

Ariadne
network

*Against Trafficking in Human Beings
in South-Eastern and Eastern Europe*

Regional Guidelines on the Identification of Trafficked Persons

A MANUAL FOR SOUTH-EASTERN AND EASTERN EUROPE



HUMAN RIGHTS DEFENCE CENTRE
ΚΕΝΤΡΟ ΠΡΟΑΞΙΩΣΗΣ
ΑΝΘΡΩΠΙΝΩΝ ΔΙΚΑΙΩΜΑΤΩΝ



**NORWEGIAN MINISTRY
OF FOREIGN AFFAIRS**



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FOREWORD

The ARIADNE Network against Trafficking in Human Beings in South-Eastern and Eastern Europe is a regional network of 16 NGOs from 12 countries. The Network was established in 2005 with its seat in Athens, Greece, and has already completed three regional projects registering the actual situation of human trafficking in participating countries, disseminating good practice models for prevention, assistance and protection and raising awareness against human trafficking in the region. The mission of the Network is to combat human trafficking through close and coordinated cooperation among countries of origin, transit and destination. The final beneficiaries of ARIADNE are the victims and potential victims of trafficking, the NGOs that enrich their ability for coordinated joint action and various state and non-state actors active in the fight against human trafficking.

Despite serious efforts, trafficking in human beings remains a serious problem in South-Eastern and Eastern Europe, with a significant proportion of victims originating from the Balkans. Efforts to combat the phenomenon in the region should be targeted towards guaranteeing assistance and protection of victims in countries of origin, transit and destination. Although progress has been made in most countries in the field of legislation, especially for the criminalization of human trafficking, there is still room for improvement in victim identification. Numerous reasons have prevented a systemic, unified and consistent international approach to the identification of trafficked persons, e.g. differing legal systems, difficulty in allocating resources, different levels of institutional organisation, varying priorities in combating human trafficking etc. The result is that the identification of trafficked persons is often conducted on an *ad hoc* basis, putting at risk the protection of the rights of victims and compromising counter-trafficking efforts. Furthermore, the clear shift in priorities in combating trafficking in human beings, from a crime centred approach to a human rights approach, makes proper identification of victims more necessary and relevant than ever.

According to international studies, many victims remain unidentified and are deprived of necessary support and intervention. Effective victim identification leads to more effective counteraction of the trafficking phenomenon and to better reintegration of trafficked persons. Thus, this publication, undertaken under the 4th joint project of the ARIADNE Network focuses on information and experience sharing on identification and referral mechanisms for victims of trafficking with the view to incorporate this expertise into practical identification guidelines.

The resulting manual aims to be of use to a wide range of practitioners involved in the identification of trafficked persons and for this reason incorporates social, legal, psychological and other aspects of the identification process. Special mention is made to child victims of trafficking. The regional guidelines are relevant to the work of NGOs, ministries, police associations, lawyers' associations, judges, prosecutors and other actors involved in one way or another in frontline victim identification. Extra effort has been made to draw upon the experience and expertise of participating NGOs and to highlight good practices developed in domestic law systems in South-Eastern Europe that can be replicated and adopted in other countries.

It is hoped that relevant stakeholders will find this manual a useful tool in their everyday work in victim identification and that victims will be able to benefit directly through improved and more effective services.

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ABBREVIATIONS

Council of Europe	CoE
Council of Europe Treaty Series	CETS
Economic and Social Council	ECOSOC
European Union	EU
International Center for Migration Policy Development	ICMPD
International Labour Organization	ILO
International Organisation for Migration	IOM
Memorandum of Understanding	MOU
National Referral Mechanism	NRM
Non governmental organisation	NGO
Organisation for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights	OSCE/ODIHR
United Nations	UN
United Nations Children's Fund	UNICEF
United Nations Office of the High Commissioner for Human Rights	UNOHCHR
United Nations Office on Drugs and Crime	UNODC
United Nations Treaty Series	UNTS
World Health Organisation	WHO

INTRODUCTION

The present Regional Guidelines on the Identification of Trafficked Persons (hereinafter “Regional Guidelines”) have been elaborated in the framework of the fourth joint project of the ARIADNE Network against Trafficking in Human Beings in South-Eastern and Eastern Europe entitled “Human Trafficking and Migration in South-Eastern and Eastern Europe”. The project is implemented by the NGO Human Rights Defence Centre (KEPAD), Greece, in partnership with 15 NGOs members of the ARIADNE Network.

In order to provide the basis for the development of the Regional Guidelines, a thematic research was conducted with the objective to analyse the existing situation and particularities of the identification of trafficked persons in each participating country. The research focused on the following areas, reflecting different aspects of the identification of trafficked persons:

- 1) legal aspects (national policy and level of formalization/ standardization of the identification procedure in each country);
- 2) organisational aspects (preliminary and formal identification, role of NGOs, etc.);
- 3) indicators for identification of trafficked persons and correlation with the definition of human trafficking;
- 4) ethical aspects of interviewing trafficked persons;
- 5) respect of human rights of trafficked persons and special rights of minors, providing access to necessary protection and assistance.

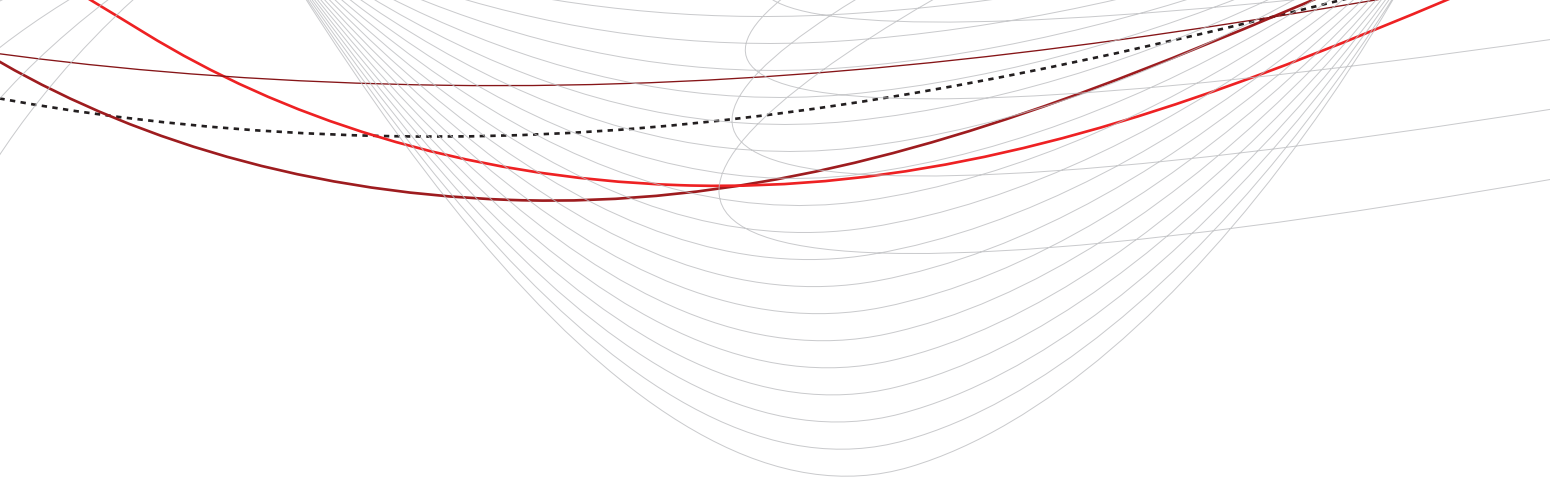
The research revealed that all participating countries have ratified the main international document combating human trafficking, i.e. the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo, 2000). The majority of the participating countries have also ratified the Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw, 2005). Regardless of the above, the conceptual and practical problems concerning the identification of trafficked persons still exist in all countries participating in this project. First of all, the majority of participating countries have not elaborated yet national standards on the identification of trafficked persons. It appears that the term “identification of trafficked persons” is interpreted differently in participating countries. In addition, different approaches to the organisation of the identification process have been adopted. For example, in many countries only law enforcement agencies have the right to perform formal identification.

At the same time NGOs rendering assistance to people who have suffered from trafficking in human beings, have gained significant experience and expertise in the identification of trafficked persons. The present research has also focused on the gathering of good practices and the identification of needs and gaps in the identification process of trafficked persons. It has also facilitated the elaboration of common guidelines on the identification procedure.

The ensuing Regional Guidelines have been accepted by the participating NGOs in the above mentioned project. These brief guidelines are designed for NGOs that specialize in offering assistance to trafficked persons.

The Regional Guidelines have been drafted in line with the provisions of the following documents:

- The “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime”, Palermo (2000), hereinafter the “Palermo Protocol”;
- The Council of Europe “Convention on Action against Trafficking in Human Beings”, Warsaw (2005), hereinafter the “CoE Anti Trafficking Convention”;
- “Recommended Principles and Guidelines on Human Rights and Human Trafficking”, United Nations Economic and Social Council (2002);

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- "National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons- A Practical Handbook", OSCE/ODIHR, Warsaw (2004);
 - "Guidelines for the Development of a Transnational Referral Mechanism for Trafficked Persons: South-Eastern Europe", ICMPD, Vienna (2009);
 - "Trafficking in Human Beings: Identification of Potential and Presumed Victims. A Community Policing Approach", OSCE, Vienna (2011);
 - "Quality Standards for Risks Assessment and Safe Return and Reintegration of Trafficked Persons", NGO LEFÖ, Vienna (2011);
 - "Identification of Trafficked Persons in Moldova-Guidelines for Specialized NGOs Acting in the Republic of Moldova", International Center "La Strada", Chisinau (2006);
 - Other international, European and national standards and policy developments.

They also include recommendations on the main aspects of the organisation of the system of identification of trafficked persons and concern:

- a) the conceptualization of the notion of "identification of trafficked persons" (goal, objectives, approaches and principles);
- b) the link of identification with the definition of trafficking in human beings;
- c) the identification process, its stages and the methods employed;
- d) the competent professionals and organisations to carry out victim identification and their particular tasks;
- e) indicators for the identification of presumed victims of trafficking and victims of trafficking (preliminary and final/formal identification);
- f) practical aspects of holding an interview with trafficked persons;
- g) information exchange and data protection;
- h) other related issues.

The overall purpose is that these Guidelines will form a comprehensive basis for the elaboration of national standards on the identification of trafficked persons.

1. Main Aspects of the Concept of Identification of Trafficked Persons

1.1. The importance of the Identification of Trafficked Persons

The identification of trafficked persons is vital for securing their human rights since first and foremost identification is meant to ensure access to necessary assistance and protection. In order to protect and assist trafficking victims it is of paramount importance to identify them promptly and correctly.

The importance and pressing necessity for effective identification of trafficked persons is highlighted in many international law documents. For example, the ECOSOC Document on Recommended Principles and Guidelines on Human Rights and Human Trafficking reads as follows: "a failure to identify a trafficked person correctly is likely to result in a further denial of that person's rights. States are therefore under obligation to ensure that such identification can and does take place".¹ Similarly, the first Action Plan of the European Union in the field of anti-trafficking, adopted by the Council of Europe in December 2005 includes a package of measures meant to facilitate the development of skills in the identification of trafficked persons (i.e. workshops and other forms of exchange of best practices).²

The importance of developing effective methods for the identification of trafficked persons is highlighted in numerous research papers. According to certain estimates made by international experts, circa 65% of victims of trafficking are not identified.³ This occurs due to various reasons. For example, trafficked persons located in the territory of a foreign state are often afraid that they will be prosecuted for breaking the law of the country; this is especially the case in instances where foreign nationals have violated immigration laws regarding the entry and stay in the territory of a third country. Additionally, they do not trust the representatives of state agencies and structures since they are often not aware of their rights and possibilities of obtaining assistance and protection as trafficked persons. Often the psychological trauma does not allow trafficked persons to adequately assess events so as to take the right steps to remedy the situation. As a result trafficked persons are routinely treated as illegal labour migrants rather than trafficked persons, are subjected to judicial or administrative detention, are heavily fined and deported from the country of destination. After their return to their country of origin, these people might be further prosecuted for using false travel documents, for leaving the country illegally etc. Thus, the suffering and trauma inflicted in the course of exploitation is further compounded by new anguish caused during meetings with law enforcement bodies.

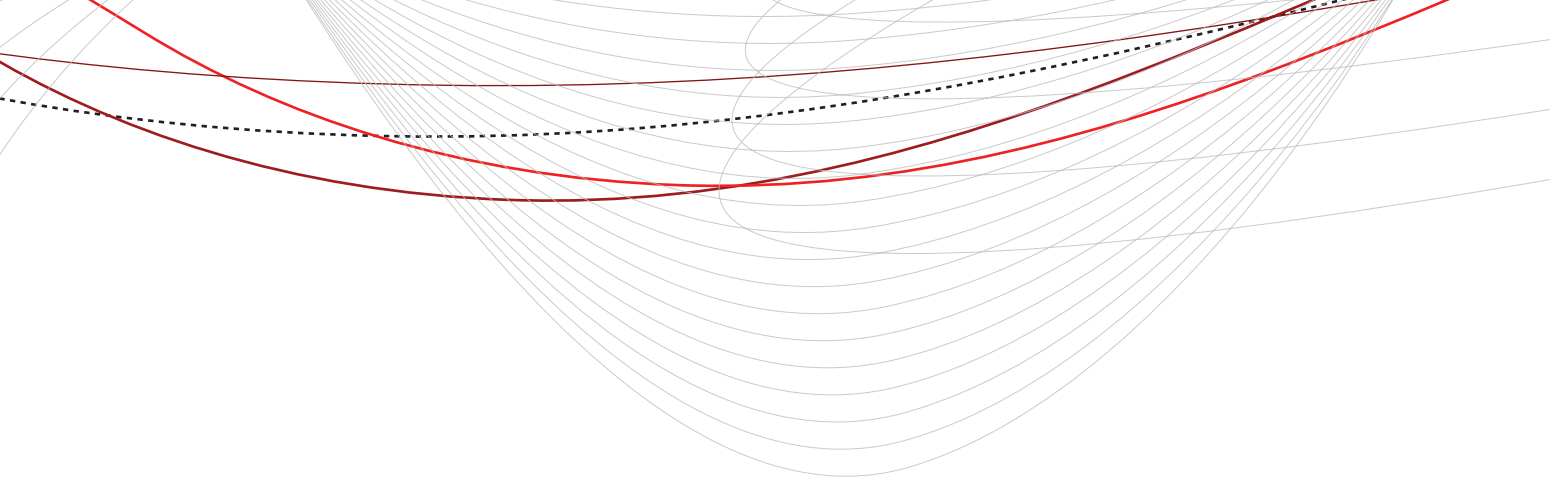
Irrespective of the country where exploitation took place, trafficked persons are always afraid of the revenge of traffickers, which is targeted not only against them, but also against their families. Victims subjected to sexual exploitation fear publicity and the negative reactions of their social environment which often turns against the sufferers themselves. Many victims do not believe that judicial redress will be effective and find no sense in appealing to official structures.

