

Minutes Focus Group Meeting 7 June 2018, Vienna, Austria

Plenary: Welcome and Introductions

After welcoming all participants, Suzanne Hoff and Xenia Commandeur of La Strada International introduced the project, the research, and the aim of the day.

Compensation is an internationally recognized right of trafficked persons, and most European countries have legal provisions for victims of crime to claim compensation or to otherwise be compensated for material and non-material damages. However, even when the legal framework is in place, the right of people who are victim of trafficking or other related crime to actually seek and obtain compensation remains difficult or impossible to exercise in practice. Barriers prevent them from effectively enjoying this right. Research of the La Strada International project **COMP.ACT (2010-1012)** showed that very few victims have the information and the means to seek compensation. Even fewer actually receive a compensation payment. As long as barriers to compensation exist, European Governments fail to fully implement their obligations under international legislation, including article 17 of the EU Trafficking Directive¹ and article 16 of the EU Victim Directive², which ensure victims' access to compensation.

La Strada International's present project on compensation: *Justice at Last - European Action for Compensation for victims of crime* addresses this issue. The 2018-2019 project is funded by the European Commission and another donor, and is a follow-up of the earlier COMP.ACT project. The project consists of three phases: research, capacity building, and advocacy and awareness raising. The focus group meeting is part of the **research phase**, which centres around three assessments. These three assessments, conducted within the framework of the project, identify and analyse remaining barriers, as well as needs and best practices on how to overcome such barriers, each focusing on a different element of compensation: legal procedures and alternative mechanisms, victim needs, and referral. The **three assessments** have thus far gathered information from earlier research on compensation, and from an initial analysis of 60+ legal cases collected by the Justice at Last consortium partners. The preliminary findings obtained from these cases are further supported by information collected from country analysis through questionnaires filled in by the Consortium partners.

The **Focus Group Discussions** of 7 June 2018 gathered input and aimed to validate and complement preliminary findings of the three assessments by representatives of diverse stakeholder groups including NGOs, lawyers, prosecutors and judges, and some national and international governmental representatives. Further interviews and desk research will complement and finalise the assessments. The assessments will be concluded with three reports due in summer, which form the basis of a policy document for further lobby and advocacy. The assessment reports will also be used to feed into the development of training curricula for professionals and an awareness raising campaign that are part of the subsequent stages of the *Justice at Last* project, and into future activities.

Annet Koopsen, Dutch lawyer and trainer of judiciary in the Netherlands, with long term experience on claiming compensation in criminal procedures for victims of crime, in particular trafficked persons, introduced the European legal framework to claim compensation.

¹ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

² Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA



In her presentation, Annet Koopsen shared a model for claiming compensation, listing the most important questions that need to be asked relating to victims' wishes and needs, and options available. Based on the answers to these questions, the way of claiming compensation is chosen: through criminal or civil proceedings, a compensation fund, or a combination of both. The second step is to get clarity on the kind of material and non-material damages to be claimed, for which examples were given. Further the need for collaborating with police and prosecution was stressed to seek sufficient evidence: it is important to ensure that damages suffered are included in the police report and are part of the criminal file; that evidence is collected and witnesses found to confirm the damages. The third step is safeguarding payment by the perpetrator, with support of freezing or confiscation of assets. This is followed by the fourth step, namely to present the claim. Tips and suggestions for claims in criminal and civil proceedings were shared. The last step relates to claim the money for the victim, from the state (e.g. a compensation fund) or from the perpetrator through the frozen or confiscated assets. The audience is reminded that assistance to victims of trafficking shall not be conditional to their willingness to cooperate in the criminal investigation, prosecution, or trial, as reflected in Article 11.4 of the 2011/36/EU Anti-Trafficking Directive.

Her introduction is followed by the introductions of the three focus group discussion topics by their three respective researchers: Liliana Sorrentino (legal procedures and alternative mechanisms), Irena Konečná (referral), and Diliana Markova (victim needs).

