11 Directive 2008/115/EC establishes that VoT who have been granted a residence permit pursuant to 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 shall not be subject of an entry ban. Article 14 and 16 provide safeguards for vulnerable persons in case of pending return and detention.

The Regulation EU No 604/2013, laying down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, explicitly mentions the risk of trafficking only with regard to minors (article 6). Basically, it establishes, on the basis of certain criteria, which State should take charge of the asylum request of a person arrived on European territory. There is a central database, Eurodac, in which the data and fingerprints of anyone who irregularly crosses the borders of a Member State or applies for international

protection are recorded. In short, this database makes it possible to establish in which Member State a person seeking asylum entered Europe for the first time, but has been identified.

Therefore, with the presentation of the application for international protection in a European country, if on the basis of the applicant's story or other elements, such as fingerprints, doubts about the responsibility emerge, a phase of investigation, the "Dublin phase", opens, which suspends the examination of the asylum application. In fact, a procedure will be activated on the basis of which the authorities, having identified the country where the asylum seeker has already been reported, will ask the relevant authorities to take charge of the application and, if the answer is positive, a transfer order will be issued to that country with the consequent effective transfer of the applicant.

The competent member state is obliged to take charge of the applicant who has applied for protection in another state. For example, a foreign citizen who entered Italy illegally and then went to Germany where he/she applied for asylum should, in theory, be transferred to Italy.

Due diligence obligations under the anti-trafficking and human rights law should be respected in the Dublin procedures and in particular the implementation of operational measures for the identification and assistance of victims, the suspension of removal and the granting of a temporary residence permit.

The decision on the transfer of a VoT to a first-entry country after Dublin III should take into account the obligations of due diligence under Article 4 ECHR and the anti-trafficking legal regimes. In light of these obligations, the State should apply the sovereignty clause and examine the victim's application for asylum even if such an examination is not within its competence under the Dublin criteria. The assessment of the applicant's vulnerability should also inform the decision on a Dublin transfer and ensure compliance with non-refoulement obligations. Furthermore, it is noted that when the victim is formally granted a

temporary residence permit, such as for recovery and reflection, the State becomes responsible for the asylum application and the Dublin procedure is automatically excluded².

1.3.5 Case law from the National and International Courts

The United Nations Office on Drugs and Crime (UNODC) holds a Case Law Database in their Human Trafficking Knowledge Portal (UNODC N.D.), which includes information on cases of THB that have proceeded to trial. The cases/court decisions for Greece, Italy, Bulgaria and Germany are summarised in the table below:

Country	Court Decision
Greece	Supreme Court Decision no. 2/2019 (Nea Manolada) – labour trafficking
Greece	Decision No. 755/2017 – trafficking for sexual exploitation
Greece	Decision no. 955/2016 – THB perpetrated professionally
Greece	Decision No. 279/2013 – THB for sexual exploitation
Greece	Case no. 783/2013 – labour trafficking and THB for sexual exploitation
Italy	Cass. Pen. Sez. III, 40270-2015- acquittal of a woman accused of obscenity because of the circumstances of the fact; she was recognized victim of trafficking and at the moment of the fact she was in state of necessity
Italy	Cass. Pen. Sez. V, n. 12574-2013- Abuse of power or a position of vulnerability- Exploitation of the prostitution of others or other forms of sexual exploitation- Slavery
Italy	Cass. Pen. Sez. V, n. 10784-2012- • Abuse of power or a position of vulnerability- Exploitation of the prostitution of others or other forms of sexual exploitation
Italy	Cass. Pen. Sez. V, n. 35479-2010- Threat of the use of force or of other forms of coercion- Abuse of power or a position of vulnerability- Exploitation of the prostitution of others or other forms of sexual exploitation
Italy	Tribunal of Bari- 08/10/2018 RG n. 8027/2017- refugee recognition for Nigerian woman victim of THB and forced marriage
Italy	Tribunal of Bologna, 26-10-2020, refugee status for woman victim of trafficking
Italy	International protection commission of Rome, 2019, refugee status for Albanian woman victim of trafficking after the criminal trial conviction
Bulgaria	Case No. 3067/2011 - sexual exploitation
Bulgaria	Case 2158/2011 - child victim of trafficking, forced criminality

² Art 19.1 Dublin III Regulation. The sovereignty clause applies even in the case of discretionary decisions taken under Art 17.

Bulgaria	Case 702/2010 – sexual exploitation
Bulgaria	Case 401/2010 – sexual exploitation
Germany	District Court of Duisburg, 33 Kls 17/18 – THB for the purpose of sexual exploitation involving six women from Nigeria

Finally, you can find below some a selection of relevant case law from the European Court for Human Rights:

ECtHR case law³	Application No.	Date
V.C.L. and A.N. v. the United Kingdom	77587/12 and 74603/12	16 February 2021
Chowdury and Others v Greece	21884/15	30 March 2017
L.E. v. Greece	71545/12	21 January 2016
M. and Others v. Italy and Bulgaria	40020/03	31 July 2012
Rantsev v. Cyprus and Russia	25965/04	10 October 2010

³ See also ECtHR Factsheet on Trafficking in Human Beings, 2017.

MODULE II: REPRESENTING AND ASSISTING VICTIMS: SPECIFIC APPROACHES

As indicated by the different Conventions, Protocols and Directives, a multifaceted approach is needed when it comes to preventing and combating THB and assisting the victims. Stakeholders and service providers working on the phenomenon should emphasise on and follow a human rights-based and victim-centred approach, setting the victim at the centre of the procedure. An intersectional approach and gender perspective is also important recognising the impact of gender in THB and the different ways women and men are trafficked and affected by the phenomenon (Official Journal of the European Union 2011).

2.1 Gender-based perspective

Women and girls are the majority of victims and survivors of THB. The ways, purposes and experiences of trafficking can differ greatly between males and females (European Parliament 2016).

The 5th Sustainable Development Goal of the 2030 Agenda for Sustainable Development, regarding gender equality and empowerment of women and girls *“includes the elimination of trafficking and sexual or other forms of exploitation, as well as the elimination of harmful practices, such as child, early and forced marriage and female genital mutilation”*.

Gender inequality and feminisation of poverty - as illustrated in social and economic structures - leading to unequal access to education, work, resources, and decision-making processes, can force women to seek risky economic opportunities, laying the ground for the traffickers to exploit their vulnerability. Amongst the factors contributing to the vulnerability of women and girls in THB is the gender inequality in economic and employability matters. Women are often paid less than men, while their employment remains unstable, often characterised by lack of contracts and stable jobs, leading them to risky routes aiming at economic growth (UN General Assembly 2020).

It should be noted that the Covid-19 pandemic has had an impact on the phenomenon and especially on women and girls' victims of trafficking for sexual exploitation. The gendered trafficking dynamics have been exacerbated by the already existing gender inequality, as

women and girls' vulnerability is increased when it comes to online recruitment. Females are still the majority of victims for sexual exploitation, while males are mostly victims of labour trafficking (UN Women, OSCE, ODHIR 2020). Furthermore, domestic violence, which is amongst the contributing factors to trafficking and intimate partner trafficking, has increased during the pandemic, with the majority of the victims being female. Such forms of violence can lead the victim to flee their home and community, which can potentially contribute to the escalation of the victim's vulnerability (UN Women, OSCE, ODHIR 2020).

Taking the impact of gender on trafficking into consideration, along with recommendations in the existing literature, the **gender-based perspective** is vital when approaching/supporting victims and survivors of trafficking. As explained in the *Gender Sensitive Guideline for Handling Women Victims of Trafficking in Persons of the Association of Southeast Asian Nations* (ASEAN) (ASAN 2016), professionals, including lawyers, should adhere to the following principles when providing legal support to victims and survivors of human trafficking:

- *Do no harm*: any potential harm that could be caused to the victim should be minimised. For lawyers it means to avoid or minimize all factors of secondary victimization, as it could derive from repeated interviews, stigmatizing or intrusive questions, initiatives or all actions which have not been previously discussed with the beneficiaries of the legal assistance and approved by them.
- *Respect and dignity*: the rights of the victim should be protected regardless of any of their characteristics, such as religion, race, sex, disability, etc.
- *Confidentiality*: the confidentiality of the victims should be preserved by the professionals working with them – organisations should take measures to ensure the confidentiality of the victims
- *Informed consent*: professionals need to provide the necessary information, options and facts to the victim, so as the latter can freely choose their path of actions
- *Right to Justice*: the right of the victims to fair treatment and access to justice should be protected and advocated
- *Rights-based/needs-based approach*: the victim should be meaningfully involved in the process and maintain access to information. Legal professionals should encourage and endeavour the active participation of each victim in the

planning of future actions. The rights of the victim should always be promoted and protected.

- *Gender sensitivity:* organisations and law professionals with private offices should be aware and respectful of the needs of women and girls, while providing appropriate legal support and aid.

Law professionals dealing with migrant, refugee and asylum-seeking populations shall be able to understand the phenomenon of trafficking, the various forms of exploitation and the consequences of the THB experience as a gender-specific crime through a gender-sensitive lens. This will help them to better address the specific needs of the victims.

This deconstruction process implies gaining **knowledge of the gender-driven dynamics of trafficking and forms of exploitation**. For example, former female VoTs are often offered the opportunity to recruit new victims to decrease their debt to the traffickers. This information should be taken under consideration and assessed in the criminalisation of behaviour, during interviews and information provision.

2.2 Intersectional Approach

Although the gender dimension of trafficking has been documented and described, there are other characteristics that, when interfering with gender, increase the vulnerability of women and girls. The 2020 report of the UN General Assembly on Trafficking in women and girls points out that migration, refugee status, ethnicity, disability and HIV status are some of these characteristics, that when intersecting with gender, increase the vulnerability of women at work, which respectively increases the chances of exploitation (UN General Assembly 2020).

THB connects with the broader systems of structural oppression, such as racism and xenophobia, colonialism and sexism, and these intersecting forms of oppression affect the lived experience of migrant, refugee and asylum-seeking populations encountered at the borders or on the territory of EU Member States (Baker 2018).

The European Institute for Gender Equality defines intersectionality as an 'Analytical tool for studying, understanding and responding to the ways in which sex and gender intersect

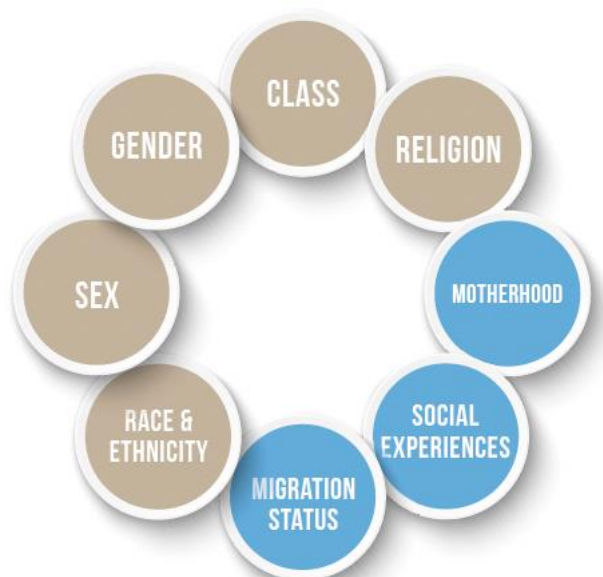
with other personal characteristics/identities, and how these intersections contribute to unique experiences of discrimination (EIGE N.D.). According to Kimberlé Crenshaw who introduced the term, intersectionality describes the ways that different forms of discrimination, such as sexism, racism and xenophobia, overlap, leading to a person experiencing multiple forms of oppression (Laboratory to Combat human Trafficking 2017). This approach is used to challenge perceptions of within-group homogeneity and bring to light the experiences of marginalised individuals.

Therefore, when law professionals approach a victim of human trafficking, they should bear in mind their individual/unique background including social, economic, cultural and political markers of their lived experiences, and the way they are linked to their behaviour, stances, beliefs and reactions (Atewologun 2018). The reasoning behind someone's behaviour is linked to a variety of factors.

The intersectional approach is also laid down in EU law in **Directive 2012/29/EU**. In particular, it stresses the needs for a **tailored response** for victims of crimes, including VoT, and it mentions several subjective and objective circumstances and factors that shall be taken into consideration while dealing with persons surviving the violation of their own rights, such as: ... *“race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, gender, gender expression, gender identity, sexual orientation, residence status or health”*⁴.

Law professionals should not make categorisations of victims based on one characteristic and always remember the within-group differences. The characteristics of a person that intersect with each other may influence the activities and decisions of a person in all situational contexts. To follow this approach, lawyers should gather all necessary data and analyse it to examine the nature of the intersections and how these influence the individual experience (Atewologun 2018).

⁴ Directive 2012/29/EU, §9.



Intersectionality –Structural categories & their interplay (Source: Blöcher et al. 2020, mentioned in https://intap-europe.eu/wp-content/uploads/Handbook_Nigerian_SoT.pdf)

2.3 Human Rights- based and Victim-centred Approach

The EU plan on best practices, standards, and procedures for combating and preventing trafficking in human beings (Official Journal of the European Union 2005) recognises the importance of an integrated human rights-based approach and focuses on the protection and assistance of the victims. From this policy paper and the following policy and legal acts, the **human rights-based and victim-centred approach** results in the best framework for dealing with individuals who suffer from serious human rights violations and crimes.

This approach has also been reinforced by the most relevant EU Directives on the issue of trafficking and protection of victims of crimes (2011/36/EU §7, 2012/29/EU §§8 and 54). It implies that all professionals dealing with migrant populations are aware of their previous possible and/or actual exposure to serious human rights violations. This awareness

stresses the need to establish a relationship based on support provision and active listening.

In a victim centred approach, the needs of the victims are equally valued, as well as the prosecution of the offender, the identification and stabilization of the psychological state of the victims (U.S. Department of Homeland Security N.D.), while ensuring a *compassionate and sensitive delivery of services in a non-judgmental way*. This approach aims to reduce the risk of secondary victimization throughout the process of identification, service provision and the criminal justice process, while the victim has an active role (Office of Justice Programs – Office for Victims of Crime: Training and Technical Assistance Center N.D.).

Law professionals should ideally follow a trauma-informed perspective and be culturally sensitized while forming collaborations with all relevant professionals. In addition, they are advised to advocate for the victim and avoid excluding them from the process, unintentionally resembling the behaviour of the trafficker. When working with victims, lawyers should create a relationship of trust and respect, contributing to their empowerment. It is important to always act in the best interest of the victim, rather than the prosecution procedure (Office of Justice Programs – Office for Victims of Crime: Training and Technical Assistance Center N.D.).

Lawyers should remember that victims may not be comfortable speaking up and cooperating with authorities, as they might fear them and, as a result, they might be reluctant to tell their entire story. Furthermore, VoTs may not identify themselves as ones but rather identify with the trafficker. Nonetheless, these behaviours are interconnected and represent the power dynamics between the trafficker and the victim. Following the victim-centred approach, legal professionals should immediately refer the victim to support services and conduct an individualised interview on who the victim is. Professionals should acknowledge and address the victims' fears while being aware and sensitised to cultural differences and language barriers, using interpretation services if needed. The interview should be conducted in a neutral space, upon the assessment of the victims' needs, while professionals should be patient and give the victim time to stabilize their recovery process (U.S. Department of Homeland Security N.D.).

VoTs have in common that they were exploited. Furthermore, the respective circumstances and people differ from each other, sometimes considerably, so that it would be wrong to speak of “the” VoT. In other words: “It is essential to acknowledge the fact that there is no single profile of a victim, or ideal victim, and there are no one size fits all responses” (OSCE 2021, 19). In order to develop strategies that protect all VoT and provide the opportunity to meet their individual needs at every stage of the process, it is important to take into account their differences, especially in the initial steps of identifying a VoT. That remains one of the most important factors: identifying people as trafficking victims in the first place. Only after they have been identified as a VoT in need of protection, their individual needs can be best identified and addressed.

2.4 The role of the lawyer within the network of identification, protection and support of victims

Law professionals should bear in mind that cases of THB are often not initially revealed but are presented as something else. In this sense, the lawyer’s role in the identification of VoTs is essential, as professionals can recognise victims through active listening, interviewing and the development of a relationship of trust, which will encourage the beneficiary to reveal their victimisation. In the event of revealing, the lawyer ought to gather useful information supporting the request for legal help, such as the beneficiary’s physical and mental health status, as well as of people close to them, any history/experience of violence, the reasoning behind their sense of fear or anxiety, and their residence (Supreme Court of the State of New York 2013).

Upon identifying a VoT, the legal professional shall also specify their needs; the level of linkage between victim and trafficker, and how recent their contact is, define the amount of needs to be covered. Some of the most important and eminent needs are the following:

- Safety: as a legal professional, one should firstly ensure the physical safety of the VoT, i.e. that they are away from their trafficker and danger of physical harm.
- Migration status: lawyers shall identify the status of their client in terms of migration status and language of communication. All procedures and information provision should be made in a language that the beneficiary fully

understands. In case the beneficiary is unable to communicate in a language that the lawyer understands, an interpreter is needed.

- Accommodation: this basic need pertains to temporal accommodation and long-term housing options. One of the most urgent needs is a safe place to stay, at least until the crisis is over. Long-term housing options might include renting a house, or public housing.
- Health: in case of immediate physical or psychological care needed, this should be provided as soon as possible. Checks should also be made regarding the victim's long-term health needs, as well as the needs of the victim's children.
- Future planning: emphasising in education, training, integration in the labour market, public benefits the victim and the people close to them are entitled to.
- Other legal needs: the lawyer should also endeavour to address any other legal needs of their beneficiary and provide information to their beneficiary regarding their rights and the procedures to be followed (Supreme Court of the State of New York 2013).

The aforementioned needs, amongst others, should be covered by comprehensive case management, with the cooperation of different professionals. If case management is not available for a beneficiary, lawyers might need to work as a substitute and try to find relevant services, which contributes to the development of a relationship of trust between the lawyer and the beneficiary. In such situations, it is advisable that the legal professional actively includes the beneficiary in the process of services selection.

The clause of confidentiality, which characterises the relationship of a lawyer with their beneficiary, should not be overlooked. It also includes people who serve to facilitate the communication of the two parties. For example, interpreters and cultural mediators, who support the lawyer in communicating legal information to their beneficiary, are also covered by the clause of confidentiality. Nonetheless, legal professionals should pay close attention to this important aspect and always inform their beneficiary on the applicable confidentiality clause, and what they should or should not do (Supreme Court of the State of New York 2013).

2.5 Barriers to Interviewing and Assisting Victims

Considering the nature of the phenomenon of THB, law professionals face several difficulties when dealing with cases of VoTs, especially in the phase of interviewing and assisting survivors. As indicated in the Lawyer's Manual on Human Trafficking: Pursuing Justice for Victims issued by the Supreme Court of the State of New York (Supreme Court of the State of New York 2013), the impact of trafficking on the victims may hinder the interviewing processes and the development of a relationship of trust:

1. Trauma: the psychological burden of the victims that might be expressed in the form of memory loss, denial or minimisation of the events might impede the process of obtaining the necessary information for the legal proceedings and the preparation of the victim's testimony at trial. Relevant difficulties might be faced by memory loss and incoherent narratives caused by physical injuries as well. Furthermore, it should be underlined that in the process of preparing survivors for legal proceedings, law professionals always face the risk of causing secondary victimisation to the survivors, who need to narrate the events they have suffered. This necessary step in gathering of information, might dissuade survivors from participating in the process, while this possibility might dishearten professionals from their well-intentioned efforts.
2. Fear: the fear endured to the victims during the exploitation by the traffickers can still affect them after they exit the situation, leading to symptoms like panic attacks that may set barriers during the interviewing and assistance provision by the law professionals. It is also usual for VoTs to fear the authorities and avoid any relevant cooperation.
3. Shame: shame might also constitute an aggravating factor that does not permit the survivor to describe their experience, due to the usual degrading perception regarding prostitution in the society and the resulting shame caused to the victim. Shame might prevent survivors from recounting experiences during the interview, enhancing the lawyers' barriers when interviewing and assisting victims.
4. Isolation: isolation constitutes a technique used by traffickers to control their victim, as well as their sense of self, their values and their relationship to society (seasoning). This way, the victim remains devoted and obedient to the trafficker, making it difficult for law professionals to build a relationship of trust and connect with the survivors.

