



## **La Strada International**

### **European NGO Platform against Trafficking in Human Beings**

### **Recommendations on the EU Strategy on victims' rights for 2020-2024**

La Strada International welcomes the development of an EU Strategy on victims' rights for 2020-2024, and is thankful for the possibility to provide feedback, while being ready to participate in future consultation activities. Making use of this opportunity we would like to provide the following feedback and recommendations on behalf of our NGO Platform.

La Strada International is a European NGO Platform against human trafficking, that works from a human rights perspective in support of trafficked persons. The platform aims to prevent human trafficking and to protect and realise trafficked persons' rights. This is done by providing access to adequate assistance and support via information and knowledge exchange, capacity building of relevant stakeholders and cross-sectoral cooperation. Via monitoring and advocacy La Strada International further aims to ensure accountability for the effective implementation of European Anti-Trafficking policies and regulations. La Strada International represents 25 member organisations and one associate member in 22 European countries.

#### **EU Strategy on victim's rights and thematic priorities**

La Strada International supports the identified key priorities of the proposed victim rights' strategy including empowering victims of crime, strengthening cooperation and coordination, improving protection and support of the most vulnerable victims, facilitating victims' access to compensation and the international dimension of victims' rights. We are happy to learn that the Strategy will build on the existing EU legislation and current achievements and aims to go further by providing for a clear, comprehensive and a long-term vision for victims' rights, which can certainly contribute to effective protection of victim rights in Europe. Indeed the European Union has made significant progress in the area of victims' rights, but as acknowledged by the European Commission victims still have problems in fully relying on their rights and accessing justice.

Based on the five thematic priorities defined, we would like to provide the following feedback:

## **Vulnerable victims**

Currently the Strategy foresees to pay special attention to the most vulnerable victims namely victims of gender-based violence, victims of hate crime, child victims and victims of terrorism. Although we understand the need for special attention to - and special focusses for - specific vulnerable groups, we believe that the Strategy should in principle be inclusive for all victims of crime. We further would like to raise awareness that victims of human trafficking and other severe forms of labour exploitation are also a very vulnerable group and would like to see them added to the list of vulnerable victims.

When referring to victims of human trafficking, please acknowledge that victims of human trafficking, can be trafficked for sexual exploitation but also for other forms, including trafficking for labour exploitation in both informal and formal labour sectors. During the last decennium, the European Commission and the EC's Anti-Trafficking Coordination have in particular called for more attention to address sexual exploitation of woman and children, linking the issue of human trafficking often with other forms of gender based violence.

Even though trafficking for sexual exploitation is still the most detected and reported form of human trafficking in the European Union - for which in particular woman and children are vulnerable - there are clear indications, including increases in registration figures, for the occurrence of human trafficking in many other regulated and unregulated labour sectors in Europe. Moreover it should be noted that among the group of (presumed) victims of trafficking, there is a large group of persons that has not been – and will not be - formally identified as a victim of human trafficking, due to numerous reasons, even though they have been subject of severe (labour) exploitation, violence and abuse.

Over the last years, we have noted an increased vulnerability of migrants, including migrant workers and refugees to fall prey to these crimes. We therefore would like to ask the Commission to reflect in the strategy also upon the vulnerability of migrant workers and especially those that are undocumented or work in irregular sectors to become victims of crime.

## **Improving protection and support**

As acknowledged in the roadmap, indeed many crime victims do still not receive the necessary support and protection, this also goes for victims of human trafficking. Not only the identification of victims remains a bottleneck, also there is still lacking awareness among relevant stakeholders groups about victims rights and support programmes to assist victims. Even though LSI's NGO platform works on strengthening referral among NGOs and building adequate support structures, difficulties in ensuring adequate and safe referral of victims of trafficking remain, as there are not sufficient high quality generic and specialist victim support services.

Often, we see that National Action Plans (NAPs) and National Referral Mechanisms (NRMs) are elaborated with requested input and support from NGOs for its implementation, without ensuring adequate financial means to back up measures and structures. Further NGOs seek to mobilise specialised legal aid to assist their clients, for example by employing specialised lawyers, establishing partners with law firms, engaging and partnering with specialised pro-bono lawyers, while NGOs usually have to secure their own funding for legal aid and representation through projects; and hence without state funding their capacity is limited.

