



# Findings and Results of the European Action for Compensation for Trafficked Persons

**COMP.ACT**

**TOOLKIT ON COMPENSATION FOR TRAFFICKED PERSONS**

**2012**

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# Introduction to the Toolkit

Trafficking in human beings is a human rights abuse. Compensation has a restorative, preventive and punitive function and is a crucial tool in combating human trafficking. Each trafficked person has the right to an effective remedy, including compensation; however, a range of barriers obstruct the consistent translation of the right to compensation into practice. Consequently, many trafficked persons are left without justice.

Although trafficked persons have an established right to compensation and various compensation mechanisms are in existence, the actual receipt of a compensation payment by a trafficked person is extremely rare. This toolkit by COMP.ACT aims to provide a comprehensive description of the right to compensation and guidance for its achievement in practice.

COMP.ACT, European Action for Compensation for Trafficked Persons, was initiated by La Strada International and Anti-Slavery International to improve access to justice and guarantee compensation for trafficked persons. It aims to raise awareness and mainstream the issue of compensation within the international anti-trafficking agenda; to overcome the problems with the implementation of compensation measures for trafficked persons; and to ensure that compensation becomes one of the key elements of programmes of assistance and services in Europe.

NGO partner organisations in fourteen European countries<sup>1</sup> have carried out a wide range of practical work in the COMP.ACT project, such as research, test cases and developing guidelines for professionals. On the international level, the COMP.ACT coalition has successfully launched an international advocacy campaign for access to justice and the right to redress for trafficked persons. This European coalition consists of NGOs that offer direct assistance to trafficked people, the legal community, labour unions, migrant rights organisations and academics.

This toolkit is a collection of the results and products of COMP.ACT partners in the first three years of the COMP.ACT project. It is divided into two parts<sup>2</sup>:

**Part One**, divided into three sections, provides general information on compensation for trafficked persons, introduces the COMP.ACT coalition and makes recommendations on removing obstacles to obtaining compensation.

Section One, introduces Compensation as a remedy for trafficked persons and means to combating human trafficking and takes a closer look at international legislation and instruments which consider compensation. It also includes an overview of the preconditions for ensuring access to justice for trafficked persons.

Section Two, details the COMP.ACT project, the methodology used by COMP.ACT and gives examples of achievements by the project to date. It also includes recommendations generated by the COMP.ACT coalition for changes at the international, state and practical level<sup>3</sup>.

Section Three, a *Eleven-country Analysis*, summarises the findings of research conducted by the COMP.ACT national partners into the barriers to accessing compensation at the national level. This section concludes with recommendations to states.

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<sup>1</sup> Austria, Belarus, Bulgaria, Czech Republic, Germany, Ireland, Italy, Macedonia, Moldova, Poland, Spain, Ukraine and United Kingdom

<sup>2</sup> The different parts and sections are interrelated but can also be consulted separately. Therefore some overlap can occur.

<sup>3</sup> To date: 10 December 2012

**Part Two** of the toolkit contains pull-out tools that COMP.ACT has developed for practitioners who work with or for trafficked persons. These tools were developed using the results of country-level research and practical experience of COMP.ACT partners:

- A **Research Template** for a country-level study on compensation; the template covers data collection on access to compensation for trafficked persons, analysis of barriers to access at the national level, to formulate recommendations to strengthen victims ability to assert their right to compensation.
- A **Poster on seeking compensation** that highlights in a simple way, key points which need to be covered when consulting a client, and what legal and support options are available to seek compensation. The posters had been designed for practitioners who support or come into contact with trafficked persons in their work, such as police, shelter staff, trade union officers, counselling centres and lawyers.
- A **Guidance on representing trafficked persons in compensation claims** with information on the rights and needs of trafficked persons, the ways of claiming compensation for both material and non-material damages, a detailed overview of the international legislation and a simple *5 Step Model for Claiming Compensation* for trafficked persons. The guidance is accessible for both lawyers and non-lawyers.

# Section One: Compensation for Trafficked Persons; an overview

*‘Trafficked persons, as victims of human rights violations, have an international legal right to adequate and appropriate remedies. This right is often not effectively available to trafficked persons as they frequently lack information on the possibilities and processes for obtaining remedies, including compensation, for trafficking and related exploitation. In order to overcome this problem, legal and other material assistance should be provided to trafficked persons to enable them to realize their right to adequate and appropriate remedies.’<sup>4</sup>*

The right to an effective remedy for a person whose rights have been violated is well established within the international human rights legal framework. Under international human rights standards this includes the right to obtain reparation which may include the following forms: *restitution, rehabilitation, compensation, satisfaction, and guarantees of non-repetition*<sup>5</sup>. The COMP.ACT toolkit focuses on the principal importance of compensation and its significance for combating trafficking in human beings.

Trafficking in persons is a gross abuse of human rights and it is one of the most serious rights issues the world is facing today. The crime of trafficking and the exploitation of women, men, and children generates huge profits. The right to compensation for trafficked persons is contained within several binding instruments under international law<sup>6</sup> against trafficking and more recently within European<sup>7</sup> legislation against human trafficking. Every trafficked person has the right to an effective remedy whether or not they have been identified and/or formally recognised as such.<sup>8</sup>

## 1.1 The restorative, punitive and preventative functions of compensation

Compensation must be considered both as a remedy for trafficked persons and an important means to combating human trafficking. It is a significant instrument of anti-trafficking law and policy which serves restorative, punitive and preventative purposes.

### Restorative purposes

The restorative justice function of compensation is important for victims’ recovery.

Trafficked persons experience both physical and psychological consequences resulting from abuses they have suffered. Psychological consequences may include: loss of dignity, mental health problems, loss of confidence, and a diminished ability to act autonomously as a consequence of being under constant control and in fear. Enabling, and more importantly,

<sup>4</sup> Recommended Principles and Guidelines on Human Rights and Human Trafficking, Office of the High Commissioner on Human Rights (2002)

<sup>5</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.

<sup>6</sup> The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention on Transnational Organised Crime (2000)

<sup>7</sup> Council of Europe Convention on Action against Trafficking in Human Beings, 2005, 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 and explicitly prohibited under Article 5 (3) of the Charter of Fundamental Rights of the European Union.

<sup>8</sup> Conclusions of the Expert Consultation on ‘The Right to an Effective Remedy for Trafficked Persons’, convened by the UN Special Rapporteur on trafficking in persons, especially women and children, Ms. Joy Ngozi Ezeilo, November 2010.

facilitating access to compensation helps to support their psychological recovery. Acknowledging the wrongdoing and recognising the rights of trafficked persons redefines victims as subjects of justice rather than objects of it and opens space for their active role in the process of bringing their traffickers to justice.

Compensation can also mean financial autonomy for former victims of human trafficking and may prevent re-victimisation. Economic independence has been shown to significantly reduce the risk of re-trafficking and compensation empowers victims by placing them in a stronger position to support themselves and their families without having to pursue risky job opportunities. Compensation counters the contributing vulnerability factors of poverty and deprivation in human trafficking.

### **Punitive and preventive purposes**

Trafficking in human beings is a low risk – high profit crime generating huge profits. A greater focus on the confiscation of the criminal assets of traffickers is required and would make more money available for compensation awards to victims. Successfully redirecting criminal assets to compensation for victims of trafficking goes beyond mere punishment in particular cases; it can directly impact and contribute to the prevention of the crime of trafficking. Depriving traffickers through the confiscation of criminal assets constitutes a strong deterrent mechanism.

## **1.2 International legislation and instruments**

The right to an effective remedy is widely recognised in the major international human rights instruments and the ILO Forced Labour Conventions No.29 and 105. Both the ILO Conventions, No. 97 and 143 on Migrant Workers, and the International Convention on the Protection of Migrant Workers and Members of their Families<sup>9</sup> set standards to ensure that migrants are not deprived of their right to be paid for work they have performed. In the European context, the 2012 Directive of the European Parliament and of the Council establishes minimum standards on the rights, support and protection of victims of crime<sup>10</sup>, and the 2009 Directive on minimum standards on sanctions and measures against employers of illegally staying third-country nationals<sup>11</sup> are relevant.<sup>12</sup>

Another key international instrument is the 2005 Basic Principles and Guidelines on Remedy and Reparation.<sup>13</sup>

A comprehensive overview of the legal framework for compensation at the international level can be found in the *Guidance on representing trafficked persons in compensation claims* included in this toolkit.

<sup>9</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Adopted by General Assembly resolution 45/158 of 18 December 1990

<sup>10</sup> 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

<sup>11</sup> Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals

<sup>12</sup> See also: Prevent, Combat, Protect: Human Trafficking. Joint UN Commentary on the EU Directive – A Human Rights Based Approach, 2011

<sup>13</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.



### 1.2.1 Human Rights Law

Redress of wrongs is a fundamental legal principle that constitutes both a general principle of law and a customary rule of law. The right to an effective remedy is a fundamental human right for all persons, including trafficked persons, which states must respect, protect and fulfil in accordance with international human rights law. It is also a well-established doctrine of international law that a state has an obligation to provide remedies where an act or omission is attributable to it and constitutes a breach of an international obligation. In the context of trafficking in persons, states are under an obligation to provide remedies for trafficked persons where they fail to exercise due diligence to prevent and combat trafficking in persons or to protect the human rights of trafficked persons.<sup>14</sup>

Traditional international law doctrine requires that reparation for an internationally wrongful act: *‘(...) must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if the act had not been committed.’* The accepted forms of reparation attached to that traditional doctrine are: *restitution, compensation, and satisfaction and guarantees of non-repetition.*<sup>15</sup>

### 1.2.2 Anti-trafficking legislation and instruments

The right to compensation is included in the three major treaties on combating trafficking in human beings that are applicable in Europe: The Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, supplementing the UN Convention on Transnational Organised Crime (2000); the Council of Europe Convention on Action against Trafficking in Human Beings (2005); and the Directive EU/2011/36 of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting the victims (2011).

*The Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, (hereafter the Palermo Protocol)*

In one of its few mandatory victim support provisions, the UN Palermo Protocol requires state parties to ensure that their domestic legal systems contain measures that offer victims of trafficking the possibility of obtaining compensation for damage suffered.<sup>16</sup> This provision is not an obligation to provide compensation or restitution, but states must offer the legal possibility of seeking compensation. The Interpretative Notes to the Protocol indicate that this should apply both in the destination country and the country of origin of the victim. According to the Legislative Guide, this obligation would be satisfied by establishing one or more of three options: provisions allowing victims to sue offenders for damages in a civil court; provisions allowing criminal courts to award criminal damages, (paid by offenders), or to impose orders for compensation or restitution against persons convicted of trafficking offences; or provisions establishing dedicated funds or schemes to allow victims to claim compensation from the state for injuries or damages.

The Protocol does not mention ancillary rights such as the right to information or the right to legal aid, but it does include the right to remain in the country during proceedings. Article 8(2) places an obligation on destination countries to conduct return *‘with due regard for...the status of any related legal proceedings’*.<sup>17</sup>

<sup>14</sup> Annual report of the Special Rapporteur on trafficking in persons, especially women and children (2011)

<sup>15</sup> Gallagher, Anne T., *The right to an effective remedy for victims of trafficking in persons: A Survey of International Law and Policy* (2010) .

<sup>16</sup> Trafficking Protocol, art. 6 (6). See also Organized Crime Convention, art. 25 (2), and *Legislative Guides to the Organized Crime Convention and its Protocols*, Part 1, paras. 368-371

<sup>17</sup> Trafficking Protocol, art 8 (2)

Furthermore, it links criminal justice with victim support by identifying victim compensation as a priority option when considering the disposal of confiscated assets. Regarding international requests around asset confiscation, Article 14(2) requires State Parties *‘to give priority consideration to returning confiscated proceeds of crime or property to a requesting State Party for compensation of (or return to) victims’*.

*Council of Europe Convention on Action against Trafficking in Human Beings (hereafter the CoE Convention)*

The CoE Convention is the first international treaty that looks at human trafficking as a major human rights issue and makes the protection of victims’ rights binding. Article 15 describes the right to compensation and legal address as well as the preconditions that should be met so that trafficked person can access this right. The Convention acknowledges that victims cannot claim their rights if they are unaware of them. First, Member State Parties<sup>18</sup> must ensure that victims have access to information on relevant court and administrative proceedings, in a language that they can understand, from their first contact with law enforcement authorities. Second, Parties must provide for the right to legal assistance and to free legal aid for victims under the conditions provided for under its internal law and under Article 16 of the CoE Convention Parties of destination countries must conduct return *‘with due regard for ... the status of any related legal proceedings’*. Third, a victim must be ensured the right to compensation to cover both material and non-material damage. Finally, recognising that a trafficked person will rarely receive full compensation from the trafficker(s), Article 15.4 requires that parties take steps to guarantee compensation of victims, for example, through establishing a state compensation fund or through social assistance programmes, possibly funded by criminal assets.

*Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims (hereafter the EU Directive)*

The EU Directive takes on a similar approach to the rights of trafficked persons as the CoE Convention and includes the right to compensation as well as ancillary rights that should guarantee access to justice. Article 17 requires Member States to ensure that trafficked persons have access to existing schemes of compensation available to victims of violent crimes. Counselling and information as described in Art. 11(5) should include information about available remedies in a language and form the victim understands. The right to legal assistance is stipulated in Recital 19 and Art. 12(2), in which Member States shall ensure that victims of trafficking in human beings have access, without delay, to legal counselling, and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation. Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources. Assistance and support should include the provision of a temporary residence status for the purpose of seeking remedies and should, as stipulated in Art. 11(3), not be made conditional on the willingness of the victim to cooperate in criminal proceedings.

Further, the EU Directive also addresses the seizure of assets. Under Art. 7, Member States shall take the necessary measures to ensure that their competent authorities are entitled to seize and confiscate instrumentalities and proceeds. While Recital 13 states that: *‘[...]the use of seized and confiscated instrumentalities and the proceeds from the offences referred to in this Directive to support victims’ assistance and protection, including compensation of victims and Union trans-border law enforcement counter-trafficking activities, should be encouraged’*.

<sup>18</sup> Member States: <http://hub.coe.int/web/coe-portal/navigation/47-countries>

### 1.2.3 Instruments of the UN Office of the High Commissioner on Human Rights (OHCHR)

*The 2005 Principles and Guidelines on the Right to a Remedy and Reparation*<sup>19</sup> clarifies some of the most important principles relating to remedies for all violations. It confirms that, a general obligation on states to ensure respect for and to implement human rights law, includes an obligation to ensure equal and effective access to justice and the availability of remedies. It also confirms the right to a remedy for gross violations of human rights, including trafficking in human beings. Access to justice means the protection of the victims' privacy and safety in the course of any legal proceedings as well as measures to ensure that victims can actually exercise their rights to a remedy.

An effective, adequate and appropriate remedy for human trafficking could include compensation paid by the offender or by the state for a range of harm factors identified within the Principles and Guidelines on the Right to a Remedy and Reparation, including physical and psychological harm, lost opportunities, loss of earnings, moral damage, and medical, legal or other costs incurred as a result of the violation.

In 2002, the OHCHR published the Recommended Principles and Guidelines on human trafficking and Human Rights, introducing the human rights approach to the international debate and in legislation on trafficking in human beings. The Principles and Guidelines are very explicit on the right to effective remedies, including compensation: *'States shall ensure that trafficked persons are given access to effective and appropriate legal remedies'* (Principle 17). Guideline 9 on Access to Remedies stipulates the preconditions that must be in place so that trafficked persons can actually exercise their right to compensation. States and, where applicable, intergovernmental and non-governmental organisations, should consider:

- Ensuring that victims of trafficking have an enforceable right to fair and adequate remedies, including the means for as full a rehabilitation as possible. These remedies may be criminal, civil or administrative in nature;
- Providing information, legal support, and other assistance to enable trafficked persons to access remedies. The procedures for obtaining remedies should be clearly explained in a language that the trafficked person understands;
- Making arrangements to enable trafficked persons to remain safely in the country in which the remedy is being sought for the duration of any criminal, civil or administrative proceedings.<sup>20</sup>

The linking of a criminal justice measure, such as confiscation of proceeds, to victim support presents an important step forward in the integration of a human rights approach to trafficking.<sup>21</sup> Principle 16 requests states to consider ensuring, to the extent possible, that confiscated assets are used to support and compensate victims of human trafficking. Guideline 4.4 is even more specific, requesting legislative provision for the confiscation of the instruments and proceeds of trafficking and related offences that, where possible, specifies, *'the confiscated proceeds of trafficking will be used for the benefit of victims of trafficking. Consideration should be given to the establishment of a compensation fund for victims of trafficking and the use of confiscated assets to finance such a fund'*.<sup>22</sup>

<sup>19</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.

<sup>20</sup> Idem

<sup>21</sup> OHCHR, Commentary on the Recommended Principles and Guidelines

<sup>22</sup> Idem

### *OSCE Action Plan to Combat Trafficking in Human Beings*

The Handbook on National Referral Mechanisms published by ODIHR/OSCE in 2004 includes guidance on the importance of compensation as a means of remedy of human rights violations experienced by trafficked persons and its important restorative and preventive effect.<sup>23</sup> Other international standards on trafficking, labour rights, migrants' rights and the rights of the victims of crime have developed the right to compensation. They have also established the principle that the profits made by traffickers through their exploitative activities should be used to benefit the trafficked persons either individually or collectively.

In this regard the 2003 OSCE Action Plan to Combat Trafficking in Human Beings recommends that States should, '*consider legislative provisions for confiscation of the instruments and proceeds of trafficking and related offences*' and that the '*confiscate proceeds of trafficking will be used for the benefit of victims of trafficking*.'<sup>24</sup>

## 1.3 Access to justice

Access to justice is about having the means and judicial protection to exercise ones right to seek remedy before a court of law or tribunal for wrongdoing suffered. For trafficked person's access to justice means enabling them to overcome the harmful trafficking experience by seeking remedies through the justice system for grievances according to basic human rights principles and standards.<sup>25</sup>

The term *access to justice*, '*...traditionally refers to opening up the formal systems and structures of the law to disadvantaged groups in society. This includes removing legal and financial barriers, but also social barriers such as language, lack of knowledge of legal rights, and intimidation by the law*'.<sup>26</sup> This means substantive justice, to receive a fair and just remedy for a violation of one's rights but also access to civil and administrative processes such as an immigration review, or to state compensation funds. In addition, it means protecting the rights of an individual from the moment the crime is first reported to police to the point of enforcing a court compensation order.

Access to justice must not be conditional. When protection measures and access to rights are dependent on a willingness to cooperate with investigations or act as a witness, as is still often the case for trafficked persons, it cannot be considered fair justice. While obtaining justice can be an essential step to claiming back life, the decision to seek justice must be the trafficked person's alone.

It is the States obligation to uphold the right to an effective remedy for those who have suffered violations, not only in terms of ensuring effective and equal access to justice and ensuring adequate reparation, but also through introducing and implementing measures that are needed to guarantee access to an effective remedy.<sup>27</sup> Many countries have transposed several binding international legal instruments into national legislation but often fall short in meeting their obligation to *guarantee* access to justice. As a result legal remedy provisions remain underused and regrettably trafficked persons rarely gain compensation.<sup>28</sup>

<sup>23</sup> *National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook*, OSCE-ODIHR 2004 pp. 83-87 ("NRM Handbook").

