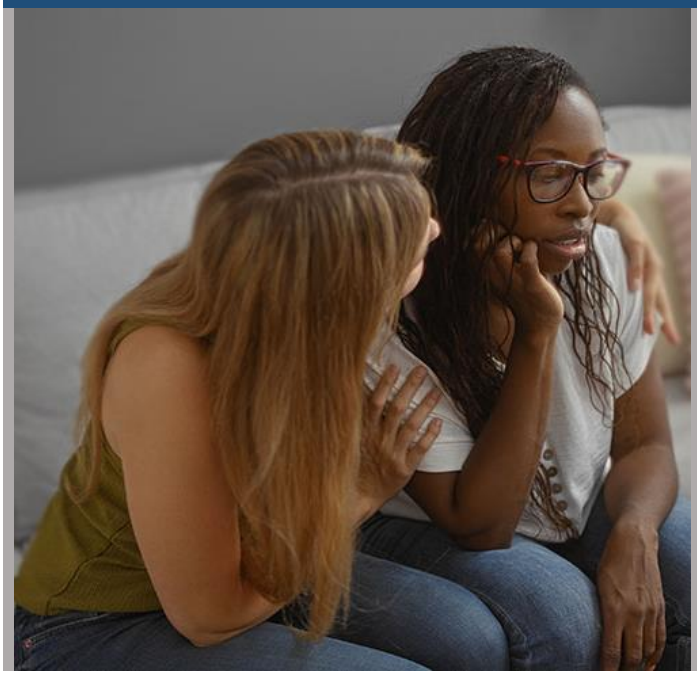
GUIDANCE NOTE

on the recovery and reflection period

(Article 13 of the Council of Europe Convention on Action against Trafficking in Human Beings)



GRETA

Group of Experts on Action against Trafficking in Human Beings

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on Action against Trafficking in Human Beings)

GRETA
Group of Experts on Action against
Trafficking in Human Beings

Council of Europe

French edition :
Note d'orientation sur la période de rétablissement et de réflexion

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Table of contents

I. INTRODUCTION 6

II. PURPOSES AND PRINCIPLES OF THE RECOVERY AND REFLECTION PERIOD 7

1. Recovery of the victim 7
2. Reflection on co-operation with the authorities 7
3. Identification of victims and investigation/prosecution of offenders 7
4. Non-conditionality 8
5. Non-discrimination 8
6. Application of the non-punishment principle 8

III. CONCEPTS OF INTERPRETATION 8

1. Reasonable grounds to believe that a person is a victim of human trafficking 8
2. Without prejudice to the activities carried out by the competent authorities 9

IV. LEGAL BASIS AND PROCEDURE FOR GRANTING THE RECOVERY AND REFLECTION PERIOD 10

1. How should the recovery and reflection period be regulated? 10
2. Who is entitled to receive a recovery and reflection period? 11
3. When should the recovery and reflection period begin? 11
4. How long should the recovery and reflection period last? 12
5. Termination of the recovery and reflection period 12
6. Grounds for not granting or revoking the recovery and reflection period 13

i. Grounds of public order 13

ii. Improperly claimed victim status 14

V. ASSISTANCE MEASURES DURING THE RECOVERY AND REFLECTION PERIOD 15

VI. RELATIONSHIP BETWEEN THE RECOVERY AND REFLECTION PERIOD AND RESIDENCE PERMITS 16

VII. RELATIONSHIP BETWEEN THE RECOVERY AND REFLECTION PERIOD AND INTERNATIONAL PROTECTION 16

VIII. APPLICATION OF THE RECOVERY AND REFLECTION PERIOD TO CHILDREN 17

IX. PRACTICAL STEPS TO ENSURE CONSISTENT APPLICATION OF THE RECOVERY AND REFLECTION PERIOD 17

1. Systematic provision of information to victims 17
2. Training and instructions to relevant professionals 17
3. Data collection 18

X. EFFECT OF THE DISCONNECTION CLAUSE (ARTICLE 40, PARAGRAPH 3, OF THE CONVENTION) 18

I. INTRODUCTION

1. The recovery and reflection period, which is provided for in Article 13 of the Council of Europe Convention on Action against Trafficking in Human Beings (hereafter "the Convention"), is an essential step in the protection of, and assistance to, victims of trafficking in human beings. This provision has been described as one of the "most original, powerful, yet contested concepts in anti-trafficking policies".[1] As is evident from the drafting history of the Convention, the inclusion of this provision in the Convention was "marked by major controversy between governments of the Council of Europe, the European Union (EU) and civil society."[2] At the same time, it has been praised as an "effective best practice and humanitarian measure at protecting the human rights of trafficked persons".[3]

2. Article 13 of the Convention states that:

> 1. Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities. During this period it shall not be possible to enforce any expulsion order against him or her. This provision is without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating and prosecuting the offences concerned. During this period, the Parties shall authorise the persons concerned to stay in their territory.
>
> 2. During this period, the persons referred to in paragraph 1 of this Article shall be entitled to the measures contained in Article 12, paragraphs 1 and 2.
>
> 3. The Parties are not bound to observe this period if grounds of public order prevent it or if it is found that victim status is being claimed improperly.

