

Council of Europe meeting on improving access to justice for trafficked persons

Concept note

Introduction

Despite increasing awareness that trafficking and the exploitation of human beings under forced labour or slavery-like conditions constitute severe human rights violations, states tend to focus on the prosecution and punishment of the perpetrators, while the protection of the rights of trafficked persons lags behind. While considerable steps have been made in the provision of social, psychological and medical assistance, access to legal assistance and representation is still a poor relation. This constitutes a serious barrier for trafficked persons to access justice.

This meeting aims to improve access to justice for trafficked persons by bringing together experienced lawyers representing trafficked persons as a start for the setting up of a network of such lawyers. The final aim is to ensure that all trafficked persons have access to legal assistance and representation from their first contact with the authorities as an integral part of national assistance systems.

Current gaps in the protection of the rights of trafficked persons

While several international and European instruments lay out the rights of victims of trafficking in criminal and other relevant legal procedures,¹ there is a considerable gap between theory and practice.² Provisions that might protect victims are not effectively used and many actors in the judicial system lack knowledge about the psychological and physical impacts of trafficking and the effects of trauma on the ability of trafficked persons to declare detailed and consistently, often leading to their disqualification as 'unreliable' or worse. Personal data of victims are publicly disclosed and sometimes even publicised on judicial websites and in some cases victims are treated in a disrespectful and degrading way by the police and judicial authorities. In many cases victims are

¹ In particular the Council of Europe Convention on Action against Trafficking in Human Beings; the 2011 EU Directive on trafficking (2011/36/EU); and the EU Victim Directive (Dir 2012/29/EU),

² See e.g. the country reports of GRETA, <http://www.coe.int/en/web/anti-human-trafficking/country-reports>; NHC (2015), *Position of victims of trafficking in human beings in criminal and other relevant procedures in Bulgaria, Slovakia and Romania. A Human Rights Based Approach. Joint regional report.*, http://www.nhc.nl/news/NEW_PUBLICATION.html?id=698; Balkans Act NOW! (2013), *Situation Analyses of Human Trafficking Bosnia and Herzegovina, Croatia, FYR of Macedonia and Serbia*, http://nadoknadimo.org/uploads/attachment/image/255/Situation_Analyses_of_Human_Trafficking_in_BiH_Croatia_Macedonia_Serbia.pdf.

subjected to repeated interviews. Direct confrontations between the victim and the suspect(s) are often still seen as an important method to 'find the truth'. The possibility of closed court sessions is hardly used and irrelevant questions – or even degrading comments - on victims' private life are no exception.

Although the law in most countries contains a non-punishment clause, it is no exception that trafficked persons are prosecuted and/or punished for crimes related to their being victim of trafficking, especially in the case of trafficking for prostitution, begging, theft or other offences. Trafficked persons may also be punished for not having identity documents, illegal border-crossing or illegal or unauthorised work.

Even if in theory victims have a right to claim compensation for the damages they suffered, in practice only few victims submit a claim to compensation. If they do such claims are rarely awarded, and even if they are awarded they are hardly ever executed. As indicated by, among others, the former UN Special Rapporteur on Trafficking in Persons, especially women and children, common obstacles for trafficked persons to seek compensation include the failure to identify trafficked persons and accord them regular residence status; lack of adequate support; lack of information and knowledge on the part of trafficked persons; lack of free legal aid available; lack of capacities, knowledge and experience on the part of the judiciary and lawyers in seeking compensation for trafficked persons; and inadequate witness protection programmes to guarantee the safety and security of trafficked persons and their family members.³

As a result, trafficked persons face major barriers in accessing justice and criminal proceedings often lead to their secondary victimisation.

Access to legal assistance and representation in Europe

Victim lawyers have a crucial role in protecting the rights of trafficked persons and the prevention of secondary victimisation. They are also key as watchdogs in balancing the rights of the victim and the suspect(s) and to ensure that trafficked persons are treated in a respectful and sensitive manner.

Yet, in many countries, an adequate legal aid system which ensures that victims are informed about the relevant judicial proceedings from their very first contact with the authorities and that their rights and interests are defended during criminal and other legal proceedings, is missing. There is only a limited number of lawyers trained in working with trafficked persons. State-funded legal aid is often scarce and sometimes limited to no more than the formal presence of a lawyer during the trial. At the same time, NGOs are generally not trained in providing legal counselling and only have limited funds to pay for lawyers for their clients.

A widespread misunderstanding is that victims only need a lawyer at the trial. At that point, however, essential rights of the victim may not have been employed during criminal investigation

³ *Report of the Special Rapporteur on Trafficking in Persons, especially women and children, Joy Ngozi Ezeilo* (2011) UN GA, A/66/283, <http://www.ohchr.org/Documents/Issues/Trafficking/A-66-283.pdf> ; La Strada International and Anti-Slavery (2012), *COMPact, Findings and Results of the European Action for Compensation for Trafficked Persons*, <http://lastradainternational.org/Isidocs/Findings%20and%20results%20of%20Comp.Act.pdf>; The Anti-Trafficking Monitoring Group, UK (2011), *Briefing Compensation for trafficked persons*, http://www.antislavery.org/includes/documents/cm_docs/2011/c/compensation.pdf; NHC (2015), *Position of victims of trafficking in human beings in criminal and other relevant procedures in Bulgaria, Slovakia and Romania. A Human Rights Based Approach. Joint regional report.*

and prosecution, for example the possibilities to protect the privacy and safety of the victim and to minimise the number of interrogations.

Access to legal assistance from the first contact with the authorities is not only important to ensure adequate identification of victims and to protect their rights, but also in relation to future compensation claims, for example to request the freezing of assets of the trafficker(s). In practice, having a lawyer appears to be a crucial condition for victims to submit a claim for compensation and significantly contributes to their respectful by the courts and other actors in the judicial system.⁴

Even if a system of free legal aid exists, there may be several problems for trafficked persons to actually access legal assistance and representation:

- Victims are not informed about the possibilities for free legal assistance and representation;
- The procedures to access free legal aid and representation are so complicated that in practice they form an insurmountable barrier;
- Lawyers are only appointed when the case goes to court rather than from the first contact with the authorities;
- The quality of state funded legal aid is low, as is the remuneration;
- There is a lack of specialised lawyers;
- There is no system to ensure that victims are appointed a specialised lawyers.

Objectives of a European Network of victim lawyers for trafficked persons

The setting up of a network of specialised trafficking victim lawyers aims to respond to the gaps identified above. Its possible objectives would be:

- to support local lawyers in national and European litigation on victim rights, facilitate access to relevant case law of other European countries and help to establish and expand national networks of trained lawyers;
- to facilitate the exchange of experiences, legal strategies and good practices among victim lawyers across Europe;
- to facilitate (inter-country) referral of trafficked persons and inter-country co-operation of lawyers;
- to support and encourage strategic litigation on victim rights on national and European level;
- to improve knowledge of human trafficking, its impact, and the rights of victims through the development of e-learning modules;
- to identify gaps in national legislation and practice, which can feed into national and European monitoring bodies.

⁴ See e.g. NHC (2015), *Position of victims of trafficking in human beings in criminal and other relevant procedures in Bulgaria, Slovakia and Romania. A Human Rights Based Approach. Joint regional report*. Available at http://www.nhc.nl/news/NEW_PUBLICATION.html?id=698.