

THE LINKAGE BETWEEN HUMAN TRAFFICKING AND MIGRATION: IDENTIFICATION OF VICTIMS

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Trafficking in human beings, as a modern form of slavery, severely violates people's fundamental rights and dignity. The victims of human trafficking are being subjected to exploitation as a result of violence or the threat of it, fraud, or lack of awareness of their rights. Migrants are especially vulnerable to trafficking, and among them are especially those with certain socioeconomic issues or in need of international protection.

Considering the socio-economic, humanitarian, and documentation problems of the aforementioned group and the probability of illegal movements and presence in the territory of certain countries, they are more vulnerable to trafficking.

The current article seeks to analyze the correlation between migration and the phenomenon of human trafficking, as well as analyze the minimum necessary steps that the state authorities, particularly, those operating in the field of migration need to implement. Those activities should be aimed at ensuring effective combat against the trafficking in human beings by detecting and referring the relevant cases in the frame of migration to the competent authorities.

Key words: *human trafficking and exploitation, victim of human trafficking, identification of victims of human trafficking, asylum seeker, refugee, international protection, migrant, migration and human trafficking, asylum and human trafficking, GRETA*

I. Applicable legal framework with regard to refugees and migrants

Refugees and asylum seekers

It is particularly important that the majority of persons representing the mentioned group of migrants suffer life-threatening situations in their countries of origin and rarely have access to personal documents, thus facing challenges in obtaining legal status in the country of presence. As a result, they become more "targetable" in the context of recruitment and exploitation by criminals and human traffickers.

The main international treaty regulating the international protection and rights of refugees is the 1951 Refugee Convention. According to Article 1(A)(2) of the Convention, the term "refugee" shall apply to any person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.¹

¹ UN Refugee Convention relating to the Status of Refugees (1951), Article 1(A)(2), available at: <https://www.unhcr.org/1951-refugee-convention.html>.

Hence, refugees are in need of international protection. Meanwhile, an asylum seeker is a person who has left their country and is seeking protection from persecution and serious human rights violations in another country, but who hasn't yet been legally recognized as a refugee and is waiting to receive a decision on their asylum claim. Seeking asylum is a human right. This means everyone should be allowed to enter another country to seek asylum.²

It should be highlighted that the states should treat asylum seekers as those in need of international protection until it is proven otherwise following the complete and objective procedure. However, the asylum system differs between states, and in some cases, it does not exist.³

Migrants

According to the IOM, "Migrant" is an umbrella term, not defined under international law, reflecting the common lay understanding of a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons. The term includes several well-defined legal categories of people, such as migrant workers, persons whose particular types of movements are legally defined, such as smuggled migrants, as well as those whose status or means of movement are not specifically defined under international law, such as international students.

It should also be noted that at the international level, no universally accepted definition of "migrant" exists. The present definition was developed by IOM for its purposes, and it is not meant to imply or create any new legal category.⁴

However, Article 2(1) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families defines "migrant worker" as referring to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national. It also gives the definition of the "members of the family" and prescribes the rights of all those benefiting from the Convention⁵.

II. The link between human trafficking and migration

While the previous section seeks to provide the overall legal definition of migrants and refugees, the current one is intended to show the causal link between migration and the phenomenon of human trafficking and discuss the possible scenarios in practice. For that purpose, the legal definition of human trafficking should be analyzed.

According to the Council of Europe Convention on Action against Trafficking in Human Beings (hereinafter referred to as the "Convention"), "Trafficking in human beings" shall mean the recruitment, transportation, transfer,

² Amnesty International, "Refugees, Asylum Seekers and Migrants" available at: <https://www.amnesty.org/en/what-we-do/refugees-asylum-seekers-and-migrants/#:~:text=An%20asylum%20seeker%20is%20a,decision%20on%20their%20asylum%20claim>.

³ Annick Pijnenburg and Conny Rijken (2021), "Moving Beyond Refugees and Migrants", available at: <https://www.tandfonline.com/doi/epdf/10.1080/1369801X.2020.1854107?needAccess=true&role=button>.

⁴ IOM, "Definition of "Migrant" available at: <https://www.iom.int/about-migration>.

⁵ UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers>.

harbouring, or receipt of persons using the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs.⁶

As it is foreseen from the above-cited description, trafficking in human beings might be conditionally divided into three main stages: (i) recruitment, (ii) transportation, and (iii) exploitation.

