

## Global Alliance against Trafficking in Human Beings

### *“Preventing Trafficking in Human Beings for Labour Exploitation: Decent Work and Social Justice”*

#### **Presentation of the Group of Experts on Trafficking in Human Beings (GRETA) -Nicolas Le COZ, President of GRETA-**

#### **Introduction**

01. First, please allow me, on behalf of GRETA, to thank OSCE and the Special Representative and Coordinator, Ms Gianmarinaro, for the organisation of this conference. It shows, once again, how our Alliance is a dynamic forum for thought and coordination on action against Trafficking between all the concerned stakeholders.

02. As you already know, GRETA is the monitoring mechanism for the implementation of the Council of Europe Convention n°197 on Action against Trafficking (hereafter "the Convention") which has the particularity of being independent from the states which created it.

03. Our main mandate is to evaluate how the 34 Parties to the Convention implement their obligations, to check if the measures they implement are efficient and to indicate how, state by state or globally, their action can be improved.

**04. Another of our missions is to interpret the standards of this international legal instrument and, if appropriate, to develop them in the respect of the « intent of the Parties » at the time of the adoption of the Convention.**

05. Furthermore, GRETA is just now finishing the evaluation of the first group of 10 States Parties. The first three final reports will be adopted by GRETA this week and will be published in the beginning of Autumn.

06. For this Conference, the Special Representative and Coordinator, Ms Gianmarinaro, has asked me to speak about the protection of foreign victims of THB according to the "Council of Europe System"; i.e. **on the one hand, Council of Europe Convention on Action against Trafficking in Human Beings and GRETA, and, on the other hand, the European Convention on Human Rights and the European Court of Human Rights.**

07. I will then focus on the two main obligations contained in the « European Human Rights Public Order », *i.e.* The obligation to investigate THB cases **(I)** and the obligation to protect victims of THB, guarantying them effective access to "International Protection", and, before that, to the Asylum Procedure **(II)**.

#### **I. INVESTIGATING TRAFFICKING IN HUMAN BEINGS**

08. According to the « Warsaw Convention », states have the obligation to conduct "*efficient criminal investigations*" (art. 1§1-b) on THB cases and to implement judicial cooperation in criminal matters and cooperation between their Law Enforcement Agencies. Parties are also required to identify and seize criminal assets, in order to allow their confiscation by National Criminal Courts, which is a key-issue.

09. However, such an obligation to seek the facts is now contained in the European law on human rights, at the initiative of the European Court of Human Rights since its decision in the case **"Rantsev v. Cyprus and Russia" of 7 January 2010**. This is a very important decision, a "landmark judgment", marking the first time that the Court found that trafficking in human beings, strictly speaking, falls under the protection of **Article 4 of the European Convention on Human Rights**, the article which **prohibits slavery and servitude and forced labour**.

10. The facts of the case, which could also have taken place anywhere in the world, are the following: a trafficker recruited a young Russian young woman as a dancer. When she arrived at destination in Cyprus, she was forced into prostitution. She then fled the establishment that had recruited her, but was found by the trafficker who tried to have her declared illegal in order to return to her country and recruit another person in her place. The authorities of the destination country concluded that it she was not illegal, but left her in the hands of the trafficker who had attempted to denounce her. A few hours later, the young woman died in a fall from the window of the apartment in which the trafficker was detaining her.

11. In its judgment, **the Court has issued positive obligations** to the States Parties to the European Convention on Human Rights.

12. States Parties are already **required to have an administrative and legal system adapted to the suppression of trafficking**. The European Court has notably had the opportunity to stipulate such a requirement in the decision *Siliadin v. France* in 2005 concerning domestic slavery. The subsequent judgement expanded the requirement to include trafficking of human beings, to ensure that all acts of human exploitation are well and truly punished.

13. **A State Party to the Convention is thus required to detect cases of trafficking** and in doing so, should expedite criminal investigations. Here, the Court issued a cardinal rule for victims of trafficking in human beings, especially those whose presence is irregular in terms of foreign law, and who suffer because of their illegal status.

14. Finally, in the case of "Rantsev," the European Court of Human Rights also ruled that the **obligation to investigate the traffickers mode of recruitment of their prey was also the responsibility of the country of origin of the victims** when, of course, they are a Party to the European Convention on Human Rights.

