



The Identification of Victims of Trafficking in The Asylum System

EMN Conference, Dublin

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29 November 2013

EU Legal Framework



EU Directive on Trafficking

2011/36/EU

Human rights-based approach

- Human trafficking = serious crime + **gross violation of fundamental rights** (Recital 1)
- **Holistic, integrated, human rights approach** (Recital 7)
- Common provisions to strengthen **prevention of crime and protection of victims** (Art.1)
- Gender phenomenon (Recital 3) – **Gender perspective** (Art.1)
- Children are at greater risk (Recital 8) – **Age-sensitive approach** (Art.13-16)
- Art.18(3) – **Regular training** for officials likely to come into contact with victims aimed at enabling them to **identify victims and potential victims**

Art. 11 – Assistance & Support

- Art. 11(2) – provision of assistance as soon as there is “**a reasonable grounds indication**”
- Art. 11(3) - **unconditional** assistance without prejudice to Residence Permit Directive
- Art. 11(4) - **mechanisms for early identification** and assistance
- Art. 11(6) - **provision of information** on reflection and recovery period, and possibility of granting international protection
- Art. 11(7) - **victims with special needs**: pregnancy, health, disability, mental or psychological disorder or victims of serious form of psychological, physical or sexual violence

EU *Asylum acquis*

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**Asylum Procedures &
Reception Conditions
Directives**

APD & RCD

- Art.23(3) APD: may prioritise or accelerate examination if applicant has **special needs**
- RCD Chap. IV - Provisions for persons with special needs:
 - Art.17(1): take into account specific situation of vulnerable persons *i.a.* **persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence**
 - Art.20: ensure victims of torture, rape or other serious acts of violence **receive necessary treatment** of damages caused by those acts
- Art.13(2) RCD: ensure **standard of living** is met in specific situation of persons with special needs
- Art.15(2) RCD: provide **necessary medical or other assistance** to applicants with special needs

Asylum Procedures Directive (APD) (Recast)

Recital 29:

- Some applicants in need of **special procedural guarantees** due to *i.a.* age, gender, sexual orientation, gender identity, disability, serious illness, mental disorders or **as a consequence of torture, rape or other serious forms of psychological, physical or sexual violence**
- **Identify** applicants in need of special procedural guarantees before first instance decision taken
- Applicants provided with **adequate support, incl. sufficient time**, for effective access to procedures and for presenting elements needed to substantiate application

Asylum Procedures Directive (APD) (Recast)

Art. 24 - Applicants in need of special procedural guarantees

- Obligation to **identify** applicants in need of special procedural guarantees **within reasonable period of time** after an application [art 24.1]
- **Adequate support including sufficient time (no acceleration)** to benefit from rights and comply with obligations APD [Art. 24.3]
- **Special procedural needs** also addressed if apparent at later stage [Art. 24.4]

Asylum Procedures Directive (APD) (Recast)

Art.10(3) - Requirements for the examination of applications:

(d) Possibility to **seek advice from experts** on particular issues, such as medical, cultural, religious, child-related or gender issues

Art.15(3) - Requirements for a personal interview:

(a) Personnel **competent** to take account of personal and general circumstances surrounding application, incl. applicant's **vulnerability**

(b) and (c) **Same-sex interviewer and interpreter** where requested

Reception Conditions Directive (Recast)

Chap. IV – Provisions for vulnerable persons

- **Art.21:** Take into account specific situation of vulnerable persons i.a. **victims of trafficking**

- **Art.22:**

(1) obligation to conduct **individual assessment** to identify whether special reception needs and indicate the nature of needs

Obligation to **initiate within reasonable period** of time after application

(4) Assessment shall be **without prejudice to assessment of international protection needs**

Holistic and Human Rights Approach

EU asylum *acquis* and victim protection regime:

- Standard: “a reasonable grounds indication”
- **Mechanisms for early identification** of victims (N.B. not applications)
- **Expert advice**
- **Competent** (regularly trained) personnel
- Identification **before** decision taken
- Individual needs assessment **without prejudice to assessment of international protection needs**

Risk Profiles **in EU asylum systems**

Risk Profiles in EU Asylum Systems (1)

- Persons in need of international protection / **refugees smuggled** out of country of origin / first asylum who fall prey to trafficking in transit countries &/or in EU
- Persons who were not in need of international protection and were **smuggled** out of country of origin but who fall prey to trafficking in transit countries &/or in EU and **who fear return**
- **Persons trafficked into the EU** who escaped their trafficker(s) and seek international protection in the EU MS where they were trafficked

Risk Profiles in EU Asylum Systems (2)

- Persons trafficked into the EU who escaped their trafficker(s) and seek international protection in another EU MS and who **become subject to a Dublin transfer**
- Victims of trafficking **forced into asylum system** by traffickers and who present claims lacking in credibility
- Victims of trafficking who **were involved in criminal activities** which they have been compelled to commit as a consequence of being subjected to trafficking and who seek asylum

Risk Profiles in EU Asylum Systems (3)

- Victims of trafficking in **need of international protection but outside asylum system** and not advised about right to seek asylum/allowed to access asylum
- Victims of trafficking who are **not in need of international protection** but whose only access to protection is through the asylum system
- Victims of trafficking who have **overstayed** their legal stay and victims who still have a **valid visa**

Risk Profiles in EU Asylum Systems (4)

- **Vulnerable asylum-seekers** in EU asylum reception centres (or homeless) targeted by traffickers and who are at risk of trafficking
- **Unaccompanied and separated children** on the move across the EU and in asylum reception centres (victims or at risk of trafficking)

