

THE **PROTECTION**
OF CHILD VICTIMS
OF **HUMAN**
TRAFFICKING
DURING
INVESTIGATION
AND **CRIMINAL**
PROCEEDINGS IN
COMPLIANCE WITH
THE **2012/29/EU**
DIRECTIVE ON
VICTIMS' RIGHTS



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ACRONYMS

CCP	Code of Criminal Procedure
CRC	United Nations Convention on the Rights of the Child
CoE	Council of Europe
EU	European Union
FRA	European Union Agency for Fundamental Rights
GDPR	European General Data Protection Regulation
GRETA	Group of Experts on Action against Trafficking in Human Beings
NGOs	Non-Governmental Organisations
UN	United Nations

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INTRODUCTION

Trafficking of children is a criminal violation of children's rights.¹ Children are trafficked and exploited in Europe in different ways. "Nearly a quarter of all victims in the EU are children with girls representing approximately 78% of victims and that nearly 75% of all child victims in the EU were EU citizens", noted the European Parliament in 2021, at the same time highlighting that "the actual number of victims [children and adults] is most likely considerably higher than in the reported data, as many victims remain undetected".²

Throughout the years the European Union (EU) adopted, a series of legislative instruments offering Member States a set of rules to protect the rights of victims, in accordance with the EU Charter of Fundamental Rights, to ensure that they are recognised, "as the person wronged by the offender".³

Since 2012, minimum standards enabling victims' access to justice and support, with a specific attention to vulnerable victims and their specific protection needs,

were developed. If the Victims' Right Directive is nowadays considered as the core instrument of the EU victims' rights policy, other legislative instruments⁴ are addressing the specific needs of the victims of human trafficking, child sexual abuse, sexual exploitation and child pornography.

The Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims,⁵ and the Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography⁶ are the main legislative instrument addressing trafficking and exploitation of children. They establish additional protection measures for child victims and they have a strong link with the Victim's Rights Directive. It is, therefore, essential to read the three directives together in order to fully appreciate the extent of the rights protecting trafficked and abused children.

1. Expression used by Frans Röselaers, former Director of ILO International Programme on the Elimination of Child Labour (IPEC) in *Unbearable to the human heart, Child trafficking and action to eliminate it* (2002).

2. European Parliament Report on the implementation of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (2020/2029(INI)), 1.2.2021.

3. FRA, *Victims' rights as standards of criminal justice – Justice for victims of violent crime, Part I*, (2019).

4. Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101, 15.4.2011; Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, OJ L 335, 17.12.2011.

5. Called hereafter "Anti-Trafficking Directive"

6. Called hereafter "Child Sexual Exploitation"



Yet several researches in the EU and analysis of their implementation demonstrated that children are not sufficiently protected and some are even marginalised because of their legal status.

The Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime (hereinafter Victims' Right Directive) lays down rules to improve the position of the victim of crime across Europe and place them at the centre of the criminal justice system. Regarding child victims, the Directive is explicit, they "should be considered and treated as the full bearers of rights set out in this Directive and should be entitled to exercise those rights in a manner that takes into account their capacity to form their own views"⁷. There is no ambiguity, the best interests of the child must be preserved, and any decisions adopted should be based on these interests.

In 2021, the European Commission reaffirmed that protection of children is a core objective of the European Union's work and the best interests of the child is at the heart of EU policies.⁸ In addition to the EU Strategy on victims' rights (2020-2025)⁹ (which pays particular attention to child victims in general and of sexual abuse), the new EU strategy on the Rights of the Child¹⁰ and the new one on Combatting Trafficking in Human Beings (2021- 2025)¹¹ identify priorities to improve the situation of child victims of trafficking in human beings. Among the proposed key actions, the promotion of gender sensitive and child rights-based training for officers and all practitioners likely to come into contact with victims is highly commendable.

AIM OF THE RESEARCH

In order to enhance the protection of child victims of trafficking during investigation and criminal proceedings, ECPAT's project "CAPISCE" studied the transposition and the implementation of the Chapter 4 of the Victims' Right Directive 2012/29/EU dedicated to the protection of victims and recognition of victims with specific protection needs. It also analysed the obstacles and challenges preventing child victims to enjoy their rights and be adequately protected in Belgium, France, Italy and the Netherlands. A special emphasis is placed on the right to an individual assessment, right to privacy protection, specific protection needs such as special representation and legal guardian which are posing particular implementation challenges in the four countries covered by the project.

By analysing the protection of child victims of human trafficking during investigation and criminal proceedings in these countries, the research project attempts to respond to the following questions: Have the countries correctly transposed and implemented the Victims' Right Directive? Does the Directive contribute to uphold the rights of trafficked child victims and ensure that they are protected and supported during criminal proceedings? Does the Directive contribute to develop a child friendly justice in the EU? Are Member States able to apply multiple EU victim protection rules adopted in 3 different Directives in a coherent manner? And finally do the Victims' Right Directive, Human Trafficking Directive and Child Sexual Exploitation Directive complement each other or create confusions?

7. Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA, OJL315, 14.11.2012, p.58, para. (14).

8. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU strategy on the rights of the child, COM(2021) 142 final, 24.3.2021.

9. Commission Communication on the EU Strategy on victims' rights (2020-2025), COM(2020) 258 final, 24.6.2020.

10. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU strategy on the rights of the child, COM(2021) 142 final, 24.3.2021.

11. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, on the EU Strategy on Combatting Trafficking in Human Beings 2021-2025, COM(2021) 171 final, 14.4.2021.

METHODOLOGY

This report is the result of a cross analysis of the implementation of child victims' rights during criminal investigation and proceedings based on country research in Belgium, France, Italy and the Netherlands. The studies were undertaken by national researchers and four reports were completed in coordination with the respective national offices of ECPAT. Each research was conducted following a same methodology based on desk research and field research through interviews with law enforcement, relevant ministries, the judiciary, service providers, NGOs, lawyers, legal guardians and children. A total of 15 professionals were interviewed in Belgium, 21 in France, 20 in Italy and 18 in the Netherlands.

In addition to analysing the transposition of the Directive, the gaps in the implementation of Chapter 4 and presenting successful practices, the country reports provide insights on how national and foreign child victims of trafficking in human beings can claim the rights to the special protection and support stipulated in the EU Directives. The national reports also include specific recommendations suggesting actions to be taken in response to the identified challenges, with the aim of improving current legislation and practice regarding the protection of child victims of trafficking in human beings.

The coordination of the country researches was an opportunity to exchange on national situations, discuss the common methodology and research challenges. The comparative approach used for this report does not deal with the national systems separately but takes great care to highlight common concerns, specific shortcomings and promising or good practices. Finally, it offers likewise a set of recommendations to ensure that child trafficking victims benefit from adequate and effective protection during investigations and criminal proceedings in the European Union.

RESEARCH LIMITATIONS

The research project started in January 2020. The first coordination meeting involving all researchers, ECPAT offices and the Research Coordinator took place in Brussels on 5 February 2020. After this first meeting, all aspects of the research project were impacted by the Covid-19 pandemic. The national researchers faced many obstacles and the original plans had to be re-examined. Despite all efforts and flexibility, it was not possible to collect in-depth field data that the research would need. The research time-line had to be reviewed and extended. It was also difficult to strictly adhere to the agreed methodology, to conduct in-person interviews and organize meetings with children. Interlocutors were less available and willing to cooperate due to the exceptional circumstances. The national geographical dimension of the research had to be reconsidered for the big countries due to the internal travel limitations and the coordination meetings were held online.

Against this backdrop, it proved even more complicated to involve child victims or survivors who experienced judicial proceedings after the transposition of the Victims' Rights Directive. Nevertheless, national researchers opted to collect information from professionals working with minors on a daily basis, rather than engage with them directly considering the reluctance from the professionals to allow the participation of a trafficked child victim in the study. However, In Italy, two interviews with children in a written format were possible and in Belgium 5 children shared their views through the professional supporting them. In the Netherlands, a now Dutch adult survivor shared her experience and how she was affected by the criminal justice system when she was a minor.



1. FROM A CORRECT TRANSPPOSITION TO AN EFFECTIVE IMPLEMENTATION OF THE 2012/29/EU DIRECTIVE

With the adoption of the Victims' Rights Directive in 2012, the European Union sent a strong message to all Member States by reaffirming general principles of victims' protection's rights. This Directive is nowadays considered as the core instrument of the EU policy on victims' rights. It is the backbone of the new EU victims' rights strategy for 2020-2024, complemented by other set of rules for the protection and assistance of victims of different type of crimes.

Despite the legal progress made by Member States during the last decade, the protection of children victim of trafficking in human beings is still not uniformed in Europe. Laws are not being implemented as they should be and children are not benefiting from the assistance they need. All available reports including

from the European institutions agree to say that there is an urgent need to enhance child protection in particular during criminal proceedings.

"Children are not sufficiently supported when participating in a criminal or civil proceeding, court settings that can be intimidating for children are not always adjusted to their needs",¹² as underlined by the European Union Agency for Fundamental Rights (FRA) in its 2015 report on child-friendly justice. In its 2019 Guide to enhance child protection focusing on victims of trafficking the FRA reminded that "the EU and its Member States must respect, protect and promote the right of the child "to such protection and care as is necessary for their well-being", as required by Article 24 of the EU Charter of Fundamental Rights".¹³

12. FRA, *Child-friendly justice Perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States* (2015), p. 3.

13. FRA, *Children deprived of parental care found in an EU Member State other than their own A guide to enhance child protection focusing on victims of trafficking* (2019), p. 3.





EU CHARTER OF FUNDAMENTAL RIGHTS

Article 24 - The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

The studies conducted in Belgium, France Italy and the Netherlands confirm that, although the countries transposed most of the provisions of the Victims' Rights Directive, or were already complying with a majority of them, many rights and protection measures are not applied to trafficked children. Nevertheless, this section will show how the Victims' Rights Directive contributed to enhancing the national legal frameworks on victims' rights and making criminal justice systems more child-friendly.

