**JUSTICE AT LAST - European Action for Compensation for Victims of Crime**

**International Exchange Seminar 27-28 May 2019**

**Written abstract** of presentation Ms. Maria Grazia Giammarinaro, UN Special Rapporteur on Trafficking in Persons, especially Women and Children - *Effective Remedies for victims of trafficking*

In her speech the UN Rapporteur questioned what *Justice* means; explaining that for trafficked persons punishment is not the major focus, rather for them it is important that the crime is not happing again to others and that they can resume with their lives; an aspect that is actually not included in the ‘landscape of criminal proceedings’. She stated that the role of victims is still secondary and just instrumental. ‘When talking about remedies, it should be clear that this right is still to be recognised and implemented in court’.

According the Rapporteur: ‘The remedial phase is conditioned and the vast majority of victims do not have access to protection, simply because they are not recognised as victims of trafficking’. She referred to her earlier [report](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/133/20/PDF/G1813320.pdf?OpenElement), on *Early identification, referral and protection of victims or potential victims of trafficking in persons in mixed migration movements (presented to the HRC in 2018)* – which revealed that there are still ‘no harmonised and effective procedures in place, to effectively identify trafficked persons among this vulnerable group’ and to her upcoming report on [social inclusion](https://reliefweb.int/sites/reliefweb.int/files/resources/G1911206.pdf) *(presented on 27 June 2019 to the HRC*). ‘Currently most countries focus only on short term support but not on longer term social inclusion; the full and permanent restoration of all rights, violated during the trafficking circle’.

She highlighted that social inclusion is closely related to access to justice and the fight to effective remedy. Effective remedy should not only include compensation, but also restitution; meaning also restitution of liberty; family reunification; guarantees of non-repetition and compensation. ‘Compensation includes many aspects, which are not all fully taken into consideration by all relevant stakeholders, including policy makers. For example access to health care, including trauma and dental care, also compensation should address the humiliation they faced, reimbursement of costs, also compensation for moral damage. Remedies should include the full restoration of someone’s status’. She then questioned whether the criminal justice path is in fact the preferable path for victims of trafficking to obtain what they want; e.g. back wages, compensation and relief. She stated that grievance mechanisms and social compliance mechanisms - to be put in place by the private sector - are important, which should be effective and include workers voice. Once situation of exploitation are identified, it remains difficult for companies to understand what they can and should do. In cases of termination of contracts with suppliers; workers should receive a real alternative, a real possibility to have another job, to ensure that also those risking deportation as irregular migrants, are able to report the exploitation.

She further debated, whether we really do need to keep the connection between remedies and the legal qualification of a situation of exploitation as a crime, including trafficking, forced labour and slavery. She stated ‘If we target severe forms of exploitation, not necessarily amounting to a crime, social actors can play a much more significant role, as currently there are so many cases where for good and bad reasons, prosecutors and judges do not qualify a situation of exploitation as trafficking, or forced labour .. etc, because the current interpretation of the legal notion is still very restrictive’.

‘If we want to enlarge the possibility for exploited persons to achieve the means to resume their lives, we should work to disconnect the concept of severe labour exploitation from the legal qualification of this situation of exploitation as a crime’.

She concluded with: ‘For many years, we have tried to highlight a human rights approach, in a context which very much is influenced - especially since the Palermo protocol – by a criminal justice approach. Of course we should continue to do so; continue to train prosecutors and judges and advocate for a broader interpretation of the legal concept, demanding that victims of trafficking can have access to the full rights they are entitled to, through and outside criminal proceedings. We should at the same time, think about new ideas and or new instruments. However with the current widespread xenophobic and anti-migrant political climate and approach, we should defend what we have and where possible try to improve the situation, also showing that migrants are not the enemy. On the contrary they are very often exploited and mistreated in countries where they find themselves.
I wonder whether for the future we could think about a new instrument targeting severe exploitation’.