5. Adaptation: after some time of suffering, victims may start accepting the harmful situation, as opposing their traffickers may result in even more harmful events. Simultaneously, in some cases of traumatic bonding, the victims might see traffickers as family and protectors. The lack of self-identification of victims may set further difficulties in the work of law professionals, who need to explore the different possibilities prior to the rejection of a THB case.

Considering the aforementioned barriers legal professionals have to deal with when interviewing and assisting VoTs, there are several steps that can be taken under consideration, in order to better approach the situation:

- Try to develop a relationship of trust: one of the most vital and hardest steps is for the lawyer to create a healthy and strong relationship of trust. A first step to achieve this, is to explain their role and answer any questions; the victim might see them as a government official and avoid showing any signs of trust. Lawyers should further explain the confidentiality that characterises their relationship with the beneficiary and always approach difficult matters, like migration status, with sensitivity. In all the questions they may want to ask, they should try to show to the victim that they are trying to help. Moreover, they should actively listen to their beneficiary's needs and try to support or provide information on how these needs can be covered.
- Prioritise effective communication: lawyers should make sure that their beneficiary fully understands the language used during any communication. If a common language is not found, the services of an interpreter, speaking not only the same language as the victim, but also the same dialect, could facilitate the communication, always according to the victim's needs and best interest. However, it shall be considered that VoTs could not speak at the presence of people of the same community, fearing shame and breaking of the confidentiality clause. In this case, legal professionals should make sure to explain to both parties that confidentiality also applies to their relationship, and ensure that the victim feels comfortable with the relevant professional. They should try to avoid any legal jargon and explain things in a simple way. At the same time, they should make sure that they thoroughly explain the different steps of the legal proceedings, the different stakeholders involved in these steps and their role, as well as the variety of options their beneficiary has. They should

always make sure that their beneficiary can reach out to them at any point, as and when needed.

- Be alert to symptoms of psychological distress: due to the nature of the victimisation in cases of THB, legal professionals should be alert to recognise symptoms of psychological distress, such as anxiety, depression and other symptoms of trauma. Such symptoms might hinder the legal proceedings, as victims might not be ready to narrate their story or actively participate in the process. Lawyers should be ready to make referrals, if necessary, to specialised support service providers, depending on the symptoms revealed.
- Try to limit the effects of narrating traumatic experiences: the narration of such events can lead victims to relive the situation and experience secondary victimisation. Although the detailed narration of the events is necessary, there are ways that the impact of such narratives can be minimised. For example, lawyers can ask victims to write down their experience. They should always ask questions in a compassionate, non-judgemental manner and bear in mind that a lot of meetings might be needed for their beneficiary to open up. Lawyers should remember to follow their beneficiary's needs; for example, if they break down during one of the interview sessions, propose a break and reassure them that such a reaction is not unusual. They should try to finish the interview on a positive note, like with the acknowledgement of the beneficiary's strength.
- Avoid intensifying any feelings of shame or self-blame; no questions that may imply that the situation was the victim's fault should be asked by the lawyer or any of their associates; a private location, without interruptions, should be selected for the implementation of the interview. No information should be shared with anyone outside the legal team engaged in the specific case.
- Take gender into consideration: usually female VoTs for sexual exploitation feel more comfortable with a female legal representative; professionals should make sure that such needs of the beneficiary are addressed. In case they have a bond with their trafficker, professionals should make sure to inform them that this is not unusual.
- Develop and implement a safety plan: legal professionals should gather information regarding safety considerations from any referral sources, such as the law enforcement of organisations working with VoTs; family members, who are usually threat recipients, should be taken into consideration in the development of a safety plan. A legal professional might also need to act as a

mediator in terms of their beneficiary finding a shelter, away from the traffickers' location. In all cases, lawyers should inform the survivor of any other measures that can be taken through other legal proceedings.

- Be attentive to the survivor's material needs: lawyers should try to be attentive to any urgent material needs, such as accommodation, food, toiletries, clothing and medical care, that should be addressed and contribute to their fulfilment, if necessary. Such contribution will also support the development of a relationship of trust.

EXAMPLE(S) OF TRAINING ACTIVITY(IES)

Title	What would you do?
Type of activity	Role playing and case studies
Estimated duration of the activity	50'
Type of platform suggested	Any
Digital tools needed	-
Goals/expected outcomes	Participants to further acquaint themselves with the approaches presented in the module Participants to practice on how to perform interviews and ask questions to establish the form of victimisation their beneficiary suffered
Description of the activity	<p>Explain the exercise to the participants. Two volunteers will be asked to perform the scenario that will be shared to the trainees. It is advised that these two people are identified in the beginning of the training and that the scenario is sent to them prior to the implementation of the exercise, so that they can read it during a break.</p> <p>The scenario will be about the conduction of an interview with a woman from Nigeria that has addressed the organisation they work (one volunteer to be the lawyer conducting the interview and one to be the refugee woman) [10'].</p> <p>After the scenario is performed by the volunteers and all participants have paid close attention, the scenario and the included steps will be discussed. Participants should try to point out the potential mistakes made and propose different ways the interview could be conducted [20'].</p> <p>After the mistakes and recommendations have been presented, guide the participants in a debriefing session, asking the following questions (additional questions can be asked, based on the responses of the participants and the recommendations made) [20']:</p>

	<p>Have you ever gotten in a situation where you did not know what kind of questions should be asked during an interview? What did you do?</p> <p>How did you feel during the performance of the scenario?</p> <p>Have you ever noticed such practices being implemented during interviews with potential victims? If so, what do you think the impact is on potential victims of trafficking? If not, can you imagine what the impact would be?</p> <p>What would you do if one of your colleagues did something relevant?</p> <p>Is there any recommendation you would like to add, that could facilitate the interviewing?</p> <p>What further steps would you follow if this was your case?</p>
<p>Materials needed / offered (if any)</p>	<p>After the debriefing is over, you should help the volunteers (and participants) to detach from the scenario. Ask the participants to implement a very quick exercise (e.g. state their names and one characteristic of themselves that begins with their initial), while stretching their fingers. Upon the completion of this step, it is advised to have a break, so that participants are completely detached from the scenario.</p> <p>Case study that will constitute the basis of the scenario: Two volunteers are needed. <i>A woman from Nigeria, named Adla (volunteer 1), arrived at the Offices of your organisation. She walks frightened, with her head looking down. When male professionals are around, she steps back, presenting feelings of fear and anxiety. Adla confides in you that she wishes to get a divorce from her husband because he verbally abuses her. However, during the interview, you notice the aforementioned symptoms of distress, fear and anxiety, as well as some inconsistencies in her story. You are about to perform an interview in order to gather information for the legal proceedings (volunteer 2), which is the language Adla understands (the dialogue will follow in the national language).</i></p> <p><i>Professional: Good morning! Welcome. Would you like something to drink?</i></p> <p><i>Adla: No, thank you.</i></p> <p><i>P: My name is Alexandra and I am a lawyer in LLP. LLP provides legal support and legal representation to victims of violence. How can I be of assistance?</i></p> <p><i>A: I came to see you because I want to get a divorce from my husband and I had nowhere else to go.</i></p> <p><i>P: I understand. Would like to tell me how long you have been married?</i></p> <p><i>A: We are married for three years.</i></p> <p><i>P: Did your husband ever exercised any kind of violence?</i></p> <p><i>A: He is constantly verbally abusing me. That's why I want to get divorced.</i></p> <p><i>P: I understand. Has he ever exercised any kind of physical violence to you or threatened you of such acts?</i></p> <p><i>A: Yes. Some time ago, after an argument he pushed me and I hit my arm.</i></p> <p><i>P: I see. And are you working anywhere this period?</i></p> <p><i>A: In my husband's bar.</i></p> <p><i>P: And what do you do there?</i></p> <p><i>A: Aaam many things.</i></p> <p><i>P: And do you consider yourself financially independent?</i></p> <p><i>A: What do you mean?</i></p> <p><i>P: Do you make your own money?</i></p> <p><i>A: But I work in my husband's bar.</i></p> <p><i>P: So you are not getting paid?</i></p>

	<p>A: No, it is a family business.</p> <p>P: Ok, we can look into the public benefits you are entitled to. Would you like to tell me your ID number, so that I can check into the system?</p> <p>A: I don't remember the number. My husband has my passport and other papers.</p> <p>P: I see. We can do it in another meeting, if you like, after you ask your husband about your papers. Would you like to tell me how much time you have been in Greece?</p> <p>A: My husband brought me here three years ago. But can we move forward on what I should do to get divorce? I cannot be late because my husband might understand that I am not at work.</p> <p>P: And would you face any consequences in this case?</p> <p>A: He would get really mad and start yelling and I can't anymore. I just want to leave.</p> <p>P: So, do you need to notify your husband on your absence?</p> <p>A: Yes, he doesn't let me get out on my own.</p>
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MODULE III: IDENTIFICATION OF VICTIMS OF TRAFFICKING IN HUMAN BEINGS

This module provides an overview of the different forms of exploitation of VoT and related indicators of victimization, which may have been used by the traffickers to recruit the victims and which may become obstacles in the process of victims' protection, support and empowerment. It is important for lawyers to be acquainted with the various forms of exploitation, in order to provide the best legal aid and organise the steps that need to be followed for the relevant legal proceedings.

3.1 Forms of exploitation

Prior to exploring the different forms of exploitation, it is important to bear in mind that **vulnerability** and its abuse are central to any understanding of human trafficking (GRETA, 2019) (see Module I).

Exploitation is a fundamental element of the criminalisation of THB although it is not defined in international law. However, there is widespread support towards understanding that exploitation includes unfair advantage of another person's vulnerability or state of need. Within the context of human trafficking, exploitation is seen as a *continuum* (GRETA 2020b).

The trafficked persons' consent to the intended exploitation is irrelevant, when any abusive means have been used in the case of adults (the use of means is immaterial in the case of children), as persons subjected to sexual and labour exploitation may willingly accept the situation because they perceive that they have no alternative in order to make a living, or because they do not perceive it as exploitation. The clear statement of the irrelevance of the consent to the intended exploitation in the legal framework could improve the implementation of the anti-trafficking provisions and provide trafficked persons with greater confidence in self-reporting to NGOs and public authorities.

a. Sexual exploitation

Sexual exploitation in the context of THB is forcing a person into prostitution with the aim of financial gain. It takes place in different countries regardless of the legal regulation of prostitution and may occur outdoor, e.g. street prostitution, or indoor, in closed places, like strip clubs, gentlemen's clubs, as part of escort services, including in apartments specially rented by the traffickers. Indoor prostitution and sexual exploitation has increased significantly since March 2020, due to the COVID-19 pandemic (GRETA 2021), which created many challenges for victims' identification. Modern communication technologies (internet, social media and mobile applications) have enabled traffickers to recruit and exploit victims, due to the increased anonymity, the ability to take part in real-time encrypted communications, the possibility to reach a broader audience (in terms of victims and clients), geographical mobility, and the ability to control victims from a distance.

Online sexual exploitation includes electronically recording, photographing, streaming of images, video and audio distributing or transmitting intimate or sexual acts of another person without their knowledge and consent, or allowing third parties to observe sexual acts, engaging in voyeurism or distributing intimate or sexual information about another person via Internet/Intranet. Online sexual exploitation is happening mainly to women and children and has an increasing trend of over 100% since the start of the pandemic, according to Europol's estimates (EUROPOL 2020).

Grooming and online sexual exploitation of children. In 2020, Europol reported a 100% increase in cases of grooming and sexual exploitation, especially of children (EUROPOL 2020). In the last several years traffickers have been increasingly using the Internet to spot, recruit, abuse, exploit and control victims through social media and different digital platforms by using grooming, sexting and sextortion. Grooming involves building a connection with someone to coerce or deceive them into being involved in an exploitative situation. It can happen to anyone of any age and gender. However, people may not recognise that they have been groomed and may not view their relationship as exploitative. Grooming is often associated with sexual exploitation but is also present in other forms of exploitation such as modern slavery and financial exploitation. It can take place face-to-face, via the telephone and via the internet – specifically social media, instant messaging, photo-sharing apps and online gaming platforms. Unlike other forms of abuse, the child

can potentially be re-victimized millions of times – every time an image is watched, sent or received.

Online sexual exploitation of exploitation of children (EUROPOL, N.D.) happens through:

- **Online child sexual abuse material** – accessing, possessing, producing and/or distributing images and/or videos of child sexual abuse - “child pornography” (Thomson, 2020).
- **Grooming of children for sexual purposes** - developing a relationship with a child to enable their sexual abuse and/or exploitation, online or offline (Sunde, 2018).
- **Live-streaming sexual abuse of children** (Sullivan, 2020) - using online video encrypted applications/platforms (such as Skype and Discord) to view, and sometimes interact with the sexually abused children live.
- **Sextortion** (UK Gov, N.D.) - coercing and blackmailing children for sexual purposes - producing and/or utilising sexual images and/or videos depicting a child, for the purposes of sexual, financial or other personal gains.

b. Labour exploitation

Labour exploitation (EC, N.D.b) is the second most common type of exploitation with people being exploited in different private sectors such as construction, agriculture, manufacturing, fisheries, food industry, hospitality, logistics, cleaning, forestry, domestic work, textile, metallurgy, electronics, oil and gas (GRETA 2020). Forced or compulsory labour is defined in Article 2(1) of the International Labour Organisation (ILO) Convention concerning Forced or Compulsory Labour (No. 29 of 1930) as “*all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily*”. Victims of labour exploitation can be of any age, gender and race and though profiles depend on the industry, males prevail (see subchapter 1.2). Domestic Servitude is a form of forced labour which occurs in households or communes, and in most cases affects women and children. Migrant workers are often vulnerable to domestic servitude. Recruitment agencies trick workers into moving abroad, without speaking the language of the country they go to and confiscate their documents on arrival,

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leaving them stuck inside a home, fearing immigration officials and being unable to make contact outside the home they serve in (End slavery now, N.D.).

c. Other forms of exploitation

Forced criminality. Adults and children are trafficked and forced to beg or pickpocket, or to commit crimes such as cultivation of cannabis, ATM theft and benefit fraud. Exploitation of crimes is when somebody is forced to carry out criminal activity through coercion or deception. It also includes social welfare fraud (Together free, N.D.), which takes place when exploiters falsely apply for tax credits and other welfare benefits using the victims' details. There is often horrific abuse used against the individuals in order to coerce them into falsely applying for benefits. Although some countries are further ahead (UK (GRETA, 2016), Germany (GRETA, 2019) than others (Bulgaria, Macedonia, Poland) in recognising this form of exploitation and taking steps to address it, this type of trafficking is under-reported (RACE in Europe, 2014).

Organ harvesting (including cells, tissues and blood). The trafficking in organs involves removing a part of the body, commonly a kidney or the liver, to sell them as an illegal trade. Organs can be taken through trade – victims formally or informally agree to sell an organ, but are then cheated because they are not paid, or are paid less than the promised price; through ailments – a vulnerable person is treated for an ailment, which may or may not exist, and the organs are removed without the victim's knowledge; and through extortion – when a victim may be kidnapped from their family and organs removed without consent (CoE/UN, 2009).

Forced Marriage (UK Gov, N.D.) occurs when full and free consent by both parties does not exist, often as the result of coercion or deceit, or when a person is put under pressure to marry someone. The main reason for forced marriage is when someone is paying the trafficker to gain access into a (EU) country (TCN) and/or to gain access to benefits (UN news, 2020). According to ILO estimates, some 15.4 million women and girls are forced into marriage (ILO, 2016). Traffickers also exploit victims, mainly women, through sham (fraudulent) marriages where there is no intention on the part of one or both spouses to participate in a genuine relationship. Common reasons behind sham marriages are resolving issues of immigration, residency, work, or citizenship rights for one of the spouses.

Trafficking of pregnant women for the purpose of baby selling is the sale of new-borne babies from poor and socially isolated communities to families with reproductive problems. It is an increasingly common form of exploitation in the context of THB as it offers victims an (illusionary) way to tackle poverty. Through well-organised criminal groups and manipulators, young girls and women mainly from Roma communities, mostly living in extreme poverty and illiteracy, give birth and sell their newborn children abroad. This form of exploitation has been observed in some EU Member States (Bulgaria, Greece, France).

d. Exploitation of children

Globally, approximately 28% of identified VoT are children (UNICEF, 2018). According to Europol, children are trafficked from different parts of the world to the EU and are targeted mainly for sexual exploitation but also labour exploitation, begging and forced criminality, such as pickpocketing and shoplifting. Children are also trafficked for illegal adoption and sham marriages (EUROPOL, 2018).

Trafficking of unaccompanied minors. In the EU context, an unaccompanied minor (UAM) is a minor who arrives on the territory of the EU Member States unaccompanied by an adult or a minor who is left unaccompanied after they have entered the Member States' territory. Unaccompanied minors are particularly vulnerable to all types of exploitation from traffickers due to their increased vulnerability along the migration route. UAMs often depend on smuggling services and with not enough financial resources to pay for them, part of the deal is often that the debt is repaid in kind, e.g. through forced labour (including domestic servitude), prostitution, or forced criminality. Many unaccompanied minors have been subjected to exploitation along the way, before entering the EU, as a way of paying for the transfer to Europe so there is clearly a hybrid smuggling-trafficking phenomenon (EUCPN, 2020).

3.2 Indicators of victimisation

Vulnerability can result from some innate characteristic of the trafficked person (physical or mental deficiency, ill health, or youth) or may develop due to the situation the person finds themselves in within a destination country (as poverty or precarious administrative

status) (ILO, YYYY). There are several indicators of victimisation, including within the group of migrants, asylum seekers and refugees, some of which are presented below.

General indicators (OSCE/ODIHR, 2004)

Dependence is a strong sign of any type of exploitation but in particular of sexual and labour exploitation, especially if the person:

- Does not speak the local language;
- Does not know their home or work address;
- Is dependent on the trafficker for their survival or/and drug use;
- Is subjected to physical, sexual, and/or emotional abuse;
- Witnesses violence against other people with the purpose of maintaining fear or “instruction”;
- Is threatened with violence against them or their family members;
- Is deprived of food and water;
- Has visible marks of violence;
- Is “disciplined” through punishments and intimidations;
- Is drugged in order to develop an addiction.

Blackmailing is a common indicator for THB. The person is blackmailed

- By retention of their personal documents;
- By their illegal status in the destination country;
- Through blackmailing or threatening relatives;
- Through threats of disseminating personal information about the victim (including photos and videos) to their family, friends or/and informing the authorities;
- Through the criminal activities in which the person is involved and exploited;
- Through threats of disclosure to immigration authorities.

Professionals can also ask persons to report on their migration journey, as the migration journey itself may reveal indicators of a THB situation. For example, the person

- Is transferred from one country/town to another or from one settlement to another;

- Is sold/resold or exchanged from one trafficker to another;
- Is “rented”;
- Has false identification or travel documents, or
- Does not have their identification or travel documents because they are being held by someone else.

Sexual exploitation

Direct indicators (BG Gov, 2016) The person:

- Is not allowed to stop prostituting themselves and is moved to different clubs/brothels/prostitution places, has tattoos, branding, or other marks showing “belonging” to a certain trafficker;
- Lives or travels with other people who sometimes do not speak their language and knows only words related to the provision of sexual services in the local language or the language of the group of clients;
- Has clothes typical for the sex industry;
- Is not allowed to refuse services to a sex client and/or is not allowed to refuse certain sexual activities;
- Is forced to have unprotected sex;
- Is subjected to forced gynaecological exams and pregnancy tests, contraceptives or terminating a pregnancy.

