



IRCT position paper on the Proposal for a recast Reception Conditions Directive (July 2016)

INTRODUCTION

With a network of 157 independent torture rehabilitation centres in 76 countries, the IRCT is the world's largest membership-based civil society organisation working in the field of torture rehabilitation and prevention. There are currently 33 IRCT member centres in 16 EU Member States that all offer a range of holistic rehabilitation services for asylum seekers and refugees. These services include medical, psychological, legal and social support to asylum seekers and refugees.

This position paper presents the IRCT's comments on the European Commission's proposal for a recast of the Reception Conditions Directive¹. It focuses on the following three areas: identification of torture victims and evaluation of their special reception needs; responses to special needs, including access to rehabilitation; impact of non-compliance measures.

The impact of torture on asylum seekers' reception conditions needs

Among asylum seekers, torture victims make up a specific group. According to a recent systematic review² of literature, virtually all asylum seekers have experienced some kind of war-related potentially traumatic experiences. Another research³ showed that torture was the strongest factor associated with trauma, from which 30.6% of the refugees and other conflict-affected persons suffer.

The negative consequences of torture on the daily life of a survivor are tremendous and take a variety of forms. They are both physical, psychological and social. Long-lasting suffering from **mental health disorders** such as depression and posttraumatic stress disorder (PTSD) are commonplace. These disorders often translate in uncontrollable anxiety, difficulties in engaging with others, nightmares and sleeping disorders among others. Memory, judgment, language and thinking skills are affected. The effects of torture also spread to the victims' children and family who suffer similar symptoms with devastating impact on their lives.

As a result, torture victims frequently have special reception needs. They usually **require specialised rehabilitation services** (including physical and psychological treatment). Required reception conditions adaptations often include material arrangements (eg housing in a single room), exclusion from detention and additional support to carry out their daily activities.

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¹ European Commission, Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast), COM(2016) 465 final, 13 July 2016, hereinafter 'the Directive'.

² Sigvardsson, E. *et al.* (2016). "Prevalence of torture and other war-related traumatic events in forced migrants: A systematic review". *Journal on Rehabilitation of Torture Victims and Prevention of Torture*, 26:2, pp. 41-73. Available [here](#).

³ Steel, Z. *et al.* (2009). "Association of torture and other potentially traumatic events with mental health outcomes among populations exposed to mass conflict and displacement: a systematic review and meta-analysis". *JAMA: the Journal of the American Medical Association*, 302:5, pp. 537-49.



Previous versions of the Reception Conditions Directive⁴ attempted to address these needs through the lenses of the concept of “**vulnerability**”: Member States had to identify “vulnerable” applicants and respond to their needs. The IRCT analysed the transposition and implementation of these provisions, as well as their impact on asylum seekers, in a recent report covering 8 Member States⁵. Research showed that **torture victims are not identified in a systematic and timely manner**, and as a result, **do not have access to rehabilitation services nor adaptations** of the reception conditions according to their needs. This has dramatic effects on their physical and mental health status. The following views are based on these findings.

SUMMARY OF VIEWS

A more “practical” evaluation of the special needs of torture victims

The IRCT believes this revision is a welcome opportunity to address some of the identified shortcomings of the current system. We welcome the conceptual changes in the proposal that remove all references to the “vulnerability” of the applicants and rather **focus on their “special reception needs”**. Indeed, the current vague wording of the provisions renders identification impracticable and difficult to implement. It proved too difficult to develop procedures or tools that captured the notion of “vulnerability” which, without being defined in the Directive, was interpreted in different ways by responsible authorities that often missed their objective. Focusing on tangible, material needs is a much more appropriate manner to ensure torture victims’ rights are enforced. The IRCT therefore recommends adopting these changes throughout the proposal.

Early identification is the key to ensure victims have effective access to rehabilitation and the specialised support and adapted reception conditions they require. In this regard, the IRCT also supports the obligation to **systematically assess special reception needs as soon as possible**, thereby addressing two pitfalls of the current directive, namely, the lack of systematic evaluation of the needs and the delayed identification of torture victims. These provisions are particularly relevant for torture victims as they are currently not identified through the current processes that often rely only on visible signs of “vulnerability”⁶. Furthermore, early identification is essential to allow for prompt access to special assistance, such as rehabilitation services, and to prevent the aggravation of symptoms. The IRCT recommends further clarifying the timing of this assessment so that it takes place before a decision is made on admissibility.

Effective identification of torture victims is usually based on two steps, namely a non-medical screening followed by a specialist evaluation. The **proposed two-stage assessment**, relying on the identification of signs of special needs followed by a **mandatory referral to a doctor or a psychologist** is a positive inclusion. The IRCT calls for the use of the PROTECT questionnaire, which was specifically designed for this purpose, as the main tool for identifying, in asylum procedures, signs of special needs potentially related to torture. In addition, the personnel identifying the signs and the health professionals involved in these assessments must be trained. This training should be in line with international standards and developed in close cooperation with experts in this field.

⁴ Including the current Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (in particular Articles 21 and 22).