Various methods are used for recruitment purposes, including the coercion or deception of a victim of human trafficking into work that involves exploitation. In particular, people are offered jobs or opportunities on favourable and enticing terms that do not actually exist, or through which exploitative working conditions are imposed on them. Some victims are also kidnapped or abused during recruitment.

Trafficking also involves overt or covert transportation from one place to another for the purpose of exploitation. Moreover, it can be done both in a group and individually, using public or private means of transport. It is essential to consider that in cases where people are moved from one country to another for the purpose of exploitation, crossing a state border can be not only illegal but also legal. Transporting people within the country for the purposes of trafficking or exploitation does not imply crossing a state border. The purpose of the transfer is to isolate and easily control the victim.

The exploitation of another person for prostitution or other forms of sexual exploitation, forced or compulsory labour or coercion to provide a service or perform illegal acts, enslavement or slavery-like conditions, purchase or sale, cell, organ, taking tissue or biological materials or fluids is the last conditional stage. This definition is envisaged by the Article 188 (4) of the RA Criminal Code.⁷

According to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.⁸

It is noteworthy that the use of coercion and its degree in all the mentioned stages of human trafficking or exploitation is not unambiguous. For example, in some cases, physical force is used, and in some, the victims are even practically unaware that they are being exploited or transferred for the purpose of exploita-

⁶ Council of Europe Convention on Action against Trafficking in Human Beings (2005), Article 4 (a), available at: <https://rm.coe.int/168008371d>.

⁷ RA Criminal Code (2021), Article 188 (4), available at: <https://www.arlis.am/DocumentView.aspx?DocID=172528>.

⁸ UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000), Article 3 (a), available at: <https://www.ohchr.org/sites/default/files/ProtocolonTrafficking.pdf>.

tion. Therefore, it is necessary not to consider the possibility of human trafficking only in the case of self-identification of the alleged victim, but also to pay attention to the situations when the person may not be aware of his or her own exploitation.

Although human trafficking does not necessarily involve crossing a state border, its practical manifestations make it clear that it is closely related to migration. People affected by migration crises caused by war or other general problems or involved in mass flows are considered more vulnerable to trafficking and have a higher probability of being targeted by criminals for this purpose. The same applies to people who need international protection on an individual basis.

The link between migration and human trafficking is also manifested in the context of other migration flows, particularly labour migration. In order to solve social-economic problems, migrants often leave their country of residence to work abroad. This is also a common phenomenon in Armenia. Migrant workers are, in practice, subjected to exploitation, becoming victims of deception and violence. Coercion is often associated with the victim not having a legal basis for residence in the country of destination, handing over the identity document to the criminal, and other issues.

Therefore, one of the stages of human trafficking, transportation, often involves the transfer of the victim from one country to another. Furthermore, as the acts of transportation and relocation imply, the perpetrator may force the victim to leave his or her residence using seclusion, manipulation, and disorientation as a means of control.

However, human trafficking is also very likely to affect voluntary migration. Criminals take advantage of the vulnerability of potential migrants in their country of origin and exploit their desire or need to migrate. Therefore, the link between migration and human trafficking is deeply rooted in the causes of migration: the economic, social, and political conditions of the country of origin, including poverty, war, violence, and persecution.

Risks and vulnerabilities can also exist in the destination country, especially for migrants who lack legal status. All these factors reveal the vulnerability of migrants to human trafficking and highlight the need for necessary state mechanisms to identify and provide assistance to victims by preventing human trafficking.

In the conditions of existing migration flows, the transportation of people for the purpose of trafficking is mainly carried out by the same channels and means used by persons seeking international protection, economic and other migrants, as well as persons traveling directly. Therefore, in the case of such mixed flows, it is difficult to clearly identify the alleged victim of human trafficking or exploitation if the competent authority does not have sufficient capacity.

The identification, assistance, and protection of an alleged victim of human trafficking or exploitation, as well as the identification of the alleged crime and the accountability of the perpetrators, depend on an effective response by the competent state authority.

In this context, the difference between the transportation of victims of hu-

man trafficking and migrant smuggling (organization of illegal migration) should be discussed. It can be difficult to distinguish between these phenomena because people might illegally cross the state border in both cases.