3. The monitoring of the implementation of the Convention by the Group of Experts on Action against Trafficking in Human Beings (GRETA) has shed light on a number of difficulties in the application of Article 13 of the Convention.[4] GRETA has observed that in some countries, the recovery and reflection period is not provided for in internal law or is construed in a way which is not consistent with Article 13. Moreover, in many State Parties the number of recovery and reflection periods issued is low or there is an absence of data. Consequently, GRETA decided to draw up this Guidance Note in order to strengthen the implementation of the obligation to grant a recovery and reflection period to victims of trafficking and provide concrete and practical guidance for relevant authorities, agencies and civil society organisations. The Guidance Note highlights the purposes and principles of the recovery and reflection period, the legal basis and procedures for granting it, and its relationship with other provisions of the Convention as well as with EU Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who co-operate with the competent authorities.

[1] Julia Planitzer, Helmut Sax (editors), A Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings, Elgar Commentaries, 2020, p. 183.
[2] Ibid., p. 184. See also pp.185-189 detailing the discussions of the Ad hoc Committee on Action against Trafficking in Human Beings (CAHTEH) which drafted the Convention.
[3] UNODC, Toolkit to Combat Trafficking in Persons, United Nations, 2008, p. 326.
[4] See GRETA's 4th General Report (stocktaking of the first evaluation round), 2015, pp. 46-47, and GRETA's 9th General Report (stocktaking of the second evaluation round), 2020, pp. 57-58.

II. PURPOSES AND PRINCIPLES OF THE RECOVERY AND REFLECTION PERIOD

1. Recovery of the victim

4. The first purpose of the recovery and reflection period is to allow victims of human trafficking to recover. This purpose, which is essentially a humanitarian measure, acknowledges that victims of trafficking are extremely vulnerable after the trauma they have experienced and tallies with the victim-centred approach of the Convention. Victims' recovery implies, for example, healing of the wounds and recovery from the physical assault which they have suffered. It also implies that they are given time to recover a minimum of psychological stability.[5] Thus, the recovery and reflection period should be seen as part of the protection and assistance afforded to victims of trafficking by the Convention. With a view to supporting victims' recovery, the Convention provides that victims should be given access to the assistance measures provided for under Article 12, paragraphs 1 and 2 (see paragraphs 40-44 of this Guidance Note).

2. Reflection on co-operation with the authorities

5. Another purpose of the recovery and reflection period is to allow the victim to make an informed decision on whether they want to co-operate with the competent authorities in the investigation and prosecution of traffickers. Informed decision-making means that the victim is in a reasonably calm frame of mind and knows about the protection and assistance measures available and the possible judicial proceedings against the traffickers. In order to enable victims to make an informed decision, the authorities should ensure that they are properly and fully informed of their rights, in a language they can understand, as well as of the implications of their participation in criminal proceedings and the available protection measures. Such a decision requires that the victim no longer be under the traffickers' influence.[6] Therefore, it is essential to create a protective environment in which victims feel safe, and to provide them with psychological counselling and other assistance to help them escape the influence of the traffickers and allow them to make an independent and informed decision on whether or not they wish to participate in the criminal proceedings.

3. Identification of victims and investigation/prosecution of offenders

6. The granting of the recovery and reflection period as soon as there are reasonable grounds to believe that a person is a victim of trafficking ensures that the person concerned will not be removed from the territory of the country during this period, and will allow for the victim identification process to be completed. As provided in Article 10, paragraph 2, of the Convention, States shall ensure that the authorities competent to identify victims of trafficking collaborate with relevant support organisations in the identification process.[7] The victims' trust towards the authorities will increase during the recovery and reflection period, as they are provided with a safe environment and measures aimed at helping their recovery. As a result, they may be more willing to speak about their experience and to co-operate in the investigation and prosecution of the traffickers.

[5] See Explanatory Report to the the Council of Europe Convention on Action against Trafficking in Human Beings (2005), paragraph 173.
[6] See Explanatory Report to the Convention, paragraph 174.
[7] See Explanatory Report to the Convention, paragraph 131.

4. Non-conditionality

7. The only pre-requisite for the granting of the recovery and reflection period is that there are reasonable grounds to believe that a person is a victim of trafficking. As such, the granting of this period should not be conditioned on any actions of the victims, including their willingness to co-operate with the authorities. Moreover, victims should be offered a recovery and reflection period even if they indicate from the outset that they do not wish to co-operate with the criminal investigation against the traffickers or when they do not perceive themselves as victims of trafficking.

5. Non-discrimination

8. In line with Article 3 of the Convention, the recovery and reflection period should be applied without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Presumed victims of trafficking for the purpose of any form of exploitation (not just sexual exploitation) are entitled to a recovery and reflection period.