<sup>24</sup> OSCE Action Plan to Combat Trafficking in Human Beings Chapter III, s1.5

<sup>25</sup> Lam, J., Skrivankova, K.: *Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK*, Anti-Slavery International, London, 2009

<sup>26</sup> Quoted from GAATW website <http://www.gaatw.org/atj/>

<sup>27</sup> Background Paper on State Practices, Concrete Strategies and Implementation of the Right to an Effective Remedy for Trafficked Persons Consultation of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo On THE RIGHT TO AN EFFECTIVE REMEDY FOR TRAFFICKED PERSONS, November 2010

<sup>28</sup> See further: *Compensation for Trafficked and Exploited Persons in the OSCE Region*, OSCE/ODIHR, Warsaw 2008, pages 126-128

## 1.4 Preconditions for access to justice

The UN Special Rapporteur on trafficking in persons, especially women and children concludes in her 2010 Annual Report that procedural rights of access to remedies are a critical precondition in realising the substantive right to remedies for trafficked persons. States must provide trafficked persons with information relating to their rights and the mechanisms for support and redress available to them. Without this essential information in a form that is understandable, trafficked persons are unable to seek remedies. Judicial and administrative proceedings are generally complex. Legal assistance is therefore crucial for trafficked persons, especially where they are not familiar with the legal system. A further prerequisite is the extending of a regular residence permit in the country where remedies are being sought. It is extremely difficult for trafficked persons to access justice if they are at risk of deportation or have already been deported.

The right to information, the right to legal aid and the right to remain in the country during proceedings are already described in the Recommended Principles and Guidelines as crucial for substantive access to justice. These rights are included in the CoE Convention and the EU Directive.<sup>29</sup>

To enable trafficked persons to receive compensation a number of structural and procedural prerequisites must be in place: There must be a legal framework; states should ensure that victims are provided with the appropriate information and assistance needed to seek compensation or restitution; and states should foster and put into practice a victims' rights culture acknowledging the rights of victims of crime.

### 1.4.1 An effective legal framework

Compensation must be codified in national law. Doing so grants trafficked persons access to effective remedies for the harm they have suffered. A range of judicial and administrative proceedings<sup>30</sup> through which victims of crime are able to claim compensation already exist in the national laws of all of the COMP.ACT partner countries. In general, compensation can be pursued through one or more of the following channels; a criminal proceeding, a civil proceeding, through labour or employment courts or tribunals, or via a state compensation fund.

#### **Criminal proceedings**

It is possible to compensate trafficked persons directly from the trafficker in criminal proceedings. How this might work will depend on the countries' legal system. In either civil or common law countries<sup>31</sup>, victims are only entitled to compensation upon the successful conviction of the trafficker and by a court order directing the trafficker to pay compensation. In civil law countries, a civil claim for damages can also be filed by the trafficked person and appended to the criminal case.

The reality is that very few trafficking cases are actually prosecuted and fewer result in a successful conviction<sup>32</sup> suggesting that criminal compensation eludes most trafficked persons. In some countries, prosecutors have found that the crime of human trafficking is

<sup>29</sup> Annual report of the UN Special Rapporteur on trafficking in persons, especially women and children

<sup>30</sup> A judicial proceeding is a legal procedure that takes place in a court to determine and enforce legal rights. Judicial proceedings can involve either criminal or civil law. In a criminal proceeding, a case is brought by the state against an individual to prosecute him or her for a crime. A criminal penalty can include a jail term and/or a fine. In some countries, a prosecutor can also apply for or request compensation on behalf of the crime victim. In a civil proceeding, a plaintiff brings a case against a defendant to enforce legal rights between private individuals. A successful civil claim often results in a financial remedy. An administrative proceeding, on the other hand, is decided by a government body rather than a court. Such proceedings may be used to determine issues such as entitlement to a government benefit or service or compliance with government rules and regulations. Penalties may include a fine or the loss of certain privileges.

<sup>31</sup> In Europe: Civil law countries (continental Europe) and common law countries (UK, Ireland, )

<sup>32</sup> The ODIHR report *Compensation for Trafficked and Exploited Persons in the OSCE Region* reviews eight countries in the OSCE region: Albania, France, Moldova, Romania, Russian Federation, Ukraine, United Kingdom and the United States.

difficult to prove; it requires overcoming substantial evidentiary burdens and identifying suitable and willing witnesses is difficult. Even where a trafficker is convicted and ordered to pay compensation there may be few or no identifiable assets. Assets may have been spent, transferred out of jurisdiction, or untraceable because it is hidden under a false name or under the name of another person.

### **Civil proceedings**

Civil proceedings are rarely for compensation claims for trafficked persons and in most countries doing so is breaking new ground with little or no established guiding legal precedent. Pursuing a civil lawsuit can be expensive, time-consuming, and is a resource-intensive undertaking. Furthermore it can be very stressful for a victim, involving extensive evidence gathering, the identification of witnesses, providing court testimony and in some countries also enduring cross-examination. In most countries witness protection is either limited or nonexistent. Finally, in order for a trafficked person to receive the money, the trafficker must be in present in the country and have verifiable assets. Even if the outcome is a judgment in favour of the victim, enforcing payment of compensation presents a subsequent obstacle. At this time, seeking compensation through a civil lawsuit is not a realistic option in many countries.

### **Labour and employment law**

In some countries labour and employment law afford some trafficked persons legal redress for wrongs suffered. Legal remedies and compensation through labour law are however, generally only available to individuals who have endured forced labour in formal work sectors such as agriculture, construction, or hospitality. Individuals who are victims of trafficking for sexual exploitation are usually not able to access labour law protections to obtain compensation, as many governments do not recognise prostitution as legitimate work. The existence of rights under labour law may also depend upon the individual's immigration status. In several countries in Europe, even within the European Union, undocumented workers are not entitled to remedies under labour laws because any employment contract would be considered void and unenforceable.<sup>33</sup>

Before bringing a claim before a labour court or employment tribunal, the individual may have to observe a number of procedural requirements. This can mean that in some countries the claimant must first attempt to resolve the issue directly with the employer through mediation or other informal process. Also, in many countries there are strict time limits within which a claimant must initiate proceedings; the time limits are usually shorter than those for civil proceedings.

### **State compensation fund**

In some countries it is possible for a trafficked person to apply to the state compensation fund. Such funds are often limited to persons who have been victims of violent crime and have suffered injuries as a result. The amount of compensation can vary widely from country to country. In some countries, psychological violence might not be recognised, or moral damages may not be covered by the award, whereas in other countries a significant amount of money may be paid for the victim's loss of opportunity of earnings.

There are many advantages of a state compensation fund: The claimant is not subject to a long court proceeding in a criminal or civil trial; the trafficker is not involved in the process and does not need to be informed; a conviction of the trafficker is not necessary; and state compensation payment is generally guaranteed and prompt. The disadvantage of a state compensation fund is that eligibility criteria may exclude some trafficked persons. Victim compensation funds that only recognise those who have suffered violence and injury exclude trafficked persons with experiences of emotional or psychological trauma, exploitation and economic loss. Some state funds bar access to specific groups, such as undocumented migrants and sex workers, who have been identified as engaging in illegal and immoral behaviour. Finally a state compensation fund is expensive to run and it can be costly for potential claimants who do not have legal assistance or legal aid support.

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<sup>33</sup> In 2012 the Irish High Court overruled the verdict of the labour Court that granted Mohammed Younis compensation for years of severe exploitation on the grounds that an undocumented worker cannot seek redress under labour law as the employment contract cannot be recognised.

## 1.4.2 Right to information and legal aid

Trafficked persons should be informed about their rights to compensation in a timely and appropriate manner.<sup>34</sup> Implementing this obligation requires providing appropriate training to relevant professionals. Anyone who provides assistance to trafficked persons, including public authorities, service providers, and legal representatives, should be aware of the right to compensation and how compensation can be sought. Training should cover providing trafficked persons with information on their right to compensation, explaining with care the processes for seeking compensation, and how to support clients who want to initiate a claim. Specific training is needed for legal representatives. In particular they should be aware of both the possibility to request an investigation into the assets of the trafficker(s) and/or the possibility to have assets frozen in order to prevent the trafficker from dispersing assets to avoid seizure. Collaborations between support services and police should be encouraged when collecting evidence and presenting a claim.

Research shows that there is a broad lack of awareness about the right to compensation for trafficked persons amongst those working to combat human trafficking. A study conducted by Anti-Slavery International<sup>35</sup> indicates that one consequence of a lack of awareness is the limited use and success of compensation orders granted by criminal courts for either violent crime or trafficking cases. When the interests and rights of victims of crime remain under-represented in court proceedings, and when access to justice in other areas is limited, trafficked persons are unlikely to obtain financial compensation.

Further, codifying compensation within law, while important, does not guarantee the receipt of compensation or access to justice for those who should be entitled to it; this requires further facilitating measures.

## 1.4.3 Immigration policies

The degree of access to justice for trafficked persons sheds light on rational behind government policy towards human trafficking in general. Where a government considers human trafficking to be a serious abuse of human rights trafficked persons are better protected and entitled to more benefits and support services. This is generally not the case in countries where the government links human trafficking with organised immigration crime.

In accordance with international law, a person should be recognised as a victim of human rights abuses from the moment they suffer harm; not when they are conferred status because they satisfy often prohibitively high criteria for identification.

States also have related obligations to:

- exercise due diligence in the identification of trafficked persons;
- apply the principle of non-criminalisation of trafficked persons; and
- explicitly recognise that the immigration status, or a decision to participate or not in criminal proceedings against alleged traffickers, in no way limits their claim to receive recognition of their human rights, including that of an effective remedy.<sup>36</sup>

Many governments continue to approach human trafficking as an immigration crime and despite their obligations under international law, they not only do not identify trafficked persons as victims of trafficking, but instead process them immigration offenders. The

<sup>34</sup> As required by the Council of Europe Convention and the Directive EU/2011/36.

<sup>35</sup> Lam, J., Skrivankova, K.: *Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK*, Anti-Slavery International, London, 2009

<sup>36</sup> Background Paper on State Practices, Concrete Strategies and Implementation of the Right to an Effective Remedy for Trafficked Persons Consultation of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, Joy Ngozi Ezeilo On THE RIGHT TO AN EFFECTIVE REMEDY FOR TRAFFICKED PERSONS

consequence of this may be arrest, deportation or the deprivation of the right to pursue legal remedies in the country. In addition, victims of forced labour, particularly labour outside of formal work sectors, such as sex work, forced begging, forced criminal activities or benefit fraud, are not identified as employees or workers, but as having engaged in criminal activity thus denying them the right to access an effective remedy.

#### 1.4.4 A Victims' Rights Culture

A healthy victims' rights culture is an essential prerequisite to access justice. When victims are formally acknowledged and supported they are able to exercise their rights, not only the right to compensation, but also other entitlements such as the right to be identified; to safe and appropriate accommodation and necessary medical treatment; protection against re-trafficking in the country and abroad; non-punishment for crimes committed whilst trafficked; protection when acting as a witness in criminal proceedings and non-refoulement.

Compensation is a right and it should be a fundamental element of any anti-trafficking assistance service. It is not a luxury or supplement to the basic assistance provided to trafficked persons. It is important to incorporate information about the right to compensation in the very early stages of assistance provision. Trafficked persons need time to consider their options in order to make informed decisions and to initiate the steps necessary to pursue a claim, such as obtaining necessary a residence permits or instruct a legal representative to assist with their claim.

The stronger the victims' rights culture in a country, the better the chance that the rights of trafficked persons will be formalised and incorporated into existing victim assistance programmes. The very nascent notion of a victims' rights culture is absent in many European countries where a general lack of awareness and the marginalisation of the issue of compensation constitute a major obstacle to trafficked persons seeking remedy.

### 1.5 The way forward

The importance of compensation for trafficked persons has gained momentum in the past five years, especially at the international level, where this has been translated in the inclusion of compensation as an explicit right for trafficked persons in recently developed international legislation. The critical next step is to see compensation for trafficked persons translated into practice, along with the implementation of ancillary rights, including the right to information, legal aid and the ability to remain in the country during proceedings. Adding the right to compensation to international and national anti-trafficking legislation is important but it is not enough; measures for support and access must be embedded into assistance programmes and anti-trafficking policies on the national level.

In their joint commentary to the EU Directive, six UN bodies recommended to EU Member States to take into account not only the substantive components of the right to an effective remedy, but also ancillary rights, when transposing the EU Directive into national legislation and policy. Member States are encouraged to fund programmes for the assistance, support and protection of victims.<sup>37</sup>

The commentary of the UN bodies corresponds largely with the outcomes of the work that COMP.ACT has conducted in the first three of the project; aiming at transposing rights from paper to rights in practice.

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<sup>37</sup> Prevent Combat Protect. Joint UN Commentary on the EU Directive – A Human Rights-Based Approach (2011)



# Section Two: COMP.ACT project

## 2.1 Introduction

COMP.ACT is a European initiative by La Strada International and Anti-Slavery International, and their partners, aimed to improve access to justice and guarantee compensation for trafficked people. COMP.ACT started as a three-year project in December 2009 with funding from the European Commission and the King Baudouin Foundation.

### La Strada International

La Strada International (LSI) is a leading European NGO network founded in 2005<sup>38</sup> that works to ensure a world without trafficking in human beings by promoting respect for human rights. The network comprises eight independent member organisations that operate from a grass-roots level. The members are based in Belarus, Bulgaria, the Czech Republic, Macedonia (FYROM), Moldova, the Netherlands, Poland and Ukraine and implement activities for advocacy, prevention and social support for trafficked persons and at-risk groups in order to empower them to exercise their rights.

The advocacy activities of LSI target intergovernmental organisations, providing specific recommendations to improve the protection and respect for the rights of trafficked persons, migrants and groups vulnerable to human trafficking.

### Anti-Slavery International

Anti-Slavery International, founded in 1839, is the world's oldest international human rights organisation and the only charity in the United Kingdom to work exclusively against slavery. Anti-Slavery works at local, national and international levels to eliminate all forms of slavery around the world by supporting research to assess the scale of slavery in order to identify measures to end it; working with local organisations to raise public awareness of slavery; educating the public about the realities of slavery and campaigning for its end; and lobbying governments and intergovernmental agencies to make slavery a priority issue and to develop and implement plans to eliminate it.

### The COMP.ACT Coalition

The COMP.ACT project is carried out by a coalition of partners in 14 European countries.<sup>39</sup> The coalition consists of NGOs that provide direct assistance to trafficked persons, legal community, labour unions, migrant rights organisations and academics.

Between December 2009 and December 2012, coalition partners worked to bring about systemic and practical changes to ensure that trafficked persons in Europe receive compensation for their suffering and unpaid labour, with the support of the COMP.ACT project. All national project partners conducted research into the existing possibilities for compensation and to identify the obstacles in systems and procedures that prevent trafficked persons from accessing compensation. The partners have also formed country-based coalitions on compensation and presented recommendations that would ensure access to justice for trafficked persons. Several partners collaborated with lawyers to support their clients in compensation claims and with law firms to inform the legal community on the right to compensation.

<sup>38</sup> La Strada International began as a prevention network of NGOs in the Netherlands, Czech Republic and Poland in 1995.

<sup>39</sup> Austria, Belarus, Bulgaria, Czech Republic, Germany, Ireland, Italy, Macedonia, Moldova, Poland, Spain, Ukraine and United Kingdom. When the project started La Strada Bosnia I Herzegovina was also involved, but had to leave the project in 2011.

At the International level, COMP.ACT advocated for the inclusion of compensation on the anti-trafficking agenda of intergovernmental organisations. This work helped to bolster the resolve to formally address the issue of compensation which is now covered by the EU Directive on preventing and combating trafficking in human beings and protecting the victims EU/2011/36 and in The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016.

## 2.2 Why a project on compensation for trafficked persons?

Achieving justice for trafficked persons is a main priority in the work of La Strada International and Anti-Slavery International. Access to an effective remedy and compensation is an important aspect of redressing the human rights abuses endured by trafficked persons. A focus on access to justice shifts the perception of trafficked persons. Rather than powerless victims in need of a rescue, trafficked persons become the claimants of rights.

Between 2008 and 2009, several studies into compensation were published by Global Alliance against Traffic in Women (GAATW), Anti-Slavery International, the German Institute for Human Rights, the Organisation for Security and Co-operation in Europe (OSCE) and others.<sup>40</sup> The research concluded that it is extremely rare for trafficked persons to actually receive compensation payments despite the established right to compensation and availability of various compensation mechanisms. The research also found that while most European countries have legal provisions to claim compensation for material and non-material damages for victims of crime, in practice, the right to compensation remains weakly supported and inaccessible to trafficked persons.

NGOs have been instrumental in increasing awareness about access to justice and about compensation in particular. It is because of the advocacy of NGOs that a victim-centred approach to trafficking in human beings is reflected in the Council of Europe Convention. The COMP.ACT project is however the first concerted effort to *ensure* compensation for trafficked persons.

### The importance of compensation

Compensation is crucial in the fight against trafficking. It is an instrument of restorative justice and the formal recognition by the state of the rights abuses and damages suffered by trafficked persons. Compensation is also important to the prevention of re-trafficking. Furthermore, re-directing the criminal assets of traffickers to compensate victims has a deterrent effect.

Compensation is non-controversial; supported by a broad consensus amongst all stakeholders. NGOs, governments and international organisations equally agree that compensation is an undeniable right of trafficked persons.

Moreover, there is agreement that a functioning system of compensation benefits all parties:

- To trafficked persons, it delivers justice and recognises their right to redress for damages and for unpaid labour;

<sup>40</sup> OSCE Office for Democratic Institutions and Human Rights (2008). Compensation for trafficked and exploited persons in the OSCE region. Warsaw: OSCE/ODIHR; Lam, J. & Skrivankova, K. (2008). Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK. London: Anti-slavery international; Follmar-Otto, P. & Rabe, H. (2009). Human Trafficking in Germany. Strengthening victim's human rights. Berlin: German Institute for Human Rights.

- To states, it assists in the prevention of trafficking. Trafficked people return home with the means to regain control over their lives and build a future, increasing their chances of successful reintegration while significantly reducing the risk of re-trafficking;
- To the international community, it assists in the international fight against human trafficking by addressing both the criminal justice and the human rights dimension of the phenomenon. Confiscation of assets deters traffickers; it increases risk and threatens profits.

## 2.3 COMP.ACT – European Action for Compensation for Trafficked Persons

COMP.ACT was initiated to support trafficked persons in Europe to obtain compensation by removing the obstacles that prevent them from getting it. In most countries a legal framework on compensation for victims of crime was in place when the project began. The aim was not necessarily to move states to introduce new laws or instruments. COMP.ACT aims to increase the awareness about existing possibilities and to mainstream the issue of compensation within international and national anti-trafficking agendas in order to make it an integral part of the services offered to trafficked persons. Most importantly, the COMP.ACT project aimed to achieve a structure where trafficked persons receive compensation as a rule rather than as an exception.

### How did COMP.ACT come about?

It was clear from the onset that the ambitions of the COMP.ACT initiative would require the support of a coalition of national and international stakeholders. Furthermore, to develop a realistic and an achievable plan, it would be important to determine both the needs and expertise of the prospective project partners.