In contrast to human trafficking, which can take place both domestically and internationally, migrant smuggling is a crime that takes place only across borders. It consists in assisting migrants to enter or stay in a country illegally for financial or material gain. Smugglers make a profitable business out of migrants' need and desire to enter a country and the lack of legal documents to do so. International law requires governments to criminalize migrant smuggling, but not those who are smuggled.

Since migrants consent to the smuggling venture, mostly due to the lack of regular ways to migrate, they are not considered victims in absolute terms. However, smuggled migrants are often put in dangerous situations by smugglers (such as a hazardous sea crossing) and might, therefore become victims of other crimes during the smuggling process, including severe human rights violations.⁹

Furthermore, as described by the EUROPOL, although patterns of human trafficking are similar to those seen in people smuggling, they are different legally and a broad distinction can be made between the two. In general, the individuals who pay a smuggler in order to gain illegal entry to a country do so voluntarily, whereas the victims of human trafficking are often duped or forced into entering another country. In addition, people smuggling does not necessarily involve exploitation for economic purposes.¹⁰

There is also academic research on certain case studies where the trafficking of migrants and those in need of international protection are thoroughly analysed. In the context of migrant smuggling the phenomenon of human trafficking for ransom is also analysed.¹¹ Certain academic analysis is also made on human trafficking for ransom in the digital age and how people can become trapped in a human trafficking cycle by the use of Information and communication technologies (ICTs).¹²

In cases where the victims of human trafficking are foreigners or persons with documentation issues, authorities may conclude that they are migrants trying to cross the border illegally rather than victims of human trafficking. In that case, the criminal involved is an organizer of illegal migration, not a human trafficker. Such assessments might result in violation of the non-punishment principle of the victim of human trafficking, non-provision of assistance and protection, as well as prevent the cases to be investigated as human trafficking, and/or alleged perpetrators from being prosecuted with the appropriate crime.

⁹ UNODC, "Human trafficking and migrant smuggling", available at: <https://www.unodc.org/e4j/en/secondary/human-trafficking-and-migrant-smuggling.html>.

¹⁰ EUROPOL, "Trafficking in Human Beings", available at: <https://www.europol.europa.eu/crime-areas-and-statistics/crime-areas/trafficking-in-human-beings>.

¹¹ Klara Smits & Mirjam Van Reisen (2023), "Deceived and Exploited: Classifying the Practice as Human Trafficking", available at: https://www.researchgate.net/publication/367254709_Deceived_and_Exploited_Classifying_the_Practice_as_Human_Trafficking/link/63cea4b26fe15d6a57425555/download.

¹² Mirjam Van Reisen, Klara Smits, Morgane Wirtz & Anouk Smeets (2023), "Living in a Black Hole: Explaining Human Trafficking for Ransom in Migration", available at: <https://research.tilburguniversity.edu/en/publications/living-in-a-black-hole-explaining-human-trafficking-for-ransom-in->

Furthermore, arrested traffickers often attempt to frame their human trafficking case as smuggling, crossing a border illegally, or being in the country illegally to avoid a comprehensive investigation and more severe punishment. Victims may believe they are being smuggled, even if they are actually being trafficked or transported for the purpose of exploitation in the country of destination.

Taking into account the above, it is necessary to distinguish between the illegal crossing of the state border by the victim of human trafficking by force or deception and the migrant smuggling or organization of illegal migration by establishing the relevant domestic mechanisms and ensuring the capacity of competent state officials.

Another group of vulnerable people to human trafficking in the context of migration are those in need of international protection. According to the UNHCR Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons at Risk of Being Trafficked, refugees are vulnerable to human trafficking, inter alia, for the grounds set out in the 1951 Refugee Convention, as well as for social-economic reasons.¹³

Furthermore, in those cases, the non- refoulement principle should be duly respected. The Convention establishes the grounds upon which a victim or potential victim of trafficking may not be removed from the State's territory. In particular, Article 10(2) states that: "[E]ach Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of ... (trafficking in human beings) has been completed by the competent authorities ...".¹⁴

As stated in the Guidance Note of the Council of Europe Group of Experts on Action Against Trafficking in Human Beings (hereafter referred to as the "GRETA") on the entitlement of victims of trafficking and persons at risk of being trafficked to international protection, "[T]he Convention recognizes that trafficked people may have international protection needs, and it requires Parties to duly assess such protection needs. The essence of international protection is to provide relief from potential future danger. Accordingly, the duty of international protection applies not only to victims of trafficking but also to those at risk of being trafficked, should they return to their country of origin. Any removal of a person to a territory where they are at risk of being trafficked will constitute a violation of the principle of non- refoulement".¹⁵

Therefore, the state authorities should ensure proper identification and

¹³ UNHCR Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons at Risk of Being Trafficked, pp. 29-40, available at: <https://www.unhcr.org/publications/legal/443b626b2/guidelines-international-protection-7-application-article-1a2-1951-convention.html>.