## **Empowering victims of crime – and insufficient awareness about victims’ rights**

According European legislation, victims of trafficking are entitled to information regarding their rights and all relevant procedures, in a language which they can understand. A [report](#) published by La Strada International in 2019, which related to an assessment conducted in the framework of our EU funded project [Justice at Last](#) (2017 – 2019), reveals that victims often do not receive information regarding their rights and all relevant procedures in a language they can understand. It is noted that in many instances information is not easily accessible or is provided by using a standard form written in the local language and using a complicated legal terminology that victims do not understand. In a number of cases it is left to the voluntary work of victim support organizations to explain in an appropriate manner to the person what their rights are and what options are available. This is despite the fact that the rationale behind the right to information – as established in European law is that the onus of providing victims with effective access to information is on the criminal justice authorities.

There are also language barriers: victims are often foreigners who do not speak the local language. The quality of interpretation influences the quality of the victim’s account, and hence impacts on the investigation, and the victim’s access to a remedy. Interpretation and translation of information are not always available prior or during criminal proceedings. This is despite the fact that there are duties under the European Anti-Trafficking Convention, the EU Victims’ Rights Directive and the EU Trafficking Directive that require States to provide victims with interpretation and translations of information essential to the exercise of their rights in criminal proceedings in a language that they understand, free of charge.

We therefore believe that increased efforts should be made by the European Commission and EU Member States to provide information in at least the most common languages of countries of origin. This information should be widely disseminated by various stakeholders, including civil society but also law enforcement and labour inspection, to ensure that victims of crime, including victims of trafficking and those vulnerable to trafficking and other crimes, know their (legal) rights and can exercise them effectively. Safe reporting and adequate complaint mechanisms should also be in place for all victims of crime and exploitation. Labour inspectors should not report on migration status and should protect confidentiality of workers. This will empower victims of crime to claim justice and rebuild their lives.

### **Difficult access to Compensation**

Access to Justice and compensation is one of the provisions in EU legislation that is very difficult for victims of crime, including victims of human trafficking, to access and therefore La Strada International fully supports the decision to make compensation one of the thematic focus priorities for the new EU victim rights’ strategy. Access to justice is about having the means and legal protection to exercise one’s right to seek remedy before a court of law or tribunal for wrongdoing suffered. Although the EU trafficking directive requests EU Member States to ensure that victims of trafficking ‘have access without delay to legal counselling and to legal representation’ and that ‘legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources’, we still note that victims are very limited in accessing legal aid, due to existing financial barriers in place. Next to adequate information, legal assistance and legal aid needs to be available

and accessible to all presumed trafficked person and all other victims of crime to guarantee access to justice and remedies.

Evidence obtained from earlier research by us<sup>1</sup> and some of our close partners in the field – e.g. Victim Support Europe and PICUM - shows that very few victims seek compensation and even fewer receive a compensation payment. Obstacles include lack of awareness among police and the judicial system, lack of access to legal aid and adequate information for victims, the postponement of trials and long duration of criminal and civil proceedings, and, in the case of foreign victims, their return or deportation to their country of origin before a verdict is reached.

Even when compensation has been ordered, barriers exist that leave victims without payment. These barriers include that victims rarely have the means to ensure the compensation order is enforced. But also that the perpetrators are not found, are not prosecuted, have moved their assets abroad, or have declared themselves bankrupt to avoid confiscation of their assets and having to pay compensation. Access to State compensation funds may be hindered as well, for instance due to a lack of residence status, lack of information, lack of means, and lack of access to legal aid. In short, many barriers prevent victims from claiming and obtaining their rights, including the right to compensation.

Modalities of accessing compensation vary greatly in different EU Member States. This includes both: the eligibility criteria - who should be compensated; and the procedure to receive compensation – how the compensation should be awarded. When it comes to the eligibility criteria, there is no EU-level definition of who is entitled to state compensation. According to the Council of Europe Convention on Compensation to victims of crime, state compensation should be available to those who have sustained serious bodily injury or impairment of health directly resulting from an intentional crime of violence and the dependants of persons who have died as a result of such crime. In the above cases, compensation shall be awarded even if the offender cannot be prosecuted or punished.