Labour exploitation

Direct indicators (BG Gov 2016) (UNODC 2020) include that the person

- Is subjected to exploitation in sectors such as agriculture, construction, industrial production, entertainment, hospitality, etc.;
- Lives in agricultural or industrial buildings;
- Is not properly dressed for the job they are doing;
- Is recruited by a friend, partner, relative, family member, other acquaintance, or false marriage;
- Has been abducted or kidnapped;

- Was deceived with promises for large income, the nature and/or conditions of work or with promising romantic relationships and/or marriage.

Additional indicators (BG Gov 2016) (UNODC 2020) could be:

- The preliminary working arrangements are not kept and the person has not received any training for the job they are doing.
- There are no occupational health and safety notices, the person does not have access to medical assistance.
- Equipment is designed or has been modified so that it can be operated by children.
- The **working conditions** do not comply with the established statutory rules.
- The person cannot negotiate their working conditions and is forced to do certain activities.
- The person is forced to work and live in the same place or the person's housing offers really bad accommodation and sanitary conditions, and/or it is shared with lots of people and very small in space, or
- The person pays very high amounts for very poor living conditions.
- The person is being hidden or does not have access to personal belongings.

Domestic servitude

Direct indicators (Hertfordshire Modern Slavery Partnership N.D.) (OSCE 2014) include:

- The person lives with the family as a servant and has no personal space and/or is not able to leave the house without their employer.
- The person does not have meals with the rest of the family or does not receive enough food.
- The person is subjected to insults, abuse, threats or violence.
- The person receives little or no payment.

Begging, pickpocketing & other criminal activities

Direct indicators include that a person:

- Begs in public places or in the public transport;
- Is part of a group for begging, petty crimes, or other type of criminal activity, including being involved against their will in the activities of organised crime groups;
- Has physical impairments that appear to be the result of intentional mutilation;
- Is punished if they do not steal enough;
- Lives together with other people who are not part of their family and who are known to the police in relation to criminal activities or travels with members of a crime group to the country of destination.

Trafficking for organ removal harvesting

Direct indicators for recruitment and exploitation (de Jong & Ambagtsheer, 2015) of the victim:

- The person is in contact with a person and/or company that advertises/organizes transplants and organ donations (abroad).
- The person is receiving incorrect or misleading information about the pre- and post-operatives risks and/or the duration of the operation.
- The person does not know who their prospective recipients abroad are and their motivation for the donation is only connected with the financial aspect.
- They travel together with one or more persons, who do not appear to know each other, to the same destination.
- The person is accompanied by someone with a medical background.
- They travels directly to a hospital or clinic upon arrival in a foreign country.

Sham or forced marriages

Direct indicators (Hertfordshire Modern Slavery Partnership N.D.) are when a person is:

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- Forced to marry someone against her/his will through threats, physical violence or sexual violence;
- Emotionally and psychologically pressured to marry someone by making her/him feel like bringing 'shame' on their family.

Trafficking in children (up to 18 years of age)

Direct indicators include that a child:

- Is neglected or/and lives with adults who are not their relatives;
- Is scared, uncommunicative and does not know the local language;
- Persistently begs from people on the street or is involved in petty or more serious crimes;
- Is part of a group with other children of the same nationality (ethnicity) who travel with the public transport for no obvious reason, or is part of a group of children supervised by the same adult;
- Does not go to school and cannot read or write;
- Is trained to answer in a particular way in certain situations;
- Cannot use the money they earn and is under permanent control/monitoring by an adult from a distance.

3.3 Risk factors of trans-European trafficking

Risk factors of trafficking or victims' vulnerabilities exploited by traffickers are important aspects that lawyers should bear in mind and use to secure better protection for victims of trafficking. It is useful to note that vulnerability factors are not human characteristics, but are resulting from society's inability to deal with them properly. Risk factors and/or vulnerabilities may be relevant to interviewing/hearing procedures, protection for the duration of victims' involvement in criminal proceedings, status determination, protection against expulsion and deportation, finding a durable solution, securing higher compensation etc.

Multiple factors create vulnerabilities to trafficking of migrants, refugees, and asylum seekers after they have entered the EU. In order to facilitate the training process, we propose to group the variety of risk factors that can lead to vulnerability to trans-European trafficking into four groups:

- a. Factors related to demographic, personal and social characteristics.
- b. Factors related to obstacles to the integration process of migrants, refugees and asylum seekers in the EU.
- c. Factors related to existing procedures, policies, and legislation on human trafficking, migration, and asylum in the EU.
- d. Factors related to the COVID-19 pandemic.

The information on the four groups of factors that are elaborated below can be provided to the trainees in the form of handouts or as a presentation summarising practical exercises during the training sessions.

a. Personal characteristics as risk factors for vulnerability to trafficking

Age is one of the most important determinants of vulnerability, with younger females being at greater risk of trafficking (Randle, 2020), especially for the purpose of sexual exploitation. Age is also a risk factor for male victimization that is often underestimated: there are more and more cases of sexual exploitation of young men and boys in the context of migration. Unaccompanied minors, regardless of their gender, are among the groups facing the highest risk (UNHCR, 2020).

Gender is another major risk factor as women and girls are disproportionately affected by trafficking and exploitation. Gender determines the relationship between the other risk factors, including age, economic status, family status, etc. (Randle, 2020). In addition, LGBTQIA+ migrants, refugees and asylum seekers face a higher risk as they are often marginalised from their families and communities (UNODC, 2021).

Health conditions (including mental health) also predispose vulnerability to trafficking. Migrants are more likely to face unmet medical needs and chronic or acute states or illnesses, which could force people in need to go through various forms of exploitation in

order to procure treatment and medications. Different forms of physical disability could lead to trafficking for the purposes of begging. Psychological trauma and other mental health problems could prevent adequate reality testing, affect behaviour and create a risk of trafficking. Psychological problems are often used by traffickers, e.g. hypomanic states whose symptoms can include sexualised behaviour or lack of personal boundaries. Addictions to substances and mental deficits also constitute risk factors. The health factor creates additional vulnerability to women in relation to their reproductive health and especially in case they are pregnant or have given birth recently.

Nationality and ethnicity are mentioned in some studies as risk factors, since the EU gives priority to nationalities that are considered to be at a higher risk and most likely to qualify for protection as refugees (Syrian, Iraqi and Afghani) (Brunovskis & Surtees, 2017). Refugees⁵ are entitled to resettlement in safe places and to not being returned to places where there are threats to their life and health (the principle of non refoulement).⁶ However, for immigrants the risk of becoming victims of trafficking or abuse may be underestimated when they are returned to their countries of origin or taken outside the EU boundaries. Migrants have to find shelter and jobs or to make money faster in order to continue their journey, which puts them in a vulnerable situation to accept propositions that might involve exploitation.

Economic status. The lack of income is a serious risk factor. People who have been granted international protection or have a long-term residence permit have the right to work, but there are a number of obstacles, such as the language barrier, lack of valid documentation that proves the level of education or professional experience, or lack of knowledge of the labour market in the country of stay. Often migrants and especially women are forced to work in low paid jobs in the unofficial sector where their labour rights

⁵ It is important to note the difference between immigrants and refugees. **Immigrants** are people who leave their home country on their own free will due to personal, economic or other reasons with the aim of settling in another state. **Refugees** are people who are forced to flee from armed conflicts, violence, persecution, and cross to another country to look for safety.

⁶ Convention on the Status of Refugees (Geneva Convention) - 1951

are not respected and the risk of exploitation is very high. A number of studies show that the poverty factor affects more women due to the traditionally lower levels of education and lack of professional experience (Randle, 2020).

Family status is a factor that affects mainly women and comes from the traditional understanding of their role in the family as economically dependent with little freedom to make any life choices. Women are responsible for taking care of the children, elderly or ill people in the family. In most cases, they are systematically subjected to attitudes that can be described as GBV, including domestic violence. Women remain closed and isolated without access to resources and thus can become VoTs (Spampinati, C. et al., 2020). Single refugee women face high risk of trafficking with the purpose of sexual exploitation, due to their economic status, lack of professional skills and family support (Randle, 2020).

Religious beliefs and practices that assign inequality between men and women often act as push factors for women to migrate. They are escaping forced marriages, genital mutilation, honour-based crimes, domestic violence and other forms of GBV. Fears of persecution may increase vulnerability to trafficking⁷.

b. Problems of integration in Europe as a risk factor

Despite the fact that most, if not all, EU Member States have systems that support migrants, refugees and asylum seekers, there are a number of serious obstacles to their integration that makes them vulnerable to becoming victims of abuse and human trafficking within the EU. These include the following.

Lack of local language knowledge which prevents them from starting a job and communicating with the local community and institutions that can help them. Social isolation is one of the vulnerabilities traffickers use for recruiting victims (Spampinati, C. et al., 2020).

⁷ For more information see (Inka, 2020)

Socio-cultural barriers that migrants have to overcome during the integration process and adjustment to a new culture, which might cause multiple stresses (Wang, Z.; de Graaf, T.; Nijkamp, P., 2018). Integration is a long process and includes the understanding, acceptance and abidance by different and sometimes contradicting to their own social norms and values,⁸ religious beliefs, family structures, norms for societal interaction (Wang, Z.; de Graaf, T.; Nijkamp, P., 2018). Depending on the level of adaptation, migrants might find themselves in a situation of integration, assimilation, separation, or marginalisation (Constant, A.; Gataullina, L.; Zimmermann, F., 2006). Social separation and marginalisation can easily be used by traffickers who often belong to the same migrant groups and exercise power and control in these closed communities.

Discrimination, prejudices, stigma and other negative attitudes towards migrants, refugees and asylum seekers in European societies constitute a significant barrier on their way to integration. Employers prefer to hire local workers. Migrants, refugees and asylum seekers often do not report the crimes they had suffered due to fears of prejudice and discrimination that would prevent the authorities from taking them seriously. This is an example how prejudice and discrimination can limit the impact of laws and services for those who experience discrimination (UN Department of Economic and Social Affairs, 2018).

Lack of access to legal aid. Migrants need a legal representative when it comes to procedures related to their status, which can be long-lasting, and decisions might have to be appealed. Additionally, they may need a legal counsellor to fully enjoy all fundamental rights (e.g. family issues, labour and independent business issues, compensation, access to social protection and benefits. For many women legal aid is the only way to overcome the domestic violence they have endured for years.

⁸ Like Individualism versus collectivism, patriarchy versus gender equality

c. Risk factors coming from applicable procedures, practices, and legislation

The way states manage migration processes may turn into a risk factor in case priority is given to security concerns and prevention of illegal migration rather than to the prevention of THB. Inadequate identification of victims, prosecution of some VoTs, lack of adequate support for people in transit are direct results of policies that are insensitive towards the vulnerability to THB.

Here are some procedures that most often create vulnerability to victimisation and that are often reflected in the procedures of lawyers.

Fast procedures that aim at speeding up the asylum applications and the return procedures make it impossible to examine risk factors (Forin, R. et al., 2018).

Restrictive migration policies prevent first line experts, including legal counsellors from identifying VoTs (Forin, R. et al., 2018), thus migrants look for alternative ways to cross borders which puts them at risk of trafficking (La Strada International, 2020).

The Dublin III regulation plays a major role in the access of VoTs to residence permits provided via asylum procedures. Asylum seekers stand different chances depending on which Member State evaluates their application. Not all Member States have proactive mechanisms for the identification of victims of trafficking or people at risk of trafficking according to the Dublin procedure, thus the sovereignty clause (17.1.) is rarely used to prevent trafficking and re-trafficking. Unidentified victims of trafficking are referred back to another EU country, where they are at high risk of being re-trafficked.

Individual interviews with asylum seekers are not conducted in a suitable environment that prompts sharing or self-identification of the victims. The procedures and questionnaires are not aimed at identifying the risk of trafficking. This implies that legal professionals shall be aware of such limits of first interviews and grant them multiple chances to meet in a safe and confidential place.

Lack of sufficient information provided by the authorities to migrants as regards their rights, places for support, existing social services, etc., or poorly presented information in an unclear, confusing or too broad manner.

Visa status is a factor that concerns undocumented migrants who have limited to no access to support services. They can only work illegally and do not have social or medical rights. They have to pay bribes to corrupted employees or accept exploitative practices in order to avoid detention or deportation (IOM, 2019).

There are no procedures that support undocumented migrants to report crimes related to THB without fear of being detained or deported.

Migrants who are victims of crimes want to avoid being identified because they do not want to take part in criminal proceedings that they do not fully understand and over which they have no control. They fear contact with authorities, or feel shame to report crimes, especially if sexual violence was involved. Often, they believe they have no benefit in pressing charges and are not aware of their rights as victims of a crime, including THB.

The asylum and refugee system and the anti-trafficking system are not synchronised and operate separately with no connection between each other. Migrants have difficulties to claim protection from both systems and have to choose (with the support of legal counsellor) which one serves better their personal situation.

The terms THB and smuggling are often mistaken, which leads to gaps in the identification of human trafficking risk factors. In the first case migrants are in the position of victims, while in the second they are active participants (IOM, 2019).

The necessity to **follow the letter of the law**, in particular the exact definition of THB (requiring cumulatively present actions, means and purpose) for the identification of VoTs for the purposes of criminal proceedings, prevents a number of people who are at risk of trafficking from receiving support.

d. The COVID-19 pandemic as a risk factor

The COVID-19 pandemic is an additional risk factor for many vulnerable communities among which are migrants, refugees and asylum seekers, as it has worsened their pre-existing social exclusion and marginalization. It has exacerbated existing socio-economic inequalities and gender discrimination that underlie violence against women and girls, including human trafficking (UN Women, OSCE, ODHIR, 2020). Therefore, COVID-19 is an important aspect of vulnerability to be considered when assessing the risk of trafficking by lawyers. Undocumented migrants cannot receive government help and unemployment compensation. The pandemic further delays and hinders access to asylum, protection, basic services and support programmes (PICUM, 2020). The stigma and fear of discrimination, detention and even deportation, and lack of health insurances can prevent migrants from looking for medical assistance or vaccination.⁹

3.4 Aspects of the procedures to guarantee victims' rights

During your training, you trainer should encourage participants to consider different aspects of the procedures which should be complied with and which, if not respected, might lead to violations of victims' rights. Below, you can find some good practices that guarantee protection of victims' rights.

A suitable space for conducting an interview, without interruptions, to ensure confidentiality and proper risk assessment (Inka, L. et al, 2019). Separate interviews for asylum-seeking women without the presence of male family members and interpreters will ensure they have the opportunity to share their situation (UNHCR, 2002).

Interview and communication. Some VoTs, especially women, may not be able to identify their traumatic experiences. They may consider professionals from RIC to be people of authority, and fear them. In addition, they may fear rejection or punishment from their family and community (UNHCR, 2002). Interviewers and interpreters of the same sex

⁹ For more information see <https://picum.org/covid-19-undocumented-migrants-europe/>

should be provided to women. Those professionals should be aware of cultural or religious sensitivities or personal factors creating vulnerability and be open-minded and aware of the principles of communication with vulnerable people (like tolerant and non-judgemental attitudes, respect for the suffering, etc.).

Information. Professionals need to provide information to migrants, refugees and asylum seekers, as they may not understand their rights, available services, or what to do to receive support (Brunovskis, A; Surtees, R., 2012).

Asylum seeker or victim of crime. VoTs have rights in every EU Member State, which they can claim. The asylum and refugee system aims at protecting people from persecution or serious harm in their countries of origin, while the victims' rights provisions ensure protection for victims of crime in the EU (Brunovskis, A; Surtees, R., 2012). They also need free legal assistance to make an informed decision whether they should take advantage of their status as a crime victim in the EU.

Teamwork. A multidisciplinary team with different professionals is the most efficient approach when working with vulnerable beneficiaries. Lawyers have a major role in the team. They cooperate with the counsellor – a social worker or a psychologist, who provides support to victims during judicial proceedings. Counsellors can function as “Confidants” as well. The confidant prepares the victims emotionally for interrogations and is present during their interview (if the law allows for it), and helps the victims afterwards to cope with her emotional reactions as a result of testifying or appearing in court. The confidant facilitates the communication between the victim, relevant authorities, police and the lawyer in the best interest of the victim. The counsellor also helps lawyers involved in the proceedings to understand the emotional condition of the victim and gives recommendations on successful communication with him/her.¹⁰

¹⁰ (2017) Handbook for Legal, Social, Health Professionals Involved in The Protection of The Rights and the Assistance of Victims of Human Trafficking <https://www.caritasinternational.be/wp-content/uploads/2018/06/Handbook-Final-Version-EN.pdf>

EXAMPLE(S) OF TRAINING ACTIVITY(IES)

Risk factors on trans-European trafficking

Title	Attitudes towards assessment and prevention of trafficking
Type of activity	Work on attitudes
Estimated duration of the activity	Depends on how many statements will be presented 20-30 min for about 6 statements.
Type of platform suggested	The activity is implemented more effectively in an in-person training. It can be modified for the online context as well by using a platform that allows the creation of polls (e.g. zeetings).
Tools needed	Labels with "I agree", "I disagree", "I don't know" and long-enough rope (optional). Digital poll (e.g. zeetings) – if online
Goals/expected outcomes	Participants will become aware of their own attitudes towards various risk factors and their role in preventing victimisation (for example, do they tend to neglect certain vulnerabilities or do they underestimate their role in preventing trafficking).
Description of the activity	<p>Draw an imaginary line (or use a rope) on the floor of the training room and stick an "I agree" label on the one end and an "I disagree" label on the other end of the imaginary line. In the middle you can stick an "I don't know" label.</p> <p>Ask participants to stand up and tell them that you are going to read out some statements and they have to show their opinion by finding the position on the line which fits best to how much they agree or disagree with it.</p> <p>Read one of the statements below and ask participants to take a position on the line. When all participants have taken a position on the line, ask some of them to explain why they agree, disagree or are neutral. Provide the correct interpretation of the given statement and explain the prejudice related to it. Continue with the next one. You can choose some of the provided statements or you can create your own.</p> <p>Examples of statements:</p> <p>Women and men are equally vulnerable to trafficking when they leave the Lawyers.</p> <p>Only women and girls are victims of trafficking.</p> <p>Only young gay men are vulnerable to sexual exploitation.</p> <p>Sexual exploitation never happens in Lawyers.</p> <p>People who pay other people to transport them illegally to other countries are not VoTs.</p> <p>Human trafficking involves only organised crime.</p> <p>There is no risk for migrants accommodated in Lawyers to be trafficked or exploited.</p>

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	<p>Women who travel alone often exaggerate the GBV they have suffered in their countries in order to receive protection.</p> <p>Violence in the family is a cultural norm in some countries from which migrants originate and it is also business to interfere with.</p> <p>Most vulnerable women do not want to be protected and separated from their families, and there is nothing to do about it.</p> <p>Migrants should be happy with any job they can get because they do not know the local language.</p> <p>The COVID-19 pandemic hits everyone equally. Migrants are not any more vulnerable than other people.</p> <p>In case the training is conducted online, create quick polls on the questions and ask participants randomly about their position.</p>
References	-

Title	Migration vulnerabilities and procedural aspects to guarantee protection of victims' rights
Type of activity	Brainstorming
Estimated duration of the activity	60 min
Type of platform suggested	Platform that allows the creation of breakout rooms
Tools needed	Flipchart and permanent markers for you; blank sheets of paper and pens for participants; Handouts Jamboard if the training is online
Goals/expected outcomes	Participants will connect their own experience and knowledge on migration vulnerabilities to trafficking and respective procedural guarantees.
Description of the activity	<p><u>Presentation of the activity</u> – 15 min</p> <p>This activity is suitable for introducing the theme of lawyers' role for ensuring respect for victims' rights.</p> <p><u>Step 1</u></p> <p>Ask participants to brainstorm ideas on factors that make migrants vulnerable in the EU in general. Write on the flipchart (or if online, share your screen and put sticky notes on a Jamboard) the factors they list and while doing so organise them in four areas:</p>

	<p>Factors related to demographics, personal and social characteristics – gender, age, nationality, economic status, family status, health, prior traumatic experience, etc.</p> <p>Factors related to obstacles to integration process of migrants in the EU;</p> <p>Factors related to existing procedures, policies, and legislation on human trafficking, migration, and asylum in the EU;</p> <p>Factors related to the COVID-19 pandemic.</p> <p><u>Step 2</u> Explain to the participants that what they are going to do now is to think about procedural aspects related to the different risk factors and factors of vulnerability and the respective steps they can undertake in case these have not been complied with.</p>
	<p><u>Work in small groups</u> – 15 min Divide participants into four small groups and ask each group to work on one of the four areas above. Their task will be to discuss what procedural aspects relate to the factors in each area and what corresponding action may be taken in case these are not complied with.</p>
	<p><u>Work in the plenary</u> – 30 min Ask the groups to present their work and based on their conclusions facilitate a discussion on available procedural action to undertake in case vulnerabilities of victims of trafficking have not been accounted for. Add information and examples.</p>
References	-

MODULE IV: REPRESENTING AND DEFENDING VICTIMS IN CRIMINAL COURT

In this module, you trainer will learn to teach your training participants how they can identify VoT's needs during the investigation and court hearing stages, and help them find services that will support them with other than legal needs (e.g. sheltered housings, specialised NGOs, etc.). Further, the module will also give you an insight into the topic of THB investigations and prosecutions, compensation rights and protecting VoT from secondary exploitation.

