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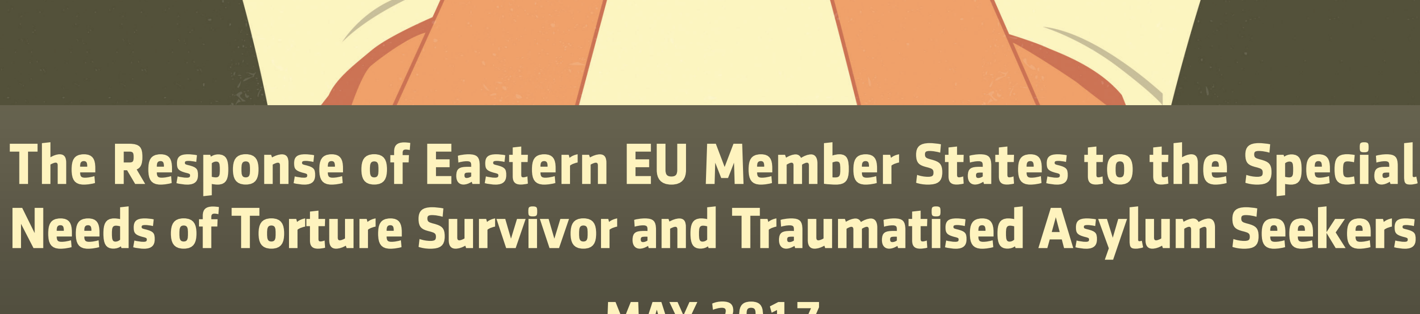

The Response of Eastern EU Member States to the Special Needs of Torture Survivor and Traumatised Asylum Seekers

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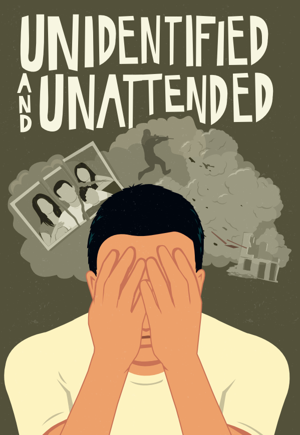


Table of contents

Executive summary 4

Summary of recommendations 6

Terminology and list of abbreviations 11

I. Introduction 13

II. Vulnerability 16

III. Early identification 18

III.1. Identification mechanisms in practice: timings and monitoring 20

III.2. Existence and forms of early identification mechanisms 21

IV. Statistics 29

V. Training 30

VI. Reception conditions 33

VII. Treatment and health care 38

VIII. Special procedural safeguards 45

VIII.1. Personal interview 45

VIII.2. Medical reports on past persecution or serious harm and credibility assessments 47

VIII.3. Use of accelerated and border procedures 54

VIII.4. Prioritisation 55

IX. Detention 57

X. Conclusion 62

Executive summary

This study looks into how relevant provisions of the Recast Reception Conditions Directive and the Recast Asylum Procedures Directive regarding the protection of victims of torture/traumatised asylum seekers are transposed into national legislation of the following Eastern EU Member States: Bulgaria, Croatia, Greece, Hungary, Poland, Romania, Slovakia and Slovenia.

The main findings of the study, which is based on a standardised questionnaire filled in by the national researchers, are the following:

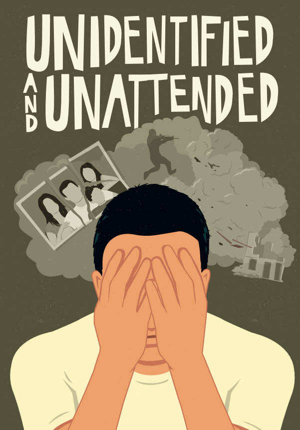
- EU legislation, in general, provides sufficient guarantees for victims of torture/traumatised asylum seekers. The reason why vulnerable asylum seekers are not being identified and treated in some of the focused countries therefore lies either in the lack of or improper transposition of the Directives' provisions or in the lack of actual implementation in practice.
- In all focus countries victims of torture/traumatised asylum seekers are considered vulnerable, however their special needs are not properly addressed in most of the countries.
- This is primarily due to the fact that an early identification mechanism either does not exist or is not adequate and victims of torture/traumatised asylum seekers remain unidentified. A regularisation of this procedure is needed in order to make the use of the identification procedure adequate and mandatory for every single asylum seeker.
- Statistics on victims of torture/traumatised asylum seekers are rarely collected. Such paucity in the collation of data is regrettable since it would enable Member States to better match service provision capacities with the actual number of beneficiaries. Statistics on referrals to specialists of pre-identified victims of torture/traumatised asylum seekers are also an important monitoring tool as to whether the early identification mechanism is functional in practice.
- Despite the fact that legislation in all focused countries provides certain safeguards for the reception of persons with special needs, the findings show that this right is severely obstructed in countries where appropriate reception centres are lacking.
- Serious obstacles in accessing mental health services exist in some of the countries, even in countries where entitlement to health care for asylum seekers is equal to those of nationals. Obstacles were reported mainly in terms of access, translation and under-funding or non-sustainable funding.
- Lack of training on needs of victims of torture/traumatised asylum seekers was identified, especially for the judiciary, interpreters, social workers and detention officials. The training of asylum officials is lacking in countries where there is a big increase or rotation of staff. Asylum officers, lawyers and judges should also be trained on credibility assessment in asylum procedures, particularly on the fact that the state of health or psychological condition of the applicant can be a reason for any incoherencies and contradictions in the applicant's statements.

- Additional procedural guarantees such as the possibility to postpone the interview, the presence of family members, a psychiatrist or psychologist at the interview, if agreed by the applicant and if it is in his/her best interest, as well as an appropriate place for the interview to take place and avoidance of unnecessary repeated questioning about the traumatic events, should be guaranteed in all Member States.
- The use of medical reports on past persecution or serious harm drafted in line with the Istanbul Protocol is not that common in the focus countries and reports written by specialised NGOs are not always given adequate evidential weight.
- Vulnerable asylum seekers are not excluded from accelerated and border procedures in all focus countries.
- The prioritised assessment of victims of torture/traumatised asylum seekers' applications is the case in very few countries.
- Half of the countries involved in the study still detain victims of torture/traumatised asylum seekers. An early identification mechanism is not used before ordering detention. Mental health services provided in detention are lacking or are not of adequate quality and interpretation is also an issue.
- Many crucial services, such as early identification, mental health services and rehabilitation for victims of torture/traumatised asylum seekers are outsourced to NGOs. While this has a positive element since NGOs are specialised in providing such services, NGOs work is usually project based and lacks sustainable funding. When outsourcing such services, the States should therefore provide sustainable funding, which should not be project-based, ensuring that these crucial basic services are available without interruption.

Despite all the gaps and shortcomings identified, research has revealed important good practices as well, in particular (but not exclusively) in Poland and Slovenia. For example:

- In Poland an early identification mechanism is considered as a contractual obligation of the private medical facility that coordinates medical care for all asylum seekers and in Slovenia, besides the early identification performed during the first medical check, the Standard Operating Procedures for victims of gender based violence were adopted and they are also applied to any other vulnerable person.
- In both countries medical and psychological care, including interpretation, are available in all reception centres in the countries.
- In Poland the training takes place when the asylum officer is admitted to work, consequently all the officials are trained on how to deal with vulnerable groups and in Slovenia social workers are trained on a monthly basis.
- In both countries cases of vulnerable asylum seekers are prioritised.
- Special teams for the prevention of violence in reception centres in Poland exist alongside detailed safeguards in Polish legislation for the asylum interview of vulnerable asylum seekers.
- Lastly, in Slovenia financial support for private accommodation if accommodation in the reception centre or in the alternative centres is not appropriate for a particular person also deserves special mention.

Summary of recommendations



Vulnerability:

- When assessing whether an asylum seeker is vulnerable because of being traumatised, the focus should be on the consequences, rather than the origin of the trauma. Traumatised asylum seekers should be considered vulnerable because they are traumatised, regardless of the trauma's origin.
- Whether psychological, physical or sexual violence is serious should be interpreted considering the individual characteristics of each case, including the specific profile of the victim.

Early identification:

- The identification procedure should be initiated as soon as possible, preferably before the first asylum interview, and definitely before any form of detention is ordered.
- The identification of victims of torture/traumatised asylum seekers should additionally be made possible at a later stage of the asylum procedure. Relevant official documents (e.g. asylum interview transcripts) that were drafted before the identification of the victim's special needs should be amended and/or supplemented whenever necessary, in order to ensure the adequate examination of the asylum application.
- Member States shall ensure that the support provided to applicants with special needs is monitored throughout the entire duration of the asylum procedure.
- The use of an early identification mechanism (pre-identification and a further referral if necessary) should be considered as an obligation to be performed in each and every case.
- Member States should clearly define procedures for systematic identification of torture victims/traumatised asylum seekers in national asylum legislation and policy.
    - — A mere statement in national legislation that vulnerable asylum seekers have to be identified is insufficient. Instead, the law should refer to a standard operating procedure of early identification, the clear methodology of which should be further elaborated in a written document (e.g. decree, guidelines, regulation, contract ...).
    - — States are encouraged to establish formal partnerships with NGOs providing mental health services to asylum seekers when developing the early identification methodology.
- Early identification is primarily a State responsibility. If the identification is outsourced to NGOs, States should provide sustainable funding, which should not be project-based, ensuring that this basic service is available without interruption.

Statistics:

- States should collect and regularly publish statistics about vulnerable asylum seekers, which would enable them to better match service provision capacities with the actual number of beneficiaries.
- States should collect and regularly publish statistics about how many referrals to specialists actually resulted in the identification of a torture victim or a traumatised asylum seeker. Such statistics are indispensable for the monitoring of whether the early identification mechanism is functional in practice.

Training:

- All staff working with victims of torture/traumatised asylum seekers (asylum officers, social workers, detention officials, interpreters, doctors, psychologists and lawyers) should be trained on how to recognise symptoms and signs of torture and trauma and about special needs of victims of torture/traumatised asylum seekers before they start working with potential victims, as well as the specific aspects of this issue related to their daily work (e.g. credibility assessment for decision-makers, need for special attention by social workers, etc.). Their continued training is also recommended. Judges working on asylum cases should be required to participate in such training activities as well.
- Member States shall make it mandatary for any newly recruited asylum decision-maker to complete the EASO Training Curriculum before starting any actual work with asylum seekers.
- The European Commission should develop a mechanism to monitor and ensure that the deliverables of EU-funded projects on asylum seekers are further used in practice (equally for state and NGO-led projects). In this framework, the European Commission is recommended to actively request all Member States to use the tools developed in previous EU-funded projects on the protection of asylum seekers, for better identifying and supporting torture victims.
- Regular psychological supervision and burnout prevention should be offered to everyone working with torture victims/traumatised asylum seekers, and especially to detention staff.

Reception conditions:

- Torture victims/traumatised asylum seekers should be provided with suitable housing facilities which contribute to their rehabilitation. This means that they should be accommodated in a safe space (e.g. a separate facility or a separate space/wing of the facility available for vulnerable persons), have their own rooms in a facility that is not overcrowded, preferably a small-sized facility located in a calm environment and where they can have access to all the services they need (e.g. psychologist, medical assistance, cultural mediator, social worker, lawyer, case officers ...).
- Victims of sexual and gender-based violence should be provided with the possibility of being accommodated in separate facilities.
- If accommodation in the reception centre or in the alternative centres is still not appropriate for a particular vulnerable asylum seeker, private accommodation should also be possible.

- Member States should make sure that torture victims/traumatised asylum seekers are moved around and within the reception system as little as possible.

Treatment and health care:

- Victims of torture/traumatised asylum seekers should have a legal entitlement in national law to health care services, including psychotherapeutic treatment.
- In the long term, the provision of mental health services for asylum seekers should be mainstreamed into the public health system. Considering the current circumstances, in the short term, States should appoint specific hospitals to provide mental health services to asylum seekers and equip them with the necessary knowledge and resources.
- Mental health services should be available at all locations where asylum seekers are accommodated and asylum seekers should be informed about their existence. If asylum seekers for some reason have to travel in order to access specialised services, this should not put additional financial burden on them that may hinder their access to these services.
- States may request NGOs with specific expertise to provide psychotherapeutic and rehabilitation services to torture victims/traumatised asylum seekers. In this case, States should ensure sustainable and adequate funding for these NGO services.
- States should make available free-of-charge translation and interpretation in mental health services, including for consultations and prescription sheets.
- Since cultural mediators were identified as a good practice regarding interpretation and facilitating access to health services, States should fund their work.
- Mental health care has to be offered to asylum seekers in a secure environment and their cultural background needs to be taken into consideration. Mental health professionals have to be sufficiently qualified to work with this population, including intercultural sensitisation.
- The care offered should be systematically monitored in order to ensure quality and effectiveness.

Procedural safeguards:

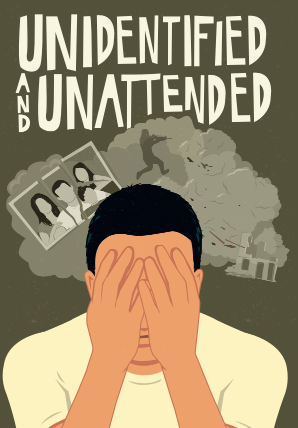
- Interview rooms should be adequately located and equipped in order to create a feeling of safety for the asylum seeker. The room should be free of any element that may potentially evoke traumatic memories (such as bars, weapons, uniforms, military objects, etc.).
- Detained asylum seekers should be taken out of the detention centre for the interview.
- The date and the place of the interview should be adjusted to accommodate the psychological and physical state of the asylum seeker.
- Member States should allow for the presence of a family member, psychologist or psychiatrist at the interview in case it is in the applicant's best interest and the applicant agrees to it.
- Repeated questioning about traumatic memories should be avoided, unless it is indispensable in order to clarify contradictions.

- Members States should make sure that torture victims/traumatised asylum seekers are interviewed by case officers who have undergone specialised training.
- Member States should transpose Article 18 of the Recast Asylum Procedures Directive and enable persons identified as possible torture victims/traumatised asylum seekers to have access to independent health professionals, competent in producing medical reports according to the standards and principles of the Istanbul Protocol, and free of charge.
- Medical reports should be given appropriate consideration when determining asylum claims, including medical reports issued by specialised NGOs and not only medical reports from the official list of forensic experts. The important factor in weighing the probative value of a medical report should be the specific expertise of the expert, rather than his/her affiliation to the state or an NGO.
- Asylum officers, lawyers and judges should be provided with training on the use of medical reports in asylum proceedings.
- Asylum officers and judges should be made aware that the state of health or psychological condition of the applicant can be a reason for the incoherence and the contradictory nature of the applicant's statements.
- Torture victims/traumatised asylum seekers should be systematically excluded from accelerated and border procedures.
- Torture victims/traumatised asylum seekers' cases should, as a matter of principle, be prioritised. However, sufficient time should be provided to torture victims/traumatised asylum seekers to present the merits of their case and to take into account the time needed for the medical or psychological treatment to have an effect. In these cases, the second consideration should overrule the general principle of prioritisation.

Detention:

- The identification of torture victims/traumatised asylum seekers should take place before any decision related to the deprivation of liberty is taken. This identification procedure should also happen whenever the detention is prolonged.
- Regular monitoring of detention facilities and reassessment of detainees' needs should be established in law and practice.
- Torture victims/traumatised asylum seekers should not be detained, unless they present a threat to national security.
- Legal mechanisms should be introduced to allow for torture victims/traumatised asylum seekers to be released on the basis of the results of the vulnerability identification procedure. Once released their health situation should be adequately followed.
- Detention officials should be trained on the identification of signs or symptoms of trauma and on the course of action to follow in such cases.
- Adequate mental health services should be available in detention, together with interpretation.

Terminology and list of abbreviations



The concept "**victims of torture/traumatised asylum seekers**" used in this study means asylum seekers who have been exposed to torture or severely distressing event(s).

Torture: The content of this specific term is based on the definition provided by the Article 1(1) of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: *"any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."* At the same time, the jurisprudence of the European Court of Human Rights (ECtHR) has made it clear that torture can be committed by non-state agents, too, and can be committed for any reason, provided that it is willingly inflicted. Note that under Article 52(3) of the Charter of Fundamental Rights of the European Union, the ECtHR's interpretation is also binding, as a minimum standard, on the EU.