6. Application of the non-punishment principle

9. The granting of the recovery and reflection period is closely linked to the application of the non-punishment principle provided for in Article 26 of the Convention. Firstly, the fact that it is not possible to enforce any expulsion orders against victims during the recovery and reflection period puts on hold the deportation of victims for immigration-related offences which victims of trafficking are often compelled to commit by their traffickers. Further, the fact that a person is granted a recovery and reflection period as a presumed victim of trafficking should be taken into account by the law enforcement authorities when investigating criminal offences that may have been committed by the victim, and the authorities should ensure that victims are not punished for any offences that they were compelled to commit by their traffickers. In this context, it is of crucial importance to provide guidance and training on the application of Articles 13 and 26 of the Convention to the relevant authorities, as well as to ensure proper communication between law enforcement authorities investigating the case against the victim and those investigating the traffickers.

III. CONCEPTS OF INTERPRETATION

1. Reasonable grounds to believe that a person is a victim of human trafficking

10. Pursuant to Article 13, paragraph 1, of the Convention, the recovery and reflection period must be granted as soon as there are reasonable grounds to believe that a person is a victim of trafficking in human beings, i.e. before the identification process has been completed. While the Convention does not define "reasonable grounds," the threshold for such a determination should be low. The reasonable grounds standard does not require absolute certainty but is a sufficient indication that a person may be a victim of trafficking. Indicators of human trafficking have been developed by different international organisations[8] as well as at the national level. Specialised victim support organisations providing assistance to presumed victims of trafficking can play a key role in the determination of the reasonable grounds standard.

[8] Such as the International Labour Organization (ILO), the International Organization for Migration (IOM), the United Nations Office on Drugs and Crime (UNODC) and the International Centre for Migration Policy Development (ICMPD).

11. The conditions for the granting of the recovery and reflection period are fulfilled as soon as reasonable grounds are established, regardless of any other factors such as the fact that the person denies being a victim of trafficking or has not filed a criminal complaint, or that the authorities consider that it is unlikely that they will open an investigation into the case (e.g. if the trafficking occurred abroad). In this context, GRETA refers to the judgment of the European Court of Human Rights in the case *V.C.L. and A.N. v. the United Kingdom*, according to which "as soon as the authorities are aware, or ought to be aware, of circumstances giving rise to a credible suspicion that an individual… may have been trafficked or exploited, he or she should be assessed promptly by individuals trained and qualified to deal with victims of trafficking."[9]

12. When determining whether reasonable grounds exist, the authorities should take into account all available information, including the victim's account, statements of eyewitnesses, medical or expert reports, travel records, electronic evidence, as well as any other relevant information. The authorities should keep in mind the impact of trauma on victims' accounts, including the fact that they may be reluctant to share information and may make contradictory statements.[10] Moreover, they may still be dependent on their traffickers and may not see themselves as victims. In addition, victims may have a general distrust towards the authorities and may fear punishment, especially if they are illegally present in the country. Other factors which might influence the victim's readiness to disclose information include the victim's possible romantic relationship with the trafficker, stigma, or low cognitive ability.[11]

2. Without prejudice to the activities carried out by the competent authorities

13. Since the very purpose of the recovery and reflection period, besides recovery, is to allow victims to reflect on their participation in the criminal proceedings, the decision to grant such a period cannot be conditional on the victim's co-operation with the authorities. At the same time, Article 13, paragraph 1, of the Convention states that "this provision is without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating and prosecuting the offences concerned". The Explanatory Report to the Convention specifies that the decision to co-operate or not with the competent authorities does not exclude the obligation to testify when it is required by a judge, and that someone who is legally required to do so therefore cannot use Article 13(1) as a basis for refusing to testify.[12]

14. The apparent tension between the purpose of the recovery and reflection period and the obligation to testify can be resolved by applying the human rights-based and victim-centred approach of the Convention in order to strike a fair balance between the victim's needs and what is necessary for the investigation.

15. There may be situations in which the police need urgently to speak to a victim, for example in order to obtain information necessary to rescue other victims or to apprehend a perpetrator. In such cases an assessment should be made of whether these activities can be carried out without the participation of the victim (e.g. collection of information from other sources) and whether the activities can be postponed until after the end of the recovery and reflection period. If the participation of the victim during the recovery and reflection period is absolutely necessary to ensure the investigation, safeguards should be put in place in order to protect the victim. Victims should be accommodated in a safe environment and provided with all of the necessary information concerning, *inter alia*, the implications of their co-operation with the authorities and their rights as participants in criminal proceedings. If a victim is receiving psycho-social assistance from a victim support organisation, it is a good practice to consult representatives of that organisation with regard to

[9] European Court of Human Rights, *V.C.L. and A.N. v. the United Kingdom*, paragraph 160.
[10] See, for example, the United Kingdom Home Office's Statutory Guidance on Modern slavery: how to identify and support victims, which provides a detailed overview of the circumstances that may impact a victim's statement to the authorities.
[11] See the statement of the Helen Bamber Foundation at https://www.helenbamber.org/resources/latest-news/new-test-reasonable-grounds-decisions-modern-slavery-guidance-withdrawn
[12] See Explanatory Report to the Convention, paragraph 176.

whether the victim is ready to be interviewed. During any interview with the police, the victim should have the possibility to be accompanied by a person of trust[13] and/or a psychologist or a lawyer, and should be interviewed in a safe and non-traumatising setting, with particular attention being paid to avoiding further traumatisation. Unless indispensable for the criminal proceedings, the repetition of interviews of victims during the recovery and reflection period should be avoided.

