

# JUSTICE AT LAST

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

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

**Monday 27 May 2019**

## **Opening**

Ms. Eefje de Volder, Board member LSI and Policy Advisor Comensha opened the seminar by welcoming all participants and providing a short introduction to [La Strada International](#), the project [Justice at Last - European action for compensation for victims of crime \(2017 – 2019\)](#) and the [programme](#), as well as some technical information. She then introduced the key note speakers.

## **Key Note Speakers**

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

In her [presentation](#) the UN Rapporteur stressed the need for adequate justice and ‘effective remedy’ for trafficked persons, which should include restitution of liberty; family reunification; guarantees of non-repetition and compensation as well as the full restoration of someone’s status’ (restoration of all rights violated during the trafficking situation). She stressed that ‘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’, as currently this legal notion is very restricted.

She recommended to continue advocating for a human rights based approach and for a broader interpretation of the legal concept and to consider developing a new instrument targeting severe exploitation to help enlarge access to rights for a broader target group of exploited persons.

**Ms. Petya Nestorova – Executive Secretary, Secretariat of the Council of Europe Convention against Trafficking in Human Beings - *Monitoring Access to Compensation.***

In her [\(power point\) presentation](#) Ms. Petya Nestorova reflected shortly on the Council of Europe Convention on Action against Trafficking in Human Beings, in particular article 15 on Compensation. She looked back at the first two monitoring rounds by the monitoring mechanism GRETA, and the main gaps that have been identified related to access to compensation. She stated that ‘the second round of evaluation of the Council of Europe Anti-trafficking Convention by GRETA has shown little improvement in victims’ access to compensation’. She explained that in some countries state compensation funds are still not available and attempts to establish such funds have been hampered among others by political and financial problems. Also difficult eligibility criteria to access state compensation remain and exclude for example those without a legal status/residence.

GRETA has recommended states to review (low lumpsum) compensation amounts currently paid in order to ensure that they correspond with the actual harm endured by victims; to improve data collection on compensation and to promote assets recovery to be used to compensate victims.

In 2019, the [3rd monitoring round](#) started and has a thematic focus on access to justice and effective remedies; the [questionnaire](#) for this round includes questions related to international cooperation on financial investigation and ensuring access to justice and might provide more insight in current practises. Petya concluded with confirming also the Council of Europe’s interest to discuss the need for a new legal instrument, referring to a recent report by the CofE Secretary General, in which Member States have been asked to consider the need for an additional legal instrument to address (other) severe forms of labour exploitation’.

**Mr. Albin Dearing, Programme Manager Research - Criminal Law and Criminal Justice, European Union Agency for Fundamental Rights (FRA). *Compensation and (criminal) Justice for Victims of Violent Crimes and Labour Exploitation***

Mr. Albin Dearing spoke about compensation in a wider context of doing (criminal) justice to victims of crimes. In his [\(power point\) presentation](#), he reflected on the findings of a FRA project on [Justice for Victims of Violent Crimes](#) and two projects on Severe Labour Exploitation (Selex I and II). For the first project research, the FRA has compared the different European criminal justice systems and reviewed how victims are ‘conceptualised’ (perceived) in these systems. According to Albin Dearing an interesting finding is that in particular in countries, where victims are actually legally accepted as parties to the proceedings (including Germany and Austria), victims of crime and NGOs indicated to like to have more opportunities to be involved in the proceedings, while legal practioners (including prosecutors and judges) almost unanimously felt that victims should not have more opportunities to actively participate, still seeing ‘victims as witnesses and not much more’.

The research findings further showed that victims would like criminal courts to ensure that they can receive compensation from the offender. The research noted that the main reasons for victims not to claim compensation relate to the fact that victims have not been (sufficiently and effectively) informed about their right to claim compensation and/or that victims believed that their claims would not be successful. ‘At times they are even discouraged by their lawyers to submit a claim’ according to Dearing. He concluded with stating that compensation should be seen as a central element of doing criminal justice, highlighting the following FRA recommendations.

- Court orders must be enforced by the state; if an order cannot be enforced, the state should be obliged to compensate the victim and recourse from the offender
- Victim-offender mediation should be used to as means of encouraging offenders to pay;
- State compensation funds have to be in place covering all forms of severe labour exploitation and must be equally accessible to victims in an irregular migration status.

In a Q & A round followed, participants raised questions about the need for another legal instrument and about advance payments on granted compensation by states to victims, as is the case in the Netherlands and apparently also in Iceland and Sweden. Dutch lawyer Annet Koopsen explained that in the Netherlands – if the perpetrator has not paid the requested compensation amount after 8 months - the state fully pays the amount to the victim, after which they will have to claim the money from the perpetrator. For this advance payment however still a positive court decision (awarding compensation) is needed, which can take years. However if a compensation claim is successful in a criminal court, the victim is sure to receive the granted amount.