ACESO project	"Access to early protection and rehabilitation services right on arrival in the EU" project
ACET	Assistance Centre for Torture survivors, Bulgaria
AIDA	Asylum Information Database
AIRE Centre	"Advice on Individual Rights in Europe" Centre
AMIF	Asylum, Migration and Integration Fund
EASO	European Asylum Support Office
ECtHR	European Court of Human Rights
ECRE	European Council on Refugees and Exiles
EU	European Union
GCR	Greek Council for Refugees
GII-DAI	General Inspectorate for Immigration – Directorate for Asylum and Integration

HELP-MED project	Health care network – psychological and cooperation in identifying and assisting asylum seekers
HHC	Hungarian Helsinki Committee
IAO	Immigration and Asylum Office, Hungary
ICESCR	International Covenant on Economic Social and Cultural Rights
IPA-1	International Protection Act-1, Slovenia
LAR	Law on Asylum and Refugees, Bulgaria
LITP	Law on International and Temporary Protection, Croatia
MSF	Médecins Sans Frontières
NGO(s)	Non-Governmental Organisation(s)
PROTECT project	"Process of Recognition and Orientation of Torture Victims in European Countries to Facilitate Care and Treatment" project
PTSD	Post-traumatic stress disorder
rAPD	Recast Asylum Procedures Directive
rRCD	Recast Reception Conditions Directive
RIS	Reception and Identification Service, Greece
SAR	State Agency for Refugees, Bulgaria
SGBV	Sexual and Gender-based Violence
SOP	Standard Operating Procedures
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
WAHA	Women and Health Alliance

I. Introduction

Psychological trauma is damage stemming from a severely distressing event (such as torture, inhuman or degrading treatment, natural disaster, sexual assault, etc.).[1] Many asylum seekers suffer traumatic experiences in their countries of origin, during flight and/or in the host country. **Post-traumatic stress disorder (PTSD)** is a condition that develops as a result of exposure to traumatic events. The symptoms of PTSD include disturbing recurring flashbacks,[2] avoidance or numbing[3] of memories of the event, hyperarousal[4] and changes in the overall patterns of the person's cognitive and emotional responses.[5]

Numerous studies have shown that refugees who have experienced torture are particularly susceptible to mental health problems, such as PTSD, anxiety, suicidal thoughts and depression.[6] A report published by the International Rehabilitation Council for Torture Victims indicated that up to **35% of refugees are torture victims**.[7] Today, the percentage of asylum seekers who have been tortured is particularly high among people fleeing from armed conflicts and failed states such as Afghanistan, Syria and Somalia.

EU legislation provides that asylum seekers who have been subject to torture/suffer from trauma are vulnerable asylum seekers who may have special needs and Member States have an obligation

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1. American Psychological Association, http://www.apa.org/topics/trauma/index.aspx; Jane Herlihy and Stuart W. Turner, The Psychology of Seeking Protection, Int J Refugee Law (2009) 21 (2): 171–192, 6 April 2009.
2. A sudden, involuntary, usually powerful, re-experiencing of a past experience or elements of a past experience. In the case of PTSD, this means the sudden "re-living" of some of the traumatic experience (e.g. torture), often without any specific stimulus, and the person often not being able to fully realise what is reality and what is only the surfacing of a past memory.
3. Difficulty in experiencing positive emotions (such as happiness, attraction, love or trust). Usually includes a loss of interest in previous activities of interest to the individual, a feeling of distance from other people and non-responsiveness.
4. A constant state of increased psychological and physiological tension, which usually leads to reduced pain tolerance, anxiety, exaggerated responses to stimuli, insomnia and fatigue.
5. American Psychiatric Association (2013). Diagnostic and Statistical Manual of Mental Disorders (5th ed.). Arlington, VA: American Psychiatric Publishing. pp. 271–280.
6. Heeren M., Mueller J., et al. Mental health of asylum-seekers: a cross-sectional study of psychiatric disorders. BMC Psychiatry. 2012; In a study carried out in 2005 on the mental health of Cambodian refugees who had resettled in the USA, 54% of the respondents reported torture. See Marshall G N. Schell T L. etc., cited in Carswell K., Blackburn P., Barker C. The relationship between trauma, post-migration problems and the psychological wellbeing of refugees and asylum seekers. International Journal of Social Psychiatry, March 2011.
7. IRCT, Recognising victims of torture in national asylum procedures, 2013, http://www.irct.org/files/Filer/publications/MLRweb.pdf.

to provide them with adequate reception conditions and additional procedural safeguards.[8] This specialised support is required in order for an asylum seeker to recover and to engage effectively with the asylum process. Victims of torture/traumatised asylum seekers should therefore have access to high-quality, effective and sustainable treatment, care and support services.

In the framework of the "Access to early protection and rehabilitation services right on arrival in the EU" (ACESO) project,[9] co-funded by the European Commission, research was conducted, which looked at shortcomings and best practices related to the transposition of the relevant provisions of the Recast Reception Conditions Directive ("rRCD")[10] and the Recast Asylum Procedures Directive ("rAPD")[11] concerning victims of torture/traumatised asylum seekers in eight EU Member States: Bulgaria, Croatia, Greece, Hungary, Poland, Romania, Slovakia and Slovenia. The national research took place in Autumn 2016. The findings of the research reflect the situation in focused countries as of March 2017.

The research focused on the definition of vulnerability, an early identification mechanism of vulnerability, collection of statistics, availability of training on special needs of victims of torture/traumatised asylum seekers, tailored reception conditions, treatment and health care, special procedural safeguards and detention. Each chapter contains a set of recommendations for the Member States on how to improve their system of protection for victims of torture/traumatised asylum seekers. Identified good practices are marked with a yellow background and case studies are presented with a green background. Relevant EU legislation is shown in tables with a grey background .

The study is based on the responses obtained by the national researchers on a standardised questionnaire developed in advance by the Hungarian Helsinki Committee. National researchers answered the questionnaire by referring to the relevant national legislation and case law, as well as the relevant practice. In order to answer the questionnaire, the researchers used the following methodology:

- desk research;
- interviews with relevant stakeholders (inter alia, asylum authority, lawyers, NGOs, medical personnel, social workers, judges, researchers, professors);
- interviews with asylum seekers.

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8. Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) ("Recast Reception Conditions Directive"), Article 22 and 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) ("Recast Asylum Procedures Directive"), Article 24.
9. The ACESO project is a 24 month-long project coordinated by the Hungarian Helsinki Committee and implemented together with the Cordelia Foundation, Greek Council for Refugees, Croatian Law Centre, Foundation for Access to Rights and the Assistance Centre for Torture Survivors (ACET).
10. Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast).
11. 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).

The aim of this study is to raise awareness about the necessity of early identification mechanisms, state-funded support services, about taking into account vulnerability in the interview stage of the procedure and the substantive determination of the claim, the negative consequences of detention on torture victims/traumatised asylum seekers and the specific challenges of Eastern EU Member States, as well as to advocate for a better transposition and implementation of the provisions of the rRCD and rAPD relating to torture victims/traumatised asylum seekers.

II. Vulnerability

Torture victims and traumatised asylum seekers are vulnerable persons according to EU legislation. Vulnerable asylum seekers may have special needs that Member States are obliged to address by providing adapted reception conditions[12] and special procedural guarantees.

Recast Reception Conditions Directive
Article 21
General principle

Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and **persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence**, such as victims of female genital mutilation, in the national law implementing this Directive.

Recast Asylum Procedures Directive
Recital 29

Certain applicants may be **in need of special procedural guarantees** due, inter alia, to their age, gender, sexual orientation, gender identity, disability, serious illness, mental disorders or **as a consequence of torture, rape or other serious forms of psychological, physical or sexual violence**.

Asylum seekers who have been victims of torture are considered **vulnerable persons** according to the national legislation of all focus Member States.[13] Whilst the term "traumatised asylum seekers" is not explicitly used in any of the national legislation, this group of asylum seekers is considered, in all focus countries, to fall under the category of persons who have been subjected to serious forms

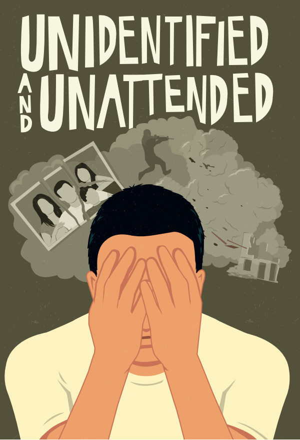
12. See Chapter VI. Reception conditions.

13. Bulgaria: Paragraph 1, point 17 of the Additional Provisions of Law on Asylum and Refugees (LAR); Croatia: Article 4(1)(14) of Law on International and Temporary Protection (LITP); Greece: Article 14(8) of Law 4375/2016; Hungary: Asylum Act, Section 2(k), Poland: Article 68(1) of the Law on Protection; Romania: Article 5^1 of Law no.122/2006 on Asylum; Slovakia: Article 39(1) of the Act no. 480/2002 Coll; Slovenia: Article 2(22) of International Protection Act-1 (IPA-1).

of psychological, physical or sexual violence. However, some issues were raised in Bulgaria, regarding the interpretation of the term “serious forms of violence”, notably that the focus was more on the act of violence itself – whether it is serious enough – and not on the actual consequences (trauma) that such an act might have had on the asylum seeker.

Recommendations:

- **When assessing whether an asylum seeker is vulnerable because of being traumatised, the focus should be on the consequences, rather than the origin of the trauma. Traumatised asylum seekers should be considered vulnerable because they are traumatised, regardless of the trauma’s origin.**
- **Whether psychological, physical or sexual violence is serious should be interpreted considering the individual characteristics of each case, including the specific profile of the victim.**



III. Early identification

An early identification mechanism is composed of pre-identification of those who might be torture victims/traumatised asylum seekers and of consequent referral to psychological or psychiatric experts for final identification and treatment.

According to EU law, Member States have an obligation to identify vulnerable asylum seekers. The obligation for early identification should be clearly defined in national asylum legislation and Member States should establish a mechanism for early identification, which should start as soon as an asylum application is received. Member States shall ensure adequate support for persons with special needs throughout the duration of the asylum procedure and shall provide for appropriate monitoring of their situation. Special needs shall be addressed even if they become apparent at a later stage of the procedure.

Recast Reception Conditions Directive
Article 22
Assessment of the special reception needs of vulnerable persons

1. In order to effectively implement Article 21, **Member States shall assess whether the applicant is an applicant with special reception needs**. Member States shall also indicate the nature of such needs.

   That assessment shall **be initiated within a reasonable period of time after an application for international protection is made** and may be integrated into existing national procedures. Member States shall ensure that those **special reception needs are also addressed**, in accordance with the provisions of this Directive, **if they become apparent at a later stage** in the asylum procedure.

   Member States shall ensure that the support provided to applicants with special reception needs in accordance with this Directive takes into account their special reception needs **throughout the duration of the asylum procedure** and shall provide for **appropriate monitoring** of their situation.

Recast Asylum Procedures Directive
Recital 29

Member States should endeavour to identify applicants in need of special procedural guarantees before a first instance decision is taken. Those applicants should be provided with **adequate support**, including **sufficient time**, in order to create the conditions necessary for their **effective access to procedures and for presenting the elements needed to substantiate their application for international protection.**

Article 24
Applicants in need of special procedural guarantees

1. **Member States shall assess** within a reasonable period of time **after an application for international protection is made whether the applicant is an applicant in need of special procedural guarantees**.
2. The assessment referred to in paragraph 1 may be integrated into existing national procedures and/or into the assessment referred to in Article 22 of Directive 2013/33/EU and need not take the form of an administrative procedure.
4. Member States shall ensure that **the need for special procedural guarantees is also addressed**, in accordance with this Directive, **where such a need becomes apparent at a later stage of the procedure**, without necessarily restarting the procedure.

The lack of identification of a person's vulnerability has a range of negative consequences on the individual. These range from deteriorating physical and mental health since reception conditions are not adapted and there is no referral to rehabilitation services, to flawed consideration of their asylum claims, as they receive no additional procedural safeguards and physical and psychological evidence of torture/trauma is not collected, as well as a risk of being detained, amongst many others.

The vulnerability of torture and trauma survivors is in most cases invisible, and, as such, it passes unnoticed. The involvement of mental health professionals is thus crucial both in developing and adapting a possibly easy-to-use, quick and reliable identification tool (such as the PROTECT questionnaire)[14] and in carrying out identification procedures of torture/trauma survivors.

14. PROTECT-ABLE project (http://protect-able.eu/), co-financed by the European Refugee Fund, developed a quick questionnaire that facilitates the early recognition of asylum seekers who have suffered traumatic experiences and can be used by professionals without a background in psychology or psychiatry.

III.1. Identification mechanisms in practice: timings and monitoring

Country	When is the early identification mechanism triggered?
Bulgaria	Upon the medical examination
Croatia	From the moment of the expression of intention to apply for international protection
Greece	Upon registration and identification in the hotspot
Hungary	N/A[15]
Poland	Immediately after submitting an application for international protection
Romania	After an application for asylum was lodged (registered), as soon as possible
Slovakia	At the beginning of the asylum procedure, after the arrival to the Reception facility
Slovenia	Within the preliminary procedure; in the context of a sanitary disinfection and preventive medical examination

In countries where an identification mechanism is in place, identification of vulnerability happens before the first asylum interview. It must be emphasised, that the rRCD and rAPD only state that the identification should be conducted within a reasonable time after the application is submitted[16] and the rAPD further states that the identification must take place before the first instance decision is adopted.[17]

In most of the focused countries the laws provide that the identification should be continued and can therefore happen at a later stage of the procedure, if vulnerability signs appear. In **Slovakia** the law is silent about this, but according to the Ministry of Interior, the identification continues through the whole asylum procedure.

GOOD PRACTICE

The **Romanian** law provides an important safeguard in this respect: In the administrative phase of the asylum procedure, documents drafted before identifying special needs will be amended and/or supplemented only where it is necessary to adequately examine the asylum applications.[18]

15. In Hungary the law is silent about the timing of an early identification mechanism.
16. Article 22 of rRCD and Article 24 of rAPD.
17. Preamble 29 of rAPD.
18. Article 5^1 The situation of vulnerable persons of Law 122/2006 (5).

A specific monitoring obligation throughout the entire asylum procedure in line with Article 22(1) of the rRCD is foreseen only in **Romanian** legislation,[19] however a similar obligation was included in a Procedure no. 1/2015 developed by the **Polish** Office for Foreigners.

Recommendation:

- **The identification procedure should be initiated as soon as possible, preferably before the first asylum interview, and definitely before any form of detention is ordered.**
- **The identification of victims of torture/traumatised asylum seekers should additionally be made possible at a later stage of the asylum procedure. Relevant official documents (e.g. asylum interview transcripts) that were drafted before the identification of the victim's special needs should be amended and/or supplemented whenever necessary, in order to ensure the adequate examination of the asylum application.**
- **Member States shall ensure that the support provided to applicants with special needs is monitored throughout the entire duration of the asylum procedure.**

III.2. Existence and forms of early identification mechanisms

In all focused countries the legislation provides that vulnerable persons/persons with special needs should be identified. The laws also provide who is the responsible authority for identification and at what stage of the procedure the identification *should* take place. However, the methodology for a formal identification mechanism is usually not prescribed in the law.

In **Bulgaria, Poland, Romania, Slovakia** and **Slovenia** the identification mechanism is based on internal guidance/regulation. **Poland** is a good example where the relevant provisions to ensure proper identification were included in the contract between the Office for Foreigners and a private medical assistance provider. In **Poland**, the mechanism has been developed within the framework of a project run by the State authorities in partnership with an NGO. Similarly in **Slovenia**, Standard Operating Procedures ("SOP") for victims of sexual and gender based violence have been developed through a project in partnership with NGOs.[20]

In **Greece**, the law details the referral mechanism for vulnerable asylum seekers, however due to the serious shortage in reception facilities, staff and funding for medical reports, only few asylum seekers can be properly identified. The vulnerability identification by EASO officers is not regulated by law.

In **Croatia** and **Hungary** there are no further provisions, internal guidance or informal practice on how the early identification mechanism should look like. In practice this means that often only clearly visible signs of vulnerability are identified early in the procedure.

19. Article 5^1 The situation of vulnerable persons of Law 122/2006 (6).
20. Both examples are detailed below.

A. Examples of early identification mechanisms being adopted by internal guidance/regulations

In **Poland,** within the framework of the project "Improving the identification of persons with special needs in the asylum procedure", a procedure has been created, which is applied by the Office for Foreigners since July 2015.[21] The procedure sets the standards of identification and adequate support for vulnerable persons, contains the templates of relevant documents (including the template of the psychological opinion issued after the examination) and the propositions of the systemic procedural solutions as well as integrating actions of various actors. Currently this procedure is further developed within the project "I recognise, I help – integration and development of the activities and procedures of the Office for Foreigners and the Border Guard with the purpose of a complex identification of vulnerable persons seeking protection on the territory of Poland", implemented by the Office for Foreigners, the Border Guard and the Foundation "Różnosfera".

In order to ensure proper identification, relevant provisions were included in the contract of the Office for Foreigners with the private medical assistance provider which specify the provision of medical care to asylum seekers and oblige the medical personnel to participate in the procedure of identification. An assessment whether a person requires special treatment is conducted by:

1) A medical doctor during the examination within an Epidemiology Filter;[22]
2) If during the above examination an asylum seeker reports psychological problems, he/she is referred to a psychologist;
3) If later on during the procedure new circumstances arise, the asylum seeker is directed for a consultation to a psychologist by the employee of the Asylum Procedures Department or by the employee of the Social Assistance Department.