16. While States Parties have an obligation under the Convention to ensure the effective investigation and prosecution of trafficking cases, criminal proceedings should not be dependent on the submission of a complaint or report by the victim (Article 27, paragraph 1). The investigation should not rely solely on the statement of the victim and whenever possible, law enforcement should work on collecting other relevant evidence while the victim recovers. This is not only in the interest of the victim but also of the investigation, since victims' statements to the authorities may well be unreliable if they are still in a state of shock from their ordeal.[14] Moreover, during the initial period following their detection, victims are likely to be fearful of their traffickers and reluctant to speak about their experiences.[15] Thus, putting pressure on them to provide a statement too early may result in them not providing reliable information.

IV. LEGAL BASIS AND PROCEDURE FOR GRANTING THE RECOVERY AND REFLECTION PERIOD

1. How should the recovery and reflection period be regulated?

17. In accordance with Article 13, paragraph 1, of the Convention, the recovery and reflection period must be explicitly provided for in internal law (i.e. not merely in an internal instruction or a handbook). Having a clear legal basis for granting the recovery and reflection period creates legal certainty and consistency of application. In the absence of an explicit legal framework concerning the recovery and reflection period, presumed victims of trafficking risk being deported and not being given the time needed to recover from the trauma experienced and to make an informed decision on possible co-operation with the authorities.

18. Furthermore, the procedure for granting the recovery and reflection period should be clearly defined. The decision to grant a recovery and reflection period could be entrusted to one or several government agencies, but it should always be a formal decision, thus providing greater protection for the victim. Moreover, a formal decision implies that the person concerned or his/her legal representative has the possibility to appeal a negative decision on the recovery and reflection period. GRETA notes the positive practice that exists in some countries allowing for specialised organisations detecting and assisting victims of trafficking to submit to the authorities a proposal to grant a recovery and reflection period.

19. The decision to grant a recovery and reflection period should not be in the form of a postponed "order to leave the country." Although such an authorisation allows victims to benefit from a recovery and reflection period, it does not reflect the spirit in which it should be granted, i.e. the absence of pressure on the victim allowing them to take a decision calmly.

[13] See Committee of Ministers Recommendation CM/Rec(2023)2 of the Committee of Ministers to member States on rights, services and support for victims of crime, Article 5(3).
[14] See Explanatory Report to the Convention, paragraph 174.
[15] See the statement of the Helen Bamber Foundation at https://www.helenbamber.org/resources/latest-news/new-test-reasonable-grounds-decisions-modern-slavery-guidance-withdrawn

20. The recovery and reflection period should be offered systematically to presumed victims of trafficking, without them having to apply for it. Presumed victims should be fully informed of their right to a recovery and reflection period as well as the assistance measures that accompany it. If a victim decides not to avail him/herself of this period and to leave the country instead or to co-operate with the authorities immediately (in this regard, see paragraphs 27 and 30 of this Guidance Note), the authorities should ensure that the victim was fully aware of the consequences of the decision not to accept a recovery and reflection period.

2. Who is entitled to receive a recovery and reflection period?

21. According to the Explanatory Report to the Convention, Article 13 is intended to apply to victims of human trafficking who are illegally present in a Party's territory or who are legally resident on a short-term residence permit, as such permits may expire or be terminated leaving the person exposed to deportation.[16] The latter can be especially relevant for victims of trafficking for the purpose of labour exploitation who entered the country on a temporary work and residence permit. Given that after the initial three months EU/EEA nationals can only stay legally in other EU countries if they meet a number of requirements (e.g. economic activity, sufficient resources, being enrolled as a student), the possibility that they would be considered as irregular cannot be excluded and they should be entitled to benefit from a recovery and reflection period.

22. Victims who were trafficked and exploited in a country other than the one in which they were identified as presumed victims are entitled to a recovery and reflection period as all other presumed foreign victims of trafficking.[17] This also applies to victims who are claiming international protection and are to be returned to another state pursuant to the Dublin Regulation[18] (see paragraph 49 of this Guidance Note).

23. While it is clear from the text of Article 13 of the Convention that this article is not designed for nationals of the country in which they are identified as victims of trafficking, or for victims with an unconditional right to remain in the territory, some countries have decided to provide in their internal law for the granting of a recovery and reflection period to victims who are their nationals or residents.[19]

3. When should the recovery and reflection period begin?

24. The recovery and reflection period must be granted as soon as there are reasonable grounds to believe that a person is a victim of trafficking in human beings, rather than upon completion of the identification process. In general, the recovery and reflection period commences on the day of the decision to grant such a period. However, some states may count as the starting date the date of the detection of a presumed victim of trafficking. In case there is a gap between the time of detection and the time a formal decision to grant a recovery and reflection period is issued, State Parties should ensure that victims are provided with all assistance measures they are entitled to from the earlier date.

[16] See Explanatory Report to the Convention, paragraph 172
[17] See the report of the 5th meeting of the Ad hoc Committee on Action against Trafficking in Human Beings (CAHTEH), para. 90.
[18] Regulation No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Dublin III Regulation).
[19] For example, Bulgaria, North Macedonia, Republic of Moldova.

