



State obligations to address Psychological Impact of Human Trafficking

Prof.dr. Conny Rijken

INTERVICT

Tilburg University

Content of the presentation

1. Development in victims' rights
2. The 3 (or 4, or 5) P-framework
3. Four key obligations:
 - a. General obligation to take into account special needs
 - b. Specific obligations on psychological well-being
 - c. Obligations in criminal proceedings
 - d. Obligations related to residency

1. Developments in victims' rights

- Since 1985, UN Declaration
- Definition of Victim: victim of crime *and* Victim of abuse of power
- European Context:
 - Council of Europe declaration; victims' rights in criminal law and procedure (1985)
 - Replaced in 2006; recommendation on Assistance to crime victims
 - EU: 2001 Framework Decision on Standing of Victims in Criminal Proceedings
 - Replaced in 2012 by Directive on rights, support and protection of victims of Crime

1. Rights of trafficking victims

- UN Trafficking protocol: limited and no firm obligations
- Council of Europe Convention on fights Against Trafficking in Human Beings
- EU:
 - Framework Decision on human trafficking (2002)
 - Directive on prevention and prosecution of trafficking and protection of its victims (2011)
 - Directive 2004/81 on residence permit for victims who cooperate with the authorities

2. The 3 (4 or 5) P-framework

- Based on the international human right legal framework
 - State obligations to:
 - Punish and prosecute human trafficking
 - Prevent human trafficking
 - Protect trafficking victims
- And:
- Promotion
 - Partnership
 - Participation
 - Etc.

Key obligations: take into account special needs

- Based on victim's directive an individual needs assessment must be made (art. 22)
- Article 11(7) Trafficking Directive; special notice must be taken of possible mental or psychological disorders or the fact that they might have suffered serious forms of psychological, physical or sexual violence
- CoE Convention Article 12(7) '...taking due account of the special needs of persons in a vulnerable position and the rights of children in terms of accommodation, education and appropriate health care'.

Key obligations: Specific obligations related to psychological well-being

- Article 11(5) EU Trafficking directive:
 - Appropriate and safe accommodation
 - Material assistance
 - Necessary medical treatment including psychological assistance
 - Counselling, information, translation and interpretation
- Article 12 CoE Convention:
 - appropriate and secure accommodation,
 - psychological and material assistance,
 - access to emergency medical treatment

Specific obligations: continued

- In EU Directive and CoE Convention access to support and assistance is guaranteed before, during and after criminal proceedings
- Access to support and assistance is guaranteed irrespective of a victim's cooperation (EU directive during reflection period)

Key obligations: protection during criminal proceedings

- EU Directive Article 12(4) prevent secondary victimization by avoiding:
 - Unnecessary repetition of hearings
 - Contact with perpetrator
 - Hearing in public
 - Questions about private life of the victim
- CoE Convention: Article 28 protection of victims, witnesses and collaborators with authorities. Less concrete, but specific mentioning of protection against intimidation

Key obligations: related to residency

- Directive 2004/81; residency conditional to cooperation with competent authorities
- Basis for legislation in many EU MS
- Conditional residency make access to support and assistance indirectly conditional to cooperation
- How does that relate to obligation for unconditional access to support and assistance?
- Article 11(3) Trafficking Directive & Article 13 (reflection period of at least 30 days) and Article 14 (residence permit based on personal situation and/or necessity for criminal proceedings)

Conclusions

- Strong obligations and protective measures in European context
- Specific provisions to take into account psychological well-being and psychological needs
- Because adopted in directives: direct effect meaning victims can apply these in criminal procedures

- Thank you for your attention