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The State's obligation to address Psychological Health Impact of Trafficking

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Legal framework

Introduction

Generally, the obligations of States in relation to human trafficking are reflected in the so-called 3P-paradigm, referring to the State's obligation to Prosecute (and Punish) and Prevent human trafficking and to Protect its victims.¹ This chapter focuses on the latter, the obligation of states to protect victims of human trafficking. Central in this chapter is the question; what are State obligations based on regional and international law to protect victims of trafficking?

Since halfway the former century (the fifties) research on victimology and victim's rights became increasingly popular in academia and practice. An important starting point of the codification of victim's rights can be placed in 1985 with the adoption of two international and European instruments: 1. UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, and the 2. Council of Europe Recommendation on the Position of the Victim in the Framework of Criminal Law and Procedure. Thereafter several other European and international agreements on victim's rights have followed. Regarding European states the rights of victims of human trafficking are spread over various instruments about general victim's rights e.g. the Victim's Rights Directive² or about human trafficking more specific like the 2011 EU Directive on preventing and combating trafficking in human beings and protecting its victims.³

¹ Tom Obokata (2006), A Human Rights Framework to Address Trafficking of Human Beings, *Netherlands Quarterly of Human Rights*, Volume: 24 issue: 3, p. 379-404.

² Directive 2012/29/EU 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, OJ L 315, 14.11.2012, p. 57–73.

³ Directive 2011/36/EU 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, p. 1–11.

This chapter considers the international and European laws and regulations which refer to victims' psychological health impact. Therefore, we will look at general victims' rights instruments as well as instruments specifically focussing on trafficking victims.

2.1 International and European legislation

During the past decades victims' rights have acquired more and more attention in the international community. This attention has led to several international and European legislations in order to protect the victims' wellbeing. Also the special and precarious position of trafficking victims has been reckoned, followed by specific obligations for States towards trafficking victims.

2.1.1 Victims' rights

United Nations

The first international instrument specifically directed at victims' rights is the 1985 UN Victims' Rights Declaration.⁴ This Declaration is a non-binding instrument which contains general principles on victims' rights. Article 4 of the Declaration provides standards which should be taken into account during the judicial and administrative processes.⁵ This includes providing the victims with information, allowing the views and concerns of victims to be presented and considered during the proceedings and taking measures to minimize inconvenience. Furthermore the declaration entails a chapter on assistance for victims of crime entailing psychological assistance through governmental, voluntary, community-based and indigenous means.⁶ Officials who get in contact with the victim (police, justice, health, social service and others) should be trained in order to sensitize to

⁴ UN General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, A/RES/40/34, 29 November 1985.

⁵ Article 4 UN Declaration.

⁶ Article 14 UN Declaration.

the need of victims and receive guidelines to ensure proper and prompt aid.⁷ Special attention should be given to victims with special needs, for example because of the nature of the inflicted harm.⁸ Since this Declaration is non-binding, States are not obliged to implement the Declaration's suggestions into domestic law. Often, rules laid down in a declaration are confirmed in a Convention, but for this Declaration this still hasn't happened. In 2010 a draft Convention was published, the draft UN Convention on Justice and Support for Victims of Crime and Abuse of Power⁹ but until today this has not led to the adoption of this draft. Nonetheless, the adoption of the UN Declaration has been a source of inspiration for other binding and non-binding instruments to be adopted, especially at the regional levels.

Council of Europe

Almost simultaneously the Council of Europe's Recommendation on the Position of the Victim in the Framework of Criminal Law and Procedure was adopted.¹⁰ Also this instrument is non-binding for the Member States. The considerations to the Recommendation mention that the criminal justice system sometimes increases the problems of the victim. The purpose of this Recommendation is to meet the needs of victims and to safeguard the interests of the victim. The victims' confidence in the criminal justice system needs to be enhanced. In order to achieve this, it is necessary to take more notice of the physical, psychological, material and social harm suffered by the victims. These objectives should be pursued throughout all stages of the criminal justice

⁷ Article 16 UN Declaration.

⁸ Article 17 UN Declaration.

⁹ Victims of Crime Clearinghouse 'UN Convention on Justice and Support for Victims of Crime and Abuse of Power' (8 February 2010)

http://www.victimsclearinghouse.nsw.gov.au/Pages/victims_clearinghouse_research_db/victims_clearinghouse_research_database_victimsrights/victims_clearinghouse_research_database_victimsrights_unitednations_convention.aspx accessed on 6 July 2018.