The Office for Foreigners adopted a Procedure no. 1/2015, which concerns granting social assistance to vulnerable groups. The document contains the steps of identification for the purpose of providing adequate support by the employees of the Department of Social Assistance, dividing the vulnerable groups into categories mentioned in the law. With regard to torture victims the steps are as follows:

1) If the employee of the centre notices any signs that the person could have been subject to torture, they inform medical personnel and the psychologist;
2) The person concerned is placed in a single room if there is such a need;
3) The employee together with the medical personnel assesses whether the person needs special attention from the employees of the Social Assistance Department;
4) Monitoring of the personal situation of the asylum seeker (responsible entities of the Office for Foreigners).

21. Letter from the Head of the Office for Foreigners no. DPS.WII.522.1.2016/KL.

22. Special system for the control of contagious diseases.

Although the researchers report that according to the NGOs,[23] the identification is not always working in practice, Poland could still be considered as a good example, where the use of an identification mechanism is considered as an obligation, since it is included in the relevant contracts with service providers and concrete procedures have been adopted.

In **Slovakia** the Migration Office on 3 August 2015 issued an "Instruction" on recording the "social personality profile" of an asylum seeker. This instruction includes an early identification mechanism of victims of torture/traumatised asylum seekers. A social personality profile is a file where information about the asylum seeker during his/her stay at the reception centre is collected by the social workers based on their observations and interactions with the asylum seeker (e.g. personality, behaviour, etc.). Part of this social profile is also the information about vulnerability and its identification. While identifying vulnerable groups of asylum seekers and proposing further steps, the social worker of the Migration Office cooperates with the employees and health personnel of asylum facilities, and the Department of Asylum Procedures (i.e. the department responsible for examining the applications). The social worker has an obligation to inform the organisational departments about the specific vulnerability of the asylum seeker. He/she uses the "list of indicators of vulnerability" and questions which are focused on identification of the vulnerability. A social personality profile is not part of the administrative case file. If the decision-maker deems it necessary, he/she can request an inspection of such social profile documentation. Given that such social profiling is not a standard part of the case file at the Migration Office, the legal representatives do not have access to it.

Social personality profiling is not done in detention centres and there is no other identification mechanism in place. The managers of detention facilities also rarely share information about the vulnerability of detained asylum applicants with the Migration Office.

While Slovakia clearly has a developed early identification mechanism in place, it is regrettable that it is not used in detention centres and that information on vulnerability of certain applicants is not part of the administrative case file, which means that vulnerable persons remain without special procedural guarantees.

In **Slovenia**, the assessment whether the applicant is an applicant with special needs is performed within the preliminary procedure in the context of a sanitary disinfection and preventive medical examination.[24] During the medical examination, the doctor and medical staff shall identify various types of vulnerabilities or specific conditions of asylum seekers, including victims of torture/traumatised asylum seekers, be it from the conversation had with the applicant or from physical signs. These indicators are included in the medical examination form. A victim of torture/traumatised asylum seeker can also be identified during the asylum application interview. In practice, most cases are identified through psychosocial consultations during their stay in the reception centre, since

23. Many NGOs complain that the Office for Foreigners does not act *ex officio* and the procedure has to be triggered by the asylum seeker (they have to request examination) so assistance of NGOs and legal representatives as well as any documents supporting their statements (e.g. a medical record from another country) are often crucial for the procedure to be launched. The sign that the system does not always work in practice is that asylum seekers who were subject to violence are still placed in detention, contrary to the legal provisions in place.

24. Article 13 of International Protection Act-1 (IPA-1).

asylum seekers might not express signs of trauma upon arrival. If an asylum seeker is identified as a torture victim or is traumatised, the psychiatrist provides guidelines and plans additional measures in addition to following the case.

The Standard Operating Procedures for prevention and action in cases involving Sexual and Gender-based Violence ("SGBV") have also been adopted by the Ministry of Interior, UNHCR and NGOs working with asylum seekers. The procedures contain an action plan for preventing violence and acting on behalf of victims (including tortured/traumatised asylum seekers). An asylum seeker may be identified as a victim of SGBV at any stage of the international protection procedure. The assistance provider shall, upon detecting that the beneficiary is experiencing or at risk of SGBV, immediately notify the head of the reception centre (the coordinator of the SGBV Working Group), who without delay notifies the SGBV Working Group members and convenes a meeting within 48 hours. At the meeting, the SGBV Working Group receives information on the case, followed by a discussion and preparation of an action plan for assistance, counselling and treatment. The follow up procedure is then put in place.

In Slovenia, besides the early identification performed during the first medical check, the Standard Operating Procedures for victims of gender based violence were developed in a written form and their use in practice is not restricted solely to victims of SGBV but they also apply to any other vulnerable person, including victims of torture/traumatised asylum seekers. The researchers have not reported any major problems with regards to implementation of the early identification mechanism.

In **Bulgaria,** the law provides that a medical examination is required to establish whether the individual seeking international protection belongs to a vulnerable group and if he/she has special needs.[25] The law does not provide what kind of mechanism should be used in order to conduct early identification of individuals' special needs. There is an internal guidance to apply the PROTECT questionnaire.[26] The questionnaire has been formally approved by the State Agency for Refugees (SAR) and it has been implemented in partnership with the NGO Assistance Centre for Torture survivors (ACET) since 25 October 2012 as a basic tool for early identification of asylum seekers having suffered traumatic experience.[27] However, in practice it is questionable whether the PROTECT tool is applied regularly. For example, a field study carried out in the period from September 2013 to January 2014 showed that the PROTECT questionnaire had been applied to only 7.1% out of 478 asylum seekers interviewed for the research.[28] UNHCR experts also noted in the study "Response to Vulnerability in Asylum" that even when the asylum seeker states that he has scars on the body the

25. Article 29(4) of the Law on Asylum and Refugees (LAR).
26. PROTECT-ABLE project (http://protect-able.eu/), co-financed by the European Refugee Fund, developed a quick questionnaire that facilitates the early recognition of asylum seekers who have suffered traumatic experiences and can be used by professionals without a background in psychology or psychiatry.
27. Retrieved from the web site of SAR at http://www.aref.government.bg/?cat=13&newsid=665.
28. Foundation "Center for Legal Aid – Voice in Bulgaria" and ACET, Vulnerability and protection: identification of vulnerable persons among asylum seekers in Republic of Bulgaria – final report, December 2015, pp. 20–21, http://www.ngogrants.bg/public/portfolios/newsItem.cfm?id=209.

officials from SAR do not always ask anything more on how the scars were obtained.[29] Applicants might not always be advised to seek necessary medical treatment. Even if the registration officer advises the applicant to raise a specific issue with the doctor at the mandatory medical examination after the registration, there is no record of this in the applicant's file.

According to SAR, the identification is carried out by experts from SAR (doctors, psychologists and social workers) and by psychologists and social workers from NGOs working at SAR centres. During the registration officials ask about the presence of particular characteristics. Information about vulnerability is written down in the asylum seekers' files and it is an indicator for the official who conducts the interview. However, as of 2017 ACET no longer operates, therefore in certain centres actual identification is no longer carried out.

The Bulgarian example clearly shows that internal guidance to use certain types of early identification mechanism is not enough in order to assure that the early mechanism is actually carried out in practice. Since identification was often conducted by NGOs, the cessation of ACET activities leaves a serious gap in this field.

In **Romania** the law provides that the assessment of who belongs to the category of vulnerable people is done as soon as possible after an application for asylum was lodged, by specialists from the General Inspectorate for Immigration (GII-DAI), based on an individual assessment.[30] In practice this means that there is a form that is filled in from the moment when an application is lodged. Specialists from the GII-DAI cooperate with the UNHCR, relevant NGOs, experts from other institutions and authorities competent in the field when needed.[31] GII-DAI has internal guidelines on early identification, but these guidelines are only for internal use and are not publicly available.

Another complementary identification mechanism was established by JRS Romania in the framework of the project HELP-MED, shared with all NGOs working in this field and with the GII-DAI.[32] In practice this mechanism is used by legal counsellors and other NGO staff. Once a month all NGOs that are working in the Regional Centres for Accommodation and Procedures for asylum seekers and the managing staff of GII-DAI hold coordination meetings, where they discuss and share their findings, including a discussion on vulnerable cases. Despite this good practice, according to the NGOs, there could be some improvement in the coordination between NGOs and authorities.

In Romania, the guidelines on how to conduct an early identification mechanism are not publicly available, therefore their quality cannot be assessed. An early identification mechanism conducted by the State is complemented by an early identification mechanism conducted by the NGOs, whose findings reach the authorities through the coordination meetings.

29. UNHCR, Response to Vulnerability in Asylum – Project Report, December 2013, http://www.refworld.org/docid/56c444004.html.
30. Article 5^1 of Law 122/2006.
31. Article 5 of the Government Decree no. 1251/2006 regarding the Methodological Norms for Applying the Law 122/2006, modified by the Decree no. 14/2016, in force since 25.1.2016.
32. Health care network – psychological and cooperation in identifying and assisting asylum seekers, offered in the period 16.12.2015–15.6.2016.

In **Greece** vulnerability screenings should be done by the Reception and Identification Service (RIS) upon registration and **identification in the hotspot**.[33] Since the implementation of the EU-Turkey statement, all newcomers are registered by the RIS. However, the relevant procedures are concluded within one day or two, raising concerns regarding the quality of the procedure and the possibility of identifying non-obvious vulnerabilities within such a short time period.[34] The medical screenings conducted at the RIS are mainly based on primary healthcare examinations without the necessary equipment to assess certain conditions. People with less visible vulnerabilities remain unidentified. It remains difficult for unspecialised people in the course of short interviews conducted in non-private spaces to identify vulnerabilities such as victims of sexual violence, trafficking, torture or those with mental health disorders.[35] Furthermore, great difficulty occurs when it comes to the identification and diagnosis of mental illnesses, as most of the psychosocial and medical units do not employ psychiatrists and not all the local hospitals/health care infrastructures have a psychiatric unit that can diagnose, certify and address the needs of people with such conditions.

When vulnerability is not manifest, but identified during registration or after the vulnerability assessment made by the RIS, the vulnerability expert of EASO takes over and drafts a relevant opinion. However, according to GCR's findings, after repeated visits to the various islands, an EASO vulnerability expert is not always available in practice.[36] Moreover, persons identified by RIS as vulnerable may again be subject to vulnerability assessments, within the scope of the examination of their claim, by an EASO vulnerability expert, since there is no clear referral pathway between the vulnerability assessment conducted by the RIS and the one conducted by EASO.[37] It is unclear (i) whether EASO must conduct the assessment by taking into account the relevant provisions and safeguards of national law, (ii) why the assessment of the RIS is not sufficient, and (iii) in cases of contradiction between RIS and EASO on the existence of vulnerability, which finding should prevail. It should also be noted that the vulnerability assessment by an EASO officer and the drafting of an opinion to this end is not provided by any provision of Greek law.[38] Therefore, the aforementioned procedure takes place in a legal vacuum. Even if during the admissibility interview EASO conducts its own assessment, there are particular concerns that certain medical cases will be left behind as EASO's vulnerability expert is not a medical person.[39]

The authorities competent for reception and housing or for reception and examination of an asylum application must ensure that persons who have been subjected to torture, rape or other serious acts of violence shall be referred to specialised units, in order to receive the necessary support and

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33. Article 8(2) L 4375/2016.
34. AIRE Centre and ECRE, With Greece: Recommendations for refugee protection, July 2016, http://www.asylumineurope.org/sites/default/files/resources/with_greece.pdf, 18–19.
35. MSF, Greece in 2016: Vulnerable People Left Behind, 20 October 2016, http://www.msf.org/sites/msf.org/files/report_vulnerable_people_201016_eng.pdf.
36. GCR Mission to Lesvos, November 2016, http://www.gcr.gr/index.php/en/action/gcr-missions/greece-activity-reports/item/616-lesvos-noemvrios-2016.
37. ECRE et al., The implementation of the hotspots in Italy and Greece, December 2016, 38 and 44.
38. AIDA report on Greece, http://www.asylumineurope.org/reports/country/greece.
39. MSF, Greece in 2016: Vulnerable People Left Behind, 20 October 2016, http://www.msf.org/sites/msf.org/files/report_vulnerable_people_201016_eng.pdf.

treatment of the trauma inflicted by the aforementioned acts.[40] This referral should preferably take place before the personal interview on the asylum claim. In case signs or claims of past persecution or serious harm arise, the competent asylum authority refers the applicant for a medical and/or psychosocial examination, which should be conducted free of charge and by specialised scientific personnel of the respective specialisation.[41] However, currently there are no public health structures specialised in identifying or assisting torture survivors in their rehabilitation process. As a result, it is for the NGOs running relative specialised programmes to handle the identification and rehabilitation of victims of torture. This is rather problematic for reasons that concern the sustainability of the system, given that NGOs' relevant funding is often interrupted. In Athens, torture survivors were referred for identification purposes to the NGO Metadrasi, a service which had ended due to lack of funding. In December 2016, Metadrasi re-opened its service but the duration of the project is uncertain and dependent on funding.

Although the early identification mechanism is applied to all newcomers in the hotspots, the quality of identification conducted is questionable, as several reports attest that non-visible vulnerabilities remain unidentified. Besides, due to the lack of funding, there is currently no functioning mechanism specialised in identifying or assisting torture survivors in their rehabilitation process, apart from the NGO Metadrasi operating in Athens.

B. Examples of where no early identification mechanism exists

In **Hungary** the Governmental Decree provides that the refugee authority shall examine whether an asylum seeker is in need of special treatment.[42] However, the law does not define the mechanism itself. Article 22 of the rRCD was not transposed into Hungarian legislation and there is no official information about why, neither have there been legislative attempts to do so. Only visibly vulnerable people are identified as such, for example families, unaccompanied minors and the disabled. In the transit zones the asylum authority conducts an interview with every asylum seeker and they are asked whether they have any health problems. But even if they answer in the affirmative, this does not mean that the Immigration and Asylum Office (IAO) concludes that they have special needs. If the asylum seeker applies for asylum elsewhere and not in the transit zones, they would only have a doctor's examination weeks after they applied for asylum.

As of 28 March 2017, according to the amendments to the asylum laws, during the time period of the "state of emergency due to mass migration", asylum applications are only possible in the transit zone. All asylum seekers – including vulnerable and even unaccompanied minors between 14 and 18 years old – are automatically detained in the transit zones for the duration of their asylum procedure. The "state of emergency due to mass migration" is prolonged until 7 September 2017; however no change is foreseen after that day, since the Hungarian Government has continuously prolonged the "state of emergency" without any reasonable justification every six months since 15 September 2015.

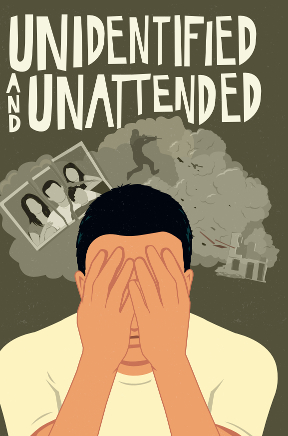
40. Article 20 PD 220/2007.
41. Article 52 L 4375/2016.
42. Section 3(1) of Governmental Decree no. 301/2007 (XI. 9.) on the implementation of Act LXXX of 2007 on asylum.

In **Croatia** the law prescribes that the procedure of recognising special needs of the applicants shall be conducted continuously by specially trained police officers, employees of the Ministry and other competent bodies from the moment of the expression of intention to apply for international protection until the delivery of the decision on the application.[43] Furthermore, the Ordinance on the Realisation of Material Reception Conditions prescribes that the process of identifying asylum seekers with special reception needs should be conducted by professionals who provide psychosocial support in the reception centre, and if necessary, the competent Centre for Social Welfare can participate in the assessment.[44] No further provisions or internal guidelines define how such identification should look in practice. According to the Ministry of Interior,[45] early identification is conducted by police officers who then accordingly inform the reception centre. Further identification is done by social workers of the reception centre as well as by employees of NGOs with whom the Ministry of Interior has cooperation agreements with. The researchers report that no system for early identification of victims of torture or other forms of ill-treatment by competent authorities and professionals has yet been developed and the police usually recognise only visible signs of vulnerability.

