

22nd Conference of the Alliance against Trafficking in Persons - Panel 1 – Building effective protection systems - Presentation Suzanne Hoff, International Coordinator La Strada International

Thank you for inviting me to speak here today. We are happy that this panel and the OSCE as well as the Council of Europe/GRETA are promoting unconditional assistance to trafficked persons. For long, we at La Strada International – European Platform against trafficking in Human Beings – have been calling for a human rights based approach to ensure that victims of trafficking have access to protection and support, regardless of whether they cooperate with the authorities and regardless of their residence status.

Providing unconditional support to victims would be a recognition that fear of reprisal and the impact of trauma, as well as their fear of arrest, detention and deportation, in case they have been staying irregular in the country, may hinder their ability to engage with criminal justice proceedings.

Nevertheless the access to support for victims of human trafficking in most European countries, remains closely tied with the criminal justice system. Assistance and protection are still made dependent upon reporting the crime and to victims' participation in legal proceedings; as well as the initiation of an investigation, continuation of a prosecution and or a successful prosecution of perpetrators and if it is qualified as human trafficking.

Even if victims are able and willing to make a complaint, press charges, and cooperate with the authorities, they risk having no access to protection and support beyond the reflection period, just because a criminal procedure has not started or is being dismissed or the crime of human trafficking could not be proven, while there are clear indications that the person has been severely exploited.

As a result many victims can only receive assistance if civil society actors or others provide them with support, while they have no access to compensation or remedy, regular/declared employment and inclusion and are at risk of detention and deportation or risk to be punished for offenses, they have compelled to commit as a victim.

This contradicts the provisions in the European Anti-Trafficking Convention (Article 12), and the EU Victims' Rights Directive (Article 8 and 9) that provide for assistance to be available from the earliest possible moment, irrespective of cooperation or whether the crime has been reported. The criminal justice framework harms the rights of trafficked persons and related vulnerable groups. Moreover, the current scope is far too limited to deal with the complexity of trafficking in human beings.

Furthermore, as long as no guarantees can be given that victims will receive assistance and a secure residence status, when cooperating with the authorities, victims are not able and neither encouraged to cooperate. This is also visible in the low self-identification of trafficked persons at the moment.

A real human rights based approach detaches victim's identification and assistance from participation in criminal proceedings and places their interests and the protection of their rights at the centre, and as the point of departure for providing support. Unconditional support can have a positive impact on access to justice for victims of trafficking, in relation to access to identification, residence, compensation, non-punishment and long term integration, including victim's access to the labour market.

Unconditional support

To guarantee the right to unconditional assistance, multiple stakeholders including civil society actors

and victim protection organisations, should be enabled to identify presumed victims, based on agreed common indicators, as part of national referral mechanisms (NRMs).

This will increase the self-reporting by victims, and thus the identification of human trafficking cases in general. In Austria for example, the provision of assistance to presumed victims of trafficking - provided by our member; the organisation LEFÖ-IBF - which is funded by the Austrian authorities, is free and unconditional, begins before the start of any criminal proceedings and is not dependent on the victim's willingness to act as a witness in a trial.

Assistance is available both to presumed victims identified by the police and to presumed trafficked persons who seek assistance or are referred by other actors, including civil society.

Residence

In the case of Austria, an obstacle is that Third Country National victims still remain without a secure residence. Generally, we see in Europe that residence permits are usually only granted for the period beyond the recovery and reflection period on the condition that human trafficking is reported to the police and a criminal investigation against the perpetrator is initiated – and is still ongoing.

In practice, it is very rare for victims of trafficking to be granted a long term residence permit if they do not cooperate or if the criminal case is discontinued, and there are only few possibilities to obtain residence on personal grounds, taking into account a range of situations, such as the victim's safety or vulnerability, state of health and family situation. However, granting a residence status on personal grounds, would significantly increase victims' incentives to co-operate with the authorities.

