LEGAL GUIDE

GOOD PRACTICES IN HANDLING CASES OF HUMAN TRAFFICKING

INCLUDING LEGAL MECHANISMS FOR PURSUIT OF COMPENSATION

With the financial support of the Prevention of and Fight against Crime Programme
European Commission - Directorate-General Home Affairs

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ΚΕΝΤΡΟ ΠΡΟΑΣΠΙΣΗΣ
ΑΝΘΡΩΠΙΝΩΝ ΔΙΚΑΙΩΜΑΤΩΝ
HUMAN RIGHTS DEFENCE CENTRE

FOREWORD

By Genoveva Tisheva,
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"...The essence of justice is the redistribution of gains earned through the perpetration of injustice. If restitution is not made and reparations not instituted to compensate for prior injustices, these injustices are in effect rewarded...Consequently, injustice and inequality will be maintained across the generations..."
Amos Wilson

For us and our partners on the project, the European Women Lawyers' Association - Bulgaria and KEPAD, Greece, the human rights-based approach to the protection of trafficked persons is crucial. Based on this principle, we insist on full implementation of the due diligence principle and of the indivisible obligations of the State to prevent human trafficking, to protect and assist its victims, to prosecute and punish perpetrators, and to provide redress and compensation for the victims.

The EU Trafficking Directive provides for the rights of trafficked persons to legal assistance and compensation. The Council of Europe Convention also provides explicitly for the rights of victims to compensation both from the perpetrators and from the State.

At present, despite the fact that the laws of Bulgaria and Greece allow for compensation, the victims cannot benefit in practice from any compensation schemes. This is due to gaps in the law and procedure, which, in fact, make the rights of the victims non-enforceable.

Our project and the project tools, including this Legal Guide, are a response to this inconsistency between law and practice and are aimed at translating international and European law into real protection for trafficked persons who rarely receive justice.

Acknowledgements

We are very thankful to the European Commission - Directorate-General Home Affairs and the Prevention of and Fight against Crime Programme for their support for the project and for the elaboration of this Legal Guide.

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INTRODUCTION

This Legal Guide on good practices in handling cases of human trafficking, including legal mechanisms for pursuit of compensation ("the Guide") is published with the financial support of the Prevention of and Fight against Crime Programme European Commission - Directorate-General Home Affairs within the framework of the project *"Towards improved access to justice and compensation of victims of trafficking in Bulgaria and Greece" (Lawyers Against Trafficking) , Project HOME/2011/ISEC/AG/THB/4000002259*. The Guide is prepared by legal experts of the European Women Lawyers' Association – Bulgaria (EWLA - Bulgaria), Bulgarian Gender Research Foundation (BGRF) and the Human Rights Defence Centre (KEPAD), Greece.

The Guide aims to raise awareness and knowledge on issues of access to justice for victims of trafficking and to promote more effective protection of the victims' rights. It endeavours to provide legal practitioners who work in the field of human trafficking with a solid foundation of the legal rights guaranteed to victims of trafficking under international and EU law with a particular focus on the law in Bulgaria and Greece. For these purposes, it contains integrated information targeting law enforcement and judicial authorities, anti-trafficking bodies, NGOs, lawyers providing legal aid as well as members of all related authorities and bodies.

The Guide is divided into nine chapters covering the main rights of victims in human trafficking cases. Each chapter is structured in the following sections:

- Outline of the key international and European legal standards in handling human trafficking cases from a victim-oriented perspective, including good practices and references to case law in their application;
- References to available useful resources on the topic;
- Review of the law and practices in Bulgaria;
- Review of the law and practices in Greece.

The Guide is primarily useful for legal practitioners in Bulgaria and Greece, but also has relevant information for lawyers and legal practitioners from all EU Member States. It identifies examples of good practices as well as recommendations for improvement of existing controversial practices. References to useful resources for handling human trafficking cases where appropriate are also made.

Disclaimer:
The information contained in the Guide is provided in good faith and is believed to be reliable and accurate at the time of publication. It is not and should not be construed as legal advice. The authors disclaim any responsibility for errors and omissions in the text and shall not be liable for the use or misuse of the Guide or of the information contained therein.

ABBREVIATIONS

CoE – Council of Europe

CoE Trafficking Convention – Council of Europe Convention on Action against Trafficking in Human Beings

Directive on Compensation to Victims – Council Directive 2004/80/EC relating to compensation to crime victims

Directive on Residence Permits – Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

ECHR – Convention for the Protection of Human Rights and Fundamental Freedoms

ECtHR – European Court of Human Rights

Explanatory Report to the CoE Trafficking Convention – Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings

IOM – International Organization for Migration

NRM – National Referral Mechanism

OSCE – Organization for Security and Cooperation in Europe

OHCHR – Office of the High Commissioner for Human Rights

OHCHR Recommended Principles and Guidelines - OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking

Palermo Protocol – Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime

Trafficking Directive – 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

UN – United Nations

UNICEF – United Nations International Children's Emergency Fund

UNTOC – United Nations Convention against Transnational Organized Crime

UNODC – United Nations Office on Drugs and Crime

Victims' Directive – 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

Victims' Directive Guidance – DG Justice Guidance Document related to the transposition and implementation of 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, European Commission, DG Justice, December 2013

CHAPTER I.
THE CONCEPT OF VICTIM AND IDENTIFICATION OF VICTIMS OF TRAFFICKING

1. KEY INTERNATIONAL AND EUROPEAN STANDARDS

Definition of victim of trafficking

The CoE Trafficking Convention[1] defines "victim of trafficking" as

> *"any natural person who is subject to trafficking in human beings as defined in this article."*

A more general definition of victim is provided for by the Victims' Directive[2]:

> *(i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;*
>
> *(ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.*

It has been the practice in Bulgaria, Greece and other countries to require formal identification of trafficking victims through some established mechanism. Often, unless formal identification has taken place, an individual is not perceived to be a victim and is denied access to existing rights and protection. However, international and European standards require that where an individual meets the definition of a victim of human trafficking, they should have access to the benefits and protections of the laws regardless of the formal compliance with the existing identification mechanism.

Obligation to identify

Early identification is of paramount importance for ensuring access to assistance and protection of victims. The obligation to actively identify victims is imposed on States by all major international and EU instruments in combating human trafficking.

CoE Trafficking Convention

> *Article 10 - Identification of the victims*
>
> *10.1. Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention.*
>
> *10.2. Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations. Each Party shall ensure that, if the competent authorities have reasonable*

[1] Council of Europe, Council of Europe Convention on Action Against Trafficking in Human Beings, 16 May 2005, CETS 197, available at: http://conventions.coe.int/Treaty/EN/Treaties/Html/197.htm

[2] 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.

grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2.

Trafficking Directive[3]

Article 11
...
4. Member States shall take the necessary measures to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organisations.

National Referral Mechanisms (NRM) are commonly used to ensure cooperation and coordination between various State bodies and support organisations in the process of identification and assistance to victims. As defined in the *OSCE Practical Handbook on National Referral Mechanisms*[4], a National Referral Mechanism is the cooperative framework through which State actors fulfil their obligations to protect and promote the human rights of trafficked persons, coordinating their efforts in a strategic partnership with civil society. In the *OSCE Practical Handbook on National Referral Mechanisms* it is emphasised that it would be good practice for each OSCE participating State to develop an NRM regardless of the country's social, economic or political situation.

Among the principles and best practices for implementation of NRMs included in the *OSCE Practical Handbook* are the following[5]:

- Protecting the rights of trafficked persons should be the first priority of all anti-trafficking measures.
- An infrastructure to combat human trafficking should work on the basis of a broad definition of trafficking in order to have the ability to respond rapidly to different forms of human trafficking.
- Support and protection services should be accessible for all categories of trafficked persons.
- A protection mechanism should include a wide range of different specialised services, addressing the specific needs of each individual.
- Victim-protection mechanisms based on human rights can help secure successful prosecution.
- Combating trafficking in human beings requires a multidisciplinary and cross-sector approach, involving all relevant actors from government and civil society.
- A structure to combat trafficking in human beings should assess and build on existing national capacity in order to foster ownership and sustainability.

[3] 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.
[4] OSCE Office for Democratic Institutions and Human Rights (ODIHR), National Referral Mechanisms, Joining Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook, 2004,
available at: http://www.osce.org/odihr/13967?download=true
[5] Id. Chapter II. 2, pp. 23 - 29.

• The guiding principles of an NRM should include transparency and assignment of clear responsibilities and competencies according to the different mandates of all actors involved.

• NRMs are building blocks of effective regional and international cooperation to combat trafficking and assist its victims.

USEFUL RESOURCES

UN Office on Drugs and Crime (UNODC), *Toolkit to Combat Trafficking in Persons*, October 2008, 2nd edition, Chapter 6 - Victim Identification, available at: http://www.refworld.org/docid/4a7944fe2.html

OSCE Office for Democratic Institutions and Human Rights, *National Referral Mechanisms, Joining Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook*, 2004, available at: http://www.osce.org/odihr/13967?download=true

European Commission, DG Home Affairs, *Guidelines for the identification of victims of trafficking in human beings, Especially for Consular Services and Border Guards*, available at: http://ec.europa.eu/dgs/home-affairs/e-library/docs/thb-victims-identification/thb_identification_en.pdf

La Strada Czech Republic, *The Narrow Gateway to Human Rights, Identification of Trafficked Persons in the Czech Republic*, 2010, Chapter 8. Issues and Obstacles in Identification of Trafficked Persons – A Practical Insight, available at: http://www.ungift.org/doc/knowledgehub/resource-centre La_Strada_The_Narrow_Gateway_to_Human_Rights.pdf

UN Office on Drugs and Crime (UNODC), *Anti-Human Trafficking Manual for Criminal Justice Practitioners*, August 2009, Module 8 Interviewing Victims of Trafficking in Persons who are Potential Witnesses, available at: http://www.unodc.org/documents/human-trafficking/TIP_module8_Ebook.pdf

UNODC Booklet: *First Aid Kit for use by Law Enforcement Responders in Addressing Human Trafficking*, available at: https://www.unodc.org/documents/human-trafficking/First-Aid-Kit/First_Aid_Kit_-_Booklet_eng.pdf

UNICEF Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe, Chapter 4. Identification of Children Who Have Been Trafficked, available at: http://www.unicef.org/ceecis/UNICEF_Child_Trafficking_low.pdf

Guidelines for the First Level Identification of Victims of Trafficking in Europe, prepared within the project "Development of Common Guidelines and Procedures on Identification of Victims of Human Trafficking", June 2013, available at: http://www.fei.gouv.fr/imagesEUROTRAFGUID%20doc%20finaux%20oct%202013/ANG/131003_Guidelines-ANG.pdf

ARIADNE Network Against Trafficking in Human Beings in South-Eastern and Eastern Europe, *Regional Guidelines on the Identification of Trafficked Persons: A Manual for South-Eastern and Eastern Europe, 2012,* available at: http://www.ariadnet.net/pdfs/Identification_manual_final.pdf

2. BULGARIA: THE CONCEPT OF VICTIM AND IDENTIFICATION OF VICTIMS OF TRAFFICKING

Bulgarian legislation defines a victim of trafficking as a person who has been subject to trafficking in human beings.[6]
The trafficking definition (last amended in September 2013) covers:

> *"Trafficking in human beings" means the recruitment, transportation, transfer, concealment or acceptance of human beings, regardless of their own will, when carried out for the purpose of exploitation;*
>
> *"Exploitation" means the illegal use of human beings for debauchery, removal of a physical organ, tissue, cell or body fluid of the victim, for forced labour, begging or forced obedience, to be put into slavery or other situation similar to slavery.*[7]

Victims of trafficking also fall within the broader definition of *injured persons* who have suffered damages from violent crimes (including trafficking in human beings) under the Act on Assistance and Financial Compensation to Crime Victims[8].

In criminal proceedings, the victim has the specific capacity of *injured party* with the corresponding rights described in the relevant chapters in the Guide.

The National Mechanism for Referral and Support of Trafficked Persons in Bulgaria[9] (Bulgarian NRM) in detail describes the standard operating procedures (including concrete measures and steps for their implementation) for:

- Identification and referral of trafficked persons;
- Protection and support;
- Social inclusion (Re-Integration).

The identification of trafficked persons is the first procedure in the implementation of the Bulgarian NRM. It is assigned three separate steps:

- Identification and referral of trafficked persons;
- Contact with authorities to verify the identity of the trafficked person;
- Informing the trafficked person of the right to a reflection period.