As a result, unidentified trafficked persons are deprived of the necessary assistance and protection and find it extremely difficult to return to normal life, i.e. find their place in their close environment, as well as in society at large. The experience of numerous NGOs offering assistance to trafficked persons shows that a significant number of persons soliciting assistance for the first time have already been involved in human trafficking in the past and have been repeatedly victimized. This leads to the conclusion

¹UN ECOSOC, "Recommended Principles and Guidelines on Human Rights and Human Trafficking. Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council", E/2002/68/Add.1, 2002, p. 6.

²EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings", Official Journal C 311, 09/12/2005.

³Limanowska, B., "Trafficking in Human Beings in South-Eastern Europe", UNICEF, UNOHCHR, OSCE/ ODIHR, 2002, p. 142.



that even if trafficked persons escape the control of the perpetrators, they often relapse and fall into the nets of traffickers out of despair and sheer lack of opportunities. Thus, **the identification of trafficked persons is required primarily for granting protection of victims' rights in order to ensure their subsequent successful reintegration. Likewise, identification of trafficked persons is highly important for the safety and cohesion of society itself.** When trafficked persons are reluctant to give evidence, then the perpetrators that cash in on selling human commodity remain unpunished and are free to re-offend, generating more victims of trafficking. As a result, unidentified cases of trafficking act as a push factor for the trafficking phenomenon in society. We could therefore argue that **timely identification of trafficked persons is a measure for counteracting the propagation of the phenomenon of human trafficking and hence, a measure required to secure protection of the interests of the society at large.**

Many international experts share the view that in order to make notable progress in combating human trafficking it is necessary to enhance the identification process of trafficked persons. The solution to this pressing problem depends primarily on the ability of the state to guarantee the safety of victims/witnesses giving evidence against their traffickers, and at the same time on the ability of state and non-state agencies to create the necessary conditions that will help victims cooperate with law enforcement bodies.

1.2. Notion of Identification: Tasks and Objectives

Despite the fact that the importance of identification of trafficked persons is mentioned in various international documents, until now there exists no formal internationally accepted definition. As a rule, specialists dealing with a range of problems related to trafficking in human beings interpret identification of trafficked persons as follows:

- a) measures targeted towards search and discovery of presumed victims of trafficking in environments considered conducive to trafficking – i.e. illegal labour migration, prostitution, etc.;
- b) analysis of information regarding a presumed trafficked person in an effort to establish a link between the specific case and existing indicators of trafficking in human beings, permitting to conclude that the person has actually suffered from human trafficking and requires special assistance and protection.

The context in which the term “identification of trafficked persons” is used in different acts of international law, e.g. in the CoE Anti-Trafficking Convention, and various references available on this subject, show that identification of trafficked persons is deemed as a process through which specially trained and qualified specialists from competent authorities (police, labour inspectorate, border guards, immigration authorities, embassies and consulates, etc.) in collaboration with specialized NGOs:

- 1) take measures targeted towards the detection/discovery of trafficked persons in locations where the different stages of human trafficking usually take place (recruitment, transportation, housing, exploitation etc.) or after their release from their traffickers;
 - 2) collect information regarding trafficking cases, either from the victims themselves or from other sources possessing information on unlawful actions perpetrated against the victim;
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3) conduct analysis of information obtained and compare characteristics of specific cases with existing indicators of trafficking of human beings;

4) conclude whether a person is a victim of trafficking and assure her/his referral for necessary protection and free assistance.

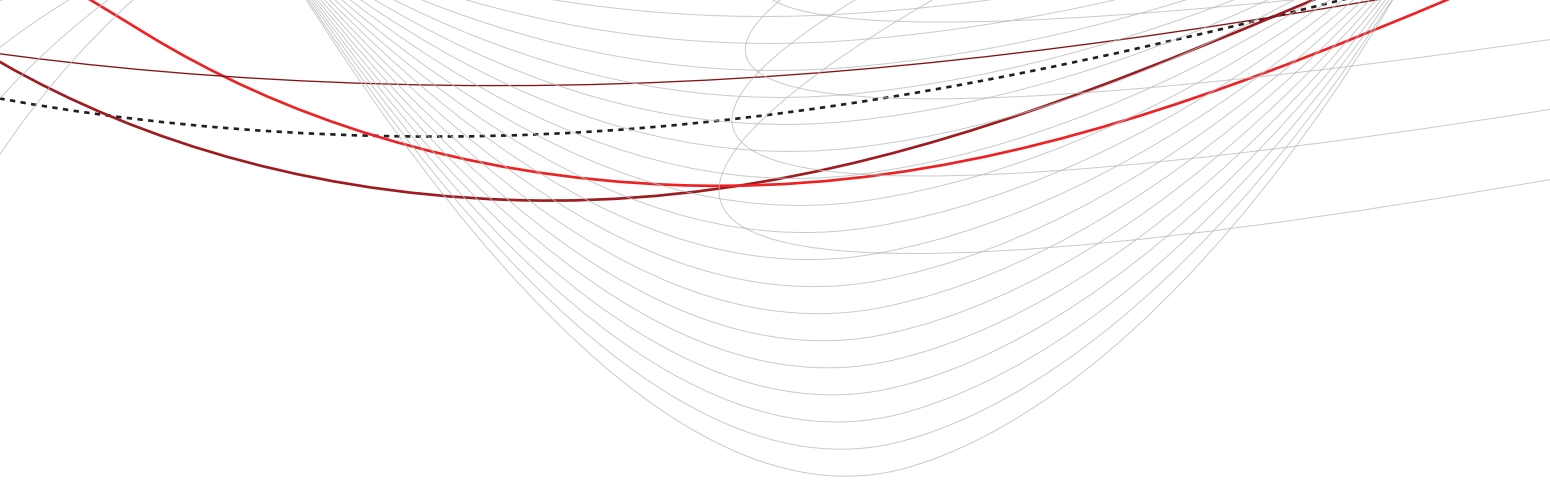
Identifying a trafficking victim is a lengthy process. It may require exchange of information with other countries and various anti-trafficking agents, including both state and non-state victim support organisations. As soon as competent authorities have reason to believe that there are reasonable grounds that a person is a victim/ presumed victim, this person should not be removed from the territory of the country until the identification process has been completed. In addition, competent authorities should ensure that presumed victims receive the free assistance/minimum package of services guaranteed by the State, as provided for in Article 12 para. 1 and 2 of the CoE Anti-Trafficking Convention.

EXPERIENCE OF CROATIA

In November 2008, the Government of the Republic of Croatia adopted the "Protocol for the identification, aid and protection of victims of trafficking in human beings". The Protocol deals with the process of identification of victims and the determination of the roles and obligations of organisations and persons involved in the protection and aid to victims of trafficking in human beings.

After the identification process has been completed and a conclusive decision has been made whether or not a person is a victim of human trafficking, the competent authorities must ensure that identified victims receive the full assistance and protection stipulated in Article 12 para. 3 and 4 of the CoE Anti-Trafficking Convention.

It is also worth noting that under no circumstances should the identification process depend on bureaucratic and cumbersome procedures that result in limiting the access of victims to the minimum package of assistance and protection. This is without prejudice to the fact that in certain instances the victim must be officially recognized as such by the competent state authorities in order to avoid deportation, have access to witness protection schemes etc. However, even in these circumstances the main objective of the identification of trafficked persons remains the same: to secure access to the necessary free assistance guaranteed by international law.



1.3. Difference between the Identification of Trafficked Persons and the Classification of a Criminal Act as Trafficking in Human Beings

The identification process should be independent of any criminal proceedings against the perpetrators. A criminal conviction must therefore have no impact, either for starting or for completing the identification process.

The notion of "identification of trafficked persons" is closely connected with the notion of "classification of crimes". Yet, there are a number of differences between these two concepts in terms of objectives, consequences, degree of responsibility, etc.

The key objective of the classification of crimes is the just and effective apprehension of criminals and the suppression of criminal activity. This is an important issue because the seriousness of a crime influences directly the type of punishments (incarceration, imprisonment, fines etc.) that perpetrators are sentenced to. This is a strictly formalized process as each crime is defined in detail in criminal codes and laws. It is also a complicated process because elements of a specific criminal activity may correspond to the description of one or more crimes. The classification of crimes can be made only by authorized personnel of law-enforcement agencies and/or the judiciary or the court of first instance in strict compliance with constitutional and criminal procedure norms, in order to respect the principle of the presumption of innocence of the accused. Apart from the objective elements of the crime, i.e. the specific acts committed, the criminal prosecution has also to prove the presence of criminal intent or negligence, because only intentionally committed actions can be subject to criminal punishment.

The identification of trafficked persons is targeted first of all to the provision of the necessary assistance to trafficked persons. It can be carried out not only by the police, but also by other specialists who may be in contact with trafficked persons: labour inspectors, border guards, social workers, specialists of NGOs rendering assistance to trafficked persons.

Compared to the classification of crimes, the identification of trafficked persons should be a simplified procedure. Information obtained for purposes of victim identification should be subject only to general verification; conclusive proof is not necessary at this stage.

Consequently, the identification of trafficked persons is a less strict and formalised process than the classification of crimes, as it does not lead to criminal prosecution and can rely upon certain instructions and indicators. For this reason, the set of indicators for the identification of trafficked persons should be flexible and adaptable to new challenges and emerging trends in the human trafficking phenomenon.

The identification of trafficked persons is based on the definition of trafficking in human beings in national legislation and varies from country to country. Usually the definition of human trafficking can be found in criminal law as trafficking is in most European countries a distinct criminal offence. In certain countries however, there are also definitions of human trafficking in civil law, establishing civil legal remedies for trafficked persons (e.g. compensation claims), as well as the terms for providing assistance and protection to victims and presumed victims. The legal requirements and definitions of human trafficking in civil

law are usually wider and more flexible than the definitions in criminal law, as civil law instruments tend to describe trafficking as a social phenomenon, rather than a criminal act. Elements of trafficking in human beings as a social phenomenon may differ significantly from the legal construction of trafficking in human beings as a crime in national legislation. The general concept of human trafficking should cover all forms of the phenomenon, with only the extreme and highly dangerous forms becoming criminal acts. In this sense, identification relying on strict criminal definitions can limit the access of victims to proper identification, assistance and protection.

Some European countries have elaborated such civil law definitions in order to determine a clear anti-trafficking policy and regulate national anti-trafficking responses.⁴ In such instances, the elaboration of indicators for the identification of trafficked persons can be based not only on criminal law definitions, but also on civil law definitions. In instances where both criminal and civil law definitions exist then indicators should include elements of the wider definition.

1.4. Human Rights and Other Types of Approaches

Promotion and protection of human rights should be the first priority of all anti-trafficking measures. Respect and protection of the human rights of trafficked persons should be the subject of special concern not only for NGO representatives, but also for all the stakeholders involved in the identification process. According to the UN Recommended Principles and Guidelines on Human Rights and Human Trafficking “safeguarding the human rights of trafficked persons should be at the centre of all efforts to combat trafficking and to protect, assist and provide redress to victims”.⁵

Trafficking in human beings is a severe human rights violation. **Human rights and the dignity of trafficked persons should not be adversely affected by anti-trafficking measures.** This is of particular importance because trafficked persons are often treated as criminals.⁶ Secondary victimization can occur if the victims are not treated with appropriate sensitivity. A human rights approach also requires **early identification and assistance to trafficked persons.**⁷ The process of making an official/conclusive identification can be particularly lengthy, thus timely and effective preliminary identification of presumed victims is crucial for their wellbeing.

It is extremely important to **ensure that access of trafficked persons to assistance is not conditioned on their consent to cooperate** with law enforcement bodies. One should bear in mind that recourse to law enforcement bodies is a right rather than an obligation of a trafficked person. It should be kept in mind that a conclusive answer to the question whether a criminal offense has been committed can only be given by a court of law passing judgment on a formally investigated case. Criminal investigation and proceedings can take years, however, the victims need immediate help as in most cases they are in extremely poor psychological and physical condition.