## Panel I – Legal Procedures and Practical Application

*Moderator: Ms. Liliana Sorrentino, Board member La Strada International*

Ms. Liliana Sorrentino introduced the panel and shortly presented her [legal assessment on compensation practices](#), conducted for LSI in the framework of the justice at last project in 2018. This assessment, based on a review of 60 selected valid compensation claims of trafficked and or exploited persons from 10 different countries, revealed that in 40 instances the persons were recognised as entitled to obtain compensation and compensation was awarded in court. However only in 11 cases the victims did actually receive compensation, while in the majority of the cases, victims did not receive compensation. She further stressed that ‘it takes tremendous efforts of different stakeholders and good multi-stakeholder cooperation for several years to be effective in compensation claims, as well as active commitment and engagement of the trafficked or exploited persons’. A serious bottleneck she noted is the absence or low amounts of assets confiscated from traffickers.

In addition to commitment and good cooperation of all stakeholders, engagement of victims and assets recovery, she highlighted the need for free specialized legal aid, safe reporting mechanisms, ‘firewalls’ between access to rights and immigration enforcement and full respect of the non-discrimination principle.

*Mr. Ryszard Piotrowicz, Professor of Law at Aberystwyth University in Wales and Vice President of GRETA – [The right to a Remedy according International law](#)*

In his [presentation](#) Mr. Ryszard Piotrowicz pointed out that ‘States should not claim that the right to remedy is effectively established, as long as it is so difficult to execute this right in practice’. He listed that in order to claim compensation trafficked persons should ‘speak the language; know and understand the law and legal procedures; locate the trafficker; launch a legal action; win the legal action; obtain an order for compensation; enforce the order and apply for the costs; and then hope that assets have not been hidden in the meantime’. If they are foreigners they should further ensure to be able to remain in the country for several years. He then talked about state compensation funds and access to funds and stated that if funds are dependent on assets recovered, funding will be scarce.

Instead he believes that ‘when talking about human rights violations, and - taking into account the [Rantsev case](#) - States should provide compensation in cases of serious human rights violations, for their failure to prevent the exploitation and maltreatment of the person’. He further reflected on the non-punishment principle, which should apply ‘in such a way, that when the state fails to apply the non-punishment clause, the state should have an obligation to provide compensation for that failure’.

He concluded by referring to annex 1 of the legal assessment paper; an [overview of international \(legal\) standards](#) in place that provide for the right to compensation.

### *Ms. Ruth Shrimpling, Policy Officer, Victim Support Europe – Claiming compensation for victims of crime and role of service providers*

Ms. Ruth Shrimpling presented the victim’s [journey from crime to compensation](#), highlighting victim’s needs and challenges at each step, including the need for adequate information and support including legal aid. She referred to the challenge of underreporting of crimes, leaving victims without access to information and compensation, as well as to remaining differences in EU MS ‘which create an unequal playing field for victims of crime in Europe’. For example deadlines to report a crime differ greatly in Europe: ‘in Denmark it is only 72 hours; in Cyprus 5 days; in Estonia 15 days; and in Hungary it is up to five years that persons still can report a crime. Research conducted by Victim Support Europe (VSE) in 2018 revealed that administrative requirements were the biggest challenge for victims of crime, next to general requirements to be eligible for compensation. For example the requirements to have been physically violated to obtain compensation or the requirement to first claim compensation from the offender, before being able to obtain state compensation. She further highlighted specific challenges related to legal procedures including the length of procedures and the revictimisation of persons.

Recommendations were made for more awareness raising on victims’ rights; the establishment of first agencies of contact and trained persons to inform and support victims of crime; next to ensuring alternative means of reporting the crime (e.g. by phone or online); the need for firewalls, and victim-sensitive communication. She also called for monitoring systems to be in place to ensure that victims have sufficient access to information and support. Lastly she recommended more European harmonization also in deadlines to report a crime; less strict eligibility criteria; upfront and emergency payments and further research on the issue of compensation.

Soon VSE will publish a policy paper ‘A journey from Crime to compensation’. Victim Support also contributed to the recent [report](#) of the EU Advisor on compensation Ms. Milquet, called ‘Strengthening Victims’ Rights: From Compensation to Reparation’.