The introductory presentation on Legal Procedures and Alternative Mechanisms by Liliana Sorrentino shares information on the preliminary findings of the research. She presented the advantages and disadvantages of existing criminal and civil procedures used, but noted that for the studied cases mainly criminal procedures were used. In case human trafficking cannot be proven or no prosecution takes place for this crime, in some cases victims were assisted to seek compensation through labour law redress mechanisms, or in civil proceedings. Often, however, in civil proceedings no free legal aid is available unless provided by an NGO or public institution, and measures for prevention of re-victimisation are also not available. In civil proceedings, the residential status of victim often also plays a critical role. Other alternatives are state compensation funds for victims of crime, however trafficked persons often encounter a number of barriers in accessing such funds due to their restrictive eligibility criteria. With regard to alternative mechanisms and collective claims, the cases collected indicate that there is very limited experience in this area among the NGOs involved in the project, and cooperation with trade unions is limited too. Lastly, promising practices are shared, such as the Dutch system of state advance payment of compensation to the victim, the provision of specialised free legal aid in various countries, etc.

The introductory presentation on Referral by Irena Konečná started with the overarching questions to be answered in her research, which included the focus on the factors contributing to the success or failure of cooperation between stakeholders, nationally and internationally, in the referral of victims towards a compensation claim. She continued with the definition of a national referral mechanism (NRM), and followed with the components of the NRM that are most relevant to access to compensation. It was noted that safe reporting of the crime is a determining moment, and for this, access to legal aid is essential. It was further noted that a lack of access to legal aid means that not all cases are known. She then continued with the definition of a transnational referral mechanism (TRM), and shared that the evaluation of the Victims' Rights Directive (Dec '17) showed that lawyers and judges remain unsure about how cross-border incidents would be resolved. The consultant then shared four scenarios that she developed of cross border situations, and invited participants to provide more feedback and to inform her if more possible scenarios could be considered.

The introductory presentation on Victim Needs by Diliana Markova kicked off with the rhetoric question why a victim would bother to claim compensation, since compensation is often not awarded and a very hard process and whether it would then serve the victim's need. She also touched upon the differences between civil, criminal and other procedures, but now more from the perspective of the victim, including options to claim material and immaterial damages; access to compensation funds; and their eligibility requirements and awards. The presentation noted that there are victims who refuse to apply for compensation, because they do not want money from their perpetrator, which is seen as 'dirty money'. The conditionality of compensation was remarked, including conditions on regular versus irregular migration status, and the often-lacking options to claim



compensation for unlawful work conducted. The presentation continued with possible negative side effects of compensation procedures to consider, such as the risk of revictimisation, the poor chances of success in the legal procedure versus the trauma that the procedure may cause, and the obstacles to claim compensation for irregular migrants which faced labour exploitation. Financial bottlenecks were also highlighted, like fees to be paid for court procedures. It was noted that court fees may be exempted, but only under the condition of providing personal information, and it was noted that legal fees sometimes need to be reimbursed at a later stage, depending on the income level of the person. Lastly, the presentation remarked that for traffickers, payment of compensation may be an incentive, to apply for parole.

Group Discussions

Participants were divided into three groups that were diverse in terms of professional background and nationality. During three rounds of discussions, these groups rotated to allow all participants to attend and provide input on all three assessment topics.

Please note that detailed minutes of the separate sessions are only provided to the consultants for use in the research. Consortium partners will have an opportunity to review the draft assessment reports. Below we provide only a concise summary of the discussions per topic.

Summary of Group Discussions on Legal procedures and alternative mechanisms

Facilitation by Liliana Sorrentino

Each discussion round started with a presentation of the advantages and disadvantages of the different legal procedures. In general, the participants acknowledged and agreed with the presented advantages and disadvantages, while some specific country situations were mentioned. For instance, it was stated that compensation claims via criminal procedures can be quicker than civil proceedings, even though there are examples that criminal procedures can take very long. It was further acknowledged that it is quite unpredictable how long a court case lasts. The criminal procedure seemed to be the mostly used option to claim compensation, while state funds to claim compensation seem rarely used in most countries. It was further noted that it is difficult to make general statements on existing legal procedures, as the situation and implementation of procedures in each country differ. In some countries legal aid is existing, but it differs per country what this legal aid or assistance entails and whether or not it is free of charge. The main bottlenecks shared were then summarised, including lack of evidence to proceed prosecution, difficulties with calculating damages, and difficulties to ensure the execution of a compensation order.