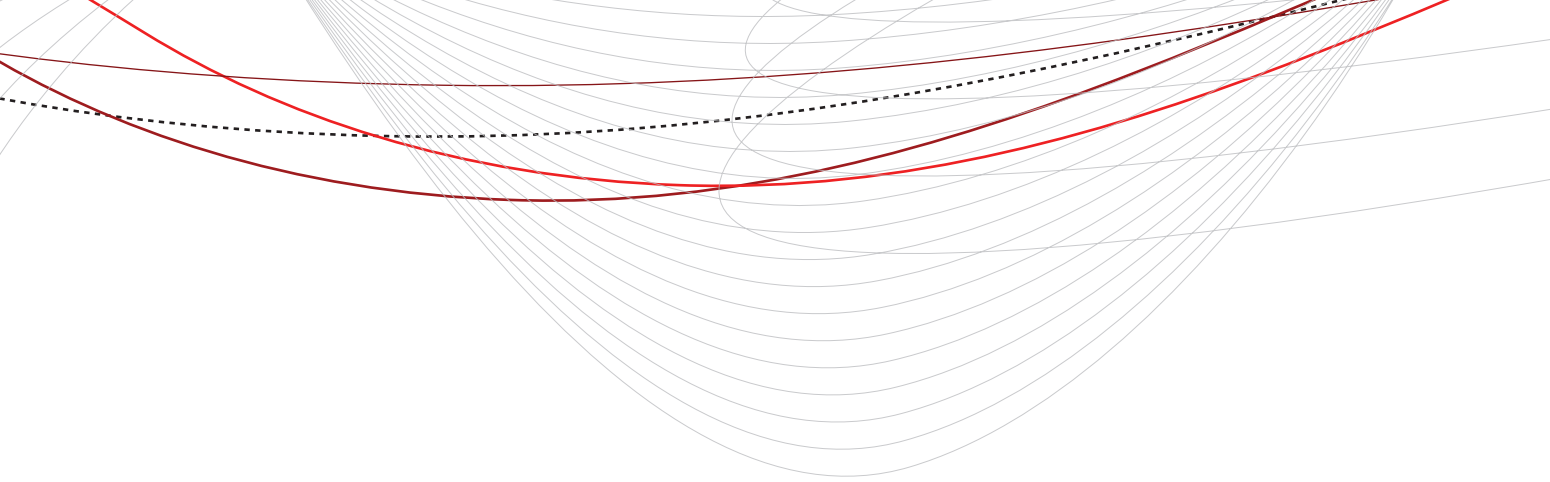
Besides, there is also an inverse dependence. Sometimes the outcome of the trial depends on whether such assistance was extended to a victim or not. Both the psychological and the physical hardship experienced by victims improve once they have

⁴For example this distinction between criminal law and civil law definition can be found in the legal system of Moldova.

⁵UN ECOSOC, “Recommended Principles and Guidelines on Human Rights and Human Trafficking”, supra note 1, p. 5.

⁶UNODC, “Toolkit to Combat Trafficking in Persons”, 1st ed., Vienna/New York, 2006, Tool 6.1, p. 103.

⁷OSCE, “Trafficking in Human Beings: Identification of Potential and Presumed Victims. A Community Policing Approach”, Vienna, 2011, p. 26.



access to the necessary assistance. Having received the desired assistance trafficked persons gain confidence in law enforcement agencies, are more inclined to cooperate with them and their testimonies as witnesses in the criminal proceedings become more effective and focused. Thus, promoting tools and methods for better victim identification and securing access to assistance and protection aims to protect not only the human rights of the victim, but also the success of the entire system of counteracting trafficking in human beings. Therefore, the identification of trafficked persons should aim on **harmonizing the interests of trafficked persons with the interests of society in persecuting traffickers.**

A victim-centred human rights approach also calls for **informing victims about their human rights.**⁸ Some trafficked persons may not even realize that their human rights have been violated. This may be the case if violation is the norm in their families or their countries of origin. Besides that, each presumed victim should be provided with full information about her/his rights on available assistance and protection guaranteed by the State.

Identification, support, protection and assistance should be **accessible for all categories of trafficked persons.** Victims must not be subjected to discriminatory treatment. Identification must be ensured without discrimination on any grounds, such as sex, race, language, religion, political or other opinion, social or national origin, citizenship, association with an ethnic minority, etc.

All organisations conducting identification should **protect the privacy and identity of trafficked persons** and the personal data of victims should be stored and used only in conformity with the conditions set out in the relevant international instruments.⁹ Finally, the exchange of information should respect the **confidentiality** of trafficked persons.

EXPERIENCE OF GREECE

In 2005 an MOU was signed between the Inter-Ministerial Committee, 12 NGOs offering assistance and protection to victims of human trafficking and the IOM Mission in Greece, with the aim to set a framework of cooperation between state, non-state and international actors. The MOU outlines basic principles of assistance and protection that should be adopted by service providers, such as confidentiality, human rights approach, independence of providers, minimum standards of services available in state and NGO shelters etc. This MOU contains general provisions regarding basic principles on how assistance is to be provided, especially during the period that the victim is accommodated in shelters.

It is important to note that the international standards for treating trafficked persons recommend that the identification process, like all other measures aiming to combat trafficking, should take into account the following **approaches and principles**¹⁰:

Government Ownership and Sustainability

The term "government ownership" means that the national government undertakes a basic commitment for proper organisation, coordination, financing and ensuring an effective regulatory framework for combating human trafficking in general and for victim identification in particular, as well as its effective implementation. Lack of government ownership stemming from excessive

⁸Id.

⁹Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (1981, as amended in 1999), CETS No. 108; European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), CETS No. 005, Article 8 (Right to respect for private and family life).

¹⁰ICMPD, "Guidelines for the Development of a Transnational Referral Mechanism for Trafficked Persons: South-Eastern Europe", Vienna, 2009, p. 26-27.

reliance to external donors and *ad hoc* service providers can easily cause the system to collapse, regardless of the quality of services offered. Though involvement of different stakeholders in the process of identification is desirable, sustainability of the system is a major concern.

Civil Society Participation

Representatives of NGOs should actively participate in the process of identification of trafficked persons, as well as in the creation of a regulatory framework for this process, as they have significant expertise gained from their work in the field. Civil society can play a useful role as watchdog for the protection of human rights during the identification process. Besides that, victims of trafficking should have the right of choice to appeal to the state or to NGOs.

Multidisciplinary and Cross-Sectoral Approach

Trafficking in human beings is a complex phenomenon, so for the efficient identification of victims the participation of specialists from different agencies should be ensured. A multidisciplinary approach means that the knowledge and expertise of different disciplines as well as their respective methods are combined to ensure comprehensive support and assistance to trafficking victims. The term "cross-sectoral" means that interventions should be designed and implemented in a way that they include all relevant sectors of society (e.g. law enforcement, judiciary, social services, NGOs, service providers, etc.). In practice, a multidisciplinary and cross-sectoral approach is implemented through the creation of multidisciplinary teams (mobile and stationary) for the identification of trafficked persons, something that helps avoid possible conflict between the human rights approach and the law enforcement approach. At the same time it allows to better organize the referral of victims for necessary protection and assistance.

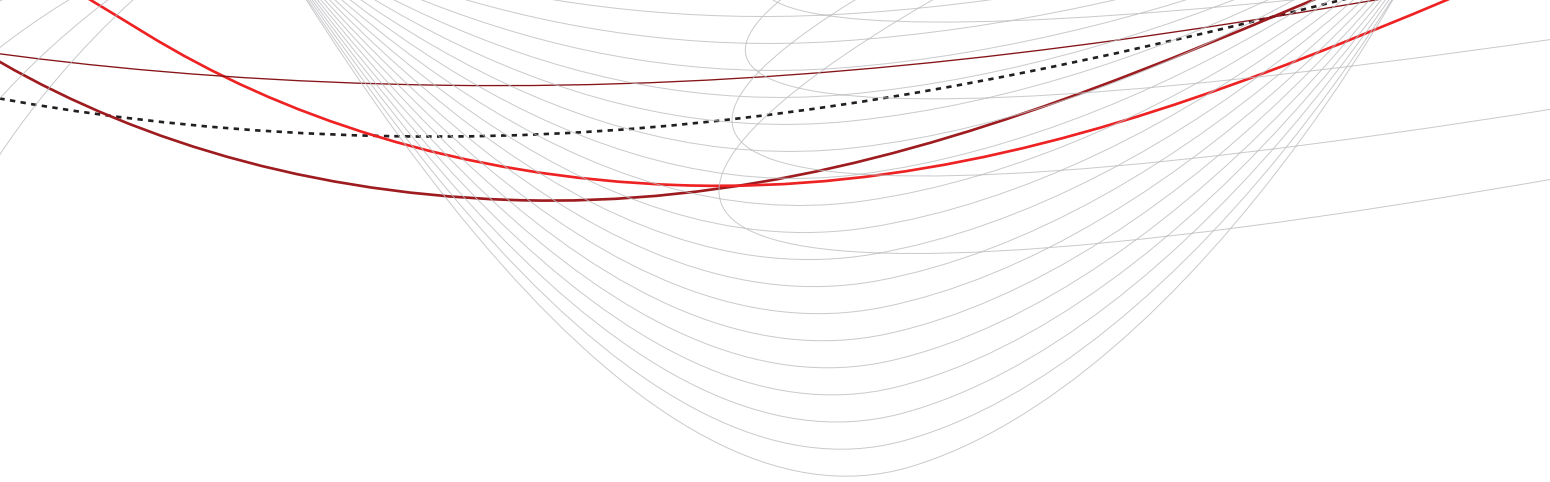
EXPERIENCE OF FYROM

In 2008 the Government of the Former Yugoslav Republic of Macedonia and the National Commission for Combating Trafficking in Human Beings and Illegal Migration adopted the Standard Operating Procedures (SOPs) for Treatment of Victims of Trafficking in Human Beings. SOPs consist of five parts: Identification and referral; Initial care and mid-term assistance; Return; Reintegration; Criminal Proceedings. These SOPs are based on the following internationally recognized principles:

- *Human rights-based approach;*
- *Interdisciplinary and inter-sectoral approach;*
- *Participation of the civil society;*
- *Government ownership;*
- *Sustainability and*
- *Prevention of human trafficking.*

Special Measures for Child Victims of Trafficking

In case of children victims of trafficking, a pro-active but sensitive approach to victim identification should be employed. Such an



approach must ensure that all relevant stakeholders are aware of the special needs of children and know how to apply special measures and processes when identifying a child victim of trafficking.

Any measures dealing with trafficked children should be based on the principles set out in the UN Convention on the Rights of the Child. Consequently, the best interest of the child must always be the primary consideration and the child's views must be taken into account in all matters affecting him/her.¹¹

EXPERIENCE FROM BOSNIA & HERZEGOVINA

*According to the "Guidelines for the Centers of Social Work regarding Victims of Human Trafficking" in Bosnia & Herzegovina, in cases of suspected child victims the social worker is obliged to **act proactively** and prevent possible child trafficking and child exploitation, by applying specific measures of family and legal protection. When the social worker observes certain suspicious situations such as children exposed to violence and neglect in the family, disruptions in family relations affecting adversely the development of the child and adverse circumstances in the environment to which the child is exposed, then she/he is obliged to report the situation with the aim to start developing an individual plan and take the necessary preventive actions (interview and professional assistance to the parents, appointment of a temporary guardian, deprivation of guardianship, taking the child away from the family, launching court proceeding to protect the child's rights etc.).¹²*

Cooperation with other states

Despite the fact that the legislation of many countries recognizes internal trafficking as a form of human trafficking, the prevailing form remains transnational trafficking in human beings. In order to be able to efficiently tackle the various problems connected with trafficking in human beings it is necessary to ensure the highest possible level of cooperation with other states, especially between states of origin and destination.

1.5. Identification as a Consistent Element of the System of Counteracting Trafficking in Human Beings

In order to fully understand the exact meaning and scope of the identification of trafficked persons it is necessary to elaborate on the importance of the identification process and its place within the system of counteracting trafficking in human beings. It is worth to mention that all available references on trafficking in human beings refer to the three main components of combating the phenomenon:

- 1) Prevention of trafficking in human beings;
- 2) Protection and assistance to trafficked persons and
- 3) Prosecution of traffickers.

¹¹ OSCE, "Trafficking in Human Beings: Identification of Potential and Presumed Victims. A Community Policing Approach", supra note 7, p. 30.

¹² Ministry of Security of Bosnia and Herzegovina, "Guidelines for the Centers of Social Work regarding the Victims of Human Trafficking", available at: <http://www.msb.gov.ba/anti_trafficking/dokumenti/prirucnici/?id=5321>

This classification is often called the three "Ps" policy framework. Despite the peculiarity of this approach, the classification is rather conventional as the three components of counter-trafficking are tightly interlinked. For example, successful persecution of the offenders serves as a good measure for preventing other offenses, etc.

Still, if we try to place the identification process within this classification, then it is only right to consider identification **under the category of protection and assistance to trafficked persons**. According to international standards for treating trafficked persons, identification as a procedure must enable immediate access of victims to necessary assistance. For this reason the availability of assistance must not depend on who was the first person to come in contact with the presumed trafficked person and conduct the initial inquiry. Whether it was a police officer, whose main objective is to persecute the offenders, or an employee of a specialized NGO whose priority is to offer assistance and protection to the victim, the end result should be the same and each victim should have immediate access to assistance and protection.

EXPERIENCE OF MONTENEGRO

Efforts on combating trafficking in human beings in Montenegro were consolidated in the Memorandum on Mutual Cooperation signed in 2007¹³ between state institutions (Supreme Public Prosecutor's Office, Ministry of Education and Science, Ministry of Labour, Ministry of Health, Police Directorate) and three NGOs. According to Annex 4, relevant to Prevention, Criminal prosecution and Protection of Potential Victims of Trafficking, when the Police is informed of the presence of a potential victim of trafficking in human beings, or identifies such a victim, they have to ensure that certain measures and actions are immediately followed, including information on the services rendering assistance to victims, in a language that the potential victim understands, referral to appropriate services, creation of optimal conditions that reduce and avoid further trauma, under which the potential victim can testify and provision of measures of protection of potential victims, their relatives and employees of shelters. Such steps have to be taken before, during and after the necessary activities undertaken as part of the criminal investigation, during interviews with presumed victims and other witnesses, and until the moment of a victim's return to the shelter.