4.1 Victim's need in criminal justice

VoT are among the most vulnerable people in need of legal assistance and support (see Module III), in fact as victims of violent crime, they have experienced a profound shaking of their trust in a just world, in other people and, not least, in themselves. VoTs often already suffer from difficult conditions prior to the crime committed against them, including lack of social integration, lack of development and employment opportunities, poverty risks and discrimination. The crime itself violates the dignity and freedom of the victims in a serious way. Among the four reasons for this defensive reaction Hassemer & Reemtsma (2002) also include the insinuation that the victim is in some way to blame for becoming a victim. This can also be seen, for example, in questions asked even by police officers or public prosecutors to victims of sexual violence about what clothes they were wearing at the time of the crime and why (Hassemer, W.; Reemtsma, J. P. 2002, 40ff).

As multifaceted as the nature of the victimisation is, as complex the variety of their individual legal needs is. (see Module II, § 2.4.) (Siniscalchi, A.; Fecko, C. M.; Ahmad, H. 2013, 241-243), and, without support, victims are likely to be too frail, too frightened, or too traumatised to provide much help in building cases or to testify in court. People providing legal services are essential links to VoT. They can help VoT gain the strength necessary to take part in a criminal proceeding (Hersh, L. 2013, 256).

That people, who have been exploited through employment, would be asked detailed questions about clothing is unlikely. Such "asymmetries of dealing with trafficked persons" in judicial proceedings, show that there is a high risk of victimising VoT a second time or not recognising people as VoT at all (Pates, R.; Leser, J.; Dölemeyer, A. 2016, 24-38). In

many cases, VoTs are dependent on clarification and active detection, as they do not approach the authorities on their own and reveal themselves. In the case example of Germany, the Federal Criminal Police Office (BKA) (2019) found that contact between VoTs and the police was made by the victim in only 53% of cases in 2019 (Pates, R.; Leser, J.; Dölemeyer, A. 2016, 8). This means that in just under half of the cases of contact, the VoTs did not initiate the procedure. One stereotype that needs to be overcome in your training is the idea that VoTs are just waiting to be “rescued” by the authorities and then willingly cooperate in solving the crime committed against them. The opposite is often the case. The reasons for a lack of self-identification and distrust of authorities are manifold. They range from multiple dependency and a feeling of powerlessness vis-à-vis the trafficker(s), to shame about what has been experienced and the desire to repress traumatic experiences, to a lack of understanding of being VoT themselves. In addition, there is often the fear of being caught in a foreign country without identification papers, criminalised and deported to the home country follow (Frei, N. 2018, 157) (Wells, et al. 2019, 39-41). Therefore, it is essential to create an environment as soon as possible in which the VoT is safe, can settle down and gain confidence.

4.1.1 *Special features in criminal proceedings*

In criminal proceedings, in addition to these general considerations, the following circumstances should be given special consideration during your training from a victim protection perspective:

Criminal law is traditionally offender-oriented (Hassemer, W.; Reemtsma, J. P. 2002, 47). Both substantive criminal law – with its prohibitions and proscriptions for the protection of certain legal interests – and criminal procedural law – which should be observed in the clarification and determination of a possible violation of the commandments – are directed at possible offenders. Criminal offences (with the exception of abstract endangerment offences) cannot be realised without a victim. However, the violation of legal interests is not systematically understood as the interests of the individual affected, but as legal interests of a state-ordered society. It is not the injury of a particular crime victim that is in the foreground, but the breaking of the law and thus an attack against the state (Schwander, M 2019, 45). In these proceedings, the victim primarily acts as a complainant or as evidence (Seitz, J. 2018, 128).

The fact that in the last decade more regulations to protect victims and strengthen their rights have received attention and been incorporated into the legal system is a substantial improvement (see Part. 2, Module I). These rights take into account the special need for protection of VoTs, especially during interrogations and negotiations. For example, it should be examined whether the examination of a witness can take place in the absence of the accused or by means of an audio-visual examination. Excluding the public from participating in the main hearing can also be considered. In summary, Member States should ensure that measures are available to protect victims from secondary and repeat victimisation, from intimidation and from retaliation, in particular from the risk of emotional or psychological harm, and to protect the dignity of victims during questioning or testimony. According to the wording of Art. 18 of the Directive, this protection explicitly includes family members of the victim.

In principle, the right to psychosocial support during the entire investigation procedure and also when filing a criminal complaint is to be welcomed. However, the fact that this is not provided free of charge to every adult victim in all Member States, for example, impairs the actual protection of victims. This is especially true against the background that current victims are particularly uncomfortable with the idea of the court hearing and being questioned as a witness (Schwander, M 2019, 72). More than the court proceedings themselves, however, the confrontation with the crime is unpleasant for contact victims compared to non-contact victims (OSCE 2021, 49). Therefore, it is of greater importance for VoT to be able to influence the official procedure. They have this opportunity in procedural systems where they have active participation and involvement rights.

However, the OSCE's Special Representatives for Combating THB (2021) have noted with concern the low rates of prosecution and conviction for THB across the OSCE region, in particular in Western Europe (OSCE 2021, 49). Prosecutors often avoid trafficking charges and divert to other offences, which ultimately can affect both the rights of VoTs during the trial and the justice of outcome, a conviction of the perpetrators for trafficking. For VoTs, punishment for the offender is the primary response aspect to the offence. However, civil law claims should also be taken into account. In that case 90% of current VoT do not like a division of their case into a criminal and a civil part but favour the possibility of being able to assert civil claims in criminal proceedings (adhesion proceedings) (Schwander, M 2019, 77).

Whether, how quickly and to what extent rights are granted to a VoT depends not least on the persons acting, which is why it should be emphasised once again the importance that personnel at the police, customs, law enforcement agencies and courts are appropriately trained. Cooperation with appropriately trained specialised counselling centres can be very helpful in this case. At the same time, it should not be forgotten that police and law enforcement agencies do not necessarily pursue the same interests as VoTs. The criminal justice response focuses more often and primarily on holding perpetrators accountable. After that comes the focus on victims. This is one reason why the exercise and enforcement of victims' rights should not be left to the police or law enforcement agencies. VoTs need an independent voice that is unilaterally committed to their interests (Berbec, et al. 2021, 12-21, 38-40). If staff members of specialised counselling centres (are to) take on these tasks, it is important to consider whether they have a right to refuse to testify according to the respective legal system or whether they have to testify as witnesses in court despite an obligation to maintain secrecy. In order to best serve the interests of VoT, representation should be by persons who are unilaterally committed to VoT and have a right to refuse to testify (see subchapter 4.2). Your training participants should consider at each end every stage the impact that a law, policy, practice or measure may have on the VoT.

4.1.2 *Four options of the VoT in the criminal justice system*

VoT have the fundamental right to access the justice system. Within this system, they have the following four options, which you trainer should make your training participants aware of:

1. to remain silent: this might be a choice because of a combination of fear for their own safety and that of their families, and a deep suspicion and distrust of the police and law enforcement agencies. It is a fundamental right, and no victim should be forced to exercise it and testify as a witness. Sometimes, however, this is only an initial decision, which is also revised again in the course of time, such as in the case of Germany.
2. to provide confidential information to the police and the prosecutor on the condition (where legally possible) that the VoT does not appear as a witness in court: This possibility is for example possible in Germany and enables the VoT to take limited action against the exploiters avoiding the risk associated with giving testimony.

3. becoming a prosecution witness against the trafficker(s): many victims wish to take action against their traffickers after they have been allowed a period of recovery and to receive independent advice (IOM 2007: 293).
4. to seek compensation and to receive support in accessing these redress options (see subchapter 4.3).

Which option the VoT chooses is up to him/her. What is important is that the decision is always voluntary and only made after the VoT has been fully and comprehensively informed about the procedure, the rights and obligations they have therein and all his/her options. This is an important message you should forward to your training participants.

4.1.3 *What are the concrete needs of VoTs after all this?*

THB is a complex crime, which causes severe trauma in victims. Avoiding re-victimisation and re-traumatisation is imperative. To ensure this, victims' physical and psychological well-being should be taken into consideration throughout the whole criminal proceeding. (See Module II) (Berbec, et al. 2021, 3-37).

Sometimes VoT want to remain silent and are grateful when their counterpart accepts this with understanding. Most VoT want to talk about what happened after the crime. They want the authoritative decision and determination of who has behaved rightly and who has behaved wrongly (Schwander, M 2019, 31). They then want someone to talk to, who will listen to them with understanding. Testifying in a preliminary investigation or as a witness in court always is a great burden.

Interviews should be conducted by trained officers and designed in such a way that it is clear to the victim at all times in which procedural step the communication is taking place and what purpose it serves. To avoid secondary victimisation, it is essential that the victim is taken seriously. They should experience understanding and appreciation. For VoT, who have decided to make a statement, it is also important that their statement is recorded in detail, that they are given space for their report and that they receive a response afterwards (Berbec, et al. 2021, 33-37).

Individual protection needs should be identified and taken into account. This may include the establishment of information blocks regarding the victim's personal data, a summons address at a specialised counselling centre or lawyer, a quick change of location as well as accompaniment by psychological and legal professionals (Wells, et al. 2019, 45-46).

In judicial proceedings, it should be possible for the VoT to be accompanied by a confidant who may remain with the VoT even if the public is excluded. If necessary, psychosocial accompaniment should be made possible without any cost risk for the VoT and summonses should be scheduled individually (not all witnesses at the same time) in order to prevent unnecessary waiting times. For witnesses, a separate room should be available in which they can wait, along with their escort, for questioning if their personal appearance is necessary and cannot be replaced by a video questioning. In principle, the number of interrogations should be reduced to a minimum¹¹ and - if the VoT does not wish it in the course of coming to terms with what has happened - a confrontation with the perpetrator should be avoided. This can be achieved by excluding the accused during the questioning of the victim, or - if the court does not grant this - in any case by providing a visual screen in the courtroom. Attempts by the accused, his defence lawyer or other persons in the courtroom to intimidate or discredit the victim should be stopped immediately.

The OSCE (2021) criticises an overreliance on VoT testimonies in THB cases, so prosecuting authorities should consider basing the case on additional evidence rather than just the VoT's statements. The VoT should never be persuaded or even forced to cooperate in any way. All rights should be granted regardless of the VoT's (un)willingness to cooperate with the investigating authorities (OSCE 2021, 49). This is an aspect you trainer could highlight. As a Spanish prosecutor pointed out at an OSCE webinar: "It is all about restoring victim's dignity." This should be the guiding principle of victim-sensitive care and can be realised without compromising the presumption of innocence and the establishment of the truth in criminal proceedings.

¹¹ CJEU, Judgment of 29 July 2019 - C-38/18.

4.2 Trafficking Investigations and Prosecutions

Here you will learn to teach your participants what to look out for when they investigate THB cases as well as what points they should pay attention to in prosecuting traffickers.

4.2.1 *Procedure of trafficking investigations – pre-court phase*

One of the most important parts of the procedure within trafficking investigations is the identification and recognition as victims of this type of organised crime (see subchapters 3.1-3.2). Whether a case of THB can be recognised and prosecuted, depends largely on the knowledge of the authorities, such as the police or special forces.

Investigations by the authorities will only be started in case they know about the facts in detail. The case can of course be reported to any police station nationwide. Generally, it is the state police which is responsible for the prosecution and investigation of criminal offenses in the field of THB. THB cases often constitute so-called control offences, meaning cases in which the police proactively investigate (BKA 2020, 9). But if you trainer face areas of international and serious crime, this can also provoke the responsibility of special forces. These special forces can then act on the basis of their own (original) investigative responsibility or on the basis of an order, for example an order of the state police to the special forces. You should inform your training participants that they should directly report a case of THB to the special forces, if they face a case of international organised crime. The idea behind this is for them to lead to an acceleration of the process as well as a necessary weighting that the procedure will then receive.

An example for an international case with reference to serious crime could be a case of THB involving minor children being separated from their mothers and being used as a pressure medium to force the mother - staying in another country - to prostitute herself. From the practical experience of the consortium, you should inform your participants to also report cases in which gang crime can be proven to the responsible police forces, as the interlinkages between THB and gang crime are often interwoven (NGC 2020).

The legal traditions in the individual member states regularly affect the question of whether a crime once reported to the public prosecutor's office and the related investigations can be withdrawn again. At the European level, the Victim Protection Directive does stipulate

the following: Member States shall ensure that victims, in accordance with their role in the relevant criminal justice system, have the right to a review of a decision not to prosecute. The procedural rules for such a review shall be determined by national law, Art. 11 (1) directive 2012/29/EU. However, invoking this provision of the directive will no longer lead to a discontinuation of the investigation and the subsequent court proceedings, after the criminal offense has been reported to the public prosecutor's office.

Since you are working with cases of THB you will have to inform your training participants that - once started - these offenses will be prosecuted by the authorities for reasons of public interest and proceedings continue in case of withdrawal by the complainant into their legal systems. In fact, Article 9(1) Directive 2011/36/EU regulates: "Member States shall ensure that investigation into or prosecution of offences referred to in Articles 2 and 3 is not dependent on reporting or accusation by a victim and that criminal proceedings may continue even if the victim has withdrawn his or her statement". That means that, even if it was the VoT that started the procedure by filing a charge, once the police know about the facts, it is the duty of the authorities to investigate until the end of the proceeding, which in the most cases should be an indictment by the public prosecutor's office followed by a court judgment. The authorities work in the public's interest and do not even stop in case the victim wants to withdraw the complaint.

You should make your training participants aware that they could face a situation in which beneficiaries do not want to testify because of fear or ongoing intimidation by the criminals. In these cases, it has to be emphasised that there is nearly no legal reason not to report a THB crime to the authorities. Instead, the VoT should be informed about the possibility of receiving numerous benefits in return for the testimony. Probably the biggest advantage – that should clearly be communicated by the training participants to the VoT – is the possibility of obtaining a residence permit. This residence permit can be obtained, even if the beneficiary has entered the European country illegally or has the duty to leave the country while reporting the crime to the respective authorities, such as the police, immigration office, etc., depending on your national context (Hofmann, R. 2016, 493). With this residence permit there is not only a possibility of residence for the duration of investigation. In many Member States the VoT can then acquire a permanent right of residence perspective. It is advisable at this point to check the individual standards of the member states regarding the issuance of work permits (see subchapter 5.2).

It is important for you to stress that the granting of the victim residence title depends on two conditions. VoT acting as witnesses are important for authorities – investigative as well as four courts. Therefore, the presence of a THB victim in the given EU Member State for the duration of the criminal proceeding from the investigation to the court ruling can be important and constitutes the first condition. As a second condition the victim has to cancel every contact with the criminals and declare willingness to testify in the criminal proceedings. If these conditions are fulfilled, the VoT can in theory receive the residence permit.

4.2.2 Trafficking investigations – investigation procedures by the public prosecutor's office

First of all, you should make your training participants aware that the VoT are given a reflection period in which they can recover and withdraw from the influence of the perpetrators, so that they can make an informed decision about whether they are cooperating with the competent authorities (Art. 6(1) Directive 2004/81/EU). However, if the VoT's situation allows, it is recommended to file the complaint as soon as possible.

As soon as the complaint is filed (preferably to the available specialised officers), the complainants should receive a certificate confirming the filing of a complaint. If this is not given to the complainant, it is highly recommended to ask for such a confirmation. The confirmation should contain a file number as a reference.

As soon as the file number is communicated, the competent lawyer should appoint him-/herself for supporting the VoTs. At the same time, it should be requested that the given lawyer is then also assigned as the legal representative of the given VoT. The assignment is made to relieve the VoTs of their obligation to pay for the attorney's costs. In this way, the VoT can be represented at an early stage and the lawyer can also assist from the beginning of the procedure; for example also in the procedure of the testimony of the victim at the public prosecutor's office. Please pay attention to the fact that it is recommended to have a lawyer with the VoT when it comes to a hearing of the VoT at the public prosecutor. Recital 19 of the Directive 2011/36/EU regulates that

“[l]egal counselling and, in accordance with the role of victims in the relevant justice systems, legal representation should be provided free of charge, at least when the victim

does not have sufficient financial resources, in a manner consistent with the internal procedures of Member States”.

In your national law, there are rules after which the VoT can be assigned a lawyer also without checking the personal and economic circumstances - even if they are working and are not in need - if certain requirements are met. In THB cases, however, national law provides for a lawyer to be assigned to the victim. Irrespective of this, however, it is advisable to give the VoT a form stating the declaration of personal and economic circumstances, so that this can be sent to the public prosecutor for review. It is up to the Member States to ensure that the authorities inform the victim about the possibilities of obtaining legal aid including financial aid (Art. 4 (1d) Directive 2012/29/EU).

The assignment then applies in principle to the entire procedure and - unlike in the case of public defence - also extends to the main court hearing. After the assignment has been clarified, there will be an appointment for the witness hearing. The victim will be invited to a testimony hearing to the prosecutor's office or a police station.

You should highlight to your training participants that the presence of a lawyer during the testimony of the VoT at the prosecutor's office is advisable, because the attorney can monitor when to make use of the victims' right to refuse to give evidence and to avert danger from the victim. In addition to that the lawyer should monitor the questions of the interviewers. For more practical information on questioning VoT, please refer to the International Organization for Migration's (IOM) (2018) *Trainer's Manual Investigation Human Trafficking Cases*. Here you will find helpful information that you could provide to your training participants to make them aware of best practices in how VoT should be interviewed (IOM 2018, 32-45). Focus should be directed to central questions of the criminal acts and avoid asking questions about supposedly marginal events. These events can lead to a lack of credibility. In this context, there is a danger especially for asylum seekers. TCNs in particular are interested in a positive asylum procedure outcome. Therefore, there is a risk that authorities may classify statements as asylum tactics and therefore tend to evaluate them as implausible. In order to prepare for your training you should take into consideration the fact that testimony hearings in cases of THB can take a long time (i.e. between 8-10 hours).

If the public prosecutor then has determined the course of events together with the police (in international cases maybe also by way of administrative assistance together with police officers of another Member State, which take part in the hearing of the victim (Recital 5 Directive 2001/36/EU)), the public prosecutor's office then checks whether there is sufficient reason to raise public charges.

If the public prosecutor's office determines that there is sufficient suspicion against the perpetrator(s), they will file public charges with the court. Sufficient suspicion is always given when a conviction is more likely than an acquittal. If this is not the case, the public prosecutor will drop the proceeding.