15. However, the protection of victims of trafficking does not end there. The Court issued another decision which, although it was not a case of trafficking in human beings, will necessarily benefit victims of THB as it relates to the obligation to establish an **effective and efficient procedure for the examining of applications for asylum, based on fear of persecution if they were returned to their country of origin**.

## **II. ENSURING THE REVIEW OF ASYLUM REQUEST PROCEDURES**

16. **The protection of victims of human trafficking is the subject of numerous articles in the Warsaw Convention**. GRETA has therefore decided to examine, for the purpose of the first round of evaluation, rules on legal assistance with the possibility for NGOs to provide assistance to victims and the existence of a compensation system and mechanisms for legal remedies available to victims of human trafficking. The "Anti Trafficking Convention" also requires that the victim of human trafficking should be protected, particularly against reprisals from traffickers, especially since the victim is at "the heart" of this legal instrument.

17. However, beyond this protection is added extra protection for victims who are illegal immigrants: international protection under the Refugee Convention of 1951. For this reason, the "Palermo Protocol" and the Convention of the Council of Europe in 2005 stipulate that their provisions shall not affect those from the Convention of 1951.

18. Indeed, there are several cases where a victim of trafficking is entitled to apply for international protection, *i.e.* refugee status, because he or she has a well-founded fear of persecution in his or her home country.

**Persecution** is defined as gross violations of human rights which are as follows:

- the victim of trafficking once returned to his/her country could again be the subject of human trafficking;
- the victim of trafficking, once returned to his/her country, could face reprisals from the traffickers, with retaliation usually constituting serious acts such as murder, torture, barbarity, etc.
- the victim of trafficking, due to the exploitation suffered in the country of destination, may be subject to persecution by his own clan/family to which the situation is experienced as an alleged violation of the honour of that clan/family.

On this issue, it is useful to refer to the "Principles" released by the United Nations High Commissioner for Refugees of April 7, 2006.

19. That is why GRETA has decided to monitor the national procedures of identification of victims of THB. This identification is crucial, especially for victims of trafficking who are foreign and which are too often treated as illegal aliens.

20. Convention No. 197 requires the competent state authorities to make such an identification of potential victims to prevent the victims being summarily returned to their country of origin. This identification benefits those who may be initially considered for lack of identification as illegal immigrants, especially when placed in detention or applying for asylum.

21. Consequently, the European Court of Human Rights had the opportunity to come to a decision on International protection through a case « ***MSS v. Greece and Belgium***», the **21<sup>st</sup> of January 2011**.

22. The case concerns an Afghan national who arrived in the European Union (EU) by Greece, and had applied for asylum in Belgium. Referring to the "Dublin II Regulation" of 2003 which stipulates states that, in general, the claim must be made within the state by which a migrant entered the space of the European Union, Belgium had then returned the applicant to Greece to introduce his request.

23. In that case, the European Court of Human Rights has crystallized a number of obligations attributable to States Parties to the European Convention on Human Rights asylum.

24. First, the Court held that a state must ensure the effectiveness of the system of asylum in the country to which he returns, which presupposes the state's capacity to decently treat the asylum applicant and that if this is not the case, it must investigate the asylum request itself.

25. Second, it held that states should ensure the efficiency of their own system of asylum request, in order to be certain that people were not likely to be ultimately returned to a country where they might be persecuted.

26. So, with this judgement strengthening the protection of asylum seekers in member states of the Council of Europe, the European Court in Strasbourg has strengthened the protection of victims of human trafficking who are illegal ensuring them the right to submit an asylum claim for examination.

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**27. In conclusion, it is important to recall that the fight against human trafficking is now a strict requirement of European Law on Human Rights namely the European Convention on Human Rights and is thus applicable in all 47 member states of the Council of Europe.**

28. Consequently, it seems essential to recall that the ratification of the Convention against human trafficking and monitoring activities performed by GRETA are key tools to enable the 47 member states of the Council of Europe to be in accordance with their obligations under the Convention and as set out by the European Court of Human Rights. The ratification of the Convention and GRETA's expertise will undoubtedly strengthen internal systems, thus protecting states from convictions by the European Court in the future.