- **Family members** of refugees in EU on the move (e.g. Horn of Africa) to access family reunification who fall prey to traffickers Victims of trafficking (Sinai)

Victim

Identification

Identification of Victims of trafficking & their specific needs

- Where?
 - At border
 - By Police
 - In detention (incl. immigration and asylum)
 - In asylum system
 - Dublin Units
 - Reception Centres (and outside the reception centres)
 - Asylum Procedure (first instance and appeal)
 - In victim protection system
 - In child protection system

Indicators of trafficking

- **Tailored** indicators to:
 - Each sector (border, police, labour inspectors, asylum reception staff, asylum registration, asylum interview, appeal etc.)
 - Types of exploitation in each country and sector
 - Victim profiles
 - Trends (countries of origin, modus operandi)
 - **!!** Age, Gender and Diversity sensitive indicators

Other Tools for Identification

- Provision of information to encourage self-identification
- Safe environment to support self-identification
- Awareness raising and training of staff
- Formal mechanism for early identification
- Country of Origin Information (COI)
- Cooperation with other sectors (trends, modus operandi)
- Interview
- Carefully listening to “formatted” stories
- Addressing culture of dis-belief

Credibility Assessment **in Trafficking Cases**



BEYOND PROOF

Credibility Assessment in EU Asylum Systems



European Refugee Fund
of the European Commission



Evidentiary Matters & Victim Identification

- Low threshold approach for identification “**a reasonable ground indication**” (2011/36/EU Art.11(2))
- Standard of proof: **NOT “beyond reasonable/any doubt”** – Not appropriate for asylum adjudication
- Art.4(1) QD - “duty to substantiate” - **NOT a matter of “proof” or search for truth**
- **Shared duty** to substantiate application (Art.4(1)QD)
- Applicant’s statements = primary and may be only source of evidence
- Lack of documentary evidence & relevant COI
- Impact of feelings of shame, stigma, fear of reprisals on **self-identification & disclosure**

Individual, Objective and Impartial

- Requirement in EU law
 - for **individual, objective and impartial** assessment
 - to take into account **applicant's individual and contextual circumstances**, his/her individual position and personal circumstances
- Other factors to take into account:
 - Applicant's **frailty of human memory, effect of emotion on memory, impact of trauma**
 - Interviewer/Decision-Maker's **thinking processes, assumptions, expectations, misconceptions**
- Factors span disciplinary fields of neurobiology, psychology, anthropology, sociology, cultural & gender studies – **Multi-disciplinary approach**

Credibility indicators

To minimise scope for subjectivity:

- Sufficiency of detail and specificity
- Internal consistency of oral and/or written material facts asserted by applicant
- consistency of applicant's statements with information provided by family members and/or other witnesses
- consistency of applicant's statements with available specific and general information, incl. COI
- Plausibility
- Coherence

THE CREDIBILITY INDICATORS

Credibility assessment refers to the process of gathering relevant information from the Applicant; examining it in the light of all the information available to the DM; and determining whether and which of the statements and other evidence relating to material elements of the claim can be accepted. These accepted facts may then be taken into account in the analysis of the well-founded fear of persecution and real risk of serious harm. Applications must be examined and decisions taken individually, objectively and impartially but there is no infallible and fully objective means to assess the credibility of the material facts presented by the Applicant. To minimize subjectivity, credibility indicators should be used. No one indicator is a certain determinant of credibility or non-credibility. DMs must be aware of the assumptions that underlie each indicator, and understand the factors and circumstances that can render them inapplicable and/or unreliable in an individual case (see Factors Affecting Credibility Assessment).

CREDIBILITY INDICATOR	✓	EXPLANATION
SUFFICIENCY OF DETAIL & SPECIFICITY	<input type="checkbox"/>	The DM must assess if the level and nature of the detail provided by the Applicant is reasonable and indicative of a genuine personal experience by someone with the Applicant's individual and contextual circumstances (age, gender, region of origin, education etc.).
INTERNAL CONSISTENCY	<input type="checkbox"/>	'Internal consistency' relates to consistency within an interview, or within the written and oral statements by the Applicant, or between the statements and documentary or other evidence submitted by the Applicant. It requires a lack of discrepancies, contradictions, and variations in the information provided.
CONSISTENCY OF APPLICANT'S STATEMENTS WITH INFORMATION PROVIDED BY FAMILY MEMBERS OR WITNESSES	<input type="checkbox"/>	Consistency in the facts presented by the Applicant with any statements made by dependants, other family members or witnesses may be considered an indicator of credibility.
CONSISTENCY OF APPLICANT'S STATEMENTS WITH AVAILABLE SPECIFIC AND GENERAL INFORMATION INCLUDING COI	<input type="checkbox"/>	The DM must assess the credibility of the material facts presented by the Applicant against what is generally known about the situation in the country of origin or place of habitual residence; accurate, independent and time-appropriate COI; available specific information; or other expert evidence (medical, anthropological, language analysis, document verification reports).
PLAUSIBILITY	<input type="checkbox"/>	'Plausibility' relates to what seems reasonable, likely or probable. The DM must be careful not to base a credibility finding on subjective assumptions, preconceptions, conjecture and speculation, but rather on independent, objective, reliable and time-appropriate evidence.

UNHCR Report & Checklists:

Beyond Proof –

Credibility Assessment in EU Asylum Systems

May 2013

available at:

<http://www.refworld.org/docid/519b1fb54.html>

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