The above view regarding the role and place of victim identification in the system of combating human trafficking is reiterated in the OSCE/ODHIR Practical Handbook on National Referral Mechanisms: "Sometimes it is a question of weeks or months before a trafficked person overcomes post traumatic stress disorder syndrome and is able to speak up. Therefore, the concept outlined in this hand-book incorporates the identification process as part of a protection and support program".¹⁴ A similar viewpoint is taken in the ICMPD Guidelines for the Development and Implementation of a Comprehensive National Anti-Trafficking Response.¹⁵

It is for this reason that the identification process must be considered as part of victim protection and assistance. However, the fact remains that in case the identification of trafficked persons is conducted by a law enforcement officer then it often becomes difficult to separate victim identification from the process of criminal persecution of the offenders, something that refers to an entirely different area of counteracting trafficking in human beings.

¹³Memorandum of Mutual Cooperation, Podgorica, 18 October 2007, No. 07-139, available in UN.GIFT & IOM, "Guiding Principles on Memoranda of Understanding between Key Stakeholders and Law Enforcement Agencies on Counter-trafficking Cooperation", March 2009, p. 100-114.

¹⁴OSCE/ODIHR, "National Referral Mechanisms-Joining efforts to protect the rights of trafficked persons: A Practical Handbook", Warsaw, 2004, p. 17.

¹⁵ICMPD, "Guidelines for the Development and Implementation of a Comprehensive National Anti-Trafficking Response", Vienna, 2006, p. 44.



2. Link of Identification with Definition of Trafficking in Human Beings

2.1. Definition of Trafficking in Human Beings

As already mentioned the indicators for the identification of trafficked persons are based on the definition of trafficking in human beings. Each indicator corresponds to a distinct element/characteristic of the human trafficking phenomenon. Therefore it is important to make use of a broad definition of trafficking in order to be able to elaborate indicators adjusted to new trends and previously unknown manifestations of the phenomenon and be able to react to them effectively and protect as many victims as possible. Securing access to the required assistance for all victims should be the first priority of a criminal prosecution.

The definitions of human trafficking contained in the domestic legislation of European countries are based on the definitions included in international anti-trafficking documents. The basic and first ever internationally recognized definition of human trafficking is contained in Article 2 of the UN Palermo Protocol.¹⁶ Article 4 of the CoE Anti-Trafficking Convention contains an almost identical definition of human trafficking:

- a) **“Trafficking in human beings”** shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of 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 or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- b) 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;
- c) 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;
- d) “child” shall mean any person aged under eighteen years”.

It is also important to note that many of the elements currently included in the definition of “trafficking in human beings” need to be further defined. In order to explicitly identify cases of human trafficking in practice one needs to know the essence of such notions as “abduction”, “deception”, “abuse of power”, “position of vulnerability”, “forced labour”, “slavery”, “exploitation”, “abuse of position of vulnerability”, etc. A separate definition of each element of human trafficking allows to create a system of indicators characterizing each element separately and the phenomenon of trafficking in general, which in its turn facilitates the adoption of practical guidelines on the identification of trafficked persons.

¹⁶ Article 3 of the “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime”, (2000), UNTS vol. 2237, p. 319.

2.2. Elements of Trafficking in Human Beings

Trafficking in human beings comprises numerous elements, which in real situations can be encountered in different combinations. The definition of "trafficking in human beings" can be divided **into three main groups of elements**:

A) Actions – recruitment, transportation, transfer, harbouring or receipt of persons;

B) Means – threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or of a position of vulnerability, giving or receiving of payments or benefits to achieve the consent of a person having control over another person;

C) Purposes – exploitation, which includes, 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.

Pursuant to Article 4 (c) of the CoE Anti-Trafficking Convention **the second group of elements "means" is not relevant for cases of trafficking in children**. Generally speaking, means used by the traffickers represent the most important group of elements of trafficking in human beings. The exclusion of this group of elements in regard to trafficking in children is explained by the fact that children give in easily to influence; their limited life experience makes them easy to manipulate and does not allow them to assess the consequences of their decisions. Hence, when a child is exploited as a victim of trafficking then this is deemed *a priori* to be a consequence of using criminal means and as such does not require further evidence to prove the fact.

As mentioned earlier, each case of human trafficking includes only some of the elements contained in its definition. The question then arises, which are the necessary elements that need to be present in order to establish that the crime of human trafficking has been committed. The CoE Anti-Trafficking Convention in its Explanatory Report states that human trafficking is a combination of different elements/actions and not the result of a single, separate action.¹⁷ Thus, trafficking in human beings is a combination containing any of the aforementioned actions (A), achieved with any of the means (B) and aiming at any of the purposes of exploitation (C). There is, however, an exception regarding children: trafficking in children is a combination of actions (A) and purposes of exploitation (C).

It is also worth noting that a case of trafficking in human beings is possible to be identified at its incipient stage, i.e. the stage of recruitment or transportation, before the victim is subjected to exploitation. In such cases the intent of exploitation serves as a sufficient ground for the identification of a trafficked person.

A specialist conducting identification of trafficked persons should make a thorough assessment and be well aware of all the elements of the definition of human trafficking and its indicators. When identifying trafficked persons one should bear in mind that human trafficking is always a combination of different elements: acts of crime, methods of influence and purposes (forms) of exploitation.

¹⁷CoE Convention on Action against Trafficking in Human Beings and its Explanatory Report, 2005, CETS No. 197, p. 38, paras 75-76, also available at: <http://www.coe.int/t/dghl/monitoring/trafficking/Source/PDF_Conv_197_Trafficking_Erev.pdf>

2.3. System of Indicators

A number of indicators can be used to identify trafficked persons. As already noted, during the identification process the person responsible for identification should compare the information regarding the individual circumstances of the actual case with specific indicators of trafficking in human beings. Each indicator describes a different constituent element of the legal definition of human trafficking. The use of indicators assists the person responsible for victim identification to ascertain whether certain actions such as recruitment, transportation, transfer, etc. occurred and whether the victim was subjected to a certain type of exploitation, which means were applied etc. Given the fact that certain indicators (e.g. transportation, movement, threat, sexual abuse etc.) reflect closely the different constituent elements of the crime of human trafficking (acts, methods, purpose) we can consider them as **direct indicators of trafficking**.

However, in practice the situation often arises where the person responsible for the identification cannot obtain from the interview sufficient information regarding the presence of direct indicators that will help ascertain that the person is a victim of trafficking. This is due to a number of reasons, e.g. when the presumed victim is unwilling or reluctant to tell the truth due to fear or highly disturbed psychological status. Sometimes information is made available by relatives or acquaintances of the victim rather than by the victim her/himself. In this case the information delivered tends to be incomplete. In such instances an experienced specialist must have sufficient skills to be able to use **indirect indicators of trafficking**. Such indirect indicators are based on research data, as well as on personal knowledge and experience, in particular good knowledge of the typical (statistical average) social and psychological portrait of victims of trafficking, of the main routes of travelling abroad, of the particular situation and the location where the potential victim is found, as well as on other circumstances relevant to the victim's personality and life style.

Thus, the set of indicators used to identify trafficked persons can be divided into two groups:

- **direct indicators** to identify trafficked persons, which correspond (confirm) to the constituent elements of the legal definition of trafficking in human beings;
- **indirect indicators** to identify presumed trafficked persons based on data gained through practice and sociological study and analysis of real cases of trafficking (average statistical social and psychological profile of trafficked persons, arrangements made to organize travel abroad, situation and location where the presumed victim is found, etc.).

2.4. Preliminary Identification and Final Identification. Presumed Victim and Victim

Due to a number of reasons mentioned above (fear, anxiety, physical and/or psychological trauma), in practice it is often not possible to obtain comprehensive information on the existence of direct indicators of trafficking, demonstrating the presence of actions, means and purposes of exploitation, which are the necessary elements for the confirmation of a case of human trafficking. In such instances, identification becomes a lengthy process, accomplished in more than one stages.

At the initial stage the specialists responsible for victim identification can combine direct and indirect indicators. A victim identified in this manner is considered a **presumed victim** of trafficking in human beings.

EXPERIENCE OF THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

The Standard Operating Procedures (SOPs) for Treatment of Victims of Trafficking in Human Beings, approved by the Government of the FYROM,¹⁸ provide that "Any individual presumed to be a victim of trafficking in human beings shall be treated as a victim until the final confirmation. If the procedure establishes that the person is not a victim of trafficking, there is a great possibility that he or she was victimized and is vulnerable otherwise and therefore in need of assistance or protection. This assistance and the needs of safety cannot be disregarded. Even those who do not meet the criteria for trafficked persons should be given appropriate support and referred to the services capable of meeting their needs, if they so request".

According to internationally accepted standards, presumed victims of trafficking "...shall fall under the effect of anti-trafficking programmes as well as under the effect of special services rendered to such persons".¹⁹ Obviously, these may not be a full set of services envisaged by law to ensure social reintegration of a trafficked person conclusively identified as such. A presumed victim of trafficking however should be eligible for a minimum service package covering immediate needs, such as access to necessary medical help, food and shelter. Apart from assisting directly the victim, access to basic protection and assistance also helps the victim to regain trust in the system and be able to describe what has happened to her/him. Once the condition of a presumed victim improves it is necessary to take measures for compiling missing data on direct indicators required to finalise her/his identification as a trafficked person.

Thus, the process of identification of trafficked persons can be distinguished in **preliminary and final identification**. During the preliminary stage, care should be taken so as to identify **presumed victims of trafficking** by using **both direct and indirect indicators**. Victims identified in this manner must be granted access to a minimum package of free assistance.

The preliminary stage of identification should lead to a second stage of identification, i.e. the **final identification of the victim, with the exclusive use of direct indicators of trafficking**. Once this stage is completed and the victim is conclusively identified as such, then he/she should be granted access to the whole package of social services ensuring protection, assistance and reintegration of trafficked persons.

¹⁸ Government of the Former Yugoslav Republic of Macedonia/National Commission for Combating Trafficking in Human Beings and Illegal Migration, "Standard Operating Procedures for the Treatment of Victims of Trafficking in Human Beings", Skopje, 2008, p. 10, available at: <<http://webapps01.un.org/vawdatabase/uploads/Standard%20Operational%20Procedures%20for%20Treatment%20of%20Victims%20of%20Trafficking.pdf>>

¹⁹ OSCE/ODIHR, "National Referral Mechanisms- Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook", supra note 14, p. 17.

2.5. Direct Indicators

In order to provide a full list of direct indicators of trafficking in human beings one needs to start with a thorough analysis of the definition of human trafficking, followed by a definition of all its constituent elements. The aim is to have an exact and detailed description of each element, which combined with the other necessary elements of human trafficking, will result in a comprehensive system of indicators for the identification of trafficked persons.

As neither the Palermo Protocol nor the CoE Anti-Trafficking Convention contain definitions of the constituent elements mentioned in the definition of trafficking in human beings, it is necessary to resort to various international and national documents in order to be able to elaborate a list of direct indicators. These documents include:

- The Explanatory Report of the CoE Anti-Trafficking Convention²⁰
- The UN Model Law against Trafficking in Persons²¹
- The ILO Global report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work²²
- The ILO Guidelines for Legislation and Law Enforcement "Human Trafficking and Forced Labour Exploitation".²³

Further to the above, practical experience gained by NGOs in the field of victim identification is also very helpful.

In order to better understand and facilitate the use of direct indicators, it is proposed to categorize them in three distinct groups, depending on the element of human trafficking that they refer to, i.e. to indicators of actions, to indicators of means and to indicators of purposes.

As already mentioned, group B of elements (means) is not relevant for establishing that the crime of trafficking in children has been committed. It is assumed that illegal actions against children are always perpetrated with the use of illegal means. However, analysis of group C elements (purposes of exploitation) does not seem to be possible without addressing the issue of illegal means of influence, as the notion of exploitation as unlawful coercion of a person to work or render services also assumes the application of illegal means. Besides, omitting this group of indicators could risk distortion of the real picture of trafficking. For this reason it is recommended to examine the presence of all types of indicators, even in cases of trafficking in children.

The experience of different countries shows that the creation of a precise description of elements of human trafficking and their correlating direct indicators is far from simple. Distinguishing between indicators implying actions, means and purposes of exploitation is extremely difficult since traffickers use similar means of influence to engage and retain people in the situation of human trafficking during all stages of the crime, from the recruitment till the exploitation phase.

It is also worth noting that currently traffickers use psychological manipulation as a method of influencing trafficked persons. This is a method of persuasion based on premeditated deception. By using this method the trafficker creates in the mind of the victim a double illusion: first that reality corresponds to the description provided by the trafficker and secondly that responding to this reality is at the victim's discretion. For example, there are cases where future victims of sexual exploitation, prior to being

²⁰ CoE Convention on Action against Trafficking in Human Beings and its Explanatory Report, supra note 17.

²¹ UNODC, "Model Law against Trafficking in Persons", Vienna, 2009, page 15. Available at: <http://www.unodc.org/documents/human-trafficking/Model_Law_against_TIP.pdf>

²² ILO, "A Global Alliance against Forced Labour. Global report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 2005", Geneva, 2005.

²³ ILO, "Human Trafficking and Forced Labour Exploitation. Guidelines for Legislation and Law Enforcement", Geneva, 2005.

subjected to any form of sexual abuse, were forced to live for months in the same room with persons/victims that had already come to the terms with being sexually exploited. By so doing, traffickers were able to influence, even subconsciously, future victims by "grooming" them to new behavioural models. At the same time, victims were permanently reminded that there was no way out from this situation. As a result they gave their consent to be exploited without any obvious coercion. Sometimes the exploited person will be paid a pittance while repeatedly suggesting that if s/he remains in this situation s/he will earn enough in the future, but if s/he quits then s/he will lose all. This results in a situation where the victim acquiesces to its exploitation, getting in return just meals and cigarettes.

Although the current definition of human trafficking in international documents makes reference to means of coercion and deception, it includes no mention of manipulation. For this reason the list of direct indicators for the identification of trafficked persons should be flexible enough in order to respond to new and emerging trends of the human trafficking phenomenon.

Due to the fact that every country has its own domestic definition of human trafficking and the phenomenon of trafficking has different characteristics in different countries, the present Guidelines will refrain from providing a detailed and exhaustive list of direct indicators for victim identification. The scope of the present publication is to provide a systemic approach to the identification of trafficked persons.