¹⁰ Council Recommendation no. R (85) 11 of 28 June 1985 on the Position of the Victim in the Framework of Criminal Law and Procedure [1985].

procedure. Article 1 recommends States to train police officers to deal with the victim in a sympathetic, constructive and reassuring manner.¹¹ This in contrast to the aforementioned UN Declaration which votes for training of all officials (e.g. also prosecutors and judges) involved. When questioning the victim, due consideration has to be given to its personal situation, rights and dignity.¹² Another interesting advice is to question mentally ill victims in presence of persons qualified to assist them. According to the United States (US) National Institutes of Health's website (MedlinePlus) mental illness is a synonym for a mental disorder which includes anxiety disorders, panic disorder, and PTSD.¹³ As we have seen in **Chapter X** all of these are problems which trafficking victims often have to deal with.¹⁴ This implies that, according to the Council of Europe, victims with severe psychological health problems may be assisted by professionals during their hearing. When deciding on the form and quantum of the sentence the court needs to have all relevant information concerning the injuries and losses suffered by the victim.¹⁵ Furthermore the Recommendation encourages States to research the efficacy of provisions affecting victims.

As a follow-up to the aforementioned Recommendation on the Position of the Victim in the Framework of Criminal Law and Procedure, in 2006 the Recommendation on Assistance to Crime Victims was adopted.¹⁶ The considerations of this Recommendation refer to the previous Recommendation of 1985 and finds that since 1985 'significant developments have occurred in the field of assistance to victims including developments

¹¹ CoE Recommendation 1985, Article 1.

¹² CoE Recommendation 1985, Article 8.

¹³ MedlinePlus, 'Mental Disorders' <https://medlineplus.gov/mentaldisorders.html> accessed on 4 July 2018.

¹⁴ Heather J. Clawson, Amy Salomon and Lisa Goldblatt Grace, 'Threatening the hidden wounds: trauma treatment and mental health recovery for victims of human trafficking' (2008) U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation (Issue Brief), 1 <https://traffickingresourcecenter.org/sites/default/files/Treating%20the%20Hidden%20Wounds%20-%20HHS.pdf>.

¹⁵ CoE Recommendation 1985, Article 12.

¹⁶ Council Recommendation Rec(2006)8 of 14 June 2006 on Assistance to Crime Victims [2006].

in national legislation and practice, a better understanding of the victims' needs and new research'. The third article of the 2006 Recommendation concerns assistance to victims. This includes the provision of psychological health services.¹⁷ Furthermore this article states that victims should be protected as far as possible from secondary victimization.¹⁸ Article 1 provides a definition of secondary victimization: 'secondary victimization means the victimisation that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim'.¹⁹ Special assistance should be provided to victims that are particularly vulnerable through either personal characteristics or through the circumstances of the crime.²⁰ The public services (all personnel and organizations coming into contact with victims) have to be supported by measures to encourage respect and recognition of victims and understanding the negative effects of crime.²¹ Specifically mentioned is the protection of the victims' physical and psychological integrity.²² States should ensure this protection at all stages of the procedure, especially when the victim could be required to provide testimony.²³ In order to achieve this protection and to prevent secondary victimization, professionals should receive appropriate training.²⁴ The police and other personnel involved in the administration of justice should be trained according to their level of contact with the victims.²⁵ They need to develop skills to minimise the risk of secondary victimization and have to be aware of the effects of crime on a victim's attitude and behaviour.²⁶ Specialized training should be provided to those working with special categories of crime like sexual

¹⁷ CoE Recommendation 2006, Article 3.2.

¹⁸ CoE Recommendation 2006, Article 3.3.

¹⁹ CoE Recommendation 2006, Article 1.3.

²⁰ CoE Recommendation 2006, Article 3.4.

²¹ CoE Recommendation 2006, Article 4.1.

²² CoE Recommendation 2006, Article 10.

²³ CoE Recommendation 2006, Article 10.1.

²⁴ CoE Recommendation 2006, Article 12.

²⁵ CoE Recommendation 2006, Article 12.4-12.5.

