



**Presentation by Suzanne Hoff, International Coordinator La Strada International**

**Joint Meeting of the EU Network of National Coordinators and Rapporteurs and the EU Civil Society Platform against trafficking in human beings -**

Thank you for the invitation to speak here today on behalf of civil society.

La Strada International is a European NGO Platform against trafficking in human beings, comprising 32 members in 24 European countries, both EU and non-EU countries. Through them, we can monitor the situation at the grassroots level and have a good insight about the impact of national and European policies and legislation, including the challenges and gaps.

In 2023 our members assisted 5103 presumed victims of human trafficking. It is unclear how many of them were also formally identified as victims by the authorities. Our platform ensures the referral of victims across countries, and hence since our establishment, nearly 30 years ago, we already function as an informal European referral mechanism, trying to ensure that victims receive adequate protection and support across borders, including in non-European countries. Our members are part of national referral mechanisms and hence cooperate with all relevant anti-trafficking actors.

Many people we assist, are migrants and in line with the statistics published by Eurostat, we also see an increase of Third Country Nationals victims in our statistical data. In 2023, we noted in particular an increase in the number of South American victims, next to victims from Asia and Africa, as well as an increase in the number of non-EU workers who were exploited through posting. Further at least 187 (potential) victims from Ukraine were assisted.

We do not know whether there has been an increase of TCNs being trafficked, neither do we know if they are increasingly smuggled. But we know, more have been detected and formally identified.

We believe that this increase is mainly a result of the enhanced attention and recognition for the vulnerability of migrants, due to growing research, projects and initiatives - partly AMIF funded - focusing on identification of TCNs. Moreover, many EU MS and CSOs have trained organisations and personnel working with migrants and asylum seekers, to recognise human trafficking practices.

This recognition is also reflected in the revised EU Anti-Trafficking Directive<sup>1</sup> which now requires EUMS to establish cooperation arrangements or protocols with the asylum authorities to ensure assistance, support and protection is provided to victims. Next to ensuring complementarity and coordination between authorities involved in anti-trafficking activities and the asylum authorities. This is very positive and can help the identification of trafficked persons from third countries. For years we have been advocating for more linkages between both systems.

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<sup>1</sup> which now mentions (recital 19) that EU Member States should take into account, in the course of asylum procedures, the specific situation of vulnerability of victims of trafficking who can be in need of international protection. And article 11.4c includes as tasks of the referral mechanisms, to establish cooperation arrangements or protocols with the asylum authorities to ensure that assistance, support and protection is provided to victims of trafficking who are in need and wish to apply for international protection, while article 11a 1 asks Member States to ensure complementarity and coordination between the authorities involved in anti-trafficking activities and the asylum authorities.

## **Vulnerability of Migrants**

Migrants are very vulnerable to exploitation and abuse, and according to the ILO, migrant workers are estimated to be three times more likely to be in a situation of forced labour than other workers. Third Country Nationals (TCNs) are in particular vulnerable, especially when they become undocumented. While EU workers enjoy unrestricted labour market access in the EU Member States, significant restrictions such as quotas or preference rules apply to TCNs and there are limited possibilities for people from outside Europe to migrate to, and find legal employment in, Europe. These persons might try indeed to enter irregularly.

However, we should not forget, that TCNs already constitute a significant part of the EU labour force and that many also enter legally or semi-legally with support of registered companies and agencies; they come to the EU on work visa, tourist visa, au pair visa, as well as via posting, or are recruited via recruitment agencies, including agencies that are licensed. Generally, it seems there is little monitoring and oversight of recruitment practices across borders and the number of recruitment agencies operating in Europe and beyond.

Those that have not been smuggled, can still be vulnerable for abuse and exploitation, including human trafficking and forced labour, as we see with the malpractices of underpayment, long working hours, poor working and living conditions, subcontracting practices, letter box companies and generally non-compliance with labour laws.

## **Human Trafficking & Smuggling - differences and links**

Migrant smuggling is indeed often linked to human trafficking and the risks of exploitation and abuse along migration routes are high. However, it is important to carefully distinguish between both crimes.

Human smuggling, the illegal entry of a border, is an illegal act, but not a crime against the human rights of people, unless smugglers abuse and exploit people and violate their rights. If the purpose of exploitation is present and the other elements of the definition, we can speak of human trafficking, even if people willingly engaged in the irregular process and consented and paid for the services of a smuggler, to cross an international border. Consent then becomes irrelevant. I would like to stress, that we must be careful that only certain groups are seen as potential victims of trafficking, while others are not. States have the responsibility to respect, protect and fulfill human rights for anyone within their territory or who may be subject to their jurisdiction, control or influence.