A. THE RELEVANCE OF THE 2012/29/EU DIRECTIVE FOR CHILD VICTIMS OF HUMAN TRAFFICKING

When addressing the specific needs of victims of human trafficking, child sexual abuse, sexual exploitation and child pornography, the Victims' Rights Directive refers to the Anti-Trafficking Directive and the Child Sexual Exploitation one.¹⁴ If these two last directives are the main EU legislation in their respective areas, the correct transposition of the Victims' Rights Directive remains key because it provides a higher level of protection during criminal proceedings to all child victims of crime including of human trafficking.

Generally speaking, the countries are complying with most of the provisions of the Victims' Rights Directive. Belgium did not adopt a new law to transpose the Directive as its criminal law was already mostly in

¹⁴. See point 7 of the Victim's Rights Directive.



line with it, but the new Government is strengthening the provision of assistance to certain category of victims, namely of sexual violence, and securing financial support for prevention and sheltering.¹⁵

In the other countries, new laws were adopted and were complemented by secondary law to ensure the actual implementation of the provisions. In France, the Directive was transposed by the Law n°2015-993 of August 17, 2015 relating to the adaptation of criminal procedure to EU law and supplemented by administrative regulations. The Decree n°2016-214 of 26 February 2016 on victims' rights specifies the implementation modalities of certain protection measures such as the individual assessment of victim's needs (Art. 22 of the Directive, Art. 10-5 of the French Code of Criminal Procedure). Since then, other decrees or "circulaires" have been adopted to complement, reinforce and interpret the initial transposition law.

The adoption of the Directive was an opportunity to strengthen national legislations but also to extend rights introduced in the past for certain victims to all categories of victims of crime. In other words, EU law permitted to eliminate existing discrepancies based on the type of crime and age that existed in national victims' rights legal frameworks. For example, in the Netherlands many protection measures, including related to child trafficking (e.g., child-friendly room and audio-visual registration of interrogations) were ruled through administrative/ministerial regulations such as the one for public prosecutors on trafficking in human Beings or sexual offences.¹⁶ In the occasion of the transposition of the Victims' Rights Directive, a general law and a Decree on Victims of Criminal Offences were adopted. As a result, rights foreseen

for abused and exploited children were extended to all victims of crime and the Code of Criminal Procedure was updated. In addition, it could be noted that the age for audio-visual registration has been raised from sixteen to eighteen years-old in order to comply adequately with the new Directive.

In Italy, many of the protections provided in the Directive were in place since 1988.¹⁷ Nevertheless, the adaptation of the existing legislation was necessary considering that it not only allowed for the improvement of existing rules, but also gave the input to the legislator to create new and more specific provisions to protect children including during criminal proceedings.¹⁸ Thus, the concept of "vulnerable victim" was introduced in the Italian legislation and the presumption of vulnerability of a child, as reaffirmed by the Directive, is now applied in Italy.¹⁹ As a consequence, trafficked children are covered by the new provisions even if the country made the choice to not have a specific legislation on fighting trafficking in human beings.

The concept of "vulnerable victim" is not an innovation of the Victims' Rights Directive since its legal basis can be found in the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA)²⁰ and in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.²¹ However, the concept was not always legally defined by countries, like Italy, before the adoption of the Directive.



15. BELGA News Agency, *Minister Nathalie Muylle (CD&V) investeert in opleiding 180 zedeninspecteurs* (Minister Nathalie Muylle invests in training 180 vice inspectors), 03.02.2020; BELGA News Agency, *Un centre de prise en charge des violences sexuelles au CHR de Namur*, 26.11.2020.

16. Instruction on Trafficking in Human Beings (Aanwijzing mensenhandel) and Instruction on Instruction on *Sex Offences* (Aanwijzing zeden).

17. Presidential Decree n°448 of 1988 is the main source of the Italian Juvenile Criminal Procedure Code. It created a new juvenile criminal justice system.

18. Legislative Decree, 15 December 2015, n°212 for the implementation of the Directive 2012/29/EU of the European Parliament and Council.

19. Article 90 quater Code of Criminal Procedure.

20. Framework Decision of the European Council of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA), OJ L 82, 22.3.2001, Art. 2.

21. Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, UNGA Resolution 55/25, 15 November 2000.

B. REAFFIRMING FUNDAMENTAL PRINCIPLES APPLICABLE TO CHILD VICTIMS OF CRIME

One of the aims of the Victims' Rights Directive is to prevent secondary and repeat victimisation in particular when it is a child. The Directive insists that special protective measures should be made available to the law enforcement and justice institutions in order to protect the safety and the dignity of children due to their vulnerability. This is indeed inherent to a child-friendly justice which must, by definition, protect children from suffering as a result of his or her participation in criminal proceedings.

Such a justice system, that guarantees the respect and the effective implementation of all children's rights, is built on general principles of the United Nations Convention on the Rights of the Child²², namely: participation, best interests of the child, non-discrimination, survival and development.²³ These overarching rights are safeguards which should be considered in all matters involving or affecting children. They are particularly necessary for the fulfilment of all other child rights.

The Victims' Rights Directive reaffirms these principles, more notably Art. 3 of the CRC by stating that "In applying this Directive, children's best interests must be a primary consideration, in accordance with the EU Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of

the Child adopted on 20 November 1989".²⁴ Article 24 of the Charter codifies the right of children to such protection and care as it is necessary for their well-being, and the right to express their views freely. Such views should be taken into consideration in accordance with their age and maturity as well as the right to have their best interests taken as a primary consideration in all actions relating to them. Therefore, EU Member States have obligations both under EU law and the CRC to apply those principles in child trafficking cases.

According to the UN Committee on the Rights of the Child, assessing the best interests of a child means to evaluate and balance "all the elements necessary to make a decision in a specific situation for a specific individual child or group of children". (General Comment n°14 (2013), par.47). The four national studies and other research have shown that if this concept is recognized by the States, in practice it is not systematically applied in various types of child related issues, particularly in criminal or immigration legal cases.

For example, in Belgium, the status of victim of trafficking in human beings can be granted under the following conditions: break off all contact with traffickers; accept the support of a specialised centre; cooperate with the judicial authorities by making a declaration or filing a complaint. Belgium is regularly criticised because no exception for children is foreseen.²⁵ Indeed the last condition violates Art. 11.3 of the Human Trafficking Directive which requires that 'necessary measures to ensure that assistance and support for a victim are not made conditional to the victim's willingness to cooperate in

22. United Nations Convention on the Rights of the Child (CRC), UNGA 44/25, 20 November 1989. All EU Member States are parties.

23. The EU is strongly committed to Child Rights and developed several online tools to promote them and mainstream the intentions and content of the United Nations Convention on the Rights of the Child (1989). The European Commission explains in its website that "Child rights mainstreaming is a means to fulfil EC obligations under the CRC. It entails using the principles and standards of the CRC as a reference point in order to assess the implications of all policies and programmes on the rights and interests of girl and boy children". For more information see <https://europa.eu/capacity4dev/sites/default/files/learning/Child-rights/3.1.html>. See also Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (2010) available at <https://www.coe.int/en/web/children>.

24. Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA, OJL315, 14.11.2012, p.58, para. (14).

25. CoE, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belgium, 2nd evaluation round*, GRETA (2017), 26.

the criminal investigation, prosecution or trial".^{26 27} In this scenario, when authorities are assessing the status of a potential child trafficking victim, they are not requested by law to determine if the condition of cooperation is in the best interests of the child, whereas the Immigration Act (art. 61/2 §2) requires that the best interest of minors must be considered.

The Dutch report demonstrates that during criminal proceedings many conflicts of interests are arising. For instance, the best interests of a child victim are continuously in competition with the interests of the investigation and the rights of the defence. Hence, the legislator should address those situations and provide guidance to minimize any negative effects on children and ensure that professionals know how to react and determine child best interests. When the solution of such conflicts is not described (or not sufficiently) in legislation and regulations, each situation and circumstances should be carefully assessed.

As a compromise the Netherlands adopted a more victim-centred approach to solve the conflict when the CCP was adapted and measures clarified for the application of the Victims' Rights Directive.²⁸ For example, Article 51c of the CCP which regulates who can assist the victim during contact with the authorities was amended to add that the police, prosecutor or judge may refuse that he or she is assisted in the interest of the investigation or in the interest of the victim, except from a lawyer. Any refusal must be justified. In this way, the potential conflict of interests is indicated in the CCP and draw the attention of the competent authorities.

Another good practice is when there is a conflict of interest between the holders of parental authority

(e.g., legal guardian) and the child victim. In this case according to the Dutch regulation, a special trustee is assigned,²⁹ in addition to the right to be represented by a lawyer.³⁰

C. COHERENCE AND COMPLEMENTARITY WITH EU LEGISLATIVE INSTRUMENTS ON HUMAN TRAFFICKING

The minimum standards of protection mentioned in the Victims' Rights Directive largely correspond to the rights set out by other directives targeting specific groups of victims.

The protection and assistance of child victims of trafficking in human beings are covered by the Anti-Trafficking Directive, again, which is the main EU legislative instrument that protects all victims of trafficking regardless the form of exploitation, gender, age or nationality. Articles 13 to 16 establish protection measures for children, including the presumption of minority, guardianship for unaccompanied minors, a tailored approach to support services and a heightened protection in criminal proceedings. It is, therefore, essential to interpret and apply the measures of the Victims' Rights Directive in the light of the provisions of the Anti-Trafficking Directive and the Child Sexual Exploitation Directive. That being said, the Victims' Rights Directive brings more coherence in the treatment of child victims by explaining the concept and approach of "vulnerable victims".