All victims of all forms of human trafficking should have access to compensation. It is important that also victims of labour exploitation for which the crime of trafficking could not (yet) be proven, or for which cases no investigation or prosecution started or these procedures were stopped, have access to compensation. These persons should be allowed to claim compensation in civil procedures or have access to other alternative mechanism or state funds.

Currently it is noted that in case trafficking cannot be proven, neither the use of direct violence, these victims can hardly access state compensation funds for victims of violent crimes. We also note that when persons worked irregular, it can be difficult to claim lost wages, in particular to find evidence and proof for hours made. Sometimes it can be tried to claim standard wages where applicable or still to request a minimum wage for the period the person was not receiving income, depending also on national regulations and criteria for claiming compensation. It should be ensured that their rights are protected too.

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<sup>1</sup> See [www.justiceatlast.eu](http://www.justiceatlast.eu) and [www.compactproject.org](http://www.compactproject.org)

## **Strengthening cooperation and coordination and international dimension of victims' rights.**

As acknowledged, victims in cross border situations – Trafficking of Human Beings is a crime that often takes place across international borders – face especially difficulties in accessing their rights; often it is dependent on the country they reside in what kind of protection and support will be offered. In that respect we fully support the main objective of the Strategy to ensure that all victims of crime can fully rely on their rights independently of where in the EU the crime took place.

The 2004 Directive on compensation sets up a system of cooperation to facilitate access to compensation to victims of crime in cross-border situations. According to this Directive, crime victims should be able to turn to an authority in their Member State of residence to claim compensation in the Member State where an intentional and violent crime took place. From our experience this remains however very difficult in practice. Often victims – as well as legal professionals and other persons assisting them – are not sufficiently aware of the possibility to report the crime in an EU country other than where the crime occurred. Victims in cross-border situations should therefore be provided with access to specialised legal services as soon as possible. From our members' direct work with victims it is noted that specialized legal assistance and adequate cooperation among all relevant stakeholders is required to ensure that a compensation claim can be successful.

For the further elaboration of the EU victim rights strategy, we would like to provide the following recommendations:

- There is a need for effective implementation of EU legislation, in particular to ensure that victim support services are in place in all EU Member States; ensuring adequate access to high quality generic and specialist victim support services.
- A full and inclusive approach in the development of EU policies is required to ensure that civil society can effectively contribute and cooperate with state actors to ensure victim protection.
- A victim centred approach should be followed in all criminal, civil and administrative proceedings; and measures taken should not harm victim rights.
- It should be ensured in practice that all victims have access to information regarding their rights and all relevant procedures, in a language which they can understand, including on how to claim compensation.
- Victims should be supported to come forward and be identified; and mechanisms for easy and safe reporting should be in place, including for undocumented persons, as part of the obligations under the EU Victims' Rights Directive (Article 8.5); which should include that labour inspectors should not report on migration status and protect confidentiality of workers.
- Equality and non-discrimination in access to legal aid should be ensured throughout proceedings ensuring sufficient state funding for legal aid for trafficked and exploited persons, removing barriers based on means test, legality of residence and reasonable chance of case success.
- Existing barriers concerning eligibility criteria for victims' access to State compensation funds for victims of violent crime should be removed, in line with the obligations under the EU Trafficking Directive (Art. 17)
- Investment in training and capacity building for relevant stakeholders is needed to strengthen knowledge and expertise, ensuring that stakeholders including criminal justice practitioners,

particularly prosecutors and judges, can build upon and promote promising practices on access to justice/compensation and seek to adapt them to the national context

- Future standardized and harmonized cross-sectoral and cross-border cooperation should be shaped on victims' access to justice and compensation.
- Funding mechanisms should be adjusted to cover victims issues in all EU policies; including providing financial support for the establishment of complaint mechanisms for all victims of crime. Funding should further be made available for the provision of practical and psycho-social support to enable access to justice, including shelter and alternative housing opportunities for victims of crime, including victims of trafficking.

See <https://www.justiceatlast.eu/readmore/> for related reports published by La Strada International