### *Ms. Evelyn Probst, LEFÖ-IBF – Claiming compensation for trafficked persons; bottlenecks in practice*

Ms. Evelyn Probst presented three practical examples of LEFO-IBF – one of the partners of Justice at Last - showing the challenges in practice to claim compensation. Firstly she presented a case of a female person exploited, including sexually, in the tourist industry. This victim was part in a criminal procedure in which one of the perpetrators was recently convicted and she was awarded 1300 euro for compensation for immaterial damages for severe forms of violence, including rape. ‘However when she went to the Austrian district court, she was sent away with the message that she could not claim this amount, with the argument that ‘the perpetrator is in jail and there is no information about his assets’. Evelyn Probst questioned whether LEFO should now hire a private investigator to find the whereabouts of the money, as the court only checks whether the perpetrator was employed and whether the person possesses any valuables. A second case she highlighted, related to the conviction

of five perpetrators in April 2019 for trafficking for sexual exploitation. LEFO accompanied about 20 victims in this case; 17 persons were awarded compensation for a total of 280.000 euro. The lawyer had demanded 780.000 euro.

Evelyn Probst stressed the fact that ‘if you want to achieve successful compensation in the criminal procedure, you have to start from the first moment and include the calculation of damages and requested compensation’. Although LEFO advocates for short police interviews, they see the need to include all details about money earned and payments made by the victim from the start of the police investigation and the need for improvement of financial investigations. Also the position of the victim in court should be enhanced and the use of expert opinions and reports should be promoted.

She highlighted that in practice there is still no sufficient attention for financial investigations; the burden remains on the victim of the crime proving information on income and profits of the perpetrator. She also noted that in general doubts remain about the credibility of victims as witnesses as well as moral perceptions ‘when the person was already working in prostitution before, this seems often reason to reduce the compensation claim. Also undocumented persons are seen to ‘deserve’ some form of exploitation and usually get less’. Further she addressed difficulties to prove psychological or emotional violence - ‘How do we really calculate the damages of immaterial damages, if there is no proven physical violence? - in particular as expert opinions are mostly not requested with the argument that it would make the criminal procedure too long.

## **Panel II – Cross-Border Cooperation in Claiming Compensation**

**Moderator: Ms. Georgina Vaz Cabral, board member Comité Contre Esclave Moderne (CCEM) and Advisory Board member Justice at Last.**

Ms. Georgina Vaz Cabral introduced the second panel and speakers and highlighted that the Justice at Last assessment and working paper related to [claiming compensation in cross border contexts](#) revealed that there is a general lack of awareness among practitioners about international referral options and about the possibilities to claim compensation in another European country, than where the crime took place. Moreover not all relevant actors are yet sufficiently or timely involved and do not cooperate well at international level to ensure access to remedies. She further mentioned the lack of harmonised European procedures, stating that there are huge differences in calculation of damages and payment of compensation awards in different European countries.

**Ms. Silvia Antoaneta Berbec, President Association Pro Refugiu Romania / Lawyer Bucharest Bar – *Financial compensation for victims of crime; Assessing the prejudice; Indicators and Evidences.***

Silvia Berbec started her [presentation](#) with shortly introducing the Romanian NGO Pro Refugiu which focuses on ensuring access to (legal) justice for victims of crime. In the last years the organisation has provided trainings for lawyers, prosecutors and judges, in cooperation with the Romanian authorities and other foreign partners. The organisation currently implements a transnational project [Justice for Women](#) - Towards a more effective rights protection and access to judicial procedures for victims of crime (2018 – 2020) in partnership with organizations from Italy, Greece, Spain and Bulgaria.

In preparation for a new publication on compensation for legal professionals - due in September 2019 - Pro Refugia has identified numerous challenges related to access to compensation. For example lack of empathy among prosecutors and judges for victims and for the impact of trauma of PTSD and or the relevance of psychological reports when assessing the damage. 'Legal professionals should recognize that the trauma impact is life changing and that this must be reflected in the compensation granted to the victim, which currently is not the case'. She stated to believe that discrepancies concerning the assessment of the damage would be diminished, if not eliminated, if there would be a national and EU level a so called 'trauma informed justice system'; where every judge, prosecutor and every lawyer would really understand what trauma is; and its past, present and continuous consequences'. She further noted that compensation claims outcomes often depend on personal qualities of the judge and that in appeals compensation amounts granted in first instances can be reduced by another judge. She also referred on gaps in quality of and access to legal assistance.

Ms. Berbec recommended enhancement of quality of and access to legal assistance; more training for legal professionals on impact of trauma; more attention for how assets have been obtained and to ensure timely financial investigations and assets recovery.