## **Anti - migration and anti- smuggling policies causing harm**

We note quite some concerning practices in the fight against human smuggling and migration, that negatively impact the prevention and identification of human trafficking and the assistance to its victims. The EU's recent migration policies prioritise containment, reducing arrivals, and outsourcing responsibilities to third countries, including offshoring asylum processing, which undermine international human rights obligations and the right to seek asylum.

Even though the EU asylum legislation and the EU Pact on Migration and Asylum contain safeguards and provisions for identification and referral of victims of trafficking, including preliminary vulnerability checks, to be carried out immediately after apprehension, we are concerned that due to the Pact and the strong focus on return of migrants, we will detect less victims of human trafficking among TCNs in the future.

For us, civil society actors, a lot is still unclear, especially how the pact will be applied in practice; how the screenings and assessment of vulnerable people will be conducted and how we will be able to ensure that those in need will receive protection and support, especially with fast-track procedures, and the increasing role and cooperation among European bodies, like Frontex and Europol.

A good practice would be that people remain having access to information and legal advice, and can consult with law clinics, who have access to reception centres, or NGOs and that there are adequate independent monitoring practices. From our years of experience, we know that for the identification of trafficking victims, more time and trust is needed for people to recover their stories. For this work also adequate resources should be made available by the European Commission and EUMS.

Generally, we see, that much depends on whether persons are trained to identify the vulnerability and needs of persons, only then persons will be referred for protection and support. Hence, we call to for structural training of border police, and other relevant first line officers to recognise trafficking and to know the support structures.

We are also concerned about the criminalisation of migrants and those acting in solidarity with migrants, which has been a growing trend across the European Union. According to PICUM, the Platform for International Cooperation on Undocumented Migrants, more and more people trying to cross to Europe are unfairly accused of being “smugglers”, and risk long periods of arbitrary detention and exclusion from accessing asylum and other regularisation procedures. At least 117 people were criminalised for acts of solidarity in 2023.<sup>2</sup>

The EU Facilitation Directive requires Member States to impose “effective, proportionate and dissuasive” sanctions on any person who facilitates someone’s irregular entry or transit across a Member State, even if they did not obtain any financial gain. Article 1(2) of the Directive permits Member States not to criminalise actions “where the aim of the behaviour is to provide humanitarian assistance to the person concerned”. But only few EU Member States have introduced this exemption clause.<sup>3</sup> This puts migrants, other individuals, humanitarian and civil society organisations at risks to be criminalised.

### **Classifying cases as trafficking or smuggling.**

Another challenge is that in some EU countries, presumed trafficking cases are increasingly investigated and prosecuted as human smuggling. If cases are classified as smuggling, this results in affected persons not being recognised as victims, which leaves them without any access to justice, including lack of access to remedies. Also, the non-punishment principle will not apply, even though the revised AT Directive expanded the scope of the non-punishment provision now to all unlawful activities, that victims have been compelled to commit as a direct consequence of being subject to trafficking.

It should be ensured that those that are smuggled and faced exploitation and abuse have access to rights under all circumstances, including access to safe reporting and complaint procedures, as embedded in the current EU Strategy on THB.

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<sup>2</sup> [At least 117 people criminalised for helping migrants in Europe in 2023 - PICUM](#)

<sup>3</sup> Apparently only 8 EU MS (Belgium, Greece, Spain, Finland, Italy, Malta, Croatia and France) See also [Migrant smuggling: why we need a paradigm shift](#); [Cases of Criminalisation of Migration and Solidarity in the EU in 2023](#) and [Between administrative and criminal law: An overview of criminalisation of migration across the EU](#)

The EU Facilitation Directive proposal includes an aggravating circumstance for smuggling offences that entailed or resulted in exploitation. In Belgium, protection and assistance is also available for victims of aggravated smuggling – based on the EU Residence Permit Directive - however this is not common in most EU countries. Delinking support and protection for victims from criminal procedures – the so-called social path – can ensure access to rights for all victims.

Adequate assistance and support and adequate referral of cases will also be enhanced, by ensuring that NRMs and action plans include specific focuses on the vulnerability of TCNs and their detection. Furthermore, AT policies should pay more attention to tackling the root causes of human trafficking, enhance legal pathways, promote regularisation programmes for undocumented workers, as we now see in Spain, and generally improve the rights of migrants. Also, refugees' access to legal employment is important. We saw with Ukraine that activating the EU Temporary Protection Directive and allowing refugees from Ukraine access to the labour market, has been the best prevention for further exploitation and abuse.

We strongly call upon EUMS to closely cooperate with specialised NGOs, who can help States with the identification and assistance to victims, with cross border referral, with enhancing policies and actions and with the strengthening of NRMs, next to the possible development of a European referral mechanism.

Thank you.