Recommendations:

- **The use of an early identification mechanism (pre-identification and a further referral if necessary) should be considered as an obligation to be performed in each and every case.**
- **Member States should clearly define procedures for systematic identification of torture victims/traumatised asylum seekers in national asylum legislation and policy.**
  - **A mere statement in national legislation that vulnerable asylum seekers have to be identified is insufficient. Instead, the law should refer to a standard operating procedure of early identification, the clear methodology of which should be further elaborated in a written document (e.g. decree, guidelines, regulation, contract ...).**
  - **States are encouraged to establish formal partnerships with NGOs providing mental health services to asylum seekers when developing the early identification methodology.**
- **Early identification is primarily a State responsibility. If the identification is outsourced to NGOs, States should provide sustainable funding, which should not be project-based, ensuring that this basic service is available without interruptions.**

43. Article 15(2) of Law on International and Temporary Protection.
44. Article 12(1)-(3) Ordinance on the Realisation of Material Reception Conditions.
45. Letter from the Ministry of Interior, 2 November, 2016.



IV. Statistics

Only in **Bulgaria** and **Romania** do statistics exist on the number of vulnerable groups of asylum seekers, split into specific types of vulnerabilities. However, these statistics were obtained based on freedom of information requests and are otherwise not publicly available. Other focus countries only collect statistics on unaccompanied minors, except **Greece** where there are no statistics on any vulnerable groups available. In **Croatia, Hungary, Slovakia** and **Slovenia** statistics are disaggregated based on age.

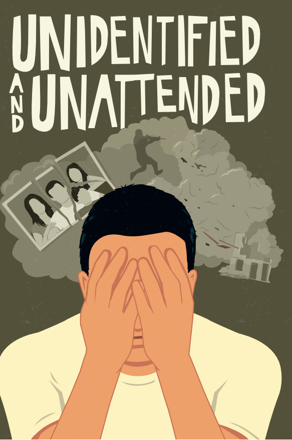
A Médecins Sans Frontières ("MSF") report on **Greece** shows that statistics on vulnerable asylum seekers could be an important monitoring tool for the quality assessment of the identification mechanism.[46] On the mainland, the Greek Asylum Service, UNHCR and EASO started a pre-registration exercise on June 8 2016, in order to overcome a backlog of pending registrations, and to identify the profiles of the people present in Greece. As of July 30, out of 27,592 persons, 3,481 persons were identified as vulnerable as per Greek law, that is 12,6% of those who were pre-registered at that time. In comparison, from the 18 to 29 August 2016, MSF's health promoters and cultural mediators undertook a mapping exercise in 5 camps where MSF runs mental health activities around Thessaloniki. The results from the mapping showed that the percentage of people identified as vulnerable by MSF's team in those 5 camps is much higher (18,5%) than the percentage of people identified as vulnerable during the preregistration exercise – calling into question the validity of the results of the exercise. Many people identified as vulnerable by MSF were not identified as such during the pre-registration exercise and, consequently, were not referred to the relevant actors and could not access appropriate protection or care.

Recommendations:

- **States should collect and regularly publish statistics about vulnerable asylum seekers, which would enable them to better match service provision capacities with the actual number of beneficiaries.**
- **States should collect and regularly publish statistics about how many referrals to specialists actually resulted in the identification of a torture victim or a traumatised asylum seeker. Such statistics are indispensable for monitoring whether the early identification mechanism is functional in practice.**

46. MSF, Greece in 2016: Vulnerable People Left Behind, 20 October 2016, http://www.msf.org/sites/msf.org/files/report_vulnerable_people_201016_eng.pdf.

V. Training



According to EU law, those working with victims of torture/traumatised asylum seekers need to be properly trained concerning their needs. As it is often impossible for all asylum seekers to have access to a psychologist or psychiatrist in the early days of their arrival, other caregivers, legal staff and officers have to be trained and be provided with the tools to be able to make the first steps towards their identification, and investigate possibilities of special medical, legal and social support when needed.

Practically anybody who works in direct contact with torture survivor patients can be affected by the phenomenon called "vicarious trauma": the emotional residue of exposure that derives from working with trauma survivors, hearing their trauma stories and becoming witnesses to the pain, fear, and terror that they have endured.[47] Psychological support in the form of supervision could be very beneficial in such circumstances.

Recast Reception Conditions Directive
Article 25

2. **Those working with victims of torture, rape or other serious acts of violence shall have had and shall continue to receive appropriate training** concerning their needs, and shall be bound by the confidentiality rules provided for in national law, in relation to any information they obtain in the course of their work.

Recast Asylum Procedures Directive
Article 4

3. **Member States shall ensure that the personnel of the determining authority** referred to in paragraph 1 **are properly trained**. To that end, Member States shall provide for relevant training which shall include the elements listed in Article 6(4)(a) to (e) of Regulation (EU) No 439/2010. Member States shall also take into account the relevant training established and developed by the European Asylum Support Office (EASO). **Persons interviewing applicants pursuant to this Directive shall also have acquired general knowledge of problems which could adversely affect the applicants' ability to be interviewed, such as indications that the applicant may have been tortured in the past.**

47. American Counselling association, Vicarious trauma, Fact Sheet #9, https://www.counseling.org/docs/trauma-disaster/fact-sheet-9---vicarious-trauma.pdf.

A. Training of asylum officials

All focus countries report that training on victims of torture/traumatised asylum seekers is carried out for their asylum officers. Trainings are mostly conducted by the authorities and they principally use the EASO curriculum. In **Poland**, the trainings are conducted by external psychologists and psychologists cooperating with the Office for Foreigners. In **Slovenia**, a psychiatrist is also training the reception centre employees in a project framework. They have mandatory lectures/workshops once per month (lasting 4 hours), each time focusing on one relevant topic of their work (e.g. victims of violence, suicidal tendencies, signs of self-harm etc.). In all focused countries except **Croatia**, the officials also attend non-mandatory trainings by NGOs and/or UNHCR. In **Croatia** and **Greece** due to the big increase or rotation of asylum officials and reception centres' staff, the trainings do not reach all of them.

GOOD PRACTICE

Poland is an example of good practice, since the training takes place when the asylum officer is admitted to work. As a consequence currently all the officials of the Office for Foreigners were trained on how to deal with vulnerable groups during the interview.

B. Training of social workers

There is a lack of training for social workers reported in **Bulgaria**, **Croatia, Hungary** and **Slovakia**. On the contrary, social workers in **Slovenia** are trained on a monthly basis by psychologists employed in the reception centre. In **Romania** the project "Adapted and accessible health services for asylum-seekers in Romania" implemented by the ICAR Foundation and AIDROM, includes 6 training sessions (in two years) for actors who work in the asylum field, which includes social workers, on identifying vulnerable persons among asylum seekers. In **Greece** some social workers are also trained, however the training is not standardised.

C. Training of detention officials

The training of detention officials on the needs of victims of torture/traumatised asylum seekers is conducted only in **Bulgaria**, **Poland** and **Slovakia.** In **Poland**, the Border Guard, since 2012, systematically organises workshops called: "Identification of vulnerable groups – victims of human trafficking, persons with PTSD and mental disorders in the context of administrative procedures" for officials, including personnel of the detention centres and psychologists. These workshops are organised by the Border Guard Training Centre with the cooperation of external experts, such as the employees of the NGO International Humanitarian Initiative. In **Croatia** and **Greece** such trainings happen occasionally**,** but it is not systematic. In **Slovenia** there is no specific training on torture victim/traumatised asylum seekers for detention officials. However the Criminal Police Directorate does organise trainings on identification of victims of trafficking.

D. Training of interpreters

The professionalism and specific training for interpreters is indispensable for effective and humane asylum interviews, for medical examinations, as well as for psycho-therapeutic sessions. Interpreters working with torture victims/traumatised asylum seekers should be trained on what torture and trauma are, and should be aware of post-traumatic symptoms and how they affect communication. They should be specifically prepared to face very difficult communication situations (e.g. when traumatised asylum seekers are not able to talk in smaller "units", such as full sentences, only in continuous speech without breaks) and to avoid collapsing, crying, etc. when obliged to translate shocking memories of torture or trauma. They should know the specific vocabulary (e.g. names of specific forms of torture) and they should be prepared to deal with symbolic or indirect language often used to describe torture or ill-treatment (e.g. to understand that the sentence "my flower was torn" actually refers to rape).[48]

Only in **Greece** and **Romania** do the interpreters receive some training on how to interpret in cases of vulnerable asylum seekers, however in **Romania** such trainings are not mandatory.

E. Training of the judiciary

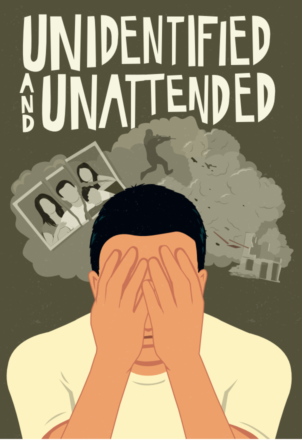
In all focus countries there were almost no trainings for judges on traumatised asylum seekers/ victims of torture.

Recommendations:

- **All staff working with victims of torture/traumatised asylum seekers (asylum officers, social workers, detention officials, interpreters, doctors, psychologists and lawyers) should be trained on how to recognise symptoms and signs of torture and trauma and about special needs of victims of torture/traumatised asylum seekers before they start working with potential victims, as well as the specific aspects of this issue related to their daily work (e.g. credibility assessment for decision-makers, need for special attention by social workers, etc.). Their continued training is also recommended. Judges working on asylum cases should be required to participate in such training activities as well.**
- **Member States shall make it mandatary for any newly recruited asylum decision-maker to complete the EASO Training Curriculum before starting any actual work with asylum seekers.**
- **The European Commission should develop a mechanism to monitor and ensure that the deliverables of EU-funded projects on asylum seekers are further used in practice (equally for state and NGO-led projects). In this framework, the European Commission is recommended to actively request all Member States to use the tools developed in previous EU-funded projects on the protection of asylum seekers, for better identifying and supporting torture victims.**
- **Regular psychological supervision and burnout prevention should be offered to everyone working with torture victims/traumatised asylum seekers, and especially to detention staff.**

48. HHC, Short guide on the support and care of asylum seeking torture victims, 2017.

VI. Reception conditions



Victims of torture/traumatised asylum seekers might have special reception needs and the reception of persons with special needs should be a primary concern for national authorities in order to ensure that reception is specifically designed to meet their requirements. Enduring inadequate reception conditions have a considerable negative impact on a person's psychological well-being.

The recovery process for victims of torture/traumatised asylum seekers cannot start if people do not have control over their own life. Flashbacks and intrusive thoughts are psychological consequences of trauma and are exacerbated in conditions of insecurity and uncertainty. Inadequate living conditions and a lack of support to meet even basic needs further undermines people's efforts to re-establish a sense of normalcy and safety. Not only is it a general obligation for Member States to provide access to minimal levels of acceptable living conditions, but for the most vulnerable people this is also a fundamental step in the recovery process and should be taken into consideration by all stakeholders.[49]

EU law provides that Member States should ensure an adequate standard of living appropriate for the situation of vulnerable asylum seekers, which protects their physical and mental health. Furthermore, Member States shall take into consideration the situation of vulnerable persons within the accommodation centres.

Recast Reception Conditions Directive
Article 17

General rules on material reception conditions and health care

2. Member States shall ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health. Member States shall ensure that that **standard of living is met in the specific situation of vulnerable persons**, in accordance with Article 21, as well as in relation to the situation of persons who are in detention.

Article 18
Modalities for material reception conditions

3. **Member States shall take into consideration** gender and age-specific concerns and the **situation of vulnerable persons** in relation to applicants **within the premises and accommodation centres** referred to in paragraph 1(a) and (b).

49. MSF, Greece in 2016: Vulnerable People Left Behind, 20 October 2016, http://www.msf.org/sites/msf.org/files/report_vulnerable_people_201016_eng.pdf.

The legislation in all focused countries provides certain safeguards for the reception of persons with special needs using the following terminology: "separate accommodation should be ensured", "appropriate conditions should be created", "material reception conditions should be adapted".

Special reception centres for vulnerable asylum seekers exist in **Croatia**, **Greece**, **Romania**, **Slovakia** and **Slovenia**, however in **Greece** the general lack of capacity in the reception system is huge and despite being a torture survivor and therefore having priority as a vulnerable asylum seeker, a young single man would have difficulties finding accommodation. A lack of capacity in centres for vulnerable asylum seekers is also reported in **Croatia**. In **Poland** a special centre exists only for single woman (with children), but in all reception centres, in order to improve safety, Local Cooperation Teams have been created, whose task it is to effectively prevent acts of violence and assure a quick response. In **Romania** special centres for vulnerable asylum seekers can accommodate only asylum seekers who apply for asylum in the area of the cities where these centres are placed. In **Hungary**, **Romania** and **Poland** victims of torture/traumatised asylum seekers would be provided separate rooms within the regular centres, if there is such a need. In **Slovenia** the possibility exists to be accommodated at a private address if accommodation in a reception centre or other institutions would not be adequate due to a person's specific circumstances. In case of a lack of personal resources, the applicant could receive financial support. In **Bulgaria,** despite the law stating that when deciding upon reception conditions "the situation of vulnerable persons is taken into account", in practice, there are no special arrangements for vulnerable persons.

In **Hungary,** the Governmental Decree provides that the refugee authority shall ensure separated accommodation at the reception centre for persons seeking recognition who have special needs.[50] However, because of non-existent early identification mechanisms, only persons who are visibly vulnerable would be accommodated in reception centres where the housing is of a better quality than tents or containers. However, inside these reception centres there is no particular ward or house for victims of torture/traumatised asylum seekers. Individuals are provided with a private room only where available, but even if placed alone in a room, this does not provide enough protection for certain vulnerable asylum seekers, as kitchen and showers are still shared with other asylum seekers and harassment was reported several times. The Governmental Decree further states that "as far as possible, family unity shall be maintained even when providing separated accommodation to a person in need of special treatment."[51] This is usually respected by the authorities, but it has to be emphasised that the family member is defined very narrowly; it encompasses only parents, spouses and children.

However, as noted above (Chapter III. Early identification), because of the new legislation since 28 March 2017, all asylum seekers are detained in the transit zones. Even though women, children and unaccompanied minors between 14 and 18 years old are accommodated separately from single men in the transit zones, in the absence of any procedure to recognise non-visible signs of vulnerability, vulnerable asylum seekers are not separated from others.

50. Section 33(1) of Governmental Decree no. 301/2007 (XI. 9.) on the implementation of Act LXXX of 2007 on asylum.
51. Section 21(6) of Governmental Decree no. 301/2007 (XI. 9.) on the implementation of Act LXXX of 2007 on asylum.

In **Slovakia** when determining in which accommodation centre the applicant will be placed, according to the Asylum Law, the following should be taken into consideration: age, health, relatives and religious, ethnic or national specificities. Victims of torture/traumatised asylum seekers are, as well as other groups of vulnerable people (single-mothers with children, sick people, elderly people, pregnant women, victims of sexual and gender-based violence), placed in the accommodation facility in Opatovská Nová Ves. The capacity of this facility is 140 people. The accommodation facility in Opatovska Nova Ves consists of two buildings; one is an administrative building together with shared dorm rooms, the other one serves as offices for workers of NGOs and two flats. Where it is later apparent that the person needs special treatment, the individual can quickly move to one of those two flats, where he/she is under the closer supervision of social workers and an NGO psychologist.

In **Slovenia**, according to the law, material reception conditions, health, psychological counselling and care for persons with special needs should be adapted.[52] A person might be accommodated in a single-bed room, at another institution or at a private address due to his or her circumstances.[53] Cases of asylum seekers with various vulnerabilities are considered under the SGBV SOPs mechanism, which would determine the most suitable accommodation facility according to the person's circumstances. A special Commission, appointed by the Ministry of Interior then decides upon accommodating the person in a separate facility.[54] The Commission consists of the head of the asylum home, a representative of the Ministry of Interior, a general medical practitioner, an NGO representative and a representative of the Ministry of Health.[55] The Ministry of Interior would cover the costs of such alternative accommodation. The available alternative accommodation possibilities are the following: safe houses for women and children, victims of violence, crisis youth centres for temporary accommodation of unaccompanied minors, student homes for unaccompanied minors and retirement homes.

GOOD PRACTICE

Slovenian law provides that if accommodation in the reception centre or in the alternative centres is still not appropriate for a particular person, the accommodation at the private address is possible and in case the person does not have their own resources, he/she would receive financial support.[56]

Greece has been struggling to provide housing to asylum seekers. The total number of requests for accommodation received in 2016 was 14,873, while at the end of 2016 the number of reception places under the national centre for social solidarity (EKKA), including short-term facilities for unaccompanied children, was 1,896 places.[57] There are some additional accommodation centres operated by NGOs. Torture victims/traumatised asylum seekers may be housed in separate facilities according to availability. Currently available accommodation that focuses specifically on vulnerable

52. Article 14(1) of IPA-1.
53. Article 83 of IPA-1.
54. Article 83(4) of IPA-1.
55. Article 34 of Rules on rights of applicants for international protection.
56. Articles 83(3) and 83(5) of IPA-1.
57 EKKA, Statistics on housing requests by asylum seekers and unaccompanied minors, Q1 2016: http://www.ekka.org.gr/portal_docs/news/391.pdf; Q2 2016: http://www.ekka.org.gr/portal_docs/news/398.pdf; Q3 2016: http://www.ekka.org.gr/portal_docs/news/426.pdf; Q4 2016: http://www.ekka.org.gr/portal_docs/news/439.pdf.

asylum seekers are Praxis – housing Action 1 (23 apartments in the Attica district, Central Macedonia and Prefecture of Lesvos), Praxis – Action 1.A1, providing shelter in the wider area of Athens, Thessaloniki and Mitilini and 40 beds provided in Patra by Praxis and the Red Cross. In Athens there are also Arsis and Caritas shelters. If not placed in specific shelters, victims of torture/traumatised asylum seekers find it very difficult, if not impossible to adjust to shelter conditions since shelters are overcrowded, with poor hygienic conditions and no privacy.