Identification under the Bulgarian NRM should be immediately followed by:

- Risk assessment and security plan elaboration, and
- Defining of the immediate needs.

The Bulgarian NRM distinguishes formal identification from informal:

- Informal identification is performed by officers and employees of different institutions and organisations who have the first contact with the victim. It allows for

[6] § 1, item 5 of the Bulgarian Act for Combating Human Trafficking, promulgated in State Gazette No. 46/20.05.2003, latest amendments and supplements State Gazette No. 84/27.09.2013.
[7] Id, § 1, item 1 and 2.
[8] Act on Assistance and Financial Compensation to Crime Victims, promulgated in State Gazette No. 105/22.12.2006, effective 1.01.2007, amended State Gazette No. 32/27.04.2010, effective 28.05.2010.
[9] The Bulgarian NRM is developed within the framework of a project funded by MATRA Program of the Dutch Ministry of Foreign Affairs and implemented by "Animus Association" Foundation, in partnership with the National Commission for Combating Trafficking in Human Beings, in the period 2008-2010.
The NRM is available at: http://lastradainternational.org/lsidocs/Bulgarian%20NRM.pdf

immediate access of the trafficked person to the support programs and services included in the NRM.

- Formal identification is performed by the pre-trial proceedings bodies and serves to initiate the investigation.

The status of a victim who is formally identified in another member state is recognised by Bulgarian authorities.

The first rights of the victim based on the official identification are:

- To be informed of their rights, including of the right to one-month reflection period to decide whether to cooperate with the authorities and all other legal rights;
- Up to one-month accommodation in a shelter (up to two months when the victim is a child);
- Free psychological support and free legal consultations.

The public prosecutor is required to provide special protection to victims who have declared their willingness to cooperate.

3. GREECE: THE CONCEPT OF VICTIM AND IDENTIFICATION OF VICTIMS OF TRAFFICKING

There is no official legal definition of a victim of trafficking in the Greek legislation. Trafficking in human beings is regulated in the Greek Criminal Code.[10] There are two distinctive definitions, a general definition comprising all forms of human trafficking (Article 323A GCC) and a special definition for trafficking for sexual exploitation (Article 351 GCC):

Article 323A of the Greek Criminal Code:

> Human Trafficking is committed by anyone who *"with the use of violence, threat or other coercive means or with the exercise or abuse of power recruits, transports or transfers in or out of the country, withholds, harbours, delivers whether for receiving a benefit or not, a person to another, or receives a person with the purpose to remove cells or organs from his body, or with the purpose to exploit either for himself or for another person the services/labour (of the trafficked person) or his begging".*

Article 351 of the Greek Criminal Code:

> Human Trafficking for sexual exploitation is committed by anyone who with *"the use of violence, threat or other coercive means or with the exercise or abuse of power, recruits, transports or transfers in or out of the country, withholds, harbours, delivers whether for receiving a benefit or not, a person to another, or receives a person from another with the purpose to sexually exploit (the victim) either for himself or for another person".*

Identification of victims of trafficking in Greece takes place in two ways:

- **Informal identification**, performed during the phase of preliminary inquiry by the competent inquiry officer.

Informal identification is based on indicators found in the "Information Sheet" that is distributed to presumed victims.[11]

- **Formal identification**, which is performed by the Special Public Prosecutor for Human Trafficking, according to the procedure described in Law 4251/2014 (Article 1, paragraph ia).

The Act of formal identification is issued based on the victim's testimony and the report of the psychiatrist/psychologist.

[10] Human trafficking as a distinct criminal offense was introduced with Law 3064/2002. Law 4251/2014 provides a definition of a victim of human trafficking, as a person who has suffered a violation of pertinent criminal laws, i.e. Art. 323 and 351 of the Greek Criminal Code, but this is solely for the purposes of his/her immigration status. It does not include any specific characteristics that will help identify a trafficked person in an objective and consistent manner.

[11] Available at: http://www.astynomia.gr/images/stories/2009/DIAFOR09/eglandANTITRAF.pdf

CHAPTER II.
RIGHT TO SUPPORT AND ASSISTANCE OF VICTIMS OF TRAFFICKING

1. KEY INTERNATIONAL AND EUROPEAN STANDARDS

Under all major international and EU legal instruments in the field of human trafficking, States are obliged to implement measures which provide support and assistance to victims, including, first and foremost, provision of appropriate and safe accommodation, material assistance, necessary medical treatment and psychological assistance.
Further, States should take into account the special needs of the victims when providing such assistance, including their gender and the type of harm they have suffered.

Palermo Protocol[12]

Article 6. Assistance to and protection of victims of trafficking in persons
...
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of: ...

(a) Appropriate housing;

(b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;

(c) Medical, psychological and material assistance; and

(d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

The **minimum assistance** according to the CoE Trafficking Convention (Article 12, paragraph 1) includes:

- Appropriate and secure accommodation, psychological and material assistance;
- Access to emergency medical treatment;
- Translation and interpretation services;
- Counselling and information on their legal rights and the services available to them;
- Assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;
- Access to education for children.

[12] UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime,15 November 2000, available at: http://www.refworld.org/docid/4720706c0.html

The Trafficking Directive further specifies the requirements to States in providing assistance and support to victims:

> *Article 11. Assistance and support for victims of trafficking in human beings*
>
> *2. Member States shall take the necessary measures to ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected to any of the offences referred to in Articles 2 and 3.*
>
> *5. The assistance and support measures referred to in paragraphs 1 and 2 shall be provided on a consensual and informed basis, and shall include at least standards of living capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate.*
>
> *7. Member States shall attend to victims with special needs, where those needs derive, in particular, from whether they are pregnant, their health, a disability, a mental or psychological disorder they have, or a serious form of psychological, physical or sexual violence they have suffered.*

Good practices that should be considered in applying the international and EU standards for support of victims include:

- Access to health care and accommodation should be the first priority, since, in order to recover and to be able to avail of other remedies, assistance to meet the basic needs of the victim is required. Without access to support and assistance, the victim would not be in position to consider information on her or his rights and be able to make an informed decision.
- The assistance measures should be designed to meet the individual needs of each victim and alleviate the physical injuries as well as psychological distress. Services must be developed on the basis of awareness and respect for cultural difference.
- Internal procedures for assessing the support needs of victims should be created by the competent authorities in order to facilitate the process for referral to the necessary services.
- According to the Victims' Directive, support should be available from the earliest possible moment after a crime has been committed, irrespective of whether it has been reported (Article 8, paragraph 5).

Important: According to established international and EU principles, cooperation with law enforcement is not required for access to assistance.

Under the Trafficking Directive, Article 11:

> *3. Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial, without prejudice to Directive 2004/81/EC or similar national rules.*

The requirement that cooperation should not be conditioned on law enforcement cooperation is clearly recognised in the jurisprudence of the European Court of

Human Rights in the *Rantsev v Cyprus and Russia* case[13]. In the *Rantsev* case Cyprus was found in violation among others of the obligation to take protective measures in the case of Ms Rantseva*: where State authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked ..., there will be a violation of Article 4 of the Convention where the authorities fail to take appropriate measures within the scope of their powers to remove the individual from that situation*[14]. The human rights approach to trafficking of persons essentially requires an unconditional provision of assistance to victims.

USEFUL RESOURCES

UN High Commissioner for Refugees (UNHCR), *Prevent. Combat. Protect: Human Trafficking (Joint UN Commentary on the EU Directive – A Human Rights-Based Approach),* November 2011, Commentary on Article 11: Assistance and support for victims of trafficking in human beings, pp. 45- 47,
available at: http://www.refworld.org/docid/4edcbf932.html

European Commission, Directorate-General for Home Affairs, *The EU Rights of Victims of Trafficking in Human Beings*, 2013,
available at: http://ec.europa.eu/anti-trafficking/download.action?nodePath=/EU+PolicyEU+rights+of+victims+of+trafficking_EN.pdf&fileName=EU+rights+of+victims+of+trafficking_EN.pdf&fileType=pdf

UN Office on Drugs and Crime (UNODC), *First Aid Kit for Use by Law Enforcement First Responders in Addressing Human Trafficking*, available at: https://www.unodc.org/unodc/en/human-trafficking/2011/first-aid-kit.html

International Organization for Migration (IOM), *The IOM Handbook on Direct Assistance for Victims of Trafficking*, 2007, Chapter 4 Shelter Guidelines, Chapter 5 Health and Trafficking,
available at: http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/books/CT%20handbook.pdf

UN Office on Drugs and Crime (UNODC), *Toolkit to Combat Trafficking in Persons*, October 2008, 2nd edition, Chapter 8. Victim Assistance,
available at: http://www.refworld.org/docid/4a7944fe2.html

European Union: European Agency for Fundamental Rights, *Handbook on European law relating to asylum, borders and immigration*, June 2013,
available at: http://www.refworld.org/docid/51b6eb394.html

[13] Case of *Rantsev v. Cyprus and Russia* , 7 January 2010,
available at: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-96549#{%22itemid%22:[%22001-96549%22]}
[14] Paragraph 286.
In the *Rantsev* case a 21-year-old female Russian national Ms Rantseva traveled to work as a "cabaret artiste" in Cyprus. Trying to leave her job, the police authorities forced her to return to the employer. Ms Rantseva died trying to escape from the employer. However, the context of human trafficking was never investigated by authorities.

2. BULGARIA: RIGHT TO SUPPORT AND ASSISTANCE OF VICTIMS OF TRAFFICKING

The Bulgarian NRM in *Measure 2.1. Crisis intervention* contains detailed provisions on the support required for trafficked persons upon identification:

- Step 1. Emergency accommodation in a crisis centre;
- Step 2. Provision of emergency psychological help;
- Step 3. Provision of emergency social, medical, and humanitarian help, where the first priority is on the medical needs of the victim. A priority is the issuing of identity documents and residence permit, if necessary.

Shelters

The Bulgarian Social Assistance Act[15] and the rules for its implementation regulate the establishment and provision of accommodation (crisis centres) for persons who have suffered violence, including trafficking. The establishment of crisis centres is also envisaged under the special anti-trafficking legislation.

The period during which victims can reside in crisis centres is set to be 6 months but can be extended and victims can stay for longer periods.

The Act for Combating Human Trafficking[16] lists accommodation in crisis centres for extended periods among the special protection measures provided to victims who cooperate with law enforcement. In practice, however, the general social assistance provisions apply to victims of trafficking in the same way as to other persons who have suffered violence.

Medical care

Medical care in emergency situations is available to victims of trafficking.[17] Under the Bulgarian NRM victims' medical needs are a priority. Emergency medical assistance is provided within the operating system of emergency medical aid, while for the purposes of hospitalisation valid health insurance rights of the victim are required, or the application of a measure of social support is also possible.

Psychological assistance

State-funded psychological assistance is ensured under the Act on Assistance and Financial Compensation to Crime Victims. Psychological assistance can be provided by the psychologists working in the crisis centre where the victim is accommodated. Psychologists working with victims may also register under the Act and be paid for services provided to victims of crime by the State through the National Council for assistance and compensation to victims of crime.

[15] Social Assistance Act, promulgated State Gazette No. 56/19.05.1998, latest amendments and supplements State Gazette No. 15/15.02.2013, effective 1.01.2014, State Gazette No. 66/26.07.2013, effective 26.07.2013.
[16] Act for Combating Human Trafficking, Article 25, item 2.
[17] Act on Assistance and Financial Compensation to Crime Victims, Article 8, paragraph 1, item 1.

Identification documents and residence permits

Victims of trafficking are entitled to repatriation assistance including in obtaining personal identification documents by Bulgarian diplomatic and consular offices abroad and by the Bulgarian Ministry of Interior.

Long-term residency permits to victims of foreign nationality can be granted only if they have declared their willingness to cooperate with law enforcement. The maximum duration of temporary residency permits is the period of criminal proceedings. For this period, the victims are entitled to scope of rights as are foreigners residing permanently in Bulgaria.

3. GREECE: RIGHT TO SUPPORT AND ASSISTANCE OF VICTIMS OF TRAFFICKING

Residence Permit

Once formally identified by the Public Prosecutor, the victim is eligible to apply for a residence permit. The law provides for two different types of residence permits for victims of human trafficking.