²⁶ CoE Recommendation 2006, Article 12.5.

violence. In addition the Recommendation urges States to research the effectiveness of intervention by criminal justice agencies and victim services.²⁷ All governmental and non-governmental agencies dealing with victims of crime should share their expertise with other agencies and institutions. This Recommendation shows the development in victims' rights that has been made since 1985 with the recognition of for example secondary victimization. Unfortunately, likewise the 1985 Recommendation, this is a non-binding international instrument. However, many of the provisions have been adopted in binding instruments targeting specific groups of victims or specific crimes.

The Council of Europe Convention on the fight against Human Trafficking is a perfect example thereof.

The European Union

In 2001 the European Union came up with the legally binding Framework Decision on the Standing of Victims in Criminal Proceedings.²⁸ EU Member States had a formal obligation to comply their jurisdictions with these new standards. The considerations emphasize on the approach of victims which should take place in a 'comprehensive, coordinated manner' in order to prevent secondary victimization.²⁹ The Framework Decision is not limited to the victim's interest under criminal proceedings but also concerns the victims' assistance before or after the criminal proceedings.³⁰ Officials who get in contact with victims should be provided with suitable and adequate training.³¹ Member States shall

²⁷ CoE Recommendation 2006, Article 17.2.

²⁸ Council Framework Decision **2001/220/JHA of 15 March 2001 on the Standing of Victims in Criminal Proceedings.**

²⁹ EU FD consideration 5.

³⁰ EU FD consideration 6.

³¹ EU FD consideration 11.

ensure the victims' real and appropriate role in the criminal legal system.³² They have to be treated with due respect for their individual dignity and their rights and legitimate interests shall be recognized. This applies especially to victims who are particularly vulnerable. They have to benefit from specific treatment best suited to their circumstances.³³ Victims shouldn't be questioned unless it is necessary for the purpose of the criminal proceeding.³⁴ Personnel involved in proceedings or otherwise in contact with victims should be trained with particular reference to the needs of the most vulnerable.³⁵ This applies especially to police officers and legal practitioners.³⁶ Member States have to support the establishment of conditions in order to prevent secondary victimization and avoid unnecessary pressure during the criminal proceeding.³⁷ This includes more specifically the presence of facilities within courts and police stations.³⁸

In 2011 the EU Directive on the European protection order entered into force³⁹. This Directive made it possible for protection measures, imposed in one Member State, to be applicable in another Member State as well. Article 5 of this Directive mentions the possible measures imposed on the convicted person of the prohibition from entering certain locations, prohibition or regulation of contact and the prohibition or regulation on approaching the protected person.⁴⁰

³² EU FD Article 2 subsection 1.

³³ EU FD Article 2 subsection 2.

³⁴ EU FD Article 3.

³⁵ EU FD Article 14.

³⁶ EU FD Article 14 subsection 2.

³⁷ EU FD Article 15 subsection 1.

³⁸ EU FD Article 15 subsection 2.

³⁹ Council Directive 2011/99/EU of 13 December 2011 on the European protection order.

⁴⁰ EU Protection Order, Article 5. Also; Suzan van der Aa, & Jannemieke Ouwerkerk (2011). The European Protection Order: No time to waste or a waste of time? *European Journal of Crime, Criminal Law and Criminal Justice*, 19(4), 267-287.

In 2012 the previously examined 2001 Framework Decision on the Standing of Victims in Criminal Proceedings was replaced by the more comprehensive EU Directive establishing minimum standards on the rights, support and protection of victims of crime which is also binding and needs to be implemented by the EU Member States.⁴¹ The goal of this Directive is to make sure that victims receive appropriate information, support and protection and that they are able to participate in the criminal justice proceeding.⁴² Member States have to ensure that victims are treated and recognized in a respectful, tactful, individualized, professional and non-discriminatory way during their contact with authorities operating in the criminal justice proceeding. The personal situation and immediate needs of the victim, possible disability and the level of development has to be taken into account during all contact with authorities related to the criminal justice procedure.⁴³ Special notion is made of gender-based violence. Gender-based violence is considered a form of discrimination and a violation of fundamental freedoms of the victim. Human trafficking is mentioned as an example of gender-based violence. Female victims of gender-based violence are often in need of special support and protection, in connection with, amongst other, the high risk of secondary victimization.⁴⁴ The victim has a right to be understood and to understand during the criminal justice procedure.⁴⁵ For this, the emotional ability and possible mental or physical disability has to be taken into account. States have to make sure that measures are available in order to protect the victim against secondary victimization.⁴⁶ It is important that victims trust the authorities.