26. It is also against the UNICEF *Guidelines on the Protection of Child Victims of Trafficking* (2006). Paragraph 3.1 refers precisely to this situation by stating that: "identification of a child as victim of trafficking and provision of assistance to him /her shall not depend on his/her willingness or ability to provide the police with information or to testify against his/her traffickers." and by referring to Art. 12.6 of the CoE Convention on Action against Trafficking of Human Beings which states a similar principle: "Each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness."

27. The authorities are aware of the concern and it has been notified in the 2015-2019 Addendum for minors to the Belgian Action Plan on trafficking in human beings. Making the conditions more flexible for children are under consideration.

28. Most the minimum standards of child victims' protection were transposed when giving force to the Anti-Trafficking and Sexual Exploitation Directives.

29. Decree on Victims of Crime (Besluit slachtoffers van strafbare feiten).

30. Article 51c, paragraphs 2 and 3 of the Dutch Code of Criminal Procedure.



For example, article 22 of the Victims' Rights Directive requires - like 14-1 of the Anti-Trafficking Directive and Art. 19 of the Child Sexual Exploitation Directive - that Member States shall consider if the victim is entitled to special needs on the basis of specific circumstances of each particular child such as serious form of psychological, physical or sexual violence she or he has suffered. The research shows that although the concept of individual assessment for children was clearly anchored in the two previous Directives, it is Art. 22 that gives substance to it. It is only with the Victims' Rights Directive that States transposed this right and started to organize its implementation. For instance, in France, the transposition of the previous Directives was completed with the Decree n°2016-214 of 26 February 2016 on victims' rights which supplements the transposition law of the Victims' Right Directive.

It cannot be explained objectively why States were not applying Article 14 of the Anti-Trafficking Directive. Apparently, the fact that Art. 22 of the Victims' Rights Directive better defines the aim of an individual assessment and the elements to be considered when conducting it, was decisive. The Directive provided clarification and also further instructions on when the assessment should take place (Art. 22-1), why children shall benefit from special protection needs (Art. 22-4) and the necessity to update the assessment in case of signs that the circumstances changed during the criminal proceedings (Art. 22-7). In addition to clarifying the concept, the Directive also completes the two previous Directives by reaffirming that for children the individual assessment is not optional and that all child victims shall be subject to such a timely assessment.

Moreover, it introduces new protection measures for trafficked child victims such as the provisions related to medical examination and the possibility for a child to be questioned by a person of the same sex. These elements are not stipulated neither in the Anti-Trafficking or the Child Sexual Exploitation Directive.

The protection of privacy is another example of right that was enhanced. Before 2012, the protection of privacy of trafficked persons including during criminal proceedings was not sufficiently ruled by the European Union. The Anti-Trafficking Directive declares that the Union "respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably (...) the protection of personal data"³¹ but it does not explicitly create an obligation for States, unlike the Child Sexual Exploitation Directive.³² It is indeed the Victims' Rights Directive that finally requires Member States to take appropriate measures to protect the privacy of the victim during criminal proceedings and "ensure that competent authorities may take all lawful measures to prevent public dissemination of any information that could lead to the identification of a child victim" (Art. 21-1). This harmonisation of the directives is very welcome since it fills an important gap in the protection of trafficked persons especially children.

Based on the analysis of the transposition of the directives in the targeted countries, it can be concluded that EU efforts to seek more coherence in the implementation of its regulations related to victims' rights seem to have more and more positive impacts on criminal justice systems. There are no doubts that the Victims' Rights Directive enhanced the national legal frameworks to

31. Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101, 15.4.2011, point (33).

32. Article 20 (6) Directive 2011/93/EU: "Member States shall take the necessary measures, where in the interest of child victims and taking into account other overriding interests, to protect the privacy, identity and image of child victims, and to prevent the public dissemination of any information that could lead to their identification."



protect abused and trafficked children and helped to draw more attention to child victims' rights.

Against this backdrop, it is unfortunate that the practical implementation of victims' rights during criminal proceedings is not a reality for all injured and exploited children. As it will be presented in the last section and conclusion of this report, the four states that have been studied, like other Member States, need to take further steps to ensure that children, regardless how they have been exploited, their gender and their level of vulnerability, are protected and assisted in a child-friendly manner.



2. CHALLENGES IN ADDRESSING CHILD TRAFFICKING HAMPERING CHILD PROTECTION DURING CRIMINAL PROCEEDINGS

Despite all efforts to comply with the Victims' Rights Directive and to apply it to trafficked child victims, the studies conducted in Belgium, France, Italy and the Netherlands revealed that in practice the rights and protection that should be granted are not fully implemented due to obstacles mostly related to the application of the Anti-Trafficking Directive.

As noted by the European Parliament's in its 2021 Report on the implementation of the Anti-Trafficking Directive, "it remains evident that certain obstacles to full implementation remain almost ten years after the Directive's adoption".³³

For the purpose of this report only the common and main challenges found in the targeted countries will be presented. More information about specific national obstacles can be found in the countries reports.

A. IDENTIFICATION OF CHILD VICTIM OF TRAFFICKING

Throughout the years the governmental regulatory framework to provide assistance to a trafficked person has been built around the concept of "identification of a potential victim". This concept became a prerequisite to receive assistance and support from the State. The European Commission itself considers that "identifying victims efficiently and at an early stage is the first step towards making sure they are treated as 'rights holders', have access to their rights and can exercise them effectively, which includes receiving appropriate assistance and protection".³⁴

It is actually interesting to note that "the identification" is not a legal

33. European Parliament Report on the implementation of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (2020/2029(INI)), 1.2.2021, p.3.

34. Communication from the Commission to the European Parliament and the Council reporting on the follow-up to the EU Strategy towards the Eradication of trafficking in human beings and identifying further concrete actions, COM(2017) 728, 4.12.2017, p.5.



concept originally defined by a legal instrument, but a procedure developed by the necessity of the State to make sure that the person is a potential victim and that there is a reasonable-grounds indication for believing that she or he might have been trafficked before granting her/him any rights and providing her/him assistance.

The Victims' Rights Directive does not explicitly require that a victim should be officially identified as a potential victim by competent authorities, to have the right to be assisted and protected as established. It only refers to "identification" when recognising the importance of capacity building. "Any officials involved in criminal proceedings who are likely to come into personal contact with victims should be able to access and receive appropriate initial and ongoing training, to a level appropriate to their contact with victims, so that they are able to identify victims and their needs and deal with them in a respectful, sensitive, professional and non-discriminatory manner".³⁵

The Anti-Trafficking Directive does not define in detail what "identification" means but urges the Member States "to take the necessary measures to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organisations".³⁶ Nevertheless, EU Member States can rely on the Council of Europe Convention on Action against Trafficking in Human Beings which clarifies in its article 10 what is meant by an identification procedure and, requires States parties "to adopt (such) legislative or other measures as may be necessary to identify victims as appropriate".³⁷

Not all EU Member States are defining the concept *per se* or even the

procedure of identification in their legislation. Legally speaking, one might argue that the formal status of victim is granted when the person formally participates in the criminal proceedings, for example, by acting as a witness or, even by acting as a civil party.³⁸ However, in application of the Victims' Rights Directive, there is no obligation to report a crime to be a victim of crime.

Regardless if a legislation defines or not the procedure of identification of potential trafficking victims, official statistics and national sources indicate that child trafficking remains under-reported. Few cases are detected and few victims are identified. In the Netherlands, a respondent has even indicated that the number of minor victims reported is decreasing although reality might be different. According to most respondents in the four countries, the major problem with this identification procedure is not the lack of legal definition but rather its practical implementation. Yet, the absence of national legal guidance opens to even more interpretation and discretion.

Apart from legal considerations, children exploited, especially among unaccompanied minors, for forced criminality (e.g. stealing, pickpocketing, or drug related offences³⁹) or constrain to commit an unlawful act or behaviour (e.g. violations of migration law, aggressive begging) tend to be immediately considered and treated as juvenile delinquent rather than potential trafficking victims.⁴⁰ This offensive attitude before assessing the circumstances in which the child is acting contradicts international principles. Few years after the adoption of the definition of human trafficking in 2000 by UN Member States, the Recommended Principles and Guidelines on Human Rights and Human Trafficking of the Office of the

35. Victims' Rights Directive 2012/29/EU, Point (61).

36. Article 11-4 of the Directive 2011/36/EU on preventing and combating trafficking in human beings.

37. Council of Europe Convention on Action against Trafficking in Human Beings CETS n°197, 16 May 2005 (hereafter CoE Convention against Trafficking), Art. 10-2.

38. Victims' Rights Directive 2012/29/EU, Point (20).

39. See ECtHR, *V.C.L. and A.N. v. the United Kingdom*, applications n°77587/12 and 74603/12, Judgement 16 February 2021. In this case two Vietnamese children had been charged and convicted of drug-related offences in 2009. The ECtHR considered that the prosecution of potential victims of trafficking might be at odds with the State's duty to take operational measures to protect them where there was a credible suspicion that an individual had been trafficked. Once the authorities had become aware of such a suspicion, the individual should be properly assessed by a properly qualified person qualified. (Press Release ECtHR 058 (2021)).

40. Practice observed in most EU member States. See GRETA's Reports concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings.