¹⁴ Council of Europe Convention on Action against Trafficking in Human Beings (2005), Article 10 (2), available at: <https://rm.coe.int/168008371d>.

¹⁵ Council of Europe Group of Experts on Action Against Trafficking in Human Beings Guidance Note On the entitlement of victims of trafficking, and persons at risk of being trafficked, to international protection, paragraph 15 (2020), available at: <https://rm.coe.int/guidance-note-on-the-entitlement-of-victims-of-trafficking-and-persons/16809ebf44>.

risk-assessment mechanisms in order to detect the cases of trafficking in human beings among those in need of international protection and guarantee the implementation of the principle of non-refoulement. For this purpose, the following guiding principles should be considered:

Non-punishment;

Access to Asylum for Victims of Trafficking;

Assistance to Victims of Trafficking;

Proper Return and Repatriation procedure of Victims of Trafficking;

Specificities of work with the child Victims of Trafficking and Asylum.¹⁶

Furthermore, it is important not only to raise awareness about human trafficking and migrant smuggling but also to address the root causes of social vulnerabilities, such as poverty, conflict, and to uphold human rights.¹⁷

III. State response to trafficking in human beings in the context of migration

Over time, the changing forms and methods of human trafficking force state authorities to take systemic steps: adopt strategic documents, create specialized structures against human trafficking, form inter-agency bodies, etc.

The peculiarity of human trafficking lies in the fact that the various forms of exploitation and stages can be related to different state bodies and organizations. Although the primary function of certain entities might not be to combat human trafficking, state officials may have the opportunity to detect and prevent human trafficking in their day-to-day work.

That is the reason why in the course of action against human trafficking, states should engage not only law enforcement authorities but also other state entities and organizations. In this context, the migration authorities are the most relevant entities to combat the trafficking in human beings in the context of migration.

Furthermore, this may be related, for example, to the vulnerability of the group of persons who are considered the main beneficiaries of a particular body. In the case of migration authorities, indeed, they are migrants and refugees.

For this purpose, the state response should include not only legislative regulations on combat human trafficking but strict guidelines for the state authorities. As mentioned in the Uniform Guidelines for the Identification and Referral of Victims of Human Trafficking within the Migrant and Refugee Reception Framework in the OSCE Region [M]any victims do not recognize themselves as such, since they may be in transportation, post-recruitment or pre-exploitation phase, and thus it is possible that no exploitation has occurred yet. Others, particularly undocumented migrants, may avoid identifying themselves to authorities due to fear of deportation, retaliation by their traffickers, or because their behaviour has been pre-conditioned by religious rituals or beliefs that have been imposed upon them. In some cases, the victim may have a relationship with the trafficker or may fear stigmatization, especially if the abuse they have suffered was sexual in nature. To reflect these scenarios, a unified set of identification indicators should be developed and appropriately adjusted to

¹⁶ Ibid. paragraphs 34-48.

¹⁷ UNODC, "Human trafficking and migrant smuggling", available at: <https://www.unodc.org/e4j/en/secondary/human-trafficking-and-migrant-smuggling.html>.

the specific context of the reception procedures.¹⁸

In the case of Armenia, based on the decree of the Head of the Migration Service, the indicators for the identification of presumed victims of human trafficking or exploitation were defined. Following the adoption of the decree, the respective handbook on the relevant topics was prepared, and the competent staff of the Migration Service was trained.

Conclusion

Considering the above, the role of state institutions and officials against human trafficking or exploitation is essential. For that purpose, state authorities should establish effective detection, assistance, and referral mechanisms with regard to the alleged cases of human trafficking. The system should contain criteria/indicators and specific questions aimed at identifying the possible cases, making the activities of competent authority more predictable, effective and clear in relevant situations. Latter should be a subject of further research and adaptation to the national context prior to its implementation.