⁴¹ Council Directive 2012/29/EU of 25 October 2012 on establishing minimum standards on the rights, support and protection of victims of crime. Also; R. Letschert and C. Rijken, 'Rights of victims of crime: Tensions between an integrated approach and a limited legal basis for harmonisation', *New Journal on European Criminal Law*, 2013(4), issue 3, 224-253.

⁴² EU Victim Directive Art. 1 sub 1.

⁴³ EU Victim Directive consideration 9.

⁴⁴ EU Victim Directive consideration 17.

⁴⁵ EU Victim Directive consideration 21.

⁴⁶ EU Victim Directive consideration 52.

To achieve this trust and to avoid secondary victimization as a result of participation in the criminal justice process, the procedure needs to be carried out in a coordinated and respectful manner.⁴⁷ Unnecessary contact with the victim should be avoided for example by the use of video tapes during court proceedings. The legal practice should be organised so that traumatization of the victim during the procedure is avoided. Chapter 4 of the Directive is aimed at the protection and recognition of victims with specific needs. They should be protected against secondary victimization and against the risk of (further) emotional or psychological damage.⁴⁸ During the criminal justice proceeding States have to make sure that the interrogation of the victim is, amongst others, not unnecessarily delayed, the amount of interrogations is limited to a minimum.⁴⁹ By means of an individual assessment the victim's risk of secondary victimization needs to be judged.⁵⁰ The individual assessment of the victim's needs is guaranteed in article 22. This individual assessment has to occur timely in order to determine the specific needs with regard to the special vulnerability for secondary victimization. Victims who are in need of special attention, like victims of human trafficking⁵¹, may claim measures such as being interrogated by or via a professional who is trained for that purpose.⁵² During the criminal justice procedure these victims have the right that no needless questions are being asked about their personal life.⁵³ All professionals who are in contact with the victim need to get specialized training adjusted to their level of contact with the victims.⁵⁴ At the very least, each police and judicial officials who get in contact with victims should achieve some

⁴⁷ EU Victim Directive consideration 53.

⁴⁸ EU Victim Directive Art. 18.

⁴⁹ EU Victim Directive Art. 20.

⁵⁰ EU Victim Directive consideration 55.

⁵¹ EU Victim Directive Art. 22.

⁵² EU Victim Directive Art. 23 sub 2.

⁵³ EU Victim Directive Art. 23 sub 3.

⁵⁴ EU Victim Directive consideration 61.

sort of a basic training. This training must aim to achieve a greater awareness of the victims' needs and to enable these professionals to treat the victims in a respectful and professional manner.⁵⁵ States should encourage this training also for judges.⁵⁶ They have to request the ones responsible for the education of judges and public prosecutors to offer general and specialized training in order to enlarge their awareness of the victims' needs.⁵⁷

During the past 30 years several international and European instruments on the rights of victims of crime have been adopted. We see a tendency towards preventing secondary victimization and together with this more training for those in contact with victims. Psychological health impact of crimes on victims is addressed only indirectly and in relation to secondary victimisation. However, it is an important aspect in the individual needs assessment, since the psychological wellbeing of the victim determines (part of) it's needs. However, and as we will see in Chapters X & Y, when discussing the file study and the victim's responses, there is ample reason for increased attention to the psychological well-being of the victim, not only to prevent secondary victimisation but also for the victim to recover from the crime.

3. Rights of victims of human trafficking

Besides all the international and European law instruments on victims' rights in general, there are also several instruments which are specifically directed at human trafficking including victim protection.

The UN Trafficking Protocol

⁵⁵ EU Victim Directive Art. 25 sub 1.

⁵⁶ EU Victim Directive consideration 61.

⁵⁷ EU Victim Directive ibid art. 25 subsection 2.

In 2000 the UN General Assembly adopted the UN Convention Against Transnational Organized Crime⁵⁸ supplemented by three protocols (the Palermo protocols): the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Woman and Children⁵⁹, the Protocol against the Smuggling of Migrants by Land, Sea and Air⁶⁰ and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition⁶¹. Different from the UN Declaration on victims in general, this Convention is binding to the States who have ratified this Convention. The Convention is ratified by 189 States and the Trafficking Protocol by 173. According to Article 25 of the Convention, Member States have to take appropriate measures to provide assistance and protection to victims of crimes that are covered by the Convention, including trafficking victim. Victims' views and concerns have to be presented and considered during the criminal justice procedure.⁶² The supplementing Protocol on Trafficking in Persons aims to protect the victims' internationally recognized human rights. Victims need to be protected and assisted with full respect for their human rights.⁶³ In order to obtain victims' physical, psychological and social recovery, States shall consider to implement measures indicated in Article 6(3).⁶⁴ Regarding the assistance and protections of trafficking victims, special needs shall be taken into account.⁶⁵ And States shall endeavour

⁵⁸ United Nations Convention A/RES/55/25 No. 39574 of 15 November 2000 against Transnational Organized Crime.