United Nations High Commissioner for Human Rights recognised that the involvement of trafficked victims in unlawful activities can be a direct consequence of their situation as trafficked persons and that victims might commit unlawful acts in the context of their status as trafficking victims.⁴¹ The EU Anti-Trafficking Directive explicitly acknowledge the cases whereby traffickers subject victims to commit criminal acts and “adopts a broader concept of what should be considered trafficking in human beings” including “exploitation of criminal activities”, in addition to “forced begging” as a form of forced labour or services.⁴² The Directive also emphasises that “when a child is concerned, no possible consent should ever be considered valid” and clearly states that victims “should be protected from prosecution or punishment for criminal activities such as the use of false documents, or offences under legislation on prostitution or immigration, that they have been compelled to commit as a direct consequence of being subject to trafficking. The aim of such protection is to safeguard the human rights of victims, to avoid further victimisation and to encourage them to act as witnesses in criminal proceedings against the perpetrators”.⁴³

In addition, few child victims are willing to report their situation or to be involved in a criminal procedure. The perception by the law enforcement regarding certain child victims, e.g., as above described, creates some reluctance to report or cooperate. In other cases, child victims very often do not recognize themselves as such, outreach is therefore necessary. In this regard, the Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children Herman Bolhaar recently alerted his country that despite the increased number of reports on cases, very little

is known about the group of child victims of sexual exploitation.⁴⁴

Regretfully, it should be underlined that resources and experience, built up throughout the past decades, have decreased as other policies priority have emerged. For instance, respondents from Belgium shared that in the past years, several experienced agents of the criminal police have been moved to other departments, which created some kind of “drain brain” from the departments dealing with human trafficking.

41. UN Office of the High Commissioner for Human Rights, Principles and Guidelines for Human Rights and Human Trafficking (2002) Recommended Principle 7. See also OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking* (2013).

42. Anti-Trafficking Directive, point (11) & (14).

43. *Ibid*, Point (14).

44. National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, *Human Trafficking Victims Monitoring Report 2015–2019*, available at: <https://www.dutchrapporteur.nl/publications/reports/2020/12/14/human-trafficking-victims-monitoring-report-2015-2019>

B. IMPORTANCE OF THE AGE ASSESSMENT FOR THE APPLICATION OF PROCEDURAL RIGHTS

Based on Art. 22(4) of the Victims' Rights Directive, a child shall always be considered as a vulnerable victim and as such she/he benefits from specific protection and additional rights. Therefore, being a child is a factor of vulnerability of a victim by virtue of age alone. In a related way, Art. 24(2) establishes a presumption of minority stipulating that "where the age of a victim is uncertain and there are reasons to believe that the victim is a child, the victim shall, for the purposes of this Directive, be presumed to be a child". Thereby, the determination of the age of a young potential trafficked victim turns out to be a crucial element for the correct application of the Directive.

The application of the presumption of minority is of special importance during investigation and criminal proceedings. It has direct consequences on the treatment of and assistance to the victim. The practice of the countries shows that the rights and procedural safeguards

afforded under the Directive are not upheld consistently. The presumption is not always applied to all protection measures set down in the Directive.

The age determination persists to be a political and legal challenge, despite the considerable international guidance on age assessment procedures from the United Nations Committee on the Rights of the Child, the United Nations High Commissioner for Refugees, the Parliamentary Assembly of the Council of Europe in addition to EU law and tools.⁴⁵ The UN Committee on the Rights of the Child General Comment No. 6 (2005) recognises the importance of identifying, as a best interest consideration, not only the status of a child but their age. It stipulates that assessment measures "should not only take into account the physical appearance of the individual, but also his or her psychological maturity". The General Comment n°6 also addresses the benefit of the doubt and presumption of minority by underlying that "if there is a chance that the individual is a child, he or she should be treated as such".⁴⁶

With the latest migration crisis and the increased number of unaccompanied minors in Europe without any document of identification, the discussion on the questionable use of medical examination⁴⁷ (usually on the basis of an X-ray of the



45. e.g. UN Committee on the Rights of the Child (2005), General Comment n°6 on *Treatment of unaccompanied and separated children outside their country of origin*; Council of Europe Parliamentary Assembly, *Unaccompanied Children in Europe: Issues of arrival, stay and return*, Resolution 1810(2011), 15 April 2011; European Asylum Support Office, *Practical guide on age assessment* (Second Edition, 2018); Article 25(5) of the Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), 29 June 2013, L 180/60.

46. UN Committee on the Rights of the Child (2005), General Comment n°6, section V.

47. A number of States' age assessment methods have been criticised for their lack of scientific basis and reliability. Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe* (2012) pp. 6-7. The European Committee of Social Rights of the CoE considered "that medical age assessments as currently applied can have serious consequences for minors and that the use of bone testing to determine the age of unaccompanied foreign minors is inappropriate and unreliable". The use of such testing therefore violates Article 17§1 of the European Social Charter. (EUROCEF vs. France, case 114/2015, 15 June 2018). Meanwhile, the French Conseil Constitutionnel recalled in its decision n°2018-768 QPC of the 21 March 2019, the requirement to protect the child best interests in the context of the age assessment and noted that in the current state of scientific knowledge, it has been established that the results of this type of examination may have a significant margin of error.



Art. 24(2): presumption of minority - Victims' Rights Directive

"Where the age of a victim is uncertain and there are reasons to believe that the victim is a child, the victim shall, for the purposes of this Directive, be presumed to be a child".

wrist and of the teeth) to assess if a young person is under or over eighteen years old has taken a new significance. For example, France adopted in 2019 a new regulation on the assessment procedures of minority for unaccompanied and isolated children.⁴⁸ The new Decree has come under criticism as it is considered creating additional obstacles for the protection of unaccompanied children.⁴⁹ Because of the concerns and the political climate, French experts are afraid that the appreciation of a possible trafficking or victimization element in the child's circumstances might be overlooked.

In Italy, the CPP was amended to ensure that the presumption is applied to victims involved in criminal proceedings. The interviews revealed indeed that the benefit of the doubt is respected as stipulated by the Directive. However, it was unfortunate to learn that the presumption is not currently applied to unaccompanied children arriving in Italy. A wrong assessment of the age could have consequences on the future and wellbeing of the unaccompanied young person, if he or she was abused or exploited during the journey and is actually a child. In this case, the rights and

protection recognized to child victims under the Directive will not be granted until a criminal procedure starts (e.g., right to access victim support service adapted to children). Another example would be the one described in the Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 *on common procedures for granting and withdrawing international protection* which requests that Member States, if they are still in doubt after the determination of the age of unaccompanied minors within the framework of the examination of an application for international protection, they shall assume that the applicant is a minor.⁵⁰

In Italy and in the Netherlands, the accuracy of the age assessment can play an important role in the treatment of a child during a criminal proceeding. The age applied to certain rights do not always follow the Directive's instruction. In Italy, a legal guardian is appointed for a (Italian) child until the age of fourteen. In 2017, a new legislation increasing the protection for migrant minors, introduced the possibility for an ordinary citizen to be appointed as "volunteer guardian" for an unaccompanied minor until



General Comment N° 6 of the UN Convention on the Right of the Child

"The best interests of the child must also be a guiding principle for determining the priority of protection needs and the chronology of measures to be applied in respect of unaccompanied and separated children (...) giving due respect to human dignity; and, in the event of remaining uncertainty, should accord the individual the benefit of the doubt such that if there is a possibility that the individual is a child, she or he should be treated as such."

48. Decree n° 2019-57 of 30 January 2019 on the assessment procedures for persons declaring themselves minors and temporarily or permanently deprived of the protection of their families and authorising the creation of processing of personal data relating to these person (non-official translation). France has taken further steps to better guide the authorities in charge of the age assessment by issuing a Handbook developed by an inter-ministerial working group in which a possible situation of exploitation of the child is emphasised: "*Guide de bonnes pratiques en matière d'évaluation de la minorité et de l'isolement, des personnes se déclarant comme mineur(e)s et privées temporairement ou définitivement de la protection de leur famille*" (December 2019), <https://solidarites-sante.gouv.fr/IMG/pdf/guide-de-bonnes-pratiques-en-matiere-d-evaluation-de-la-minorite-et-de-l-isolement.pdf>

49. Note d'observations sur l'Application du Décret n° 2019-57 du 30 janvier 2019 "relatif aux modalités d'évaluation des personnes se déclarant mineures et privées temporairement ou définitivement de la protection de leur famille" et "autorisant la création d'un traitement de données à caractère personnel relatif à ces personnes", InfoMIE, janvier 2020.

50. Council of the European Union, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 *on common procedures for granting and withdrawing international protection* (recast), 29 June 2013, L 180/60, Art. 25(5).

the age of eighteen.⁵¹ Consequently, a migrant minor can, in principle, have a "legal guardian" until fourteen and a "volunteer guardian" until eighteen. Then the question is: do the volunteer guardian and the legal guardian have the same role and responsibilities? Moreover, trafficked children or child victims are not only migrants. Quid of the Italian child exploited and isolated after fourteen?

In the Netherlands, since the transposition of the Victims' Rights Directive, vulnerable victims are persons under the age of eighteen. Before, minors were considered vulnerable only until sixteen years old. In some procedural rights' aspects, the limit of sixteen still applies like before, e.g., the age limit to be considered as an underage witness.⁵² Also, the Dutch law has not changed with regard to the age limit for the use of child-friendly interview rooms. It is only mandatory for minors under the age of twelve. However, under certain circumstances, investigating officers may decide to hear a minor over twelve years old in such a room.⁵³

If the European law is considerably guiding and influencing national policies, the lack of consistent incorporation into national legislation can perpetuate a situation of confusion and conflict between national and EU law.

C. STRUCTURAL BOTTLENECKS

Despite the progressive improvement in the application of the Victims' Rights Directive in the countries targeted by the project, the interviews led to the conclusion that the full implementation of the protection measures to trafficked child victims are challenged by a variety of legal and structural bottlenecks leading to discrepancies on the provision of assistance depending on the age, the nationality, the form of exploitation or the level of skills of the law enforcement involved.

Most of EU Member States are faced with different challenges in combating trafficking in human beings and assisting victims, not only because of the complexity of the crime but also due to different capacities of agencies across the national territory. This is particularly notable in bigger countries like France and Italy. The insufficient knowledge concerning certain forms of exploitation (e.g., forced criminality, forced labour) and the lack of recognition of certain type of victim is limiting the effectiveness of the assistance response. Strengthening capacity and applying a multidisciplinary approach are necessary, so that authorities have the institutional and technical ability to recognise, identify, treat respectfully and assist child victims of human trafficking without discrimination.