In 2008, La Strada International and Anti-Slavery International organised a consultation in Berlin, Germany to confer with a selected group of relevant stakeholders on trafficking and access to compensation for trafficked persons. The consultation brought together grass-root NGOs, lawyers, prosecutors, parliamentarians, migrant rights organisations, the International Trade Union Confederation (ITUC) and others. La Strada International and Anti-Slavery International prepared and presented a draft plan for a three-year pan-European project on compensation for trafficked persons as a basis for the consultation. Participants discussed their national situations, the objectives and desired outcomes of the project, the project activities, and the structure of cooperation. The Berlin meeting led to the formation of the European coalition and the project was given the name *COMP.ACT: European Action for Compensation for Trafficked Persons*.

The manner of consultation at the Berlin meeting set the ethos for the project - work based on needs and evidence using a participatory approach. From the start there has been a strong commitment amongst project partners to lead the implementation of the COMP.ACT project on the national level and to actively contribute to the European Coalition. The excellent results achieved by COMP.ACT partners, despite often minimal resources, attests to the strength of commitment and the success of the COMP.ACT methodology.

## How does COMP.ACT work?

The goal of COMP.ACT is rather ambitious: **To ensure access to compensation and legal redress for all people trafficked in Europe**

To achieve this goal would take time. For the first three years of the project it was necessary to work together on more specific objectives:

- To remove systemic and procedural obstacles in access to compensation;
- To mainstream compensation into anti-trafficking policies and practice;
- To ensure that avenues for compensation of trafficked persons are available on a systematic and sustainable basis.

To achieve these objectives COMP.ACT has combined practical work, such as research, test cases and the development of guidelines for professionals, with international advocacy and campaigning.

## Governance structure

**Project Coordination (PC)** has been led by La Strada International and Anti-Slavery International with input and guidance from the Steering Committee and the Advisory Board throughout. The PC coordinated the project on three levels:

Operational: Developing frameworks for the project activities of the national coalition partners, including, a template for analysis, capacity building for lawyers, training on awareness raising and advocacy, and monitoring and evaluation.

Consultative: ensuring interaction amongst partners as well as cascading knowledge and experiences within the coalition.

Political: setting the agenda and advocating for the rights of trafficked persons to compensation and monitoring the obligations of national governments and international organisations to ensure systematic and sustainable access to compensation.

**The Steering Committee** was formed by three of the fourteen national partners (LEFÖ-IBF, La Strada Czech Republic and KOK e.V.), who had more experience on the issue compensation at their national level. They took part in the bi-annual coordination meetings to set the agenda for the annual coalition meetings, to develop activities, and to assess the progress of the project. Their role was also to act as peer educators and to assist the other national partners in the project.

**The Advisory Board** consisted of four international organisations: The Churches' Commission for Migrants in Europe (CCME), The International Trade Union Confederation (ITUC), Platform for International Cooperation on Undocumented Workers (PICUM), the Office for Democratic Institutions and Human Rights of the OSCE, and one of the project donors, the King Baudouin Foundation. The Advisory Board supported the Project Coordination and the Steering Committee with input from their specific areas of expertise, advice from an international perspective, by identifying international opportunities for synergies and by providing links with the broader international networks.

An integral part of the project was carried out by the **National Partners**<sup>41</sup> of COMP.ACT:

Austria: LEFÖ-IBF-Intervention Centre for Trafficked Women  
 Belarus: IPA "Gender Perspectives" / La Strada Belarus  
 Bulgaria: Animus Association / La Strada Bulgaria  
 Czech Republic: La Strada Czech Republic

<sup>41</sup> More information about the national partners can be found in Annex I.

Former Yugoslavian Republic of Macedonia (FYROM<sup>42</sup>): Open Gate / La Strada Macedonia  
 Germany: KOK e.V. – German NGO network against trafficking in women and violence against migrant women  
 Ireland: Migrants Rights Centre Ireland (MRCI)  
 Italy: On the Road  
 Moldova: Institute for Penal Reform  
 Poland: Foundation against Trafficking in Persons and Slavery / La Strada Poland  
 Spain: Women's Link Worldwide and Project Esperanza  
 Ukraine: International Women's Rights Centre / La Strada Ukraine  
 United Kingdom: Anti-Slavery International

In addition, the partners of the European coalition set up country-based coalitions on compensation involving a wide range of stakeholders to support the aim of creating a sustainable compensation system for trafficked persons. Country-based coalition partners include NGO service providers, legal community, labour unions, migrant rights organisations and academics.

### COMP.ACT Methodology

One of the unique features of COMP.ACT is that it works both at national and international level. National work informs and reinforces the international work and vice versa. For example, the results of the national analyses, case studies and good practices, were used to strengthen the international awareness campaign. At the same time, increased international awareness and pressure stimulated national governments to take on the issue of compensation and to cooperate with the country-based compensation coalitions.

**National** work was lead by COMP.ACT partners according to context specific work plans. Partners established country-based coalitions involving practitioners, policy makers and academics to investigate the possibilities and obstacles for trafficked persons to claim and receive compensation, to formulate recommendations to overcome these barriers, and to raise awareness on the right to compensation. Only a very small part of the work of the national partners was co-financed by the COMP.ACT project PC. National partners were responsible for raising funds for national activities, but were supported by the PC in some cases.

**International** activities were lead by the Project Coordination, the Steering Committee and the Advisory Board. In addition to operational and consultative support, key strategic partnerships with European and UN institutions were established to help raise awareness within the international community and for advocacy support to include compensation in policies and legislation at the national level. The success of the COMP.ACT project can be attributed to the vital support and the close cooperation with intergovernmental organisations such as the OSCE/ODIHR, the Council of Europe and several UN bodies such as UN.GIFT, and UNODC. Some COMP.ACT partners received financial support from intergovernmental organisations.

### Key principles

All work carried out under the project was **needs- and evidence- based**, reflecting the national context. Consequently, COMP.ACT partners followed different paths in implementing the different project components depending on the national situation. The benefit of this methodology was the ability to advance the work through peer learning, and through sharing successful tools and practices.

Each year Project Coordination, supported by the Steering Committee, assessed the needs and progress of the coalition partners and communication throughout the project timeframe

<sup>42</sup> The official name is FYROM, this report uses the name Macedonia

was frequent. The needs assessments helped to form the basis of the programme for the annual Coalition meetings.

**A participatory approach** was followed for each element of the project. For example, COMP.ACT partners were the key presenters and trainers at the annual Coalition Meetings. They presented their achievements to the other partners, providing practical recommendations, tips and tricks and advice on good practices.

The COMP.ACT partners also participated in the development of the COMP.ACT project website, newsletters and represented COMP.ACT internationally. The same principle of participation was applied also to the work within national coalitions.

## 2.4 Results of the first three years of COMP.ACT

In the first three years, the COMP.ACT project has achieved the following five key results:

- More trafficked persons applying for and receiving compensation;
- Access to compensation included in anti-trafficking policies;
- Information and support to access compensation included in services offered to trafficked persons;
- Strong international coalition set up to ensure access to justice for trafficked persons;
- Increased knowledge and awareness about compensation nationally and internationally.

### 2.4.1 More trafficked persons applying for and receiving compensation

Most of the COMP.ACT partners are direct service providers and their main goal is to see that trafficked persons receive compensation for the damages they have suffered. In supporting their clients to claim compensation they have learned that success is underpinned by knowledge, skills and the availability of support. A trafficked person needs to be informed from the first moment of identification about their rights. Psychosocial and legal support is needed throughout the duration of the process along with close cooperation between service providers (councillors), lawyers, prosecutors and others. In addition, it is important to be realistic and understand that gathering all the information, such as court files and expert evidence is time consuming. Claiming compensation demands endurance and perseverance from the trafficked person, service providers and lawyers.

Experience shows that compensation proceedings are often complicated and lengthy. Many cases initiated during the COMP.ACT project are still pending.

There are however some encouraging first successes:

- LEFÖ-IBF Austria has claimed compensation in criminal court for every trafficked client since 2010. Seven trafficked persons received compensation in 2012, with the highest award being €30,000. The outcome of the first civil court resulted in an award of €54,000; a decision that is now pending in appeal court.
- La Strada Czech Republic has been monitoring two cases of trafficking for forced labour where compensation is claimed. La Strada also claimed compensation on behalf of a group of exploited forestry workers. Seven cases are pending. In a separate case in the Czech Republic, one trafficked person was awarded €10,000 in compensation in criminal proceedings.

- La Strada Poland has been involved in a compensation claim for eight exploited Thai workers in cooperation with the Thai Embassy and a lawyer experienced in trafficking cases.
- In Italy, compensation of €15,000 and €10,000 was awarded to exploited Pakistani and Indian workers in an extra-judicial setting, (in the Provincial Labour Directorate,) by bringing civil action into criminal proceedings. In 2012, a group of 17 Nigerian women were granted €50,000 as an injunctive interim payment.
- Between 2010 and 2011 four clients of La Strada Belarus made moral damage claims against their traffickers as part of criminal proceedings. Three claims were awarded of 1,600, 1,000, and 600 dollars (€1225, €765, €460). One claim was rejected because the presiding judge denied the victim status of the client re-qualifying them as a witness. Witnesses do not have a right to compensation.
- In March 2012 the Blagoevgrad District Court in Bulgaria found five men guilty of abducting and raping a woman and forcing her into prostitution. The woman was awarded compensation for a total amount of BGN 50,000 (€25,641). The case is pending before the appeal court.

### Collective action for unpaid wages

(by Migrant Rights Centre Ireland (MRCI))

The Forced Labour Action Group was established by MRCI in January 2010 to support workers who have experienced forced labour and trafficking to come together to campaign for better rights and an end to modern-day slavery. The group is made up of workers who have suffered forced labour and trafficking. The main focus of the group is to campaign for a law to end modern-day slavery and to bring in protections for the victims of this heinous crime. The group also supported workers to claim compensation through meeting with lawyers, protesting for payment of wages and highlighting the problem in the media.

Example of street project for unpaid wages

Muhammed Younis, a victim of forced labour, was awarded €92,000 by a Labour Court following an official complaint about alleged breaches of employment rights. However his ex-employer, Mr Amjad Hussain, (owner Poppadom Restaurant), neglected to pay the court ordered award. Muhammad Younis, supported by MRCI and the Forced Labour Action Group took to the streets protesting outside the Poppadom Take Away Restaurant to demand payment. Fellow workers stood in solidarity with Mr Younis and to raise awareness of the severe exploitation he suffered at the hands of his ex-employer. The group also called for the criminalisation of forced labour to protect workers like Mr Younis.

Mr Amjad Hussain appealed the court decision to the High Court where it was struck down. The court ruled that undocumented workers cannot seek redress under labour law as employment contracts cannot be recognised. Mohammed is appealing this ruling to the Supreme Court and will continue to seek justice to secure the wages and other payments owed to him.

The struggle for justice for Mohammed continues and the Forced Labour Action Group continues to support Mohammed in solidarity. Mohammed's struggle for justice is the struggle of all workers.<sup>43</sup>

### Strategic litigation

One of the aims of COMP.ACT is to facilitate litigation and develop jurisprudence by identifying suitable test cases and working with specialised lawyers to run the cases through national court systems. This has proven more difficult than expected. Trafficking cases are highly complex, involving intersecting issues such as cross-border concerns, individual health and psychological issues and potentially other processes that run parallel, such as immigration proceedings.

<sup>43</sup> Resource: <http://youtu.be/qLQzNw9nMdE> Campaign for criminalisation of Forced Labour

Important partnerships with legal experts at the national and international level have been established through the COMP.ACT project that will help to advance test cases. Two major international law firms; Freshfields Bruckhaus and Deringer<sup>44</sup> and Hogan Lovells<sup>45</sup>, and the pro bono network PILnet<sup>46</sup> are helping to support COMP.ACT objectives. The OSCE/ODIHR has also begun developing a network of lawyers for trafficked persons, in close partnership with COMP.ACT.

In Germany, COMP.ACT partner KOK supported the “Forced Labour Today” Database of Case Law project of the German Institute for Human Rights,<sup>47</sup> helping to improve accessibility by translating into English the court decisions of forty-four compensation cases.

La Strada Czech Republic has developed a framework for strategic litigation and began implementation in 2011. Central is the focus on the needs of the client and a clear definition of the priorities of the litigation. The priority in the initial period of implementation was compensation for victims of trafficking and forced labour. By the end of 2012, La Strada Czech Republic had registered six strategic litigation cases with the courts on behalf of eight clients.

#### 2.4.2 Access to compensation included in anti-trafficking policies

All national COMP.ACT partners established and consolidated country-based coalitions on compensation in order to raise awareness and to put compensation on the national anti-trafficking agenda.

##### Policy changes

All COMP.ACT partners succeeded in introducing compensation into policy and practice in their country:

- In Bulgaria, Animus Association/La Strada Bulgaria introduced compensation to the agenda of a multi-agency working group that drafted the National Referral Mechanism (NRM). As a result, compensation is an integral part of the Bulgarian NRM. Also, a standing agenda item of the permanent expert group of the National Anti-Trafficking Commission.
- La Strada Poland formed a sub-group responsible for incorporating compensation into the amended National Action Plan within the national working group on human trafficking.
- La Strada Ukraine created a broad national coalition to work on compensation that includes representatives from universities, ministries, the High Court, associations of lawyers, human rights observers, international organisations and national NGOs.
- LEFÖ-IBF established a working group dedicated to compensation in Austria. The group meets monthly to work on cases and ways to promote compensation. The group cooperates with the working group on the rights for undocumented workers.
- La Strada Czech Republic contributes to a national focus group composed of lawyers, attorneys, state prosecutors and representatives of the police who examine the position of victims in criminal proceedings and obstacles preventing them from obtaining compensation.
- In Spain, Women’s Link Worldwide and Proyecto Esperanza have brought the topic of compensation into the Spanish Network against Trafficking and in meetings with

<sup>44</sup> [www.freshfields.com](http://www.freshfields.com)

<sup>45</sup> [www.hoganlovells.com](http://www.hoganlovells.com)

<sup>46</sup> [www.pilnet.org](http://www.pilnet.org)

<sup>47</sup> “Forced labour today – Empowering trafficked persons” <http://www.institut-fuer-menschenrechte.de/en/project-forced-labour-today/database-of-case-law.html>



the Prosecutor's General Coordinating Office on Migrant Issues. As a result, the Prosecutor issued a *memorandum* (an internal order) that was circulated to all Prosecutors' Offices in Spain.

- Migrant Rights Centre Ireland took part in the Irish National Referral Mechanism working group and contributed to a mid-term review of the Irish National Action Plan, focussing on the existing barriers for claiming compensation.
- Open Gate/La Strada Macedonia established partnership with the national Academy for Judges and Prosecutors.
- In Italy, On the Road has brought together a network of lawyers, judges, politicians and journalists to collaborate on the development of a law proposal aimed at the creation of a national fund for victims of trafficking and to create awareness on the issue of compensation.

Because of the work of COMP.ACT national partners, compensation is now included or improved in the National Action Plans and/or the work plans of national coordination groups in eight of the project countries: Austria, Belarus, Ukraine, Bulgaria, Germany, Macedonia Spain and Italy. In Ukraine, the right to compensation is now included in new anti-trafficking legislation adopted by Parliament in June 2011.

### Compensation included in the National Referral Mechanism in Bulgaria

(by *Animus Association*)

The Animus Association initiated the development of the 2011 National Mechanism for Referral and Support of Trafficked Persons in Bulgaria. It is a cooperative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons. Under *measure 3.4 (NRM), Provision of Financial Compensation* two steps are listed:

- 1) Information about the legal possibilities and
- 2) Support in the communication with relevant institutions.

The inclusion of compensation in the NRM is a crucial step to embedding compensation within the anti-trafficking policy, to mainstream access to compensation into services for trafficked persons, and to complement the law and assess its effectiveness.

Including compensation as a specific measure within the NRM is significant for long-term recovery. It helps to ensure that facilitating access to compensation becomes the shared responsibility of all stakeholders offering assistance to victims. Victims are often unaware of their rights. Professionals should be aware of the rights of victims and they should be ready to provide key information throughout the recovery process. The possibility to receive compensation has benefits beyond the financial for trafficked persons; it supports increased confidence and self-worth, and acknowledges victims as rights holders.

The current legislation, Crime Victim Assistance and Compensation Act, is not suited to the needs of the trafficking victims. The legal requirements can rarely be met by trafficked persons. The inclusion of compensation in the NRM can be a way to complement existing law. It can also be used to assess whether legislation works for trafficked persons and to understand what changes are necessary to ensure accessibility.

### 2.4.3 Compensation included into services offered to trafficked persons

Lack of knowledge and skills amongst professionals and practitioners who work with trafficked persons was identified as a key issue in several assessments carried out by COMP.ACT. Capacity building amongst COMP.ACT partners and enabling them to cascade knowledge nationally was a crucial element of the project. All partners indicated that their own knowledge and confidence about the different aspects of compensation had improved enormously throughout the project.

#### The power of information

It is impossible to access rights unless one knows about them.

As a result of the work of the COMP.ACT project coalition partners, providing information on claiming compensation and providing support and assistance during proceedings has become standard procedure for service providers and counselling centres within the COMP.ACT coalition. Information and resources are also flowing to other supporting agencies improving information provision on compensation to trafficked persons in general. Some partners offer legal assistance themselves, others work closely together with law centres:

- In Austria and Germany, LEFÖ-IBF and KOK have developed a leaflet in several languages for trafficked persons with information on the right to compensation and ways to seek remedy.
- In Belarus, Austria and Germany, COMP.ACT partners have developed a leaflet for service providers that they can use to inform trafficked persons about compensation.
- In Austria, LEFÖ-IBF has been exploring new avenues for remedy, including the possibility of pensions for trafficked persons.
- La Strada Ukraine has trained their hotline consultants on compensation so trafficked persons get this information at the first point of contact.

Through awareness raising activities at the national level COMP.ACT partners have worked to ensure that others, including some state authorities, also take on the responsibility to inform trafficked persons about compensation:

- In the Ukraine, social services are obliged to provide trafficked persons with information on compensation.
- In Macedonia, the responsible police inspectors and public prosecutors provide information about compensation.
- In Bulgaria, all shelters of the Anti-Trafficking Commission provide information on compensation.

#### Capacity building

Capacity building of COMP.ACT partners has been a crucial element of the COMP.ACT project. In June 2011, trainings were delivered during the second coalition meeting for lawyers on claiming compensation on behalf of trafficked persons and for service providers on assisting their clients through this process. International law firm Hogan Lovells provided a training session on making claims from state compensation funds and a specialised lawyer from the Netherlands presented a 5-step model for claiming compensation in criminal cases.

Several COMP.ACT partners have passed new knowledge and learned skills on to relevant stakeholders at the national level, building capacity by developing and delivering trainings for a national context:

- La Strada Belarus delivered six regional trainings for law-enforcement officers.

- LEFÖ-IBF has been training lawyers, police, judiciary and other stakeholders in Austria.
- In Spain, Proyecto Esperanza and Womens' Link Worldwide have included the issue of compensation in their regular trainings for the specialised anti-trafficking police units. In the training, the police learn the steps that they need to take within their jurisdiction to guarantee compensation in criminal investigations. Proyecto Esperanza also participated in trainings at the Spanish National Bar Association providing information about compensation in trafficking cases.
- In Germany, KOK has initiated a project "Strengthening Victims' Rights." During project trainings lawyers and counselling centre staff collaborate in assessing the eligibility to claim compensation of recent cases, learn how to lodge compensation claims, and how to improve contact with the relevant authorities.
- In Italy, On the Road, has joined forces with the national branch of Hogan Lovells and delivered three trainings for lawyers on access to justice and compensation for trafficked persons.
- In the Czech Republic, La Strada organised two focus group meetings for legal professionals; attorneys, judges and public prosecutors. In these meetings, lawyers had the opportunity to share and discuss mutual practical experience from their work with clients. The meetings laid new ground for cooperation between La Strada Czech Republic and attorneys representing trafficked persons.