• **Residence permit specifically for victims of human trafficking** who cooperate with the authorities (Articles 49-56 of Law 4251/2014)

- It is issued by decision of the Minister of Interior, in priority and without payment of a fee, following the Act of Formal Identification.
- It is granted for one year and is renewed until the conclusion of the criminal proceedings (with the issue of an irrevocable judgment).
- It gives access to the labour market, medical and psychological support, and access to professional training and education in accordance with the conditions prescribed by the legislation in force.

The residence permit can be revoked:

- If the holder resumes his/her contacts, actively and voluntarily, with his/her traffickers.
- In case that the Authorities conclude that the cooperation of the victim or the reporting of the crime was fraudulent or abusive or there are concerns of public order and safety.

• **Residence permit issued on humanitarian grounds** (Joint Ministerial Decision 30651/2014, Article 1, paragraph 1)

- It is granted to formally identified victims of human trafficking who do not cooperate with the authorities.
- It is granted for one year and each renewal can be for two years only, under the condition that the investigation of the criminal proceedings is on-going. If the criminal proceedings are in any way terminated or discontinued, then the permit may be renewed for another ground foreseen in Law 4251/2014, with the assent of the Immigration Committee.

The documentation needed for the issuing of residence permit on humanitarian grounds (JMD 30651/2014, Article 2) includes:

- Application form;
- 2 recent photographs;
- A certified copy of a passport in force or of other travel document or in any case, an official record that can replace a certification of personal identification;
- Act of Formal Identification.

In case of renewal, the following are needed as well:

- A document from the public prosecutor that certifies the continuation of the criminal proceedings;
- Evidence of medical insurance that covers medical expenses.

Protection

Presumed victims of trafficking are entitled to a 3-month reflection period (5 months maximum for minors) in order to recover and escape from the influence of their traffickers so that they can make an informed decision whether to cooperate with the police and with the judicial authorities. During this period:

- victims of trafficking cannot be deported.
- the relevant decision on deportation is suspended.
- victims of trafficking are entitled to emergency medical treatment and psycho-social assistance and protection.

Assistance

Pursuant to PD 233/2003 victims of trafficking are entitled to assistance including police protection, accommodation, education for persons up to 23 years old, health care, legal advice and assistance by interpreters. NGOs, the IOM or other International Organisations or specialised protection and assistance agencies recognised by the State are specified in Articles 2, 3 and 4 of the PD 233/2003.

As an example of good practice, the General Secretariat for Gender Equality has established an "Integrated Action Plan in favour of women and combating of violence at national and local level". The Action Plan involves a nationwide network of 61 structures which consists among others of (i) the SOS telephone helpline 15900 of 24 hour operation and (ii) the establishment of 40 consultation centres and 19 shelters in the largest Greek cities.

Another good practice in Greece is the voluntary repatriation of victims of trafficking. The Hellenic police cooperates with IOM for the safe repatriation of victims of trafficking. Victims of trafficking will not need to pay for the airplane ticket and are not in danger of being arrested by the police until the day of departure.

- In case the victim does not possess a valid passport, an application for new passport or travel documents has to be submitted to the respective country's Embassy in Athens;
- Then, the victim should refer to the Alien's Directorate of Attica (P. Ralli 24-Tavros, Office 101, 8:00-13:00 Mon-Fri) and submit their passport or the copy of the application obtained from the Embassy.

Usually, for matters of renewal of residence permit or matters concerning the repatriation of victims of trafficking, the National Centre for Social Solidarity (EKKA) cooperates directly with the competent authorities.

CHAPTER III.
RIGHT TO INFORMATION OF VICTIMS OF TRAFFICKING

1. KEY INTERNATIONAL AND EUROPEAN STANDARDS

International and European law recognises that a victim of human trafficking must have access to support and assistance including access to information about the legal rights available, in order to recover and pursue other remedies, such as compensation or participating in criminal proceedings.

Article 6 (3) (b) Palermo Protocol and Article 12 (1) (e) of the CoE Trafficking Convention oblige States to ensure to victims:

> *"counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand".*

Article 11, paragraph 5 of the Trafficking Directive refers to the provision of *"counselling and information"* as a minimum standard of assistance and support to a victim outside criminal proceedings, while Article 12, paragraph 2 refers to the provision of *"legal counselling without delay"* in the context of criminal proceedings.

The Victims' Directive in Article 4 extensively describes the content of the relevant to be provided to victims from their first contact with authorities.

Who has the obligation to provide information to victims?
In general the obligation to inform victims of their rights is imposed on law enforcement authorities, including police and investigation authorities. In the course of criminal proceedings, this obligation falls on the prosecution and judicial authorities. The Victims' Directive extends the scope of the obligation by assigning it generally to the competent authorities of Member States. The information must be provided *ex officio*, through a procedure established by law enforcement agencies.

When should the information be provided?
National authorities often focus exclusively on a victim's potential role as a witness. However, such considerations should not affect a victim's rights. Effective access to information must be ensured to victims from the first contact with the competent authorities. This means that the information must be provided *ex officio*, in compliance with the established for the purpose procedure.

What is the information that has to be provided to victims?
At the time of first contact, the victim is entitled to information on[18]:

- The type of support which they can obtain and the organisations to which they can turn for the purpose;

[18] Article 4 of the Victims' Directive.

• Where and how they can report an offence;
• How the criminal law system operates including:
- the length and consequences of an investigation or trial;
- witnesses' duties;
- to what extent and on what terms they have access to legal advice and representation.
• Legal remedies available, including compensation from the traffickers and the State and applicable time limits.
• How and under what conditions they can obtain protection.
• If they are residents of another state, any special arrangements available to them in order to protect their interests.

After initiation of criminal proceedings, Article 6 of the Victims' Directive particularly stresses on the provision of the following information about the victim's case:
• A decision to end criminal proceedings (including the reasons for this) and
• The time and place of the trial and the nature of the charges.
If the victims participate in the criminal proceedings, they are also entitled to obtain information about the state of the proceedings.

Important: It is further required by the Victims' Directive that victims not only hear the information on their rights, but it is ensured that they actually understand it (Articles 3 and 4 of the Victims' Directive). Officials need to take an individual, pro-active approach when dealing with victims.

In the Victims' Directive Guidance[19] it is emphasised that *"...the Directive seeks to ensure that victims — based on their personal characteristics (e.g. gender, disability, age, maturity, relationship to or dependence on the offender) — understand and can make themselves understood during criminal proceedings (linguistically or otherwise) and that authorities pro-actively assist victims to do so throughout criminal proceeding."* To this end Member States are invited to consider the development of *"procedures allowing authorities to assess the communication needs and constraints of each individual victim, from the victim's first contact with the criminal justice system..."*

Good practices that should be considered in applying the international and EU standards for provision of information to victims of trafficking include:
• The obligation to provide information on victims' rights should apply to all state authorities competent to identify victims, such as customs or border agencies, refugee agencies, or other authorities.
• It is not obligatory that the person informing the victim be a lawyer. However, appropriate training on victims' rights and manner of communication with victims is essential for state officials likely to come into contact with victims of trafficking.

[19] European Commission, DG Justice, Guidance Document related to the transposition and implementation of 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, December 2013, available at: http://ec.europa.eu/justice/criminal/files/victims/guidance_victims_rights_directive_en.pdf

• Establishment of detailed procedures regulating the obligations of competent authorities to inform victims of their right at the time of identification.

• A record should be kept of the first contact/interview with a victim as an additional safeguard to ensure that victims are provided with the necessary information.

• To facilitate the process of communicating and understanding by the victims of their legal rights, special brochures with appropriate content and explaining in an easily understandable manner their rights, may be created and handed out to victims for reference following the explanation by the state official.

USEFUL RESOURCES

UN Office on Drugs and Crime (UNODC), *Toolkit to Combat Trafficking in Persons*, October 2008, 2nd edition, Chapter 8, Tool 8.16 Access to information and legal representation, available at: http://www.refworld.org/docid/4a7944fe2.html

European Commission, Directorate-General for Justice, *Guidance Document related to the transposition and implementation of Directive 2012/29/EU*, December 2013, Article 4 — Right to receive information from the first contact with a competent authority (Recital 21 and 23), pp. 13 - 16, available at: http://ec.europa.eu/justice/criminal/files/victims/guidance_victims_rights_directive_en.pdf

2. BULGARIA: RIGHT TO INFORMATION OF VICTIMS OF TRAFFICKING

Provision of information at the time of first contact with the victim

The Bulgarian Act on Assistance and Financial Compensation to Crime Victims obliges police officers and victim support organisations, from their first contact with the victims, to give them preliminary information about their rights, including:

- The organisations to which victims can turn for counselling and support and the types of counselling and support which they can obtain free of charge;
- Victims' right to legal aid, the services to which they can turn in order to exercise that right, and the terms and procedures for obtaining legal aid free of charge;
- The services before which a crime can be reported, the procedures following such a report, and the types of action which victims can take;
- Victims' rights in the criminal process and the options for their participation in it;
- The services to which victims can turn for protection for themselves and their family, and the terms and procedures for obtaining protection;
- The services to which victims can turn for financial compensation from the state, and the terms and procedures for obtaining such compensation;
- Existing rights, if they are foreign nationals who are victims of crime in the republic of Bulgaria;
- Existing rights, if they are victims of crime in another country, and the services to which they can turn in such cases;
- To receive special protection if within one month the victims declare their consent to cooperate with the investigation.

The information should be provided either in writing or orally in a language understood by the victim. The provision of the information shall be documented by drawing up a written statement which is then registered in the records department of the respective service. Administrative liability and sanctions are envisaged for failure to fulfil the above obligations.

Provision of information in criminal proceedings

In criminal proceedings the investigating officer or the prosecutor who has initiated the pre-trial proceedings, should immediately notify the victim if the latter has provided an address for summoning in Bulgaria. Along with the notification for the initiated proceedings, information on the rights of the victim in pre-trial proceedings needs to be furnished, including[20]:

- To be informed of his/her rights within the criminal proceedings including for the right to bring a civil claim;
- To obtain protection with regard to his/her personal safety and the safety of his/her relatives;
- To be informed of the progress of the criminal proceedings;

[20] Criminal Procedure Code, Article 75.

- To participate in the criminal proceedings;
- To make requests, notes and objections;
- To appeal against acts resulting in the termination or suspension of the criminal proceedings;
- To have a lawyer.

The participation of the victim in pre-trial proceedings is subject to his/hers expressed will before the investigating authority to take part in the proceedings and the provision of an address at which to be summoned.

3. GREECE: RIGHT TO INFORMATION OF VICTIMS OF TRAFFICKING

From their first contact with the competent authorities (usually the police), victims of trafficking must be informed, in a language that they understand, about their rights. This right to information applies both prior and after the criminal proceedings.

The information provided should include (Articles 50 and 51 para 3 of Law 4251/2014):

- The procedure to be followed in order to be formally identified as victims of trafficking;
- The right to a 3-month reflection period (5-months maximum for minors);
- The suspension/revocation of criminal proceedings and deportation orders in case of immigration violations;
- The organisations and services that offer support and psycho-social assistance, as well as the possibility to obtain free legal aid;
- The right to institute criminal proceedings against their trafficker, including the right to request compensation.

During the preliminary investigation, the police officer in charge provides all presumed victims of trafficking with an "Information Sheet" which contains information regarding the process to be followed, the rights and protection available to trafficked persons, as well as a list of indicators for their self-identification. The information sheet is available in 14 languages.

It should be noted that the victims must make properly informed decisions; this means that they must give their full, free and prior informed consent on their concerned issues and must be fully informed about the proper procedures and the consequences of their decision to cooperate with the authorities or to decline such cooperation[21].

> Article 4 (3) of Law 3811/2009
>
> 3. *The investigation, preliminary investigation and prosecution authorities are obliged to clearly inform the victims of violent acts (victims of human trafficking included) on their right to apply for compensation, as well as for the specific formalities of its exercise...*

For children victims of trafficking:

- States are under the obligation to "*take all necessary measures in order to safeguard that the children are adequately informed about their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases*".[22]
- Children victims of trafficking have the right to be informed by the Public Prosecutor, who is competent for the implementation of sentences, for the temporary or permanent discharge of the offenders and for the leaves granted to the offenders by the detention centres.[23]

[21] For the issue of full, free and prior informed consent, see V.C v. Slovakia, no. 18968/07, ECHR 2011, at paragraph 108; I.G. and others v. Slovakia, no. 15966/04, ECHR 2012, at paragraph 118.
[22] Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, Article 8 (b).