4. How long should the recovery and reflection period last?

25. The Convention states that "such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on co-operating with the competent authorities," but it shall be for at least 30 days. The Convention does not provide for an upper limit. Some countries allow for a longer recovery and reflection period (e.g. six months). GRETA has welcomed the provision in these countries of a recovery and reflection period longer than the minimum 30 days envisaged in the Convention and/or the more flexible arrangements that exist in the case of child victims.[20] Countries that only have an upper limit for the recovery and reflection period should guarantee the minimum duration of 30 days.

5. Termination of the recovery and reflection period

26. The recovery and reflection period can end in one of four ways: 1) the time for a recovery and reflection period has lapsed (see the section below on residence permits); 2) the victim decides to co-operate with the authorities and is granted a short-term residence permit under Article 14 of the Convention; 3) the victim decides to end the recovery and reflection period voluntarily; or 4) the decision to grant a recovery and reflection period is revoked/not granted (see paragraphs 31-39 of this Guidance Note).

27. Depending on the circumstances, some states may grant victims of trafficking a residence permit under Article 14 immediately, without first giving them a recovery and reflection period. For example, a victim may decide to co-operate with the authorities from the moment of detection. Alternatively, a victim may reach the decision to co-operate and file a criminal complaint before the end of the recovery and reflection period, in which case the recovery and reflection period will end, and the victim will be granted a short-term residence permit. From the victim's standpoint, this could be advantageous, since the residence permit is issued for a longer period of time and it comes with more rights and therefore should be more secure and foreseeable.

28. However, State Parties should be cautious when terminating the recovery and reflection period before the expiry of the 30 days or bypassing it altogether. First, even if the victim is able to reach an informed decision on co-operating with the authorities before the expiry of the recovery and reflection period, the need for recovery may still exist. In such cases, State Parties should check whether it is a well-informed and voluntary decision and whether the victim has sufficiently recovered. Secondly, while a residence permit based on the victim's co-operation with the authorities is usually for a longer time than the recovery and reflection period, it can be terminated early on short notice depending on the status of the criminal proceedings. For example, in some countries, this could happen if criminal proceedings are not initiated or continued because a suspect cannot be identified, no further evidence can be collected, or there is no longer a need for the victim to participate in the proceedings. In all of these cases, the victim is left without support and without legal residence in the country.

29. Further, it is important to distinguish the above-mentioned cases from the situation in which the recovery and reflection period is terminated early because the victim has declared that he/she is not willing to co-operate with the authorities. This is not a valid ground for termination of the recovery and reflection period and, unlike in the situation where the victim is issued a residence permit based on co-operation with the authorities, victims are left without any support and are deprived of the possibility to recover.

30. The recovery and reflection period may also be terminated prematurely and voluntarily by the victim in case he/she decides to leave the country. While States Parties have an obligation to offer a full recovery and reflection period to a victim, it is clear that they cannot prevent a person from leaving the country. Thus, if a victim declines to make use of the recovery and reflection period because he/she wants to leave the country,

[20] For example, in Iceland, Norway, Poland, Spain.

the state should take measures and safeguards to ensure that this decision is well-informed and voluntary. States Parties should also ensure that they are in compliance with their obligations under Article 16 of the Convention, concerning the return and repatriation of victims. The managing of these kinds of situations requires diligence, tact, and an open approach from the officers and agencies involved.

6. Grounds for not granting or revoking the recovery and reflection period

31. Article 13 of the Convention provides for two situations in which State Parties are not bound to observe the recovery and reflection period, namely, if i) grounds of public order prevent it, or ii) if it is found that victim status is being claimed improperly. These are narrow exceptions which should be applied on a case-by-case basis. Some EU Member States apply another exception which is provided for in EU Directive 2004/81, namely when the victim actively and voluntarily renewed contacts with the trafficker(s) (see paragraphs 55-58 of this Guidance Note).

i. Grounds of public order

32. Neither the text of the Convention nor the Explanatory Report gives guidance on the interpretation of the notion of public order. There is no consistent and clear definition of this concept in law. When considering the application of the public order exception in the context of Article 13, reference can be made to other relevant international standards described below.

33. The grounds of public order are intended to apply in very exceptional circumstances and cannot be used by States Parties to circumvent their obligation to provide access to the recovery and reflection period. Therefore, the public order exception in Article 13 should be applied restrictively with due regard to the circumstances of the individual case. The State has the burden of proof and the decision to apply the public order exception must be substantiated with evidence. Of relevance in this context is the case law of the European Court of Human Rights in relation to the public order exception in Article 1 of Protocol No. 7 of the European Convention on Human Rights (ECHR) related to the expulsion of lawfully resident aliens. The Court has stressed that the fact of "merely indicating that the applicant was dangerous for public order and security, without relying on the slightest argument in support of that assertion, cannot be justified by the provisions of paragraph 2 of Article 1 of Protocol No. 7."[21]