From a legal point of view, in France for example, the interviews indicated that the incrimination of human trafficking is still, after so many years since its incorporation in the criminal code, rarely used. In the Netherlands, the low number of cases of child's exploitation reaching criminal courts

51. The appointment of a "voluntary guardian" for migrant children has been introduced by the law "Zampa" n°47 of 7 April 2017.

52. Public prosecutors' Instructions for the auditory and audiovisual recording of interrogations of suspects, witnesses and witnesses and suspects (*Aanwijzing auditief en audiovisueel registreren van verhoren van aangevers, getuigen en verdachten*).

53. *Ibid.*



hints the difficulties of conducting investigations, a lack of reporting or detection of the crime. This is therefore not a surprise that the conviction rates under the specific offence of human trafficking remain low in many countries. As a consequence, national jurisprudence is poorly developed.

In the context of human trafficking, the role and relevance of jurisprudence should not be underestimated because it provides a deeper understanding of the crime and of the legal reasoning. Lawyers and judges can use jurisprudence as a guide to correctly interpret the law or provisions that require clarification. Moreover, it is known that the adaptation or amendment of the law takes time. It is the jurisprudence that could, in the meantime, meet the legal rules' objective by providing appropriate interpretation and make regulations consistent with the realities of the time.⁵⁴ In other words, the field research suggests that more legal security and consistency need to be achieved in the fight against trafficking in human beings and victims' protection, especially when dealing with children.

Furthermore, cooperation and coordination between the competent authorities can lead to a more consistent implementation of the rules as the practice of the Belgian interdepartmental coordination body has demonstrated. According to the respondents, the long-standing Belgian multidisciplinary approach to fight human trafficking involving all relevant actors and expertise (police, social inspection, immigration, specialised centres, Foreign Affairs and reference magistrates) has facilitated so far, the implementation of EU related directives and the policy development.⁵⁵

The protection of trafficked child victims remains a challenging task considering the variety of bottlenecks and barriers. Trafficking in children is a complex multifaceted crime requiring that child assistance involves a wide array of actors and institutions, from child protection services, health sector to trained police officers and court staff. The constant disappearance of children in care proves that more attention should be dedicated to the determination of their best interests in order to overcome the weakness of child protection systems that are persistent. All four studies reported that children are regularly disappearing from care.

54. Amiraghdam, Seifi Zeinab, Zare & Ghasemi, *The Role of Jurisprudence in the Interpretation of the Law and Its Conformity with the Realities in the Law of Iran and France*, Journal of Politics and Law; Vol. 9, n° 8; 2016 (Published by the Canadian Center of Science and Education).

55. As indicated in the Belgian Report, the new government declared in 2020 "that the fight against THB (and smuggling) shall be increased and that working against THB and economic exploitation in that context needs to be absolute priority. This needs to be supported by sufficient means for all specialised services, magistrates, police and inspection services etc. The focus will be on detection, and thus control on the field... The government also invests in detection of victims, with special attention to the situation of minor victims and other vulnerable profiles. In this framework, the financing of specialised centers for THB victims will be continued. In addition, legislation and policy will be audited in a parliamentary commission or working group." (information available at: https://www.tijd.be/content/dam/tijd/redactie/multimedia/20200930_VerslagFormateurs_DEF.pdf)



3. UPHOLDING THE RIGHTS OF CHILD VICTIMS OF HUMAN TRAFFICKING DURING CRIMINAL PROCEEDINGS

Apart from establishing victims' rights in the EU, the aim of the Victims' Rights Directive is to strengthen the legislation of Member States and practical support measures for the protection of victims.⁵⁶ A correct and full implementation of its provisions would mean that all victims of human trafficking can rely on the same rights and assistance measures no matter where the crime took place, the type of exploitation, the victim's nationality, gender and level of vulnerability.

If this scope is commendable, the reality is more complex because the Directive's implementation depends on national criminal system, legal culture, geopolitical and migration context in each country. In addition, as presented in the precedent section and discussed in more detail in the national reports, many factors and obstacles are undermining the Directive's effectiveness. Yet, it can't be denied that the Directive has an indisputable impact on the national



EU strategy on the rights of the child (2021-2024)

"Children may be victims, witnesses, suspects or accused of having committed a crime, or be a party to judicial proceedings – in civil, criminal, or administrative justice. In all cases, children should feel comfortable and safe to participate effectively and be heard. Judicial proceedings must be adapted to their age and needs, must respect all their rights and give primary consideration to the best interests of the child."⁵⁷

⁵⁶. European Parliament, *The Victims' Rights Directive 2012/29/EU, European Implementation Assessment*, EPRS, Ex-Post Evaluation Unit, Study (2017).

⁵⁷. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *EU strategy on the rights of the child*, COM(2021) 142 final, 25.3.21.

legislations of the countries covered by the project.

The Federal Government of Belgium and its regions announced in 2020 important investments in terms of financial support, training of law enforcement, new hotlines, opening of additional care centres for the protection of victims of sexual abuse and violence. Since November 2017, Belgium has set up three Sexual Assault Care Centres comparable to the model of Barnahus for children but accessible to victims of all ages.⁵⁸ These efforts should benefit the victims of trafficking for sexual exploitation. According to the press,⁵⁹ there is no indication that children are excluded, and in addition, some measures are specificity oriented to children. For example, the establishment of online outreach and online education aimed at children. The regions have developed a "chat box" through which children can talk anonymously about experiences with sexual abuse and other violence with specialised personnel.⁶⁰

In France, academics see a real added value of the Directive above all in the construction of a legal status for the victim. Its provisions bring important innovations into the French criminal standards of protection measures although the standards were already quite high. At the time of the Directive's adoption, the focus of the French law was on the protection against secondary victimization through the prohibition of the offender from having contact with the victim. The European law establishes a more general protection of the victim, taking into account the trauma that can be generated by the course of investigation and criminal procedure.⁶¹ This emphasis on possible trauma is of particular importance when dealing with trafficked child victims.

Concerning the Netherlands, the impact of the Directive is visible through the number of regulations adopted and the expansion of existing protection measures to victims of all type of crimes. Moreover, the Dutch research shows that since the Directive's adoption, many efforts have been made to guarantee that all child victims of trafficking in human beings benefit from the protection measures through an attempt to standardise the national practices with more systematic working methods.

In Italy, the Directive was influential for the modernization of the legislation on victim's rights. New and more specific provisions to protect child victims in criminal proceedings have been introduced.

Despite all advancements, the practice doesn't reflect the efforts to adapt the legislation to EU requirements. Trafficked child victims are not properly protected when formally identified and involved in criminal proceedings.



58. Information provided by the Belgian Ministry of Justice in February 2021.

59. BELGA news agency. *Un centre de prise en charge des violences sexuelles au CHR de Namur*, 26.11.2020.

60. Information provided by the Belgian Ministry of Justice in February 2021.

61. Etienne Vergès, *Un corpus juris des droits des victimes : le droit européen entre synthèse et innovations*, in *Revue de science criminelle et de droit pénal comparé* 2013/1 (n°1), Chronique législative, pages 121 à 136.

A. INDIVIDUAL ASSESSMENT (ART. 22)

The right to an individual assessment of the victim's protection needs aims to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings due to particular vulnerability, to secondary and repeat victimisation, to intimidation and to retaliation (Art. 22). The individual assessment of victims of crime is considered as one of the most innovative aspects of the Victims' Rights Directive but also one of the most challenging in terms of implementation.⁶²

Paragraph 4 of article 22 recalls that child victims shall always be considered as having specific protection needs due to their vulnerability. Importantly, the result of the individual assessment, thus its correct implementation, will impact the provision of measures required in article 23 and 24 of the Directive. If this right seems to be an innovation for the States, it should be recalled that it has a strong correlation with the article 12 of the Human Trafficking Directive ruling the protection of victims of trafficking in human beings in criminal investigation and proceedings.

The Victims' Rights Directive refers only to an "individual assessment" whereas the Anti-Trafficking Directive requires both an "individual assessment" (Art. 12(4)) and, an "individual risk assessment" to protect in particular the victim (adult or child) from the risk of being re-trafficked (Art. 12(3)). This last assessment must be carried out in accordance with the grounds defined by national law or procedures, thereby leaving it to the discretion of the Member States.

For trafficked child victims, additional guidance on the individual assessment is provided. Member States are required to take "the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child's views needs and concerns with a view to finding a durable solution for the child" (Art. 14).

The Child Sexual Exploitation Directive is consistent with the Anti-Trafficking Directive as it also requires an individual assessment in order to protect child victims of sexual abuse and exploitation (Art. 19(3)). It should not be forgotten that some child victims of trafficking are also subjected to sexual abuse or exploitation.

Again, if it was not the Victims' Rights Directive that introduced the right of an individual assessment for trafficked persons during investigation and criminal proceedings in order to better protect them, it is the *facto* this Directive which gave substance to the concept and guidance to the Member States. This not only includes the factors that should be taken into account, the moment of carrying out the assessment, but also that such assessment should be updated and special attention should be paid to specific groups of victims, such as of human trafficking. In addition, it specifies that the victim, including a child, should be closely involved and her/his wishes taken into account.

Among the four countries covered, only two, France and the Netherlands, have introduced the right to an individual assessment, as defined by

62. Report from the Commission to the European Parliament and the Council on the implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, COM(2020) 188 final, 11.5.2020, p. 8.



the Directive, in their Code of Criminal Procedure.

