



La Strada International Statement on 18 October 2011 European Day against trafficking in human beings

Identification to ensure protection and support to trafficked persons

Unfortunately often international and national European policies, designed to address human trafficking, do not protect the rights of trafficked persons and risk groups, but instead harm them and cause secondary victimisation. In the name of fighting human trafficking, governments restrict migration possibilities and close their borders for labour migrants, either expel or detain migrants, without checking for human rights violations. Moreover, migrants working in Europe in general have limited rights.

The 2010 evaluation of the European Directive on the Temporary residence permit for third-country nationals showed that only very few trafficked persons actually have access to their rights. And this happens not only to third country nationals; more frequently EU citizens trafficked within European Union borders are denied existing protection and assistance measures, as they do not 'qualify' for getting such support.

On the positive side, the recently adopted Directive 2011/36/EU of the European Parliament and the European Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, contains several provisions for better protection of the rights of trafficked persons. Now it comes down to the actual implementation in the Member States.

It is clear, that that there is a need to lift all existing barriers to identification and that it is time that conditionality of support on cooperating with the authorities should be reconsidered, in order to ensure that all trafficked persons have access to their rights.

Identification

Early identification of trafficked persons is a prerequisite for their recognition and status, and consequently their access to assistance and protection but also for the successful prosecution of their traffickers. Although this is widely acknowledged, still the majority of trafficked persons are not identified. This leaves them without the support and assistance they are entitled to according to European and international legislation.

The problem with identification is twofold: The trafficked person is not seen or known by authorities or civil society and does not identify him or herself as being trafficked or does not dare to come forward. Therefore the person is not 'seen'. Or the presumed trafficked person is known by the authorities and there are indicators of human trafficking, but the competent authorities do not officially identify the person as a victim of trafficking and therefore the person is not granted support and assistance.

Officials and practitioners should be able to recognise trafficked persons and identify them as a presumed victim of human trafficking. Next to recognising a trafficked person, practitioners should actively look for trafficked persons. Member States should adopt a pro-active approach to identification.

After the first identification as a presumed victim, the identification or verification process starts, during which the trafficked person is entitled to support and assistance (reflection period). In this process the authorities are currently asked to determine whether this person is a 'real' victim or not. Due to the extreme complexity of trafficking in human beings, this is a difficult and complicated process that can take long, often longer than the duration of the reflection period. But there are more complicating factors in the identification process: Identification of a victim is intertwined with the investigation of the crime. In many countries law enforcement authorities are

the ones who take the decision on the official identification. Access to support and assistance is still very much conditional on the cooperation with law enforcement.

Also, the identification (and therefore the access to assistance and support) is closely linked to the eligibility for a residence permit (according to the 2004 Directive). The (temporary) residence permit seems to be the symbol of having the 'status' of a victim. However also internal EU trafficking (trafficking of EU citizens within the European Union) still exists. These persons do not need a residence permit, but do need support and assistance. There is no international victim status and it is also unclear what "victim of trafficking" means on a national level. The main aim of identification should be that persons who are likely to experience exploitation, violence and abuse are supported to leave the exploitative situation and enabled to restore their rights. The restoration of rights and access to effective remedies is a state obligation under international human rights laws and the EU legislation.

The process that is needed after the first identification is a process of a needs assessment. Assuming the person has been trafficked, what does this particular individual need to restore his or her rights and what obligations does the state have to ensure effective remedies according to international human rights law? These could include a temporary or permanent residence permit, but also legal, medical and (psycho) social support. This approach delinks the right to assistance and support from the more legal qualification of a case as a human trafficking case and from the related criminal proceedings. It makes assistance and support for trafficked persons unconditional on their cooperation with the authorities.

Rather than making the trafficked person prove he or she is a real victim and eligible for a status and a residence permit, the process should be about the human rights violations experienced by the person and what the presumed victim needs in order to restore his or her rights.