34. The application of the public order clause requires an individual examination and respect for the principle of proportionality. Furthermore, under EU case law, there must be a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.[22] A long-term resident can only be expelled if the person is an actual and sufficiently serious threat to public order.[23] If a person is not a long-term resident states have a wider discretionary power, but nevertheless an individual decision must be made and the principle of proportionality be adhered to. The grounds for refusal must be substantiated and a right to effective judicial protection should be in place.[24]

35. In general, a conviction for or probable cause that the person has committed a serious criminal offence might trigger the public order clause under Article 13, albeit without infringement of the non-punishment principle guaranteed in Article 26. If a victim of human trafficking was compelled to be involved in unlawful activities, the public order clause should not be applied. The fact that victims may have difficulties disclosing

[21] European Court of Human Rights, *Takush v. Greece*, paragraph 63.
[22] European Court of Justice, *HT v Land Baden-Württemberg*, paragraph 79.
[23] Member States "must take account of the duration of residence in the territory, the age of the person concerned, the consequences for the person concerned and family members, and the person's links with the country of origin." See Meijers Committee (Standing Committee of Experts on International Immigration, Refugee and Criminal Law), Public Policy Restrictions in EU Free Movement and Migration Law - General Principles and Guidelines (2021), p. 35.
[24] Ibid., p. 47 and following.

their situation, including any unlawful activities they may have been compelled to commit, should be taken into account. It is for these reasons that the public order clause should be applied with the greatest caution. The protection of public order needs to be balanced against the need and positive obligation to provide support to victims of trafficking.[25]

36. Furthermore, the public order clause can only be applied vis-à-vis victims of trafficking on an *individual* basis as opposed to *situational* cases. This means, for example, that in the case of large groups of migrants being intercepted at the border, steps must be taken to identify any victims of trafficking amongst them and to assess, on a case-by-case basis, their individual threat to public order before any decision disqualifying them from the recovery and reflection period is made.[26]

ii. Improperly claimed victim status

37. Similar to the public order clause, the concept of 'victim status claimed improperly' is not explained in the Convention nor in its Explanatory Report. This clause was included based on concerns that the recovery and reflection period might be abused by those seeking to circumvent immigration laws. GRETA stresses that this ground for the revocation of or refusal to grant a recovery and reflection period should be applied on a case-by-case basis by fully taking into account the individual circumstances of each victim.

38. As outlined in paragraph 12 of this Guidance Note, there are a number of reasons why victims of trafficking may not be able to provide the authorities with full and/or adequate information. In such a situation it may seem like the victim is claiming the victim status improperly, but the lack of information is actually due to the trauma caused by the trafficking situation. Therefore, State Parties should apply this exception with caution, taking into account all of the circumstances of the case. Decision-makers should be familiar with how trafficking affects victims and should take all of the relevant factors into account when assessing possible gaps in evidence or an apparent lack of credibility on the part of the victim. The burden of proof as to whether a victim status has been improperly claimed should lie with the state. The fact that the criminal investigation has not yielded results should not be a reason to conclude that victim status was claimed improperly.

39. Victims of trafficking should have the possibility to appeal a decision not to grant the recovery and reflection period on the basis of one of the grounds mentioned above. While the appeal proceedings are ongoing, the execution of expulsion orders should be put on hold.

[25] Matrix Chambers, 'High Court orders no public order disqualifications of slavery victims may take place without a risk assessment pending trial' (27 July 2023).
[26] See 10th General Report on GRETA's activities (2021), paragraphs 145-146.

V. ASSISTANCE MEASURES DURING THE RECOVERY AND REFLECTION PERIOD

40. Article 13 of the Convention explicitly stipulates that persons who are granted the recovery and reflection period shall be entitled to the assistance measures enumerated in Article 12, paragraphs 1 and 2, of the Convention. These assistance measures must be guaranteed not only once the identification procedure has been completed (Article 10), but as soon as there are reasonable grounds to believe that a person is a victim of trafficking in human beings. Providing timely and effective assistance and protection is crucial not only for the victims' recovery and successful reintegration but also in order to empower them to sever ties with their traffickers and to be able to support the investigation and prosecution of the case if they so decide.[27] Any delays or restrictions in providing assistance can leave victims vulnerable to further trafficking or re-trafficking.[28] The assistance should be secured regardless of whether a presumed foreign victim of human trafficking has access to it on other grounds.

41. The assistance encompasses at least providing a standard of living sufficient to guarantee the victims' subsistence and includes appropriate and secure accommodation, psychological and material aid. The accommodation should be tailored to the victim's specific needs. Access to emergency medical treatment is particularly necessary for victims of trafficking who have been exploited or exposed to violence. This type of assistance may also allow for evidence of the violence to be kept so that, if they wish, the victims can take legal action.[29]

42. Translation and interpretation services are essential measures for guaranteeing access to rights, which is a prerequisite for access to justice and is not limited to the right to an interpreter in judicial proceedings. Counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand, are also essential for the victims' empowerment and recovery. The information and counselling should enable victims to evaluate their situation and make an informed choice from the various possibilities open to them.[30]

43. Addressing safety and protection needs is fundamental, given the susceptibility of victims to further exploitation and harm. It is essential to ensure an individual approach and provide measures that take victims' safety fully into account. Furthermore, considering that the needs of victims might be specific and vary based on different factors, such as gender, age, and form of exploitation, assistance and protection measures should be provided with due consideration to the individual circumstances of the victim.