CHAPTER IV.
RIGHT NOT TO COOPERATE OF VICTIMS OF TRAFFICKING

1. KEY INTERNATIONAL AND EUROPEAN STANDARDS

International and European law recognises that a victim of human trafficking must not be obliged to cooperate with law enforcement in criminal proceedings.

CoE Trafficking Convention

Article 13. Recovery and reflection period

1. Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities. During this period it shall not be possible to enforce any expulsion order against him or her. This provision is without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating and prosecuting the offences concerned. During this period, the Parties shall authorise the persons concerned to stay in their territory.

The decision whether to cooperate may have far-reaching consequences of retaliation by the trafficker either against the victim or against the victim's family. To ensure that the best decision is taken for the overall safety and privacy of the victim, it is particularly important that the victim fully understands his/her role in the proceedings and fully considers the situation and all possible consequences of their choice.

As a result of their experience and the trauma caused, certain amount of time is often necessary for making a decision. For this purpose, the victim needs all relevant information of what is expected of him/her and how the proceedings will develop in the reflection period.

Directive on residence permits[24]

Article 6. Reflection period

1. Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.
The duration and starting point of the period referred to in the first subparagraph shall be determined according to national law.

2. During the reflection period and while awaiting the decision of the competent authorities, the third-country nationals concerned shall have access to the treatment referred to in Article 7 and it shall not be possible to enforce any expulsion order against them.

[24] Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

In many countries, however, individuals cannot refuse to provide witness statements when requested by the authorities. In Bulgaria, for example, the victim's eventual refusal to meet with the investigator can lead to a fine and bringing into custody for interrogation.[25] At the meeting, however, he/she can state that witness statements cannot be provided due to risk to incriminate herself/himself[26] or close family members.[27]

An important factor is that the granting of residence and work permits is conditional upon the provision of testimony by the victim according to the Directive on residence permits. Thus, especially in the countries of destination, the residence permits are closely linked to the willingness of victims to cooperate with the prosecution and provide evidence.

Good practices and recommendations relating to the right of the victim not to cooperate are:

- If the victim decides not to give evidence, offenders should still be charged and prosecuted based on other evidence.
- For victims who decide to give testimony, protection and specialist support should be available from the prosecution authorities and other support services which can help to prepare and encourage victims before trial.
- Access to assistance, support and protection, including the issuance of residence permits, should not be conditional upon cooperation of the victim. In the Joint UN Commentary on the EU Directive – A Human Rights-Based Approach[28], the following recommendation is made on Article 11 (3): *"Member States are strongly encouraged to omit the last part of Article 11 (3), and* ***make access to assistance, support and protection entirely unconditional.***"
- Reflection periods are important to allow a period of recovery outside the influence of the trafficker. The opportunity to reflect on the situation and the potential consequences of cooperation, including if the victim has sufficient psychological capacity to participate in the criminal proceedings, is essential for the future of the victim and needs to be respected.

USEFUL RESOURCES

UNODC, *Toolkit to Combat Trafficking in Persons*, October 2008, 2nd edition, Chapter 7, Tool 7.1 Reflection period, available at: http://www.refworld.org/docid/4a7944fe2.html

UNODC, *Anti-Human Trafficking Manual for Criminal Justice Practitioners*, 2009, Module 11 on Victims' needs in criminal justice proceedings in trafficking in persons cases, available at: http://www.unodc.org/documents/human-trafficking/TIP_module11_Ebook.pdf

[25] Criminal Procedure Code, Article 120, paragraph 3.
[26] Id., Article 119.
[27] Id., Article 121, paragraph 1.
[28] Joint UN Commentary on the EU Directive – A Human Rights-Based Approach, 2011, available at: http://www.unodc.org/documents/human-trafficking/2011UN_Commentary_EU_Trafficking_Directive_2011.pdf

2. BULGARIA: RIGHT NOT TO COOPERATE OF VICTIMS OF TRAFFICKING

Bulgarian law does not make a clear statement on the right of victims of trafficking to refuse to cooperate in criminal proceedings. There is no specific obligation binding victims to cooperate is set forth while there are explicit provisions for special privileges to be granted to victims who cooperate.

> *"Pre-trial authorities shall promptly inform the individuals who have become victims of human trafficking, upon identification thereof, about the possibility to receive special protection, if within one month the victims declare their consent to collaborate with the investigation.[29]"*

Thus, victims are granted the choice whether to make a report and provide witness statements in the proceedings. However, only cooperating victims have access to other privileges such as extended accommodation in shelters, long-term stay in the country, financial compensation:

• Individuals who have become victims of trafficking and have declared their willingness to cooperate for disclosure of the perpetrators are granted special protection status for the time of the criminal proceedings, including[30]:

- Permission to foreign nationals for long-term stay in the country;
- Extension of the accommodation period in the shelters.

• If the victim has not made a report on the crime, she or he may not be entitled to financial compensation and free psychological assistance.

It should be noted however, that during criminal proceedings the victim's eventual refusal to meet with the investigator or appear before court without a legitimate reason may lead to a fine and bringing into custody for interrogation.[31] Such reasons may be that witness statements cannot be provided due to risk for the victim to incriminate herself/himself or close family members[32].

[29] Act for Combating Human Trafficking, Article 26, paragraph 1.
[30] Id., Article 25.
[31] Criminal Procedure Code, Article 120, paragraph 3.
[32] Id., Article 121, paragraph 1.

3. GREECE: RIGHT NOT TO COOPERATE OF VICTIMS OF TRAFFICKING

Victims of human trafficking may be formally identified even if they do not cooperate with the authorities.

The Act of Identification of victims who do not cooperate with the authorities, is issued by the Public Prosecutor of the Court of First Instance, with the assent of the Public Prosecutor of the Court of Appeals when:

- It is considered that the life of the victim is in danger.
- The victim has already suffered considerable harm to his/her health, physical integrity, personal liberty and sexual freedom.
- There are threats against the victim's family.
- There is reason to believe that if the victim is not protected or is returned expelled then his/her family is in imminent danger.

Formally identified victims of trafficking that do not cooperate with the authorities may still be granted a residence permit issued on humanitarian grounds (Joint Ministerial Decision 30651/2014)[33].

[33] For the conditions, see Chapter II, Right to Support and Assistance.

CHAPTER V.
RIGHT TO PARTICIPATE IN CRIMINAL PROCEEDINGS

1. KEY INTERNATIONAL AND EUROPEAN STANDARDS

Under different criminal justice systems, victims' rights to participate in criminal proceedings vary and may include:

- The right to join in criminal proceedings as an injured party, as a private prosecutor or a civil claimant.
- In some legal systems (particularly adversarial) victims cannot have the status of a party.

One of the purposes of the Victims' Directive is to ensure that victims are able to participate in criminal proceedings. The Directive does not harmonise procedural rules in member states nor does it provide a mandatory role of victims who wish to participate. This is left to the national criminal procedures.

What victims must be guaranteed as a minimum is:

- An opportunity to provide information, views or evidence throughout criminal proceedings (Article 10 — Right to be heard of the Victims' Directive).
- Victims of serious crime have the right to a review of a decision not to prosecute.

The rights of the victim to information on the course of proceedings are of high importance. A victim should be informed of the following issues:

- Any questions of the victim about court procedures should be answered to facilitate the process of cooperation.
- Indication of how long it will take before giving evidence should be provided.
- In the event of delays to criminal proceedings, the victim should be informed of the reason for the delay and how long it is likely to last.
- The victim should be informed and explained the reasons if a decision to drop the charges is taken.

USEFUL RESOURCES

European Commission, Directorate-General for Justice, *Guidance Document related to the transposition and implementation of Directive 2012/29/EU*, December 2013, Article 10 — Right to be heard (Recital 41 and 42), pp. 29 - 30, available at: http://ec.europa.eu/justice/criminal/files/victims guidance_victims_rights_directive_en.pdf

2. BULGARIA: RIGHT TO PARTICIPATE IN CRIMINAL PROCEEDINGS OF VICTIMS OF TRAFFICKING

A victim of trafficking may be involved in criminal proceedings in the capacity of "injured party", "civil claimant", "private prosecutor" including in the three capacities simultaneously.

Injured Party (victim)

The victim in Bulgarian criminal proceedings has the following main rights:

- To be informed of his/her rights within the criminal proceedings including for the right to bring a civil claim;
- To obtain protection with regard to his/her personal safety and the safety of its relatives;
- To be informed of the progress of the criminal proceedings;
- To request the collection of evidence or to object to evidence;
- To appeal against acts resulting in the termination or suspension of the criminal proceedings;
- To have a lawyer.

In order for the rights of the victim to arise, the victim needs to make a request to participate in pre-trial proceedings and indicate a mailing address in the country.

Civil claimant

The victim is entitled to bring civil action for compensation to be reviewed by the court in the course of criminal proceedings.

The victim as a civil claimant has the following rights[34]:

- To take part in court proceedings;
- To request security for the civil claim;
- To examine the case-file and obtain excerpts;
- To produce evidence;
- To make requests, comments and raise objections, as well as to file appeal from acts of the court which infringe upon his or her rights and legal interests.

Private Prosecutor

A victim may participate in the proceedings as a private prosecutor maintaining the prosecution along with the public prosecutor. During the trial the private prosecutor may present evidence, make requests and arguments relating to the proving of the guilt of the accused and for determining the penalty. Those rights are specific for the private prosecutor capacity and differ from the rights of the civil claimant who can only participate on matters relating to the compensation.

[34] Criminal Procedure Code, Article 87, paragraph 1.

If the victim does not cooperate

If the victim does not wish to participate in the criminal proceedings, he or she will still be required to provide witness statements. Under Bulgarian Criminal Procedure Code witnesses are obliged to:

- Appear before the respective body;
- State everything they know about the case and answer the questions asked;
- Remain at the disposal of the competent authority as long as this may be necessary.

In case of failure to appear and provide witness statements the victim will be fined and may be brought coercively in for interrogation.

The victim may refuse to testify on questions, the answers to which might incriminate him/her, and has the right to consult a lawyer.

3. GREECE: RIGHT TO PARTICIPATE IN CRIMINAL PROCEEDINGS OF VICTIMS OF TRAFFICKING

During the investigation of the crime

Victims of trafficking may report the crime to the public prosecutor or the police. After the victim has reported that he/she is a victim of trafficking, the Public Prosecutor may initiate criminal proceedings against the alleged trafficker. The Public Prosecutor may also act *proprio motu*. During preliminary examination, and once investigation procedure begins, victims of trafficking are called to testify as witnesses. If the victim does not speak Greek he/she is entitled to an interpreter free of charge.

During the criminal trial

• The victim of trafficking will be summoned to the court as a witness, with the obligation to appear before the court. The victim has the following rights:

- personal protection by the police;
- nondisclosure of personal data (name, place of birth, home and work address, job and age);
- interviewing outside the court via audio or video conference.

During the criminal trial, the victim of trafficking has the right to use the assistance of an interpreter free of charge.

• The victim of trafficking may join criminal proceedings as a civil claimant by submitting a formal request during all steps of the criminal proceedings.

If the victim has already become a civil claimant during the investigation, he/she can participate in the trial without submitting any additional documents.

CHAPTER VI.
RIGHT TO PROTECTION OF PRIVACY AND PHYSICAL SAFETY

1. KEY INTERNATIONAL AND EUROPEAN STANDARDS

The protection of victims of trafficking following their identification is a primary issue of concern for the national authorities. The CoE Trafficking Convention sets forth a framework of the basic procedural measures of protection within court proceedings. The Convention makes a particular link to Article 6 – Right to a Fair Trial, of the ECHR.

> *Article 30. Court proceedings*
>
> *In accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms, in particular Article 6, each Party shall adopt such legislative or other measures as may be necessary to ensure in the course of judicial proceedings:*
>
> *(a) the protection of victims' private life and, where appropriate, identity;*
>
> *(b) victims' safety and protection from intimidation, in accordance with the conditions under its internal law and, in the case of child victims, by taking special care of children's needs and ensuring their right to special protection measures.*

Wide-ranging protection measures are provided by the Victims' Directive.

> *Article 18. Right to protection*
>
> *Without prejudice to the rights of the defence, Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members.*

According to the Victims' Directive Guidance "*the reference without prejudice to the rights of defence should be interpreted strictly proportionately, as real situations in which such defence rights could legitimately override the need for victims' protection are likely to be extremely rare*". The particular balance between the rights to privacy and protection of victims against the right of any accused person to a fair trial is for each State to determine.