#### *Ms. Pam Bowen, Senior policy advisor at the Crown Prosecution Service – Cross border cooperation in claiming compensation*

In her [presentation](#) Pam Bowen referred to challenges in pursuing compensation in the UK and the importance of access to justice and compensation for victims of crime. 'While there is an increase of investigations by the police in the UK, and increases in the identification of victims and in prosecutions and convictions, there are still many cases not prosecuted, because victims are not supporting investigation or prosecution. Only a little over 1 % of the victims want to support the prosecution'. She reflected on cooperation in cross border cases and stated that often it is decided to let the prosecution take place in the country, where the exploitation took place (or for the longest period); while the victims' benefit is not taken into account when deciding upon the jurisdiction. She further noted the dependency on assets recovery for cases to be successful; 'Without confiscation, securing and realising assets for compensation to victims can be compromised'. In her presentation she further reviewed the role of the prosecutor, the requirements for action according legislation and the different stages at which the prosecutor can ensure that victims can access the compensation to which they are entitled.

She recommended the need for cooperation between agencies during investigation and for asset recovery; highlighted the importance of financial investigations to trace and freeze assets; and the need to pursue all sources of evidence which can support compensation claims.

## **Launch campaign and reception**

At the end of the first day, Suzanne Hoff, International Coordinator of La Strada International (pre) launched the campaign website see [www.justiceatlast.eu](http://www.justiceatlast.eu)

**Tuesday May 28 2019**

### **Panel III - Ensuring access to remedies and compensation**

Ms. Suzanne Hoff, International Coordinator of La Strada International moderated the 3<sup>rd</sup> panel and introduced the panelists. She highlighted that all speakers in this panel would provide different examples of approaches that can possibly be taken when prosecution at national level fails and when claiming compensation directly from a trafficker might not work; e.g. if legal procedures are exhausted at national level, it might be possible to claim compensation at the European Court of Human Rights (ECHR); either try to make those that profit from the exploitation accountable or try to claim money via mediation or collective bargaining from employer and claim back wages via labour courts.

*Ms. Natasha Dobрева – Attorney Bulgaria – Claiming compensation at the ECHR.*

Natasha Dobрева prepared [3 examples](#) from the ECHR jurisprudence, where the Court elaborated on the right, the amount and the collection of compensation for material damages caused by human trafficking. These cases concerned trafficking in the forms of domestic servitude and labour exploitation related to 3 countries with different legal systems: France, the UK and Greece. She reflected on the judgments regarding their implementation and the subsequent supervision by the Committee of Ministers, to show the individual benefit for the applicant from the use of the ECHR mechanism.

She promoted the ECHR as a good tool for monitoring and recommended to make more use of jurisprudence of the ECHR for legal argumentation for national compensation claims.

*Ms. Barbara van Straaten – Dutch Human Rights lawyer – Claiming damages and prosecuting the use of trafficked services (via skype)*

Ms. Barbara van Straaten of Amsterdam based law firm Prakken D'Oliveira presented a case, she is working on in the Netherlands; a case of a North Korean exploited worker, [suing a Dutch shipbuilder over slave labour claims](#). Although it is still unclear how the case will further develop and whether indeed compensation for the worker can be claimed, it is tried ensure the prosecution of the use of 'profit of trafficking/slave labour' by the Dutch private sector company. The Dutch criminal law on human trafficking, criminalizes the act of profiting from exploitation. She highlighted the relevance for her law firm to take up the case; the need for close cooperation with other actors in the Netherlands and abroad; in particular for the investigation and prosecution.

*Mr. Edwin Atema – Research and Enforcement Officer, Dutch trade union Transport Sector (FNV – Foundation VNB) – Claiming compensation and back wages for victims of trafficking and labour exploitation by the Dutch trade union*

Over the last months Mr. Edwin Atema of FNV - Foundation VNB has conducted research and been in contact with large groups of truck drivers including several Filipino truck drivers in different European countries. These drivers are mostly formally employed in Poland but actually mainly work in Northern and Western Europe. They live in their trucks, some of them even for over a year surviving on poor salaries. On top of that penalty systems deduct fines from their salaries established by their employers. In some EU countries these truck drivers have been identified as presumed trafficked persons and further investigation has started, also thanks to the efforts of the FNV/VNB to reach out to and cooperate with different stakeholders including governmental representatives and NGOs to ensure support for the drivers and get attention for the case. In the case of the truck drivers exploited in Germany, Edwin Atema managed to claim back wages and compensation for a group of 8 drivers for

amounts up to 20.000 Euro. This had definitely a positive impact, however it is stressed that more is needed to make companies accountable and to ensure access to justice and compensation for all those exploited on European routes.

He recommended to engage employees and trade unions more, as ‘the collective of employees often not only sees what goes wrong but also has the solutions’.