44. Although the Convention does not oblige States Parties to guarantee the right to work during the recovery and reflection period, GRETA has stressed that allowing victims who wish to work during this period can be beneficial to regain personal, economic and social autonomy.

[27] See 8th General Report on GRETA's activities (2019), paragraph 87.
[28] Ibidem.
[29] See Explanatory Report to the Convention, paragraph 157.
[30] See Explanatory Report to the Convention, paragraph 160.

VI. RELATIONSHIP BETWEEN THE RECOVERY AND REFLECTION PERIOD AND RESIDENCE PERMITS

45. The Explanatory Report of the Convention states that the recovery and reflection period should not be confused with the issue of a residence permit under Article 14, paragraph 1, of the Convention.[31] This article requires State Parties to provide in their internal law for the granting of a renewable residence permit to victims if the competent authority considers that their stay is necessary owing to their personal situation and/or the competent authority considers that their stay is necessary for the purpose of their cooperation with the competent authorities in investigation or criminal proceedings.

46. It is up to the State Party to include one or both of these situations as separate grounds for a residence permit. The residence permit based on co-operation with the competent authorities was introduced to address the fact that victims are often hesitant to contact national authorities due to fear of immediate deportation to their country of origin as undocumented migrants in the country where they were exploited.[32] The personal situation ground for a residence permit encompasses various circumstances, such as the victim's safety, health condition, family circumstances, psychological needs or other relevant factors that need consideration.[33] GRETA has highlighted the importance of allowing victims who might be afraid to co-operate in the investigation, for example because they have been threatened by the traffickers, to benefit from a residence permit on the basis of their personal situation.

VII. RELATIONSHIP BETWEEN THE RECOVERY AND REFLECTION PERIOD AND INTERNATIONAL PROTECTION

47. Pursuant to Article 40, paragraph 4, of the Convention, nothing in the Convention shall affect existing international legal obligations, including those under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. Specifically, this reaffirms that being a trafficking victim does not exclude the right to seek asylum, and the State Parties must ensure that victims have access to fair and efficient asylum procedures. Additionally, the States must uphold the principle of *non-refoulement*, preventing the return of individuals to countries where they may face persecution or harm.[34]

48. As a general principle, the asylum-related status granting a possibility for a person to legally reside in the territory of a State Party does not exclude the person's right to a recovery and reflection period under Article 13 of the Convention. Indeed, all presumed foreign victims of trafficking, including asylum seekers and those falling under the Dublin Regulation, should be provided with a recovery and reflection period and should be able to fully benefit from all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention. As pointed out above, although Article 13, paragraph 1, of the Convention prohibits the enforcement of an expulsion order against a presumed foreign victim of human trafficking and imposes an obligation to authorise his or her stay in the territory of a State Party, the recovery and reflection period serves other aims, namely the provision of protection and assistance measures to presumed victims of trafficking. Similar or parallel measures for asylum seekers on the national level do not necessarily align with those envisaged by the Convention, e.g. access to specialised accommodation and psychological support. Furthermore, the duration of the asylum procedure (when it is expedited) may be shorter than the authorisation of stay on the ground of the recovery and reflection period.

[31] See Explanatory Report to the Convention, paragraph 175.
[32] See Explanatory Report to the Convention, paragraph 185.
[33] See Explanatory Report to the Convention, paragraph 184.
[34] See GRETA's Guidance Note on the entitlement of victims of trafficking, and persons at risk of being trafficked, to international protection.

49. As noted in paragraph 22 of this Guidance Note, the recovery and reflection period applies to presumed victims of trafficking detected during the asylum procedure who are to be returned to another state pursuant to the Dublin Regulation. It is the state on whose territory the victim is present that has the obligation to provide the recovery and reflection period and this obligation cannot be transferred to another state. The European Court of Justice has taken the same position with regard to the prohibition of expulsion under EU Council Directive 2004/81/EC, when it found that a decision on transfer to another EU State pursuant to the Dublin Regulation may be taken but cannot be executed during the recovery and reflection period.[35]

VIII. APPLICATION OF THE RECOVERY AND REFLECTION PERIOD TO CHILDREN

50. The Convention does not distinguish between adults and children in respect of benefiting from the recovery and reflection period. Such a period should be offered to all presumed victims irrespective of their age. However, some peculiarities should be considered when it comes to children, namely the authorities must bear in mind the best interests of the child. Some State Parties provide for a longer recovery and reflection period for child victims of trafficking in human beings.[36]

51. It is crucial for unaccompanied children to be assigned a legal guardian during the recovery and reflection period. With due consideration to the best interests of the child, the legal guardian decides on the child's participation in the assistance and protection programmes offered by the State Party during the recovery and reflection period.

IX. PRACTICAL STEPS TO ENSURE CONSISTENT APPLICATION OF THE RECOVERY AND REFLECTION PERIOD

1. Systematic provision of information to victims

52. Presumed and formally identified victims of human trafficking should be proactively provided with information on their rights, including the right to a recovery and reflection period and the services and assistance measures provided during this period, as well as how to access them. The information should take into account the victim's age, maturity, intellectual and emotional capacity, literacy and any mental, physical, or other disability which may affect the ability to understand. The information should be provided irrespective of the victim's capacity or willingness to co-operate in criminal proceedings.