In the judgment *Doorson v. the Netherlands*[35], the European Court of Human Rights held:

> *70. It is true that Article 6 does not explicitly require the interests of witnesses in general, and those of victims called upon to testify in particular, to be taken into consideration. However, their life, liberty or security of person may be at stake, as may interests coming generally within the ambit of Article 8 (art. 8) of the Convention. Such interests of witnesses and victims are in principle protected by other, substantive provisions of the Convention,which imply that Contracting States should organise their criminal proceedings in such a way that those interests are not unjustifiably imperilled. Against this background, principles of fair trial also require that in appropriate cases the interests of the defence are balanced against those of witnesses or victims called upon to testify.*

[35] Case of Doorson v. The Netherlands, 26 March 1996,
available at: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57972#{%22itemid%22:[%22001-57972%22]}

A good practice in view of the above is to always warn the trafficked person of the difficulties inherent in protecting identities and avoid promising unrealistic expectations in this regard.

The right to protection of privacy is also proclaimed by the Palermo Protocol:

> *Article 6*
>
> *1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.*

Under the Victims' Directive:

> *Article 21. Right to protection of privacy*
>
> *Member States shall ensure that competent authorities may take during the criminal proceedings appropriate measures to protect the privacy, including personal characteristics of the victim taken into account in the individual assessment provided for under Article 22, and images of victims and of their family members.*

Encouraging media to self-regulate to protect victims' privacy is also suggested by the Victims' Directive.

In practice, appropriate measures to protect privacy and safety of a victim would include:

- Hearing behind closed doors;
- Screening the victim from the defendant;
- Giving evidence through videoconference or video recording of witness statements;
- Protection of victim's identity, especially where the trafficker did not know the identity of the victim;
- Keeping information, including medical, confidential to the extent possible. A proportionality test should be applied and only personal information relevant for the case should be disclosed to the defendant;
- Minimising the number of interrogations;
- Restricting media coverage of cases;
- The family of the victim should also be protected as too often a victim will not cooperate because of threat to their family or the fear that information of their past will be disposed to their families.

If the victim is particularly vulnerable to secondary and repeat victimisation, special protection measures should be taken (Article 22 of the Victims' Directive). This is almost always the case of human trafficking. The individual approach towards the victim is introduced by the Directive requiring a twofold assessment in each case:

- Determination whether a victim has specific protection needs;
- Determination what protection measures, if any, should be applied.

Some of the key questions to assess the risks in the cases of trafficking in persons are[36]:

- Who or what is at risk?

[36] UNODC, Anti-human trafficking manual for criminal justice practitioners, Module 5 Risk assessment in trafficking in persons investigations, 2009, available at: http://www.unodc.org/documents/human-trafficking/TIP_module5_Ebook.pdf

- What is the risk?
- What is the level of risk?
- What action should be taken?

When determining the individual specific protection needs of the victim, the following should also be considered:

- The personal characteristics of the victim, including health, psychological condition, vulnerability and intimidation. In the majority of cases of human trafficking, there is a high level of vulnerability and intimidation of the victim.
- The nature and circumstances of the crime, including the type of relationship between the victim and the offender.

Some of the protection measures that should be applied as suggested by the Victims' Directive and whose efficacy is proven in practice are the following:

- The interviews should be carried out by or through professionals trained for that purpose. This is important in the general case in view of the vulnerability of the victim. It is also of high importance when the identity of the victim is secret and the interrogating officer needs, at the same time, to clarify the facts of the case and prevent the trafficker from learning who the witness is.
- The interviews should be carried out by the same person in the course of the investigation in order to gain trust.
- The interviews should be carried out in designed for the purpose premises.
- Application of gender-based approach in interviews.
- Use of communication technology to avoid visual contact between victims and offenders when giving evidence.
- Screening the victim from the defendant when giving evidence.
- Avoiding unnecessary questioning, especially minimising questions on private and sexual life.
- The court hearings should be conducted behind closed doors without the presence of the public.
- Ensuring that court premises have separate entrances and waiting areas for victims.

Children are always presumed to have specific protection needs and special protection measures should be used (Article 24 of the Victims' Directive). Special representatives for child victims should be appointed where the child victim is unaccompanied or separated from the family or the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim.

Right to Witness Protection

The Trafficking Directive (Article 12, paragraph 3) requires States to ensure that trafficked persons receive appropriate protection on the basis of an individual risk assessment *inter alia* through witness protection programmes or similar measures.

The CoE Trafficking Convention, Article 28, paragraph 2 provides some guidance as to the kind of witness protection required by State Parties:

- physical protection,
- relocation,

- identity change, and
- assistance in obtaining jobs.

The authors of the *Handbook on Trafficking in Human beings for Police, Prosecutors and Judges* elaborate on several important guidelines for ensuring the right to witness protection[37]:

• *"Before, during and after the criminal proceedings, all necessary and possible measures should be taken to protect the victim from intimidation, threats of reprisals and reprisals from the suspect(s) and/or their associates. If necessary, similar protection should be provided to the family and/or friends of the victim.*

• *The need for safety of the victim and her/his family and friends should be taken into account in decisions on the arrest, detention and terms of any form of release of the suspect.*

• *If the suspect is released, the victim should be notified prior to the release of the suspect from custody or detention.*

• *If possible, a direct confrontation between the victim and the suspect should be avoided. If nevertheless such confrontation is necessary, the victim should be carefully prepared beforehand.*

• *If possible, the victim/ witness should be provided with a separate waiting area and other necessary facilities. If this is not possible, different times to enter and exit the courtroom and escorts to and from the courtroom should be arranged.*

• *If there is evidence that the presence of the accused may influence the testimony of the victim/witness or may harm the mental wellbeing of the victim/witness, the victim/witness should be heard in absence of the accused (suspect). Alternatives are the examination of witnesses through video conferencing or closed TV circuits."*

Other measures that can also contribute to the safety of the victim-witness are:

- Identification of a safe place in the country of destination;
- The provision of a mobile phone with direct connection to the police;
- Housing in a safe and secret accommodation;
- Escorting victim-witnesses to and from court hearings by the police;
- Identification of options for continued stay, resettlement or repatriation.

USEFUL RESOURCES

UNODC, Anti-Human Trafficking Manual for Criminal Justice Practitioners, 2009, Module 11 on Victims' needs in criminal justice proceedings in trafficking in persons cases, available at:
http://www.unodc.org/documents/human-trafficking/TIP_module11_Ebook.pdf

International Organization for Migration, Resource Book for Law Enforcement Officers on Good Practices in Combating Child Trafficking, 2006, Chapter IV Interviewing Techniques,
available at: http://www.childtrafficking.com/Docs/iom_06_res_bk_lawenoicchtr.pdf

[37] Marjan Wijers, Handbook Trafficking in human beings for police, prosecutors and judges, 2008, p. 35, available at: http://bim.lbg.ac.at/files/sites/bim/HANDBOOK_AGIS_EN.pdf

2. BULGARIA: RIGHT TO PROTECTION OF PRIVACY AND PHYSICAL SAFETY

Hearing behind closed doors

The Bulgarian Constitution contains a general provision on personal privacy:

> *"no one can be followed, photographed, videotaped, recorded or subjected to other similar actions without his/her knowledge or despite his/her explicit disagreement".*[38]

This provision allows the restriction of photo and video recordings in the courtroom. The privacy guarantees of Bulgarian criminal proceedings[39] set forth the option for conducting of hearings behind closed doors. This is possible in cases where:

- This is required in view of safeguarding the morality.
- Where necessary for preventing the disclosure of facts pertaining to the intimate life of citizens.
- A witness is afforded special protection measures.

The court may decide to hold the hearing behind closed doors at its own initiative or at the request of the victim. Whenever a child victim is to be interrogated, the court may also decide to close the courtroom for the public and the press.

A good practice applied by Bulgarian courts is excluding the general public from the court room as a general principle in cases of human trafficking.

A good practice is the introduction of the so called "blue rooms" – specialised facilities, equipped with one-way mirrors, used for interrogation of child witnesses and victims of crimes. The aim of the blue rooms is to ensure non-threatening and less traumatic experiences of the children within the criminal proceedings, by avoiding their direct contact with the accused offenders and the repeated interrogations in the formal setting of the court room.

Physical protection of the victim

Personal physical protection may be provided to the victim-witness upon request, including police escorts to hearings.[40]

Hiding the identity of the victim

A good practice applied by Bulgarian authorities is the frequent use of secret identity in cases where the victim has showed fears of being intimidated or retaliated by the trafficker. The measure is applied by the prosecutor or the court upon the victim's request.

In those cases the victim is given an identification code and must be interrogated in a manner, protecting the secrecy of his/her identity. However, a rule in Bulgarian criminal proceedings states that the indictment and the sentence may not be based only on testimony of witnesses with secret identity in view of the rights of the accused to a fair trial.[41]

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[38] Constitution of the Republic of Bulgaria, Article 32, paragraph 2.
[39] Criminal Procedure Code, Article 263, paragraph 2.
[40] Id., Article 123, paragraph 2, item 1.
[41] Id., Article 67, paragraph 1.

Avoiding hearings in the presence of the perpetrator

If the process is at a stage where the victim's identity has not been hidden, or is already known to the perpetrator, there is an option adopted relatively recently by the Bulgarian courts for interrogation of the victim in the absence of the defendant. Although there is no explicit legal provision allowing interrogations of victims in the absence of the perpetrator, by analogy of Article 278 of the Criminal Procedure Code *(Interrogation of accused persons with contradictory interests)*, under the established case law such practice does not contravene the right of the accused to a fair trial. The Supreme Cassation Court has confirmed that in cases where the victims are reluctant to testify in the presence of the perpetrators, the victim may give statement in their absence and the content of the statement is being read to the accused by the court.[42]

Avoiding frequent interrogations

In order to avoid frequent or/and consecutive interrogations of the victim by investigative authorities or by the court, which may lead to deterioration of the person's psychological status, a good option proves to be Article 223 of the Criminal Procedure Code providing for interrogation before a judge.

The witness testimony given before a judge may be used at later stages of pre-trial and court proceedings if there is a risk the victim to be unable to give a statement at trial for various reasons (including being out of the country, unwillingness to remember and retell events surrounding the crime due to emotional stress and fear of facing the perpetrator, etc.)

Interrogation through videoconferencing

Victims can be interrogated through audio or video link. In case of victims with secret identity, voice or/and image alternation shall also be applied. Prior to commencing the interrogation the judge verifies the identity of the victim.[43] In view of the rights of the defence, the need of videoconferencing has to be well substantiated to be admitted by the court.

Complete change of identity

An existing legal alternative is to provide a complete change of identity under the Act for Protection of Individuals at Risk in connection with Criminal Proceedings.[44] This measure is applied where the other available victim-identity safeguards are not sufficient, when the testimony of the victim-witness is of particular importance for the case and, especially, in cases of organised crime. Other special protection measures under this act include temporary accommodation in a safe place, change of residence, job, or school.

Ban to approach the victim

At the proposal of the prosecutor and with consent of the victim, or at the request of the victim, the court may prohibit the accused from directly approaching the victim.[45]

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[42] See for example Judgment No. 44 /08.02.2011of the Supreme Cassation Court.
[43] Criminal Procedure Code, Article 141, paragraph 3.
[44] Act for Protection of Individuals at Risk in connection with Criminal Proceedings: promulgated, State Gazette No. 103/ 23.11.2004, effective 24.05.2005, latest amendments and supplements State Gazette No. 53/27.06.2014.
[45] Criminal Procedure Code, Article 124.

3. GREECE: RIGHT TO PROTECTION OF PRIVACY AND PHYSICAL SAFETY

Witness Protection Programme

Victims of trafficking who agree to cooperate with the authorities and testify against their trafficker enter the witness protection programme, under the guidance of the Unit of Organised Crime of the Hellenic Police.

Hearing behind closed doors

In principle, hearings during criminal trials are open to the public. However the Greek Code of Criminal Procedure gives the possibility of the hearing to be held, entirely or partially, behind closed doors when (Article 330 of the Greek CCP):

- necessary for the protection of public morals;
- necessary for the protection of privacy of the parties, especially if the hearing is public;
- some witnesses in the case are subject to protection measures including hidden identity.