In **Croatia** the Ordinance on the Realisation of Material Reception Conditions prescribes that reception conditions should be adapted to the needs of asylum seekers, psychosocial support should be provided, and special care should be given to asylum seekers with special reception needs. According to the Ministry of Interior, special reception needs are based on the recommendation of the doctor after the initial health check (such as a special diet, psychosocial support, special accommodation).[58] Mental health is considered as a special factor when deciding on reception conditions, so if needed, special reception guarantees would be given i.e. a person would be accommodated in the part of the reception centre where vulnerable groups are accommodated; a person can be accommodated without a roommate and in a room without bunk beds. The reception centre in Kutina is aimed for the accommodation of vulnerable applicants and has a capacity of 100 places, which in practice is not enough. In the reception centre in Zagreb, there are 186 places aimed at accommodating vulnerable asylum seekers.[59] The existing capacity of these places is not enough and vulnerable people often get placed in the general part of Zagreb reception centre, where no private room is provided.

In **Poland,** when deciding on accommodation of an asylum seeker, the Office for Foreigners is obliged to consider their vulnerability. They should be accommodated in a single room in any of the centres (there are no special centres for them). In order to secure the situation of single women and women with children, there is a centre in Warsaw dedicated exclusively to them. In order to prevent gender based violence the Office for Foreigners concluded a special agreement with the Police, UNHCR, "La Strada" Foundation and Halina Niec Legal Aid Centre in 2008, aiming to better identify, prevent and respond to gender-based violence in reception centres.

GOOD PRACTICE

In all reception centres in **Poland** Local Cooperation Teams have been created, consisting of one representative from the Office for Foreigners, the Police and an NGO. Their task is to effectively prevent acts of violence in reception centres and respond to any which do occur promptly.[60] Within the established cooperation, there is regular security monitoring in the centres and in the surroundings and the teams report any cases of violence.[61]

58. Information provided by the Ministry of Interior, 2 March 2017, AIDA report on Croatia, http://www.asylumineurope.org/reports/country/croatia/special-reception-needs-vulnerable-groups.
59. Letter from the Ministry of Interior, 2 November 2016.
60. Realizacja Porozumienia w sprawie przemocy seksualnej lub przemocy związanej z płcią – 2013 (Enforcement of the Agreement on sexual violence or gender-based violence – 2013), (2013), https://media.wix.com/ugd/1fb8cf_2616c95dc3004f47ba34baaf0722233c.pdf; Centrum Pomocy Prawnej im. Haliny Nieć, K. Przybysławska (Ed.), Report: Sexual and Gender-Based Violence in Centers for Asylum Seekers 2012–2014, December 2014, p. 21.
61. Letter from the Head of the Office for Foreigners no DPS.WII.522.1.2016/KL.

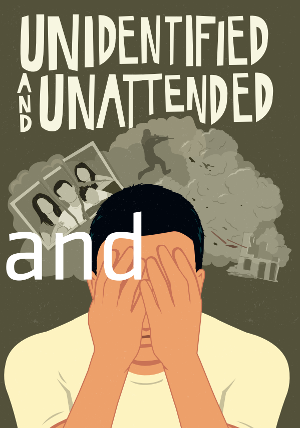
In **Romania** there are two accommodation centres for vulnerable persons (mainly single parents) run by AIDROM, one in Timişoara, with a capacity of 15 places and one in Bucharest, with 18 places. Only asylum seekers that apply for asylum within these two cities can be accommodated there. In the rest of the Regional Centres for Accommodation and Procedures for Asylum Seekers (Giurgiu, Şomcuta Mare, Rădăuți and Galați), in general, vulnerable persons are accommodated in separate rooms. Generație Tânără Romania (GTR), an NGO which operates in Timişoara, is offering accommodation to unaccompanied minors and asylum seekers who are victims of sexual and gender-based violence. The NGO has two centres, one in Recaş, with a capacity of 15 places and one in Calacea, with a capacity of 30 places. These centres are also offering accommodation to other categories of vulnerable persons who are not asylum seekers, such as victims of human trafficking. The regional centre from Rădăuți (Suceava) was recently renovated and 26 places were created in order to accommodate vulnerable persons.[62]

Recommendations:

- **Torture victims/traumatised asylum seekers should be provided with suitable housing facilities which contribute to their rehabilitation. This means that they should be accommodated in a safe space (e.g. a separate facility or a separate space/wing of the facility available for vulnerable persons), have their own rooms in a facility that is not overcrowded, preferably a small-sized facility located in a calm environment and where they can have access to all the services they need (e.g. psychologist, medical assistance, cultural mediator, social worker, lawyer and case officers).**
- **Victims of sexual and gender-based violence should be provided with the possibility of being accommodated in separate facilities.**
- **If accommodation in the reception centre or in the alternative centres is still not appropriate for a particular vulnerable asylum seeker, private accommodation should also be possible.**
- **Member States should make sure that torture victims/traumatised asylum seekers are moved within the reception system as little as possible.**

62. http://igi.mai.gov.ro/sites/all/themes/multipurpose_zymphonies_theme/images/Programe/Pag_%202_azil%20I.pdf.

VII. Treatment and health care



The right to access health care finds its basis in the right to health, guaranteed in Article 12 of the International Covenant on Economic Social and Cultural Rights ("ICESCR"). The right to the highest attainable standard of mental health under Article 12 of ICESCR includes a right to services that are available, geographically and economically accessible without discrimination, acceptable, and are of an appropriate and good quality, provided by trained medical and professional personnel.[63]

EU legislation obliges Member States to provide necessary medical or other assistance to applicants who have special reception needs, including appropriate mental health care where needed. Member States shall ensure necessary treatment for the damage caused by acts of torture or inhuman or degrading treatment, in particular access to appropriate medical and psychological treatment or care. Member States should pay particular attention to child victims and ensure access to rehabilitation services, appropriate mental health care and qualified counselling when needed.

Recast Reception Conditions Directive
Article 19
Health care

2. Member States shall provide **necessary medical or other assistance** to applicants who have **special reception needs**, including **appropriate mental health care** where needed.

Article 25
Victims of torture and violence

1. Member States shall ensure that persons who have been subjected to torture, rape or other serious acts of violence **receive the necessary treatment for the damage caused by such acts**, in particular **access to appropriate medical and psychological treatment or care**.

63. The Committee on Economic, Social and Cultural Rights, General Comment 14, The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4, 11 August 2000.

Recast Reception Conditions Directive
Article 23
Minors

4. Member States shall ensure **access to rehabilitation services for minors** who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts, and ensure that **appropriate mental health care is developed** and **qualified counselling is provided** when needed.

Asylum seekers are entitled to the same or similar health care as nationals in **Bulgaria** and **Poland.** In **Greece,** asylum seekers with special needs and in **Romania, Slovakia** and **Slovenia**, children are entitled to similar health care as nationals**.** Traumatised asylum seekers and victims of torture are entitled to extra treatment in **Croatia**, **Greece**, **Hungary**, **Romania**, **Slovakia** and **Slovenia**. The health care is mainly publicly funded, but in certain countries is not available at all locations where asylum seekers are staying. In addition to public health care, which is often not accessible to asylum seekers due to practical barriers (translation, location, information, reluctance to treat asylum seekers, under-funded public health system, etc.), in **Croatia**, **Greece**, **Hungary**, **Romania** and **Slovakia** mental health care is mainly ensured by specialised NGOs. However, the major issue is the absence of sustainability due to project financing. The lack of access to adequate health care was identified in **Bulgaria**, **Croatia**, **Greece** and **Hungary**. In **Poland** there is no special psychological assistance for children. Lack of translation services during medical examination/treatment was also widely reported in **Bulgaria**, **Croatia**, **Greece**, **Hungary** and **Slovakia** and in **Romania,** during hospital treatment only**.** The researchers did not report about particular waiting times to access the services, except in **Greece** (about a month). Waiting times are also reported for access to psychiatrists in **Slovakia** (from one week to one month, depending on the location of the reception centre).

In **Hungary** asylum seekers are only entitled to basic medical services and emergency treatment. A person seeking recognition, who has special needs, shall, besides basic medical services, be eligible for free of charge health care services, rehabilitation, psychological and clinical psychological care or psychotherapeutic treatment required by the person's state of health.[64] This is however dependant on the person's individual situation and is based on a medical specialist's opinion. The Cordelia Foundation provides mental health care in Budapest on a weekly basis in open and closed reception centres. However, the Cordelia Foundation has not received permission from the IAO to be able to enter the transit zones where all the newly arrived asylum seekers are detained since 28 March 2017 due to the amendments of the asylum laws. The Cordelia Foundation always uses professional interpreters when treating an asylum seeker. Their work is project funded by external donors. Due to the shortages of the capacity of the Cordelia Foundation, it can happen that they are unable to see all their patients every week. If an asylum seeker needs to be taken to a psychiatric ward, the state's psychiatric ward would provide mental health care, but they might have to wait some days until there is capacity in the wards to treat them. Besides, the psychiatric wards are reluctant to treat asylum seekers for a longer duration; usually they are discharged after a few days. The IAO

64. Section 34(1) of Governmental Decree no. 301/2007 (XI. 9.) on the implementation of Act LXXX of 2007 on asylum.

does not often ensure access to interpretation if an asylum seeker is treated by doctors or nurses of the reception centres, or if the asylum seeker is treated in the local psychiatric ward, mainly due to the lack of funding. Article 23 of the rRCD is transposed into Hungarian legislation. However, it is the Cordelia Foundation and psychologists of SOS Children's Villages Hungary that ensure mental health care for unaccompanied minors.

It is extremely worrying that in the transit zones, where all newly-arrived asylum seekers or Dublin returnees (except unaccompanied minors below 14 years of age) are held for the whole duration of the asylum procedure, there are no mental health services available as it currently stands.

In **Bulgaria** despite asylum seekers being entitled to the same scope of medical treatment as nationals, access to health treatment is seriously restricted due to the lack of medical personnel being employed in reception centres. In six reception centres, there is 12 medical staff,[65] which is clearly not enough since in 2016, 14,800 asylum seekers applied for asylum in Bulgaria. The State Agency For Refugees (SAR) has only one psychologist based in Sofia who also performs other duties (currently the psychologist is an administrative director of one of the SAR's directorates). Two NGOs (ACET and Center "Nadya") provided mental health services, but their services are based on project funding and since 2017 ACET no longer operates. Therefore, during certain periods of time or at certain locations there are sometimes no mental health services available or they are available for only a limited number of clients. Besides, there is no possibility, neither for asylum seekers, nor for Bulgarian citizens, to access state psychologists since psychological examinations and therapy are not covered by the National Health Insurance Fund.

Bulgaria is an example, where despite guaranteeing the highest standard for asylum seekers in law (equal to nationals), in practice, access to mental health care is seriously obstructed.

GOOD PRACTICE

Social mediators were identified as a good practice regarding interpretation. They provide assistance in relation to access to health care services in reception centres in **Bulgaria** and **Hungary**. Social mediators are, however, not state funded.

In **Croatia** the law provides that applicants with special needs shall be provided with the appropriate health care related to their specific condition. However, in practice, this provision is not interpreted in the sense that it would cover costs when there is a need for further treatment recommended by a specialist (for example transport to specialist clinics, cost of operations, procurement of necessary medicines, etc.). Despite the fact that mental health care shall be covered by the Ministry of Health, it is mainly the NGOs' psychologists that provide mental health care to asylum seekers. The existence of such NGOs depends on project funding and reportedly there are not enough psychologists. Moreover, interpreters are mainly provided by the NGOs.

In Croatia mental health services are assured mainly by NGOs, whose funding is limited.

65. Fundamental Rights Agency, Weekly data collection on the situation of persons in need of international protection, Update 5, 26 October – 30 October 2015, p. 13, http://bit.ly/1KQWp1S.

In **Greece** asylum seekers receive free of charge necessary health, pharmaceutical and hospital care, with the condition that they have no health insurance and no financial means.[66] Asylum seekers with special needs are entitled to sufficient medical care, including psychological care and support, under the same conditions as nationals.[67] However, in practice, administrative barriers have been observed in some cases with regard to access to the health care system, which mainly concerns difficulties in the issuance of a Social Security Number (AMKA), or the fact that staff in hospitals or health care centres are not always aware of the relevant law.[68] Furthermore, the public health care system in Greece, along with the provision of secondary health care, is affected by the financial crisis that has also had repercussions on the health services provided and hospitals are struggling to respond to the needs of both local people and migrants. As a result, people regularly face difficulties in accessing proper healthcare, especially specialised care. Whilst they theoretically have access to the treatment in hospital for specialised issues, in reality access is difficult due to a general lack of capacity, including a lack of financial and human resources.[69] The lack of adequate cultural mediators further aggravates access to public health services for refugees and migrants.[70] Transportation to and from health facilities remains one of the biggest issues as the vast majority of the camps are very isolated. An ambulance service is made available for emergency cases, however since there are no medical actors in the evening and at night to perform triage, the ambulance service is overused and this raises complaints from the public health system.[71]

Beyond the public health care system, specialised medical care for victims of torture/traumatised asylum seekers is also provided by NGOs, however only in certain locations, mainly in Athens. Rehabilitation of victims of torture is provided by GCR and Day Centre Babel ("Prometheus" project – Rehabilitation Unit for Victims of Torture) in cooperation with MSF. Funding of the Rehabilitation Unit also depends on the availability of funds, which are scarce. Considerable waiting times to access the services have also been reported. Translation is solely provided by NGOs.

Greece is an example, where despite very favourable legislation on access to health care for victims of torture/traumatised asylum seekers, the actual enjoyment of this right is seriously obstructed, mainly due to the lack of funding, resources, administrative barriers and remote location of reception centres.

In **Poland** access to health care for asylum seekers is guaranteed to the same extent as for Polish nationals, who have health insurance, excluding sanatorium treatment and sanatorium

66. Article 14(1) PD 220/2007.
67. Article 31(2) of Presidential Decree No. 141/2013.
68. Solidarity Now, "Issues in the issuance of AMKA", 10 November 2016, http://www.solidaritynow.org/regarding-issue-social-security-number-amka/; MSF, Greece in 2016: Vulnerable People Left Behind, 20 October 2016, http://www.msf.org/sites/msf.org/files/report_vulnerable_people_201016_eng.pdf.
69. MSF, Greece in 2016: Vulnerable People Left Behind, 20 October 2016, http://www.msf.org/sites/msf.org/files/report_vulnerable_people_201016_eng.pdf.
70. UNHCR, Regional Refugee and Migrant Response Plan for Europe, December 2016; The Guardian, "Patients who should live are dying: Greece's public health meltdown", 1 January 2017, https://www.theguardian.com/world/2017/jan/01/patients-dying-greece-public-health-meltdown.
71. MSF, Greece in 2016: Vulnerable People Left Behind, 20 October 2016, http://www.msf.org/sites/msf.org/files/report_vulnerable_people_201016_eng.pdf.

rehabilitation.[72] Health care for asylum seekers is publicly funded. Since 1 July 2015 asylum seekers can benefit from medical care provided by a private contractor Petra Medica Sp. Z o. O. with whom the Head of the Office for Foreigners signed an agreement to coordinate medical care for asylum seekers.[73] Moreover, basic health care is organised in medical offices within each of the reception centres. Free medical and psychological care is available in every centre. Duty hours of psychologists take place at least 4 hours a week for 120 asylum seekers and an additional 1 hour a week for every additional 50 asylum seekers.[74] This is considered not enough by NGOs. Additionally, there are NGO psychologists providing counselling in the centres, but some are placed too far away to be reached regularly. Interpretation is provided by the Interpretation Division within the services of the medical contractor. Additionally, in centres, the Office for Foreigners contracts psychologists who speak Russian. Sometimes the quality of interpreters and psychologists employed by the medical contractor is questionable.

Contracting a private medical facility to coordinate medical care for all asylum seekers appears to be a good practice. It ensures that medical and psychological care, including interpretation, is available in all reception centres in the country. However, it is important to establish an element of oversight of the medical contractor and that translators chosen by them have relevant experience and are proven to provide good quality services.

