

Magna Carta of Rights of Trafficked Persons

15 June 2015, Strasbourg

Conference to mark the 10th Anniversary of the Council of Europe Convention on Action against Trafficking in Human Beings

Klara Skrivankova, Anti-Slavery International

It is an honour to have been invited here today and to speak about the civil society experience with the Convention, in the implementation of which Anti-Slavery has been heavily involved. Yesterday, in the English town of Runnymede, commemorations were held to note the 800th anniversary of the signing of the Magna Carta. Today, we are marking the 10th Anniversary of the Convention on Action against Trafficking in Human Beings - a treaty which I believe is the Magna Carta of rights of trafficked persons.

As the drafters of the Convention put their pens down ten years ago and the states picked theirs up and began signing the treaty, we, the anti-trafficking activists were full of expectations. For what we had before us was a historic convention - the first international law that saw human trafficking not primarily as a crime, but as a human rights issue.

We were aware that the text of the treaty was not without flaws - there is no such thing as a perfect law. But often, it is not the minute detail of legislation, but the overall impact that the passage of a law has. For the first time we had an instrument that guaranteed minimum standards of protection to those affected and an instrument that spelled out to governments the importance of collaboration with the civil society in tackling trafficking.

Until the introduction of the Convention, protection for trafficked persons was considered an add-on, a kind of luxury that could be arbitrarily provided or denied, depending on the particular victim's usefulness in criminal proceedings. Since 2005 however, the three or rather the four P (prevention-protection-prosecution-partnership) formula has become a recognised recipe for addressing trafficking.

It is important to remind ourselves that protection mechanisms are not just reserved to a few articles of the Convention. The principle of the rights of victims is discernible throughout the treaty - the title of Part III embodies these principles - Measures to protect and promote the rights of victims, guaranteeing gender equality - and I want to stress the title again - protection of the *rights* of victims, not victim protection. There is a qualitative difference and significance in this title, denoting trafficked persons as rights bearers rather than passive victims.

Protection of the rights of trafficked persons is a red thread running throughout the text of the document. There is Article 3, the non-discrimination principle, there is article 15 on compensation and legal redress and Article 26, the very important non-punishment provision. The Convention truly brings the rights of victims at the centre of an anti-trafficking standard and this is in my opinion the key contribution of the convention. At the same time, I believe that this is also an aspect of the Convention that is yet to be understood properly and remains an element of the treaty that is still to be appropriately implemented.

As a result of the Convention, in most countries there are now structures and systems in place that govern identification and protection. Processes, sometimes called the national referral mechanism, are meant to provide protection for the rights of trafficked persons and be an opportunity for those trafficked to access justice - to see their exploiters being brought to account and to get redress. At the same time, these systems are at times barriers to justice - instead of protecting the rights of trafficked persons, they vet the potential victims themselves, subjecting them to onerous bureaucratic procedures and often a culture of disbelief. I recall how in the UK the civil society organisations were delighted when the government finally agreed to sign the Convention and rejoiced at first when we saw the Convention referred to in identification decision in a case of a potential trafficked person. Unfortunately, it quickly became apparent that to quote the Convention does not equate to understanding it in its entirety and implementing the required human-rights approach.

Having advised on many cases and assisted with GRETA with a number of follow-up seminars, it is my analysis that the lack of appreciation of the rights dimension of the treaty leads to deficiencies in the application of the protection and assistance provisions.

Time and time again I find myself reminding governments, civil society and legal representatives that the Convention needs to be read in its entirety and understood thus. The four P's are the pillars of the anti-trafficking framework and what we have seen in practice is that if one of the pillars is too weak, the system is crooked at best, or at worst it is on its way to a collapse.

I have seen a number of cases where it did collapse. Where instead of protecting the rights of the victims, the system in fact exacerbated the violations by disbelieving them, detaining them and prosecuting them. But it was in those situations where the Convention proved to be significant as a safeguard - a standard that on the one hand provides blueprint for developing infrastructures, but on the other hand a framework for courts and lawyers to refer to. A standard that goes beyond national law and policy.

By way of example I want to mention a very recent case that concerned a Vietnamese lady that was trafficked to Ireland for cannabis cultivation. Despite clear indicators of trafficking being present in her case, instead of being identified as a victim, she was remanded in custody and prosecuted. Representations were made to the police on her behalf requesting identification, but they failed. The matter was eventually brought before the High Court that ruled that the administrative procedures on identification of trafficking were in breach of international obligations. In the judgment handed down in April this year, the judge made several references to the Convention, stating that, and I quote: "standards established by the Convention are these that the Irish State has undertaken to apply..."

Ms Justice O'Malley went on to quote the Article 26 in her judgement as well as referring to the findings of GRETA in their report on Ireland in 2013. I am also pleased to share with you that in a further ruling in this case, delivered just last week, Ms Justice O'Malley not only spelled out further where the authorities have erred in their actions, but also awarded the complainant general damages of € 30,000 for her suffering as a result of failed identification.

The P v Ireland case demonstrates in my opinion the great contribution that the Convention has made so far. In discharging their duties, states have introduced victim referral systems that work to some extent, but often they don't - and where these systems fail the victims, the Convention provides a framework on which courts can rely and seek assistance in interpreting what amounts to minimum standards of protection of the rights of victims. Moreover, by creating a monitoring mechanism within the treaty, the impact of the Convention is even stronger - the significance of GRETA analyses and reports was also shown in this case.

However, it is not my intention to single out a particular country - on the contrary - I brought up this particular case here as it is a very fresh example, and also because as one of the experts in the case, I am familiar with the facts and hence feel I can speak with some authority on it. It is the fact of the matter nevertheless that measures to promote and protect the rights of victims appear to be the weakest pillar in most signatory countries still. The report by GRETA published just a few weeks ago, summarising the first round of evaluation of countries gives a clear record of gaps - 89% of states were urged to improve identification and assistance to child victims; 86% were recommended to improve in application of the reflection and recovery period; 80% of countries were to improve victim assistance measures and 77% victim identification.

The conclusion of the GRETA evaluations is clear and very much corresponds to the findings of the civil society organisations on the ground. A lot has been achieved in anti-trafficking efforts in the past ten years, and I would like to stress that these achievements are unlikely to have happened without the Convention, without the work of the GRETA and the strong ethos of partnership promoted by the Council of Europe, including the active engagement of the the civil society from the very beginning. Yet, there is still a long way to go until we see human rights approach and the spirit of the Convention truly reflected in practice and experiences of majority of trafficked persons. I would like to see this as the challenge for all of us for the next decade and I

hope that this conference, so aptly entitled "Focus on Victims' Rights" is the first step on that journey. Thank you very much.