4.2.3 Trafficking investigations procedures during the main criminal trial

You should explain to your training participants that in preparation for the date of the main criminal hearing, a psychological assessment of the VoT should have taken place. The quantification of this psychological-pathological state is also of great relevance when it comes to the claims of the VoT in the criminal proceedings against the perpetrator(s). In this respect, it is important to get in touch with a specialist in psychology and to obtain release from the obligation of confidentiality from the VoT. With regard to the psychological assessment and the certificate of the specialised doctor, it should also be noted that the formal requirements for the judicial process should be met (Alempijevic, et al. 2007, 117-121).

You should inform your training participants that the main criminal trial most commonly is a public appointment in which the audience and the press can be present. Particularly in cases of minor victims, there can be the possibility to apply to the court to exclude the public for the duration of the questioning (Art 23 (3 d) Directive 2012/29/EU). Furthermore, within the criminal proceedings, an application should be made to the criminal court for reimbursement of damages and compensation for pain and suffering, if certain conditions are met that the lawyer has to review (see subchapter 4.3).

4.2.4 *Aspects to consider after the court trial*

After the end of the criminal proceeding, the lawyer should work to have the VoT's residence permit extended. If the Member State offers measures to the VoT for the return to a normal social life, including – if necessary, courses to improve their professional skills, or for the preparation of assisted return to their country of origin –, the renewal of the residence permit can depend on the execution of the measure (Art. 12 Directive 2004/81/EU).

The residence permit of the VoT can be extended in some Member States if humanitarian or personal reasons or public interests require the further presence of the foreigner in the territory. Humanitarian reasons can be given in case people no longer has a livelihood in his country of origin. Personal reasons can be the beginning of a therapy, a work or apprenticeship (Hofmann, R. 2016, 494). It is advisable at this point to consult the individual standards of the Member States.

4.3 Compensation of Victims

Compensation in the context of THB is based on the principle that victims have a right to redress and justice. Victims' right to compensation is firmly entrenched in EU Law for example in the Compensation Directive 2004/80/EU and states that victims of crimes have the right to receive financial compensation from either the offender or the state. According to Recital 6 of the Compensation Directive, compensation is required to be "fair and appropriate [...] regardless of where in the European Community the crime was committed".

There are many international, regional and national legal bases dealing with compensation for VoT, including the following: the

- Compensation Directive 2004/80/EU.
- Victim's Rights Directive 2012/29/EU.
- Anti-Trafficking Directive 2011/36/EU.
- OHCHR's Recommended Principles and Guidelines on Human Rights and Human Trafficking.

- Palermo Protocol.
- The UNTOC.
- OHCHR's Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.
- European Convention on the Compensation of Victims of Violent Crimes.
- ILO's Protocol of 2014 to the Forced Labour Convention, 1930.

Article 12 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, to which all countries in the EU are signatories, stipulates that victims of serious crimes, under which THB falls as well as their dependents or family (especially in the case of their demise or incapacity), are eligible to receive compensation. Compensation can be either material or immaterial (Art. 4 European Convention on the Compensation of Victims of Violent Crimes). VoTs can claim material compensation e.g. in the form of the payment of lost wages as well as taxes and other social security benefits according to Art. 6(1) (European Parliament, 2009).

This can be done by assessing how much money the VoT should have earned during the period or by examining the financial assets of the offender (Planitzer and Sax 2020). Funeral and medical expenses can also be claimed. In terms of compensation of non-material costs, it can take the form of payments for moral damages, or damages for pain, suffering and loss of enjoyment. Compensation can also be paid to VoT for psychological, emotional as well as physical pain and injury (Cusveller and Kleemans 2018, 297-311).

Information about compensation for VoTs as well as the procedures involved in claiming compensation should be made available to victims as soon as they are officially identified as VoTs. This is a critical step which may determine if they are able to claim compensation.

Compensation is a form of restorative justice that seeks to address the injuries done to victims and it is in the form of any financial payment for harm incurred, and recognition of the pain that the VoTs have suffered. These payments can be sought for and received in civil or criminal proceedings and can also be awarded by the government. The payment of compensation helps to serve as an acknowledgement to VoTs that they were indeed victims of a serious crime and offers them a form of financial independence to empower themselves. This may in effect make victims less likely to be re-victimised (Planitzer and Sax 2020).

Compensation is also meant to serve as a deterrent to offenders or as a punishment to them. This is because they have caused harm and exploited their victims, many times to their financial benefit. Offenders have to compensate their victims in addition to other punitive measures (GRETA 2019).

Please be aware that there can also be challenges to compensation, such as lack of information, lack of legal representation etc. (La Strada International 2019), which your training participants should be aware of and counterbalance. To improve VoTs' claims to compensation, lawyers can involve specialised NGOs to assist beneficiaries to get reports from physicians, psychologists and other experts as preparation for legal proceedings as well as to provide expert assessments of the material, physical and psychological toll of THB on victims to present to the courts as evidence (see subchapter 4.1.1). VoTs can also be provided with easy-to-understand information about procedures and rights related to compensation to ease their anxiety about the claim procedure.

4.3.1 How to facilitate VoT's right to compensation

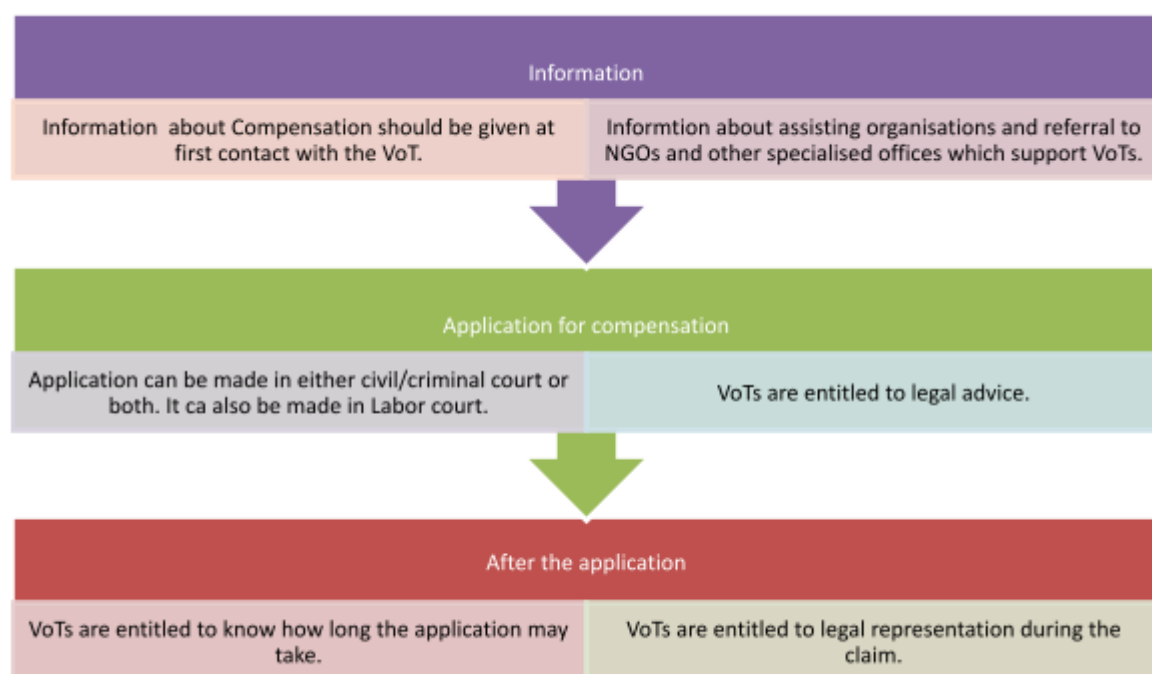
The cooperation amongst all the actors that are or should be involved - law enforcement, prosecution, social services and counselling centres – are important for the successful compensation of the victim. Cooperation increases mutual understanding and can provide lawyers with much information to substantiate the claim. VoTs should be made aware of their rights, especially the right to legal representation (see subchapters 4.1-4.2). In this sense, it is very important for your training participants supporting VoT to bear in mind the need to construct and collect information for compensation from the very first moments of protection. Some facts can only be fully documented at certain moments and risk not being able to be proven later. It may also be necessary to encourage other actors involved to document the damage and the circumstances that can be used to prove it.

Here are some of the things that can be useful to do from the first assistance of the victim:

- Ensure that the damages suffered are included in the official police report, and are part of the criminal file;
- Ensure that in their statements to the authorities the victim writes down and describes not only what happened but also the damage suffered is reported;

- In case of physical injury: check whether any photos have been taken and secure a statement from a specialised medical professional;
- In regards to psychological damages: ensure a psychologist makes a written statement explaining the psychological condition of your beneficiary;
- Collect evidence: reports from doctors, the hospital, psychologists, financial experts, case law, diaries, etc.

Graph - Procedure on how to claim for compensation



source: own graph

4.4 Protection of trafficking victims as perpetrators – secondary exploitation

In the previous chapters, we have emphasised the importance of identifying a VoT, both for successfully combating THB and especially for the victims themselves.

Remind your participants in the training that the purpose of VoT protection is to restore the dignity and the safety of VoT. An important building block on this journey, which we look at in more detail in this subchapter, is the principle that VoT should not be held accountable for acts they were forced to commit by their traffickers. Fear of prosecution can be a major reason why victims are reluctant to disclose their exploitation (OSCE 2021, 46). The rationale of a principle of non-punishment is “not to confer blanket immunity upon victims” (UNODC 2020b, 48), but to avoid punishing victims for what is the responsibility of their traffickers. A punishment of VoT for crimes directly related to their trafficking experience would constitute “a serious denial of reality and of justice” (OSCE 2013, 10). However, the VoT's responsibility for their own criminal behaviour – whether directly related to trafficking (e.g. providing false information to obtain travel documents, work and residence permits, illegally crossing state borders and overstaying visas) or as a result of being forced to commit crimes (e.g. shoplifting, smuggling drugs or weapons or similar offences) – is limited by the fact that their freedom of action is restricted by the traffickers.

This is one reason why the principle of immunity from prosecution is stipulated in international norms such as Article 26 CETS and Article 8 of Directive 2011/36/EU. Other reasons are to avoid subjecting them to further trauma, encouraging VoT to report crimes and participate as witnesses in trials without fear of being prosecuted themselves and to prevent particularly children and young people from entering into a long-term criminal career (ICAT 2020, 1) (UNODC 2020, 19).

The table below provides a - non-exhaustive - list of examples of how the principle of non-punishment has been implemented in international/regional statutes and guidance documents.

Table 1 – Principle of non-refoulement & relevant instruments

The content of this publication represents the views of the author only. The European Commission does not accept any responsibility for use that may be made of the information it contains.

Instruments/Guidelines	Conduct	Threshold for Applying the Principle	Outcome
Council of Europe Convention on Action against Trafficking in Human Beings	Unlawful activities	The victim was compelled	Not impose penalties on victim
Directive 2011/36/EU of the European Parliament and of the Council	Criminal activities	The victim was compelled	Not prosecute or impose penalties on victim
Conference of the Parties Working Group on Trafficking in Persons	Unlawful acts	Direct consequence of their situation as trafficked person or where they were compelled to commit such acts	Not punish or prosecute victim
United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking	Illegal activities entry/residence	Direct consequence of their situation as a trafficked person	Victim should not be prosecuted, detained or punished
OSCE Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking	Acts	Caused or directly linked to their having been trafficked	Not punish or prosecute victim

Source: (ICAT 2020, 3)¹²

GRETA recommends that corresponding regulations be included in national criminal laws, as otherwise there is a risk that VoT will be treated differently depending on the public prosecutor's office dealing with the case (GRETA 2020, 25).

¹² Please note that only regional and international instruments were listed from the table here, as the geographical scope of this manual focuses on the situation of VoT in the EU.

4.4.1 *Secondary Exploitation*

Among the detected VoTs worldwide in 2018, 6% were exploited directly for the purpose of committing crimes (UNODC 2020b, 34). Although the principle of non-punishment applies to this group, your training should focus on people who commit crimes as part of a main form of exploitation (e.g. for sexual purposes or forced labour). The offences range from offences under immigration law, theft or fraud to more serious offences such as transporting or dealing drugs or even weapons. Finally, it also happens that former VoT themselves are now involved in exploiting other people (OSCE 2013, 23) as it happens in the Nigerian human trafficking system, for example (Bundesamt für Migration und Flüchtlinge 2020, 14).

All that is covered by the term of “secondary exploitation” as you should use it in the training.

4.4.2 *The necessity of implementing the non-punishment principle - a case law analysis*

UNODC examined criminal jurisdiction concerning trafficking in persons for sexual exploitation in cases “in which there were reasonable indications that the defendant was, previously or concurrently, a VoT, even if this was not explicitly identified in the decision.” (UNODC 2020c, 8). The study analysed 53 cases from 15 countries worldwide (covering the period from 2006 to 2020) and the case law of the European Court of Human Rights (ECtHR) and concluded that “victim-centred approaches are not sufficiently implemented during investigation, prosecution and final adjudication” (UNODC 2020c, 108), resulting in the principle of non-punishment often not being applied to victim defendants; “a state of affairs reflective of the broader lack of recognition of the circumstances experienced by the majority of female victim-defendants in the cases examined for this report.” (UNODC 2020c, 109).

The *Case of V.C.L. and A.N. v. The United Kingdom*¹³, on which the decision of the ECtHR of 16 February 2021 was based is also exemplary. The applicants – Vietnamese minors at the relevant time – were discovered in the United Kingdom by police to be working in cannabis factories. They were finally charged despite several national reports having found that Vietnamese children were particularly vulnerable to being trafficked into and within the United Kingdom and being exploited in such factories. The applicants were not referred immediately for assessment as potential VoT, but the Competent Authority later determined that both had been trafficked. The Crown Prosecution Service (CPS) disagreed with that assessment and pursued their prosecution. Both applicants pleaded guilty to the charges and were convicted. They later appealed unsuccessfully (ECtHR 2021).

This case was the first occasion on which the Court was asked to consider whether and when a case involving the prosecution of a VoT raises an issue under Article 4 of the European Convention on Human Rights (ECHR), which provides for a prohibition of slavery and forced labour. The court ruled that both Art. 4 ECHR and Art. 6 ECHR (right to a fair trial) were violated because the domestic authorities failed “to take operational measures in line with international standards to protect minors prosecuted despite credible suspicion they were trafficking victims” and also failed “to investigate applicants’ status as potential trafficking victims affecting overall fairness of criminal proceedings”. The applicants were granted EUR 25,000 each in respect of non-pecuniary damage.

4.4.3 Implications for Lawyers assisting VoT

The non-punishment principle for victims of trafficking is a cornerstone of a victim-centred approach to trafficking in persons (UNODC 2020d, 44). It should be implemented at national level in legal, operational and policy measures and guidelines. As the identification of a VoT is essential for granting this right, lawyers should also be able to proactively identify VoT and take measures to protect and assist them at the earliest possible stage.

¹³ Case of V.C.L. and A.N. v. The United Kingdom, Applications nos. 77587/12 and 74603/12, Judgment of 16.02.2021.

This requires attention to and knowledge of the structural aspects of crime and coercive control to which VoTs are subjected. The aim of your training is to work towards this.

MODULE V: IMMIGRATION REMEDIES

In this module, you, as a lawyer or legal practitioner, will be asked to reflect on the interconnection of the regulations governing the general entry of foreigners to the national territory with the legal institutions on human trafficking and international protection. This reflection will allow you to acquire the necessary flexibility to mitigate the impact of the procedures that contribute to the concrete emergence of trafficking and the activation of existing protection instruments.

In particular, after an introduction on the interference of the current regulation of entry into the Member States with the effective recognition of VoT, the different residence permits for which the conditions may be met are examined in depth, as well as the procedure for the recognition of international protection for VoT and access to appropriate measures to prevent the danger of further crimes and secondary victimisation resulting from the legal procedures.

5.1 The border as a risk factor for THB

Migration and asylum policies that establish measures such as increased border controls, denial of entry, refoulement, deportation or detention restrict movement and may prevent promptly recognition of vulnerable groups of persons with special needs of protection: to and increase exposure to the risk of trafficking.

In order to ensure the efficient implementation of these procedures, border officials and all public agencies charged of implementation, divert attention from the subjective and objective indicators of exposure to serious forms of violation of fundamental rights that are recorded against persons involved in irregular migration routes against their will, and as a result, victims of trafficking risk not only not being recognized but also being exposed to secondary victimization resulting from the procedures in place.

This increased risk most severely affects women and girls fleeing crises and conflict zones by increasing their vulnerability to all forms of exploitation - particularly in transit - due to an increased need to use the services of human traffickers or other types of clandestine or criminal networks to move, both domestically and internationally to circumvent border controls.

Identifying, addressing and eliminating the root causes of THB, as recalled, among the main obligations of States due to the numerous international law standards referred to. However, as underlined by the CEDAW Committee itself in its recent General Recommendation No. 38 on trafficking in women and girls in the context of global migration, these obligations cannot be adequately fulfilled unless the protection of victims is approached with an eye to the global migration context.

Your training participants should understand how border closure and control systems and overly inflexible immigration policies risk preventing THB and acknowledge the importance of taking a gender-sensitive and intersectional approach.

As emphasised by the CEDAW Committee itself: *"Criminal law alone cannot address or solve the crime of trafficking, due to the uneven harmonisation of laws, including the definition of trafficking, both between and within countries, the complexity of financial transactions and the impotence of judicial systems, which are often corrupt, underfunded and lacking in resources, to combat powerful trafficking networks. An effective anti-trafficking response that ensures that women and girls are able to exercise their fundamental rights should therefore involve all substantive provisions of the Convention and be read within the framework of international human rights treaties."* (CEDAW 2020).

Furthermore, the Cedaw Committee recommends an approach that takes into account the migration phenomenon from a gender perspective to consider the substantial impact of its legal regulation on the condition of VoT. At the same time, it should be granted a systemic reading of immigration rules in the light of international obligations to make protection effective through the principle of non-refoulement. As highlighted in **Recommendation no. 38 of the CEDAW** (CEDAW 2020), migration policies that force people to travel by irregular routes or in situations of irregular migration constitute in themselves a risk of exposure to trafficking at all stages of the migration cycle: in transit, at the borders and in the countries of destination.

The Recommendation clearly states that:

"Migration is a constitutive element of modern society and can be empowering for women if they are able to migrate and work in conditions in which their dignity is respected. Although it presents new social and economic opportunities for many women, migration

may also place their human rights and security at risk, in particular if they are compelled to travel through irregular channels and/or it results in an irregular migration situation. Women and girls face an increased risk of being trafficked at all stages of the migration cycle – in transit, in reception and accommodation facilities, at borders and in destination countries. Upon return, they may experience reprisals and revictimization.”

This perspective should be considered by the States in the implementation of their intervention actions, but it should also characterise the work of legal assistance so that the access to justice of the VoT is effective.

For this reason, in assisting the VoT during the process of regularising their legal position on the territory of the State and in protecting them from removal and refoulement, it is necessary for you as lawyers that not only the experience of trafficking but also the links between trafficking, their personal history and gender-based factors are always brought to light.

5.2 The right to a residence permit and the protection of VoT

The Directive 2004/81/EC and Directive 2011/36/EU as well as the Warsaw Convention lay down some key provisions on temporary residence permits for victims of trafficking by providing for renewable residence permits not only in exchange for cooperation with the criminal justice system, but also in consideration of the personal situation of victims of trafficking.

In particular, articles 5-7 Directive 2004/81/EC provide that as soon as the competent authorities become aware of the existence of a trafficked person, states should grant the person a period of recovery and reflection. This period is intended to provide victims of trafficking with the time and space to recover and escape the influence of their traffickers and to decide their options, including whether to cooperate with the competent authorities.

It is expressly provided that during this period, VoT may not be removed from the territory and are given unconditional access to services and support (articles 6.2 and 7).