In **Romania** asylum seekers with special needs have a right to receive an adequate medical service.[75] However there is a lack of doctors in reception centres, currently GII-DAI only has nurses working in the regional centres. Doctors, as well as psychologists, are provided by the ICAR Foundation in all reception centres in the country, funded by the national allocation of the Asylum, Migration and Integration Fund (AMIF). Such an arrangement lacks sustainability and doesn't ensure the continuous presence of services.[76] The ICAR Foundation also has resources to contract interpreters. If there is no interpreter of a certain language within the area of the regional centre, the asylum seeker is transferred to another regional centre where there is an interpreter which speaks his/her language. In case of treatment in hospital, the interpreter should be insured by the immigration authority, but this is often not the case. Minors benefit from the same protection afforded to Romanian nationals.[77]

In Romania the biggest problem is a lack of doctors in reception centres. At the moment the ICAR Foundation covers this gap, but its operation is project based and does therefore not constitute a sustainable source of funding.

In **Slovakia** asylum seekers are entitled to urgent health care, but in cases deserving special consideration, when based on an individual assessment of the applicant's medical needs, the Ministry covers the costs of additional health care. A psychologist is currently provided on a project basis either by Slovenská humanitná rada or by obec Rovné. They are present in the camp for 10 hours

72. Article 73(1) of Act of 27 August 2004 on health care services funded from public resources.
73. http://udsc.gov.pl/zmiana-swiadczeniodawcy-uslug-medycznych-dla-cudziemcow/.
74. Letter from the Head of the Office for Foreigners no DPS.WII.522.1.2016/KL.
75. Article 17(1)(n) (the rights of asylum seekers) of Law 122/2006.
76. For example in 2015, the break between consecutive national AMIF projects was six months long.
77. Article 17(4) of Law 122/2006.

a week and in the first reception centre Humenne for 20 hours a week. If other mental health-care is needed, then it is usually solved through making an appointment with the clinical psychiatrist or, if necessary, by hospitalisation at the psychiatric clinic. The Migration Office is responsible for the facilitation and provision of further health care. Since there is usually one clinical psychiatrist contracted and he/she is responsible for the whole county, waiting times are reported in order to see the psychiatrist. In case of emergency, the asylum seeker would be taken to the hospital. The interpretation is ensured through project funds of NGOs. Despite the Ministry of Interior's official statement that they can provide and cover the presence of an interpreter during health care, the researchers report that this is not always the case. According to the law, minor asylum seekers who are victims of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment or who have suffered the consequences of armed conflict should be provided with adequate health care.[78] In the home for minors a psychologist is constantly present.[79]

In Slovakia, psychologists are ensured by NGOs and therefore depend on project funding. Due to the lack of an adequate number of state funded psychiatrists, there is a waiting time to access their services.

In **Slovenia** adult asylum seekers are entitled only to emergency health care services. Minors are entitled to the same scope of health services as nationals. Vulnerable persons with special needs are entitled to additional health services, including psychotherapeutic assistance approved and established by the Commission, appointed by the Minister (see Chapter on Reception Conditions).[80] Currently, the Women and Health Alliance (WAHA) with the support of UNICEF, once a week, provides a paediatrician and a child psychologist in a reception centre in Ljubljana. They mostly focus on working with all family members which enables identification of trauma signs.

In practice, for torture victims/traumatised asylum seekers, an assistance plan is prepared. First, during the medical examination, a doctor examines the asylum seeker and assesses the situation; after the medical examination, the psychiatrist is consulted and decides upon the forms of assistance according to the asylum seekers needs (therapy, counselling, etc.). If they are referred to therapy, it is provided through the regular national health care system. Additionally, a psychiatrist is available in the reception centre once per week (app. 2 hours). The Ministry of Interior provides translation. The psychiatrist is available only in the reception centre in Ljubljana; from other branches of reception centres, the asylum seekers in need of psychiatric support are sent to the main reception centre. A child psychologist visits all locations where minor asylum seekers are accommodated.

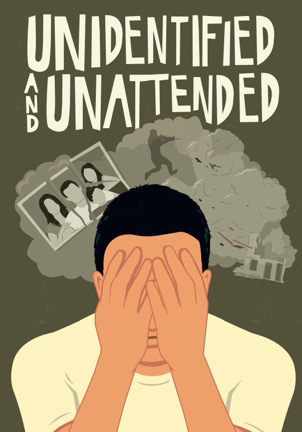
In Slovenia the provision of health services seems to be a good practice as it is highly individualised. Each asylum seeker in need of additional health care is the object of discussions within a special Commission, who then need to approve the treatment. The preparation of an assistance plan follows the Commission's approval.

78. Article 22(5) of the Act. 480/2002 Coll.
79. Article (3) of Act no. 580/2004 Coll. on Health Insurance.
80. Article 86(2) of IPA-1.

Recommendations:

- Victims of torture/traumatised asylum seekers should have a legal entitlement in national law to health care services, including psychotherapeutic treatment.
- In the long term, the provision of mental health services for asylum seekers should be mainstreamed into the public health system. Considering the current circumstances, in the short term, States should appoint specific hospitals to provide mental health services to asylum seekers and equip them with the necessary knowledge and resources.
- Mental health services should be available at all locations where asylum seekers are accommodated and asylum seekers should be informed about their existence. If asylum seekers, for some reason, have to travel in order to access specialised services, this should not put additional financial burden on them that may hinder their access to these services.
- States may request NGOs with specific expertise to provide psychotherapeutic and rehabilitation services to torture victims/traumatised asylum seekers. In this case, States should ensure sustainable and adequate funding for these NGO services.
- States should make available free-of-charge translation and interpretation in mental health services, including for consultations and prescription sheets.
- Since cultural mediators were identified as a good practice regarding interpretation and facilitating access to the health services, States should fund their work.
- Mental health care has to be offered to asylum seekers in a secure environment and their cultural background needs to be taken into consideration. Mental health professionals have to be sufficiently qualified to work with this population, including intercultural sensitisation.
- The care offered should be systematically monitored in order to ensure quality and effectiveness.

VIII. Special procedural safeguards



VIII.1. Personal interview

Repeated questioning about torture/traumatic events can re-traumatise asylum seekers. Interviews might sometimes need to be postponed as victims of torture/traumatised asylum seekers might not be fit to be interviewed due to their mental health condition. Presence of family members, social workers or psychologists at the interviews might sometimes be of great support for victims of torture/traumatised asylum seekers. By not adapting the interviews to the above requirements, there is a risk that the refugee status determination will not adequately take into account the psychological symptoms suffered by many asylum seekers and take relevant corrective measures to ensure that the process itself is suitable to provide an appropriate examination of the asylum claim.[81]

According to EU law, Member States shall ensure that the person who conducts the interview is competent to take into account the personal or general circumstances surrounding the application, including the applicant's cultural origin or vulnerability, insofar as it is possible to do so.

Recast Asylum Procedures Directive
Article 14
Personal interview

2. The personal interview on the substance of the application may be omitted where:
   (b) the determining authority is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his or her control. When in doubt, the determining authority shall consult a medical professional to establish whether the condition that makes the applicant unfit or unable to be interviewed is of a temporary or enduring nature.

Article 15
Requirements for a personal interview

3. Member States shall take appropriate steps to ensure that personal interviews are conducted under conditions which allow applicants to present the grounds for their applications in a comprehensive manner. To that end, Member States shall:
   (a) **ensure that the person who conducts the interview is competent to take account** of the personal and general circumstances surrounding the application, including **the applicant's** cultural origin, gender, sexual orientation, gender identity or **vulnerability**;

81. IRCT, Falling Through the Cracks, Asylum Procedures and Reception Conditions for Torture Victims in the European Union, 2016, https://issuu.com/irct/docs/falling_through_the_cracks.

The researchers report that interviews conducted by national authorities of traumatised asylum seekers/victims of torture do not really differ from other interviews, except in **Poland** where the law provides specific guarantees for the interview. There are no special rooms for such interviews, except in **Poland**, where the interview can take place at the person's place of stay. In **Hungary,** the interview rooms are not adequate at certain locations (e.g. other case officers are present, walls separating interview rooms are not high enough and asylum seekers can hear other interviews). In all focused countries vulnerable asylum seekers are interviewed by asylum officers trained on interviewing vulnerable asylum seekers, if the vulnerability is identified prior to the interview. Because of the lack of a proper identification mechanism, this is often not the case especially in **Hungary** and **Bulgaria**. An interview can be postponed in case the applicant does not feel well, however in **Hungary** the IAO can reject such a request if postponement would mean that the IAO cannot make its decision within the procedural deadline foreseen in the law. In **Poland** it is specified in the law that a psychologist, medical doctor or an interpreter can be present in case there is such a need. In other countries presence of someone else at the interview is generally allowed if the applicant so wishes.

GOOD PRACTICE

In **Poland**, the law provides that in the case of an applicant who is a person requiring special treatment, all actions in the proceedings regarding granting international protection are performed in the following conditions:

1) ensuring freedom of speech, in a manner adjusted to their psychophysical state;
2) on the dates adjusted to their psychophysical condition, taking into account the time in which they benefit from health care services;
3) in the foreigner's place of stay, in case it is justified by their health condition;
4) in the presence of a psychologist, medical doctor or an interpreter, in case there is such a need.[82]

It has been reported that in **Hungary** the IAO sometimes, in repeated interviews, asks questions concerning traumatic events that are not aimed at dissipating the contradictions, despite the legal representative opposing to such questions.

Recommendations:

- **Interview rooms should be adequately located and equipped in order to create a feeling of safety for the asylum seeker. The room should be free of any element that may potentially evoke traumatic memories (such as bars, weapons, uniforms, military objects, etc.).**
- **Detained asylum seekers should be taken out of the detention centre for the interview.**
- **The date and the place of the interview should be adjusted to accommodate the psychological and physical state of the asylum seeker.**
- **Member States should allow for the presence of a family member, psychologist or psychiatrist at the interview, in case it is in the applicant's best interest and the applicant agrees to it.**

82. Article 69(1)) of the Law on Protection.

- **Repeated questioning about traumatic memories should be avoided, unless it is indispensable in order to clarify contradictions.**
- **Members States should make sure that torture victims/traumatised asylum seekers are interviewed by case officers who have undergone specialised training.**

VIII.2. Medical reports on past persecution or serious harm and credibility assessments

Post-traumatic stress disorder is a psychiatric disorder, which – as proven by a wide range of scientific evidence – causes lasting changes in the brain (including volume and activity change for certain brain areas as well as increased hormonal responses to subsequent stressors). Nevertheless, there often appears to be little awareness about the medical consequences of torture and other severe forms of trauma in the asylum procedure which would demonstrate that these consequences go far beyond "bad mood" or "sadness". This undermedicalisation of trauma and its consequences is in sharp contrast with the scientifically unfounded overmedicalisation of other key aspects in asylum procedures, such as age assessment or previously even the "testing" of sexual orientation. Understanding and properly documenting the consequences of trauma on physical and mental health can significantly contribute to the proper establishment of material facts and circumstances in asylum decision-making, and thus reducing the inevitably high level of uncertainty in this process.

Physical evidence (wounds/scars and stated torture) are hard to prove, psychological consequences (PTSD) are even harder. It is for this reason that medical and psychological expert reports are extremely important. According to Article 18 of the rAPD, Member States have the obligation, where they deem it relevant and subject to the applicant's consent, to arrange for a medical examination of the applicant concerning signs that might indicate past persecution or serious harm. Furthermore, when asylum authorities request a medical examination, Member States have to pay for it out of public funds. However, in cases where the asylum authorities do not request a medical examination, asylum seekers must themselves arrange to cover the costs. For many victims, this cost renders essential medical evidence of their torture claims inaccessible. This creates a risk that valid protection claims will be rejected on the basis of incomplete evidence resulting in torture victims being sent back to their countries of origin, where they are at risk of repeated torture and ill-treatment. It may also result in avoidable appeals and delays in the procedure to the detriment of the individual applicants and the broader functioning of the asylum system.[83]

Medical reporting, according to the internationally recognised standards outlined in the Istanbul Protocol,[84] is beneficial to both the asylum seeker and the State assessing the asylum application, for the following reasons:

83. IRCT, Falling Through the Cracks, Asylum Procedures and Reception Conditions for Torture Victims in the European Union, 2016, https://issuu.com/irct/docs/falling_through_the_cracks.
84. UN Office of the High Commissioner for Human Rights (OHCHR), Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Istanbul Protocol"), 2004, HR/P/PT/8/Rev.1, http://www.refworld.org/docid/4638aca62.html.

- The purpose of the medical report is the reporting to legal professionals (lawyers, judges) or to the asylum authority, the history of the asylum seeker and the medical-psychological consequences of trauma/torture;
- The use of a medical report as evidence allows an expert opinion to be given on the degree to which medical or psychological findings correlate with the alleged victim's allegation of abuse;
- It decreases the number of procedures and appeals necessary to correct previously incomplete evidence in support of the asylum claim;
- It improves the quality of the decision-making process by ensuring the information provided in support of the allegations is in conformity with internationally recognised standards;
- In countries where detention of unidentified torture survivors is a practice, medical reports can help in proving that the patient's conditions make him/her unfit for detention and can contribute to him/her receiving more appropriate reception conditions.[85]

The increased use and acceptance of medical reports to support allegations of torture or ill-treatment must be accompanied by **training for decision makers** on how to interpret findings in such reports and how to evaluate such pieces of evidence as part of a wider evidentiary and credibility assessment. Decision makers need to understand the effects torture can have on an asylum seeker's ability to recount past events.

Early identification is also important for the assessment of credibility of the asylum seeker, since the state of health or psychological condition can interfere with the asylum seeker's ability to render a coherent and consistent account in the asylum procedure. In many asylum procedures consistency is used as the standard test of credibility. In the case of asylum seekers, traumatic experiences are often a result of persecutory acts. Therefore, recalling and describing these events usually plays a crucial role in credibility assessment and the evaluation of international protection needs. Trauma can have a very different impact on a victims' ability to remember traumatic experiences. Both depression and PTSD have been shown to be associated with a pattern of over general memory, in which individuals have difficulty retrieving memories of specific events.[86] Consequently, asylum seekers suffering from PTSD often cannot be expected to present a coherent, detailed account of their traumatising experiences.

85. HHC, Short guide on the support and care of asylum seeking torture victims, 2017.
86. R. J. McNally et al., Autobiographical memory disturbance in combat-related posttraumatic stress disorder, Behaviour Research and Therapy, Vol. 33 (1995), pp. 619–630.

Recast Asylum Procedures Directive
Article 18
Medical examination

1. **Where the determining authority deems it relevant** for the assessment of an application for international protection in accordance with Article 4 of Directive 2011/95/EU, Member States shall, subject to the applicant's consent, **arrange for a medical examination of the applicant concerning signs that might indicate past persecution or serious harm**. Alternatively, Member States may provide that the applicant arranges for such a medical examination.

   The medical examinations referred to in the first subparagraph shall be carried out by **qualified medical professionals** and the result thereof shall be submitted to the determining authority as soon as possible. Member States may designate the medical professionals who may carry out such medical examinations. An applicant's refusal to undergo such a medical examination shall not prevent the determining authority from taking a decision on the application for international protection.

   Medical examinations carried out in accordance with this paragraph shall be **paid for out of public funds**.

2. When no medical examination is carried out in accordance with paragraph 1, **Member States shall inform applicants that they may, on their own initiative and at their own cost, arrange for a medical examination concerning signs that might indicate past persecution or serious harm**.

3. The results of the medical examinations referred to in paragraphs 1 and 2 shall be assessed by the determining authority along with the other elements of the application.

Article 18 of rAPD was transposed in **Bulgaria**, **Greece**, **Romania** and **Slovakia** and in more general terms in **Slovenia**. It was not transposed in **Croatia**, **Hungary** and **Poland**. Medical examination is not ordered very often by the asylum authorities of the focus countries (almost never in **Bulgaria**, **Croatia**, **Poland** and **Romania**). Medical opinions are more often ordered by the legal representatives. In **Slovakia** and **Slovenia** even if ordered by the legal representatives, the costs are still borne by the State. In **Bulgaria**, **Croatia** and **Hungary** costs are borne by the NGOs.

In **Bulgaria** and **Romania** medical opinions issued by NGOs are not regarded as binding, only a report by an official expert appointed by the administrative body or by the court (from the official list of experts) will be considered as "an expert report" under the law. Instead, medical opinions issued by NGOs are seen as just a part of written evidence, which might be regarded as credible or not by the decision-maker. In **Poland,** in case of psychologists' opinions arranged for by the applicant, the authorities often disregard them, especially when there is a general lack of credibility of the applicant. Only if the applicants' statements as a whole are credible is the medical documentation confirming the trauma or PTSD treated as important evidence. In **Slovakia** the authorities order an additional examination if the opinion of an NGO is submitted. In **Hungary** it is explicitly stated in the law that incoherencies and contradictions that are the consequences of the state of health or psychological condition of the applicant shall not lead to the conclusion that the applicant lacks credibility.