Nevertheless, despite the establishment of the legislative framework and guidelines, it is important to develop the theoretical and practical capacities of competent state officials, aimed at ensuring the effective implementation of legal regulations.

ՄԵՐԳԵՑ ՂԱԶԻՆՅԱՆ – Մարդկանց թրաֆիքինգի և միգրացիայի փոխկապակցվածությունը. գոհերի նույնականացում – Մարդկանց թրաֆիքինգը՝ որպես ստրկության ժամանակակից դրսևորում, կոպտորեն խախտում է մարդկանց հիմնարար իրավունքները և արժանապատվությունը: Մարդկանց թրաֆիքինգի գոհերը ենթարկվում են շահագործման՝ բռնության կամ դրա սպառնալիքի, խարդախության կամ իրենց իրավունքների մասին տեղեկացված չլինելու հետևանքով: Միգրանտները հատկապես խոցելի են թրաֆիքինգի նկատմամբ, և նրանց թվում են հատկապես որոշակի սոցիալ-տնտեսական խնդիրներ կամ միջազգային պաշտպանության կարիք ունեցողները:

Հաշվի առնելով վերոհիշյալ խմբի սոցիալ-տնտեսական, հումանիտար և փաստաթղթային խնդիրները և որոշ երկրների տարածքում անօրինական տեղաշարժերի ու ներկայության հավանականությունը՝ նրանք առավել խոցելի են թրաֆիքինգի նկատմամբ:

Սույն հոդվածը նպատակ ունի վերլուծել միգրացիայի և մարդկանց թրաֆիքինգի երևույթի հարաբերակցությունը, ինչպես նաև այն նվազագույն անհրաժեշտ քայլերը, որոնք պետք է իրականացնեն պետական, մասնավորապես միգրացիայի ոլորտում ներգրավված մարմինները: Այդ գործողությունները պետք է ուղղված լինեն մարդկանց թրաֆիքինգի դեմ արդյունավետ պայքարի ապահովմանը՝ միգրացիայի շրջանակներում համապատասխան դեպքերը բացահայտելու և իրավասու մարմիններին փոխանցելու միջոցով:

Բանալի բառեր — *մարդկանց թրաֆիքինգ և շահագործում, մարդկանց թրաֆիքինգի գոհ, մարդկանց թրաֆիքինգի գոհերի նույնականացում, ապաստան հայցող,*

¹⁸ OSCE Uniform Guidelines for the Identification and Referral of Victims of Human Trafficking within the Migrant and Refugee Reception Framework in the OSCE Region (2019), available at: https://www.osce.org/files/f/documents/2/4/413123_0.pdf

փախուսական, միջազգային պաշտպանություն, միգրանտ, միգրացիա և մարդկանց թրաֆիքինգ, ասիստան և մարդկանց թրաֆիքինգ, ԳԴԵՏԱ

СЕРГЕЙ КАЗИНЯН – *Связь между торговлей людьми и миграцией: идентификация жертв.* – Торговля людьми как современная форма рабства нарушает фундаментальные права и достоинство людей. Жертвы торговли людьми подвергаются эксплуатации в результате насилия или угрозы его применения, обмана, введения в заблуждение или незнания своих прав. Мигранты особенно уязвимы в плане торговли людьми, и среди них особенно те, у кого есть определенные социально-экономические проблемы или кто нуждается в международной защите.

Учитывая социально-экономические, гуманитарные и документальные проблемы вышеупомянутой группы, а также вероятность нелегального перемещения и присутствия на территории отдельных стран, они более уязвимы в плане торговли людьми.

В настоящей статье ставится задача проанализировать взаимосвязь между миграцией и явлением торговли людьми, а также проанализировать те первоначальные шаги, которые необходимо осуществить государственным органам, в частности тем, которые работают в сфере миграции. Эта деятельность должна быть направлена на обеспечение эффективной борьбы с торговлей людьми путем выявления и передачи соответствующих случаев в сфере миграции компетентным органам.

Ключевые слова: *торговля людьми и эксплуатация людей, жертва торговли людьми, идентификация жертв торговли людьми, лицо, ищущее убежища, беженец, международная защита, мигрант, миграция и торговля людьми, убежище и торговля людьми, ГРЕТА*