Social inclusion

Moreover, if victims have no access to secure residence and remain in the country of destination as irregular persons, they have to take up precarious undeclared work in order to survive. When undocumented, people do not have access to vocational training or declared employment.

When persons can access a secure residence, because of their personal situation and harm experienced, they can get access to legal aid, trauma care, have access to employment and social protection and can work on their recovery, which reduces the chances for revictimisation and re-trafficking, and supports their social inclusion.

Compensation

Compensation and the recovery of unpaid wages are crucial aspects of access to justice for victims of severe exploitation. Compensation serves as an instrument of restorative justice and of prevention of further exploitation. It is also a recognition of the violation of their rights, the damages they have suffered and the wages they are owed. Despite international legal standards to which European countries generally comply, a number of legal, procedural, financial and practical barriers hinder the access of trafficked and exploited persons to effective remedies, including compensation.

This situation is exacerbated in the case of undocumented or irregular migrants who are disproportionately exposed to violence and exploitation because of the challenges they face in accessing justice and support.

If victims are not able to cooperate with the authorities they do not have access to free legal support and it is extremely difficult to claim compensation via a criminal or civil court procedures; due to the risks this would entail. These victims are often also excluded from access to state compensation.

If victims do not come forward, exploiters face much less risks for investigations and prosecution; it reduces the possibilities for confiscation of assets or imposing of fines and increases the chance that exploitative practices continue.

The Non-Punishment Principle

Lastly, also the lack of implementation of the non-punishment principle hinders the access to unconditional assistance and residence permits. Despite international and European legally binding standards on non-punishment and the adoption of specific legislation in several countries, trafficked persons in Europe are often still wrongly detained, prosecuted and punished for offences they have been compelled to commit in the course, or as a result, of having been trafficked.

Our member organisations have also noted many cases in which victims were detained or prosecuted, even though they were formally identified and recognised as victims. These are serious human rights violations and a denial of justice. It serves to reinforce distrust towards the criminal justice system revictimization. Criminal records can have life-long negative consequences on the enjoyment of other rights, including rights to residence, employment and social welfare.

In most countries too little efforts are made to clear criminal and administrative records of victims unjustly punished, and to remedy to the injustice they experienced. Broad awareness about the Non-Punishment principle, as well as the correct application of the principle are of paramount importance if one wants to ensure justice for trafficking victims and prosecute and punish the real perpetrators.

Let me highlight few recommendations to change the current situation

- Victims of human trafficking should be entitled to adequate assistance and support, regardless of residence status and on the basis of (indications of) their victimhood and violations of human rights, and not on the basis of their cooperation with the authorities.
- More actors should be allowed to identify trafficked persons and grant them a victim status.
- Possibilities for unconditional support should be extended, to grant trafficked persons a victim status outside the criminal framework. A good example was the Dutch pilot/temporary regulation on the plausibility of victimhood of human trafficking victims which helped victims – if there was no successful court case - to get access to support and residence.
- Safe reporting policies and effective complaint mechanisms should be implemented, with firewalls, to ensure that workers with precarious or irregular status can safely file a complaint to police or labour authorities and courts, and get access to services and justice, without facing immigration enforcement as a result.
- Access to legal aid should be increased and barriers and criteria that limit this access should be lifted. Legal aid should also be available for those not able to cooperate with the authorities on the basis of their victimhood.
- Trafficked persons should have access to residence on personal grounds and regularisation programmes should ensure that persons can access a secure and long-term status to reduce inequality and social exclusion.
- When public prosecutors assume that the suspected or accused person is a victim of trafficking, they should establish contacts with specialised counselling centres in order to provide for professional support and counselling.
- There should be more access to remedies including compensation and back wages, for those not (able to) cooperate with the authorities.

I would like to conclude by quoting the OSCE Special Representative, Valiant Richey “It is time to grant victims their rights, it is time to give victims the support they need, it is time to listen to victims”.