On criminal procedures, it was stated that article 16 of the EU Victim Directive of 2012 requires Member States to ensure that the criminal court issues decisions on compensation for the victim. Moreover, States are required to promote measures to encourage the perpetrator to pay the compensation. In the discussions, it was stated that when a criminal case is completely closed you cannot claim compensation via another criminal procedure for the same crime, only via a civil procedure.

In some instances, the defence may bring on evidence of mitigating factors that would support a reduction of the sentence; payment of compensation by the perpetrator can support a reduction of prison sentence. It was stated that indeed there is the possibility of human trafficking cases being settled through plea bargaining, and there was limited experience among participants with arrangements for victim compensation in such cases. GRETA's critics related to plea bargaining were noted and it was stated: 'The public is never satisfied if we talk about plea bargaining for human trafficking. If a person was a perpetrator but played a minor role, we could look at such options to ensure a rapid settlement and secure compensation for the victim, but it very much depends on each individual case.'



On compensation via civil procedures, participants referred to cases in which the criminal court considers that the evidence on damage is insufficient and refer the person to a civil court. It is noted that evidence of harm may come from medical reports and proof of lost earnings may be found by lawyers and NGOs building on proof of working hours, minimum salary, collective agreements, using other witnesses etc.

On estimating and calculating fair compensation for material and immaterial damages, it was questioned whether the 'scales' developed for civil proceedings can be used for calculation of non-material damages. It was debated that in general it is the prosecutor who should prove the violence and exploitation to have occurred. For the calculation of material and immaterial damages, it was noted that only with accurate estimations and figures, judges can be convinced to grant the requested compensation claim. It was mentioned by participants that currently prosecutors take into account several issues when calculating the height of the claim, such as the nationality and background of the victim, the victim's story, the type of exploitation, the duration and the conditions under which they took place.

For the execution of a compensation order, based on the collected data (cases), the consultant noted that a person needs to have access to free legal aid from a lawyer, as the procedure is often complicated and expensive. The participants acknowledged this but stated that free legal aid however, is not provided for to assist victims in the execution of the compensation order. The participants that were present in general had not much practise with providing assistance to ensure execution of the compensation order. The discussion then inquired whether confiscated assets go to the state and whether there are mechanisms in place to ensure that confiscated assets go to victims.

Gaps in the access to the right to information and to free legal aid were discussed, such as the need to be party to the procedure, income requirements and paying back legal fees, the requirement that the legal aid is offered by licenced agencies - which may exclude NGOs, the limitation of free legal aid to criminal, not civil proceedings, nor for enforcing the execution of the compensation order.

State compensation funds were discussed: the relatively easy and quick procedures, the nevertheless limited use of these among the cases in the research, seemingly due to the generally strict and limiting eligibility requirements in combination with limited experience in claiming compensation via this route among the consortium partners.

Other discussion topics were the requirement to be located to be able to claim compensation; the requirement to be present in court; and the availability of victim protection measures. The latter was noted to be limited and it was acknowledged that still prosecution is too much dependent on the victim statement. Violations were shared by participants, and the need to complaints on these violations. Bottlenecks related to lack of residence status or irregular employment were also touched upon. It was also discussed that there is limited information on prosecutions for human trafficking, involving legal persons (e.g. private businesses) and of claiming compensation (remedies) in those cases. Further discussed were the issue of non-punishment and how the lack of implementation of this provision may hinder victims 'access to remedies.

Summary of Group Discussions on Victim Needs

Facilitation by Dilyana Markova

The discussions on Victim Needs centred around four questions. Each of the three groups discussed several of these questions. Below, the outcomes of the discussions are grouped per topic.