⁵⁹ United Nations Protocol A/RES/55/25 No. 39574 of 15 November 2000 to Prevent, Suppress and Punish Trafficking in Persons, Especially Woman and Children.

⁶⁰ United Nations Protocol A/RES/55/25 No. 39574 of 15 November 2000 against the Smuggling of Migrants by Land, Sea and Air.

⁶¹ United Nations Protocol A/RES/55/255 No. 39574 of 31 May 2001 against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition.

⁶² Art. 25 (3) UNCTOC.

⁶³ Article 2 (b) Trafficking Protocol.

⁶⁴ Article 6 (3) Trafficking Protocol. These measure shall include: (a) Appropriate housing; (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) Medical, psychological and material assistance; and(d) Employment, educational and training opportunities.

⁶⁵ Article 6(4) Trafficking Protocol

to provide for physical safety of trafficking victims.⁶⁶ According to Article 7 States shall adopt measures to allow victims to remain on their territory. Article 8 relates to compensation. Article 6 and 7 are largely formulated as instructions to States about what they should do instead of strong obligations for the States party to the protocols. Nevertheless, it is a good first step taken on the international level and a clear expression of the importance of victim protection.⁶⁷

Victim protection in the CoE Convention on Action against Trafficking in Human Beings

The Convention on Action Against Trafficking in Human Beings (or the Warsaw Convention) adopts a human rights based approach to human trafficking and mentions the protection of the psychological wellbeing of victims of human trafficking.⁶⁸ Each party to this Convention has to adopt necessary legislative and other measures to assist victims in their physical, psychological and social recovery.⁶⁹ According to Article 12 victims should at least be offered assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings.⁷⁰ Effective and appropriate protection from potential retaliation or intimidation has to be offered, especially during and after the investigation and prosecution.⁷¹ Article 12 sees to the assistance and recovery of victims. According to this article states have to make sure that they adopt measures in order to assist victims in their physical, psychological and social recovery. The article provides minimum standards, which have to be fulfilled, such as appropriate and secure accommodation, psychological and material assistance in order to achieve a

⁶⁶ Article 6(5) Trafficking Protocol

⁶⁷ A T Gallagher, 'Two Cheers for the Trafficking Protocol', *Anti-Trafficking Review*, issue 4, 2015, pp. 19—22.

⁶⁸ Council of Europe Convention of 3 May 2005 on Action against Trafficking in Human Beings.

⁶⁹ CoE Convention Art. 12(1).

⁷⁰ CoE Convention Art. 12 (1) (e).

⁷¹ CoE Convention Art. 28 (1) (a).

standard of living that ensures the victims subsistence and access to emergency medical treatment. These provisions have been formulated more strongly as Article 12 paragraph 1 states 'Each Party shall adopt....' rather than the vague formulation in Articles 6 and 7 including that 'States shall consider to implement measures...'. Furthermore, residency for trafficking victims is guaranteed in Articles 13 and 14 of the Convention. Article 13 provides for a reflection period of at least 30 days during which some of the rights under Article 12 are guaranteed. Article 14 provides for a residence permit in case the personal situation of the victims requires such a stay and/or if the stay of the victim is needed for cooperation in the criminal proceedings. This means that States may chose to make the residence permit dependent on cooperation in criminal proceedings, which is very much in line with the practice in most of the EU Member State due to Directive 2004/81 as we will see below.⁷²

The EU Trafficking Directive.