At the end of the reflection period, the third-country national VoT have the right to a residence permit based on the following criteria (article 8):

- The stay is necessary for the purpose of the investigation or prosecution;
- The victim has demonstrated a clear willingness to cooperate;
- The victim has severed all ties with the person or persons responsible for the trafficking;
- The victim does not pose a threat to public order or public safety.

The permit should be valid for at least six months and may be renewed under the same conditions.

It is also expressly provided that the residence permit may be revoked if the victim re-establishes a link with the person or persons responsible for trafficking, if his/her cooperation is fraudulent or the complaint is fraudulent or unfounded, if the victim may constitute a threat to public safety.

Under this legal framework, VoT would appear to receive support only to the extent required by the demands of prosecution.

It is the Anti-trafficking Convention of the Council of Europe that allows for a step forward by breaking away from the concept of conditionality with the usefulness and participation of the victim in the criminal process.

Article 7 of this Convention expressly provides for the issuance to VoT of a temporary renewable residence permit not only in exchange for cooperation, but also for their needs, when their stay is deemed necessary due to the personal situation of the victim. The Explanatory Report lists examples such as "the victim's safety, health status, family situation."

Thus, for the general principles of effective protection to be effectively adhered to, assistance should be provided to VoT by implementing additional general principles that may have an impact in their interpretation and scope.

You should advise your training participants to make reference to the general principle of "safe reporting of crime" as a prerequisite for effective access to justice for foreign women present on the territory of the Member State.

As a multidimensional right, the safe reporting of crime requires the implementation of the procedural profiles ruled by Directives 2011/36/EU and 2012/29/EU, according to which each person is entitled to receive information on protection measures and remedies available in the system; on specialised support services; to receive legal assistance to participate fully in administrative and judicial proceedings; to contribute to the formation of evidence, including through personal interviews, free interpretation and translation services, while receiving protection from further crime and persecution and from the risk of "secondary and repeat victimisation without discrimination of any kind, including those forms related to residence status, as stated by article 1 Directive 2012/29/EU.

A combined reading of Article 1 Directive 29/2012/EU with Articles 11 and 12 Directive 2011/36/EU, allows to consider the right to seek help from the authorities without fear to be removed.

In addition to the general principle of safe reporting, the legislation on residence permits should also be interpreted through the approach of victim-centeredness.

5.3 The Protection of Victims of Trafficking in need of International Protection

The entitlement to the above-mentioned residence permits should not exclude lawyers from simultaneously initiating a procedure for the recognition of international protection. The establishment of the right to international protection in fact should be considered to provide the VoT with a more lasting guarantee against the risk of refoulement.

In fact, all the international instruments specify that there may be a close correlation between the **need for protection of trafficking victims** and the **need to respect the principle of *non-refoulement*** and especially the obligations arising from the **1951 Geneva Convention on the recognition of refugee status**.

5.3.1 *Forms of International Protection*

Under the 1951 Geneva Convention on the status of refugees, a refugee is defined as a person with a well-founded fear of being persecuted because of his or her race, religion, nationality, membership of a particular social group or political opinion, whom the authorities in his or her State are unable or unwilling to protect. These individuals may request asylum in a safe country as long as the authorities in their own State tolerate said threats, or are unwilling or unable to provide effective protection.

Subsidiary protection is a form of international protection granted to **people who cannot return to their country of origin because they would face a real risk of suffering serious harm.**

The types of serious harm that could give rise to subsidiary protection are as follows:

- Death penalty or the risk of physical execution;
- Torture or inhuman or degrading treatment of an applicant in the country of origin;
- Serious threats to the person's life or integrity by reason of indiscriminate violence in situations of conflict.

State Members may provide residual forms of protection to prevent serious human rights violations against the asylum seekers.

Some VoT may fall within the definitions of international protection and therefore may qualify for the related permit of stay.

By virtue of the Geneva Convention, the circumstance of having been, being or risking becoming a VoT can integrate the requirements for international protection, whether refugee status or subsidiary protection.

The Palermo Protocol in Article 14 states that “Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and where

applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein (...).

5.3.2 Eligible situations of VoT for international protection

Claims to international protection can be made by a person who has already been trafficked or is at risk of being trafficked; that the victim has been exposed to exploitation outside their country of origin or that exploitation is the reason for their escape; and that at the time of applying for international protection they may have managed to escape trafficking or may still be a VoT. In all these situations, there may always be a risk of persecution, the assessment of which implies a prognostic judgement on the consequences that the victim will face in case of return. Such an investigation requires an adequate knowledge of the phenomenon of trafficking (which also differs according to migration routes) and the availability of accurate and up-to-date information on existing conditions in the countries of origin. In this sense, it is thus important that the lawyer/your training participants - in accompanying and supporting the applicant for international protection - is also deeply aware of the correlation between trafficking and migration (see subchapter above). It is essential to consider that the Geneva Convention contains an important humanitarian clause in Article 1-C, n. 5 and n. 6 for imperative reasons arising from previous persecution. This clause allows for protection even when the experience of persecution has ended, and the risk is no longer present. The clause provides that when the experience of persecution has been particularly atrocious and the person is still subject to the effects of the serious violations suffered to the extent that a return would in any case be intolerable, it is still necessary to proceed to the recognition of the status.

The UNHCR guidelines point out that it is necessary to consider that the VoT may, in certain circumstances, constitute a member of a "social group" whose membership is linked to protection under the Geneva Convention. The NHCR defines a "particular social groups" as follows:..." [it] is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one's human rights" (UNHCR 2001, §11).

This can be the case of former VoT for sexual exploitation, sharing common background or past experience of having been trafficked: they are capable of being members of a particular social group within the meaning of Article 1A of the Refugee Convention. However, the group in question should have a distinct identity in the society in question, what means that an attribute should not only be shared, it should also unite the group perceived as such by a society.

Article 11 (6) of Directive 2011/36/EU regulates assistance and support to VoT, by for example providing basic information about rights.

To implement this principle, it is important that the duty to provide information on the right to access the procedure for recognition of international protection is implemented to the fullest extent possible, including by legal counsellors and lawyers.

and that any obstacles that might make such access less effective are removed. Currently in Europe the rules governing international protection in addition to the Geneva Convention are:

- **Directive 2013/33/EU¹⁴** - Standards for the reception of applicants for international protection (Recast Reception Directive 2003/9/EC),
- **Directive 2011/95/EU¹⁵** - Minimum standards on the qualification and status of refugees/subsidiaries (Recast of the Qualification Directive 2004/83/EC)
- **Directive 2013/32/EU¹⁶** on common procedures for granting and withdrawing international protection status (Recast Procedures Directive 2005/85/EC).

All serious violations of human rights to which the VoT would be subjected in case of return is relevant for the purposes of integrating the requirements of persecution, but it should be

¹⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L003>.

¹⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0095>.

¹⁶ <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32013L0032>.

recalled that also those non-serious violations that acquire the character of seriousness as a whole can constitute persecution.

Possible and specific forms of persecution of VoT are represented by:

- By the risk of re-trafficking;
- From reprisals on the part of the exploiters if the victim has escaped trafficking or has attempted to do so or has cooperated in the punishment of crimes related to his/her exploitation;
- The marginalisation, stigma, and discrimination to which the victim would be exposed because of his or her trafficking experience by the family or community in the country of origin.

The risk of persecution requires a further assessment in case of already suffered exploitation, which is a circumstance making the risk of further persecution more concrete. In fact, when the person has been subjected to trauma, it shall be evaluated the effective availability in the country of origin of adequate conditions and assistance for the recovery of an effective state of wellness.

In your training, you should pay particular attention to the concept of agent of persecution or serious harm in the examination of applications for international protection submitted by (potential) VoT should t. In fact, in such a situation, almost always the agent of persecution is a non-state agent such as traffickers or criminal organisations or in some cases even the family or community of origin. For this reason, in order for lawyers/your training participants to properly analyse the request for protection, it becomes very important whether the authorities of the country of origin are willing or able to provide protection. In many countries, such as Nigeria, where trafficking is a widespread phenomenon, state authorities have structured legislative and administrative mechanisms to prevent and combat THB through which they provide assistance to victims (US dep. of State 2019). However, the existence of such mechanisms cannot automatically lead to exclusion from protection because the personal situation of the applicant and the effectiveness and efficiency of the protection provided should always be evaluated.

For example, the following should be considered by your training participants:

- The numerical incidence of assistance and reception systems in order to verify their effectiveness;
- The existence of a durable protection system that can effectively affect the reasons for exposure to trafficking (including gender-based) and physical, psychological and social recovery;
- The coexistence of the risk of other forms of persecution due to personal circumstances and individual history;
- The circumstance that the risk of re-trafficking can be determined by the simultaneous existence of many factors.

5.3.3 ECHR-based criteria to assess VoT right to international protection

EU law on international protection provide **for other complementary forms of protection** by offering a further way to ensure a long-term residence status for victims of trafficking: protection from refoulement when the victim, in the event of return and may be exposed to the violation of Article 3 of the ECHR (prohibition of torture and inhuman or inhuman or degrading treatment or punishment) or serious harm¹⁷.

A look at the case law of the ECtHR establishing the legal criteria that can guide the application of Article 3 in asylum cases can be extremely helpful for lawyers/your training participants in assisting VoT.

In particular, the Court has repeatedly recalled the general nature of Article 3 obligations for which no derogation from Article 3 is allowed. This means that Article 3 applies even in cases where the person has allegedly committed a criminal offence¹⁸. The latter is

¹⁷ The ECtHR has interpreted Art 3 as including an obligation not to expel a person where substantial grounds have been shown for believing that the person concerned if removed would face a real risk of harm –such that it would reach the severity of torture or inhuman or degrading treatment. See ECtHR, Saadi v. Italy, Application No. 37201/06, 28 February 2008, para 125

¹⁸ ECtHR, Chahal v. United Kingdom, Application No. 22414/93, 15 November 1996, para 79-80; ECtHR, Labita v. Italy Application No. 26772/95, 2000 para 119; ECtHR, Selmouni v. France, Application No. 25803/94, 28 July 1999, para 95, 1999; ECtHR, K. and Others v. Sweden, para 77

particularly important for victims who may have been forced to commit crimes as a result of their trafficking experience.

The principle of non-refoulement also applies in cases of indirect removal to an intermediate country, including a Council of Europe Member State (e.g. returns according to the Dublin regulation). In such cases, lawyers shall assess the risks of subsequent refoulement and the conditions of the proposed place of return¹⁹.

In addition, the focus on the risk of inhuman and degrading treatment may also give prominence to the foreseeable consequences of the applicant's removal, considering the general situation in the country and his or her personal circumstances. In particular, the Court considers that inhuman and degrading treatment is to be regarded as constituting inhuman and degrading treatment where the person is dependent on the intervention of the State because of his condition and yet, by reason of the State's inaction, finds him-/herself in a situation of serious deprivation which is incompatible with human dignity.²⁰ The Court's case law makes it possible to include in the inhuman and degrading treatment in the protection claims of VoT in order not to be returned.

The Court has recognised the existence of a violation of Article 3 of the ECtHR in cases where:

- 1) A situation of extreme material poverty is established which does not allow the person to satisfy his most basic needs, such as, among others, food, personal hygiene and a place and which undermines his physical or mental health or places him in a state of degradation incompatible with human dignity. In many cases VoT may not have access to the support and essential support and protection in the receiving country and face extreme material poverty resulting in the violation of their dignity and rights.
- 2) The person is in a serious state of health that may worsen in the event of deportation, causing suffering contrary to human dignity. In this sense, the in-depth

¹⁹ ECtHR, K. and Others v. Sweden, para 78.

²⁰ ECtHR, K. and Others v. Sweden. See also ECtHR – Tarakhel v. Switzerland, Application No 29217/12, Judgment of 4 November 2014, ECtHR Mss c Belgium Application No. 30696/09

identification of the trafficked person's state of health, both mental and physical, and the resulting medical needs may be a fundamental element for international forms of protection (Stoyanova, 2011; UNHCR, 2003). As highlighted, victims may suffer from complex traumas (e.g. Post-Traumatic Stress Disorder) as a result of prolonged interpersonal violence. Such complex traumas require targeted and effective approaches to treatment, recovery and long-term support that are not always adequately provided in the victims' home context.

5.3.4 *Procedural safeguards*

Article 22 Directive 2013/33/EU establishes that VoT within the procedure for the recognition of international protection should be considered "**vulnerable**" in the same way as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, persons suffering from serious diseases or mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation and for this reason provides for some more favourable provisions in their reception and examination of their procedure.

In general, the simultaneous existence of a double obligation of protection on the part of the state authorities, arising on the one hand from the legislation on international protection and on the other from the peculiar situation of VoT, makes the procedure for the recognition of international protection a moment of particular importance and relevance.

For this reason, it is necessary to grant to the applicant for international protection the widest possible guarantees for a proper examination of the application, and it is also essential that, within the recognition procedure, the VoT can be promptly identified as such and enjoy the specific support and protection actions aimed at the exit from subjection.

From the point of view of the examination of the application, it is necessary for your training participants/lawyers to rigorously evaluate the cases in which the national legislation imposes summary and accelerated procedures for the examination of applications for protection, especially in cases of detention or at the border.

In these cases, in fact, the risk of inadequate examination of the application of victims of trafficking is very high, as well as the risk that the asylum procedure exposes the person to secondary victimisation or violations of the principle of non-refoulement.

For this reason, the possibility of access to complete and correct information, effective remedies in the appeal process guaranteed also through effective access to specialised legal protection are particularly important, as stressed by the European Court, 03/19/2019, C-163/17, Aboubacarr Jawo vs. Federal Republic of Germany.

Moreover, since the identification of trafficking victims is sometimes a very long and complex process that can be hindered by the resistance of the victims themselves due to fear, shame, lack of trust in the authorities, it can happen that they are not able to reveal all or part of the facts of what they had experienced.

This implies two different consequences that should be taken into account by your participants/lawyers in order to correctly apply the positive obligations of protection.

Firstly, the condition that the victim self-identifies as such should not be considered necessary for the recognition of international protection and the protection of the general principle of non-refoulement. It is necessary to stimulate a pre-identification by the involved authority and request a referral for promptly recognition as VoT that disregards, where necessary, the self-narrative of the person. To do so, it is necessary in some cases that the decision-makers make their own assessment, giving precedence to the objective elements of the risk of persecution, regardless of the subjective expression of that risk.

Secondly, it is important to ensure full access to the application for international protection even in case the application is submitted again after the final examination of a previous application. In fact, it happens very often that due to the difficulties presented, the person applies for protection and this application is rejected because of the circumstance that a correct identification was not made or that the applicant did not present his or her exploitation experience. However, in order not to violate the positive obligations of protection, it is necessary that in the case of new applications in which the applicants express their fear of persecution that they did not previously share and therefore was not evaluated, there is an adequate and thorough examination of the personal situation and access to the procedure is not limited in any way. To this end, it is necessary that the

application which is a subsequent application within the meaning of Article 2 of Directive 2013/32/EU is examined thoroughly on its merits.

Finally, when providing legal assistance to VoT, attention in your trainings should be paid to the functioning of the system for determining the state responsible for assessing the procedure under the Dublin Regulation. Regulation (EU) No 604/2013, so called Dublin III, does not include specific provisions on VoT, except for minors²¹ and its rationale conflicts with the protection obligations under anti-trafficking and human rights legal regimes (UNHCR 2016, 16) (see Part. 2 Module 1).

EXAMPLE(S) OF TRAINING ACTIVITY(IES)

Title	Migration vulnerabilities and procedural aspects to guarantee protection of victims' rights
Type of activity	Case study
Estimated duration of the activity	60-90 min (depending on the participants number and topics of discussion proposed)
Type of platform suggested	Platform that allows the creation of breakout rooms
Tools needed	A text file with the case description and the list of questions proposed for the discussion
Goals/expected outcomes	Participants will be able to test the knowledge acquired during the training by experimenting with a concrete case. They will also benefit from the opportunity to discuss and compare with other participants and the trainers/legal experts.
Description of the activity	Presentation of the activity: 10 min Participants will be divided into working groups (suggested number 4-5 participants per group). Each group will be presented with a case and some questions/thoughts to guide the discussion.

²¹ Art 6.3 Dublin III Regulation

	<p>The working groups will have 30-40 minutes to discuss the case. They will also have to choose a spokesperson who will report the group's reflections in the final plenary session.</p> <p><u>Work in small groups</u> – 30-40 minutes (depending on the number of questions proposed)</p> <p>Case study: <i>M. is a woman who comes into contact with a lawyer for the first time in a detention centre. Before entering the centre, she had been detained following a criminal conviction for transporting drugs as a "courier". During the interview it emerges that she had already made an application for international protection as soon as she entered the territory a few years earlier and that, however, she did not know the outcome of the application due to the fact that in her trafficking condition she had been moved to the territory and could not continue the legal process. M. was born in Benin City and grew up with her grandmother where at the age of 7 she was orphaned of her parents. She tells a difficult childhood. She worked in the agriculture sector and her sister, three years older, worked as a maid in a family. She also mentioned that throughout her childhood she suffered from a deep illness that debilitated her greatly. When she was about 18 years old, her grandmother, who had been contacted by some women in the neighbourhood, convinced her to accept a proposal to leave for Europe with the help of Madame B. Her grandmother exercised a strong pressure, telling her that many women who have made the trip, found a good job and finally successfully also settled their families. M. was very frightened, but succumbed to grandmother's pressure and submitted to JuJu. Through the intervention of some connection men, she reached Libya after passing through Niger, crossing the desert and being forced into ghettos in terrible sanitary conditions. When she arrived in Sabrahata, she was put in a connection house where she was forced to prostitute herself for several months and very often severely beaten. After twice trying to embark for Italy, she managed to cross the Mediterranean Sea and arrived to Sicily where she applied for international protection. She was transferred to a reception centre but was immediately intercepted by exploiters. She discovered that she was in debt of about €30,000 and had to contribute €300 a month to her living expenses. She was also told that she would have to prostitute herself and she was obliged to this on the street for eight months. Her daily income was often reduced because of a police raid or a dishonest client and she was punished by brutal retaliation. Exhausted by the torture and exploitation, she decides to leave. She moved to the house of a friend of hers and started begging, until she was offered to cooperate in a "business" by a Nigerian man, involved in drug trafficking. She was reluctant, but looking for surviving expedients and way to ensure her grandmother enough funds to repay the debt to avoid retaliation. After the second transport, M. was arrested by the police. She was tried and sentenced to 2 years and a few months.</i></p>
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	<p>Possible questions to be proposed:</p> <ul style="list-style-type: none"> • Please, list the indicators of trafficking and risk of re-trafficking • Identify the push factors that made M. at risk of recruitment and forced transfer from her origin country. • Appraise the impact of family organization, gender roles, access to economic resources on personal choices. • Identify the gaps in legal assistance and advice that can be inferred from the case story • Assess the extent to which to investigate the case by collecting the story directly from the woman. • Evaluate the possible tools useful to minimize the traumatic impact of the procedures. • Evaluate the impact of accusations of crime on effective protection as a victim of crime. • Assess the extent to which the condition of a trafficking victim can be brought to the attention of the judicial authority in charge of the criminal proceedings. • Assess the subjective and objective conditions that may can determine the entitlement to a residence permit. <p>This list of questions includes topics covered in different modules. It is therefore possible to choose and adapt the questions on the basis of the topics covered during the whole training, the activities already proposed and the time available. You may also consider proposing the case and the questions a few days before the training, in order to allow participants to already start studying the story, get an idea of the topics that will be proposed and the kind of work they will be asked to do.</p>
	<p><u>Plenary session</u> – 30-40 min (depending on the number of groups created)</p> <p>Ask to the spokesperson from the first group to present the work concisely (5 minutes). In order to optimise time, after the first presentation you can ask to the following spokespeople to add only new or different considerations to those reported by their predecessors.</p> <p>On the base of reported content, summarise the main relevant points and facilitate a discussion focusing on good practices, legal strategies that may or may not be effective, possible obstacles that may be encountered during legal assistance...</p> <p>Add/ask for additional information and examples from your expertise on other cases and from participants' ones.</p>
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MODULE VI: ADDITIONAL LEGAL DEFENCE NEEDS IN ASSISTING VICTIMS OF TRAFFICKING

6.1 The Nexus Between Domestic Violence, Gender Based Violence and Trafficking

The nexus between Domestic Violence, GBV and THB is twofold: firstly, Domestic Violence and other forms of GBV are push factors, that are circumstances which make people want/need to escape (Sorensen, et al. 2012). Secondly, THB and GBV have common dynamics of perpetration.