### **Pilot Project Strengthening Victims' Rights!**

*(by KOK)*

Project Strengthening Victims' Rights (August 2012 to end-January 2013) aimed to improve access to compensation for exploited and trafficked persons in Germany, in particular, through facilitating access to two German compensation instruments: the Crime Victims Compensation Act (CVCA, Opferentschädigungsgesetz), and the Statutory Accident Insurance (SAI, gesetzliche Unfallversicherung). SAI had not yet been applied to trafficking cases.

During the project a nation-wide network of twenty-two lawyers and twenty-two NGOs, including specialised counselling centres, was established. The network focuses on practical cooperation and training that will facilitate the submission of compensation applications. The project also created a database of contacts amongst the authorities responsible for administering the CVCA and SAI to facilitate raising awareness about exploitation and trafficking in persons.

Activities undertaken during the project included: Conducting a workshop for lawyers, representatives from an experienced counselling centre, and representatives from CVCA and SAI. At this workshop an experienced lawyer worked with participants to develop a general case template to assist NGOs in filing compensation applications; Establishing a team of a lawyer and counselling centre to jointly assess cases for compensation eligibility and to assist counselling centres in filing applications for eligible cases; Monitoring and evaluating the development and progress of all compensation applications filed under the project.

## Access to appropriate compensation: Cooperation of specialised lawyers and counselling centres

(by LEFÖ-IBF)

LEFÖ-IBF, COMP.ACT partner and Steering Group member is committed to help bring about systemic and practical changes in Austria to overcome obstacles identified in the national study conducted in the context of COMP.ACT into systems and procedures that prevent trafficked persons from accessing compensation.

LEFÖ-IBF initiated meetings between lawyers with experience of trafficking cases in Austria; all who had followed an individual approach. At the meetings current and past criminal, civil and labour law cases were discussed. Discussions highlighted the complexity of laws and regulations related to or applied to human trafficking in Austria.

A key outcome of these meetings was the identification of potential test cases for which LEFÖ-IBF initiated proceedings in the context of COMP.ACT. The aim was to achieve clarity in the latest judicial developments and set precedents for future cases. Two landmark cases, one in criminal court and the other in civil court, were successful.

In the criminal court case the claimant was granted an award of €30,000 in compensation. Significantly, the judge in her verdict based the award amount on a monetary valuation of the period of suffering endured by the victim. In the civil court case the claimant was awarded €54,000 in compensation.

The positive outcomes of these informal meetings have led to the decision to institutionalise regular exchange and training meetings. The first agreed action point is to produce a general statement on compensation, including international law and Austrian criminal court decisions, that can be used in any procedure and which can be adapted to strengthen claims for compensation for other trafficked persons.

## COMP.ACT Tools

New knowledge and successful national practice was shared among the coalition partners and several of the national tools have been adopted and adapted in other countries:

- In 2010 KOK, in cooperation with the German Institute for Human Rights, developed a **Poster**<sup>48</sup> that gives lawyers and counselling centres a clear overview of compensation available in Germany. It includes a decision tree model with simple steps to follow when advising a trafficked person. The German poster inspired partners in Austria, Italy, Bulgaria, Ukraine, Macedonia, Belarus and the Czech Republic to develop their own versions. The German and Czech poster are also available in English and Russian.
- Proyecto Esperanza and Women's' Link Worldwide have produced a memorandum on legal avenues for trafficking victims to claim compensation in Spain, including information on national jurisprudence, European legislation and European Court of Human Rights (ECHR) case-law.
- In Ireland, MRCI has developed a system for vulnerable migrant workers to access quality legal services and to pursue compensation assisted by lawyers in an affordable way. This work is also being expanded to include immigration matters.
- COMP.ACT project coordination transposed a 5-step model for claiming compensation developed by a Dutch lawyer into the **Guidance on representing trafficked persons in compensation claims**<sup>49</sup>. The 5-step model has been translated into German by LEFÖ-IBF and KOK.

<sup>48</sup> Included in this toolkit

<sup>49</sup> Included in this toolkit

## **Memorandum on legal avenues for trafficked persons to claim compensation in Spain.**

*(By Proyecto Esperanza and Womens' Link Worldwide)*

As a first step to drafting a comprehensive strategy on access to compensation for trafficked persons in Spain Proyecto Esperanza and Womens' Link Worldwide produced a comprehensive memorandum, with translation to English, about the current international, European and national legal frameworks that apply to compensation for trafficked persons.

The main focus of the Memorandum is on the Spanish legal system and existing criminal, civil and labour law avenues for compensation claims. It explains the requirements for litigating compensation for each context and contains an outline indicating average duration and the extent to which victim presence or testimony is required during a procedure. Since so few claims have been made in civil or labour courts information in the Memorandum prioritises criminal proceedings.

The memorandum also highlights relevant international instruments and European Directives and emphasises the positive obligation of states to protect the human rights of victims.

The advocacy efforts of Proyecto Esperanza and Womens' Link Worldwide targeted the Prosecutor's General Coordinating Office on Migrant Issues. In addition, frequent meetings were held with the Coordinating Prosecutors office, responsible for coordinating all prosecutors' offices throughout Spain, to introduce and discuss the importance of compensation and to present specific cases. As a result of these meetings Proyecto Esperanza and Womens' Link Worldwide participated in training courses and provided training to prosecutors on claiming compensation.

Positive outcomes from this work are a greater understanding of the Coordinating Prosecutors Office of the need for awareness and practical training for prosecutors on compensation for trafficked persons.

The Coordinating Prosecutor's Office also issued a memorandum to all prosecutors' offices highlighting the importance of claiming compensation for trafficking victims as well as providing information on how to do so. There has been a significant increase in awareness amongst prosecutors as well as an increase in compensation claims as a result of this advocacy work.

### **2.4.4 Strong international coalition to ensure access to justice for trafficked persons**

One of the aims in the first year of the project was to consolidate the European coalition of COMP.ACT and establish country-based working groups on compensation. With this in place core coalition worked to gain interest and commitment of others to join the efforts of COMP.ACT.

What started in 2010 as a relatively modest initiative has grown into a larger coalition of organisations supporting the aims of COMP.ACT and those interested to join it. NGOs from other countries, including from Serbia, Turkey, and the Netherlands, have participated in the annual coalition meetings and expressed interest in joining the coalition.

COMP.ACT has also enjoyed the institution support of the Council of Europe, with the General Secretary launching the project, and of the Office of the OSCE Special Representative and Co-ordinator on Trafficking.

In the course of the project, further international bodies came out in support of the coalition, including the UN Office on Drugs and Crime, UN.GIFT, UN Office of the High Commissioner on Human Rights and the UN Special Rapporteur on trafficking in persons, especially women and children.

Individual lawyers as well as international law firms have joined in to work in advancing access to compensation for trafficked persons; these include The Prague Attorneys<sup>50</sup>, Hogan Lovells and Freshfields Bruckhaus and Deringer.

## 2.4.5 Increased knowledge and awareness about compensation nationally and internationally

A premise of the COMP.ACT project was that the majority of national policies and laws would not need to be changed in order for trafficked persons to be compensated; they just needed to be better implemented. COMP.ACT partners undertook country analyses of the legal possibilities for claiming compensation and the obstacles that prevent people from being compensated to better understand implementation issues.<sup>51</sup>

Some partners conducted their research before the beginning of COMP.ACT in 2008 and 2009, such as La Strada Belarus, and MRCI in Ireland in cooperation with CCME. Similar studies were conducted in other countries. In Germany the Institute for Human Rights conducted the study “Human Trafficking in Germany – Compensation and Remuneration for Trafficked Persons in Germany,” in 2009, and KOK coordinated a comprehensive study on behalf of the Federal Ministry of Labour and Social Affairs on forced labour and access to labour courts “Trafficking for the Purpose of Labour Exploitation in Germany – Developing Sustainable Support Structures for exploited Persons” (published in 2011). A legal analysis on access to compensation for trafficked persons was also conducted by La Strada Czech Republic and published in 2009.<sup>52</sup>

### Knowledge gathering by COMP.ACT

The Project Coordination commissioned a consultant to develop a common research framework and methodology<sup>53</sup> for the national COMP.ACT partners to help them collect comparable data. The consultant was supported by LEFÖ-IBF as a steering committee member.

The Research Guidance was presented by the consultant and discussed at a special training at the first Coalition meeting in Prague, Czech Republic, June 2010. The template provided guidance for the research conducted by the partners in Austria, Spain, Macedonia, Ukraine, Bulgaria and Poland. The Italian partner, On The Road, adapted the template into a smaller survey that worked within their budgetary constraints, which was sent to all service providers and other stakeholders in Italy.

Most of the country analyses were finalised and published in 2011 and the majority are either available in English or there is an English summary. An LSI volunteer analysed the reports and summarised the possibilities and obstacles for claiming compensation in a consolidated report.<sup>54</sup>

While the national situations differed in detail, there were some general findings shared by most reports.

<sup>50</sup> Lawyers from the Prague Attorneys are representing eight victims of forced labour in the Czech ‘Tree Workers Case’. <http://www.pragueattorneys.cz/>

<sup>51</sup> See annex II for the full list of the country reports. The reports can be found on: [www.compactproject.org](http://www.compactproject.org)

<sup>52</sup> Šáchová, P., Lomozová, P.: „Možnosti a limity odškodnění obchodovaných osob v českém právním systému“ („The possibilities and limits of compensation for trafficked persons in the Czech legal system“).

<sup>53</sup> See the research template in this toolkit.

<sup>54</sup> See section 3 of this toolkit

## Obstacles in seeking compensation in trafficking cases

The reports unveiled a number of often interconnecting barriers that prevent trafficked persons from accessing compensation. These can be categorised as structural, practical and personal.

The most salient **structural obstacles** noted by the majority of project partner reports were: the non- or misidentification of trafficked persons; indifference or negative attitudes towards trafficked persons and the subject of compensation; the irregular status of the victims; and the priority given by government to enforcement of immigration laws. Negative societal attitudes, or indeed a lack of social awareness about the crime of human trafficking are also often reflected in inadequate policy, legislation, and in the lack of funding afforded to victim support services or training. These structural obstacles reveal the lack of a victims' rights culture in general.

The most common **practical obstacles** identified were the lack of training of relevant stakeholders, such as support workers, police, solicitors and judges, and significant gaps in the availability and quality of victim support services which are so vital for the rehabilitation of trafficked persons and their ability to claim and receive compensation. Other practical obstacles related to financial investigation, lack of compensation orders made, missing criteria for determining compensation amounts, and low monetary amounts of compensation awards. These obstacles are linked to the poor awareness about legislation, policies, the importance of compensation, and the needs of trafficked persons. In some countries this lack is exacerbated by insufficient availability of free legal aid. A significant predicament cited by a number of the reports was the failure to recover assets from perpetrators post-trial. This problem was found to be underpinned by, the failure to freeze assets in a timely manner thereby allowing traffickers to conceal their assets, the lack of specialised training in police forces, and the lack of funding for financial investigations. In addition, reports noted that where assets were recovered they flowed to the state and were rarely used to compensate trafficked persons.

**Personal obstacles** related to the trafficked person included the lack of awareness of their right to compensation, the desire to forget their experiences and move on, fear of their traffickers, a reluctance to become involved with formal institutions, and the inability to cope with lengthy procedures.

Many reports had similar recommendations in response to analogous problems. Most recommendations made related to the review of existing legislation and policies, training for all relevant stakeholders, encouraging financial investigation, freezing and confiscation of assets at the initial stages of inquiry, greater funding for victim support services, compensation funds for those countries currently without, and a uniform approach to determining compensation amounts. Many also recommended a coordinated approach among stakeholders; highlighting the need for compensation to be integrated in legislation, policy and practice of those supporting, advising and awarding compensation to trafficked persons.

## Research based advocacy for policy change

All partners used the outcomes of their reports to advocate for policy changes. Before research was conducted, many of the partners (including the project's Steering Committee) thought that no additional legislation was needed and that only the implementation of existing mechanisms was necessary. However, the research conducted found this to be only partially the case. The reports show that some measures need to be specified, such as explicitly including compensation into national legal anti trafficking mechanisms.

- La Strada Ukraine used the report for advocating for the establishment of a state compensation fund.

- In Germany, the Victims Compensation Act is under review and according to KOK there is a consensus amongst Government Ministries on the need to improve this Act to address compensation possibilities for trafficked persons.
- Gender Perspectives/La Strada Belarus lobbied successfully for the inclusion of specific measures on compensation into the National Action Plan.
- The report and activities of Open Gate/La Strada Macedonia led to the creation of a fund for compensation of minor victims of trafficking crimes on state level.
- LEFÖ-IBF included the research recommendations in a shadow report to GRETA<sup>55</sup>. These were used by the Expert Group in their report to the Austrian Government.
- LEFÖ-IBF used the research study as a tool to inform the debate in Austria on the issue of compensation together with the Ministry of Interior; organising trainings for police, financial investigators and civil servants.
- Within the Spanish National Network on trafficking in human beings and together with parliamentary groups, Women's Link is a member to the Spanish National Network on trafficking in human beings. The Network has been lobbying parliamentary groups in order to make them understand that a Comprehensive Law to Combat Human Trafficking is needed in our country. We want to take the opportunity to implement the Directive through this Comprehensive Law and include compensation on it. The Network is willing to assist parliamentary groups on the bill drafting process.

### National awareness raising

The COMP.ACT partners noted a substantial increase in awareness about compensation and claiming damages for victims of trafficking amongst key national stakeholders. Most civil society and government organisation partners in the field were very receptive to the COMP.ACT proposition that trafficked persons should be compensated for unpaid wages and damages. COMP.ACT partners used the occasion of launching country reports to organise national awareness raising events:

- Open Gate/La Strada Macedonia organised a special event to present their report for both national and international stakeholders.
- La Strada Ukraine was invited to organise a round-table on compensation to present the report at the Ministerial conference "Ukraine society of equal opportunities".
- Gender Perspectives/La Strada Belarus organised an international seminar on compensation for practitioners and promoted the results of the study at several media appearances and within legal publications.
- LEFÖ-IBF organised a round-table discussion together with the Boltzmann Institute of Human Rights and the Austrian working group on compensation and with the support of the Ministry of Justice. The event included a press conference for the release of the report. In Austria, information on compensation is part of standard training on trafficking for law enforcement.

### International awareness raising

The COMP.ACT campaign focused on raising awareness about compensation for trafficked persons with politicians and policy makers at both the international and the national level. The campaign was not aimed at the general public but at those international institutions that can influence national decision makers. The international COMP.ACT campaign for compensation for trafficked persons was officially launched on 2 July 2010 in Prague in a key note speech by the OSCE Special Representative on Trafficking, Ms Maria Grazia Giammarinaro and also via video message by Thorbjorn Jagland, the Secretary General of

<sup>55</sup> Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA)



the Council of Europe, who emphasised the institutional support of the Council of Europe and the OSCE for COMP.ACT.

COMP.ACT successfully included the issue of compensation in the agenda of major international meetings on trafficking in persons. The project coordination, members of the steering committee and advisory board, and project partners were frequently invited as experts on the issue presenting COMP.ACT at a number of international conferences and seminars:

- Evelyn Probst (LEFÖ-IBF) and Klara Skrivankova (Anti-Slavery International) presented COMP.ACT at the Workshop “Trafficking in Human Beings for Labour Exploitation – emerging civil society responses to a growing challenge” in Bucharest, Romania in February 2010.
- On 18 October 2010, EU Anti-Trafficking Day, Irena Konečná (La Strada Czech Republic) presented the COMP.ACT project in Serbia at the meeting of the Council of Europe on “Criminal Assets Recovery in Serbia”.
- On 18 October 2010, EU Anti-Trafficking Day, COMP.ACT coordination organised a side event at the 5th Conference of the State Parties to the UN Convention on Transnational Organized Crime in Vienna.
- Galina Tjurina (La Strada Belarus) and Klara Skrivankova presented COMP.ACT at the Expert Consultation on Effective Remedies for Trafficked Persons by the UN Special Rapporteur on trafficking in persons, especially women and children, in Slovakia in November 2010.
- Wiesje Zikkenheiner (La Strada International) presented COMP.ACT at the International Round Table on Compensation for Victims of Human Trafficking: the experience of Belarus, Moldova and Ukraine, in Belarus.
- In February 2011 Marieke van Doorninck (La Strada International) presented the concept of compensation and the COMP.ACT coalition at a hearing on Combating Trafficking for Forced Labour in the European Parliament.
- Evelyn Probst (LEFÖ-IBF) presented the COMP.ACT coalition and national experiences at the Alliance Conference of OSCE: “Human trafficking for Labour Exploitation” in June 2011.
- Marieke van Doorninck (La Strada International) presented the concept of compensation for trafficked persons and the COMP.ACT coalition at the OSCE Alliance Expert Seminar on Leveraging Anti-Money Laundering Regimes to Combat Human Trafficking, co-organized by SPMU<sup>56</sup>, OCEEA<sup>57</sup> and UNODC in October 2011
- At the Fundamental Rights Conference on Dignity and Rights of Irregular Migrants in November 2011, Marieke van Doorninck together with the project’s Advisory board member PICUM<sup>58</sup> succeeded in including the implementation of Article 6 of the Employers Sanctions Directive, on claiming unpaid wages, in the recommendations of the conference.
- Klara Skrivankova (Anti-Slavery International) and Marieke van Doorninck (La Strada International) participated in December 2011 in a consultation of the EU Anti-Trafficking Coordinator for the European Strategy on the fight against trafficking in human beings and successfully advocated for the inclusion of the issue of compensation into this Strategy which was adopted in June 2012.

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<sup>56</sup> Strategic Police Matters Unit

<sup>57</sup> Office of the Coordinator (of OSCE) Economic and Environmental Activities

<sup>58</sup> Platform for International Cooperation for Undocumented Migrants

- Ulrike Gatzke (KOK) presented the COMP.ACT project at the 18<sup>th</sup> meeting of the Council of the Baltic Sea States' (CBSS) Task Force against Trafficking in Human Beings in June 2012 in Berlin.
- Evelyn Probst (LEFÖ-IBF) presented the COMP.ACT project at the Round table of the Regional Implementation Initiative in November 2012 in Vienna.

### Special events by COMP.ACT

COMP.ACT resources were primarily focused on the development of tools and capacity building amongst project partners and their national coalitions. It did not allow for the organisation of a large final conference to present the results of the project. Thanks to the excellent partnerships developed with intergovernmental organisations, the COMP.ACT coordination was able to organise three international events on access to justice and compensation:

#### UN Human Rights Council

La Strada International and Anti-Slavery International, with the support of the OSCE/ODIHR and the permanent missions of Germany and the Philippines to the UN, organised a side event to the 17th Session of the UN Human Rights Council on 31 May 2011. The event "Compensation for Trafficked Persons: Making effective remedy a reality for the victims," brought together high-level panellists including the UN High Commissioner for Human Rights, Ms Navi Pillay; the UN Special Rapporteur on trafficking in persons, Ms Joy Ngozi Ezeilo; the President of the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA), Mr Nicolas le Coz; and the OSCE/ODIHR Senior Advisor on Anti-Trafficking Issues, Ms Mariana Katzarova. The event was chaired by the Philippines Ambassador to the UN.