France amended its CCP by application of the Law n°2015-993 of August 17 relating to the adaptation of criminal procedure to EU law, to add the right of victims to such an assessment. Thus, article 10-5 of the French CCP stipulates that "as soon as possible, victims shall receive an individual assessment in order to determine whether they need specific protection measures during the criminal proceedings". It is up to the authority conducting the victim hearing to collect the "initial elements for this assessment". The principle of the victim's involvement in this assessment is also established by law. On the basis of these initial elements, and with the agreement of the competent judicial authority, a more detailed assessment may be made. In a trafficking case, the assessment will be, therefore, carry out by the judicial authority in charge of the formal identification.⁶³ However, although the CCP provides a sufficient framework for conducting the assessment, in practice, according to the majority of the respondents, the measures taken are often the same as for any other minor at risk and do not meet the specific needs of trafficked children. In addition, there is no standardized practice and, if some police officers systematically conduct an assessment when they interview a child victim for the first time, regardless of the type of crime, most of the time the focus will be on the child's situation for the purposes of the investigation rather than on his or her specific needs.

Similarly to France, Article 51aa (3) (b) of the Dutch CCP regulates the victims' right to receive an individual assessment by referring to the "Victims' Rights Decree" adopted to transpose the Victims' Rights Directive. However,

as explained in the country summary at the end of the report, the specific vulnerable position of child victims of trafficking in human beings seems not to be recognized since it was not integrated in the specific guidelines for public prosecutors, "Instruction on Trafficking in Human Beings" (*Aanwijzing mensenhandel*), which exclusively deal with trafficking victims. Of course, trafficked victims can rely on the "Victims' Rights Decree" but the practice shows that the implementation of this right is not (yet) guaranteed because of a lack of awareness and only trained investigating officers are applying it.

Italy has not transposed literally the right to an individual assessment as defined by the Directive but introduced in its CPP, in 2015,⁶⁴ a provision on the condition of "particular vulnerability" of a victim established by his/her personal characteristics, from the type and nature of the crime or from the circumstances that led the perpetrator to commit it. Article 90-*quater* of the Italian CPP instructs what the assessment of this condition should take into account. Therefore, since 2015 the individual assessment of the victim should play a central role in Italian criminal proceedings. However, the lack of further indications in the Italian legislation about who should carry it out, how or when it should be done, seems to result in a poor implementation of Art.90-*quater* and a lack of knowledge. The interviews revealed that professionals are confused when discussing the fact that a child has the right to receive an individual assessment. Many of the respondents understood and referred to Art. 18 of the Consolidated Act on Immigration, containing "Humanitarian provisions relating to residence for reasons of social protection". This Art.18 requires that an individual assessment is conducted to determine whether a migrant child could be a victim of

63. Article D1-4 of the French CPP; *Circulaire sur les conditions d'admission au séjour des ressortissants étrangers victimes de la traite des êtres humains ou de proxénétisme*, Ministère de l'intérieur aux préfets, 19 mai 2015.

64. Article introduced in application of the legislative decree of 15 December 2015, n°. 212.



trafficking in order to allow him/her to participate in a program of assistance and social integration. There is no indication that an assessment of potential protection needs is done at the same time. The objective is here is the issuance of a special residence permit, which allows him/her to escape the violence and the criminal organization.

This confusion is not specific to Italy. The lack of awareness about the new procedural right has been noted in all four countries. Where migration policy is a greater priority, the assessment of foreign unaccompanied children for the determination of the child's age and social situation is better known than the assessment of their protection needs.

Finally in Belgium, there is no special legal rule in place to determine the particular vulnerability and protection needs of a victim as described in Art. 22. An individual assessment of protection needs, as defined by the Victims' Rights Directive, is lacking. Yet, since 2016 Belgium has improved the specific legal framework in place relating to the fight against human trafficking in order to better protect trafficked children. As GRETA noted in its second Report concerning Belgium, the authorities have taken several measures to improve the formal identification of child victims and their referral.⁶⁵ Then again, the assessment procedure is mostly an assessment to benefit the investigation against the traffickers and refer the victim to assistance services, and not so much as described in Art. 22 of the Directive. Once a victim meets the conditions defined by the Belgian law and is recognized as a child, protection and assistance will be offered in specialised shelters, as well as the special support mentioned in Art. 23 and 24 of the Directive.

Belgium, France, Italy and the Netherlands are all facing particular challenges in the implementation of the right to an individual assessment of victims' protection needs during criminal proceedings. The issue of "identification" cannot be considered here to be the main problem as it could be actually an opportunity to carry out such an assessment, as shown by the French practice (when of course it is taking place). The national reports indicates that it is indeed the lack of awareness and training as well as guidance that prevent the full implementation of this victims' right.



65. Council of Europe, *Report concerning the implementation of the CoE Convention on Action against Trafficking in Human Beings in Belgium*, 2nd evaluation round, GRETA(2017)26.

B. SPECIAL PROTECTION MEASURES (ART. 23/24)

In order to ensure that child victims are protected during criminal proceedings, a wide range of measures are required and should be made available by the State.

Article 23 of the Victims' Right Directive specifies the protection measures for vulnerable victims with specific protection needs that have been identified as a result of an individual assessment. In addition, to the measures that should be offered to victims of all age groups, article 24 anchors the procedural protection for child victims during investigations and criminal proceedings (right to a legal guardian, legal representation, audio-visual recordings of all interviews, presumption of minority). Most measures are available and amendments were made, when necessary. Again, if the legislations are fulfilling the EU requirements and even go further than the Directive's provision,⁶⁶ the practical implementation of the protection measures in cases of child exploitation and trafficking remain sporadic and to the discretion of the officers in charge. The national studies demonstrate that the shortcomings in the practice are predominantly due a lack of knowledge and clear instructions.

In terms of social and medical assistance to trafficked children, one of the main weaknesses in national protection systems for victims of human trafficking is the fact that the cases of children were neglected during many years and left to the responsibility of Child Protection Services or Immigration Services which were not trained to deal

with such victims of crime, whilst there is no doubt that they have a pivotal role. The lack of skills and understanding of the trafficking crime hamper the essential actions to detect and recognize the indicators of exploitation or victimhood and to proceed with the appropriate referral.

Today, many progress were made especially concerning the recognition that an unaccompanied migrant children might be a potential victim of trafficking or sexual abuse. As such, this category of children can be one of the most vulnerable one in a country. They are unaware of their rights and whom they should trust. They are often going missing, leaving the care where they could be protected. Countries are still facing difficulties to deal with this kind of disappearance because of the stranglehold of traffickers over the children and, importantly, because the assistance provided seem not to respond to their needs and vulnerability.

It is often reported that children and young people have a profound lack of trust in the police, with some fearing officers. This is even greater for child victims suffering from psychological and physical trauma inflicted by the offenders.⁶⁷ The set of specific protection measures established by the Directive can contribute enabling victims to develop trust in authorities, therefore a full and correct implementation is key for the child willingness to cooperate and above all well-being.

The audio-visual recording of child hearings and the use of a child-friendly room were well considered by the legislators of the four countries targeted by the project. But the practice shows that authorities are facing difficulties in applying the rules in a systematic manner and taking advantage of the available tools.

66. French criminal law is particularly protective of child victims of crime. France was one of the precursors in this area with the creation of the so-called Melanie procedure (which makes the recording of hearings of child victims of sexual offences mandatory to avoid their repetition) and with the use of child-friendly rooms. The French expertise in this area was exported to Eastern and South Eastern Europe through project for combating child trafficking.

67. Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings in partnership with the Ludwig Boltzmann Institute of Human Rights and the Helen Bamber Foundation, *Trafficking in Human Beings Amounting to Torture and other Forms of Ill-treatment*, Occasional Paper Series n° 5 (2013).



France was one of the precursors in the area of child victims' protection during criminal proceedings. A specific legislation was developed to ensure procedural safeguards (training of professionals, controlled contact with other parties, child-friendly rooms, separate courts for children with specialised panels of judge⁶⁸). The so-called "audition Mélanie" is a child-friendly procedure in which hearings are recorded, child-friendly room are used, police

officers are trained and dressed in plain clothes. For sexual crimes, the child can be heard by an officer of the same gender, upon request.⁶⁹ If these safeguards are in principle available for trafficked victims, it is regretful, according to respondents, that the "Melanie" procedure is not so frequently used and that recorded hearings do not prevent the multiplication of interviews. The recording is rather considered as a proof of good execution.



Child hearings in "Melanie" rooms - France

So-called "Mélania" rooms are places specifically set up for the hearing of a child victim. They have been created in police stations and gendarmeries. These rooms or offices allow the child to be heard and filmed, in particular to observe his or her body language; they may have no tables or be equipped with a transparent table. They may be specifically equipped with toys to facilitate the expression of children's speech.⁷⁰

Italy amended its CPP regarding the preliminary investigation phase and the examination of victims in trial in order to better protect children, thereby transposing and complying with the Directive's requirements. Training on special interrogations methods is available to magistrates and police officers. Among the novelties, the legislator added measures to prevent further trauma during interrogations with vulnerable victims by allowing the judicial police to make use of the support of an expert in psychology or child psychiatry, appointed by the public prosecutor (Art. 351 (1-ter) of the CCP). Here again, the field research shows that the practical implementation is more complex than it was initially thought. Additional clarifications

seem to be needed. Despite the presence of an expert in psychology or child psychiatry, the examination of the child victim is actually conducted and managed exclusively by the magistrate. Then according to the researcher, the question is what role should be assigned to the expert and, above all, whether his presence should be considered mandatory, or the result of a discretionary choice. Nevertheless, the children interviewed during the research, said that they felt safe and understood during their hearing, both in the preliminary investigation and during the proceedings. This shows also that the attitude towards the children can seriously impact the proceedings and its perception of law enforcement.