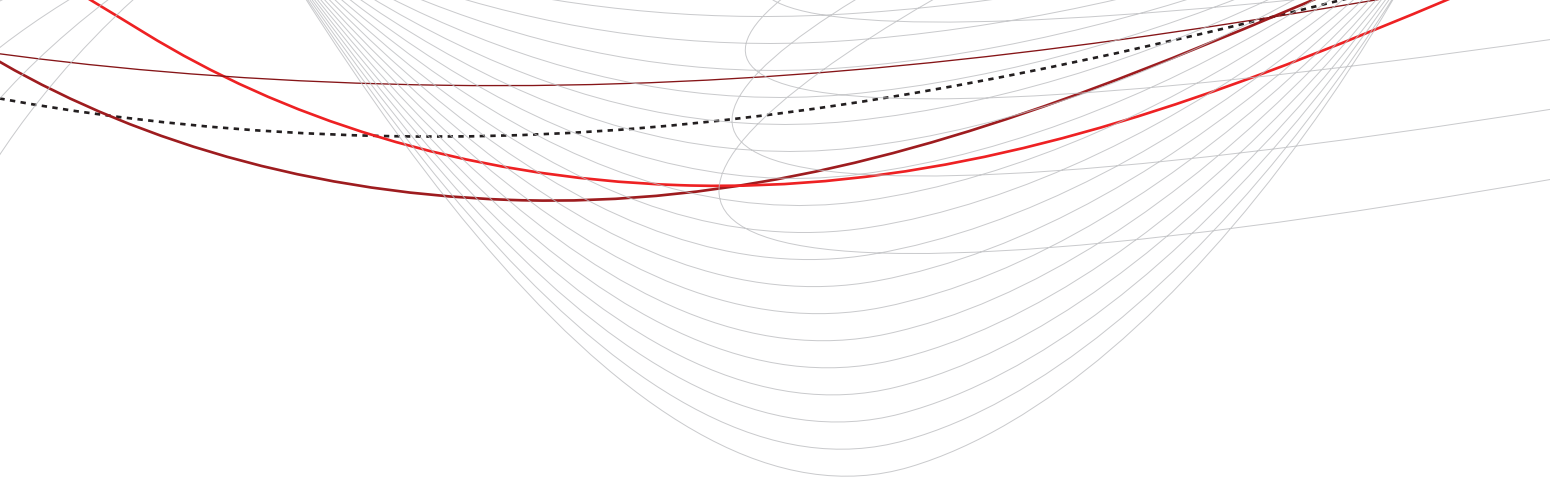
2.6. Indirect Indicators

In certain instances the situation in which a victim/presumed victim of trafficking finds her/himself in, hampers the collection of sufficient information on the existence of direct indicators that will help ascertain that this person is actually a victim of human trafficking. The reasons can vary. For example, when a presumed victim of trafficking does not want or cannot tell the truth due to fear or poor psychological condition; or when information is made available by relatives or acquaintances of the trafficked person who know only part of the story. In such cases, the specialist responsible for identification should be able to make use of certain indirect indicators, in particular:

- Average statistical social profile of human trafficking victims;
- Average statistical psychological profile of human trafficking victims;
- Arrangements of the trafficked person for emigrating abroad;
- Victim's legal status in the country of destination or transit;
- Personal circumstances and environment of the trafficked person;
- Other circumstances regarding the life and personality of the victim.

Average statistical social profile of a victim of trafficking in human beings²⁴ includes data regarding gender and age, data on family status, education and occupation, marital status, employment and income level. In most cases victims come from poor rural families, have a low education level and lack an occupation and/or a job.

²⁴ Rusu V. & Fomina T., "Trafficking in Persons in Moldova: Comments, Trends, Recommendations" International Center for Women Rights Protection and Promotion "La Strada" Moldova, 2nd ed., Chisinau, 2011, p. 19. Available at: <http://www.lastrada.md/publicatii/ebook/Brosura_trafic_eng.pdf >



Average statistical psychological profile of a victim of trafficking in human beings is based on the assumption that victims of trafficking develop psychological trauma resulting from their physical and mental abuse. Experienced specialists should have the ability to recognise symptoms of such trauma when identifying trafficking victims. Some indications of psychological trauma are disorganized thinking, confused mental state, memory and sleep disorders, recurring nightmares, high level of agitation, obsessive-compulsive behaviour, etc.

Arrangements for emigrating abroad, i.e. who made arrangements and covered travel expenses for the presumed victim of trafficking. Specific details for organizing emigration and travel abroad can serve as an indirect sign of human trafficking, especially when the trip is organized and paid by a third person, when a third person organizes work abroad, when a third person arranges to issue travel documents etc.

Legal status of the trafficked person in the country of destination or transit can also serve as an important indirect indicator. As it often happens, illegal/irregular migrants run a high risk of becoming victims of human trafficking. This is true even if they entered the country legally, but later became illegal because they violated the terms of their visa or residence permit.

Circumstances and environment of the trafficked person— this refers to specific features of habitat and social/family surroundings of the trafficked person, compared to already known cases of trafficking in human beings. A typical example is that the presumed victim is surrounded by people having prior criminal records, esp. if they have been already accused for human trafficking. Such knowledge can serve as an indirect indicator for the preliminary identification of a trafficked person.

Previous experience of violence is another important indirect indicator. Research data has shown that many victims of trafficking have already been subjected to violence, usually more than once, long before they got into the vicious circle of human trafficking.

EXPERIENCE OF GREECE

According to the process of formal identification detailed in Law 3386/2005 (as amended by Law 3875/2010) the Prosecutor of the Court of First Instance issues a special Act to this effect. This can be done either immediately after or before the initiation of criminal prosecution.

If the act is issued prior to the initiation of prosecution, a written opinion delivered by two specialists is required before the Act is issued. These specialists must be psychiatrists, psychologists or social workers and serve in services or units of protection and assistance run by the State, NGOs, the IOM, other international organisations or in specialized protection and assistance agencies recognized by the State.

The Act of formal identification can also be issued for victims who do not cooperate with the competent authorities. This is possible when the Public Prosecutor of the Court of First Instance, with the assent of the Public Prosecutor of the Court of Appeals, decides that the victim has suffered direct harm to her/his physical integrity or to his/her personal and sexual freedom, or that there is serious danger to these freedoms or to the life of the victim.

Based on national experience and the specific characteristics of the human trafficking phenomenon in each country, it is possible to elaborate specific indirect indicators that reflect the realities of human trafficking, to be used for the identification of trafficked persons. The obligation to evaluate the circumstances of the trafficked person for purposes of victim identification is also mentioned in the Explanatory Report of the CoE Anti-Trafficking Convention: "Through the identification process, competent authorities seek and evaluate different circumstances, according to which they can consider a person to be a victim of trafficking."²⁵

²⁵ CoE Convention on Action against Trafficking in Human Beings and its Explanatory Report, supra note 17, p. 44, para. 127.

3. Organisational Aspects of Identification

3.1. Organisations and Professionals Performing Identification

Pursuant to Article 10 of the CoE Anti-Trafficking Convention, the identification of victims of trafficking must be conducted by the competent authorities. The term “competent authorities” means the public authorities which may have contact with trafficking victims, such as the police, the labour inspectorate, border police, immigration authorities and embassies or consulates. The Convention likewise requires that the various authorities collaborate with each other and with NGOs that provide aid and support to victims.²⁶

EXPERIENCE OF UKRAINE

Participation of NGOs in the identification process has a positive influence in establishing contacts with presumed trafficked persons. As practice shows, the level of trust to governmental institutions is usually lower than to non-governmental ones. Thus, the involvement of NGOs in the identification process helps prepare the victim to take the necessary steps for getting protection and assistance. For example, specialists of NGO La Strada Ukraine that undertake victim identification, provide each presumed victim with all the necessary information regarding assistance and protection offered by state and non-state organisations. This is particularly relevant in cases where the victim is afraid for her/his personal security and requires protection measures by law enforcement agencies, or is in need to restore personal documents (ID, passport etc.).

The positive impact of NGOs in the identification process is also illustrated by the cooperation of NGO La Strada-Ukraine with NGO “Faith.Hope.Love.” (Odessa). The two NGOs have succeeded in getting permission from the State Border Administration for a social worker of “Faith.Hope.Love.” to be present at the interviews of persons deported to the sea port Odessa. The presence of the social worker has enabled the NGO to get in contact with presumed trafficked persons, gain their trust and inform them about available services including shelters. This action resulted in the identification of numerous trafficked persons.

In practice, the identification of trafficked persons is often done by the police or by specialized NGOs providing assistance to victims/presumed victims of human trafficking. Victim identification can take place either in the country of destination, in the transit country, or in the country of origin of trafficked persons once they return. It is essential that agencies responsible to identify trafficked persons employ personnel that are qualified and capable to identify victims of trafficking and refer them to pertinent organisations and services for assistance and protection. The Convention does not require that the competent authorities have specialists in human-trafficking matters, but it does require that they have trained qualified people so that victims can be effectively identified.

EXPERIENCE OF UKRAINE

The experience from two regions (oblasts) of Ukraine, where the National Referral Mechanism was piloted in 2010, shows that training and better qualifications of specialists have a positive impact on increasing the number of identified and presumed trafficked persons and the quality of services provided to them. Educated specialists from different agencies (i.e. law enforcement,

²⁶ Ibid, paras 129-130.

social services, social services for youth and children affairs, etc.) were able to better identify presumed victims of trafficking even in cases where the person did not cooperate. This was particularly important given the fact that during the piloting phase of the NRM significant information campaigns were underway with the aim to inform trafficked persons and the public about available assistance and protection for victims of human trafficking. Experience showed that the education of specialists from related state institutions is an important prerequisite for the effective functioning of the NRM and services provided.

As the characteristics of trafficking in human beings are in a constant state of flux, it is extremely important to ensure proper monitoring and analysis of the emerging trends regarding the *modus operandi* of the offenders, new methods of influencing the victims and new ways of exploitation. In order to benefit from such analysis, it is necessary to extrapolate these findings in the daily work of anti-trafficking agencies and incorporate them in professional trainings.

It is also worth noting that there are numerous other structures that by virtue of their activity often encounter trafficked persons, e.g. social workers, employment officers, doctors and nurses etc. In order to organize an efficient system of identification of trafficked persons it is desirable to engage these specialists at the stage of preliminary identification of victims. These specialists should be specifically trained in dealing with trafficked persons and their role should be mainly targeted towards the protection of the interests of victims. For this reason they should be skilled in informing presumed victims about their rights, including the right to participate or not in criminal proceedings, the right to have access to comprehensive information on issues of safety, to witness protection schemes, etc.

To conclude, the main role of the above mentioned service providers that due to their scope of work often encounter victims of trafficking is to perform preliminary identification and refer presumed victims to the competent authorities responsible for official identification, protection and assistance.

3.2. Methods of Identification

Both proactive and reactive methods can be used in the process of identification of trafficked persons.

In proactive identification, trained specialists and/or organisations rendering assistance to trafficked persons actively undertake measures to search for presumed victims of human trafficking. To this end, it is necessary to have detailed and up to date information on the most probable places where trafficked persons can be found.

EXPERIENCE OF GREECE

Since 2002 the Greek NGO ARSIS undertakes street work for the identification of minors- victims of trafficking and exploitation or at risk of trafficking and exploitation. Street work is carried out by mixed teams of two social workers/investigators, one of who speaks the language of the children (Albanian, Bulgarian or Romanian). Once a child is identified as a victim/presumed victim then ARSIS takes all the necessary steps to ensure that protection and assistance is offered to the child and its family, e.g. psycho-social support (child-family); notification and cooperation with all stakeholders (municipality, school, health, social and welfare services, etc); provision of counselling and other necessary services (legal, job seeking, etc); workshops/ additional teaching for children; shelter with the approval of the Prosecutor for Minors'; repatriation / reintegration services.

Equally important is to find ways to contact presumed victims and put in place a procedure for delivering information on their rights and contacts of organisations which offer assistance. This is extremely important for enhancing the efficiency of existing structures that identify victims, as current research shows that the majority of trafficked persons remain unidentified.

EXPERIENCE OF TURKEY

Experts of the Turkish NGO Human Resource Development Foundation visit regularly the Istanbul Foreigners Detention Guesthouse (now called Removal Centre) to make a second screening during awareness raising seminars or psychological assistance sessions for irregular migrant women.

In 2008 HRDF got permission from the General Directorate of Security to visit Istanbul Foreigners Guesthouse and to meet with foreign women awaiting deportation. In 2009 HRDF organized seminars on human trafficking for officers of the Foreigners' Department Police and awareness raising seminars on human trafficking targeting irregular migrant women. These events were followed by individual meetings with those women who required further confidential counselling. Confidential, one to one counselling aimed at locating unidentified victims of trafficking. During these visits, HRDF experts distributed gift packages to women (personal hygiene products, cosmetics, etc).

In 2010, again with the permission of state authorities, HRDF continued its activity at the Guesthouse. HRDF's psychologist visited the Guesthouse weekly and provided counselling to women who requested so. Apart from providing psychological assistance, these visits were also aimed at the identification of trafficked persons.

Making arrangements for the proactive identification of trafficked persons is an important aspect of the work of border guards. In this manner state authorities are able to come in contact with persons that are not aware that they are exploited by traffickers and have become or are about to become trafficking victims. Given the tendency of further increase of the number of trafficking cases through legal border crossing, this method is particularly valuable for the early detection and identification of presumed victims and the prosecution of trafficking offenses at an early stage.

Trafficked persons can also be identified during police operations in places of exploitation of victims (bars, brothels, massage parlours etc). However, the success of such operations depends on the observance of certain rules when working with presumed victims of trafficking and the ability of the police to cooperate with specialized NGOs, given the fact that presumed victims of human trafficking will usually have more trust in NGO professionals as opposed to policemen.