See further the following media materials:

- <https://www.youtube.com/watch?v=Z4LOLVdf4dY>
- [https://www.youtube.com/watch?v=-6fgXoc\\_o\\_k](https://www.youtube.com/watch?v=-6fgXoc_o_k)
- <https://www.youtube.com/watch?v=aba81QUrKmk>
- <https://www.youtube.com/watch?v=OXb6lp4vQC4>

## Workshop Round I

*Workshop 1 – Claiming compensation for victims of sexual exploitation and sex workers – by Sarah-Marie Maffesoli of Médecins du Monde, and Ms. Anna Fiodorova, Professor at Universidad Carlos III de Madrid, Procedural Law Department.*

Ms. Anna Fiodorova [presented](#) a study carried out by the University Carlos III in Madrid on monetary reparation to the victims in Spain and two projects: a national Crowd-funding project “Reparation to victims of sexual violence”, and a project “Towards fair and effective compensation scheme to victims of sexual violence” (FAIRCOM) with the grant of the EU Justice Programme. She presented the findings of the research related to practical application of Spanish legal regulations and effective payment of compensation, as well as the impact of the participation of victims in the legal procedure (in Spain victims have the right to accuse and to participate in the process as a formal party). For the research 2763 cases have been randomly selected - excluding crimes against road safety and gender based violence. More than half of these cases (60%) include compensation for the victims. Findings show that half of the compensation amounts included in judgements are lower than 1451 Euro; 25% up is up to 6000 Euro and 25% above 6000 Euro. The Provincial Court is granting the highest amounts due to the fact that this court deals with economic crime. But in practice, for half of victims that have a right to compensation foreseen in judgements only 300 euro compensation is paid and 1/3 of the compensation is not paid at all. The Crowd-funding project “Reparation to victims of sexual violence” has made one step further by analysing what happens when a victim of sexual violence does not receive a compensation from the offender? In these cases Spanish law, as law of all EU Member States, foresees a possibility to request a compensation from the state, but very few victims receive it, e.g. in 2015 only 9 compensation were granted. This national Crowd-funding project gave an idea for a proposal of a European project FAIRCOM (starts in September of 2019) with the aim to analyze the state of play of access to compensation for victims of sexual violence and to find out shortcomings in 5 Member States: Greece, Italy, Latvia, Spain and the Netherlands. The project also aims to design and promote a model for fair and appropriate compensation to victims of sexual crimes.

Ms. Sarah-Marie Maffesoli, Médecins du Monde [presented](#) the project *Jasmine* addressing violence against sex workers, which she coordinates. Among others they support sex workers (victims of THB and victims of violence) in claiming compensation. She explained work done in order to support sex workers to report violence/crimes (which includes the claim for compensation). The project has



ensured the establishment of alert and information web sites in 10 languages and a reporting questionnaire. It was noted that there are still many obstacles related to safe reporting for sex workers; partly as a result of current legislation addressing pimping and prostitution. Regarding compensation for victims of violence, it is very difficult for sex workers - especially when they are undocumented - to get compensation for all the damages, in particular also compensation for unpaid wages. As sex workers are self-employed, they can claim in theory unpaid money from clients through the commercial court - in Germany for example, but in practice this is not really possible. She explained that when a sex worker is a victim of rape and she needs to stop working for a while, she won't get any compensation for the economic damage. 'The fact is that in order to get unpaid wages or compensation for economic damage, you need to have a lot of evidence proving lost earnings, which most of sex workers don't have'. Further only in cases of identification as a trafficked person, the victim can access residency and other benefits; sex workers that faced other offences such as rape, do not have access to residency. Participants discussed impact of legislation (e.g. criminalisation of prostitution or clients of sex workers) and major/specific bottlenecks in claiming compensation for sex workers. In Austria there was a high court decision on trafficking for sexual exploitation, seen as labour exploitation that implicates that the loss of income - material damage - shall be acknowledged.

*Workshop 2: Safe reporting and effective complaint mechanisms – by Ms. Lilana Keith, Senior Advocacy Officer at PICUM and Jan Knockaert/FAIRWORK Belgium*

The Platform for International Cooperation on Undocumented Migrants' (PICUM) promotes access to justice for undocumented workers. Crucial to this is the possibility to safely report crime to the police ('safe reporting'), access support services, and access complaints and redress mechanisms for labour rights violations that are effective ('effective complaints mechanisms'). Ms Lilana Keith highlighted in the [workshop introduction](#) that there are major barriers to accessing an effective remedy for undocumented workers in both the civil or criminal justice systems; they usually cannot file a complaint without risking arrest or deportation. Considering the range and prevalence of labour rights violations and exploitation, PICUM takes a labour rights approach, focusing mostly on strengthening protections and empowerment through the labour/ civil justice system.