Domestic violence and other forms of GBV are widespread push factors of human trafficking and means to control and exercise coercion against women, children and even young men into both sexual exploitation and forced labour across all forms of trafficking.

Many of the factors that increase the risk of GBV, gender discrimination, poverty, natural disasters, conflict, poor education, and health infrastructures, are root causes of human trafficking (directive 2013/33/EU, Articles 21-22):

- Feminisation of poverty- Majority of young, trafficked women come from poor backgrounds;
- Domestic violence - in many cases, trafficked women escape from domestic violence.
- Forced marriages - Women and girls look for a way of fleeing violent relationship deriving from forced marriages and often they refer to people who knows a takes advantage of their condition of need and fear.
- Other forms of GBV: Bride burnings, fear of Female Genital Mutilation (FGM), stigmatisation after a sexual assault and rape and dowry murders have pushed many young girls to escape from their homes, but they are recruited by traffickers and end up in exploitative situations;
- Armed conflict –many girls are reluctant to go home for fear of rejection and stigmatization due to the history of sexual violence at the hands of the rebels enhancing their vulnerabilities to further exploitation.

- displacement - Displaced female populations, who suffer disproportionately from lack of resources and community support, are the most at risk of both GBV and trafficking (Wirtz et al. 2013, 13). These women and girls are susceptible to trafficking when they are in camps because of physical insecurity, food shortages, lack of documentation, and few if any economic opportunities.

On the other side, trafficking and GBV have common dynamics of perpetration, so that the descriptive model of domestic violence (the spiral of violence) is often used to analyse the modes of coercion and subjugation used against victims of trafficking: from psychological abuse, economic deprivation, intimidation and threats, isolation, denial, blaming and minimisation, to physical and sexual violence (UNICEF USA 2017).

The comprehensive efforts for your training participants/lawyers to grant full access to justice to VoT should include efforts to prevent and respond to GBV both as push factor and as indicator of exploitation within a trafficking context. As such, GBV requires legal practitioners to consider the intertwining to identify the most appropriate legal instruments for the concrete case. Protection orders and specific paths of protection provided for GBV cases, including special permit of stay as victim of DV, may constitute a first way out from the situation of exploitation deriving from trafficking. This, furthermore, may emerge only after the first period of recovery, implying the need to integrate the criminal complaint filed against the abuser, in order to represent the larger context of violence and exploitation. At the same time, the opportunity for your participants may arise to ask for a more comprehensive residence status on the territory under the asylum system.

Furthermore, the nexus between GBV and trafficking allows lawyers to gain a better understanding of the subjective components of shame, fear, normalisation of violence that derive from the situation of victimisation. On the base of such awareness, lawyers may integrate their legal strategy of support and protection by means of appropriate tools and resources to prevent secondary victimisation within the proceedings (see subchapter 4.2).

6.2 Representing Trafficking Victims in Custody Cases

A gender-sensitive and intersectional approach to analysing the phenomenon of trafficking and developing appropriate legal assistance cannot fail to take into consideration the fact

that, in many cases, exploited women are or become mothers during exploitation. Many women, in fact, often become pregnant as a result of the sexual violence they have suffered and very often their motherhood depends on the exploitative organisation itself, which controls every decision in this regard: the use of contraception, access to abortions and the possibility of carrying the pregnancy to term. In addition, the children of trafficked women are often used as a means of control and a tool to increase the profitability of exploitation.

Very often trafficked mothers therefore find themselves caring for their children in difficult and hostile contexts and situations. They are generally single mothers where, as we have seen, even when there is a father, in the context of exploitation, there is domestic violence and a connection to the condition of being a VoT (Pascoal 2020).

Women are therefore very often alone in caring for their children, they continue being exploited or suffering from trauma deriving from past exploitation.

Although the children of trafficked persons are entitled to the same level of safety, reparation and restoration of their rights as their mothers and that if the victims constitute a family, protection should be provided to the whole family, it is common that these principles are not adequately taken into account in child protection interventions. In fact, during the stay in the territory of the State, during the contacts with the institutions it happens that the mothers who are victims of trafficking, especially in situations of strong social marginality, undergo jurisdictional interventions that intervene, limiting their parenthood because of the need to protect minors from situations of risk and abuse. In some cases, children are separated from their mothers and placed in facilities for unaccompanied children.

When providing legal assistance in such cases, it is important for lawyers/your training participants to submit to competent authorities mother's vulnerability factors resulting from being or having been trafficked, ensuring that the family is not separated and that measures are taken to promote family bonding and the restoration of unity if there is a separation.

It is essential to promote the principle that it is in the best interests of the child that the mother is supported in overcoming her vulnerability and victimhood through the adoption of appropriate measures.

The UN Convention on the Rights of the Child (CRC) establishes a set of obligations necessary to respect the fundamental rights of the child including the right to survival, full development, protection from harmful influences, abuse and exploitation; and to participate fully in family, cultural and social life that you should make your training participants aware of. Knowing about these principles is important, as they help lawyers to support VoT mothers.

The right to safe motherhood is included within the category of reproductive rights (AbouZahr 2013, 13ff).

Safe motherhood may be broken down into two broad areas: the right of every woman to enjoy motherhood as a free choice, and the right to access to the healthcare services necessary for healthy pregnancy, childbirth, and postpartum period and the social services necessary for childcare. This right should be enjoyed without discrimination and in conditions of equality, meaning that motherhood should not create disproportionate burdens on women because of their gender, race, ethnicity, immigration status, or any other condition. Therefore, for example, States should take all necessary measures to ensure that pregnancy and motherhood are not stigmatized or used as a basis to deny access to rights.

In the European system of human rights, both aspects: the rights of children to have their best interests respected in interventions within the family and the right to safe motherhood are covered by Article 8 ECHR.

The right to private and family life applies to the private sphere of individuals and relationships, the family and the family unit, which are entitled to the highest level of protection. This means that children have the right to live with their mothers, and women also have the right and duty to care for their children and should be able to exercise this right.

Consequently, as reiterated by the ECtHR itself, only very exceptional circumstances can, in principle, lead to the separation or rupture of family ties. Therefore, every effort should be made to maintain personal relationships and, where appropriate, at the appropriate time, to "reconstitute" the family (Gnahoré v. Italy, no. 40031/98, § 59, ECHR 2000-IX).

The ECtHR itself reiterated that in assessing parental capacity in THB cases, the authorities are obliged to take into account the situation of vulnerability resulting from having been or being a VoT. The Court recalled how this is in line with the obligations assumed by states in the protection of victims. It reiterated that in order to comply with the obligations deriving from the right to private and family life in the case of vulnerable persons, the authorities should indeed show special care and should provide them with enhanced protection (*B. v. Romania* (no. 2), no. 1285/03, §§ 86 and 114, 19 February 2013, *Todorova v. Italy*, no. 33932/06, § 75, 13 January 2009, *R.M.S. v. Spain*, no. 28775/12, § 86, 18 June 2013, *Akinnibosun v. Italy*, § 82, *Zhou*, §§ 58-59, and *mutatis mutandis S.M. v. Croatia* [GC], no. 60561/14, 25 June 2020 concerning the positive obligations imposed on States by Article 4 of the Convention on Action against Trafficking in Human Beings and Forced Prostitution).

Furthermore, in line with the stated principles, it is necessary that the parenting skills of mothers are assessed without discrimination and without imposition of Western models of motherhood and family.

Decisions such as a determination of risk or abandonment should be made in a way that ensures proportionality in the measures taken and respects the right to non-discrimination (*Women's Link Wordwilde* 2018).

In this sense, a gender-sensitive approach to human rights requires that authorities understand that being a VoT does not necessarily make a woman unfit to be a good mother. This means protecting the family unit and not re-victimising the woman (*ECtHR A.I. v. Italy*, Application No 70896/17).

6.3 Labour Exploitation of Migrants and its Interlinkages to Human Trafficking

THB for the purpose of labour exploitation is one of the most challenging aspects of “modern-day slavery” on many accounts. The reasons are manifold. First, there are differences in the interpretation and application of labour standards and/or the definition of labour exploitation. Second, victims often prefer not to lodge complaints or stand as

witnesses because of their dependence on their traffickers for work or housing. To these add up gaps in the coordination among different stakeholders (GRETA 2017).

The topic is important for your THB training as it will allow you to teach your training participants the specificities in identifying and defending VoTs of labour exploitation. Cases of labour exploitation often involve trafficking that however may easily be ‘omitted’ in legal proceedings. Hence exploitative practices fail to be discontinued, perpetrators do not get punished accordingly and victims do not receive due compensation or see justice done.

The concept of labour exploitation

The concept of labour exploitation in the context of THB is not defined in international legal instruments, but is taken to cover forced labour or service, slavery or practices similar to slavery, and servitude. The term “forced or compulsory labour” is understood as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself/herself voluntarily (ILO 1930). Hence, the definition covers any type of situation in which a person is forced to work without his or her consent, regardless whether the type of work or service is considered legal or illegal and whether the person is residing legally or illegally.

GRETA observes that restrictive interpretations by courts of what constitutes human trafficking for the purpose of labour exploitation may result in acquittals or the cases being considered as labour law violations or exploitation that does not involve human trafficking (ILO 1930).

Failure to distinguish exploitation as a violation of labour rights from forced labour or human trafficking hampers identification in practice (Beirnaert 2011). The important issue is the element of coercion – if the victim is prevented from leaving the situation or cannot choose or refuse to work (e.g. because of threats or debt bondage), then it is likely to be a situation of labour exploitation.²² In addition, in countries with a significant size of informal economy

²² Although in *Chowdury and Others v. Greece* (application No. 21884/2015, judgment of 30 March 2017) the European Court of Human Rights considered that a restriction on freedom of movement was not a *conditio sine*

in certain sectors such as agriculture, construction and textile industry and high number of irregular migrants working in them, detection of victims of human trafficking for the purpose of labour exploitation is particularly complicated.²³

Irrelevance of the victim's consent

The irrelevance of the victim's consent to the indented exploitation is not always explicitly stated in the national legal provisions criminalising human trafficking. Victims of labour exploitation in particular may willingly accept the exploitation because they have no alternative to make a living or because they do not perceive it as exploitation. GRETA has noted that there are benefits in stating explicitly in legislation that consent is irrelevant in determining whether the crime of human trafficking has occurred (GRETA 2017). In addition to the qualification of the offence as trafficking, consent is relevant for the identification of victims (who, due to the consent, fail to self-identify themselves as victims of trafficking), for the penalty of the traffickers, avenues for seeking redress for the victims, available support and protection etc.

The ILO Committee of Experts on the Application of Conventions and Recommendations has also clarified that if a person has been deceived about the kind of work or the working conditions, the person's consent to the deceitful offer is invalid. Further, the "menace of any penalty" is not limited to physical violence or threats but covers also the "threat of loss of rights and privileges", including the threat of being reported to the immigration authorities (ILO 2012). It is important to explain to VoTs that a person's consent is irrelevant where he or she has been deceived about the nature of work or the working conditions since VoTs' misconceptions about their consent often prevent them from seeking support and protection from official authorities which they fear for persecution.

qua non for establishing a situation as forced labour or human trafficking because a trafficking situation could exist in spite of the victim's freedom of movement.

²³ E.g. Italy, cf. GRETA first-round evaluation country report on Italy.

Similar to the principle of non-punishment of criminal activities committed by VoTs in the context of their trafficking experience (cf. section 4.4.1), it is important to explain to the VoTs the irrelevance of consent. Thus, their testimonies will help build a convincing case and most importantly underpin the proper qualification of the offence, which in turn will confer more rights on the victims.

Trends in labour trafficking

Although trafficking for the purpose of sexual exploitation is the predominant form of trafficking as far as identification of victims is concerned, trafficking for the purpose of labour exploitation has been on the rise and is the predominant form of exploitation in some countries such as Belgium, Cyprus, Portugal or the UK (GRETA 2017).

Labour trafficking takes different forms and occurs across sectors, both in the formal and informal economy. Both men and women are affected although male victims tend to be in higher numbers. While men are exploited primarily in sectors such as agriculture, construction, the hospitality industry, and fisheries, women fall victims to labour trafficking in domestic care and care work. Children trafficked for labour exploitation are most often subjected to forced begging or exploitation of criminal activities (GRETA 2017).

Labour exploitation of foreign migrants

A 2019 report²⁴ examining the connection between migration and modern slavery outlines certain sub-groups of migrants at a particular risk of labour trafficking. These are:

- Migrants fleeing violence and conflict;
- Migrants who have been dislocated from community and family support structures without access to legitimate forms of employment, legal status or social protection;

²⁴ Report of Minderoo Foundation and IOM (2019), <https://publications.iom.int/books/migrants-and-their-vulnerability-human-trafficking-modern-slavery-and-forced-labour>

- Migrants who are moving or working through irregular channels;
- Migrants working in sectors that are out of sight (e.g. work at sea or in private homes) or in sectors of the economy that are not covered by labour law.

Child and adolescent migrants are particularly vulnerable.

In addition, the report notes that restrictive migration policies could increase the vulnerability of certain groups of migrants and can have unintended consequences, such as driving risky practices underground or trapping vulnerable people in dangerous situations. The International Trade Union Confederation has noted that migrant workers are a disproportionately vulnerable group as they lack power and status in society, while migrant workers in irregular situation have weak access to remedies in cases of conflict, and lack protection against deportation. Likewise, in 2020 the UN special rapporteur on trafficking has observed that children, women and migrants are all at increased risk of exploitation and trafficking due to the COVID-19 pandemic (OHCHR 2020).

Human trafficking and migration

Many European countries see human trafficking primarily in a criminal justice framework, opting to link combating trafficking with migration regulation. Thus, instead of addressing labour shortages on national labour markets, rigid and restrictive migration policies have caused much migration to be illegal, abusive and exploitative (Beirnaert 2011).

Policies to combat human trafficking still target the illegal movement of workers at the expense of leaving the exploitation suffered ignored, thus not protecting effectively people from forced labour and trafficking. Workers are being identified as perpetrators of administrative migration regulations rather than workers whose human rights have been violated. Protection of victims of trafficking is mostly conditional and there is the structural problem with the identification of workers trafficked for labour exploitation. As a result, after coming into contact with authorities exploited migrants are likely to be deported without compensation for any abuse suffered.

This is why a labour approach is required to human trafficking. The labour approach recognises the push and pull factors for exploitative labour migration (e.g. demand for

cheap labour and services) that make people vulnerable to forced labour and their links to trafficking. It is established that rigid and restrictive migration policies that fail to acknowledge real labour shortages on national labour markets have caused much migration to be illegal, abusive and exploitative. Especially where migrant workers' residence status is tied to employment, it has generated a tool for exploitation and trafficking. ILO estimates that in industrialised countries including Europe three out of four forced labour victims were trafficked. Bearing in mind the limited possibilities of migrant workers to denounce their situation due to language barriers, limited knowledge of their rights or ability to access rights, legal professionals should be aware of the complex interlinkages between migration, labour exploitation and human trafficking.

Identification of victims of trafficking for the purpose of labour exploitation

Often situations of labour trafficking are misidentified as instances of “poor working conditions”, cases of irregular migration (where workers are identified as irregular migrants instead of victims of trafficking) or situations that seem to be exploitative, but are “still better than what the workers are used to in their home countries” (VV.AA 2011). As a result, many of the cases showing indicators of labour exploitation or coercion will be hard to classify as criminal offences. It is therefore important that you make your training participants aware of how they can identify this group/category of VoTs.

The identification of VoTs for the purpose of labour exploitation is challenging due to the fact that the persons concerned may not see themselves as victims or mistrust the authorities because they are in an irregular situation. ILO has elaborated a set of indicators to identify forced labour in practice as an end result of a trafficking process, which is referred to as the Delphi methodology (ILO 2009).

The Delphi Methodology

In the framework of a joint European Commission-ILO project, surveys with a wide range of experts from 27 EU Member States involved in the fight against human trafficking were conducted in 2008 and 2009 to reach a consensus about indicators of human trafficking for labour exploitation.

The result of the surveys consists of **four sets of operational indicators** for adult and child victims of trafficking for labour and sexual exploitation. Each set is a structured list of indicators relevant to the following dimensions of the trafficking definition:

Deceptive recruitment (or deception during recruitment, transfer and transportation): 10 indicators
Coercive recruitment (or coercion during recruitment, transfer and transportation): 10 indicators
Recruitment by abuse of vulnerability: 16 indicators

Exploitative conditions of work: 9 indicators

Coercion at destination: 15 indicators

Abuse of vulnerability at destination: 7 indicators

Within each set, each indicator is qualified as either **strong**, **medium** or **weak**. However, a single indicator can be strong for children and at the same time be medium for adults, or strong for sex exploitation and weak for labour exploitation. The definitions of all 67 indicators are presented in a separate document that can be accessed at www.ilo.org/forcedlabour.

The final set of indicators resulting from the survey can be easily translated into a practical assessment guide for organisations that have contact with potential victims. One indicator can be translated into one or more questions, the answers to which can be used to determine the presence or absence of the indicator.

For each potential victim, each of the six dimensions of the trafficking definition is assessed independently from the others. The result of the assessment is positive if the dimension is present for the potential victim, negative if not. In order to be assessed as positive, a dimension must include at least:

- Two strong indicators, or
- One strong indicator and one medium or weak indicator, or
- Three medium indicators, or

- Two medium indicators and one weak indicator.

After an assessment is done for each dimension, the final analysis involves combining the six elements to identify the victims of trafficking. In the case of children, in accordance with the Palermo Protocol, the presence of deception and coercion is not necessary to characterize a case as trafficking.

The final analysis of the dataset gave the ratio of migrants to victims of deceptive or coercive recruitment, exploitation, and coercion at destination. Based on the results, migrants were qualified as successful migrants (no deception, no exploitation, no coercion), exploited migrants (exploitation without deception or coercion), victims of deception and exploitation (without coercion) and victims of trafficking for forced labour (deception, exploitation and coercion).

A full list of the indicators ranked according to their strength (strong, medium, weak) for each of the six dimensions is available here. (https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_105023.pdf) (The summary of the Delphi indicators may be handed out to participants.)

Assistance to victims of labour trafficking has specificities linked to the fact that the majority of victims are men who may fear losing their jobs and due payments, or feel responsible for what happened to them and do not see themselves as victims (GRETA 2017). However, the fact that victims of labour trafficking are more often male should not lower the alert about possible female victims of trafficking.

Availability of information on their rights in a language they may understand, qualified interpretation and specialised legal assistance are crucial for providing protection and redress to victims of labour trafficking.²⁵

²⁵ Cf. e.g. Action Plan for developing victim-centered and trauma-informed criminal justice system at : <http://re-just.prerefugiu.eu/wp-content/uploads/2021/04/Action-plan-for-developing-victim-centred-and-trauma-informed-criminal-justice-systems.pdf>

Access to remedy

Effective protection of trafficked persons involves them being able not only to report grievances to competent authorities but, more importantly, to have access to justice and obtain redress and compensation for material and non-material damage, which is an important component of redress for victims.

Access to compensation schemes is provided for in all relevant legal instruments.²⁶ ILO Protocol 29 further stipulates that access to appropriate and effective remedies, such as compensation should be ensured for all victims of forced or compulsory labour, irrespective of their presence or legal status in the national territory.²⁷

However, compensation remains one of the weakest links in providing justice to victims of trafficking. Some of the key obstacles concern irregular migrants and relate to the lack of firewall between access to court and migration status. Effective labour rights enforcement is increasingly argued to be conditional on a firewall between rights of access to the court and migration status, otherwise abuses are not reported and exploiters escape justice (VV.AA 2011).