Right to testify through electronic audio-visual means

The testimony of the victim of trafficking may be provided in writing or may also be taken through electronic audio-visual means. The testimony by electronic means replaces the actual presence of the victim in the following stages of the criminal procedure; it has to be read in a court hearing. (Article 226B paragraph 3 and 4 of the Greek CCP)

Special protection for childreng

Art. 226A of the Code of Criminal Procedure provides that:

"1. Upon examination of a child victim [...] a child-psychologist or child-psychiatrist or, if not available, a psychologist or psychiatrist, is appointed as an expert.

2. The child-psychologist or child-psychiatrist prepares the child for the examination and cooperates to this end with the preliminary investigation officers and judges. For this reason, she/he uses appropriate diagnostic methods, decides on the perceptual ability and mental condition of the child and makes a written report of the findings which constitutes an integral part of the file.

3. The minor's testimony shall be in writing and can also occur through electronic and audio-visual mediums, where possible. The electronic testimony replaces the physical presence of the next stages of the procedure."

CHAPTER VII.
NON-PROSECUTION AND NON-PUNISHMENT OF VICTIMS OF TRAFFICKING

1. KEY INTERNATIONAL AND EUROPEAN STANDARDS

A generally accepted principle is that victims of trafficking should not be subject to prosecution, punishment and detention for offences committed in relation to the trafficking.

According to the CoE Trafficking Convention:

> *Article 26 CoE – Non-punishment provision*
>
> *Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.*

Recital 14 of the Trafficking Directive further states that:

> *Victims of trafficking should "be protected from prosecution or punishment for criminal activities [...] they have been compelled to commit as a direct consequence of being subject to trafficking".*

To that end, Article 8 of the Trafficking Directive provides for the following:

> *Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being [trafficked].*

The main purpose of the non-punishment principle is to avoid further victimisation and to encourage them to act as witnesses in criminal proceedings against the perpetrators.

According to Principle 7 of the OHCHR Recommended Principles and Guidelines[46]:

> *"Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons."*

There are two main approaches for implementing the international and European standards:

- Through a "duress"- based provision: no one should be held responsible for a crime they were compelled to commit;
- Through a "causation"- based provision: in this case the non-punishment principle is applied based on the direct connection to the trafficking of the committed offence.[47]

[46] UN Office of the High Commissioner for Human Rights (OHCHR), Recommended Principles and Guidelines on Human Rights and Human Trafficking, 20 May 2002, E/2002/68/Add.1, available at: http://www.refworld.org/docid/3f1fc60f4.html
[47] According to the Non-punishment and non-prosecution of victims of trafficking in persons: administrative and judicial approaches to offences committed in the process of such trafficking, Background paper of the Working Group on Trafficking in Person established by the Conference of the Parties to the CoE Convention, 2013, p. 2 available at: http://www.unodc.org/documents/treaties/organized_crime/2010_CTOC_COP_WG4/WG4_2010_4_E.pdf

It is further explicitly acknowledged that "*Without the principle of non-liability, victim assistance and support programmes are rendered ineffective and sometimes meaningless.*"[48]

What is important to consider in connection with the non-prosecution and non-punishment principle?

- If victims are afraid of detention or prosecution, they may not seek help from the authorities and consequently will not cooperate in investigations.
- The non-liability principle applies to criminal acts as well as administrative offences including immigration offences to the extent that the offence is a direct consequence of their situation as trafficked persons.
- An important part of the non-liability principle is the non-detention of victims of trafficking. Prosecution and detention of victims creates secondary victimisation and further trauma for them.
- The international human rights standards and case law of the ECtHR on the right to liberty and prohibition of arbitrary detention, also apply to victims of trafficking.
- The application of the non-punishment principle is tightly linked to victims' identification: the earlier the moment of identification, the more likely a victim will not be prosecuted.
- A person may be considered a victim of trafficking regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim.
- In order to recover and rehabilitate, victims need security of status which reduces vulnerability and prevents re-trafficking.

USEFUL RESOURCES

Working Group on Trafficking in Person established by the Conference of the Parties to the CoE Trafficking Convention, *Non-punishment and non-prosecution of victims of trafficking in persons: administrative and judicial approaches to offences committed in the process of such trafficking*,
available at: http://www.unodc.org/documents/treaties/organized_crime/2010_CTOC_COP_WG4/WG4_2010_4_E.pdf

The Anti Trafficking Monitoring Group, *In the Dock, Examining the UK's Criminal Justice, Response to Trafficking,* Chapter 8: Non-criminalisation of trafficked persons, pp. 92- 102,
available at: http://www.antislavery.org/includes/documents/cm_docs/2013/i/inthedock_final_small_file.pdf

[48] Id, p. 4

2. BULGARIA: NON-PROSECUTION AND NON-PUNISHMENT OF VICTIMS OF TRAFFICKING

In 2013, during the process of transposition of the Trafficking Directive, the Bulgarian Criminal Code[49] was amended to introduce a new provision on non-punishment of gvictims (Article 16a).

> *"An act shall not be considered culpably committed if performed by a person who is a victim of human trafficking and was forced to commit such act in direct relation to being such victim."*

Still, there are several existing provisions under which victims of trafficking, if not properly identified, may be prosecuted and punished:

• It is a crime if *"an adult capable for work, who for a long time does not engage in any socially useful work, but receives non-labour incomes in an illegal or immoral way, shall be punished by imprisonment for up to two years or probation."*[50] Under this provision prostitution is sometimes prosecuted.

• Illegal border crossing[51] (it is enough to cross the Bulgarian border without the necessary documents) may also become a ground for punishment of victims of trafficking.

The Control of Juvenile Anti-social Behaviour Act[52] allows for children between the age 8 and 18 to be punished by sending them to correctional institutions for up to three years for committing anti-social acts. Anti-social acts could be any *"act that poses a threat to society and contravenes the law or morality and good manners"*.[53] Under this vague and outdated definition fall prostitution, begging, vagrancy and other acts which might be a result of human trafficking situation.

Good practices and recommendations in this respect would be:

• Revocation or revision of the Control of Juvenile Anti-social Behaviour Act and undertaking a fully safeguarding approach to children victims of trafficking is advisable.

• In relation to children in prostitution, the Government should consider the European Parliament resolution of 26 February 2014 on sexual exploitation and prostitution and its impact on gender equality[54], most notably in relation to:

- adopting *"a zero-tolerance approach based on prevention, protection of victims and prosecution of clients"*[55];

- ensuring *"special, age-specific educational awareness-raising and preventive campaigns be conducted in schools and colleges"*[56];

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[49] Criminal Code, promulgated State Gazette No. 26/2.04.1968, effective 1.05.1968, latest amendments State Gazette No. 53/27.06.2014.
[50] Id., Article 329, paragraph 1.
[51] Id., Article 279, paragraph 1.
[52] Control of Juvenile Anti-social Behaviour Act: promulgated State Gazette No. 13/14.02.1958, last amendments State Gazette No. 15/15.02.2013, effective 1.01.2014 and State Gazette No. 68/2.08.2013, effective 2.08.2013.
[53] Id., Article 49a, paragraph 1.
[54] European Parliament resolution of 26 February 2014 on sexual exploitation and prostitution and its impact on gender equality (2013/2103(INI).
[55] Id., Article 15.
[56] Id., Article 21.

- funding *"organisations working on the ground with support and exit strategies, to provide innovative social services for victims of trafficking or sexual exploitation (...), aimed at helping vulnerable women and minors leave prostitution"*[57].

• Instead of prosecuting prostitutes for receiving *"incomes in an immoral way"*, prosecution efforts could be directed against combatting human trafficking.

3. GREECE: NON-PROSECUTION AND NON-PUNISHMENT OF VICTIMS OF TRAFFICKING

Article 59, paragraph 4 of the Greek Code of Criminal Procedure and article 187B of the Greek Criminal Code, consistent with Article 8 of the Directive 2011/36/EU, provide for the following:

> The Public Prosecutor is entitled *"not to prosecute or to impose penalties to potential victims of trafficking for any violations of the law on foreign citizens or the law on prostitution as well as for their involvement in criminal activities where such involvement was a direct consequence of being victims of the offences of Articles 323A and 351 of the Greek Criminal Code."*

In practice, this provision gives the right to the public prosecutor not to prosecute or punish victims of trafficking for breaches of the laws on prostitution or immigration or for the use of false documents.

By the same token, Article 323A, paragraph 3 and Article 351, paragraph 3 of the Greek Criminal Code foresee the criminalisation of people who knowingly receive sexual and other services provided by victims of trafficking.

[57] Id., Article 47.

CHAPTER VIII.
ACCESS TO FREE LEGAL AID OF VICTIMS OF TRAFFICKING

1. KEY INTERNATIONAL AND EUROPEAN STANDARDS

The **Palermo Protocol** creates an obligation for the States to provide victims with an opportunity to have their views and concerns presented and considered at appropriate stages of criminal proceedings against offenders.

> Article 6. *Assistance to and protection of victims of trafficking in persons*
>
> *2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:*
>
> *(a) Information on relevant court and administrative proceedings;*
>
> *(b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.*

The right of victims to legal representation is expressly included in the section on protection in criminal proceedings in the **Trafficking Directive**.

> *Article 12. Protection of victims of trafficking in human beings in criminal investigation and proceedings*
>
> *2. 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.*

The **Victims' Directive** further imposes a specific obligation on the States to ensure access to legal aid to victims *"where they have the status of parties in the criminal proceedings"*.

> *Article 13. Right to legal aid*
>
> *Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings. The conditions or procedural rules under which victims have access to legal aid shall be determined by national law.*

The conditions and procedures for ensuring victims' access to legal aid are to be specified by national law. However, the Victims' Directive Guidance explicitly states that *"if a victim has the right to access legal aid under national law, it should at least cover legal advice and legal representation free of charge."*

The right of victims to legal assistance under the CoE Trafficking Convention is broader and not restricted to criminal proceedings. This is clear from the Explanatory Report to the CoE Trafficking Convention[58]:

[58] Explanatory Report to the Council of Europe Convention on Action Against Trafficking in Human Beings, CETS 197, available at: http://conventions.coe.int/Treaty/EN/Reports/Html/197.htm

Article 15. Compensation and legal redress
....

2. Each Party shall provide, in its internal law, for the right to legal assistance and to free legal aid for victims under the conditions provided by its internal law.

Explanatory Report to the CoE Trafficking Convention

"195. Under paragraph 2 each Party shall provide, in its internal law, for the right to legal assistance and to free legal aid for victims under the conditions provided by its internal law. As court and administrative procedure is often very complex, legal assistance is necessary for victims to be able to claim their rights.

196. This provision does not give the victim an automatic right to free legal aid. It is for each Party to decide the requirements for obtaining such aid. Parties must have regard not only to Article 15, paragraph 2, but also to Article 6 of the ECHR. Even though Article 6, paragraph 3.c of the ECHR provides for free assistance from an officially appointed lawyer only in criminal proceedings, European Court of Human Rights case-law (Airey v. Ireland judgment of 9 October 1979) also recognises, in certain circumstances, the right to free legal assistance in a civil matter on the basis of Article 6, paragraph 1, of the ECHR, interpreted as establishing the right to a court for determination of civil rights and obligations (see Golder v. the United Kingdom, judgment of 21 February 1975)."

The same principle is stated as Principle 9 of the OHCHR Recommended Principles and Guidelines[59]:

"9. Legal and other assistance shall be provided to trafficked persons for the duration of any criminal, civil or other actions against suspected traffickers. States shall provide protection and temporary residence permits to victims and witnesses during legal proceeding."

1.1. THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS ON LEGAL AID IN CIVIL CASES

The right to a fair trial under Article 6 of the ECHR[60] guarantees the right to fair trial in both civil and criminal proceedings. It is explicitly set out for cases of criminal charge but has also emerged for victims in criminal and civil matters through the jurisprudence of the European Court of Human Rights (ECtHR).

The following leading cases illustrate the Court's jurisprudence on application of the right to legal advice and representation under Article 6 (3) (c) of the ECHR in civil cases.