EXPERIENCE OF MOLDOVA

The NGO "International Center "La Strada", Moldova" has experience in cooperating with the police during the process of identification of trafficked persons.

The psychologist, social worker and lawyer of "La Strada" are members of a mobile team formed by different professionals (police and NGO). As soon as information about a possible trafficking case is received by the police, the mobile team arrives at the location of the suspected crime, in any region of the Republic of Moldova.

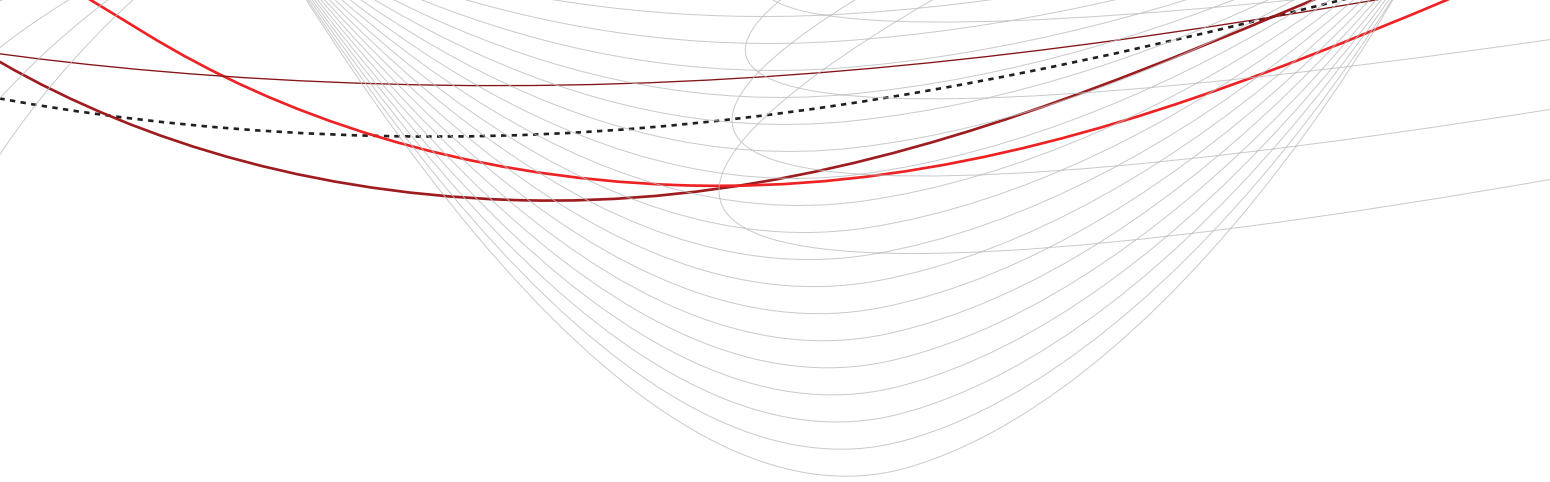
The mobile team exists for more than 5 years and assures the respect of victims' rights during the identification and investigation process.

Reactive identification is an inactive strategy of identifying trafficked persons in cases where the victims/presumed victims themselves or their close ones appeal for help, either to the police or to specialized NGOs. In order to make this method of identification work, trafficked persons need to know where to appeal for assistance. It also means that specialized awareness raising campaigns targeting particularly vulnerable groups to trafficking, as well as victims, must run constantly, informing individuals at risk what steps they can take if they have suffered from trafficking. At the same time, specialized NGOs and/or state services should also operate 24 hour hotlines.

A hotline is a dedicated multichannel telephone line, operating ideally on a 24 hour basis, which provides confidential assistance to persons in need. A hotline operator should have special training on identification of trafficked persons, know how to deal with trafficking victims and be aware of special procedures that need to be followed when providing assistance. Obviously, the employees of a single NGO/service provider cannot help on their own someone escape the control of criminal elements and offer a whole package of the desired/required assistance. At this point it is necessary to collaborate with law enforcement agencies and international structures where necessary.

EXPERIENCE OF UKRAINE

NGO La Strada Ukraine usually identifies trafficked persons through its Hotline. The Hotline is accessible from the whole of Ukraine. Telephone consultations are very effective in that the caller is able to keep anonymity and thus feel more at ease. Callers are therefore more inclined to discuss the details of their situation without fear of judgement. The fact that communication is purely verbal has also been found to have a positive effect on making the caller focus in more detail on the topic of the conversation. In this way the counsellor and the caller establish primary contact, which is crucial for further final identification.



The specifics of trafficking in human beings and the needs experienced by victims are such that no structure has the capacity to deal with it alone; to solve these problems a multidisciplinary and cross-sectoral approach is necessary. A hotline can serve as a link between the organisations responsible for carrying out the preliminary and the final identification and can also contribute to the referral of identified trafficked persons to organisations where they can get the necessary assistance and protection.

3.3. Self-Identification of Trafficked Persons and its Importance

Another important aspect of the identification process lies with the self-identification of the trafficked persons, i.e. their capacity **to analyse, understand and accept the idea that they have become the victims of such a grave offense as trafficking in human beings**. If the presumed or already identified victims do not self-identify, i.e. refuse to recognize and acknowledge what has happened to them, at least from a legal perspective, then they reject the suggested assistance and refuse to cooperate in solving these crimes.

Experience from holding interviews with the aim to identify cases of human trafficking shows that if the victims realize that they have suffered from criminal acts, recognize the feelings and emotions they went through and verbalize these emotions, then they are more inclined to be actively engaged in the creation and implementation of their own rehabilitation and (re)integration plan. Thus, it is necessary to create the conditions that will allow victims to self-identify as this has a positive effect both for them personally, as well as for the prosecution of trafficking cases.

EXPERIENCE OF GREECE

Good practice of the Hellenic Police:

The competent investigating officer provides an "Information Sheet" to the presumed victim during the phase of preliminary investigation. This sheet, published in 13 languages and signed by both the officer and the victim upon delivery, informs the presumed victim about the rights and protection that is offered by national legislation to recognised victims of human trafficking. It includes a list of indicators that can help a presumed victim to identify herself/himself as a victim of trafficking in order to cooperate with investigating and prosecuting authorities. Compared to the forms of deception listed by the ILO, indicators regarding deception are not as analytical and they include a strong one (promising some other work) and a medium one (way of life).²⁷

The success of self-identification depends on a number of factors. **Table 1** presents the main factors hindering self-identification of trafficked persons, as well as guidelines for the specialists on rectifying this situation.

²⁷ The Information Sheet is available at: <http://www.astynomia.gr/index.php?option=ozo_content&perform=view&id=1713&Itemid=0&lang>

Table 1. Factors hindering self-identification of trafficked persons and guidelines for specialists carrying out identification

	Factors hindering self-identification of trafficked persons	Guidelines to rectify the situation
1.	Trafficking in human beings is a complex phenomenon, composed of many elements. A victim is possible to associate the event that happened to her/him with only one element of this crime (for example, with deception or with physical abuse).	- Explain to presumed victims what trafficking in human beings means and which elements it comprises.
2	Very often persons that have suffered from trafficking know nothing about human rights and/or do not realize that these rights were violated.	- Explain that every person has certain rights by virtue of birth and no one is entitled to violate them, e.g. the right to freedom and personal security, the right to life etc.
3	Victims are not aware of their rights or of the fact that they are entitled to assistance and protection provided by national legislation.	- Explain to trafficked persons their rights, including the right to refuse assistance at any stage of the process. - Use all opportunities to provide to presumed victims specialized information (e.g. in the form of leaflets or brochures) regarding their rights
4	Victims often suffer from extreme feelings of guilt and self-recrimination because of what has happened to them. This can be a symptom of post-traumatic stress disorder or the result of repeated victimization from being mistreated by their environment (accusations, verbal and psychological abuse, rudeness, etc.).	- Explain that the victim does not bear any moral responsibility whatsoever for the offenses committed against her/him. All the guilt lies with the offenders who have engineered or facilitated the crime. - Allow presumed victims of human trafficking sufficient time to make a decision on suggested/possible assistance. - In case of a recurring pattern of self accusation/recrimination it is important to ensure access to assistance rendered by qualified psychologists and to reduce the effect of such factors that can lead to repeated victimization of these persons.
5	Victims lose their trust in people and feel reluctant to discuss what has happened to them so as to avoid re- living unpleasant memories. They also fear that the data they disclose may become publicly known. This seems to block their train of thought and hinder their capacity to perceive the event.	- Make the victim aware of the observance of the principle of confidentiality. - Inform the victim about the possibilities to get social assistance on the basis of keeping anonymity. - Communicate to the victim the hope that assistance is possible for her/him (and that she/he will be granted access to rehabilitation services once she/he would feel prepared to do so). - Let your respondent know that at any instance she/he is free to accept/quit the programme of assistance; never insist that the victim makes a specific decision. Instead, create a safe atmosphere and help her/him to decide/make the first step by herself/himself. ²⁸ - Offer to your respondent the contact details of the organisations providing services (including those located in her/his region), let her/him know that social workers are entitled to appeal on her/his behalf and with her/his voluntarily consent to specialized organisations.
6	Victims believe that they do not deserve to be helped as they are well aware that persons that have suffered from sexual exploitation are often blamed and accused by the society.	- Take care to inform the actual or presumed victims about the possibility of getting assistance from specialized services that provide specialized information materials.
7	Minority and juvenile age of trafficked persons, lack of experience or mental disability impedes victims from realizing what has happened to them.	- Engage a qualified specialist/psychologist with experience in interviewing children and/or a psychologist capable of detecting mental health problems and consequences of violence. Suggest assistance for mental and social rehabilitation.

²⁸ International Center for Women Rights Protection and Promotion "La Strada" Moldova, "Social Assistance to Trafficked Persons, especially to Women. Handbook for social workers and psychologists". 2nd ed., Chisinau, 2005, pp. 54-58.

4. Practical Aspects of Holding an Interview with Trafficked Persons

4.1. Organisation of Interview

Presumed trafficked persons can be interviewed either on the telephone or face to face.

Often, the victims of human trafficking make up their mind to talk about their experience by calling a specialized hotline. They are attracted by the conditions of anonymity and confidentiality and by the fact that usually these calls are free of charge. As a rule, victims calling a hotline seek specific assistance but at the same time are reluctant to go into detail regarding what has happened to them. Hence, a hotline counsellor should be able to make a preliminary identification and help the presumed victim to reach a decision whether s/he wants to make an appointment with a specialist. Unlike individual face to face interviews, an interview conducted on the phone can be a rather difficult task. On the other hand, this type of interview has its advantages as the caller has the freedom to terminate the conversation at any time and feels safe (especially at the preliminary stages), since all information provided is treated as confidential.

EXPERIENCE OF SERBIA

Good practice of NGO ASTRA

NGO ASTRA operates an SOS Helpline, that is a specialized telephone hotline available 24/7 and intended for identification and provision of direct assistance to victims of human trafficking, as well as for prevention of human trafficking by providing potential migrants with information on safe migration and the danger of human trafficking.

Identification of trafficked persons includes interviews with persons calling the hotline and reporting a missing person that is believed to be involved in a human trafficking chain or persons who have emerged from a situation of trafficking/violence and report this.

Only preliminary identification can be done during the initial telephone conversation. Nevertheless, hotline consultants immediately undertake all the necessary steps for the provision of urgently needed assistance. After their preliminary identification victims are referred to ASTRA Daily Center for final identification, needs assessment and elaboration of an individual action plan.

In order to assess correctly the situation it is important to maintain direct contact with the presumed trafficked person, something that will enable, at some point, a direct, face to face conversation which helps build trust. Direct communication offers many advantages. For example, a face to face conversation allows not only for verbal, but also for visual and non verbal communication. Non verbal communication helps bring to surface emotions and feelings experienced by the respondent, especially when discussing such sensitive issues as conditions of exploitation. Affirmative nodding, face mimics, gesticulation, posture – all these help to better understand the intonation of the conversation and make up for missing information.

Such interviews are usually held in a shelter, an office or the domicile of the respondent, if s/he wishes so. It is very important to find a relaxed and safe environment to contact the interview without interferences and disturbances. The presence of third parties at the interview is not permitted, unless so desired by the respondent. The respondent should feel comfortable and safe in the place chosen for holding the interview otherwise she/he will find it difficult to open up.

It is also desirable that the interviewer is of the same gender as the presumed trafficked person. In view of the specifics of the psychological trauma inflicted to women subjected to sexual exploitation a woman-interviewer can gain more trust and has better chances to identify direct indicators/elements of trafficking in human beings, especially in regard to certain aspects of exploitation of trafficked persons.