She presented PICUM [guidelines](#) explaining how to establish effective complaints mechanisms for labour rights violations, for all workers, including undocumented workers including by implementing a "[firewall](#)". This is a clear division of roles between labour inspectorate bodies and activities and immigration enforcement. Mr. Jan Knockaert, FAIRWORK Belgium then presented the situation in Belgium through the example of a specific, successful case. The worker was able to file a complaint to the labour inspectorate without risking immigration enforcement or a fine for working undeclared. With the appropriate support, he was awarded unpaid wages, and actually received the money, though he remains undocumented. The case highlights the importance of a firewall; of appropriate and specialised advice, for example, to collect evidence; and of mechanisms to seize assets. The group then split and discussed the main bottlenecks to access justice, and what steps are and can be taken to ensure effective access to remedies at local, national and EU level.

*Workshop 3: Criteria to calculate compensation claims in criminal and civil claims – by Ms. Annet Koopsen, Lawyer and Ms. Eline Willemsen, FairWork*

This workshop focussed on how compensation amounts are calculated and whether there are specific criteria or models for calculating compensation for damages? Ms. Annet Koopsen and Ms. Eline Willemsen presented the Dutch situation. Many barriers in claiming compensation/calculating damages were noted, including:

- Victims are not identified as such, hence cannot make a compensation claim
- Lack of trained legal professionals; need for specialised lawyers, and trained/knowledgeable prosecutors and judges
- Lack of legal support and financial and administrative barriers including State fees for enforcement of verdict
- Lack of harmonised criteria to calculate damages
- Length of procedures; any payment is late
- Burden of evidence is on the victim, victim also bears the cost for expert opinions fees
- Complexity of the legal system and complicated and unclear (and too many different) procedures to claim compensation;
- Insufficient international cooperation - The victim might have to return to the country of origin, or the criminal profits are in a different country than where the claim is made.
- Lack of adequate financial investigation and difficulties to collect evidence and trace assets; offender usually hides proceeds of crime
- No possibilities to collect money from the perpetrator and or no funds available to pay for successful compensation claims, next to general difficulties to execute compensation order
- Judges do not provide enough information about their reasoning related to compensation claims.

The workshop further talked about types of injury/damage and costs that can be covered and criteria in place. Participants discussed ‘what is fair compensation’ and options to bring responsibility to the state, for failure to protect and compensate the victim: several examples were shared, including willingness of prosecutors and judges to deal with the compensation claim within the criminal procedure and to include compensation in the sentence.

Recommendations included: the need for more debate, sharing of best practises and successful cases, enhance confiscation of assets, promote joint investigations, cross-border cooperation between and with NGOs, and willingness of prosecutors and judges to include compensation in their sentence.

**Workshop 4: PRO BONO services – by Mr. Paul Yates, Head of Pro Bono at Freshfields, Bruckhaus, Deringer, and Ms. Judith Gellér, Legal Officer at PILnet.**

Ms. Judith Gellér introduced [PILnet](#), a global public interest law organization which operates a clearing house in Hungary and Hong Kong. NGOs can submit cases for legal support for which PILNET tries to find adequate pro-bono lawyers/law firms. PILNET works on knowledge sharing and providing trainings for lawyers. Judith Geller stated that there is a high demand for legal research, e.g. for comparative legal review and or assistance with specific legal questions, often related to periodic reporting to UN bodies and or research. PILnet did conduct an assessment related to the challenges and needs of NGOs which revealed: a lack of cooperation between different stakeholders, including corporate legal actors and NGOs; the need for specialised legal knowledge, trustful cooperation and sensitive attitudes towards victims as well as long term commitment from pro-bono lawyers. A challenge noted is that law firms would like to directly engage with victims which NGOs/lawyers might have difficulties with – e.g. there can be challenges in the cooperation related to ‘who owes the case?’.

Mr. Paul Yates introduced [Freshfields](#) and his related to human trafficking cases. He draw a picture related to the legal work offered by pro bono law firms in general and legal needs of civil society, which is not always in balance. With cuts on legal assistance he also noticed more requests for pro-bono work, stating that in the UK - like in many other countries - there is no properly funded legal aid system that pays for specialised expert lawyers. He highlighted the need for effective cooperation and realistic expectations: 'Pro bono services can help NGOs to become a bit more effective, however the support will not be revolutionary', highlighting that large corporate firms can often not do much related to criminal law and or migration law. However they can well support internal legal work (e.g. legal research, legal work connected with the organisation's operation), conduct research into legislation, which might support advocacy and or for example provide assistance with submitting cases to complaint mechanisms and conducting civil litigation. Freshfields has engaged in ensuring enforcement and execution of 'paper' judgements, including enforcement of compensation orders for victims of crime. Via desk research and private investigations they also searched for assets aiming to ensure that 'claims are paid'.