In **Slovenia,** the law provides a very general provision that if a case officer, when assessing a certain fact, does not have the expert knowledge needed, an expert opinion has to be sought.[87] Asylum officers rarely ask for a medical examination due to signs of possible past persecution or serious harm; it is more often that a legal representative from the NGO PIC requests such an examination. The examination is paid by the Ministry of Interior. It is more common that a medical examination is requested if an asylum seeker shows signs of mental disorders. A medical opinion is accepted as evidence.

CASE LAW

Constitutional Court of Slovenia, Up-771/06, 5.6.2006 and Up-2195/06-14, 11.9.2007

Due to possible mental health problems, the applicant, while submitting his asylum application and at the hearing, may not be able to adequately explain all the circumstances relevant for the decision. Unrelated and uncredible statements of the applicant cannot constitute an abuse of the asylum procedure by itself without an adequate establishment of the facts and finding of the reasons for the applicant's conduct.

CASE LAW

Supreme Court of Slovenia, I Up 585/2007, 24.10.2007

If doubt arises about the applicant's awareness of her statements in her asylum application as well as at her hearing, the asylum authority needs to seek an expert opinion on the state of her mental health.

Article 18 of rAPD was not transposed into **Hungarian** legislation. However, the medical opinions can be ordered and the costs of medical expert opinions shall be borne by the IAO since, according to section 34 of the Asylum Act, the first asylum procedure is free of charge for the asylum seeker. In practice, if the medical opinion is provided by the Cordelia Foundation, the costs are also borne by the Cordelia Foundation, which is funded by projects. Medical opinions are accepted as evidence but are often not properly assessed.

GOOD PRACTICE

The **Hungarian** Asylum Act itself gives the opportunity to the IAO or to the judge to conclude that the reason for the incoherency and the contradictory nature of the statements by the applicant is the state of health or psychological condition of the applicant (if confirmed by a medical expert).[88]

87. Article 39 of IPA-1.

88. Section 59(1)(c) and 59(2) of Asylum Act.

Debrecen Administrative and Labour Court, case No. 9.K.31.128/2014/14.

When examining the credibility of the asylum seeker, the court attributes great significance to the fact that he spoke about how he was detained – even though this happened several years ago – along the same lines on several different occasions. The fear of being detained and the fear of prison are tied very closely to the asylum application.

Psychology discovered that one of the most important conditions of the ways how humans think is that most humans remember in exact detail those events which are able to "push them out from their balance". Being imprisoned and the time spent in prison was such an event in the life of the asylum seeker which "pushed him out of his balance" and his memory could remain fresh regarding this event.

CASE LAW

Győr Administrative and Labour Court, case No. K.27.144/2014/8.

The case concerned an asylum seeker from Sudan who was a victim of torture suffering from PTSD. The IAO rejected his application arguing that he was not credible. The judge found him credible and granted him refugee status, in part, due to the medical opinion issued by the Cordelia Foundation which was submitted to the court.

The applicant rightly stated that the medical expert opinion of the Cordelia Foundation was neglected by the IAO without any legal ground. The medical opinion was, without doubt, not issued by a forensic medical expert; however the IAO did not present evidence which would have been suitable to debase the statements of the medical opinion. Nor did the IAO substantiate that the symptoms of the asylum seeker were not likely to be caused by the events as stated in the medical opinion. There was no other evidence regarding the medical issues at stake which could have challenged the professional integrity of the medical opinion issued by the Cordelia Foundation. The conclusions of the opinion can be evaluated regarding the credibility of the asylum seeker and they are suitable to explain the asylum seeker's statements which were found to be dubious by the IAO.

The psychological state of the asylum seeker, which is the result of the trauma he experienced, is to be taken into account in this matter.

CASE LAW

In **Bulgaria,** Article 18 of rAPD was transposed into national legislation, however no cases demonstrating that a medical examination had taken place were reported by the researcher. The cost of providing medical expertise in the administrative procedure shall be borne by the administrative authority, if the expertise is requested by the administrative authority. Medical opinions requested by a legal representative were mostly issued by ACET, but this NGO ceased to operate as of January 2017. Usually SAR disputes the credibility of such opinions. The reasoning of SAR is that, first, the expert opinion is based solely on the "allegations" of the asylum seeker. Second, any expert statements beyond the establishment of medical and psychological consequences of the alleged experiences are irrelevant (e.g. the expert statement that the applicant is a victim of violence during armed conflict). Third, SAR argues that the condition of the applicant might be a consequence of circumstances outside the refugee story, such as, for example, personal reasons that are irrelevant

to the qualification for international protection.[89] According to Article 49(2) of the Administrative Procedure Code, the administrative body has the opportunity (not an obligation) to appoint an expert during the administrative procedure. At the same time, Article 171(1) of the Administrative Procedure Code states that the evidence collected regularly in proceedings before the administrative authority shall have legal force before the court. The latter provision has been interpreted by the courts as meaning that only the opinion of an expert, appointed by the administrative body or by the court, will be considered as a "credible" expert.

In **Croatia** Article 18 of rAPD has not been transposed, but the Ministry of Interior has the possibility to order a medical examination. However, this possibility is not used in practice. Even when applicants mention that they are victims of torture, they are still not referred to a specialist. One of the reasons is also the lack of public funds.

In **Greece** Article 18 of rAPD is transposed into national legislation and asylum authorities sometimes ask for such opinions.[90] The authorities only bear the costs for opinions that they order. Medical expert reports were, until recently, produced on a project by project basis by NGOs accredited by the State to deliver official certification of victims of torture or by Greek public hospitals. However, currently there is no funded state or non-governmental mechanism to provide medical certification of torture victims.

First Appeals Committee, Decision no 4/563609

Bangladeshi torture victim, whose narration presented some gaps, was recognised as a refugee by the First Appeals Committee. The Committee stated: *Not all contradictions are considered as important as to have an effect on the credibility of the applicant. It has to be taken into consideration that some contradictions, generalisations, time laps and non-essential inconsistencies can be due to the symptomatology of post-traumatic stress disorder, which is experienced by persons who have experienced traumatic experiences, such as the one that the applicant stated during his oral examination, in relation to the political violence and disturbance that takes place in Bangladesh. It is proven by the presented medical documents that the applicant suffers from somatisation of his anxiety and post-traumatic stress disorder.*

CASE LAW

In **Poland** Article 18 of rAPD was not transposed into national legislation. There is no medical examination that would be aimed at identifying the signs of past persecution or serious harm. In case of psychologists' opinions arranged by the applicant, the authorities often disregard them, especially when there is a general lack of credibility of the applicant. NGOs report that only if the applicants' statements as a whole are credible can the medical documentation confirming the trauma or PTSD be treated as important evidence.

89. For example, Cassation appeal by SAR against Decision No. 7256 from 28 November 2014 of Sofia City Administrative Court, case No. 7784/2014.

90. Article 17(12) PD 113/2013: If during the personal interview in the asylum procedure there are indications that the applicant has been subjected to torture, he or she must be referred to a specialised medical centre or a doctor or a psychologist of a public hospital or to a civil society organisation, who shall make a report on the existence of injuries that could be the result of maltreatment or of indications of torture.

In **Romania** Article 18 of rAPD is transposed into national legislation, but medical reports are usually not ordered by the GII-DAI, because of financial consequences. The GII-DAI accepts medical expert opinions issued by officially recognised experts enrolled on the lists drawn up by the Ministry of Health and the Ministry of Justice, with the approval of the Board of Forensics.[91] The GII-DAI does not accept the reports drafted by the ICAR Foundation because they are not officially recognised experts. These reports are scrutinised in the sense that they have to be confirmed by other evidence.

Judicial First Instance Court (Judecătorie), decision no. 2955, 13 July 2012

In a case of a Mauritanian applicant, who claimed that he was a slave in his country of origin, he was examined under a fast-track procedure. The Court stated: *Given the applicant's allegations in the court procedure and the country of origin information, the court considers that the case is not suitable for a fast track procedure prescribed by Article 75 of Law no.122/2006, because the applicant invokes a well-founded fear of state persecution in the country of origin, the inconsistency of the material facts claimed by the applicant can be explained by psychological or emotional trauma, fear, distrust of authorities or painful memories.*

CASE LAW

In **Slovakia** Article 18 of rAPD is transposed into national legislation. The asylum officers rarely ask for medical examinations themselves, but mostly accept the suggestion for such examinations by legal representatives. If a medical examination is requested by the legal representative, the costs are borne by the Ministry of Interior. The most common are cases of psychiatric medical expert opinions. The Migration Office has certain reservations if the expert opinions are done by experts who are contracted by NGOs. In such cases the authorities would order additional examinations.

F.CH. v Ministry of Interior of the Slovak Republic, 26 May 2009, 1Sža/12/2009

The individual contradictions on which both the Migration Office and the Regional Court focused may create the impression that the Applicant is a non-credible person. ***Without addressing the fundamental question of whether the Applicant suffers from post-traumatic stress disorder*** *(to which the Applicant's representative drew attention in the appeal procedure, along with the fact that the contradictions in the statements may be caused by the disorder, which itself resulted from the trauma he experienced),* ***it is not possible, according to the Supreme Court, to unequivocally establish that the Applicant is not credible.***

Therefore, with reference to the foregoing and with regard to the fact that the Applicant repeatedly mentioned headaches, fear and stress during the administrative procedure, it will be necessary in subsequent proceedings, if the Migration Office does not regard any contradictions stated by the Applicant in repeated interviews to be of a minor nature or to be the result of fear and stress or cultural differences, for the Migration Office to appoint an expert to assess the Applicant's mental state, and to examine the Applicant's personality, particularly in terms of whether the Applicant suffers from or has suffered from post-traumatic stress disorder as a result of the trauma he has experienced and whether the disorder might have been the cause of the contradictory claims he made during the administrative procedure.

CASE LAW

91. Rules for the implementation of O.G. no. 1/2000 approved by H. G. no. 774/2000 (Of. No. 459 09.19.2000) as last amended by H. G. no. 1204/2002 (Official Gazette no. No. 814 of 08.11.2002), Articles 32-39 on Medico-legal experts.

Recommendations:

- **Member States should transpose Article 18 of the Recast Asylum Procedures Directive and enable persons identified as possible torture victims/traumatised asylum seekers to have access to independent health professionals, competent in producing medical reports according to the standards and principles of the Istanbul Protocol and free of charge.**
- **Medical reports should be given appropriate consideration when determining asylum claims, including medical reports issued by specialised NGOs and not only medical reports from the official list of forensic experts. The important factor in weighing the probative value of a medical report should be the specific expertise of the expert, rather than his/her affiliation to the state or an NGO.**
- **Asylum officers, lawyers and judges should be provided with training on the use of medical reports in asylum proceedings.**
- **Asylum officers and judges should be made aware that the state of health or psychological condition of the applicant can be a reason for the incoherence and the contradictory nature of the applicant's statements.**

VIII.3. Use of accelerated and border procedures

Accelerated and border procedures are usually very short and victims of torture/traumatised asylum seekers might not have access to medical opinions to substantiate their allegations of torture in such a truncated framework. Besides, treating symptoms related to the conditions of PTSD as a consequence of torture/trauma is often a long-term process that is incompatible with the time-frame of an accelerated procedure. Accelerated procedures also raise concerns over the feasibility of identifying torture victims/traumatised asylum seekers in such a short time frame.[92]

EU legislation provides that asylum seekers in need of special procedural guarantees as a result of torture, rape or other serious forms of psychological, physical or sexual violence, can be exempted from accelerated and border procedures, where adequate support cannot be provided to them in such type of procedures.

Recast Asylum Procedures Directive

(30) **Where adequate support cannot be provided to an applicant in need of special procedural guarantees** in the framework of **accelerated or border procedures**, such an applicant should be **exempted from those procedures**. The need for special procedural guarantees of a nature that could prevent the application of accelerated or border procedures should also mean that the applicant is provided with **additional guarantees** in cases where his or her **appeal does not have automatic suspensive effect**, with a view to making the remedy effective in his or her particular circumstances.

92. IRCT, Falling Through the Cracks, Asylum Procedures and Reception Conditions for Torture Victims in the European Union, 2016, https://issuu.com/irct/docs/falling_through_the_cracks.

Article 24
Applicants in need of special procedural guarantees

3. Member States shall ensure that where applicants have been identified as applicants in need of special procedural guarantees, they are provided with **adequate support** in order to allow them to benefit from the rights and comply with the obligations of this Directive throughout the duration of the asylum procedure.

   Where such adequate support cannot be provided within the framework of the procedures referred to in Article 31(8) and Article 43, in particular where Member States consider that the **applicant is in need of special procedural guarantees as a result of torture, rape or other serious forms of psychological, physical or sexual violence**, Member States shall not apply, or shall cease to apply, Article 31(8) and Article 43. Where Member States apply Article 46(6) to applicants to whom Article 31(8) and Article 43 cannot be applied pursuant to this subparagraph, Member States shall provide at least the guarantees provided for in Article 46(7).

In **Slovakia** there are no accelerated or border procedures. Vulnerable asylum seekers are excluded from accelerated and border procedures in **Croatia**, **Greece** and **Slovakia**. In **Romania** vulnerable asylum seekers might be subjected to such procedures only if they represent a threat to national security or public order, due to their activity or membership in a certain group. Despite the fact that vulnerable asylum seekers are excluded from such procedures, the deadline to issue a decision in a regular procedure is only 30 days,[93] starting from the moment when the file is handed over to the case officer. The legal counsellors interviewed consider that this period of time is not enough to identify a vulnerable person. In **Hungary** all newly arrived asylum seekers (except unaccompanied minors below 14 years of age) are subjected to a border procedure.

Recommendation:

- **Torture victims/traumatised asylum seekers should be systematically excluded from accelerated and border procedures.**

VIII.4. Prioritisation

According to EU law, Member States may prioritise the applications of vulnerable persons. This means that once identified torture victims/traumatised asylum seekers' applications will take precedence over others, e.g. prioritised interview times. Prioritisation is an important procedural safeguard for victims of torture/traumatised asylum seekers since the state of uncertainty that a lengthy procedure might entail has stronger psychological consequences on vulnerable asylum seekers than others. Besides, as already mentioned, the recovery process for victims of torture/traumatised asylum seekers cannot start if people live in uncertainty. Because of its complexity,

93. Article 52(1) of law 122/2006.

asylum procedures of victims of torture/traumatised asylum seekers usually take much longer and therefore should not be unduly prolonged, by not according them the priority status.

Recast Asylum Procedures Directive
Article 31
Examination procedure

7. Member States may **prioritise** an examination of an application for international protection in accordance with the basic principles and guarantees of Chapter II in particular:
   (b) **where the applicant is vulnerable**, within the meaning of Article 22 of Directive 2013/33/EU, or is in need of special procedural guarantees, in particular unaccompanied minors.

Cases of asylums seekers who are traumatised and are victims of torture are prioritised only in **Poland** and **Slovenia.**

Recommendation:

- **Torture victims/traumatised asylum seekers' cases should, as a matter of principle, be prioritised. However, sufficient time should be provided to torture victims/traumatised asylum seekers to present the merits of their case and to take into account the time needed for the medical or psychological treatment to have an effect. In these cases, the second consideration should overrule the general principle of prioritisation.**

IX. Detention

EU law does not prohibit detention of victims of torture/traumatised asylum seekers as such. However, detention under EU law is only possible when, on the basis of an individual assessment, it proves necessary and if other less coercive alternative measures cannot be applied effectively.[94] Being a victim of torture/traumatised asylum seeker is a personal circumstance which has to be taken into account when examining the necessity of detention. Detaining someone who is a victim of torture/traumatised asylum seeker might have severe consequences on his/her mental health,[95] which might be disproportionate to any legitimate objective pursued by the government when detaining such a person. The necessity and proportionality tests further require an assessment of whether there are less restrictive or coercive measures (alternatives to detention) that could have been applied to the individual concerned and which would be effective in the individual case. In cases of victims of torture/traumatised asylum seekers, a thorough examination into applying alternatives to detention is even more necessary.

According to UNHCR's detention guidelines, victims of torture and other serious physical, psychological or sexual violence also need special attention and should generally not be detained.[96] The detention of torture victims/traumatised asylum seekers is fundamentally incompatible with their right to rehabilitation as enshrined in international law and is irreconcilable with the requirements under the Reception Conditions Directive to provide vulnerable asylum seekers with adequate support and necessary treatment for torture victims.[97]

The right to the highest attainable standard of mental health under Article 12 of ICESCR also applies to persons who are detained and they are entitled to a standard of medical care, including mental health care, equivalent to that available in the wider community.

According to Article 11 of rRCD, where vulnerable persons are detained, Member States shall ensure regular monitoring and adequate support, taking into account their particular situation including their health.