If the presumed trafficked person is a foreigner and does not have the necessary language skills to communicate it is necessary to ensure the presence of an interpreter and if necessary a cultural mediator.²⁹

EXPERIENCE OF GREECE

In cases involving children victims of sexual exploitation, Law 3625/2007 which ratified the UN Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, introduces the following procedure:

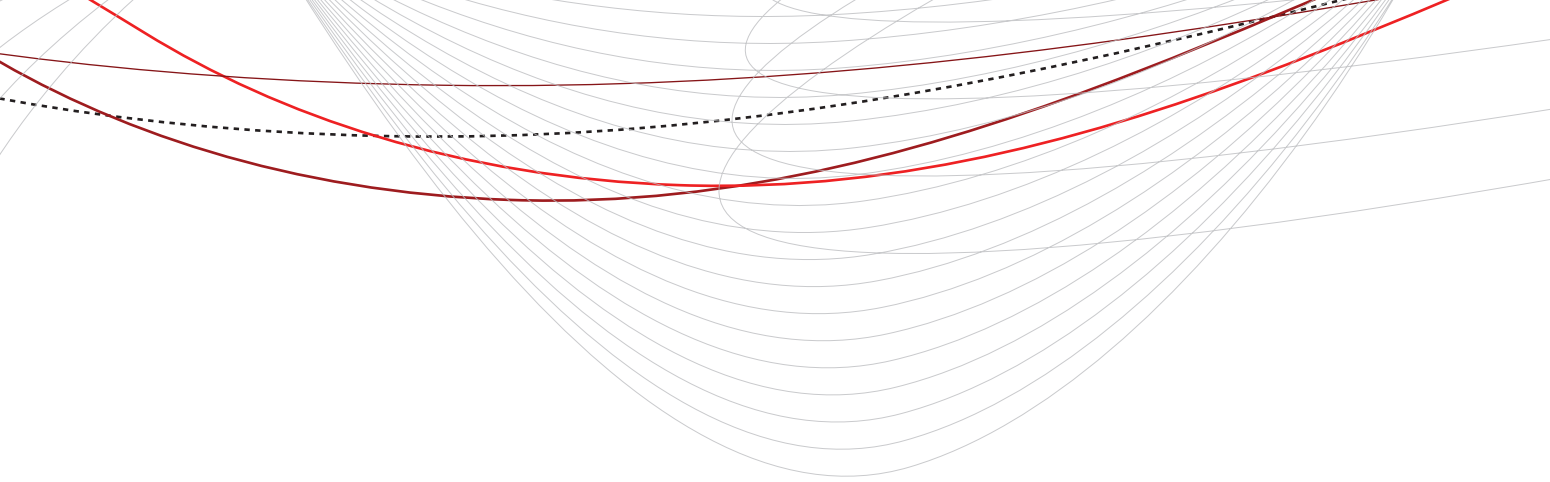
A child therapist/psychologist (and if not available, a general therapist/psychologist) is ordered as an expert to be present and cooperate with the child during the child's testimony. The therapist prepares the child for the interview and is present during the whole interview. S/he also compiles a written report about the child's mental state and perception. This procedure can also serve as a model whenever interviewing minors for the purposes of his/her identification as a victim of trafficking.

Identification of minors victims of trafficking should be done in the presence of their parents or legal guardians. For this reason it is also necessary to contact in advance social services for the protection of minors in order to invite a representative in cases where legal guardianship of the minor has been awarded to social services.

EXPERIENCE OF UKRAINE

An example of developing child friendly procedures is the initiative of La Strada-Ukraine in creating the so-called "green rooms". These rooms are used for interviewing children that have suffered from violence, including trafficking in human beings. They are equipped with special furniture, toys, etc, and they also have cameras and two way mirrors that allow specialists/authorities to observe the interview from outside the room. Such interviews are recorded with the purpose to be used in court proceedings in order to avoid the re-traumatisation of the child.

²⁹ ICMPD, "Guidelines for the Development of a Transnational Referral Mechanism for Trafficked Persons: South-Eastern Europe", supra note 10, p. 44.



La Strada-Ukraine has equipped one "green room" in Kyiv, which is already functioning and is in the process of equipping another green room in Odessa. However, due to the existing legal framework, it is not possible yet to use the recorded interview/testimony in the court, despite the fact that this would significantly reduce trauma for the child victim/witness.

4.2. Communication with Trafficked Persons

Holding interviews with presumed trafficked persons is subject to certain basic rules that are already described in specialized, as well as in non specialized publications, such as the WHO Ethical and Safety Recommendations for Interviewing Trafficked Women.³⁰

Interviews with presumed and actual trafficked persons with the aim of identification must **be based on respect of human rights, i.e. incorporate the human rights approach** (see section 1.4. of the present Guidelines), and with due respect for the following ethical principles:

- respect for the respondent's opinion;
- careful choice of language in the framing of questions, i.e. questions should be delicate, polite and tactful, and avoidance of categorical opinions;
- risk assessment for the respondent and provision of safety measures where necessary;
- competency and responsibility of the interviewer;
- other ethical principles (e.g. confidentiality, non judgmental approach).

During the interview the interviewer should address the respondent with simple, brief and specific questions using words easily perceived. In this way, it will be easier for the interviewee to give more precise and less vague answers. For the same reason it is better to avoid using legal and other professional terminology as it can sound strange and create an unnecessary barrier to an informal discussion.

As a rule, interviewees usually withhold certain details that can be very important for their identification as trafficked persons. In these cases the interviewer should approach the situation with discretion, while at the same time enquire whether the interviewee forgot to mention certain details or is not willing to share them. If the respondent is still unwilling to recall certain details it is not advisable to insist; she/he will probably mention them at a later stage.

In order to establish a good rapport with the respondent it is advisable throughout the conversation to:

- use the same manner and tone as the respondent does;
- study the reactions of the respondent during short breaks in the discussion;
- avoid long breaks in discussion as this may interrupt the flow of conversation;
- maintain visual contact with the respondent throughout the discussion;

³⁰ Zimmerman, C. & Watts C., "WHO Ethical and Safety Recommendations for Interviewing Trafficked Women", WHO/ London School of Hygiene & Tropical Medicine, Geneva, 2003. See also Mitchels, B., "Let's talk. Developing Effective Communication with Child Victims of Abuse and Human Trafficking", UNICEF (Kosovo Mission), 2004; International Center for Women Rights Protection and Promotion "La Strada" Moldova, "Social Assistance to Trafficked Persons, especially to Women. Handbook for Social Workers and Psychologists", supra note 28.

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- acknowledge and pay tribute to the words of the respondent even if the interviewer believes that certain points in his/her story are questionable;
 - manifest emotional sharing and support to respondent;
 - avoid using a questionnaire and make communication more friendly and informal;
 - show empathy to the suffering experienced by the respondent;
 - highlight, whenever appropriate, the strong points in behaviour and character of the respondent.

All the above will help the respondent to feel more at ease and have a sincere and open conversation.

4.3. Information and Needs Assessment

Prior to holding an interview the presumed trafficked person should be notified that information obtained at the interview will be kept secret. The respondent should also be informed about her/his right to refuse to answer questions or to terminate the interview at any given instance.

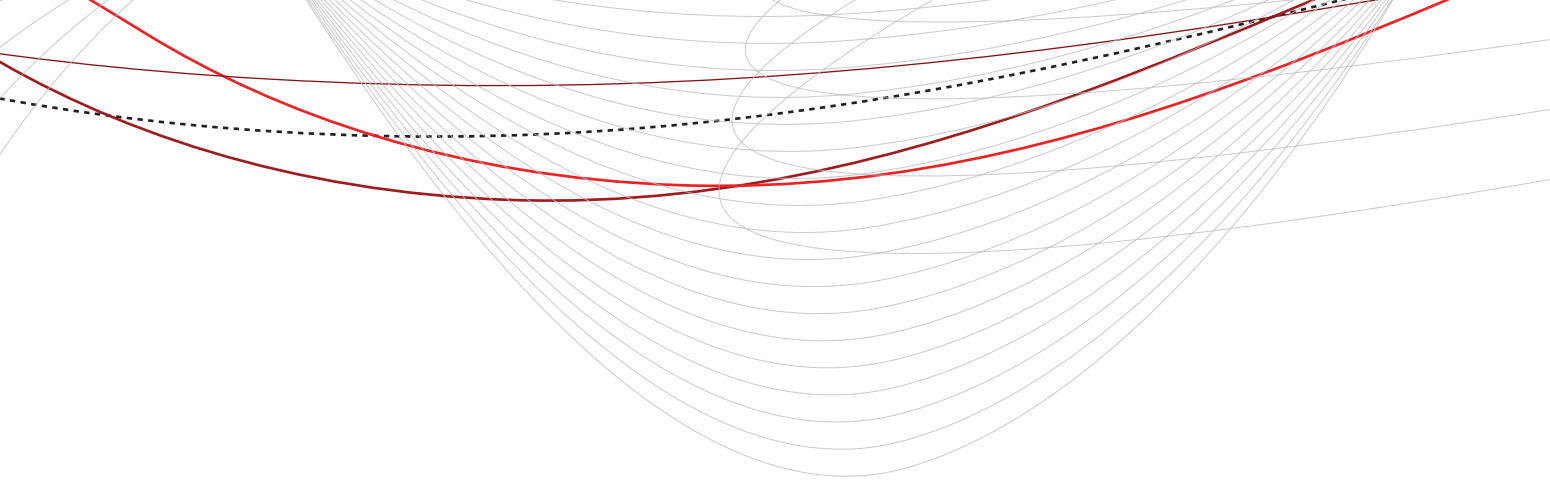
The interviewee should also be informed on how the information obtained will be used. It is necessary to explain that information obtained will be subsequently used for the purpose of combating the phenomenon of human trafficking (e.g. for the creation of a statistical average profile) and for preventing the recurrence of trafficking cases.

EXPERIENCE OF ALBANIA

Albania's National Referral Mechanism for the Enhanced Identification of and Assistance to Victims of Human Trafficking was adopted on 18 July 2005.³¹ Annex I to the NRM entitled "Instructions for the Determination of Actual, Presumed, or Potential Victims" contains general principles and instructions on for conducting interviews with presumed trafficked persons:

- *The interviewee and the interviewer must be able to communicate in a common language: interviewees who cannot communicate in a language understood by the interviewer shall be treated as referred (as a possible victim of trafficking) until direct (interviewee/interviewer) communication is established.*
- *Interviews should be conducted in a private place, without the presence of others – except in the case of minors accompanied by their parents as noted below.*
- *Interviews should be conducted by specially trained personnel.*
- *Interviewees shall be informed of confidentiality and anonymity.*
- *Interviewees shall be informed on how information provided will be used.*
- *The interviewer has obtained the interviewees consent in order to complete the interview process. If the interviewee does not consent, s/he must be free to go.*
- *Interviews may take place over time; everything does not have to be determined at once.*

³¹ "Cooperation Agreement to Establish a National Referral Mechanism for The Enhanced Identification of and Assistance to Victims of Human Trafficking", Tirana, 18 July 2005, available at: <<http://www.legislationline.org/documents/action/popup/id/6224>>



The presumed trafficked person should also be informed on the basic human rights – i.e. rights enjoyed by everyone, including victims of trafficking in human beings- and their corresponding obligations. Detailed information concerning the following areas should also be given:³²

- Recovery and reflection period;
- Services available (accommodation, counselling, etc.);
- System of protection, including witness protection schemes;
- Possible next steps of referral;
- Current security concerns.

The specialist conducting the interview must inform the presumed trafficked person that the main purpose of the interview is to identify and address her/his basic needs and to provide effective assistance and protection with due consideration for the human rights of the victim.

It is important to remember that many trafficked persons make up their mind to appeal for assistance only once they find themselves in extreme hardship. Therefore the process of identification is usually accompanied by the need for addressing urgently the basic needs of the presumed trafficked person.

The following basic needs should be met before providing or enquiring about any other type of information³³:

- Food
- Water
- Toilet and basic hygiene
- Clean clothing
- Rest
- Some privacy
- Urgent medical care
- Possibility of contacting family members.

4.4. Early Risk Assessment

The interviewer should try to find out the existing risks for the life and the physical and mental health of the respondent.

For this reason it is necessary to identify the relationship between the trafficker and the presumed victim/respondent and the possible risks involved, for example if the respondent or her/his family members have received any threats from the traffickers. If necessary, the interviewer must contact the police and request the personal protection of the presumed victim.

³² ICMPD, "Guidelines for the Development of a Transnational Referral Mechanism for Trafficked Persons: South-Eastern Europe", supra note 10, p. 3.

³³ Ibid, pp. 38-39.

One should also bear in mind that holding an interview poses certain risks for the psychological stability of the interviewed person, as recalling the suffering this person went through can facilitate the recurrence of an imbalanced emotional condition. During the interview the victims can develop and manifest the symptoms of psychological trauma, such as headaches, apathy, feeling of helplessness, inability to concentrate to the discussion, extreme feelings of guilt, distorted time perception, disassociation of personality, provocative or aggressive behaviour, denial of the violence experienced or attempts to minimize its consequences on their health etc.³⁴ Therefore, interviews with the purpose of identifying cases of human trafficking should be conducted by experienced specialists capable of recognizing the immediate needs of the respondent that need to be satisfied as a matter of priority. Interviewers should also be ready to accept the responsibility to make arrangements for further qualified assistance and timely emotional support for the presumed victim.

The interviewer must also keep in mind that people are inclined to forget certain painful experiences and will have difficulty recalling them. In case this is needed for identification purposes the interviewer may ask some carefully selected questions, but she/he is prohibited from insisting that the respondent recalls incidents that are unpleasant or traumatic. When touching on the matter of conditions of exploitation, the interviewer must avoid asking questions that may arouse emotional answers as this can often lead to repeated victimization.

Early risk assessment for a presumed child victim must also take into consideration the best interest of the child, something that will usually be determined by her/his appointed guardian.

EXPERIENCE OF BULGARIA

In Bulgaria, the National Referral Mechanism for referral and support of trafficked persons formed by governmental and non-governmental organisations envisages the procedure of risk assessment as an ongoing process that starts with the identification of the trafficked person and continues throughout the stages of investigation, criminal prosecution, and reintegration.

At the moment of identification of a trafficked person, a risk assessment is made with regard to the immediate dangers for the health and the life of the victim – including elements such as emergency medical needs, danger of re-trafficking and present and past experiences with violence. The risk assessment during identification includes the trafficked person's personal concerns and the objective assessment of the interviewer.

The risk assessment is made during the initial interview with the trafficked person, in a safe place when she/he is able and willing to speak, and includes several steps: involving a trafficked person in the process of risk assessment; development of an individual safety plan; revision of the risk assessment and the safety plan at every contact with the trafficked person and after any new developments in the case. The organisations involved in identification and reintegration within the NRM in Bulgaria revise safety plans and assess risks after every contact with the trafficked person.