⁵ IRCT (2016). *Falling Through the Cracks: Asylum Procedures and Reception Conditions for Torture Victims in the European Union*. Regional Report. Available [here](#).

⁶ The experience of several IRCT members in the EU show that identification processes are either highly flawed or do not exist at all.

Process of Recognition and Orientation of Torture Victims in European Countries to Facilitate Care and Treatment (PROTECT).

The PROTECT questionnaire is a tool aiming to enhance the identification of torture victims in the asylum process and to raise awareness of the need to facilitate their access to immediate health care and treatment. It was developed by 12 expert EU-based NGOs in 10 countries. It is designed to check for the signs and symptoms of the most common health problems encountered by asylum seekers who could have suffered traumatic experiences. This screening checklist has been devised so that nonmedical personnel, such as immigration authorities, civil servants, border guards or other stakeholders accessing asylum-seekers can use it in the early stages of the procedure. As a second step, the asylum seeker should have access to a full psychiatric or psychological diagnosis.

The tool is available [here](#).

Safeguarding appropriate reception conditions of applicants with special needs, including access to rehabilitation

Once identified, torture victims have a **right to rehabilitation**. The IRCT encourages that the text explicitly refers to holistic rehabilitation since this is the globally recognised methodology through which torture victims can rebuild their lives. Holistic rehabilitation helps victims through a combination of services including medical, psychological, legal and social support. This right is clearly established in international law and Member States have an obligation to make available to victims rehabilitation which is appropriate and promptly accessible⁷. This should be reflected in Union law. Rehabilitation can be provided directly by the State in public medical institutions or through the funding of non-governmental organisations delivering such services.

To allow for victims to restore their lives, rehabilitation requires a conducive environment. However, a number of new **provisions have a direct negative effect** on torture victims. The IRCT is deeply concerned by measures introduced in the proposal aiming at sanctioning applicants for non-compliance. They can be detrimental to torture victims, potentially re-traumatising them and are incompatible with fundamental rights principles.

The IRCT highlights that torture victims must be **exempted from detention** and any use of coercion as they often recall memories of past persecution and reactivate or reinforce symptoms of PTSD. Similarly, the obligation to report – especially when reporting occurs at police stations – could be re-traumatising for torture victims.

The **restriction or even withdrawal of reception conditions** can have a severely negative impact on the living standards of torture victims and impede their right to rehabilitation. The restrictions to freedom of movement can further hinder access to rehabilitation services. The exclusive provision of material reception conditions in kind can prevent torture victims from buying non-reimbursed medicines or paying for their transportation to the rehabilitation centre, thereby impeding their recovery.

The IRCT is also worried about the possibility for a Member State to exceptionally apply different standards, for instance in cases of disproportionate numbers of applicants. The IRCT believes that applicants with special needs should **always have access to full reception conditions** even in these situations. Likewise, their special needs should be planned for in the drafting of contingency plans by Member States. Additional safeguards should be introduced in this regard.

⁷ See for instance UN Committee against Torture (2012). *General comment no. 3. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Implementation of article 14 by States parties*. Available [here](#).



Finally, in order for this instrument to be adequately implemented, Member States, EU agencies and other stakeholders will need a clearly defined common operational framework. The IRCT welcomes the **development of operational standards and indicators** on reception conditions (including on the assessment of special needs) by the **European Asylum Support Office (EASO)**. The IRCT calls on EASO to develop those standards and indicators in close cooperation with the civil society through a dedicated working group of the Consultative Forum and an open consultation. The IRCT recommends the specific situation of applicants with special needs to be systematically taken into account when designing the standards and indicators.

MAIN RECOMMENDATIONS

Conceptual framework

- The policy framework towards torture victims should be based on the concept of their “special needs”, not of their “vulnerability”.
- Consistency should be ensured with other proposals and currently enforced legislative instruments when referring to “applicants with special needs” by adequately removing references to their vulnerability.

Assessment of special needs

- Special needs should be assessed as early as possible.
- Special needs should be assessed through the proposed two-stage process, i.e. an initial nonmedical screening followed by a specialised medical evaluation.
- In the implementation of this provision, Member States are encouraged to rely on the PROTECT questionnaire.
- All personnel intervening in this process should be adequately trained.

Response to special needs

- The right to rehabilitation for torture victims should be ensured through the provision, in all Member States, of specialised healthcare services in line with international obligations.
- Applicants with special reception needs should be exempted from the sanctions for non-compliance and detention.
- Applicants with special reception needs should always be guaranteed access to appropriate reception conditions, which may be, in their case, of a higher standard than a “dignified treatment”, even when they absconded. The scope of “emergency healthcare” should not only include the treatment of serious mental disorders but also rehabilitation services.
- All restrictive measures should be based on a thorough assessment of the individual applicant’s potential special reception needs and capacity to cope with such measures.
- Applicants with special reception needs should still benefit from the full reception conditions to which they are entitled when a Member State is “exceptionally applying different standards”. Contingency plans should include safeguards in this regard.

Operational implementation

- EASO should further develop operational tools and guidance in close cooperation with the civil society.