68. FRA, *Child-friendly justice perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States* (2015).

69. Articles D1-3 to D1-9 of the French CPP.

70. The audiovisual recording of hearing of a minor victim is mandatory since 1998 (law n° 98-468 of 17 June 1998).





Child's view in Italy

"One of them wanted to stress how important it is for a juvenile victim of such a serious crime to feel welcome. She remembers feeling uneasy that people in front of him did not smile, trying to make him feel calm and at ease. Something that may seem like a subtlety to an adult, but which can be fundamental in gaining the trust and esteem of a child or adolescent."⁷¹

In the Netherlands, the age of the child plays a particular importance in the use of a friendly environment. According to the Instructions on Auditory and Audio-visual Registration of Hearings of Assailants, Witnesses, and Suspects, a child-friendly room is mandatory for hearings of minors under the age of 12 and, under certain circumstances, children above 12 years old (or persons with a mental disability) can also be heard in such a room. Audio-visual registration is compulsory for child victims of human trafficking until the age of 18, and for child witnesses under the age of 16.

Dutch respondents indicated that hearings of child victims of sexual exploitation usually took place at the police station although some attempts were made to conduct the interview in the so-called family room or living room of the police. In a case presented as an example, in order to interrogate a child above 12 years old in a child-friendly room, the degree of vulnerability was used as a criterion and the police had to assess, in consultation with the public prosecutor, whether the vulnerable victim should be interrogated in such a room. Moreover, several respondents underlined that when Dutch underage victims are questioned by the examining magis-

trate, this takes place in the Cabinet of the examining magistrate. It seems that hearings of child victims in a friendly environment is not a standard practice and should be more promoted.

Similarly in Belgium, the practice is not standardized and also need to be improved. Respondents noted that interviews by trained professionals should be expanded to cases of labour exploitation and that recordings are not always done as it should. Smaller police teams outside the major cities are not equipped well enough and lack both trained staff and adequate settings. In previous research of ECPAT Belgium,⁷² it was also highlighted that child victims are interviewed by several different instances (police, prosecutor, judge) and several lawyers (residence permit, civil party in the trafficking case). This can be very confusing and harmful for the child.



71. Testimony of child victim collected by the Italian researcher.

72. ECPAT Belgium, *La traite des enfants en Belgique, Identification et protection des victimes*, National Report of the ReACT project (2016).

C. PROTECTION OF PRIVACY AND INTEGRITY (ART. 21)

According to Article 21 of the Victims' Rights Directive, it is the duties of competent authorities to protect the identity and the privacy of children involved in court proceedings. The State shall ensure that personal data of children remain confidential and are kept from the media and the general public. Thereby, trafficked child victims have a right to have their privacy and integrity protected. At the same time, the Anti-Trafficking Directive lays down, in Articles 19 and 20, requirements for the Member States to gather and report on statistics on trafficking in human beings. This includes information on criminal justice data in particular regarding to type of exploitation and use of services exacted from victims, breakdown by sex and age in addition to suspects' prosecutions and convictions. EU Member States have been encouraged and requested to provide statistical data to the European agencies in order to better understand the crime of human trafficking, the forms of exploitations going on in the EU, the trends and evaluate the results of actions.⁷³ The data collection was important some years ago for the development of appropriate tools and legal instruments. But the need to understand the crime by getting victim's information on her/his private life overlooked in most of the cases the right to privacy protection of many trafficked persons. In some cases, the access to counselling centres was granted only after having provided personal data.⁷⁴ Since then progress have been achieved to better protect the victim's privacy. Yet, existing general rules and stand-

ards that were not considered in human trafficking cases so far should now be applied.

The right to children to see their privacy and integrity protected is firmly anchored in international law and reflected in European law. One of the most important principles is Article 16 of the UN Convention on the Rights of the Child, which states: "No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation." Thus, it is State's duty to protect children's privacy and integrity. The Victims' Rights Directive provision (Art. 21) reflects Article 20 of the Child Sexual Exploitation Directive which governs the protection of child victims in criminal investigations and proceedings. Paragraph 6 establishes that Member States "shall take the necessary measures, where in the interest of child victims and taking into account other overriding interests, to protect the privacy, identity and image of child victims, and to prevent the public dissemination of any information that could lead to their identification". Protecting the privacy of the child trafficking victim prevent secondary and repeat victimization, but also possible intimidation and retaliation by the perpetrator. In this regard, it should be noted that Art. 12 (d) of the Anti-Trafficking Directive is not affirming the right for privacy protection assertively. It simply declares that "unnecessary questioning concerning the victim's private life". Stronger language would have given greater importance to the issue considering the Directive's preamble recalls that the principles, including the protection of personal data, recognised in particular by the Charter of Fundamental Rights of the European Union are observed and respected.

73. Anti-trafficking Directive, point (28).

74. Baerbel Uhl, Presentation on Data Protection in Anti-trafficking Action (KOK Project datACT) at the 14th Alliance against trafficking in persons conference, Vienna, 5 November 2014.



Apart from EU criminal and civil law principles on privacy protection, the European General Data Protection Regulation is applicable since May 25th, 2018 in all Member States. It aims to harmonize data privacy laws across Europe and it had significant impact on data protection policy. All public or private agencies processing personal data have been required to comply with the GDPR. Its rules concern any processing of personal data, even if not computerized: collection, recording, organization, conservation, adaptation, modification, extraction, consultation, use, reconciliation, communication and provision. This new regulation will probably contribute to ensure a better protection of private data concerning child victims provided that rules are applied, support and clear instructions are available.

The right to privacy is protected for child victims in all countries through legislation which restricts the disclosure of information about them.

In the Netherlands, the interview with a survivor (exploited as a child but adult at the time of the research) shows that since the implementation of the Directive more attention has been paid to the withholding of victim's personal data in criminal file. Before European rules, the address details were indicated in the file and were mentioned during hearings. The blocking of personal data is now a protection measure that can be applied on the basis of the individual assessment. For example, the victim's location is not recorded by choosing the actual domicile. Privacy-sensitive data can now also be anonymised in files.

In Belgium, according to the law, general privacy protection rules are applied in cases of trafficked children. The Criminal Code forbids any

publication and dissemination of text, drawings, photos or images or audio materials which could reveal the identity of a trafficked victim (Art.433 novies/1). Such publication or dissemination is punishable (Art. 378 bis1), except when the victim has given his/her written agreement or when the prosecution has deemed it necessary in order to get the required information for the investigation. However, at the same time, it is interesting to note that some Belgian respondents mentioned that the rules on professional confidentiality, deontology and child rights in youth care can become counterproductive as the respect of confidentiality might impede the sharing of relevant information about a case. In addition, the researcher comments that the law of April 8th 2002 allows the judge of instruction and the prosecutor to give witnesses partial or full anonymity in criminal proceedings when their statements could endanger their integrity. None of the respondents referred to this law and it was confirmed by the Department of Justice that this is hardly ever used in trafficking cases. Then again, since the victim's identity would be revealed in the police reports before the court case even got started, this provision would not be so helpful.

Since 1988, the Italian legislation strongly protects the privacy and integrity of children (as witness or as victim) from questions concerning their private life or sexuality and it prohibits the publication and dissemination of news or images enabling their identification including during investigations or in the course of the proceedings, unless they are necessary for the reconstruction of the fact.⁷⁵

If national findings indicates that Art.21 of the Victims' Rights Directive is generally speaking transposed by

75. Presidential Decree n°448 of 1988 is the main source of the Italian Juvenile Criminal Procedure Code. It created a new juvenile criminal justice system.



new provisions or existing ones, the measures are not implemented harmoniously and applied effectively in all territories. The treatment of private data and the exchange of information between authorities and other involved agencies during criminal proceedings remain a serious issue. The lack of knowledge of the legal guardians of unaccompanied children in this matter has been noted, for instance, by the researchers during the interviews. It is advisable that guidance and tools on practical modalities to protect child victims' privacy and integrity should be developed and made widely available.

D. SPECIAL REPRESENTATION FOR CHILD VICTIMS (ART. 24(B))

The appointment of a special representative for child victims deprived of parental care and responsibility is considered nowadays in the European Union a key protection measure to safeguard the child's best interests and promote the child's well-being.⁷⁶ The appointment of a guardian or a representative to an unaccompanied trafficked child is required by all three directives, Child Sexual Exploitation Directive (Art.20), Anti-Trafficking Directive (Art.14(2),15,16 (3)) and Victims' Rights Directive (Art. 24(b)). This last one specifies that "where, in accordance with this Directive, a guardian or a representative is to be appointed for a child, those roles could be performed by the same person or by a legal person, an institution or an authority" (point 60).

The right for child victims, including trafficked and abused, national or migrant unaccompanied children, to be assisted by a special representative (legal guardian) and by a lawyer during criminal proceedings is stipulated by the legislation of Belgium, France, Italy and the Netherlands.

These countries are even offering higher protection in certain cases. In the Netherlands, child victims have the right to be assisted by a lawyer, legal representative and, a person of their choice during both the preliminary investigation and the trial. The right to representation by a person of one's choice does not replace the right to be assisted by a legal representative.⁷⁷

76. FRA, *Children deprived of parental care found in an EU Member State other than their own. A guide to enhance child protection focusing on victims of trafficking* (2019)

77. Article 51c of the Dutch Code of Criminal Procedure.



Concerning Italy, it should be underlined that a legal guardian can be appointed only until the age of fourteen. For migrant unaccompanied children until eighteen, a new institution has been established: "volunteer guardian". This special representative has the same competences and duties as a legal guardian, the Italian Civil Code relating to legal guardianship applies to both category of guardian. This new measure was seen by experts among the main innovations introduced by the famous Law n°47 of 7 April 2017. The objective is to increase the protection of migrant unaccompanied children, thus better comply with the European law. Consequently, as the Italian Juvenile Criminal Law makes no difference based on the child's nationality, a migrant child can in principle have a "legal guardian" until fourteen and a "volunteer guardian" until eighteen.