94. Article 8(2) of Recast Reception Directive.
95. Jesuit Refugee Service, Becoming Vulnerable in Detention (the DEVAS Project), June 2010 http://www.europarl.europa.eu/document/activities/cont/201110/20111014ATT29338/20111014ATT29338EN.pdf.
96. UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, http://www.refworld.org/docid/503489533b8.html.
97. IRCT, Falling Through the Cracks, Asylum Procedures and Reception Conditions for Torture Victims in the European Union, 2016, https://issuu.com/irct/docs/falling_through_the_cracks.

Recast Reception Conditions Directive
Article 11
Detention of vulnerable persons and of applicants with special reception needs

1. The health, including mental health, of applicants in detention who are vulnerable persons shall be of primary concern to national authorities.

   Where vulnerable persons are detained, Member States shall ensure regular monitoring and adequate support taking into account their particular situation, including their health.

Traumatised asylum seekers and victims of torture are explicitly exempted from detention only in **Poland**, but in practice they are not detained either in **Croatia**, **Romania** and **Slovenia**. Mental health services are not available in detention in **Croatia**, and in some detention centres in **Greece**. In **Poland**, **Romania** and **Slovenia** mental health services are ensured by the State, while in **Greece**, **Hungary** and **Slovakia,** by NGOs.

Victims of torture and traumatised asylum seekers are not excluded from detention in **Greece.** Medical opinions sometimes contribute to their release. **Greece** transposed Article 11 of rRCD, but the law only states that detainees should be provided proper health care. Mental health is not specifically mentioned in legislation. Mental health care is not provided in all detention centres. Where it is provided, it is done so by NGOs. When a detainee asks for mental health care, they are usually referred to the local hospital/psychiatric unit, if there is one, and they are usually given medicines, but no therapy. There are no sufficient resources of mental health facilities within the country. Patients referred to psychiatric hospitals are sent back to detention without a proper treatment because of the lack of free beds in the hospital. A lack of proper communication and translation alongside cultural differences are also serious issues, as well as burned out and insufficient detention personnel who are insufficiently trained.

GOOD PRACTICE

In **Poland** the law prohibits the detention of persons for whom detention could constitute a threat to their life or health or whose psychophysical condition can justify the presumption that they were subject to violence.[98]

In all detention centres in **Poland** there is a so called social supervisor i.e. a person responsible for ensuring adequate conditions and an early identification of vulnerable persons. This person is an employee of the Education Section, which works shifts from 9 am to 10 pm. The Education Sections in every detention centre received uniform guidelines on how to provide adequate support straight after placing a person in the centre. One of the tasks of the employees of this section is to engage in a conversation with the detainees in order to identify victims of human trafficking, trauma or PTSD and, in case of identification of such persons, provide specialist support (psychological/medical).[99]

98. Article 88a(3) of the Law on Protection, as amended in November 2015.

99. Letter from the Border Guard Headquarters no KG-OI-III.0180.76.2016.AP, 28 October 2016.

However, according to the representative of the National Prevention Mechanism, an identification system of torture victims for the purpose of not ordering detention is not in place, is ineffective and does not protect torture victims in a sufficient way.[100] Therefore it is possible that a victim of torture or a traumatised asylum seeker is detained and only released once he is identified as traumatised. Occasionally medical reports contribute to earlier release.

Supreme Court judgement, no IIIKK 33/14, 4 February 2015 (on compensation for unlawful detention)[101]

The conclusions of the psychologist's opinion pointed out that the presumption that he was subjected to violence had arisen. Of course, the content of the opinion might not have been enough to establish it without any doubt, especially since the psychologist mentioned the need for further diagnosis. However, it was completely disregarded, not only by the Court of Appeal in this case but by all the courts deciding on detention of the applicant beforehand. (...) The statement of the Court of Appeal that "the psychologist's observations from the personal interview pointed at some abnormalities in the applicant's behaviour, but were not evident enough to acknowledge the presumption that the applicant was a victim of violence," is unacceptable. In case of this presumption there is no need for "unequivocal evidence", since the legislator only requires a presumption.

CASE LAW

Notwithstanding that there has been no direct transposition of Article 11 of rRCD in **Poland**, psychological assistance is provided in every detention centre by officials and employees of the Education Sections who have relevant competences. The Border Guard also employs external psychologists on the basis of the freelance contract. Every psychologist hired in the centres has to know at least one foreign language, if there is a problem with communication – an interpreter is made available. However, in a report on Kętrzyn detention centre, the representative of the National Prevention Mechanism finds that the interpreter is usually a Border Guard employee working in the Education Section in the centre, which is a breach of doctor-patient confidentiality and a right to privacy. They provide psychological assistance only if there was a traumatic incident, and only upon request from a doctor who examined the patient. This means that individuals cannot have access to psychologists upon their request. Further, only male psychologists are hired, which is an obstacle when identifying victims of torture, especially women. The psychologists in this centre also do not speak fluent Russian and they use google translate.[102]

Victims of torture/traumatised asylum seekers can be detained in **Slovakia**. Article 11 of rRCD is not properly transposed into Slovak legislation, the law only provides that special attention should be

100. National Prevention Mechanism, Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Kętrzynie, https://www.rpo.gov.pl/pl/content/kmp/od-1477316700-do-1477403100-krajowy-mechanizm-prewencji-przeprowadzi%C5%82-wizytacj%C4%99-w-strze%C5%BConym-o%C5%9Brodku-dla-cudzoziemc%C3%B3w-w.

101. Available on the European Database of Asylum Law: http://www.asylumlawdatabase.eu/en/case-law/poland-judgement-supreme-court-4-feb-2015-no-iii-kk-3314-quashing-judgements-court-appeal.

102. National Prevention Mechanism, Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Kętrzynie, https://www.rpo.gov.pl/pl/content/kmp/od-1477316700-do-1477403100-krajowy-mechanizm-prewencji-przeprowadzi%C5%82-wizytacj%C4%99-w-strze%C5%BConym-o%C5%9Brodku-dla-cudzoziemc%C3%B3w-w.

paid to vulnerable persons, but it does not specify that mental health should be ensured. However, in practice mental health services are available. Psychologists are provided by NGOs. A main barrier is a language one. Talking about sensitive issues in the presence of an interpreter can be inconvenient to the point that the detainee rather omits to attend the meetings with the psychologist. The other barrier is the unfriendly and unsafe environment of detention which is not suitable for the provision of mental health services to traumatised asylum seekers.

In **Hungary** torture victims/traumatised asylum seekers are not excluded from detention. The asylum authority often argues that the treatment of traumatised asylum seekers can be just as well provided in detention as in an open reception centre. Medical opinions often contribute to the release of the individual from detention. Since 28 March 2017, due to the amendments to the asylum legislation, with the exception of unaccompanied asylum seekers below 14 years of age, all newly-arrived asylum seekers are automatically and unlawfully detained in the transit zones for the whole duration of their asylum procedure.

Nyírbátor District Court, case No. 7.Beü.286/2016/2.

The court prolonged the detention of an asylum seeker from Afghanistan in spite of the fact that the court acknowledged that he was imprisoned and shot at by the Taliban and despite him showing the court his wounds and that his legal representative submitted a medical opinion according to which the asylum seeker suffers from PTSD and cardiac failure, and concludes that the asylum seeker should be released. Nevertheless, the court prolonged his detention.

According to the court the asylum seeker's health care and other needs, with adequate attention paid to his status, can be better provided for in his present circumstances, and he can be better taken care of than in an open reception centre. It is also in the interest of the asylum seeker to remain in a safer environment. His complaints would not cease to exist even if he stayed in an open reception centre.

Neither had the social worker – interviewed as a witness – stated, regarding the conditions of his placement that the safety of the asylum seeker, both based on his health and other grounds, could not be ensured there.

CASE LAW

Nyírbátor District Court, case No. 2.Beü.907/2016/3.

The HHC attorney requested the release of a Somali asylum seeker suffering from PTSD, based on a medical opinion issued by the psychiatrist of the Cordelia Foundation. Based on the attorney's request, the Court released the asylum seeker.
According to the medical opinion issued by the Cordelia Foundation and submitted by the attorney, the asylum seeker suffers from PTSD and he needs to be observed due to his paranoid mental disorder. His state of health is a result of the severely inhumane treatment that he was subjected to several times. It can be expected that his health status deteriorates in his present environment, and he is in need of medical and therapeutic care.

CASE LAW

Article 11 of rRCD has been partially transposed into Hungarian legislation in Article 31F(2) of the Asylum Act: "The accommodation of persons in need of special treatment shall be arranged in view of their specific needs – in particular their age and health condition (including their mental condition)." The Cordelia Foundation provides mental health services in detention on a weekly basis by therapy and medication. The doctors and the nurses of the asylum detention centres are also providing mental health services, but only in the form of medication and not therapy. In case of a serious mental health problem, the local psychiatric ward is contacted by the detention centre and can accommodate the asylum seeker for a short period of time. One of the main barriers to accessing care is a lack of interpretation. The other is the fact that the local psychiatric wards are sometimes not cooperating well enough with the asylum detention centre and are unwilling to treat the asylum seeker for the time which would be needed. It is also a general problem that asylum seekers do not have access to therapies besides the ones provided by Cordelia on a weekly basis. However, and as said above, the psychiatrists of Cordelia do not have enough capacity to continue the therapy of all their clients every week. Furthermore, the Cordelia Foundation does not have access to the transit zones and there are no mental health services available.

Victims of torture/traumatised asylum seekers might be detained in **Bulgaria**, although the law states that a decision to detain somebody should be taken after the consideration of whether they belong to a vulnerable group.[103] The law also transposes Article 11 of rRCD by stating that towards foreign nationals who belong to a vulnerable group and who are accommodated in a centre of a closed type, monitoring is carried out and if necessary, appropriate assistance is provided, considering their particular situation.[104]

Recommendations:

- **The identification of torture victims/traumatised asylum seekers should take place before any decision related to the deprivation of liberty is taken. This identification procedure should also happen whenever the detention is prolonged.**
- **Regular monitoring of detention facilities and reassessment of detainees' needs should be established in law and practice.**
- **Torture victims/traumatised asylum seekers should not be detained, unless they present a threat to national security.**
- **Legal mechanisms should be introduced to allow for torture victims/traumatised asylum seekers to be released on the basis of the results of the vulnerability identification procedure. Once released their health situation should be adequately followed.**
- **Detention officials should be trained on the identification of signs or symptoms of trauma and on the course of action to follow in such cases.**
- **Adequate mental health services should be available in detention, together with interpretation.**

103. Article 45c (New - SG. 80 of 2015, in force 01.01.2016) of LAR.

104. Article 45e(3) (New - SG. 80 of 2015, in force 01.01.2016) of LAR.

X. Conclusion

In the author's view, EU legislation, in general, provides sufficient guarantees for victims of torture/traumatised asylum seekers. The reason behind why vulnerable asylum seekers area left unidentified and untreated in some of the focused countries therefore lies either in the lack of or improper transposition of the Directives' provisions or in the lack of actual implementation in practice. It is not enough that Member States transpose the Directives in national legislation, but they need to establish an actual working system for protection of victims of torture/traumatised asylum seekers that can be monitored and constantly improved according to their needs.

Vulnerability:

The findings of this study reveal that in all focus countries victims of torture/traumatised asylum seekers are considered vulnerable, however their special needs are not properly addressed in most of the countries.

Early identification:

Failings in addressing special needs are primarily due to the fact that an early identification mechanism either does not exist or is not adequate and victims of torture/traumatised asylum seekers remain unidentified. The rRCD and rAPD state that an early identification mechanism does not have to have a form of administrative procedure. However, the findings of this study clearly show that some form of regularisation of this procedure is indeed necessary in order to make the use of the identification procedure adequate and mandatory for every single asylum seeker. Moreover, the procedure cannot be conducted properly if there is a lack of trained psychologists and psychiatrists to whom the potential victims of torture/traumatised asylum seekers could be referred to for a final identification and rehabilitation. Early identification is primarily a State responsibility, but if it is outsourced to NGOs, States should provide sustainable funding, which should not be project-based, ensuring that this basic service is available without interruption.

Statistics:

Statistics on victims of torture/traumatised asylum seekers are rarely collected, which is regrettable since such data would enable Member States to better match service provision capacities with the actual number of beneficiaries. Statistics on referrals to specialists of pre-identified victims of torture/traumatised asylum seekers are also an important monitoring tool as to whether the early identification mechanism is functional in practice.

Reception conditions:

Once identified, victims of torture/traumatised asylum seekers should receive reception conditions that are adapted to their special needs. Notwithstanding that legislation in all focused countries provides certain safeguards for the reception of persons with special needs, the findings show that this right is severely obstructed in countries where appropriate reception centres are lacking. This is of serious concern, since inadequate living conditions have an important negative impact on an asylum seeker's psychological well-being and undermine their rehabilitation efforts.

Treatment and health care:

Despite a very clear provision in the recast Reception Directive obliging Member States to ensure mental health care to asylum seekers, the findings of this study reveal serious obstacles in accessing mental health services in some of the countries, even in countries where entitlement to health care for asylum seekers is equal to those of nationals. Obstacles were reported mainly in terms of access, translation and under-funding or non-sustainable funding.

Training:

The study also reveals a lack of training on the needs of victims of torture/traumatised asylum seekers especially for the judiciary, interpreters, social workers and detention officials. The training of asylum officials is lacking in countries where there is a big increase or rotation of staff. Training is especially important because the interviews of victims of torture/traumatised asylum seekers should be conducted by specially trained asylum officers.

Procedural safeguards:

Additional procedural guarantees such as the possibility to postpone the interview, the presence of family members, a psychiatrist or psychologist at the interview, if agreed by the applicant and if it is in his/her best interest, as well as the appropriate place of the interview and avoidance of unnecessary repeated questioning about the traumatic events are of equal importance. Asylum officers, lawyers and judges should also be trained on credibility assessments in asylum procedures, particularly on the fact that the state of health or psychological condition of the applicant can be a reason for any incoherencies and contradictions in the applicant's statements.

Medical reports on past persecution or serious harm drafted in line with the Istanbul Protocol play a very important role in terms of evidence in asylum determination procedures. Unfortunately, the findings show that their use is not that common in the focus countries and that reports written by specialised NGOs are not always given adequate evidential weight.

It is very difficult to assure that proper identification, adequate reception conditions and health care, and additional procedural guarantees that victims of torture/traumatised asylum seekers are entitled to can be ensured in accelerated or border procedures. However, the findings of the study reveal that vulnerable asylum seekers are not excluded from such procedures in all focus countries.

The prioritised assessment of victims of torture/traumatised asylum seekers' application should be a general rule, however this is only the case in very few countries.

Detention:

Lastly, detention of victims of torture/traumatised asylum seekers should be avoided, unless they represent a threat to national security. However, half of the countries involved in the study still detain victims of torture/traumatised asylum seekers. Findings also reveal that an early identification mechanism is not used before ordering detention, that mental health services provided in detention are lacking or are not of adequate quality and that interpretation is also an issue.

Despite all the gaps and shortcomings identified, research has revealed important good practices as well, in particular (but not exclusively) in **Poland** and **Slovenia**.

In **Poland** the following is viewed as positive practices: an identification mechanism which is considered obligatory, since it is included in the relevant contracts with service providers and concrete procedures have been adopted; the contracting of a private medical facility to coordinate medical care for all asylum seekers, including medical, psychological care and interpretation is available in all reception centres in the country; the training takes place when the asylum officer is admitted to work, consequently all the officials are trained on how to deal with vulnerable groups; special teams for prevention of violence in reception centres have been created; legislation provides detailed safeguards for the asylum interview of vulnerable asylum seekers; their cases are prioritised and finally the law prohibits detention of victims of torture/traumatised asylum seekers. However, shortcomings were apparent in the identification of victims of torture/traumatised asylum seekers before ordering detention, in the lack of psychologists for children and in the use of medical reports on past persecution and serious harm.

In **Slovenia**, besides the early identification performed during the first medical check, the Standard Operating Procedures for victims of gender based violence were adopted and they are also applied to any other vulnerable person. The researchers have not reported any major problems with regards to implementation of the early identification mechanism. Several good practices were identified, such as training of social workers on a monthly basis, financial support for private accommodation if accommodation in the reception centre or in the alternative centres is not appropriate for a particular person, highly individualised provision of additional health services based on the assessment of a special Commission, prioritisation of vulnerable cases and exclusion from detention in practice.

Lastly, this study has found that many crucial services, such as early identification, mental health services and rehabilitation for victims of torture/traumatised asylum seekers are outsourced to NGOs. While this has a positive element since NGOs are specialised in providing such services, NGOs work is usually project based and lacks sustainable funding. When outsourcing such services, States should therefore provide sustainable funding, which should not be project-based, ensuring that these crucial basic services are available without interruption.