#### Special Focus Event

On invitation of the OSCE Special Representative and Co-ordinator on Combating Trafficking in Human Beings, Maria Grazia Giammarinaro, COMP.ACT organised a Special Focus Event prior to the 12<sup>th</sup> *Alliance against Trafficking in Persons* Conference in Vienna on 11 October 2012.

At the event, *Access to Justice, making compensation a reality for trafficked persons*, the OSCE Special Representative, the Executive Secretary of the Council of Europe Convention on Action against Trafficking in Human Beings, the Senior Adviser on Anti-Trafficking issues of OSCE/ODIHR, and a representative of the Office of the EU Anti-Trafficking Coordinator, underlined the importance of compensation for trafficked persons in combating trafficking in human beings. They reaffirmed their commitment to keep compensation on the international anti-trafficking agenda and expressed their support for the COMP.ACT project. The COMP.ACT coordinators presented the results of the project, the tools that were developed and the COMP.ACT recommendations. The COMP.ACT event was attended by the majority of the participants of the 'Alliance Conference', including a large number of State representatives.

#### Hearing in the European Parliament

On 28 November 2012, COMP.ACT organised a hearing in the European Parliament. The event '*Access to Justice – Ensuring Compensation for Trafficked Persons*' was hosted by the Dutch MEP Judith Sargentini. The COMP.ACT Advisory Board presented the human rights based approach to trafficking in persons, with an emphasis on effective remedies and the relation with the EU Trafficking Directive. Members of the Steering Committee presented their experiences with COMP.ACT, the results they achieved and the tools that were developed. Recommendations were made to the Members of the European Parliament to promote access to justice for trafficked persons in their national parliaments and to include the issue of compensation in the monitoring work of the National

Rapporteurs on Trafficking in Human Beings. At the event a preview of the promotion video for compensation was shown.

### COMP.ACT Video

To promote the issue of compensation for trafficked persons to an audience broader than those directly working in the anti- trafficking field, the COMP.ACT coordination negotiated with the European Commission to use project funding savings to produce a public information video promoting the issue of compensation.<sup>59</sup>

The video explains the importance of compensation and includes key people in the anti-trafficking field talking about the obstacles and barriers that prevent trafficked persons from claiming their rights.

### Campaign results

Over the three years of the COMP.ACT project the discourse has changed at the international level. There is an increased awareness about compensation and about the barriers preventing trafficked persons from claiming compensation. This important shift has led to the adoption of new legislation and policies:

- The Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, includes the right to compensation as well as the ancillary rights that should guarantee access to justice. Article 17 requires Member States to ensure that trafficked persons have access to existing schemes of compensation to victims of violent crimes.
- The right to compensation is included in the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016 that was launched by the European Commission in June 2012.
- La Strada International together with the advisory board member PICUM advocated for the inclusion of the rights of undocumented victims into the commissions' proposal for the Victims' Directive. The COMP.ACT research had shown that irregular migration status is one of the main barriers to access to justice. Consequently, the European Parliament made amendments resulting in the 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, irrespective of immigration status.
- GRETA, the Group of Experts on Action against Trafficking in Human Beings that monitors the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, had started their country evaluations in 2010, the year the COMP.ACT project began. GRETA produced ten country reports between 2010 and 2012; all included information dedicated to the issue of compensation. In each country report GRETA urged the Member State to lift those legal and practical barriers that prevent trafficked persons from receiving compensation.
- The theme of the 2011 annual report of the UN Special Rapporteur on trafficking in persons especially women and children, was: 'Effective Remedies for Trafficked Persons'. In the preparation the office of the Special Rapporteur published two Addendum reports<sup>60</sup> and organised two international expert meetings which COMP.ACT participated in. At the launch of the annual report the Special Rapporteur also presented the draft basic principles on effective remedies for trafficked persons.

<sup>59</sup> The video is available on [www.compactproject.org](http://www.compactproject.org)

<sup>60</sup> The 2011 Dakar addendum A/HRC/17/35/Add.5 and Bratislava addendum A/HRC/17/35/Add.6: <http://www.ohchr.org/EN/Issues/Trafficking/Pages/annual.aspx>

- In June 2012, the UN Human Rights Council adopted a resolution ‘Trafficking in persons, especially women and children: access to effective remedies for trafficked persons and their right to an effective remedy for human rights violations’.

## 2.5 Conclusions and recommendations

The successes of COMP.ACT demonstrate the strength of working in partnership and of the COMP.ACT methodology.

By forming new national and international coalitions and strengthening existing ones, undertaking research, conducting trainings, developing tools for practitioners, and sharing good practices, COMP.ACT has contributed to raising awareness and laid the foundation for a multi-faceted and holistic strategy to make the improvements needed for more trafficked persons to receive compensation.

The results and products of COMP.ACT have reinforced the international recognition of the importance of a human rights based approach to combating trafficking in human beings. With a *broad coalition of the willing* now established on both the national and international level it is possible to; expand to include all stakeholders working in the anti-trafficking field, anchor compensation into all policies, measures and legislation, and most importantly; to make compensation a reality for all trafficked persons.

The success of COMP.ACT on the national level has benefited from the international level involvement and campaigning of COMP.ACT. International organisations have supported COMP.ACT by encouraging states to take on the issue of compensation and access to effective remedies. Financial and practical support from international organisations and international law firms made it possible to provide trainings for professionals and support clients claiming compensation.

Many COMP.ACT national partners indicated that ongoing international support is essential if the issue of compensation is to remain alive at both the national and organisational levels. The goal of mainstreaming compensation is not yet achieved and awareness raising must continue if it is to flow to organisation and administrative structures and remain on the agendas of practitioners. The fear is that if the attention on policy fades, the work on the ground would also come to a halt.

COMP.ACT has the following recommendations for further action. These recommendations are intended to ensure that compensation is granted to trafficked persons and becomes common practice in anti-trafficking measures.

### Recommendations for International Organisations:

- Include access to justice and compensation in the review mechanisms that evaluate the countries’ efforts to implement international obligations.
- Engage Europol, Cefpol and Eurojust to build the capacity of law enforcement and judiciary on victims’ rights and compensation and link them to financial investigations and asset recovery.
- Promote the use of confiscation legislation across Europe and explore ways of using seized assets to compensate victims.
- Promote the human rights based approach to trafficking in human beings.

### Recommendations for States:

- Include access to justice and compensation into National Referral Mechanisms and victim assistance programmes.
- Build the capacity of practitioners to support clients to claim compensation.
- Include compensation into existing trainings for law enforcement and judiciary.
- Secure funding for social and legal aid to trafficked persons.
- Set up state compensation funds and make them accessible for victims of all forms of trafficking.
- Consider guaranteeing compensation payment to the victim from state funds in the event the trafficker fails to pay within a given period.

### Recommendations for practitioners (service providers, law enforcement, judiciary)

- Enhance cooperation between all stakeholders and build partnerships to establish an integrated and coordinated approach.
- Apply and test all the possible avenues of redress for trafficked persons.
- Apply portable justice <sup>61</sup> to assist returned/deported trafficked persons to be able to claim and receive compensation.
- Develop strategic litigation techniques and increase knowledge on ways of redress.
- Disseminate successful compensation claims and good practices.

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<sup>61</sup> The concept of portable justice was developed by Global Workers Justice Alliance. Portable justice is the right and ability of transnational migrant workers to access justice in the destination countries after they return to their home countries.



# Section Three: Access to compensation: a 11–country analysis

## 3.1 Introduction

This section<sup>62</sup> summarises the studies conducted in 11 European countries<sup>63</sup> in the context of the COMP.ACT project. In the reports are more detailed descriptions of the national legislation and legal mechanisms through which compensation may be accessed. This section focuses on the barriers identified and recommendations for overcoming them.

Legislation on compensation for victims of crime is in place in all of the COMP.ACT countries; however, the reports highlight a number of often interconnecting structural, practical and personal obstacles that prevent trafficked persons from accessing compensation.

Many of the reports converge both in their descriptions of obstacles and in the recommendations to overcome them. It is clear that there is a need for systematic and coordinated thinking about how to raise awareness in respect of compensation, how to formally integrate it into policy, legislation, and the practice of those supporting, advising and awarding compensation for trafficked persons.

### Methodology

Both qualitative and quantitative methods were used in data collection. Research around issues affecting vulnerable groups is not without its difficulties; partners faced challenges locating interview subjects who were both available and willing to participate in the research. In addition, not all the country studies used the same methodologies for gathering information. As stated previously, some partners used the Research Guidance and template prepared for the COMP.ACT project, but a few partners had conducted studies prior to COMP.ACT. Missing from some of this earlier research is up-to-date information and a more specific focus on compensation. Finally, research was conducted in the language(s) of the country and then translated into English, varying in quality.

## 3.2 Structural obstacles to accessing compensation

Structural obstacles to accessing compensation are highly correlated to a failure to promote a victims' rights culture. This is particularly problematic for the majority of trafficked persons who, as undocumented migrants, are often also denied the recognition of ancillary rights that would support their access to justice. Finally, even when trafficked persons are successful in their claim for compensation there often obstacles impeding payment. In the absence of a victims' rights culture many governments have no structures in place for the confiscation of assets of traffickers and do not place a high priority on guaranteeing compensation payments.

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<sup>62</sup> The 11 country reports has been analysed and comprised in 2011 by Alexa Jeremy, volunteer at La Strada International

<sup>63</sup> See annex II for the full list of the country reports. The reports can be found online: [www.compactproject.org](http://www.compactproject.org)

### 3.2.1 No victims' rights culture

#### **Non-identification of trafficked persons**

The non-identification of trafficked persons is a significant obstacle to access to justice. Report findings indicate that only a very few trafficked persons are identified by the police or relevant authorities. The reasons for this are multiple, including authorities lacking specialised knowledge needed for identification, a lack of awareness amongst authorities and the public, and gaps in structures that provide assistance. The issue of identification is complicated; trafficked persons do not always identify themselves as victims of trafficking nor are they always aware of the legal implications of adopting the term.

Without identification there is no access to entitlements for a trafficked person. The German report raises an important associated issue; without identification there can be no proceedings against traffickers and trafficked persons are not compensated.

The UK, Austrian and German reports found that labour exploitation and trafficking for forced labour often go undetected because they are largely hidden crimes and remain a low priority for law enforcement. The Austrian report highlights that there are only a few cases of men identified as trafficked and there are very few cases identified of trafficking for purposes other than sexual exploitation.

#### **Misidentification of trafficked persons within the framework of immigration and organised crime**

Misidentifying trafficked persons as undocumented migrants without further investigation is also highly problematic. German, Austrian and UK reports in particular stated that there is a tendency for government to approach the issue of trafficking in persons as an element of immigration or organised crime, without considering the possibility of human rights violations. As a result, removal proceedings are often initiated and trafficked persons are denied access to justice from the outset or they are extended limited or temporary rights tied to their usefulness as witnesses.

Labour unions do recognise the issue of exploitation of irregular migrant workers within labour unions; however, there is minimal representation of the interests and needs of undocumented migrants exploited in labour. Unless someone is identified as a trafficked person, attempting to take an exploitive employer to civil or labour courts risks exposure to immigration authorities and possible removal. The Austrian report highlights how traffickers use the threat of deportation to control trafficked persons who are without a work permit.

#### **The impact of negative societal attitudes towards trafficked persons**

Societal attitudes have an impact on the way trafficked persons are treated and can often impede accessing compensation. The Ukraine report states: 'sadly, [the] perceived character of [the] victim is still taken into account by trial judges when making their verdict', which influences determinations about compensation. In cases of sexual exploitation, trafficked persons may be stigmatised and considered amoral and undeserving in the decision making process. In general, bias and prejudice towards victims of trafficking is present amongst investigators, prosecutors, and judges which can influence the decision for compensation.

In Belarus there is a lack of understanding and qualifications amongst the judiciary. One interviewee stated that: 'judges tend to say [to the victim] "you are guilty yourself," which is why the compensation amounts tend to be "just trifles."



In addition, the Ukraine reports that there are ‘commonly held stereotypes regarding victims of human trafficking’. The media perpetuates negative stereotypes about victims of trafficking, for example, that they voluntarily agree to sell themselves for use in labour or sexual slavery, and that they gain a significant profit from doing so.

The UK report attributes the lack of concrete plans and attention paid to the issue of compensation in UK anti trafficking policy to the general apathy towards victims of crime in general.

Employees responsible for granting state compensation are reported to have stated they have ‘moral reservations’ about voluntarily doing sex work, or irregular migration led them to assume that the trafficked persons partially contributed to the injury and therefore to refuse compensation. (Germany)

In general the police, public prosecutors, and criminal courts appear to view trafficked persons for their usefulness as witnesses in criminal proceedings against traffickers or as illegal immigrants. Assistance to trafficked persons to exercise their rights is the focus of law enforcement agencies only when it is either a prerequisite to their ability to testify or a motivation to testify. In the view of law enforcement agencies, the right to compensation or the payment of wages undermines this objective.

### 3.2.2 Personal Obstacles

The absence of a victims' rights culture has a huge impact on the personal experiences and decisions of trafficked persons in relation to access to justice.

#### **Trafficked persons do not see themselves as victims**

Many of the reports highlight how trafficked persons may not perceive themselves to be victims. An interviewee in the Belarus report notes that ‘even when we talk to them and explain that they, according to current legislation can be recognised to be victims of trafficking in persons and may receive help, they reject the identification: ‘I’m not a trafficked person, I’ve not suffered’. Similarly, the Ukraine report notes that many victims have ‘difficulty in acknowledging that they had suffered as victims of human trafficking, who in turn meant that they might not feel entitled to claim compensation from their traffickers.’

#### **Fear of traffickers and rejection by the family**

Trafficked persons are often frightened of claiming compensation because they fear reprisals from their traffickers. A number of interviewees in the Belarus report noted that the trafficked persons may experience pressure from traffickers or be fearful of reactions by relatives or friends. This can impact on their resolve to lodge a claim, take part in the criminal process, or to give accusatory evidence. The report also notes that 46% of the respondents indicated that after their return to their homeland they were exposed to threats from traffickers. In one example where a victim did give evidence, she then ‘submitted an application asking [the court] not to collect the sum of money owed to her as defined in the verdict’ due to pressure on her by the defendants.

Case studies show that instances where victims decide to drop their claims in court are quite common. (Ukraine)

### **Intimidating institutions/procedures**

The Belarus report noted that many trafficked persons are intimidated by institutions such as the court, are afraid of professionals or legal executives, and are wary of bureaucratic procedures. Criminal proceedings in particular can be very lengthy and many trafficked persons want to return to their countries of origin as soon as possible. The German report noted many trafficked persons felt that the disadvantages of going through official or court proceedings outweighed the potential financial or immaterial advantages of compensation. The willingness and ability to go through proceedings may also depend on the degree of importance compensation is given by those providing advice, what possibilities for assistance are available, the prospects of success, and how these are presented to trafficked persons. The Italian report notes that victims become de-motivated and discouraged easily given the lengthy time span between the facts of the case and the possible compensation decision.

... trafficked persons often do not trust state authorities. This mistrust deters them from filing a claim. (Bulgaria)

### **Desire to forget their experiences**

One interviewee from the Belarus report did not link the desire to have ‘minimum contact with law enforcement bodies’ with fear but with the desire to forget their experiences. The Ukrainian report echoed this finding and the German report stated that due to psychological stress, people trafficked into sexual exploitation often have no inner resources for exercising their rights. Other interviewees found that trafficked persons suffered post-traumatic stress disorder, or were in such a depressed psychological condition that they could not face discussions about damage compensation.

Victim interrogation procedures are seriously flawed. The victim is required to describe in public the intimate details of the crimes committed against her. Given the fact that judges are mostly men, appearing in court can be extremely traumatic for [female] victims [of trafficking for sexual exploitation]. This, in turn, provokes the ‘wrong’ behaviour from victims, who may appear silent and unwilling to answer the judge’s questions. This can have obviously detrimental consequences for their claim. (Ukraine)

In addition to the lack of information, some women, because of their emotional and psychological state, decline assistance, including claiming compensation. The reason is that they would like to forget what happened to them, they do not want to fill in any documents which can bring back painful memories. (Bulgaria)

### **Legislation and procedures**

Legislation and procedures often present serious obstacles to claiming compensation from State funds. Many of the reports reflect how legislation and official procedures often are in conflict with the interests and situation of trafficked persons. In Bulgaria, under legislation financial compensation is only provided upon the entry into force of a guilty verdict.

The Secretary General of the Bulgarian National Commission for Combating Trafficking in Human Beings was interviewed in the Bulgarian report and in her opinion, this law “discourages a lot of victims to apply for compensation and due to this requirement; there are not so many claims, as many trafficking cases take a lot of time before a verdict enters into force.”

In Germany, procedure requires a number of formal steps be taken and official documentation or evidence be obtained in order to establish credibility and prove the offence. This is often extremely difficult for a trafficked person. Furthermore, the process requires repeated statements to police, public prosecutors, in court, and in some cases to the benefits office which can be very distressing.

Also in Germany, under the Crime Victims’ Compensation Act, benefits are allowed if the injured party lodges a complaint with the authority responsible for criminal prosecution without undue delay. This is problematic for trafficked persons who often need a prolonged stabilisation phase before they are able to report an offence. In some cases they are able to extricate themselves from the situation but it is only much later that they decide, with assistance from the counselling centres, to report the offence.

In Austria the Victims of Crime Act states that third country nationals have the right to make claims only if they legally resided in Austria at the time of the offence. This constitutes a serious disadvantage for trafficked persons who were forced to stay and had no influence on their residence status.

In a number of countries a compensation fund for victims of violent crime is non-existent or limited and conditional.

### 3.2.3 Lack of information, knowledge and legal aid

#### **Insufficient victim support services**

The lack of victim support services was found to be a major obstacle in claiming compensation. The German report makes the important point that claiming compensation and lost wages in court costs money, takes time, and is stressful for the people concerned. The decision by people who have been trafficked into sexual exploitation about whether to assert their claims will generally depend on the importance attributed to that issue when counselling them, what potential assistance is available, and what the prospects of success might be. This is particularly true in the case of women migrants with few language skills and little knowledge about rights and procedures.

The Austria report makes a direct correlation between access to legal and psycho-social victim support services and claiming compensation. Providing detailed advice normally takes a lot of time, since victims of trafficking, just as any other person who is confronted with court proceedings for the first time, usually have no legal expertise. If unprepared witnesses are then asked about compensation claims in the course of having to tell the judge about traumatic experiences, they are completely overwhelmed by the situation and therefore not able to exercise their legal rights.

In Ireland and the UK, NGOs and various community groups continue to highlight the massive shortcomings in services offered to trafficked persons and are critical of the lack of protection for them. People who are identified as trafficked persons are forced to rely on inadequate support and services which are under resourced. Severely underfunded victim support services directly impact not only on the recovery and rehabilitation of trafficked

persons, but also upon their awareness of and the likelihood of their claiming and receiving any form of compensation.

The German report states that people who are exploited in sectors outside of sex work have a great need for assistance and sometimes for housing. Workers on construction sites or farms generally live near their jobs in housing provided by the employer, for example, in portable cabins. When they initiate proceedings under labour or criminal laws, they lose their accommodation and need alternative housing quickly. There are serious shortcomings in this area, particularly for men.