The country studies found that the systems of legal guardianship in place could be improved. For instance, the timely appointment of the legal guardian in Italy and Belgium and the systematic participation of the legal guardian or representative in hearings with the judicial authorities in France and in the Netherlands. The interviews show that criminal investigation officers generally prefer to conduct the first hearings without the presence of a third party because it could influence and have an impact on the statements of the child.

All the legal guardians interviewed agree that more specific training on the issue of human trafficking would be necessary. Belgium is one of the few countries in the EU that is organizing a special training in the field of trafficking in human beings for legal guardians. The first one took place in 2014 and others in September 2017.⁷⁸ They were organized by the Guardianship Service in collaboration with

relevant NGOs such as Caritas and ECPAT in 2017.⁷⁹ The Guardianship Service has also set up a pool of "human trafficking" guardians made up of experienced guardians who have been previously trained and are aware of the implications of such cases. Nevertheless, the research indicates that some guardians consider this level of training not sufficient to enable them to deal properly with all the different situations they have to face. On the other hand, one respondent warned against too much specialisation. It could underestimate the importance of keeping a holistic approach to child protection. Belgium has five associations of guardians.⁸⁰ They provide support through regular meetings, where guardians can exchange and share experiences and expertise. Despite the efforts of the Belgian Guardianship Service, guardians reported that training sessions on specific topics, or (informal) meetings among them are highly appreciated, but still insufficient or not frequently organised.

The perception of the children supported by a guardian is another issue of concern. During a meeting in Italy, several criticisms have been raised by unaccompanied children. Most of the participants stated that they did not know their "volunteer guardian", that they did not know what role he/she was assigned by law and that they did not know whether a guardian had been assigned to them.⁸¹ The interviews conducted by the Italian researcher herself confirmed all critical points (lack of training, timing of appointment and child's perception).

78. See Belgian Report.

79. Council of Europe, *Rapport soumis par les autorités belges pour être en conformité avec la Recommandation du Comité des Parties CP(2018)4 sur la mise en œuvre de la Convention du Conseil de l'Europe sur la lutte contre la traite des êtres humains*, CP(2019)09, page 3. Document available only in French.

80. A&A, ATF MENA, Gardanto, Maia and Oliv.

81. See Italian Report. Workouts, metodo UN, *I minori stranieri accompagnati: comprenderne i bisogni, sostenerne le speranze*, organized in Milan in 2018 and in 2019, by UNICEF-Italy, Istituto Europeo di Psico-traumatologia da stress e stress management, ECPAT-Italy and Milano-Bicocca University.





CONCLUSION AND RECOMMENDATIONS: TOWARDS A BETTER CHILD VICTIM'S PROTECTION IN THE BEST INTERESTS OF THE CHILD

Almost 10 years after the adoption of the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime and replacing Framework Decision 2001/220/JHA, and of the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims as well as the Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, the protection of children victim of trafficking in human beings is still not sufficient and effective in Belgium, France, Italy and the Netherlands. Yet, these four countries have made sig-

nificant progress in the last 5 years to transpose and comply with the Directives, but the impact on the ground is barely visible. In other words, the research project comes to the conclusion that the legislations are, except from few elements, in line with Chapter 4 of the Victim's Right Directive and, efforts have been made to recognize the importance of a child victim protection tailored to their specific needs. At the same time, the four countries are facing particular difficulties in the implementation of their rights during investigation and criminal proceedings.

The analysis of the practical implementation of the protection measures shows that important shortcomings and challenges are remaining and they are hampering that a trafficked child victim is properly protected

from potential side effects of the criminal proceedings as well as from possible intimidation and retaliation by traffickers. According to most of the respondents, children are not receiving the assistance that they would need in their best interests and for their well-being. Very often it is because their victimhood or exploitative situation are not timely detected, identified as a human trafficking crime or, because the vulnerability due to their age is not considered as appropriate. The weakness of the anti-trafficking system in place demonstrates the little progress made in terms of national coordination and of execution of protection measures like the ways in which hearings are conducted as well as individual assessments, when and if they are taking place. It is striking to see that in all four countries it is the lack of awareness, of training, guidance and of standardization of the measures that prevent an effective protection of trafficked child victims during investigation and criminal proceedings.

During the research, it was noted that the Directive was insufficiently known by the respondents in charge of the fight against child trafficking and child protection. More expertise about European Law related to victims' rights would have been expected. For instance, the Report about Italy indicates that 60% of the professionals interviewed said they knew in depth the contents of the Victims' Rights Directive, but at the same time, they argue that, despite the Directive having made important changes in the Italian legal system, there are difficulties in applying its provision from a practical point of view.

The lack of knowledge is regularly listed as one of the main obstacles to an effective response to human

trafficking and assistance to trafficked persons. Regretfully, this research project leads to the same conclusion that the respect for victims' rights and the protection of trafficked children often depend on the specialisation and knowledge of the actors involved. It would be urgent to change perceptions of child victims' rights and understand what these mean for children's role in criminal proceedings.⁸²



Shifting perceptions of victims among practitioners (FRA)

"For criminal proceedings to recognise victims, what is decisive is not only the role that legislation accords to them but also how the police, public prosecutors and criminal judges perceive them. If practitioners conceive of victims essentially as witnesses, victims will often feel that they are nothing more, regardless of their role laid down by procedural law. Therefore, to improve how victims are treated in reality, legislative reforms are not enough."⁸³



⁸². FRA, *Victims' rights as standards of criminal justice - Justice for victims of violent crime* - Part I (2019).

⁸³. *Ibid*, page 9.

Therefore, given the procedural difficulties that trafficked child victims are facing, even though greater attention has been given to them, bringing the countries to fulfil their obligations in an efficient manner, requires, more than ever, capacity building programs and ongoing training of professionals.

On 24 March 2021, by adopting the Strategy on the Rights of the Child, the European Commission has renewed its commitment to put children and their best interests at the heart of EU policies, through its internal and external actions,⁸⁴ thus supporting and encouraging Member States through a set of recommendations and targeted actions including upholding the rights and needs of children in order to reduce their vulnerability. Along the same lines, the new Strategy on Combating Trafficking in Human Beings presented in 14 April 2021 underlines that "cases involving child victims of trafficking require trained officials who are aware of the particular vulnerabilities of child victims and who are well trained on children rights and protection needs during criminal proceedings" and that children should have access to appropriate and safe accommodation.⁸⁵ Moreover the EU is monitoring⁸⁶ and supporting the States by developing guiding tools, handbooks, strategies and by providing funding. However, the EU is unlikely to alleviate current national obstacles without stronger engagement and practical action of the Member States. It is in this context that ECPAT is offering the following recommendations.

84. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU strategy on the rights of the child, COM(2021) 142 final.





85. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, on the EU Strategy on Combatting Trafficking in Human Beings 2021-2025, COM(2021) 171 final, 14.4.2021, p. 10;14;15.

86. See e.g. European Parliament Report on the implementation of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (2016/2328(INI)) 14.5.2018; European Parliament, The Victims' Rights Directive 2012/29/EU, European Implementation Assessment, EPRS, Ex-Post Evaluation Unit, Study (2017); Report from the Commission to the European Parliament and the Council on the implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, COM(2020) 188 final, 11.5.2020; European Parliament Report on the implementation of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (2020/2029(INI)).












RECOMMENDATIONS TO THE EU

-  Conduct EU-wide in-depth research on the views and experience of trafficked and sexually abuse children during investigation and criminal proceedings. It would provide a better understanding of the practical improvement and action that should be taken to overcome the national shortcomings and enhance the implementation of the Victims' Rights Directive.
-  Further encourage Member States to strengthening capacity and increase trainings opportunities by applying a multidisciplinary approach so that law enforcement and the Judiciary have the institutional and technical ability to recognise, identify, treat respectfully and assist child victims of human trafficking without discrimination and in a way that protects their best interests.
-  Provide more guidance on practical measures on the protection of privacy and integrity especially related to child victims. Field research on the method of collection, processing and storage of personal data in the context of criminal proceedings for trafficking offences, and the impact on the care of victims could inform the elaboration of such guidance.
-  Further promote a multidisciplinary approach to respond to child trafficking cases and assist the children at both local and national levels



RECOMMENDATIONS TO STATES

-  States should ensure that more legal security and consistency should be achieved when transposing EU directives related to child trafficking and victims' rights. This can be achieved by interpreting and applying the protection measures of the Victims' Rights Directive in the light of the provisions of the Anti-Trafficking Directive and the Child Sexual Exploitation Directive.
-  Each state should establish a best interests determination process to determine the durable solution most appropriate for each individual trafficked child.
-  Comprehensive educational curriculum and ongoing training focusing on child victims' rights should be offered in a regular manner to law enforcement and the Judiciary.
-  States should take further steps to harmonize and standardize the practical implementation of protection measures throughout their territory by developing legal guidance, disseminate EU and international tools (e.g. handbooks, guidelines), by organizing national exchange of experience and practical exercises, and by providing the necessary resources to implement the procedural safeguards for child victims (e.g. recording possibilities, child friendly-rooms, availability officers of different gender).
-  Ensure that special representatives of children including legal guardians and "volunteer guardians" are the main contact person for the child, monitor the child's well-being, represent the child safeguard the child's best interests, inform the child, hear the child and consider the child's views.⁸⁷ This can be achieved through monitoring and tailored training including on child trafficking and child sexual abuse.
-  States should improve their mechanisms to identify trafficked child victims, so that children are not punished for unlawful activities committed by them whilst being exploited or as a consequence of having been trafficked.
-  Trafficked unaccompanied children must be early identified. Their best interests and special need and rights shall be considered paramount at all times due to their special vulnerability and age.



87. FRA, *Children deprived of parental care found in an EU Member State other than their own. A guide to enhance child protection focusing on victims of trafficking* (2019).

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