Questions were raised about expectations and wishes of NGOs and law firms; whether victims outside the NRM system can also benefit from pro bono services (answer: yes) and the reasons for law firms to provide pro bone services (e.g. one reason mentioned was to ensure that employers remain motivated and stay working for the company). There was also a discussion on how law firms can help NGOs to ensure a change in legal systems. As for the selection of pro bono lawyers it was stated that the selection of who can provide the best support to NGOs (a big or smaller law firm) depends on the question/needs and on the lawyer and his/her specialism, as well as on the system in place.

When contacting agencies for pro bono legal support, NGOs were recommended to make firstly a list of needs – and frame these needs clearly. The law firm contacted is then able to indicate which of the needs they can effectively support. It is advised to inquire with different law firms.

## Workshop round II

*Workshop 5: Claiming compensation at the ECHR – by Ms. Markella Papadouli, Solicitor and Europe Litigation Coordinator at Aire Centre at Attorney at Law Athens Bar Association, and Ms. Natasha Dobрева, Attorney at Animus Association Foundation, Bulgaria*

Ms. Markella Papadouli [presented](#) the work and experience of the UK AIRE centre, gained in litigation of (trafficking and labour exploitation) cases and presented the learnings from several cases submitted – by the AIRE centre and by others - to the ECHR on Art. 4, e.g. e.g. the case of Chowdury v Greece. The AIRE Centre represents applicants before the European Court of Human Rights and intervenes in cases there, and provides free legal advice to individuals and advisers on European law.

The following recommendations were given: Identify if your case is suitable for the ECHR and it fulfils all requirements (not all cases do); Look for suitable cases in other areas of law; when working in other jurisdictions always ensure harmonious cooperation with domestic lawyers; know your registry lawyer and respect deadlines; explore different options to help the victim e.g. with monetary compensation and or access to therapy (but be aware of the limits of the Court/State).

Ms. Natasha Dobрева afterwards [presented](#) her work related to cases submitted to the ECHR. She looked at which stage during the proceedings human rights violations should be pleaded before national courts and how ECHR case law should be invoked in the national proceedings. She reviewed

a case of compensation for re-victimization (S.Z. v. Bulgaria) and a case of compensation for material damages (Krachunova v. Bulgaria) taking into account her experience with the applicants. As for the last case – still pending (status: requiring a decision) - the precedent question is whether Art. 13 requires compensation for material damages to be provided for victims of trafficking? She stated that so far the Court has examined compensation for material damages only in the context of sexual violence under Article 3 (E. and Others v. UK, appl. No 33218/96). In the case against Bulgaria, the applicant claims that Art. 13 in conjunction with Art. 4 guarantee her a right to compensation of all the damages caused by the crime, including material damages.

After both presentations participants discussed the possibilities to claim justice/compensation at the ECHR and bottlenecks in practice. Here also a discussion was held on how to make governments more accountable for their failure to compensate victims. Very practical suggestions were shared, next to an exchange of experience of which legal provisions to use in which situation.

*Workshop 6: Claiming remedies from the private sector and Corporate accountability – by Ms. Julia Planitzer, Senior Researcher at the Ludwig Boltzmann Institute of Human Rights, and Ms. Klara Skrivankova, Justice at Last and LSI Advisor, and independent advisor on business and human rights.*

The focus of this workshop was put on corporate criminal liability and its (non-) application in Europe; in her presentation [Claiming Remedies from the Private Sector and Corporate Accountability](#), Ms. Julia Planitzer provided examples and highlighted gaps and the reasons for the limited application of corporate criminal liability. She looked at how and which alternative/complementary complaints mechanisms can be used, while also explaining more about company-based grievance mechanisms, their eligibility criteria, as well as collective redress actions. She highlighted that the number of fully - developed grievance mechanisms is limited in Europe and that grievance mechanism procedures can take a long time. Based on review of several examples, it was stated that there are mechanisms that are not legal remedies in strict legal sense which can be accessed and can provide for more effective remedies for affected workers.

Ms. Klara Skrivankova [spoke](#) about new mandatory due diligence legislation across Europe like the Dutch new Child labour law and provided examples of initiatives (CSO and company-led), which have been the result of the call for more transparency. She referred to soft law that can be used to pressure companies. She referred to the strong call from civil society for binding legislation that obliges companies to mandatory due diligence, however noted that this call is not yet much supported by the European commission. ‘Without binding legislation, much depends on the willingness of the company’.