What this means in practical terms is that as regards irregular migrants in particular (but not only), legal professionals should keep in mind the interlinkages between migration status and (potential) labour exploitation and trafficking and try to obtain information about these aspects building their case on proper legal qualification basis.

In addition, traditional criminal and civil procedures for obtaining compensation are often not well adapted for victims of labour trafficking in particular (VV.AA 2011).

²⁶ Article 6(6) Palermo Protocol; Article 17 Anti-Trafficking Directive; Article 16 Victims' Rights Directive; Article 15 CoE Anti-Trafficking Convention.

²⁷ Article 4, P029 - Protocol of 2014 to the Forced Labour Convention, 1930.

a. Compensation through criminal procedures

Lack of appropriate identification of labour trafficking and forced labour as crimes will preclude successful action. Where national laws apply a narrow definition of means of coercion, which is required for establishing forced labour or labour trafficking, cases of severe exploitation may escape prosecution of labour trafficking if pure physical force is absent.

Victims of trafficking may further be treated as irregular migrants and deported, while exploiters may escape convictions for human trafficking and be convicted for illegal smuggling instead. It is therefore important that you make your training participants aware of how they can claim compensation for VoTs in criminal proceeding.

c. Compensation through labour courts

In some countries it is possible to seek redress through labour courts. Here application of the doctrine of illegality may be a pitfall. For example, irregular migrants used to be unable to access compensation for unpaid wages in UK employment tribunals because of their illegal migration status. It was the UK Supreme Court judgment in *Hounga (Appellant) v Allen and another (Respondent)*²⁸ that reversed this practice. The court held that upholding the defence of illegality ran counter to the greater public policy interest in combatting human trafficking and protecting its victims, including against discrimination (GRETA 2017). GRETA has further observed in some judgments that the forced labour that irregular migrants were subjected to was weighed against their irregular migration status (GRETA 2016).

²⁸ *Hounga (Appellant) v Allen and another (Respondent)* [2014] UKSC 47, para 239, at <https://www.supremecourt.uk/cases/uksc-2012-0188.html>.

Further on, the Employers Sanctions Directive²⁹ requires EU Member States to criminalise the employment of irregular migrants in cases of severe labour exploitation or labour trafficking. Employers of irregular migrants are liable to pay outstanding remuneration, which is presumed to be at least the amount of the minimum wage for a presumed period of at least three months, if not proven otherwise. .

6.4 Legal Protection of Children Victims of Trafficking

According to the 2020 UNODC Global Report on Trafficking in Persons, about one third of the overall detected victims were children, both girls (19 per cent) and boys (15 per cent) (UNODC 2020).

Criminals trafficking children target victims from extremely poor households, dysfunctional families or those who are abandoned with no parental care. In low-income countries, children make up half of the victims detected and are mainly trafficked for forced labour (46 per cent).

In higher income countries, children are trafficked mainly for sexual exploitation, forced criminality or begging.

According to the same report, as with previous economic crises, the sharp increase in unemployment rates brought about by the COVID-19 pandemic is likely to increase trafficking in persons, particularly from countries experiencing the fastest and most persistent drops in employment.

Key principles in protecting and assisting children victims of THB

²⁹ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, Article 9.

The principle that in all actions concerning children, the best interests of the child should be a primary consideration is guaranteed by Article 3.2 of the CRC. This principle should underpin all actions taken in response to child trafficking and should be the main reference point for you during your training.

Despite the near-universal ratification of the CRC, it is still common for agents of child protection to focus on the actors and factors that harm children, rather than to endorse a full rights-based approach. Thus, in the context of child trafficking States look primarily at the activity as a crime and focus on detection, prosecution and punishment of the perpetrators and less so on the needs of children victims (UNICEF 2006).

Other important principles that should underpin all actions taken in relation to child victims of THB are non-discrimination (CRC, Article 2), the right to have the child's views listened to and taken into account in all matters affecting him or her (CRC, Article 12), and the child's right to privacy (CRC, Article 6).

Essential aspects concerning child trafficking

Child trafficking is the recruitment, transportation, transfer, harbouring or receipt of a child³⁰ for the purpose of exploitation.

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ("the Palermo Protocol") expressly states that child trafficking does not require any of the means such as threat or use of force or coercion, fraud, deception, abuse of power or of a position of vulnerability, for the crime to be qualified as child trafficking.³¹

³⁰ "Child" is any person under eighteen years of age, Article 1 CRC, Article 3d) of the Palermo Protocol.

³¹ Article 3c), Palermo Protocol.

In addition, Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour of the International Labour Conference adopted in 1999³² specifically refers to trafficking of children as one of the ‘worst forms of child labour’.

Specific forms of exploitation of trafficked children

According to the UNODC Global Report on Trafficking in Persons 2020, the characteristics of child trafficking and its underlying drivers differ according to the geographical and social contexts. Trafficked children detected in low-income countries are more likely to be exploited in forced labour, while children detected in high income countries are more frequently trafficked for sexual exploitation (UNODC 2020). In Europe the most common forms of exploitation associated with trafficking in children are commercial sexual exploitation (child prostitution) and making children beg for money. Trafficking in children, like trafficking in adults, has a strong gender aspect.

Other forms of exploitation include illicit or criminal activities, including stealing and housebreaking, irregular adoption, removal of body organs and other ‘worst forms of child labour’.

It should be borne in mind that trafficked children are subjected to a wide variety of methods to control them and to make them obey orders. These vary from physical abuse to subtler forms of control and manipulation. Most common forms of coercion are rape and sexual abuse, beatings, threats of physical punishment, threats to inform child’s family members about the sexual activities in which children are involved, threats to relatives, starvation, forced use of drugs, verbal abuse, confiscation of identity papers.

When assisting with the defence of a trafficked child, professionals should bear in mind that often there are close social links between traffickers and the families of the children involved, which makes it difficult to secure the cooperation of children and their families in

³² Convention came into force in 2000. Text is available at <http://www.ilo.org/ilolex/english/convdisp2.htm>. Bulgaria, Germany, Greece and Italy are all a party to it.

providing information for the purpose of prosecuting the trafficker and securing a conviction. In this regard the issue of guardianship becomes important. How the topic of guardianship is relevant to your training participants will be addressed in the next subchapter.

Appointment of a guardian and specific challenges

Identified unaccompanied child victims of trafficking should be appointed a guardian until a durable solution in the best interest of the child is reached. The role of the guardian is not the same as that of a legal representative.³³ The guardian serves as the link between the child and the various agencies the child comes into contact with.

In some countries there are no guardianship service but rather the national authority responsible for social services or another appropriate institution is responsible for establishing a guardianship service.

In relation to trafficked children, guardians need to have a good understanding of a couple of aspects:

- The traumatic experiences that children trafficked for the purpose of sexual exploitation have undergone;
- The special rights and needs of trafficked children;
- The specific cultural needs of unaccompanied minors;
- Gender aspects as regards the circumstances and experiences of trafficking and exploitation of girls and boys.

Guardians are in a privileged position to listen to a child's experience about what has happened as well as to a child's views about the future. It is the guardian's responsibility to ensure that the child's views are heard and taken into account. It is debatable whether

³³ Although the two roles of a guardian and legal representative may be performed by the same person, cf. recital 24 of the EU Anti-Trafficking Directive.

a guardian may refuse to allow a child to give testimony in criminal proceedings if he or she deems it is not in the best interest of the child, e.g. because the child's security may be jeopardized or the child may be exposed to a risk of reprisals. Legal professionals should be aware of these aspects if they are appointed as guardians. Likewise, in cases other professionals are appointed as guardians, they should cooperate with the latter to ensure the best interests of the child are of primary concern.

Interviews with child victims of trafficking

Children held in captivity may develop disturbances in their sense of time, memory and concentration. Sometimes exploited children forget what has happened to them ('traumatic amnesia'). In addition, prolonged or severe abuse may result in personality disorganization or dissociation. Children might feel unexpressed anger against those who hurt them or failed to help them, which may affect building an effective trust relation between the child and the legal counsellor.

You should make your training participants aware that it is important to take into account the effects of the traumatic experience when interviewing child victims of trafficking.

Initial questioning should be conducted in a child-sensitive manner, by specially trained law enforcement officials and preferably by officers of the same sex as the child. Initial questioning is meant to collect basic data such as biographical data and social history but not information about the experience of trafficking. The length and scope of questioning should be minimised to minimize further trauma or psychological distress.

Box: The NICHD Protocol

The USA's National Institute of Child Health and Human Development's has elaborated a structured method of questioning/interviewing child victims or witnesses of violence, based on the findings of numerous scientific studies. These studies aimed to use the existing knowledge in the field on a child's memory and communication and social abilities to create practical guidelines which could improve the quality of questioning.

The Protocol, the different types of questions (e.g. open-ended, focused, close-ended, suggestive), the specific order and techniques of questioning may be consulted here: <http://phf.org.ge/en/resources/interviewing-a-child-victim-or-witness>

Good Practice: ‘Blue Rooms’ for child-friendly hearing of children victims of crime

‘Blue rooms’ are specifically designed premises for hearing and questioning child victims of crime. They consist of two rooms divided by a glass that allow looking one-way only. The two rooms are connected through a video conference. The room with the child and the specially trained interviewer may be seen from the room where the representatives of the respective authorities are seated (judge, prosecutor, police officer, psychologist, legal representative of the defendant and the defendant himself, depending on the stage of investigation and the circumstances of the case). They are connected through microphones with the interviewer who rephrases and poses the questions in a child-sensitive manner. Video and audio recordings of the hearings are made. Blue rooms usually have different entries and waiting rooms so as to avoid a direct contact between the child and the defendant.

Hearings in blue rooms minimize the stress for the child, improve the quality of the testimony, and reduces the need of additional interviews.

As of 2020, there are around 40 blue rooms in Bulgaria, located in premises of the judiciary, the Ministry of Interior or service providers.

Despite the progress made in ensuring child-friendly and child-sensitive hearings through blue rooms and training professionals in interviewing children, the overall blue rooms framework has not been codified in any way (in which cases hearings should be conducted in blue rooms; what protocol to follow; principles and rules regarding the procedure; minimum requirements for the design of the blue rooms; mandatory training of professionals etc.).

Legal professionals should insist that blue rooms be used (where available) for questioning/interviewing children from the very start of children's interaction with criminal justice authorities. Likewise, they may request that similar victim-sensitive interviewing modalities are used in cases involving VoTs in general.

The apparent consent of a child victim to the intended exploitation should not be used as a ground for retaining the child in police custody for further questioning. In addition, child victims shall not be subjected to criminal proceedings or sanctions for the offences related to their trafficking situation, including illegal entry or residence.³⁴

Legal professionals defending child victims of trafficking should be aware that authorities often deport or expel children from the countries they have been trafficked to, mostly due to the authorities' failure to identify them as victims of trafficking. Thus, in cases involving children at risk of deportation the potential trafficking situation should be studied.

Unaccompanied minors

The Syrian civil war that started in 2015 and the turmoil in the Middle East and Africa caused an unprecedented influx of refugees in Europe. A significant share of the asylum-seekers reaching Europe are unaccompanied minors ("UAMs") – minors who arrive on the territory of a EU Member State unaccompanied by an adult responsible for him or her, as well as minors left unaccompanied after he or she has entered the territory of a Member State.³⁵

Once in Europe, UAMs often find themselves in a precarious situation, in which they often disappear from the radar, e.g. by leaving a reception centre (EUCPN 2020). According to

³⁴ Principle 7 of the UN High Commissioner for Human Rights' Recommended Principles and Guidelines on Human Rights and Human Trafficking, UN document E/2002/68/Add. 1, 20 May 2002. In addition, Article 8 of the EU Anti-Trafficking Directive, Non-prosecution or non-application of penalties to the victim.

³⁵ Recast Qualification Directive (Directive 2011/95/EU on Standards for the Qualification of Third-Country Nationals or Stateless Persons).

estimates of Europol, in the years 2014-2017 more than 30,000 migrant and refugee children have gone missing after their arrival in Europe, the majority before having filed an asylum application or during the asylum procedure (EC 2018).

From the crime prevention perspective, the fact that children are unaccompanied and the fact that they are off the authorities' radar are major risk factors. Unaccompanied minors run a significantly increased risk of being trafficked for sexual exploitation, labour exploitation, or criminal exploitation (EUCPN 2020).

Speaking about the risk and vulnerability to THB, experts have identified two more groups of children present in European soil running the risk of becoming victims of THB. One comprises the so-called Euro-orphans – children, mostly from Central and Eastern Europe, whose parents left to work in Western Europe and left their children in the care of family members, usually grandparents. The UN Committee on the Rights of the Child refers to this group as “separated children”.³⁶ The other group of children that remains outside the definition of UAMs but is relevant concerning child trafficking are those children who are presumably cared for by parents or guardians, but those parents or guardians are, in fact, their exploiters or traffickers (FRA 2015).

Likewise, Europol has found that children particularly at risk of being trafficked are orphans, children originating from countries affected by the socio-economic crises and children displaced due to conflict (Europol 2018).

One more aspect that needs to be borne in mind concerning THB in the context of migration is the trend of blurring the boundaries between THB and migrant smuggling. While migrant smuggling is an offence against territorial borders, THB is an offence against the personal and sexual freedom and integrity. However, migration pressures make it increasingly difficult to distinguish between migrant smuggling and THB. The crossover between the two is particularly threatening in the context of missing UAMs and child exploitation. Smugglers exploit UAMs along the way, before entering the EU, as a way of paying upfront

³⁶ UN Committee on the Rights of the Child, CRC/GC/2006/6: General Comment No. 6: Treatment of Unaccompanied Minors and Separated Children, 2005.

for the transfer to Europe, or after they enter the EU to repay debt in kind through forced labour, sex work, or forced criminality.³⁷ Europol has established this hybrid smuggling-trafficking phenomenon where the initial buyer of the smuggling service becomes the trafficking victim, and the smuggler and trafficker are the same person (Europol 2018).

EXAMPLE(S) OF TRAINING ACTIVITY(IES)

Title	Case Study THB for the purpose of labour exploitation – EU dimension
Type of activity	Case discussion
Estimated duration of the activity	60 min
Type of platform suggested	Platform that allows the creation of breakout rooms
Tools needed	Description of a case List of ILO indicators for trafficking of labour exploitation.

³⁷ Article 6(6) Palermo Protocol; Article 17 Anti-Trafficking Directive; Article 16 Victims' Rights Directive; Article 15 CoE Anti-Trafficking Convention

Goals/expected outcomes	Use indicators for THB for the purpose of labour exploitation to identify THB and formulate questions to potential victims
Description of the activity	<p><u>Step 1</u></p> <p>Provide participants with the following case example (or a similar one)</p> <p><i>Lillia is a young woman who lives in a small town in Bulgaria. She is unemployed and lives together with her mother, who does not work due to disability, and younger sister. She meets Yordan, a former schoolmate from the same town, who lives and works in Hungary. She shares her difficult situation, and he suggests to help her find a job in Hungary. After a couple of months Yordan gets back to Bulgaria and informs Lillia that he has found her a job as a seasonal worker. She will be living at the place where she will work and get paid EUR 800. Yordan will cover her transportation costs.</i></p> <p><i>Once they arrive at the place, Lillia finds out that she will be living together with 18 other women in one room. She works for 12 hours six days a week. After the first month, she received less than EUR 200. The employer explained that the deduction covered the transportation costs and the accommodation. The next month she received EUR 250. The employer explained that the deduction covered bribes to the authorities as she was working illegally, while at the same time her ID was taken on the pretext to have her working permit issued. Lillia does not speak the language and does not know anyone there, since in the meanwhile Yordan has disappeared.</i></p> <p><u>Step 2</u></p> <p>Divide the participants into several working groups. Distribute the case study and the list of indicators of trafficking of adults for labour exploitation to each group.</p> <p>Give participants enough time to identify indicators of trafficking for labour exploitation and determine their strength. By reference to the indicators, let the participants formulate questions to be asked to the victim to determine whether she was a victim of trafficking or of labour exploitation.</p> <p><u>Step 3</u></p>

	Ask the participants to further formulate questions to the victim that would: <ul style="list-style-type: none"> • Establish the facts and circumstances of the case; • Establish any risks for her safety and the safety of her family; • Establish whether the employer exercises control over the victim.
References	ILO indicators for labour exploitation https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_105023.pdf

Title	Case Study THB for the purpose of labour exploitation – TCN dimension
Type of activity	Case discussion
Estimated duration of the activity	60 min
Type of platform suggested	Platform that allows the creation of breakout rooms
Tools needed	Description of a case Analysis of selected case-law in Eurojust's Report "Prosecuting THB for the purpose of labour exploitation"
Goals/expected outcomes	Use indicators for THB for the purpose of labour exploitation to identify THB and identify multiple vulnerabilities
Description of the activity	<u>Step 1</u>

Provide participants with the following case example (or a similar one)

In 2004 Djamila was forced by her family to enter into a traditional (not civil) marriage in Burkina Faso. During the marriage which continued for 7 years she was victim of serious physical, psychological and sexual violence and isolation. After another particularly violent incident, Djamala tried to seek help from her parents. Due to their traditional convictions, they refused any support and forced her to go back to her husband.

At a later stage Djamila nevertheless managed to escape from her husband and take refuge with an acquaintance of hers in Burkina Faso, who told her that a Moroccan family was looking to hire a girl from Burkina Faso as a house maid in Ghana. A man explained that she was going to look for the family's children and helped her buy a ticket for a bus to Ghana.

Initially Djamala was looking for the two children, while another girl was busy with the housework. However, in July 2021 Djamala moved with the family to Morocco where the family had a third child. Djamala was taking care of all three children and all the housework for two years, all by herself.

In 2014 Djamala's employer was appointed to the Moroccan Embassy to Bulgaria. Djamala was offered to accompany the family to Sofia and look after the kids for a remuneration of EUR 250 (at that point in time the minimum wage in Bulgaria stood at EUR 170).

Once in Bulgaria, Djamala was issued a temporary residence permit as a service staff at the Moroccan Embassy, although she was working in the family's apartment. She took care of the three kids and the household, slept in the youngest child's room and ate the leftovers from the family's meals. She worked excessive hours, sometimes up to 18 hours a day, and had one free day which she could use only after she had finish all the housework. Despite her exhaustion, Djamala feared that if she did not perform well, she would be returned to Burkina Faso and to her violent husband. She further feared the high employment position of her employer. Djamala signed documents in the Bulgarian language, which she was explained were required to have her ID issued. For most of her stay in Bulgaria Djamala had no ID as it was allegedly sent to Morocco to have her work permission extended.

In 2016 the term of office of her employer expired. Djamala understood that she was expected to move with the family to Tunis. Fearing she would continue to work in the same conditions, Djamala fled her employer's home.

She embarked on a train to Serbia but was returned to Bulgaria as she held no visa. The police referred her to an NGO providing legal aid to migrants and asylum seekers.

	<p><u>Step 2</u></p> <p>Divide the participants into several working groups. Ask them to discuss whether this is a case of THB for the purpose of labour exploitation or not by reference to the case-law in Eurojust report.</p> <p><u>Step 3</u></p> <p>Ask the participants to further formulate steps they would undertake acting as Djamala's legal counsel for securing her stay in the country. Ask participants to identify multiple vulnerabilities and to discuss how these can be used in legal or administrative proceedings for legalising Djamala's stay in Bulgaria.</p>
References	<p>Eurojust Report (2015): Prosecuting Trafficking in Human Beings for the Purpose of Labour Exploitation, at https://www.eurojust.europa.eu/sites/default/files/Publications/Reports/2015-12_Report-on-prosecuting-THB-labour-exploitation_EN.pdf</p>

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