1. *How do you ensure that victims are informed in a manner they can understand, taking into account many victims have a/multiple vulnerability?*
2. *Access to services: what obstacles do you face? male/female/minors, residence status, formal victim status, willingness to cooperate, formal complaint.*
3. *Legal aid: eligibility per type of proceedings, conditionalities: nationality, due fees, specialisation*



4. *Rights in proceedings: protection against revictimisation, retaliation, who makes the assessment, at what point, and how is it done in practice?*

It is noted that in some countries, the police play an initial judging role, since they decide to file the case as trafficking or as another crime. As a result, even the first police report needs to be fought to get it recognised and registered as trafficking case. The legal case might thus end even before starting. Also, since it is a police decision and not in writing form, there is no information on reasons behind the decision and no way to appeal the decision. It is noted that cases of sexual exploitation have better chances of being recognised as trafficking than cases of labour exploitation. It is noted that even specialised, trained police not always implement procedures correctly, also because their priorities are -from the start- with investigation of the crime, rather than with identifying indicators of possible trafficking. In another country, all victims, not just of trafficking, are to be assessed by a national system. In practice, not all victims pass this system, and the system does not have time to do individual evaluations of all victims. The system's opinion on the victim however does not have a legal status.

The separation between executive and judiciary powers is discussed, as it affects the options for exchange of knowledge and specialisation/training of professionals. It is noted that in some countries, the prosecutor is part of the executive power, while in others, they are part of the judiciary. Also, in some countries, NGOs may have good access to the judiciary, while in other countries this is very hard. It is requested to take into account such cultural differences. A good practice to get around this issue, is to have foreign lawyers or prosecutors train judges, and vice versa.

A discussion took place about whether a period of recovery and reflection is offered, or if the victim is immediately interviewed. It is noted that police need a minimum of information to be able to refer to an NGO for support during reflection period, and the NGO is to ensure nothing is signed by the victim during the reflection period. It is noted that the victim needs psychological assistance first, and only then is ready for an interview, but also only then is ready for providing and receiving information and therefore granting and respecting the reflection period is very important. It is questioned whether the right to information from the very first moment may be counter-productive, since it is not yet the right moment. Further, the need for interpretation was noted, in terms of language, mental abilities, and culture. A good practice was shared of making the procedures clear for mentally challenged persons by using drawings. It is suggested to make use of this for all victims of trafficking, for all procedures, for the verdict, resolutions, summon to court, etc. Some NGOs have special procedures for interrogation of vulnerable victims, e.g. special rooms for interrogation by the police. The availability of funds to support the victim during the reflection period was discussed: both for NGOs, and for the police who require interpretation during interviews. It is noted that information is to come at multiple moments, and repeatedly, and that a combination of lawyer and psychologist in this works well. It is remarked that, when the victim is informed about compensation during the reflection period, the defendant may use this fact to claim that the victim is just after money. It is noted that an NGO should be given time to build a relation of trust with the victim. A prosecutor notes to find it hard to seek the balance between investigating for evidence and building a relationship of trust with the victim.

Access to services and the willingness to cooperate with the authorities was another topic of discussion. The 'duty to report', the obligation to report a crime when you are aware of a possible crime, while the victim may not want to inform the police, is discussed, and it is noted that in some countries NGOs are exempted from this obligation. Cultural differences were also noted to play a role in services.

The need for the availability of in-house lawyers of NGOs; the availability of funds to provide legal aid; the level of specialised training for state legal aid providers; and conditionality of free legal aid was highlighted, the latter coming to similar conclusions as the discussions in the Legal Procedures sessions.

Most NGOs have their own network of specialised lawyers whom they refer to. This network does not always cover all regions in the country, leaving some regions without specialised lawyers. Also, it is noted that the training to become specialised lawyer might take only 1 day, leaving doubts about the quality of the training. Another barrier mentioned is that the lawyer needs to know about all legal branches: migration, asylum, criminal court, trafficking, labour law, etc, to take the entire case, but this is not happening. Another barrier mentioned is that specialised lawyers often receive little money, while the cases generally are lengthy and complex. As a result, they put relatively less effort



into the trafficking case compared to other cases. Several NGOs mention to step in to support the lawyer, but also note that they cannot do so in all cases. A good practice is shared, where the national anti-trafficking program has an agreement with the Bar Association, and pays a good salary of one lawyer to work on trafficking cases only. It is suggested to take this up as lobby issue, since the fee for 1 or 2 lawyers is just a tiny share of the national anti-trafficking budget.

