

Regional conference

“Access to Compensation for Trafficked Persons in the Region”

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- Summary and Conclusions -

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Up till now only limited attention has been paid to compensation of victims, despite the fact that by now trafficking and its forced labour and slavery-like outcomes are recognised as a serious violation of human rights.

An important judgement in this respect is that of the European Court on Human Rights in the case of *Rantsev v. Cyprus and Russia*¹, in which the Court held that trafficking in human beings itself falls within the scope of article 4 of the European Convention on Human Rights, without the need to identify whether it constitutes slavery, servitude or forced and compulsory labour. This implies that States have a positive obligation not only to properly identify victims, prevent trafficking, prosecute traffickers and protect victims, but also to provide victims with an effective remedy. Compensation is a key element of an effective remedy.

The word ‘effective’ is crucial here. It means that a theoretical possibility is not enough. There must be an actual possibility for victims to claim and de facto receive compensation. This poses a considerable challenge. Although the law in Serbia, Bosnia-Herzegovina, Croatia and Macedonia allows for the possibility to claim compensation as part of the criminal proceedings, in practice, only a small number of victims actually received compensation, either from the traffickers or from the State. A small number of victims receive compensation through civil proceedings, too.

In practice, victims are severely discouraged from claiming compensation. In criminal proceedings any claims are, as a rule, rejected or not decided upon on the argument that this would prolong the proceedings. In civil proceedings claims for compensation are prohibitively long and difficult to prove, apart from the fact that victims do not have the financial means to conduct long and expensive legal proceedings. And, even if claims are awarded, they are extremely difficult or impossible to enforce for a variety of reasons. State Funds for compensation of victims of serious crimes do not exist or are dysfunctional.

For victims, compensation is a key element of justice. Compensation is an acknowledgment by society of the wrong done to them and a condition to regain confidence in the justice

¹ ECtHR, *Rantsev v. Cyprus and Russia*, Application No. 25965/04, 7 January 2010, available at www.interights.org/rantsev.



system and a just world. It helps them to recover and empowers them to pick up their lives. It also works as deterrence by targeting traffickers where it hurts most: money.

Yet, there are many obstacles to overcome. To mention some: lack of awareness or knowledge among the relevant actors within the justice system, lack of information and access to free legal aid or the requirement for victims to have regular immigration status or to be physically present in the jurisdiction concerned. Financial investigations targeting the flows of the proceeds of trafficking are not yet common or, if assets are confiscated, they go to the state instead of being used to compensate the victim, leaving them with empty hands.

And specifically for victims of trafficking for forced prostitution: too often consent to sex work is taken as consent to abuse and exploitation. This sends two messages: first, sex workers can be abused with impunity, and secondly: the right of women to protection against violence depends on their sexual innocence, or, in more traditional terms, their 'honour'. We have to seriously question ourselves if this is really the message we want to send. Do we really believe that human rights apply to everybody, or are some of us more equal than others?

There are different mechanisms to claim compensation: from the offender through the criminal proceedings or through a civil action, or, if it is not possible to get compensation from the offender, through a state fund. Experience learns that a civil action is not a real possibility: it is expensive, can take years, is extremely burdening, and even in case of a positive decision it is the victim who has to enforce the judgement. Most victims will not even dare to try so and certainly not in the case of organised crime. And most traffickers will have made certain that they have no assets on their own name. Not to mention the fact that if the victim loses the case, he or she risks to be sentenced to paying all legal costs, including those of the trafficker. Overseeing these obstacles, the question can even be posed whether it is morally right to refer victims of trafficking to civil proceedings. But certainly, it cannot be qualified as an effective remedy.

That leaves us with compensation through the criminal proceedings and a State Fund. A major obstacle in criminal proceedings is the requirement that a civil claim should not delay the criminal case. Yet, this obstacle can be overcome as the practice in the Netherlands shows. It takes time, motivated judges and persistent lawyers, but it is possible. It also requires up stepping financial investigations and the possibilities to freeze and confiscate criminal assets. And use them for compensation of the victims.

But if it is not possible to get compensation from the offender, because they cannot be identified or prosecuted, a State Fund for compensation of victims of violent crimes is indispensable. As showed, such a fund can be financed in different ways: from general taxes as in the Netherlands, or –more creative – from a small percentage of each insurance contract like in France, or simply from confiscated criminal assets.

A major conclusion of this conference is that in most cases the tools are there. The conventions are ratified. The laws are in place. What we need is to use them. We do not need new laws. We need the existing laws to be implemented. It is here that there is a world to win. To win this world, we need creativity, persistence and, above all, committed lawyers, prosecutors and judges. It is this, that this conference has hoped to achieve.