Golder v. United Kingdom[61]

In that case the applicant was a prisoner denied the right to consult a solicitor for the purposes of taking civil action for libel against a prison officer. The ECtHR found that:

"Article 6 para. 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way the Article embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect only." (paragraph 36)

[59] See supra note 46
[60] Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, available at: http://www.refworld.org/docid/43fded544.html
[61] Judgment of February 21, 1975,
available at: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57496#{%22itemid%22:[%22001-57496%22]}

> *"The principle whereby a civil claim must be capable of being submitted to a judge ranks as one of the universally "recognised" fundamental principles of law; the same is true of the principle of international law which forbids the denial of justice. Article 6 para.1 must be read in the light of these principles."* (paragraph 35)

Airey v. Ireland[63]

The applicant in this leading case on issues of free legal aid wished to separate from her abusive husband but could not afford to pay the full costs of legal representation in order to apply to the High Court of Ireland for judicial separation.
The ECtHR found that Article 6, paragraph 1 also implies the right to free legal assistance in certain civil cases if it was indispensable for effective access to the courts:

> *". . . Article 6 (1) may sometimes compel the State to provide for the assistance of a lawyer when such assistance proves indispensable for an effective access to court either because legal representation is rendered compulsory, as is done by the domestic law of certain Contracting States for various types of litigation, or by reason of the complexity of the procedure or of the case."* (paragraph 26)

Pakelli v Germany[63]

The applicant in this case was a Turkish citizen who was refused appointment of an official defence counsel at hearings related to an appeal on points of law before the Federal Court of Germany. The grounds for refusal were that that there was no legal requirement at that stage of proceedings for him to appear in person or to be represented by a lawyer. This was despite the applicant not being in a position to pay for a lawyer and that the final conviction could have led to his expulsion from Germany.

In this case, of particular importance is the manner in which the Court applied the financial criteria in establishing eligibility to receive free legal aid. According to the Court, even if it is not established "*beyond all doubt that the applicant was indigent*" "*in the absence of clear indications to the contrary*", the financial condition of Article 6 (3) (c) is satisfied.

In light of the Court's jurisprudence, the following key principles on issues of free legal aid, based on the right to a fair trial in both criminal and civil cases, can be underlined:

• In deciding whether free legal assistance is indispensable for effective access to the courts in a particular case, the individual facts and circumstances of the case should be considered, taking into account several factors:

- the importance of what is at stake for the applicant;
- the complexity of the case or the procedure, particularly when legal representation is mandatory by law;
- the capacity of the applicant to effectively exercise his or her right of access to court.

• It may therefore be acceptable to impose conditions on the grant of legal aid based, *inter alia*, on:

[63] Judgment of April 25, 1983,
available at: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57554#{%22itemid%22:[%22001-57554%22]}

- the financial situation of the litigant;
- in cases of frivolous or vexatious claims, claims that had no reasonable prospects for success, or claims where the costs of funding the litigation were disproportionate to any likely damages to be awarded;

• Article 6 does not apply to the proceedings relating to the application for legal aid *per se* (such as preparation of the application for legal aid procedure, determination of eligibility for legal aid), except if serious deficiencies in such proceedings may lead to arbitrary denial of free legal assistance or access to court.

How the jurisprudence of the European Court of Human Rights applies to victims of human trafficking

The ability to access legal aid by the victim is an important consideration in all human trafficking cases for the following reasons:

• Trafficking cases are complex both from a factual and a legal perspective.

• Due to various circumstances, including psychological, victims of trafficking would rarely be able to effectively self-represent themselves. The emotional character of the nature of human trafficking limits the objectivity necessary to ensure effective advocacy.

• The trafficker is usually represented.

• If no documentation can be presented to show lack of financial means but there are clear indications as would usually be in the situation of trafficking victims, free legal aid should be afforded.

• The importance of what is at stake for trafficking victims is always high, including when repatriation and compensation may be concerned. Therefore, legal representation should not be restricted to where there are criminal proceedings.

In view of the above, not affording free legal assistance to victims of human trafficking will often lead to a breach of Article 6, paragraph 1 of the ECHR but also of other positive obligations of the State such as the due diligence obligations under Article 3 and 4 of the ECHR.

1.2. GOOD PRACTICES IN THE PROVISION OF LEGAL AID TO VICTIMS OF TRAFFICKING

Good practices which make practically possible the access of victims to legal representation include:

• Minimal bureaucratic requirements in the process of applying for legal aid;

• Simple application forms available in different languages;

• Informing victims of their options from the first contact with authorities;

• *Ex officio* assignment of legal representative by the public investigator, prosecutor or judge in cases of particularly vulnerable victims;

• The prosecutor acting as defender of the rights of the victims, particularly vulnerable victims, such as minors or disabled individuals.

Other good practices and recommendations relating to legal representation in the context of human trafficking include:

• The presence of a victim's lawyer has a highly significant effect on victims' level of confidence when giving evidence, and lowers the hostility rating for the defence lawyer.[64]

• *"By strengthening victims' access to legal representation the division of power to influence proceedings shifts from the accused to the victim without jeopardizing the rights of the accused."* (The conclusion is based on an Austrian study examining 5,000 pre-trial files and 85 interviews with police officers, prosecutors, judges and lawyers)[65].

• There should be no delay in providing access to legal representation: as soon as there is a reasonable indication to believe that a person might have been subject to trafficking. It is very important that lengthy proceedings for assessing the financial condition of victims are avoided.

• Early legal representation as soon as possible will ensure appropriate information and counselling of victims as to their different rights and will highly support the taking of an informed decision during the reflection period; Legal advice should be provided before the victim makes an official statement/complaint to ensure that the victim has made an informed decision.

• Victims should have a direct say in the choice of their counsel and maintain continuity of legal counsel, provided that the victim is satisfied with that lawyer in order to facilitate trust.

• Legal representatives of victims should be experienced or trained in working with victims and vulnerable persons.

• Lawyers should work closely with NGOs and State actors to ensure that they are getting early access to victims.

• Bar association should participate in the process of facilitating access to legal aid of victims, including human rights and gender based approach.

• Human rights based approach to the victim's situation, placing the victim and its concrete needs and goals at the core of the representation, may shift the paradigm of putting an exclusive focus on the victim as a witness.

• Gender sensitive legal representation is important especially in cases of sexual exploitation where women and girls are more often affected.

• Legal representation provided to victims of trafficking should be available for the whole process of proceedings through which the victim goes. The support in legal matters and provided legal counsel creates trust and encourages cooperation with authorities.

[64] Backik, I, Maunsell, C & Gogan S (1998) The Legal Process and Victims of Rape, Rape Crisis Centre, Dublin & School of Law, Trinity College, Dublin, pp17-18), quoted from Legal representation for victims of crime – Fairer Justice, Michael O'Connell, Commissioner for Victims' Right, Government of South Australia, 2013, p. 26, available at: http://www.victimsa.org/files/michael-oconnell-conference-paper.pdf

[65] Birklbauer, Soyer & Weber 2012, quoted from Legal representation for victims of crime – Fairer Justice, Michael O'Connell, Commissioner for Victims' Right, Government of South Australia, p. 25.

• Legal representation provided to victims of trafficking needs to cover all available mechanism and procedures - administrative, labour, criminal and civil. Free legal assistance should be ensured as an important ancillary right to the right to compensation which makes it an effective and practically possible mechanism.

As a general comment on the importance of legal aid to victims, it should be underlined that "*there is a clear relationship between the victims' access to legal representation and successful prosecution outcomes*"[66].

USEFUL RESOURCES

Anne T. Gallagher, *The Right to an Effective Remedy for Victims of Trafficking in Persons: A Survey of International Law and Policy*, 2010, available at: http://www.ohchr.org/Documents/Issues/Trafficking Bratislava_Background_paper1.pdf

Open Society Justice Initiative, *A Legal Brief prepared to assist legal practitioners to litigate the right of arrested or detained persons to free legal aid*, 2013, available at: http://www.opensocietyfoundations.org/sites/default/files/arrest-rights-template-legal-aid-20130412.pdf

UN Office on Drugs and Crime (UNODC), *Toolkit to Combat Trafficking in Persons*, October 2008, 2nd edition, Chapter 8, Tool 8.16 Access to information and legal representation,
available at: http://www.refworld.org/docid/4a7944fe2.html

[66] UN Office on Drugs and Crime (UNODC), Toolkit to Combat Trafficking in Persons, October 2008, 2nd edition, p. 402.

2. BULGARIA: RIGHT TO FREE LEGAL AID OF VICTIMS OF TRAFFICKING

Provision of legal aid financed by the State to vulnerable groups, including victims of trafficking, is regulated by the Bulgarian Legal Aid Act.[67] The scope of primary legal aid may cover:

- Primary legal aid:
  - Legal advice before bringing a case in court;
  - Legal advice for reaching a settlement prior to bringing legal proceedings;
  - Preparation of documents for bringing a case before a court;
- Legal representation before court by legal counsel.

2.1. Primary legal aid

When the right arises

The right to free legal consultation for victims of trafficking arises from the time of their identification as victims.[68] This is the time, when State authorities are obliged to inform them of their right to legal aid, the services to which they can turn in order to exercise that right, and the terms and procedures for obtaining legal aid free of charge.

Procedure and competent authority

The competent authorities organising the provision of legal aid are the National Legal Aid Bureau and the regional Bar Associations. The National Legal Aid Bureau keeps a National Legal Aid Register for the lawyers designated to provide legal aid at the district of each district court. In order to be granted free legal aid, the victim should file a request to the Bureau along with the required supporting documents.

The decision to grant legal aid is taken by the President of the Bureau within 14 days after submission of all required documents. This decision is then forwarded for appointment of an attorney to the competent Bar Association in the court district where proceedings would legally take place.

Conditions for provision of primary legal aid

Pursuant to the Legal Aid Act, victims of trafficking are entitled to free legal aid if *"they do not have means to pay and wish to avail themselves of the assistance of a lawyer"*. No particular documents are listed by the law for proving the lack of financial means of the victim. Thus, a decision is to be taken on an individual basis as long as an identified victim of trafficking is concerned. For example, some of the documents that could be presented by victims for proving financial situation are:

- Certificate by the Director of the "Social Assistance" Directorate certifying that the applicant meets the eligibility requirements for receipt of monthly social assistance under the social assistance legislation.

[67] Legal Aid Act, promulgated State Gazette No. 79/4.10.2005, effective 1.01.2006, latest amendments and supplements State Gazette No. 53/27.06.2014.
[68] Per argument of Article 6, item 2 of the Act on Assistance and Financial Compensation to Crime Victims.

• Order by the Director of the "Social Assistance" Directorate for placement in a specialised institution for provision of social services (such as homes for the elderly people, homes for people with physical or mental disabilities, homes for children deprived of parental care, centres for temporary accommodation for homeless people, refugee accommodation centres);

• Other documents evidencing the financial and property status, social status and other circumstances relating to employment and health of the applicant.

2.2. Legal representation in criminal proceedings

In the pre-trial phase of criminal proceedings, granting of legal aid to victims is not explicitly regulated by law but is possible in practice by order of the public prosecutor.

In criminal trial, the competent authority ruling on the provision of free legal aid to the victims, are the courts, provided that they have the status of parties to the proceedings in the capacity of private prosecutor and/or civil claimant (where a claim for damages against the defendant is brought). The legal preconditions for appointing a counsel by the court are (i) presentation of evidence of not having sufficient funds to hire a lawyer, and (ii) if the interests of justice so require.

In deciding on granting of free legal aid, the courts consider the following circumstances[69]:

- Income received by the victim or her/his family;
- Property owned;
- Marital status;
- State of health;
- Employment;
- Age;
- Other circumstances relevant to the case.

The court ruling to grant legal aid is, upon being issued, sent immediately to the Bar association in the court district, for appointment of an attorney.

Some NGOs have established good practices in this respect working with lawyers who are also registered with the National Legal Aid Bureau as attorneys providing legal aid.

[69] Legal Aid Act, Article 23, paragraph 3.

3. GREECE: RIGHT TO FREE LEGAL AID OF VICTIMS OF TRAFFICKING

In Greece, victims of trafficking are entitled to free legal aid and representation according to the general provisions of Law 3226/2004 (G.G. A'24/4-2-2004) which transposed Council Directive 2003/8/EC.

According to Law 3226/2004 low-income citizens are entitled to free legal aid in cases of criminal, civil and commercial nature, covering contentious and non-contentious proceedings. The right to free legal aid is available to Greek citizens, EU citizens, as well as third country citizens or stateless people as long as they have been legally domiciled in Greece.

The authorities are obliged to inform the victims of human trafficking, in a language they understand, about their rights, including the right to free legal aid.

The scope of legal aid offered to victims of trafficking covers:

- Primary legal aid includes:
  - Pre-litigation advice for bringing a case before the court;
  - Preparation of documents for bringing a case before a court.