³⁴ International Center for Women Rights Protection and Promotion "La Strada" Moldova , Thematic Publication "La Strada EXPRESS", Vol. 2: "Identification of Trafficked Persons, Chisinau, 2006. See in particular: Petrova, D. & Kojuharova, N., "Psychological Aspects of Identification of Trafficked Persons", p. 41, available at: <http://www.lastrada.md/publicatii/ebook/Express_2_eng.pdf>

4.5. Reflection Period

The reflection period can be defined as a period of time, its length varying according to national legislation, that aims to allow the presumed trafficked person to recover, escape the influence of traffickers and make an informed decision about her/his future, in full compliance with human rights provisions.³⁵

The reflection period should be granted regardless of a person's willingness to cooperate as a witness³⁶ and should be followed by the granting of a (temporary) residence permit. Cooperation with the competent authorities should be, at any stage in the process, voluntary and never a prerequisite in order to acquire the status and rights of a trafficked person. Furthermore, no expulsion order should be enforced against the presumed trafficked person during this period.

The recovery and reflection period also serves to raise the assisted person's confidence in the State and its ability to protect her/his interests.

Consequently, the main characteristics of a recovery and reflection period should be:

- A period of time that will allow trafficked persons to recover and escape the control of their traffickers. According to Article 13 of the CoE Anti-Trafficking Convention this period cannot be less than 30 days, though it has been repeatedly suggested that the reflection period should be at minimum three months.³⁷
- Prevent removal of the trafficked person from the country, prior to having its status determined.
- Provide adequate assistance and protection addressing the immediate needs of the victim.
- Provide assistance and protection regardless from cooperation with the authorities.

EXPERIENCE OF GREECE

*Identified **presumed victims** of human trafficking are offered a **three month reflection period and are entitled to assistance services**. During the reflection period the presumed victim cannot be deported.*

*According to the law, during the reflection period presumed victims of trafficking receive a package of basic services of assistance and protection, including **health care, psychological support, shelter, food, interpretation services, necessary legal aid and protection and security by the competent authorities**.*

After the reflection period is over, the full package of services (including residence permit and access to the labour market) is provided only to conclusively identified victims (as opposed to presumed victims) by the competent authority which is the Prosecutor of the Court of First Instance. Identified victims have the additional right to apply for a 12 month, renewable residence permit. This

³⁵ European Commission, "Report of the Experts Group on Trafficking in Human Beings", Brussels, 2004, pp. 105-106, 173, available at:

http://ec.europa.eu/anti-trafficking/download.action?nodeId=977ca985-90c5-4520-baa5-57a914aa4ddc&fileName=Report+22+Dec_en.pdf&fileType=pdf

³⁶ Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report, 2005, supra note 17, Articles 13 and 14.

³⁷ See EU Experts Group on Trafficking in Human Beings, Opinion on reflection period and residence permit for victims of trafficking in human beings, (16 April 2004) and Opinion No. No. 4/2009 (16 June 2009).

residence permit gives access to the labour market, as well as the right to participate in vocational training programmes run by OAED (Workforce Employment Organisation) or other agencies.

Since September 2010, victim identification no longer depends on the willingness of the victim to participate in criminal proceedings against the perpetrators. As victim identification was only recently made unconditional from the victim's willingness to cooperate by testifying against her/his traffickers, it remains to be seen in practice how easily and for how long identification and subsequent assistance will be provided to those who don't cooperate with the authorities. On the positive side, there have been a few instances since the introduction of the new law, that victims have been identified even when they cannot or do not want to cooperate with the authorities.

5. Identification and Data Collection

5.1. Recommendations on the Content of Questionnaires for Identification

A standard questionnaire for holding an interview with presumed trafficked persons (which can be in the form of a checklist) permits to collect information with the purpose of:

- identification of presumed victims and victims of trafficking in human beings;
- early risk assessment and basic needs assessment to ensure access of trafficked persons to the necessary protection and assistance;
- compilation of data on the phenomenon of trafficking in human beings.

Data collection is required for deducing general conclusions regarding the phenomenon of human trafficking, for identifying the main sources of the problem and for pinpointing factors of influence and emerging trends. Accumulation and analysis of information contributes towards the development of guidelines improving the system of combating human trafficking. It also inhibits the spread of the phenomenon and contributes towards better assistance and protection to trafficked persons.

EXPERIENCE OF MOLDOVA

The standard questionnaire for identification of victims of trafficking in human beings has been piloted in different regions of Moldova and proved to be an effective tool within the National Referral System³⁸ for victims and potential victims of trafficking in human beings. The questionnaire takes into account the experience of leading NGOs and the IOM Mission to Moldova and is based on already applied indicators. It is used as a referral tool for victims of trafficking, ensuring that they receive assistance and protection. The use of the questionnaire has also helped avoid repeated interviews and (re)victimization of trafficked persons. In addition to the above, the distribution and use of the questionnaire at local level by trained social workers resulted in increased numbers of identified trafficked persons and has ensured access to necessary assistance.

A standard questionnaire should collect information on:

- 1) direct indicators of trafficking in human beings;
- 2) indirect indicators of trafficking in human beings;
- 3) needs of the victim in order to work out an individual plan of rehabilitation/reintegration and to grant immediate and long term assistance;
- 4) possible risks for life, physical and mental health of the trafficked person;
- 5) other relevant data.

It is important to ensure that the drafting of a standard questionnaire and its accompanying guidelines is a joint effort of governmental, non-governmental and intergovernmental organisations, active in the fight against human trafficking. Such cooperation benefits from the experience and good practices of all active anti-trafficking actors, ensures widespread implementation of the resulting questionnaire and ensures data comparability and reliable analysis at national level.

Points to be included in a standard questionnaire for the identification of trafficked persons can be found in the table below. It

³⁸ Taking into consideration existing legal traditions in the country, as well as the chosen approach to implementation and development of cooperation structures for referral of victims of trafficking in human beings, Moldova decided to use the term "national system" instead of "national mechanism".

should be noted however, that though questionnaires are a useful tool for collecting information that can lead to the identification of trafficked persons, they should be used with caution and only by trained personnel, as exclusive reliance on pre-determined questions runs the risk of overlooking other vital signs that might not be directly addressed in the questionnaire. For this reason no questionnaire should be considered as exhaustive in its questions.

Table 2. Key recommendations on the content of a questionnaire for the identification of trafficked persons

Subject description	Points recommended for inclusion
1. Personal information	<ul style="list-style-type: none"> • Full name/personal ID • Contact phone • Date and place of birth • Gender • Domicile • Education • Marital status • Number of children • Date when lured in human trafficking • Date when freed/released from exploitation/situation of trafficking in human beings
2. Data on factors facilitating acceptance of dubious suggestions to travel abroad or accept dubious work.	<ul style="list-style-type: none"> 1. Poverty and unemployment <ul style="list-style-type: none"> • Record of vocational education • Record of employment and level of income before travelling abroad 2. Break up of family ties <ul style="list-style-type: none"> • Contacts and relationship with parents • Relationship with own family • Violence and conflicts in the family/outside family • Life values 3. Lack of information about the phenomenon 4. Other, please specify

3. Direct indicators of trafficking in human beings

3. A. Actions

Recruitment

1. Methods of recruitment (fictitious job offers, fabricated job placements, promised type of activity and industry where the person is supposed to work etc.)
2. Data on the recruiter (legal entity or natural person, gender, age etc.)
3. Relation to the recruiter (relative, neighbour, friend, acquaintance, other)
4. Place of recruitment (work, family/friendly environment, advertisement, random, other)
5. Who made arrangements/covered expenses for obtaining necessary travel/work documents and transportation fees
6. Was information on leaving kept secret from the relatives
7. Other details of recruitment

Transportation

1. Confirmation of the fact of transportation of the trafficked person from the place of permanent residence to another location within the territory of the country (internal trafficking in persons) or abroad (specify destination country and transit country)
2. Ways of crossing the border of the country
 - Legal crossing of the border
 - Illegal crossing of the border
 - Use of forged documents and/or visas
3. Ways of arranging for transportation
 - Individual
 - Group
4. Type of transport used
5. Other, please specify

Transfer/Receipt

1. Data on transfer of a trafficked person in the country of origin, transit or destination
2. Data on receipt of money or other benefits in exchange for transferring a trafficked person

Harbouring

1. Data on harbouring a trafficked person in order to ensure that s/he cannot make contact with the police or other persons that could assist her/him
2. Opportunities to escape the place of harbouring/detention

3.B. Means	Use of the following means of influence: <ul style="list-style-type: none"> • Threat of physical and/or mental violence • Physical violence/ mental violence • Torture • Inhuman or degrading treatment with the aim to force a person to submission • Rape • Abduction • Confiscation of documents • Deception • Abuse of a position of vulnerability • Abuse of power • Giving or receiving payment or benefits to secure the consent of a person having control over other persons • Keeping a person dependent • Abuse of physical dependence • Threats to divulge confidential information to family or other persons • Limiting freedom of movement • Threats to denounce the victim to the authorities • Other
3.C. Purpose of exploitation	Availability of indicators of exploitation: <ul style="list-style-type: none"> • Forced labour or services • Commercial or non-commercial sexual exploitation • Slavery or practices similar to slavery • Recruitment by force in armed conflict • Forced participation in criminal activities • Removal of organs/tissues/other parts of human body for transplanting • Forced use of a woman as surrogate mother • Illegal adoption with the scope of exploitation • Forced begging • Other
4. Indirect indicators of trafficking in human beings	<ol style="list-style-type: none"> 1. Degree of correlation of collected data to the average statistical social profile of a trafficked person (gender and age of victim, data on family status, education and occupation, marital status, employment and income level) at the date of being involved in human trafficking. 2. Psychological condition of the presumed trafficked person and degree of correlation to the average statistical psychological profile (presence of indicators of psychological trauma: disorganized thinking, confused mental state, memory and sleep disorders, distressing nightmares, high level of agitation, compulsive behaviour etc.) 3. Arrangements for emigrating abroad: who was in charge of arrangements and covered travel expenses. 4. Legal status of the presumed trafficked person in the destination or transit country. 5. Personal circumstances and environment of the trafficked person- specific features of habitat and social/family surroundings, compared to known cases of trafficking in human beings.

5. General description of a case of trafficking in human beings	<ol style="list-style-type: none"> Detailed description (history) of a case of human trafficking. Data on methods used for recruitment, arrangements for travelling abroad, conditions of exploitation, information on escape/release from place of exploitation and general information on the offenders: gender, age, relation to the trafficked person, place of residence, etc.
6. Assessment of basic and long term needs of the trafficked person	<p>Description of needs identified by the interviewer:</p> <ul style="list-style-type: none"> Needs requiring immediate attention Needs requiring long term attention (does not apply to presumed trafficked persons) Needs experienced by the immediate social surrounding of the trafficked persons, i.e. children and family (does not apply to presumed trafficked persons)
7. Assessment of risks	<p>Specifying risks:</p> <ul style="list-style-type: none"> Risks for the life and health of the respondent and her/his immediate family
8. Trafficked person's consent for referral	<ol style="list-style-type: none"> Obtaining a trafficked person's consent for referral Agreeing on the procedure of referral and monitoring of services rendered.

Unification of data collection regarding cases of trafficking in human beings allows for a professional and effective approach to victim identification, increases the number of identified cases and ensures access of trafficked persons to the necessary assistance and protection.

5.2. Information Exchange and Protection of Personal Data

In cases of victim referral to another organisation, which also collects information on cases of trafficking, it is necessary to obtain the consent of the victim prior to sharing his/her personal data. The respondent should be notified on her/his right to refuse the transfer of information already collected to another organisation where the referral is planned. It is also necessary to let her/him know the purpose of the referral and the name of the organisation where she/he would be referred. Finally, it is recommended that the specialist doing the interview for identification accompanies the respondent-victim to other specialists who will be responsible to provide additional services and/or measures of protection according to identified needs and risks.

Concluding Remarks

Identification of trafficked persons is a complex but central element in the system of protection and assistance, as well as in the entire system of combating human trafficking. The reason is that identification enables access to much needed support, assistance and protection. It also offers trafficked persons a chance of reintegrating into their families and society and helps prevent their re-victimization. Properly conducted identification, focusing on the rights of trafficked persons has also a positive impact on the criminal investigation of cases of trafficking by satisfying the needs of victims for assistance and protection, as well as by restoring their faith in the work of the Police.

Taking into account the importance of identification of trafficked persons, the present Regional Guidelines draw both on the theoretical aspects of victim identification and on the good practices developed by NGOs, as well as by other actors in countries of Eastern and South-Eastern Europe, with the aim to provide a clear framework for victim identification and suggest tried and tested tools in solving a series of issues arising during this process.

The Regional Guidelines are inspired by the legal systems of different countries, but they are underpinned by a common legal basis for combating trafficking in human beings as these Guidelines incorporate the general principles and obligations contained in the UN Palermo Protocol and the CoE Anti-trafficking Convention which all states participating in this manual have ratified, or are in the process of ratifying.

By incorporating in these Regional Guidelines the rights enshrined in the two conventions, several practical tools have emerged regarding the identification of trafficked persons. Of equal importance is to use these tools without losing sight of the individuality of each case as there is no tool and solution that fits all. In the end, these are Guidelines and should be used as such, with due regard to the individual circumstances of each trafficked person. In case of doubt the identification process should always err on the side of protecting the rights of a presumed trafficked person, i.e. when in doubt it is better to identify than not identify a victim of trafficking. Failure to identify a trafficked person can have detrimental consequences on its wellbeing.

It is hoped that the present Regional Guidelines will provide readers with a clear understanding of the notion and the different aspects of the process of identification and will be of use in the practical work of specialists, who by their very role are in close contact with presumed trafficked persons. It is for this reason that the role of well qualified, experienced and specialised personnel in practical application of the Regional Guidelines cannot be stressed enough. No system of identification can be effective if it is not based on professional experience and is not applied by professionals.

Furthermore, it is hoped that the Regional Guidelines will contribute positively in the development of Standard Operating Procedures, instructions, and other tools and explanatory documents for the identification of trafficked persons in the region of South-Eastern Europe, where human trafficking remains a serious human rights concern.



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*Against Trafficking in Human Beings
in South-Eastern and Eastern Europe*



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