Very little of the existing structure for providing assistance to trafficked persons is oriented on access to justice and there is a need for language services, legal advice, and support services focussed on rights. A further obstacle, identified in the German report is that not all counselling centres place emphasis on the right to claim compensation to their clients when they advise them. This can be due to a lack of awareness, but also some service providers consider the main purpose of their work is to stabilise clients for criminal proceedings and to organise travel back to their countries of origin.

There is a lack of an organized system of legal assistance to the victims of trafficking. The NGOs engaged in the anti-trafficking field still do not consider compensation as a priority for victims of trafficking. (Italy)

#### **A lack of awareness, knowledge and skills with police, prosecution, judiciary**

A problem cited by the UK report was the lack of sufficient uniform guidance and training to police, prosecution and judiciary on the legislation and procedure for pursuing compensation orders. The consequence is that trafficked persons may not be informed of their right to apply for a compensation order.

In one 2005 trafficking case, police did not inform two trafficked women of their right to pursue compensation; instead they were quickly returned to their home country once they were rescued. (UK)

In Germany, the adhesion procedure, (an ancillary civil action to criminal proceedings in which claims for damages under civil law can be made against the party causing damage), can potentially assist trafficked persons. However, according to respondents, courts are still relatively unfamiliar with this instrument and are reluctant to use it. As a result, the right of trafficked persons to compensation is not regularly taken into consideration when structuring the criminal proceedings. Lawyers report that in some cases they make the tactical decision to not make an ancillary civil action application.

The Ukraine report notes that 'investigating authorities often fail to inform victims of the option of filing a claim, and even when the victim is informed, investigating authorities may make subjective appraisals of the victim's circumstances with little concern for whether the case will be proved in court'.

In Germany, the Pension and Benefits office deals with the claims for state compensation for trafficked persons. With little experience handling claims made by trafficked persons the Pension and Benefits office has not developed any specific knowledge about structures of

exploitation and coercive relationships or dynamics of violence. This lack of training, combined with prejudicial attitudes, often results in little or no compensation being awarded.

First of all, most trafficked persons are insufficiently aware of their right to compensation...lack of knowledge is the biggest problem. (Bulgaria)

Reports highlighted that the lack of knowledge is directly linked to a lack of training and knowledge building of those within various institutions such as the police, NGOs, or government departments, who may come into contact with trafficked persons.

The Belarus report stated that 26% of trafficked persons failed to lodge their claim for compensation because they were unaware of this right. Trafficked persons obtain information only when specialised counselling centres are active, particularly when they work proactively to appropriately identify and support trafficked persons. The German report noted that the investigating authorities apparently do not consider it their job to provide information on compensation to trafficked persons. Or they may inform trafficked persons of their rights by reading regulatory acts and using legal language without explaining what the act actually means. In the Czech Republic, the draft law on victims of crime provides for the obligation of criminal investigating authorities to inform victims about the rights they have as victims of crime and about organisations they can access for further help.<sup>64</sup>

In the UK, neither the police nor the Crown Prosecution Service are obligated to inform crime victims of their rights regarding compensation measures; placing the burden on the victim does not facilitate the victim's ability to receive compensation. For example, victims may be uninterested or loath to request compensation fearing that it may reflect poorly on them, or that doing so may be used to discredit them as a witness in a criminal trial.

### **Inaccessible legal aid**

Legal aid is essential in enabling trafficked persons to take their cases to court. The reports noted that with respect to legal advice and representation for trafficked persons, state legal aid is inconsistent and problem-ridden. Where legal aid is available, decisions taken on whether to award it are restrictive, and often awarded only when the case has a prospect of success. Predicting success of human trafficking cases is difficult; often there is little experience with some cases are breaking new ground. When legal aid is awarded it is often so low it does not cover the costs of language support services or the work needed to clarify complex legal issues.

According to data from the NGO Successful Woman, in only three of the six cases opened in the Kherson region where victims appealed to NGOs for assistance was there a lawyer offering legal assistance. (Ukraine)

In Germany, in many cases, if a trafficked person decides to bring action, they must first assess the potential cost implications. For many this leads to the decision to not proceed. For example, in Labour Court procedures in Germany both parties must cover the costs of their own legal representation in the court of first instance. Approval of legal aid to cover court costs depends on the court assessed prospect that the action will be successful, as well as the financial needs of the persons concerned. In some cases, lawyers reported that

<sup>64</sup> Czech Republic, draft law on victims of crime, Senate print No. 19 .

courts also delay decisions on legal aid. Consequently, costs are incurred without a guarantee that they will be covered. If the legal aid request is subsequently denied, the claimant will be liable for the incurred costs. Understandably, many people do not want to run that risk.

In the Czech Republic, La Strada Czech Republic was able to arrange for legal representation for clients only due to grants provided by Open Society Institute and the European Union. In this way, La Strada was able to secure legal representation in a major case of labour exploitation in the forest industry (see the “Tree workers case” below). This highlights the reality that legal aid for those who cannot afford commercial legal services is difficult to obtain without external support.

Finally, several reports note that there is little to no cooperation between counselling centres and lawyers who specialise in victims and workers’ rights. Respondents attributed this to the early development stage of the area of compensation for trafficked persons but also offered the possibility that it was because the work is unprofitable. Language support, the need for a high level of support services, in some cases low award amounts at issue, and a low rate of state aid for advisory services makes the amount of work that is required unattractive in relation to the fees lawyers might receive.

### 3.2.4 Payment of compensation

#### **Low level of asset seizure and compensation orders**

Countries face significant challenges related to asset seizure and the enforcement of compensation orders. Recovering the assets of traffickers is difficult. Assets may have been spent, transferred out of jurisdiction, or untraceable because it is hidden under a false name or under the name of another person. In addition, lack of funding inhibits the development of robust enforcement mechanisms undermining the effectiveness of investigation and asset seizure efforts.

In Macedonia, judges and public prosecutors pointed out the reality that in practice, courts seldom rule on asset seizure or property confiscation. This means that in the absence of a state compensation fund there is simply no source available for paying compensation. Representatives from the Macedonian Ministry of Justice stated that although there is an Agency for Asset Seizure and Confiscation it does not have any direct authority, has never confiscated any assets, and has no record of ever being involved in the process of awarding compensation. The UK report also found that a low number of compensation orders were made and linked this to a ‘general perception among the criminal bar and policy makers that compensation for crime victims is a low-priority issue, and not relevant until late in the criminal proceedings.’

Similarly, the Austrian report found that public prosecutors do not treat the issue of compensation as a priority in their investigation efforts. As stated in the Macedonia report: ‘the reality is that in practice, legally, compensation is not regarded as being fundamental in the process of rehabilitation, nor is it considered a key element in policies and measures adopted for preventing trafficking in human beings’.

Both the UK and Belarus reports found that even when criminal assets were confiscated and the means were available to pay significantly high value compensation awards to victims, the proceeds from these assets flowed instead to the state.

### **No criteria for determining compensation amounts**

In the UK, judges found that the calculation of the appropriate value of compensation orders often entailed a complicated and tedious accounting exercise. There was no consensus on how to address this challenge effectively. The Macedonia and Belarus reports echoed this dilemma. From the Belarus report: with ‘no studies and no criteria to define the volume (sum) of a claim... [this] leads to a very non-uniform approach to awarding compensation’.

An interviewee in the Belarus report stated: ‘Each judge passes his/her own decision: One may grant all claims filed by the victims, another may reduce them ten times over. There is no uniform practice in the republic, each region decides facts in its own way’.

The German report found that compensation amounts are determined not by the amount for damages claimed but are dependent on the technical expertise and dedication of law enforcement in seizure efforts and the value of the assets seized. Tables for estimating damage amounts for pain and suffering are available to German courts but more representative human trafficking cases are needed to develop realistic award value guidelines for claims by trafficked persons.

Estimating how much to claim is also a problem for trafficked persons and their lawyers. The Ukraine report noted if both claimants and their lawyers lack the skills and knowledge to make damage assessments, claims are often dismissed or inadequate compensation is awarded.

The Bulgarian report points out that the procedure of proving *lost income* is very difficult: ‘It is impossible to show evidence that wage or salary payments were not received and most trafficked persons were unemployed before becoming a victim of trafficking so they cannot claim that they lost their job through fraudulent recruitment; and since prostitution is not recognised as a profession in Bulgaria, persons trafficked into prostitution also cannot claim lost income’.

### **Low compensation awards**

If compensation orders are made, many of the reports found awards to be highly insufficient. The Austria report found that the Criminal Court has broad legislative opportunities for imposing the compensation claims requested by trafficked persons; however, very often guilty verdicts are coupled with compensation orders at substantially lower amounts.

A claim of 25.000 Euros was submitted by a trafficked person accompanied by expert opinion substantiating the extent of pain and suffering and corroborating the six-month duration of the abuse. The court granted only 7.600 Euros compensation. (Austria)

The Austria report highlighted the value of expert opinions as instrumental to obtaining higher compensation awards; however, ‘in human trafficking cases, expert opinions are hardly ever requested’.

In Belarus, the majority of interviewees believed that the levels of compensation that are awarded is highly insufficient. One lawyer stated it is 'practically impossible to get anything back' and another interviewee stated that sums awarded are not proportionate to the damage caused.

'An under-age girl who had been raped before being trafficked, was awarded a laughable low amount of BYR 900,000 (±€78). This is a problem of judges. Victims file claims for BYR 10,000,000 (±€1000) and are awarded BYR 1,000,000 (±€90) or BYR 200,000 (±€17)'. Another interviewee stated that 'judges in my view often underrate the damage; they should award more, even twice as much'. (Belarus)

### **Lack of enforcement of court orders and insolvent defendants**

A number of countries found that even if compensation orders were granted the enforcement of payment proved difficult. Locating and securing the assets of defendants was identified as a key obstacle to receiving compensation. The country reports stressed that traffickers may in fact not have any assets but in some cases, a lack of efficiency in investigations, as mentioned by a judge in Belarus, creates the opportunity and time for traffickers to 'withdraw money during the course of the investigation'. Efficient investigation is contingent on training and building expertise amongst police and requires targeted funding to support the resources needed to carry out successful asset investigations.

The German report indicates that 'over the past four years investigators in proceedings on human trafficking into sexual exploitation have been able to secure assets in only three to seven percent of investigations'.

There are other issues. For example, in Macedonia offenders have been known to use threats, or the authority they may have, to discourage buyers from purchasing their property: 'no one wants to buy offender's property'. The Ukraine report noted that most assets of traffickers are held outside of the Ukraine; inaccessible to Ukrainian law enforcement agencies, and beyond the reach of national law. The complications and costs related to cross-border asset seizure were also identified as an issue in the German report. The introduction of the European order for payment procedure and the European enforcement order is intended to make cross-border enforcement of undisputed claims simpler and less expensive.

The "Tree workers case" in the Czech Republic (see below) is a good example of how things can change over the course of an investigation. In this case investigations were ongoing for over two years. During this time the companies under investigation, which hired workers for work in forests, ceased to exist. Applications for insolvency show that assets were transferred to private accounts.

What can victims do when compensation orders are not paid? The Austria report found that in cases of orders awarded in criminal proceedings it is the responsibility of the victim to initiate civil proceedings. Taking this step is often too much for trafficked persons and many do not or cannot proceed with a civil court claim. For these reasons there are also very few civil claims for compensation in Germany.

The compensation enforcement mechanisms in Belarus are very complicated. If trafficked persons are awarded compensation they often do not receive the whole sum at once. The



report refers to defendants ‘making small payments over a long period of time, or when [the defendant] has served most of their term in prison [they may] fully repay the claim in order to get a conditional release early. This may take five years, in which time, inflation will have eaten the claim and the money has become worthless’.

‘In the majority of the cases, the defendants are foreigners and, at least in Italy, without assets. In this regard, it is important to underline the serious lack of investigation of the assets of defendants in their origin countries. Claimants and their lawyers also lack the resources needed to carry out such investigations autonomously’. (Italy)

In many of the countries where compensation is not paid by traffickers there are no other alternative sources of compensation available to trafficked persons.

### 3.3 Recommendations

Legislation on compensation for victims of crime is in place in all of the COMP.ACT countries; however, the reports highlight a number of often interconnecting structural, practical and personal obstacles that prevent trafficked persons from accessing compensation. The following are recommendations from the country reports that would help to overcome these obstacles.

#### **Greater research and the compiling of databases**

Many of the reports recommend that more research is needed into the area of compensation to be able to support trafficked persons better. The German report noted that the information that is available in Germany is not entirely appropriate for compensation claims because it is derived from case histories of individuals seeking assistance. More applicable knowledge gained from compensation and labour court claims needs to be compiled and made accessible. The Macedonian report echoed this and added that more funding needs to be made available in order to create a knowledge database on compensation for trafficked persons. The UK report recommends that the Ministry of Justice should collect statistics on numbers of compensation orders applied for in trafficking cases and on compensation received by trafficked persons.

#### **3.3.1 Review and amendment of legislation and procedures**

##### **Residence permits**

Not having proper documents often impedes trafficked persons access to needed support services and the ability to claim compensation. The UK report recommends that trafficked persons be allowed to obtain temporary residence permits under the provisions of the Council of Europe Convention, in order to be able to initiate a claim for compensation. Doing so would offer trafficked person some security so that they can evaluate the legal options available to them.

The German report also noted that granting (temporary) residence permits to trafficked persons is in accordance with the EU Directive and would improve access for many more people to available mechanisms for compensation claims.

### **Extension of employment law protections to all workers**

The Irish report recommends the extension of employment law protections to enable all workers to enforce core statutory employment rights, including the right to minimum wage, regardless of their immigration status. Restrictive migration policies often create the conditions for forced labour by increasing workers' vulnerability to exploitation. The Austrian report recommends establishing an 'institution responsible for helping migrants receive compensation if they were forced to work without appropriate payment or were exploited'.

### **Victims of Crime Act exception**

In Austria, only those who were *legally* in the country at the time of the offence have access to the benefits provided by the Victims of Crime Act. Many elements in crimes of trafficking mirror those covered by Victims of Crime Acts. Trafficked persons do not have control of movement and should not be blocked from accessing compensation because of residency status.

Many countries recommended a review of and amendments to existing national legislation to harmonise national law and policy with established international norms, and in order to ensure the right to compensation for trafficked persons in law. The Belarus report noted that both national and international legislation needed to be developed. The Spanish report recommended a review of national legislation and the Ukraine report recommended that the Parliament of Ukraine move quickly on the ratification and implementation of international legal treaties.

The Ukraine report also recommended that definitions of 'harm' and in particular 'moral harm' should be reviewed and amended. The Bulgarian report supports this recommendation stating that a weakness in the law, in particular the Crime Victim Assistance and Financial Compensation Act, is that it 'does not apply for moral damages'.

### **More lenient sentences where compensation is paid in full by the trafficker**

The Ukraine report recommended that judges assign a more lenient penalty on those convicted for human trafficking, if the 'appeal for compensation is fully satisfied during trial assize'. Lawyers interviewed for the Belarus report also called for legislation to allow 'the defendant [a] more lenient punishment, subject to immediate and voluntary compensation of the damage caused by the crime to the victim.' The Belarus report also recommended introducing a labour scheme for convicted traffickers to pay off compensation amounts owed while incarcerated.

### **More transparent judgments**

The Belarus report recommends that the amount of compensation as well as the detailed composition of compensation be explained in the judgement. This would make court decisions more transparent and comprehensible for trafficked persons and their legal representatives, and would increase confidence in the fairness of the compensation scheme. Even if no compensation is granted, an explanation would be desirable. The Ukraine report recommends emphasising to judges the importance of making reasoned, well-informed decisions when awarding compensation, refusing compensation or making partial awards.

## **3.3.2 Recommendations on the right to information, support and assistance**

### **Informing trafficked persons about their rights and the support structures available to them**

Country reports recommended that trafficked persons be put in contact with counselling facilities immediately after identification and that they be comprehensively informed about their rights, from first contact and throughout proceedings, in a language they understand.

A number of connected recommendations were also made. The Ukraine report recommends the creation of a separate hotline run by experts on compensation accessible to victims of human trafficking, and drafting information booklets for trafficked persons including detailed information on their rights and responsibilities and clear information on the necessary steps to be taken as part of the claims process. Both the Bulgarian and the Ukrainian reports recommend including information on compensation and related services in the trainings for consultants of hotlines. Trainings should also include information that hotline consultants can share with trafficked persons about collecting evidence for use in trial.

The Macedonian report recommends the development of a manual to facilitate the effective 'execution' of compensation claims for trafficked persons.

The UK report recommends that codes of practice regarding victims of crime should require police to inform victims of all compensation mechanisms available to them; trafficked persons should not be made responsible for informing the police that they want to initiate proceedings. Finally, the German report recommends that methods should be explored that would allow compensation claims to proceed without requiring victims of trafficking to testify in open court.

### **Secure funding for victim support services**

Many of the reports highlighted the gaps in services, inadequate support and lack of protections for trafficked persons. As the Austrian report points out, research indicates that the enforcement of compensation claims of trafficked persons who received victim assistance services is more successful than for those who did not receive assistance. The interviews revealed that trafficked persons who received victim assistance services were perceived as more credible by the court. As a result, many call for greater funding for comprehensive victim support services. The Irish and UK reports recommend that appropriate tiered support systems should be developed with a particular focus on housing needs and employment. The German report recommends assessing victim support services to evaluate whether they provide appropriate and adequate housing, legal, and psychosocial services throughout claim proceedings or whether they need to be expanded to meet the unique needs of trafficked persons. The Macedonian report emphasises continued financial support for activities aimed at support provision, including supporting reintegration into society.

Both the Austrian and the German reports acknowledge that current support systems for trafficked persons are almost exclusively accessible to women. It is necessary to build support structures, including shelters that take into account the needs of men who have been trafficked. In addition the German report also recommends that specific funding should be earmarked for developing and expanding services for persons trafficked for labour exploitation and that children should be guaranteed the same right to compensation and access to appropriate victim assistance services as adults.

### **Increased legal aid provisions**

A number of reports highlight the need for increased legal aid funding. Financial support needs to cover all costs related to the compensation claim and subsequent negotiations or proceedings. Both the German and UK reports recommended that legal aid be granted in forced labour cases, so that 'the issue of compensation and remuneration for contemporary forced labour can be developed and integrated into legal practice'. The UK report recommended that legal aid should be allowed for law centres representing vulnerable and exploited workers before employment tribunals, and that conditions on funding should be relaxed to allow legal aid funding for the provision of interpreters for trafficked persons suing offenders in these employment tribunals and in civil courts. The Bulgarian report recommends that 'survivors of trafficking should be granted an effective access to free legal aid in accordance with the law'.

### **Training for all stakeholders**

Many of the reports note that greater awareness and training is needed for all stakeholders to ensure they are aware of the particular nature of the crime of human trafficking and so that trafficked persons are properly informed about their rights and obligations. The Belarus report recommended holding awareness training seminars with judges. The Ukraine report recommended awareness raising and trainings to promote professionalism amongst law enforcement bodies responsible for human trafficking cases, stressing that 'disinterested and formal attitudes of law enforcing bodies towards their obligations, and the stigmatisation of victims, can disempower even the most active victims'.

Awareness trainings could also include exploring alternatives. The German report highlights the potential benefits of the adhesion procedure for compensation claims saying it is potentially less stressful and less time consuming. It also recommends incentive systems for increased use of this procedure within courts.

The Bulgarian report recommended awareness training for medical staff, not only to recognise possible victims of sexual exploitation, but also to be better able to inform them of their right to compensation.