Calculation of compensation awards was also discussed, including lost wages and non-material damages. It is noted that payment of lost wages may be limited when the victim had no work permit, or thought to have one. It is also noted that, to get access to services, the victim needs to cooperate with the police. It is noted that in Belgium, if a victim has been detected as victim and mentioned as such in the police file and in the court decision, the victim may ask a lawyer to claim compensation in a civil procedure. The victim does not need to be part of the court case, but does need to be aware of the case and court decision. The latter is a barrier. In the Netherlands, there is an inventory of cases with material damages showing what judges have granted in damages in several types of crimes.

It is reported that the implementation of the Victims' Rights Directive, to be transposed by EU countries, except for those that opted out, is currently evaluated by an EU funded project, coordinated by Victim Support Europe.

Summary of Group Discussions on Referral

Facilitation by Irena Konečná

The first round of discussions focused on the challenges and good practices with reporting the crime that was committed in other EU member state than the victim is a resident. An investigative judge highlights the need to check the legal instruments on how to send the report to the other country. The importance of personal contact is mentioned, and the increased difficulty in procedures when the Ministry of Foreign Affairs needs to be involved. The bad practice is shared of closing the case in the country of destination, and referring the victim to the country of origin to make the claim. It is remarked that the procedures of the Dublin convention should be frozen in case of indications of possible trafficking, allowing the person to stay. In practice, this happens in some cases but not all. It is further noted that in the Netherlands, police have become reluctant, and depending on the quantity and quality of information given to the police, they continue or close the procedure. Also noted is that, once the compensation claim is awarded, it may be difficult to ensure that a victim who already left the country can receive the awarded compensation amount. There may be a connection between two respective national NGOs, and they need to involve the victim of trafficking on the compensation claim. It is noted that it should first work on the national level, and then internationally.

The second round of discussions focused on the experiences to facilitate assistance of a lawyer for a compensation claim, when the victim reports the crime in the country of origin upon return. Several options were mentioned, of either an NGO, prosecutor, or victim travelling. For instance, it was shared that an NGO from the country of destination would meet the victim in the country of origin and make a compensation claim. The NGO had not yet considered the option of making the claim in the country of origin, which would then be referred to the country of destination, because it would take too much time and the chances on good results were deemed smaller. Also, it was shared that the prosecutor of the country of origin would come to the country of destination and residence to take testimony. Another shared that a victim was harassed by authorities in the country of origin, who urged the victim to travel back to the country of destination and exploitation to testify, which the victim did not want. An NGO facilitated the contact with the lawyer for a victim who returned to the country of origin. In this case, compensation was granted and put on the account of the NGO. An NGO mentions to have referred a case to an NGO in a neighbouring country, which contacted the liaison officer (attaché), who in turn contacted his colleague in the country of the original NGO. The embassy of that country then supported the victim to find a lawyer in the country of origin. The negative impact of the Dublin convention is reported: it is important that indicators of human trafficking are identified and recognised, in order to refer the victim to specialised NGOs and authorities. One NGO, unsuccessfully, appealed a Dublin convention related decision at the ECHR. On taking testimony, it is stated that in some cases, the testimony may be taken in a public location



instead of using formal channels. In one country, the claim may be made online, though the person shall have to come for the hearing.

The third round of discussions spoke about firewalls for safe reporting in case of severe labour law violations to undocumented workers, and about the consequences when a presumed and undocumented victim does not want to report. A victim of trafficking in domestic work shared that the interview was a difficult experience. In one country, there is no need to disclose the residence in case of undocumented persons. In another country, there are no options to access justice for undocumented persons. In again another country, it is relevant if the victim knew he or she was in an irregular situation. One country stated that in that country, a victim's return to the country of origin does not influence his/her access to compensation, as long as the victim stays in contact with that country of destination. It is shared that in some countries, compensation fund only reimburses costs, but not personal injuries. A lack of experience is also noted, since no client so far applied for it. It is noted that victims of labour exploitation get unpaid wages more easily. A situation is described where assets were confiscated in the country of exploitation but not delivered to the country of the victim.

Closure

As mentioned, the input of the participants during the Focus Group Discussions will be used to validate and complement the research findings. The assessment reports will be shared with participants and quoted participants will be contacted prior to publication.

Upon request of the participants, a participants list has been made with the contact details of all participants, which is annexed to this report.

Annexes

List of participants including email addresses
Presentation Annet Koopsen
Presentation Liliana Sorrentino
Presentation Irena Konečná