In 2011 the EU Directive on preventing and combating trafficking in human beings and protecting its victims⁷³ replacing the 2002 Framework Decision on combating trafficking in human beings⁷⁴ was adopted. Much different from the Framework Decision, the Directive does specifically address the rights of trafficking victims. This Directive resembles a lot with EU Directive establishing minimum standards on the rights, support and protection of victims of crime, which was adopted only 1 year later. States are urged to promote the obligation of training to professionals who are in contact with victims.⁷⁵ The Directive requires specific treatment of trafficking victims in order to prevent

⁷² Also; A. Brunovskis and M. L. Skilbrei, 'Two Birds with One Stone? Implications of conditional assistance in victim protection and prosecution of traffickers', *Anti-Trafficking Review*, issue 6, 2016, pp. 13–30.

⁷³ European Parliament and Council Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.

⁷⁴ Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings.

⁷⁵ EU Trafficking Directive Art. 18(3).

secondary victimization.⁷⁶ Therefore, national laws should provide with regulations on preventing unnecessary repetition of interviews throughout all stages of the criminal procedure, prevent visual contact between victims and defendants, prevent giving evidence in open court, and prevent unnecessary questioning about the victim's personal life.⁷⁷ Furthermore, special notice has to be taken of possible mental or psychological disorders or the fact that they might have suffered serious forms of psychological physical or sexual violence.⁷⁸ Article 11 provides for concrete measures to support victims in paragraph five, stating that:

5. The assistance and support measures referred to in paragraphs 1 and 2 shall be provided on a consensual and informed basis, and shall include at least standards of living capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate.

Assistance and support should be provided 'before, during and for an appropriate period of time after the conclusion of criminal proceedings'⁷⁹ and 'as soon as the competent authorities have a reasonable-grounds indication for believing that the person' is a victim of human trafficking.⁸⁰ Regarding residency paragraph 3 of this Article 11 states that:

⁷⁶ EU Trafficking Directive Art. 12(4).

⁷⁷ EU Trafficking Directive Art. 12(4).

⁷⁸ EU Trafficking Directive Art. 11(7).

⁷⁹ EU Trafficking Directive Art. 11(1).

⁸⁰ EU Trafficking Directive Art. 11(2).

3. Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial, without prejudice to Directive 2004/81/EC or similar national rules.

In the first place this seem to be a guarantee that assistance and support is not made conditional to the victim's cooperation with the authorities, which was based on Directive 2004/81. This latter directive links the residence permit for third-country nationals who are victims of trafficking in human beings to their willingness to cooperate with the authorities in criminal proceedings. Consequently, this has been the standard in most EU countries since the entering into force of this directive.⁸¹ At first glance, Article 11(3) of the trafficking directive seems to break this conditionality, however, in its evaluation of the 2004/81 Directive the European Commission clarified that the relation between Article 11(3) Trafficking Directive and Directive 2004/81 must be understood in line with recital 18 of the trafficking directive. Thus, unconditional access to support and assistance is limited to the reflection period, hence, the issuing of a residence permit can be made conditional on a victim's cooperation in criminal proceedings.⁸²

Conclusion

Following from the above victims; rights have seen an important development over the past decades and so have the rights of victims of human trafficking. Apart from the guarantees for support and assistance in instruments on victims' rights, victims of trafficking can apply more specific provisions in human trafficking instruments. In

⁸¹ A. Brunovskis and M. L. Skilbrei, 'Two Birds with One Stone? Implications of conditional assistance in victim protection and prosecution of traffickers', *Anti-Trafficking Review*, issue 6, 2016, pp. 13–30.

⁸² Communication from the Commission to the Council and the European Parliament on the application of Directive 2004/81 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. Brussels, 17.10.2014 COM(2014) 635 final, p. 3.

contrast to European documents, in the international documents (e.g. the Trafficking protocol) the obligations for States are still rather vague and non-compulsory formulated. At the European level (both Council of Europe and the EU) State obligations are more clearly and concretely defined. As regards the psychological well-being of victims of human trafficking, in the European context States do have specific obligations that can be divided in four categories. First, States do have a general obligation to take into account the special needs of victims who have been trafficked including mental or psychological disorders and needs that follow from physical, psychological and sexual violence. Second, the legal frameworks provide for concrete guarantees relating to safety, support and assistance. Especially, Article 12 Warsaw Convention and Article 11(5) Trafficking Directive are relevant for determining these concrete obligations. Third, special guarantees are provided in the criminal proceedings and especially to prevent secondary victimisation. Last and fourth, States do have obligations to provide for a reflection period of at least 30 days including unconditional access to assistance and support, followed by a residence permit for trafficking victims. The latter however, can be made conditional to cooperation in criminal proceedings.