Regular training of all stakeholders, specifically regarding compensation and the procedure for applying for compensation is vital. Police and prosecutors should be provided with guidance to improve information sharing with trafficked persons about compensation orders, the average amounts of orders and enforcement procedures for unpaid orders. Police should also liaise with support workers to ensure that trafficked persons understand the compensation alternatives available to them.

In addition, police, prosecution and courts should be fully instructed and aware of the legislation and the interrelationship of compensation and confiscation orders. In the interest of victims compensation should take precedence over confiscation. This means that, when appropriate, compensation orders should be issued by default along with confiscation orders. Finally training should include information on the range of injury and loss potentially covered by that compensation orders and guidelines on the practical administration of compensation orders.

### **A coordinated approach to enable effective partnerships**

It is clear from recommendations in many of the reports that effective partnerships and a more integrated and coordinated approach is paramount. Without effective partnerships it will be impossible to successfully, prevent trafficking, prosecute traffickers and protect the rights of people who have experienced forced labour and trafficking. NGOs and INGOs have developed a level of expertise and knowledge of the phenomenon of forced labour and trafficking that can and should help to inform state agencies in matters of identification and protection. Together NGOs and government can cooperate for the identification and assistance of trafficked persons to improve the efficiency of the system as a whole.

In the same way, efforts towards punishment of traffickers and compensation should be consolidated, and all actors should work towards assisting and encouraging trafficked persons to claim compensation and take part in the process. The Macedonian report noted that common agreement between actors on the particular problems relating to compensation needs to be reached to enable joint lobbying to improve the efficiency of the judicial system in the exercise of this right. The German report recommended that existing regional cooperative structures that work to combat human trafficking should be expanded to include key governmental and non-governmental players in the area of labour exploitation, such as trade unions, employers' associations, inspection authorities, specialised organisational units of the police and public prosecutors' offices, employment

agencies, and migrant organisations throughout the country, as has already been done in some German federal states.

The German report also suggests that in order to make increased networking and cooperation possible, a model coordinating organisation, run jointly by governmental and non-governmental organisations, should be established. This organisation would be responsible for centralising data collection, making data and other pertinent information accessible and for developing strategies for needs-based assistance to trafficked persons, including assistance for claims to wages and compensation.

### 3.3.3 Recommendations to ensure payment of (fair) compensation

#### Quantifying amounts of compensation

Many of the country reports recommended that a table outlining tariffs for injury and loss should be established to assist the courts and the prosecution in determining compensation awards. This would promote more uniformity, consistency, fairness and transparency in the process.

The Austria report indicates there is a massive emotional, and sometimes financial, burden for trafficked persons who have to endure civil court proceedings following a criminal court process. The criminal courts should pay more attention to granting an appropriate compensation amount in criminal proceedings to prevent this.

The Macedonian report recommends that provisions within contract law could provide a useful starting point for determining awards, particularly in relation to determining non-material damages for trafficked persons. The UK report recommends that guidelines on damages from personal injury cases are already a useful starting point used by courts. Additionally, the tariff schedules of the Criminal Injuries Compensation Authority (CICA) and the Magistrates' Association Sentencing Guidelines should also be consulted. The Austrian report made recommendations along similar lines and stated that courts should put more emphasis on loss of earnings and influence legislation in a way that victims are granted compensation for any proven loss of earnings. The Belarus report points out that expenses incurred by NGOs and IOs in the provision of services (i.e. medical and psychological) should be reflected in the materials of a criminal case and taken into account by the Courts when awarding compensation.

The Ukraine report recommends that judges should avoid the approach of separating the concept of 'harm' into material and non-material, but rather have a holistic approach towards compensation, which is more convenient for the investigation and more just for the trafficked person.

The Austrian report recommends that different levels of gravity of psychological damage should be taken into account. Experts should be available to trafficked persons and their opinion should be taken into account by courts. The Ukraine report supports this noting that lawyers are rarely qualified to accurately identify the psychological and emotional state of victims, are unable to provide the necessary proof to substantiate victim statements, and may struggle to accurately portray the true extent of their client's suffering using legal terminology.

The Bulgarian report also recommends that the current laws in place (namely the Crime Victims Assistance and Financial Compensation Act) should be amended to consider moral harm. Similarly, both the Belarus and Ukraine reports recommend that experts other than those who are court appointed be allowed to participate in the process. The Ukraine report states that experts should be qualified psychologists or forensic psychologists, able to

conduct a psychological examination of victims of human trafficking, and to provide an expert opinion on the degree of harm suffered by the victim.

### **Financial investigation, freezing and confiscation of assets at the initial stages of inquiry**

The Macedonian report advocates greater use of the criminal code to ensure confiscation of property or proceeds of crime. Similarly, the Belarus report recommends more timely measures, at the initial stage of inquiry, to locate assets. The UK report recommends that financial investigations be prioritized in human trafficking cases and further recommends that law enforcement bodies be provided with sufficient resources to enable them to identify and freeze assets quickly. Training should also be focused on equipping officers with efficient processes and procedures to investigate, freeze, and confiscate traffickers' assets early on in the criminal investigation. The Spanish report recommends a 'thorough investigation of the assets of the accused ... to ensure the payment of the amounts outlined in the decision [of the court]', and that the determination, identification and safeguarding of sufficient assets to meet the satisfaction of the civil liability should be one of the aims of the investigative stage of the criminal proceedings.

The Austria report states that 'in practice, more attention has to be paid to seizure and sequestration of objects of value from the suspected person. Although seizing objects of value acquired through criminal acts is part of the judicial authorities' duties, in fact, in most preliminary proceedings not enough attention is paid to this obligation, which not only leads to a limitation of a trafficked persons' rights, but also to the unwanted outcome of perpetrators being able to keep the profit that they acquired from their criminal offences'.

The Belarus report makes the point that where assets are confiscated, they should be directed towards the satisfaction of compensation claims and not transferred to state funds. The Spanish report recommends that if compensation is a penal sanction, it should be collected in the same way as fines and take priority over any other financial sanction imposed on the offender. In all other cases, it recommends that the victim should be assisted as much as possible in the collection of compensation awards.

### **Establish or expand a compensation fund**

A number of the reports recommended the establishment of a state fund for restitution for trafficked persons. The Macedonian report envisaged this fund as one through which "trafficked persons would receive compensation through activation of assets from the budget of the Ministry of Justice and other state bodies and the state will then create the conditions for 'recovery' from the offender/trafficker, by selling his property." The Belarus report recommended that this fund be established out of the resources confiscated from convicts and obtained from selling the property confiscated and taken into the state budget.

The Austrian report notes that there are too many requirements to access state compensation and recommends that barriers to access to compensation payments be removed.

The Bulgarian report also recommended the establishment of a compensation fund for victims of trafficking generated from the timely confiscation of assets obtained from traffickers engaged in sexual exploitation. The Bulgarian report also noted that even if traffickers are arrested and prosecuted in a foreign country bilateral or multilateral agreements provide the tools to Bulgarian authorities to freeze assets in Bulgaria.

The Spanish report recommends that where traffickers fail or unable to pay compensation orders states should endeavour to provide financial compensation to trafficked persons or their dependants in the event they have died or become incapacitated as a result of

violence perpetrated by their trafficker. The State should “promote the establishment, strengthening and increase of national funds for compensation to victims.”





## Annex I: COMP.ACT Partners

### **La Strada International**

La Strada International (LSI) is a leading European NGO network comprising eight member organisations in Belarus, Bulgaria, Czech Republic, Macedonia, Moldova, The Netherlands, Poland and Ukraine and an international secretariat based in Amsterdam. The aim of LSI is to prevent trafficking in persons in Europe and to protect the rights of trafficked persons. La Strada's philosophy, guiding its anti-trafficking work and its provision of services, is based on a human rights approach, demanding equal human rights for all human beings. The mission of LSI is to improve the position of women and to promote their universal rights, including the right to choose to emigrate and work abroad and to be protected from violence and abuse.

### **Anti-Slavery International**

Anti-Slavery International, founded in 1839, based in London, is the world's oldest international human rights organisation and the only charity in the United Kingdom to work exclusively against slavery. ASI works at local, national and international levels to eliminate all forms of slavery around the world by supporting research to assess the scale of slavery in order to identify measures to end it; working with local organisations to raise public awareness of slavery; educating the public about the realities of slavery and campaigning for its end and lobbying governments and intergovernmental agencies to make slavery a priority issue and to develop and implement plans to eliminate it.

### **LEFÖ-IBF Intervention Centre for Trafficked Women**

LEFÖ is an association by and for migrant women founded in 1985. LEFÖ strives to respond to migrant women's diverse and complex needs related to migration patterns. LEFÖ has been a pioneer in Austria in working with migrant women in sex work and with women affected by trafficking. Today, LEFÖ is still the only organisation in Austria that provides a broad spectrum of counselling and support for migrant women and advocates for their rights. LEFÖ – IBF is a branch of LEFÖ and a recognised victim support organisation mandated by the state to offer all necessary services for trafficked women and girls.

### **Animus Association Foundation (La Strada Bulgaria)**

Animus Association/La Strada Bulgaria has been working in the field of violence against women since 1994. The organisation implements a holistic approach to all forms of VAW (domestic, sexual violence, trafficking in women). Animus Association has been the Bulgarian partner in La Strada programme since 1997 and in 2004 became one of the co-founders of La Strada International. It follows the multidisciplinary approach of the La Strada International network, with three focus areas: Information and Lobby, aims to put and keep trafficking in persons firmly on the political agenda, to raise public awareness, stimulate the public debate and monitor the implementation of counter-trafficking measures. Prevention and Education, aims to empower persons at risk of trafficking and those already affected to make independent and informed decisions about their lives. This activity area also educates professionals who might come into contact with trafficked persons or risk groups. Social Assistance aims to allow trafficked persons to regain freedom and control over their lives and to reduce the risk of re-trafficking.

### **La Strada Czech Republic**

La Strada Czech Republic is one of the founding members of the La Strada network and began its work in 1995 as part of a project of the ProFem foundation (Central European consultation centre for women's projects). Over the past years, La Strada Czech Republic has become a reliable partner of governmental as well as non-governmental organisations and has been recognised for its expertise and professionalism. It has proven to be able to react and respond in a flexible manner to challenges and new developments. La Strada's

focus is not only on trafficking into the sex industry but includes all forms of human trafficking. It follows the multidisciplinary approach of the La Strada network.

**KOK – German nationwide activist coordination group combating trafficking in women and violence against women in the process of migration**

KOK is a German NGO umbrella organisation, based in Berlin, made up of women’s organisations and counselling centres for women in Germany with the aims to combat trafficking in persons, to achieve the realisation of human rights for migrants and strengthen the rights of trafficked persons, to combat the racist and sexist discrimination of female migrants and to achieve realistic social equality for prostitutes. By means of public relations and lobbying KOK involves itself directly in the discussion of these issues both within political spheres and with the public in general, thereby assuring a continued effort to achieve its goals.

**Migrant Rights Centre Ireland**

Migrant Rights Centre is a national organisation working to promote justice, empowerment and equality for migrant workers and their families. For ten years, MRCI has taken a stand with migrants to tackle the root causes of inequality. MRCI uses a community work approach with a focus on participation, leadership and empowerment. MRCI has a strong track record in securing policy changes, for example, bridging Visas for undocumented migrants; the reversal of work permit changes; protections for domestic and agriculture workers; and reversing the minimum wage cut.

**Associazione On the Road onlus**

On the Road provides support and assistance to structured services (outreach units, drop-in centres, shelters, etc.) for trafficked persons, refugees and asylum seekers, sex workers and vulnerable migrants. Within the Italian Social Assistance and Integration Programme for trafficked persons, On the Road offers accommodation and protection; social, health, psychological and legal counselling and assistance; accompaniment to the social and health services; vocational guidance and training; on-the-job training programmes and direct insertion into the labour market. The Association also implements awareness-raising activities, community work, training modules, research and publications and it is engaged in national networking and policy development initiatives.

**La Strada Foundation against Trafficking in Persons and Slavery (La Strada Poland)**

La Strada Poland is one of the founding members of the La Strada network in 1995. In the past years, La Strada Poland has become an (inter)nationally acknowledged specialised and professional expert and advisory centre on the issue of trafficking in women. In the framework of the National Action Plan to Prevent and Combat Trafficking in Women, La Strada cooperates with governmental institutions as well as with NGOs, at the national and international level. La Strada Poland significantly improved the social assistance aspect of her work by developing a crises intervention centre and a new La Strada shelter for trafficked persons.

It follows the multidisciplinary approach of the La Strada network.

**Proyecto Esperanza**

Proyecto Esperanza offers a comprehensive support programme for women who are victims of human trafficking, primarily for the purposes of sexual exploitation, but also in domestic service, servile marriages, forced labour or other forms of slavery. The Project has a multidisciplinary team of professionals who consider trafficking in persons to be a violation of human rights. The team consists of lawyers, educators, social workers, intercultural mediators, psychologists, etc. Proyecto Esperanza collaborates very closely with other organisations within the framework of the Spanish Network against Human Trafficking and the Global Alliance against Traffic in Women (GAATW).

### **Women's Link Worldwide**

Women's Link Worldwide is an international human rights non-profit organisation working to ensure that gender equality is a reality around the world. With this objective in mind, the organisation strives to advance women's rights through the implementation of international human rights standards and strategic work with the courts, including strategic litigation. In its work against human trafficking, the objective of WLW is to seek the recognition of the rights of trafficked persons as well as to change the manner with which authorities tackle the problem of trafficking by shifting the focus of the problem from one of crime and migration control to one which centres on the human rights violations and reparation for the victims.

### **International Centre for Protection and Promotion of Women's rights (La Strada Moldova)**

La Strada Moldova is one of the leading actors within the Moldovan anti-trafficking community and part of the La Strada network since 2001.

In its capacity of an NGO - La Strada undertakes preventive, assistance, and lobbying activities, aimed at ensuring the protection of rights and legal interests of vulnerable social groups at all levels - individual, legal and executive. For already a decade, the public information activities of La Strada Moldova are contributing to safe migration and prevention of trafficking in human beings, domestic violence and sexual exploitation of children for commercial purposes. It follows the multidisciplinary approach of the La Strada network.

### **Gender Perspectives Belarus (La Strada Belarus)**

The Belarus organisation Gender Perspectives, (until 2011 part of the Belarus YWCA), is part of the La Strada Network since 2001. La Strada Belarus has developed into an independent expert programme in Belarus on the issue of human trafficking, acting as a resource and consultation centre for other NGOs, governmental structures and international agencies based in Belarus. It follows the multidisciplinary approach of the La Strada network.

### **Association for action against violence and trafficking in human beings Open Gate/La Strada Macedonia**

"Open Gate - Women Lobby and Action against Violence and Trafficking in Women" is part of the La Strada network since 2000. La Strada Macedonia has developed into a leading NGO against trafficking in the former Yugoslav Republic of Macedonia. It has trained other NGOs that now form the National NGO anti-trafficking Network, comprising twelve organisations, representing the country-wide constituency and the former Yugoslav Republic of Macedonian, Albanian, and Roma groups as well as urban and rural groups. It follows the multidisciplinary approach of the La Strada network

### **International Women's Rights Center La Strada Ukraine**

The International Women's Rights Center "La Strada Ukraine" joined the La Strada Network in 1997. The organisation has developed special expertise and knowledge on trafficking in children, prevention of gender violence and human rights activities in the past years and cooperates closely with child rights organisations, human rights organisation and women's rights organisations in Ukraine and abroad. It follows the multidisciplinary approach of the La Strada network.

## Advisory Board

### **Platform for International Cooperation on Undocumented Migrants (PICUM)**

PICUM – the Platform for International Cooperation on Undocumented Migrants, is a non-governmental organisation that aims to promote respect for the human rights of undocumented migrants within Europe. PICUM reports on issues regarding undocumented migrants through its members' experiences and simultaneously monitors developments within European institutions. This approach mainstreams undocumented migrants' concerns into key policy debates, ensures PICUM's network is well informed of the EU agenda and develops their capacity to engage in the realisation of just and fair strategies for undocumented migrants.

### **International Trade Union Confederation**

The International Trade Union Confederation (ITUC) is the main international trade union organisation, representing the interests of working people worldwide. ITUC's primary mission is the promotion and defence of workers' rights and interests, through international cooperation between trade unions, global campaigning and advocacy within the major global institutions. Its main areas of activity include trade union and human rights, economy, society and the workplace, equality and non-discrimination and international solidarity.

### **Churches Commission for Migrants in Europe**

CCME is an ecumenical organisation that aims at promoting an inclusive policy at the European and national level for migrants, refugees and ethnic minority groups. CCME provides a space for churches and Christian agencies to share their experiences in the ministry among migrants, refugees, and minority ethnic persons. CCME promotes the adoption and implementation of international standards such as the European Social Charter, the European Convention on the Protection of the Legal Status of Migrant Workers, and the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. CCME has also made specific proposals for the adoption of a European immigration policy and for equal treatment of European citizens and third-country nationals.

### **OSCE Office for Democratic Institutions and Human Rights**

The Office for Democratic Institutions and Human Rights (ODIHR) is the specialised institution of the OSCE dealing with elections, human rights, and democratisation. Within the broader fields of human rights and democratisation, ODIHR's expertise and activities focus on the following areas: democratic elections, monitoring the implementation of OSCE human rights commitments by participating States, combating trafficking in human beings, Roma and Sinti issues, protecting human rights in the fight against terrorism, freedom of religion, civil society, freedom of movement, rule of law, gender equality, and combating racism and related forms of intolerance.

### **King Baudouin Foundation**

The King Baudouin Foundation supports projects and citizens who are committed to create a better society. In this way we can make a lasting contribution towards greater justice, democracy and respect for diversity.

The Foundation works on an independent and pluralistic basis. This is also guaranteed by the diverse backgrounds of our Board of Governors and our staff. We respect diversity and strive towards quality, transparency and integrity.

The Foundation focuses on specific themes and is based in Brussels, but also supports projects far beyond the borders of Belgium and Europe. By working together with a range of different organisations the foundation aims to harmonise our own mission as effectively as possible with the efforts made by others.

## Annex II: Compensation reports/researches: <sup>65</sup>

Austria – Possibilities to Obtain Compensation for Trafficked Persons in Austria, LEFÖ-IBF, 2011

Belarus – Compensation for Trafficked Persons in the Republic of Belarus, Young Women’s Christian Association of Belarus/La Strada Belarus, 2010

Bulgaria – The Right to Compensation for Victims of Human Trafficking in Bulgaria, Animus Association Foundation/La Strada Bulgaria, 2011

Czech Republic – A Study on the Options and Limits of Compensation for Trafficked Persons, La Strada Czech Republic, 2009

Germany – Compensation and Remuneration for Trafficked Persons in Germany, German Institute for Human Rights, 2009

Ireland – Trafficking for Forced Labour in Ireland and the United Kingdom: Issues and Emerging Good Practice, Migrant Rights Centre Ireland, 2010

Italy – Development of Italian Legislation on Compensation. State of art and strategies, Associazione On the Road Onlus, 2012

Macedonia – The Right to Compensation for Trafficked Persons in R. Macedonia, Open Gate/La Strada Macedonia, 2011

Spain – Access to Redress Mechanisms in Spain, Women’s Link Worldwide, 2011

Ukraine – Analysis of the current rights of victims of human trafficking in Ukraine to obtain compensation, International Women’s Rights Center La Strada Ukraine, 2012

United Kingdom – Opportunities and Obstacles: Ensuring Access to Compensation for Trafficked Persons in the UK, Anti-Slavery International, 2009

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<sup>65</sup> All country researches can be found at: [www.compactproject.org](http://www.compactproject.org)



## Annex III: Compensation cases

**Country: Austria**

**NGO: LEFÖ-IBF**

**Test Case Civil Proceedings: Labour and Social Court**

### **Introduction**

This test case shows how it is possible, in Austria, to file a civil court claim without the client having to bear the full risk of legal costs for compensation after criminal proceedings have been dismissed.