Klara Skrivankova presented the UK Lithuanian chicken catcher case - which showed gaps in the UK justice system and looked at the UK criminal injuries compensation scheme, next to presenting examples of company based complaints/remedy mechanisms and other innovative approaches.

Participants discussed what instruments or tools, legal or otherwise, are needed to improve access to remedies from companies for exploitation. It was questioned how the application of corporate liability for cases of human trafficking can be enhanced. In that respect, workers driven monitoring was mentioned and the example of the [Coalition of Immokalee workers](#). Also in Italy, a group of (exploited) workers in the agricultural sector have developed own ethical work codes.

Recommendations included:

- Anti-trafficking NGOs should use due diligence themselves and engage more with civil society organisations that work on business and human rights
- Check relevant websites for initiatives and apps, e.g. the website of Business and Human right in the UK and the app <https://apps.apple.com/us/app/asos-industrial-i-%C5%9F%C3%A7i-haklar%C4%B1/id1440516280>
- NGOs should consider to make more use of existing grievance mechanisms – company related or not - to claim justice and compensation, as the traditional criminal prosecution of trafficking is not leading to a lot of convictions.
- When engaged in grievance mechanisms, ensure as NGOs that you can maintain your independency – know until where you can go along with what the company does
- Engage victims/workers in options for solutions (what solution do they see), also ensure that workers can organise themselves per sector and or provide information on who is actually buying/selling their products so workers themselves could start a campaign.
- NGOs should engage with private sector representatives, e.g. establish contact or consultations with suppliers in companies, also to raise awareness.
- When deciding to file complaints ensure to have collected sufficient proof (e.g. recording of phone calls to the employer); otherwise a court fee might have to be paid.
- Use mediation or a complaint to the labour inspection to ensure that workers are paid; the labour inspectorate can confront the employer.
- Recruitment agencies need to be seen as a part of the chain and the liability.

*Workshop 7: Financial investigations, assets recovery for the benefit of compensation claims – by Mr. Jiří Vondráček, Police investigator, at the Human trafficking and illegal migration Department (Organized Crime Investigation Unit) Czech Republic*

Mr. Jiří Vondráček shared the Czech experience on financial investigation and calculation of proceeds, which can be used for compensation claims. He spoke about success factors for financial investigations and the need to improvise to define assets as long as there are no clear procedures in place to define assets. It was noted that there are different practices in Europe to calculate crime profits. In the Czech Republic the investigation works with nett profit costs; costs for specific expenditure by the perpetrator e.g. costs for rent of houses to accommodate victims are deducted from the profit made. Vondráček stressed that unfortunately there is still too much dependency on the statements of the victims, not only for proving the crime, but also for defining evidence.

He highlighted challenges e.g. financial investigations require time and sufficient staff capacity and the fact that when no primary crime can be proven money can be not be laundered/taken- and assets have to be re-released. Another challenge relates to the fact that perpetrators often try to hide profits made, claiming losses or bankruptcy instead or hide assets under other persons' name. In general it remains difficult to obtain the necessary information or to trace assets, especially in cross border cases.

The discussion focussed on the lack of sufficient dedicated and trained financial investigators; best practises on assets recovery and the fact that there is a clear connection between financial investigation and assets recovery and the payment of compensation in most EU countries.

## Recommendations

- Share best practises on financial investigation/assets recovery – including innovative practises (social media as investigation tool via confiscation of a computer or smart phone it might be possible to define if the perpetrator has assets, including real estate)
- Make use of general information known, e.g. use company average costs
- Make more use of national legislation - UK – Welfare order (people having a welfare, that people have to explain; how they obtained assets)
- Ensure that financial institutions are alerted about red flags related to suspicious transfers.
- Harmonise procedures at EU level, e.g. evidence might be *obtained which might not be admissible in national court, e.g. in some countries wiretapping from another country or the own country cannot be used.*
- Provide more funding and training to ensure dedicated financial investigations.
- Information from financial investigations should become (earlier) available to support compensation claims
- Establish good international cooperation (joint investigation teams) and effective use of investigative bodies Europol/Eurojust/CARIN
- Ensure good use of available national legislation – e.g. tax authorities can ask for proof that earnings/possessions were obtained through legal activity (e.g. in Spain)
- Conduct research on impact of assets recovery on compensation for victims of crime
- Monitor the effects of the tools/instruments available and used.

## Plenary and Closing

Ms. Evelyn Probst and Ms. Suzanne Hoff shortly presented the conclusions of both days - Informing about next steps and report, reminding about campaign [www.justiceatlast.eu](http://www.justiceatlast.eu) and the request to contribute to the Justice at Last [surveys](#).