2. Training and instructions to relevant professionals

53. GRETA's monitoring shows that the relevant authorities are often not aware of the fact that victims of trafficking in human beings are entitled to receive a recovery and reflection period. As a result, victims are not offered this period when they come in contact with the authorities, especially when they are not accompanied by specialised NGOs. Therefore, providing training to the relevant officials is of crucial importance. All officials whose tasks may put them into contact with victims of trafficking should be made aware of the existence of the recovery and reflection period. Officials involved in the identification of victims should be issued with clear instructions stressing the need to offer and explain the recovery and reflection period to presumed victims. Furthermore, law enforcement officers or other staff responsible for victim identification should systematically refer victims of trafficking to structures providing assistance, for example, specialised NGOs which enable them to exercise their rights, including those prescribed in Article 12, paragraphs 1 and 2, of the Convention.

[35] European Court of Justice C-66-21 20 October 2022; *O.T.E. vs Staatssecretaris van Justitie en Veiligheid* (Netherlands).
[36] For example, Croatia, Cyprus, Poland.

3. Data collection

54. In a number of State Parties, GRETA has observed the absence of data or lack of disaggregated data concerning the granting of the recovery and reflection period. The collection of such data is important for monitoring observance of the provisions on the recovery and reflection period.

X. EFFECT OF THE DISCONNECTION CLAUSE (ARTICLE 40, PARAGRAPH 3, OF THE CONVENTION)

55. Article 40, paragraph 3, of the Convention contains a "disconnection clause" added with the view to regulating potential conflicts between EU law and the Convention. This provision states that "without prejudice to the object and purpose of the present Convention and without prejudice to its full application with other Parties, Parties which are members of the European Union shall, in their mutual relations, apply Community and European Union rules in so far as there are Community or European Union rules governing the particular subject concerned and applicable to the specific case."

56. EU Directive 2004/81/EC referred to in paragraph 3 of this Guidance Note is of particular importance as it includes a reflection period in its Article 6. In principle, this article falls outside the scope of the disconnection clause because the granting of the reflection period concerns a relation between a state and the individual who is a presumed victim of trafficking, and not between EU Member States in their mutual relations.[37]

57. However, there are situations in which the Convention and the EU Directive address the same issue in different ways, even though the disconnection clause is not applicable. Although EU Directive 2004/81/EC only applies to non-EU citizens it would be against the object and purpose of the Convention not to provide the recovery and reflection period to EU nationals residing in another EU member state who became a victim of trafficking. As such, and without limiting the rights of these EU nationals under EU law, they should be granted the recovery and reflection period. Given the fact that the EU Directive does not provide for a minimum length and in line with the Convention, the period should be at least 30 days.

58. According to the above EU Directive, the recovery and reflection period can be terminated if the victim has actively, voluntarily and on his/her own initiative renewed contact with the perpetrator(s) of the offence, which does not exist as grounds for termination of this period under the Convention. Taking into account that in human trafficking cases the perpetrator and the victim frequently know each other, and that the victim is often dependent on the perpetrator, as well as the consequences of trauma and the fact the victim is in a foreign country, it is not unusual for a victim to renew contact with the perpetrator. The termination of the recovery and reflection period in these cases would harm the essence of Article 13 of the Convention as the protection and recovery of the victim would become null and void. EU Member States should therefore be cautious to end the recovery and reflection period in case of renewed contact with the perpetrator(s). It should be determined on a case-by-case basis whether in such cases the termination of the recovery and reflection period indeed is in line with the object and purpose of the Convention and does not lead to a violation of the Convention.

[37] Such situations would involve, for example, the application of the Dublin Regulation (see paragraphs 48 and 49 of this Guidance Note) or cross-border co-operation between EU Member States.

The Council of Europe Convention on Action against Trafficking in Human Beings, in force since 2008, is an international treaty which provides a comprehensive framework for combating trafficking from a human-rights based and victim-centred perspective. Provided for in Article 13 of the Convention, the recovery and reflection period is an essential step in protecting and assisting victims of trafficking.

This Guidance Note highlights the purposes and principles of the recovery and reflection period, the legal basis and procedures for granting it, and its relationship with other provisions of the Convention. The purpose is to strengthen the implementation of the obligation to grant a recovery and reflection period to victims of trafficking and provide concrete and practical guidance for relevant authorities, agencies and civil society organisations.

The recovery and reflection period must be granted as soon as there are reasonable grounds to believe that a person is a victim of trafficking in human beings. The aim is to enable victims to recover a minimum of psychological stability and to allow them to make an informed decision on whether they want to co-operate with the competent authorities in the investigation and prosecution of traffickers. During this period, it is not possible to enforce expulsion orders against the presumed victims, thus guaranteeing them essential protection.

trafficking@coe.int
www.coe.int/trafficking

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The Council of Europe is the continent's leading human rights organisation. It comprises 46 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

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