The client was employed as a domestic worker and also worked at her former employer's restaurant. The client did not receive any salary for either job and turned to LEFÖ-IBF for support. She was informed about her right to claim unpaid wages and decided to take steps to remedy this. The first legal step was to formally accuse her former employer. On April 28<sup>th</sup> 2011, accompanied by a LEFÖ-IBF counsellor, the client attended a hearing at a police station. The police then located the suspect and questioned him.

Criminal proceedings under §104a Human Trafficking were started on 28 June 2011 but later dropped due to the lack of evidence and doubts about the client's credibility. The option to request a continuation of proceedings was considered but it was decided that civil proceedings would be more effective.

### **Preparatory Measures**

An initial problem was that the client lacked crucial information about her former employer, including his full name. The client's attorney was able to obtain the name, address, and other relevant information from legal files and police documents and initiated civil proceedings.

LEFÖ-IBF took on a coordinating and mediating role during proceedings, helping to organise the necessary steps and accompanying the client to meetings with her attorney, the chamber of labour and other important agencies.

### **Step one: the Chamber of Labour**

The Chamber of Labour was contacted in order to gain full legal protection in this Labour Law case. Upon learning the facts of the case the Chamber of Labour also estimated the client's loss of earnings and provided an assessment of the possible legal costs and risks of legal costs. Further, the Chamber of Labour requested the police's protocols of interrogation in order to compare the testimonies of both the client and suspect, and to assess the client's credibility.

Vienna Regional Health Insurance (WGKK) Memorandum:

A memorandum by the Vienna Regional Health Insurance served to estimate the amount of an insurance claim, which had not been provided by the employer, either. During this procedure, the client's name, the employer's name, the place of work and the period of employment were noted. Furthermore, the fact that the client was insured by the employer was confirmed. For the memorandum to be written, certain information such as the date of entry into Austria, and possible witness statements corroborating the client's claim about where she worked were important to obtain. On 22 September 2011 the memorandum was sent to the client's attorney at the Chamber of Labour.

The Chamber of Labour then held a mediation meeting with the client and her former employer. A letter of formal notice was sent to the former employer informing him about the claim against him, the estimated loss of earnings and the amount of compensation being claimed; with information on the possibility of an out of court settlement.

In this case, the Chamber of Labour agreed on 10 November 2011 to take on full legal protection for the client. The LEFÖ-IBF counsellor explained the importance of full legal protection to her client.

**Court case.** After legal proceedings had started, the employer tried to put pressure on the process by questioning the validity of the full legal protection provision of the Chamber of Labour for the client. Lawyers for the accused argued that the client was not entitled to the provision of full legal protection because she did not have legal residence and demanded the provision of security for legal costs be annulled. In the meantime the client had received a residence permit under the NAG 69a provision invalidating the opposing party's challenge of the validity of client's right to the legal protections provided by the Chamber of Labour.

Currently, LEFÖ-IBF is counselling and preparing the client for the upcoming trial at the Labour Court. The client has received information about the legal possibilities and advised about expectations and her questions and uncertainties are being addressed during these counselling sessions. LEFÖ-IBF has worked to ensure psychological and social support throughout the proceedings by coordinating between attorneys and other authorities and by accompanying the client.



**Country: Ireland**  
**NGO: Migrant Rights Centre Ireland**  
**Test Case: Mohammed Younis**

**Background to the case**

Mohammed Younis was employed at Poppadom, a take away restaurant, located in Dublin, Ireland and owned and operated by Mr. Amjad Hussain. He was employed as a tandoori chef between 10 September 2002 and 8 December 2009. Mohammed Younis entered Ireland on a Work Permit valid from 2002 to 2003. The employer failed to renew it once it expired. Mohammed Younis worked 11 hours per day, 7 days a week. He was paid 55 cent per hour for many years. There were no scheduled rest breaks during his work shift. His only day off was 25 December when Poppadom's Take Away was closed. He did not receive any annual leave. He lived in accommodation provided by the employer. The accommodation was a house with eight other residents and consisted of three single beds and one double bed. Five people slept on the floor during the night.

M Younis passport was kept by the employer who upon failing to renew the work permit for M Younis rendered him undocumented. He was in an extremely vulnerable situation. He was undocumented and linguistically isolated as he does not speak English and could not ask for help. He also had extremely limited social connections as his only real ties were to his employer and his work colleagues. He went to the employer's house to collect his passport, but the employer told him that he would call the Gardai and that he would be deported if he insisted on having it. He was afraid and did not know what course of action to take.

On 17 August 2009, Mohammed Younis and the employer's wife came to the MRCI requesting information about a work permit. The MRCI arranged an appointment with M Younis independently. On 8 December 2009 and after consultation with MRCI, Mohammed was directly made aware of his rights and assisted in leaving his employment. A complaint was made to the Garda National Immigration Bureau under the Criminal Law (Human Trafficking) Act, 2008 as a trafficking for forced labour case.

**Claim for compensation**

Mohammed Younis made a formal complaint to the Labour Relation Commission in April 2012 under the following acts for compensation.

- Terms of Employment (Information) Act, 1994
- Payment of Wages Act, 1991
- Organisation of Working Time, 1997
- National Minimum Wage Act, 2000

The amount of damages sought for breaching the above provisions was €92,000. The Labour Relations Commission heard the case and found in favour of M Younis awarding him in March 2011 the total amount claimed. Payment of the award was sought from the employer who failed to pay the money. An application was made to the Labour Court for a Determination Order requiring the employer to pay the monies owed. This order was secured from the Labour Court in September 2011. Enforcement proceedings were issued in February 2012 after repeated requests to the employer to pay the money. In April 2012 the employer applied to the High Court to overturn the order of the Labour Court claiming it was outside of the jurisdiction of the Labour Court to order the compensation to be paid.

This claim was on the grounds that the contract of employment was illegal, (as Mohamed Younis had no Work Permit), and therefore, the court had no right to enforce an illegal contract. Mohamed Younis applied to be named as a party to the case. The High Court case was heard on In July 2012.

### **High Court Judgment in the Case**

Justice Hogan found that the Employment Permits Act 2003 prevents an undocumented worker from seeking redress under labour law as the employment contract cannot be recognized. Justice Hogan said he would send a copy of his judgment for consideration by the government. He stated 'there must be some concern that this legislation will produce consequences which were not foreseen or envisaged. Specifically it may not have been intended by the Oireachtas that undocumented migrant workers should be effectively deprived of the benefit of all employment legislation by virtue of his illegal status...'

The judge sent the verdict in this case to the government for consideration in terms of addressing the lacuna in the law. This judgment impacts negatively on a range of workers who now have no right to legal redress through labour courts and no right to compensation for labour rights violations because their employment contracts are not legal. Further, this court decision impacts on others, such as students required to work in excess of 20 hours, dependants of Work Permit holders who are not entitled to work but may be forced to, and all minors, regardless of residence status, who may be exploited for their labour. To rectify this requires a legal response that is not limited to the Work Permit Legislation.

The majority of Trafficking for Forced Labour cases MRCI deal with involve workers who have lost their legal status due to the situation of forced labour. They now have no recourse to the employment or other courts for compensation.

### **Next Steps**

- An appeal to the Supreme Court and the ECHR is being considered by M Younis.
- Lobbying the government for the rights of legal redress for all workers regardless of contravention of other laws to be inserted in to the forthcoming Work Place Relations Bill. We will be seeking this to be retrospective to enable workers Like Mohammed Younis to be fully compensated.

## Country: Germany

NGO: Member organisation of KOK.<sup>66</sup>

## Test Case: Trafficking into the sex industry

### Case Description

A female client of the counselling centre, who had been a victim of trafficking for the purpose of sexual exploitation, decided to act as witness and joint plaintiff, along with a number of other victims, in a criminal case against their traffickers. In 2007, six of the accused were convicted for trafficking in persons and related offences and sentenced to terms of imprisonment between seven months and four and a half years. The women remained in Germany.

Some time later she submitted an application for compensation under the German Crime Victims Compensation Act, the German state fund for victims of crime, supported by the counselling centre, a lawyer and the project 'Forced Labour Today'. Her application was accepted in 2011 recognising the severe damages she had suffered. The compensation amount for damage due to "chronic post-traumatic psychological disorders" was determined at 60% and she was granted a life-long pension. In 2012, this initial decision was revised and the degree of damage was re-established to 70%. The increase acknowledged the likelihood that she would be unable to pursue her previous profession as a seamstress. The pension was increased to €1,400 per month retroactive to the date the application was filed.

### Lessons learned

Assessing the specific characteristics of the case and the circumstances that were helpful for the compensation award, the staff of the counselling centre has pointed out several points they consider important:

- It was helpful and reassuring both for the woman and the counselling centre to have a lawyer on board. It is important to engage a lawyer as soon as possible.
- In this particular case, the verdict from the criminal court was valuable for the compensation claim as additional proof.
- It proved extremely important to have detailed documentation, for example, of the physical and psychological damage suffered through assessments from doctors and clinics. This helped to document in evidence the consequences of the trafficking experience, which for these women included a severe trauma, suicide attempts, and several therapeutic treatments both in hospital and ambulatory.
- One of the main challenges was the lengthy procedure. It took several years from the date of application to the notification. New assessments and evidence was requested regularly by the fund.
- It was also increasingly difficult for the women to remember details the more time passed. Hence, it is vitally important that the client write a detailed account as soon as possible.

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<sup>66</sup> The case was supported by the project "Forced Labour Today – Empowering Trafficked Persons" of the German Institute for Human Rights

**Country: Spain**  
**NGO: Proyecto Esperanza**  
**Test Case: June**

**Trafficking Situation Background:**

June is Nigerian and came to Spain through Morocco on a small boat after accepting a job offer in a store. She did a swearing with a voodoo ritual. Upon arrival, her passport was retained by a woman, Maria, who would control her. She was told she would have to pay back a debt of €45.000 by working in prostitution. June tried to resist but was physically attacked by the woman. She was brought to a club on the outskirts of Valencia where she remained for 8 months. Maria, the woman who lured her to Spain went to the club biweekly to pick up all the money June had earned.

June was then transferred to the city of Vigo where she remained for 2 years forced to work in prostitution and make monthly deposits of the money she earned. June has paid Maria €30.000 Euros. On a trip to Madrid to apply for a passport June is arrested and detained for being undocumented.

**Legal situation:**

In June 2010 June officially presses charges against her traffickers. She is released and referred to Proyecto ESPERANZA the following day. On 4 November 2010, residency and work permits are requested to permit June to collaborate with law enforcement authorities, Public Prosecutors and Judges, but June has to wait until 2011 for the resolution of her application for residency permit.

Proyecto Esperanza collaborates with the Public Prosecutor in the pre-trial investigation period of the criminal proceedings, no information is shared on confiscated assets, etc.

In July 2011 June is granted a 5 year non-restricted residency permit for exceptional circumstances for cooperation with the authorities.

**Criminal proceedings**

June's case is taken to criminal court. On 21 July 2011. June testifies as a protected witness at the pre-trial evidence in the pre-trial investigation.. As a protective measure, an investigation of assets and confiscation of goods of the charged has been requested. The judge has supported this petition and has waited for the results of the police investigation on this issue. When the pre-trial investigation stage was complete, the request for compensation for damages was specified for June by her personal lawyer and the prosecutors. To prepare for the calculations of the damages suffered by June, a report and evaluation has been requested and submitted by the Institute of Legal Medicine in Galicia of the Directorate General for Justice of the Autonomous government of Galicia.

To date (December 2012) the process is still pending on the closing, through auto judicial, of the pre-trial proceedings stage in order to open the trial stage presenting an indictment (formal accusation) and the opening of oral proceedings. Proyecto Esperanza is maintaining the necessary coordination with the judge, prosecutor and police. The police that is carrying out the investigation on assets and goods, has not yet found any assets, but will continue searching. The collaboration with country of origin (Nigeria) remains difficult.

**General Observations**

Even if the prosecutor claims and the judge grants compensation, Spain still lacks a national fund to guarantee that compensation is paid out. We have seen so many cases in which the compensation is never paid out.

There is still a lack of a Comprehensive Law against Trafficking.

In addition, there continues to be a focus on trafficking for sexual exploitation. Although the Penal Code makes all forms of trafficking a crime, the national plan against trafficking only includes sexual exploitation and there is little awareness for labour exploitation. Because prostitution is not a regulated economic activity, it makes it more difficult to claim compensation.

**Country: Former Yugoslavian Republic of Macedonia**  
**NGO: Open Gate/La Strada Macedonia**  
**Test Case: Minor trafficked for sexual and labour exploitation**

**Background of the case**

The trafficking incident took place in the western region of the Republic of Macedonia in October 2010. The trafficked person was a minor female (14 years old). The parents of the trafficked person are divorced and after the divorce she lived with her father, two sisters and her brother. Tensions began after her father re-married. The trafficked person did not get along with her stepmother, had constant arguments and decided to run away from home. She was trafficked by her friend who brought her into one hotel to work as a maid.

From that moment, her life turned into a nightmare of sexual and labour exploitation. Five men, later accused of human trafficking involving a minor, took her to a house, sexually abused her and forced her give sexual services to others. She was forced to work nine hours from 08:00 pm till 04:00 am, facing beatings and threats to her life. Any money she received was handed over to the first accused trafficker, (also her boyfriend). She was only provided with food, clothes and accommodation. Most of the time she was paid €50 for a single sexual service, but sometimes less. She was also required to work as a hotel maid during day and was also forced to give all of this money to the first accused trafficker. Moreover, she was forced to consume intoxicating drugs while giving sexual services. She was exploited for four months until a cousin of her father came to the restaurant of the hotel and took her from there, reporting the case later to the police.

**Court process**

The court process began February 2011 in the Court for organized crime, located in Skopje. The accused were charged for the crime of `human trafficking involving minors`. On 15 February 2011 the investigative judge hears testimony from the accused and on the next day from the trafficked person. In the investigation phase of this case the lawyer for the victim submitted a claim for non-material compensation. There was clear evidence of sexual and labour exploitation supporting a compensation claim. Her freedom of movement was denied and a 4 month period of extreme abuse has caused her fear, stress, severe traumas and psychological damage. The trafficked person gave testimony in front of the investigative judge accompanied by lawyer and a social worker from La Strada Macedonia.

The main hearing lasted from 2 April 2011 until 11 November 2011 with a total of ten scheduled processes. Since this was a detention case, there was no postponement of the court hearings. During the main hearing, the Court asked for a forensic psychiatric report for the trafficked person in order to determine the degree of fear, pain and psychological damages suffered and to decide on the issue of non-material compensation. The trafficked person was accompanied during the psychiatric assessment by the La Strada Macedonia shelter staff. Based on the forensic report on the psychological damages of the trafficked person, her lawyer requested a non-material compensation amount of €9.000.

During the main trial twelve supporting and defending witnesses were heard by the court. The father of the trafficked person was also a witness in the trial. The court also heard testimony from the forensic psychiatric that made the assessment report on psychological damages.

Because the trafficked person was a minor she was not required to testify again at the main hearings, only her statement was read during the trial.

### **Final verdict**

The final verdict by the Court was published on 11 November 2011. The first and the second accused were sentenced to prison terms of 8 years, the third accused was sentenced to prison term of 6 years and the fourth accused and fifth accused were sentenced to prison terms of 4 years. The property of the fifth accused, the hotel where the crime took place, will be confiscated in the benefit of the Republic of Macedonia after the final verdict.

The trafficked person was awarded €4880 Euro for non-material damages to be paid by the convicted traffickers.

The hotel property in this case should be confiscated for the benefit of the Republic of Macedonia after enforcement of the verdict.

To date (December 2012) the trafficked person has not received any compensation money.

**Country: Czech Republic**  
**NGO: La Strada Czech Republic**  
**Test Case: The tree workers case**

**Background of the case**

The financial crisis at the end of 2008 led to thousands of migrant workers in the Czech Republic losing their jobs. Consequently, many faced growing debts and became more vulnerable to exploitation, forced labour or human trafficking. In 2009 and 2010 a conglomerate of companies, (Affumicata a.s., Wood service Praha s.r.o. Etc.), employed hundreds of workers in tree planting and other forestry work. The workers came from a number of countries, including Vietnam, Slovak Republic, Ukraine, Mongolia, Romania and Bulgaria. They performed heavy manual labour but received no pay or only small deposits on wages owed. The suspects abused the very specific position of vulnerability of the Vietnamese community in the Czech Republic, making huge profits. This became their *modus operandi*, which they successfully used to traffic members of other migrant communities working in the Czech Republic. The companies also abused the communication barriers between the different migrant communities who do not share language and are unable to communicate with each other about their labour exploitation or other information.

The recruited workers performed their jobs from a few weeks to several months, working between 10 to 12 hours per day, six or seven days a week. In few cases the workers were threatened with physical violence when they decided to stop working or when deciding to report their situation to police or to other authorities. La Strada's estimation is that this case involves around 1500 to 2000 trafficked persons. La Strada Czech Republic believes that they are victims of the crime of Trafficking in Human beings according section 168 of Czech Penal Code.

**Legal proceedings**

In 2010, attorneys supported by La Strada Czech Republic initiated a criminal investigation on behalf of the victims. By the end of 2012 power of attorney had been collected from approximately one hundred victims and almost ninety criminal complaints were filed. Each complaint was treated as a separate investigation by the authorities despite being similar in nature. Furthermore, they have been repeatedly moved between different Police departments and competencies.

After two years the cases were dismissed *ad acta*. Police found no violation of the criminal law. After this result attorneys for the victims filed numerous complaints to law enforcement authorities claiming there has not been sufficient investigative action in these cases. Attorneys also had to file an initiative to exercise supervision to a public prosecutor's office. In August 2012, the public prosecutor stated that police proceedings in the Tree Workers case were not sufficient and there was insufficient legal ground for dismissing the cases *ad acta*. As a result the police are required to continue their investigations in these cases, which after two years of work is still in the initial phase.

The manner in which the Tree Workers case has been handled raises reasonable concerns as to whether breaking each victim claim into separate legal cases was not motivated by an interest to stop the investigation altogether. An initiative to establish a special investigation team to look at investigating all of the claims as one case has been filed. This initiative was submitted to the Deputy Minister of Interior, the Chief of Police and to the Supreme State Prosecutor's Office.



### **Further action and assessment by La Strada Czech Republic**

La Strada Czech Republic continues to inform the responsible state authorities, as well as international anti-trafficking bodies, about this case. The documentary film maker Daniela Agnostini, made a documentary film about the case. The production company Inter/Aktion and La Strada Czech Republic organised a screening of the film followed by the post-screening discussion with the Czech and international experts at the American Centre Prague in September 2012.





More information on the Toolkit and on the COMP.ACT project can be found at [www.compactproject.org](http://www.compactproject.org)

La Strada International: [www.lastradainternational.org](http://www.lastradainternational.org)

Anti-Slavery International: [www.antislavery.org](http://www.antislavery.org)



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