According to Article 1 paragraph 3 of Law 3226/2004 trafficked persons are entitled to free legal aid in order to pursue criminal and civil law litigation against their traffickers. According to Article 7 paragraph 3 of Law 3226/2004, victims of trafficking are entitled to legal counsel that will draft and file a complaint against their traffickers before the Public Prosecutor, as well as file a claim to participate as civil parties to the criminal trial.

- Legal representation before court by legal counsel

Victims of trafficking are entitled to free legal representation before a criminal or civil court (Article 7 paragraph 3 of Law 3226/2004). In a criminal trial the victim will participate as a witness and/or a civil party. In a civil trial, the victim will initiate proceedings against the perpetrator in order to obtain compensation. Legal representation is available not only for proceedings in the first instance, but also at an appellate level for pursuing judicial redress and other remedies.

Conditions for granting free legal aid

- Low annual income

Important: Depending on the competent Court of First Instance, the amount of income varies from 5,800 to 7,000 euro.

- Application by the beneficiary. The application shall contain
  - Personal information;
  - A brief description of the dispute for which the legal aid is requested;
  - Vat number: a financial status certificate issued by the local tax office, or, in

case of complete lack of financial resources, a certificate from the welfare services or affidavit;

- Proof of residence (utility bills).

Important: The application requesting free legal aid may be filled out with the assistance of the Secretariat of the competent Court of First Instance.

Every Bar Association in Greece has to prepare (Article 3 of the Law 3226/2004):

- A monthly list of lawyers that will be on service for free legal aid:
  - one for cases of criminal character;
  - one for cases of civil and commercial character.
- A daily list of lawyers able to provide legal assistance in the investigation procedures and the trial of felonies and misdemeanours.

Both lists are forwarded to the courts. The lawyers are appointed by the competent court, the Bar Association having no involvement whatsoever with the appointment of the lawyer.

The **General Secretariat for Gender Equality** has established 12 Consultation Centres for the support of women-victims of violence in Athens, Patras, Lamia, Heraklion, Tripoli, Larissa, Mytilini, Komotini, Corfu, Syros and Ioannina. These centres offer psycho-social and legal assistance, consultation and referral services to women victims of violence, human trafficking and gender discrimination. They also cooperate with the local Bar Associations offering free legal services and legal representation to women referred to them.

The **General Secretariat for Youth** is cooperating with Bar Associations throughout the country and finances free legal aid for young persons (up to 30 years old) and for women victims of trafficking up to 35 years old.

Twenty six Bar Associations all over Greece cooperate with the programme of the General Secretarial for Gender Equality, offering free legal aid for criminal, civil and administrative law cases that covers all trial and pre-trial procedures. (full list available at http://www.neagenia.gr/frontoffice/portal.asp?cpage=RESOURCE&cresrc=2086&cnode=48&cuser=4f1805b0-6a2b-4ccd-80a3-ad5676c207d8)

In two cases against Greece the ECtHR considered the legal aid requirements in Greece:

Case of *Twalib v. Greece*, Judgment of the Court of 9 June 1998

With regards to the necessity of granting legal assistance, the ECtHR has held that:

> *6. "It is to be noted that the complexity of cassation proceedings is confirmed by the requirement that the parties must be represented by counsel at the hearing before the Court of Cassation. Further, the preparation of a notice of appeal must also be considered to require legal skills and experience and in particular knowledge of the grounds on which an*

appeal can be brought. It is noteworthy that the applicant, of foreign origin and unfamiliar with the Greek language and legal system, was unable to indicate any grounds of appeal in his written notice of appeal and that this failure resulted in his appeal being declared inadmissible." (paragraph 53)

Case of ***Biba v. Greece***, Judgment of the Court of 26 September 2000

The applicant was an undocumented immigrant who lacked the means to retain a lawyer before the Supreme Court and was not appointed a lawyer under legal aid schemes. The ECtHR held that:

"[...] as to whether the interests of justice required that the applicant receive legal assistance, the Court noted the seriousness of the offense and the severity of the sentence: the applicant was found guilty of "particularly abhorrent murder "and was sentenced to life imprisonment. To this, it should be added the complexity of the cassation proceedings and the fact that the applicant, a foreign national who did not know the language and Greek legal system, was not in position to write on his own - and within ten days from the judgment of the court of Criminal Appeal - such a technical legal document that an appeal in cassation..." (paragraph 29)

CHAPTER IX.
RIGHT TO COMPENSATION OF VICTIMS OF TRAFFICKING

Compensation in human trafficking cases has a very important role that may be found in the following aspects:

- **Restorative**

The restorative role of compensation, if implemented effectively, is found in that it assists the victim in a practical way to overcome the impact of the crime. It can empower the victims and provides financial independence to move on with their lives.

- **Punitive**

The punitive role of compensation is in the direct effect of punishment, which taking money from trafficker produces.

- **Preventive**

Compensation can also act as a preventative mechanism: it sends a signal about consequences for offenders to prevent them from engaging in criminal activity in the future.

The right for compensation should provide for a right to claim compensation for both moral and material damages from the trafficker.

- **Material** (pecuniary and financial) damages generally include the following damages and losses: medical costs – ambulant and hospital medical treatment, rehabilitation; funeral costs; unpaid wages and benefits the victim lost due to the crime; loss of future income, damages caused to property.

- **Moral** (non-pecuniary) damages are personal damages caused to health, well-being, honour and reputation: e.g. physical pain, psychological distress, emotional suffering, damage to reputation and honour, loss of enjoyment of life, etc.

1. KEY INTERNATIONAL AND EUROPEAN STANDARDS

The **Palermo Protocol** requires states to ensure that at least one type of legal procedure is available to trafficked persons to access compensation, including that victims are provided with information about that possibility.

> *Article 6. Assistance to and protection of victims of trafficking in persons*
> ...
> *6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.*

The **CoE Trafficking Convention** makes a clear suggestion for the establishment by States of funds for victims' compensation funded by the assets confiscated by offenders.

> *Article 15. Compensation and legal redress*
> ...
> *3. Each Party shall provide, in its internal law, for the right of victims to compensation from the perpetrators.*
>
> *4. Each Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions under its internal law, for instance through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of measures provided in Article 23.*

The **Trafficking Directive** requires states to ensure to victims access to existing compensation schemes.

> *Article 17. Compensation to victims*
>
> *Member States shall ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crimes of intent.*

The **Directive on Compensation of Victims** contains a requirement for member states to establish state scheme for victims of violent crime and set up a system for facilitating compensation for victims in cross border situations.

> *Article 12*
> ...
> *2. All Member States shall ensure that their national rules provide for the existence of a scheme on compensation to victims of violent intentional crimes committed in their respective territories, which guarantees fair and appropriate compensation to victims.*
>
> *Article 1. Right to submit an application in the Member State of residence*
>
> *Member States shall ensure that where a violent intentional crime has been committed in a Member State other than the Member State where the applicant for compensation is habitually resident, the applicant shall have the right to submit the application to an authority or any other body in the latter Member State.*

The **Victims' Directive** sets forth the right of victims to a decision on compensation from the offender in the course of criminal proceedings. It further fosters the promotion of measures to encourage offenders to provide adequate compensation to victims.

Article 16. Right to decision on compensation from the offender in the course of criminal proceedings

1. Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.

2. Member States shall promote measures to encourage offenders to provide adequate compensation to victims.

Fair restitution and compensation of victims from the offender are also stipulated among the main principles under the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.[70]

Restitution

8. Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.

Compensation

12. When compensation is not fully available from the offender or other sources, states should endeavour to provide financial compensation to:

(a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;

(b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.

1.1. COMPENSATION BY THE OFFENDER IN CRIMINAL PROCEEDINGS

A primary goal of the international and European standards on compensation of victims is that victims are compensated by the perpetrator who has caused the suffering and the distress. In some countries the mechanism for obtaining compensation by the offender in criminal proceedings is through association of a civil action for compensation with the criminal proceedings against the perpetrator. Another alternative is including as part of the main sentence of the payment of compensation to the victim by the perpetrator. If, in proceedings against traffickers, the criminal courts are not empowered to determine civil liability towards the victims, it must be possible for the victims to submit their claims to civil courts.

Why is it a good practice to bring compensation claims through criminal proceedings?

- Compensation can be obtained within one single set of proceedings.
- A shorter period is needed for obtaining compensation as additional time-consuming process of civil proceedings is not conducted.

[70] General Assembly Resolution 40/34 29, November 1985.

• The psychological burden on the victim is less without having to go through second trial for compensation in civil court.

• Compensation claims may be brought by the public prosecutor in certain cases, especially in cases of vulnerable victims. For example in Bulgaria the public prosecutor may file civil cases on behalf of victims who are underage or of a physical or mental deficiency.

• Criminal proceedings in many EU countries (including Bulgaria and Greece) are based on the principle of official investigation. This principle requires that the State authorities shall investigate all circumstances including those related to the damages caused by the crime. The court further has the power to clarify and examine the facts of the case and collect evidence to establish the truth. The contrary principle is usually applied in civil cases where it is up to the victim as a civil claimant to prove the compensation claim and furnish the required for the purpose evidence.

• Settlements (plea bargains) in criminal cases between the state/ public prosecutor and the offender should in principle cover damages suffered by the victim.

Important: A plea bargain should cover the issue of compensation of victims to the extent possible under the applicable law. This is especially important as in many jurisdictions criminal cases end up with plea bargains which terminate the proceedings. Thus, victims' compensation claims are precluded in the procedure and if not sufficiently taken care of by the plea bargain, the victim needs to initiate separate proceedings in civil court to obtain compensation. In certain cases the claim for material damages is precluded with entry into force of the plea bargain as it is presumed to cover all material damages caused by the crime.

1.2. COMPENSATION BY THE OFFENDER IN CIVIL PROCEEDINGS

Entitlement to compensation claims against the offender in civil proceedings is provided for in the legal systems of most countries. The usual grounds of the claim are based in tort law, particularly when a verdict is available founding guilty the offender.

When would it be a good solution to bring a compensation claim through civil proceedings?

• If, in proceedings against traffickers, the criminal courts are not empowered to determine civil liability towards the victim, or the victim has not used this right, it is possible to submit damages claim through civil proceedings.

• Another situation in which a claim should be brought to civil court is when criminal proceedings have not been instituted for one or another reason against the perpetrator. However, due to the lack of a verdict and with the full burden of proof being placed on the victim, in those cases the likelihood of successful outcome of the case and obtaining compensation is less probable.

• A potential advantage of civil claims, as compared to damages sought in criminal proceedings, is that if the case is successful, the amount of damages would normally be higher than the awarded in criminal case. The principles of civil justice

require compensation of the total losses of the victim, including both moral and material damages.

Among the disadvantages of civil claims of damages in trafficking cases are:

• Unless a guilty verdict from criminal proceedings is available, all circumstances of the case need to be proved by the victim, including: perpetrator, damages, direct relation between the acts of the perpetrator and the causing of damages. Proving all relevant facts is particularly difficult taking into account the nature of human trafficking. This is also the case if there is a guilty finding in a criminal trial but the verdict is not binding upon the civil courts.

• Civil suits often, while not always, take longer than criminal proceedings.

• Civil suits do not usually give grounds for extension of residence permits, if the victim is not a resident of the respective country where proceedings have to take place.

• Security measures over future payment by the offender could usually be imposed on more stringent terms compared to such measures in criminal proceedings. Further, a requirement for provision of bank guarantee or deposit by the claimant normally applies which is impossible in most cases of victims of trafficking.

Compensation under Labour Law

Compensation under Labour Law is an option for victims of trafficking in some countries. These claims may be based on:

• Unpaid wages or non-payment of minimum wages or unpaid overtime work: in most cases of human trafficking, all or part of the wages earned by the victim are withheld;

• Work-related accidents and injuries caused;

• Discrimination.

In many countries however, including Bulgaria and Greece, to the extent that: (i) in cases of sexual exploitation prostitution is not considered a legitimate employment and (ii) employment contracts are considered void to the extent their subject (scope or work) is illegal, or if the person is illegally residing in the country, those options are not particularly relevant in practice.

Evidence to support damages and compensation claims in trafficking cases

Proving and quantifying damages, both moral and material, is a difficult issue in trafficking cases for the courts but must not be used as a reason to deny compensation.

The type of evidence that may be used includes:

• Personal statements of the victim;

• Police records;

• Evidence of physical injury and scarring, medical records;

• Psychological evidence;

• Payslips, bank statements.

Enforcement against the trafficker

Enforcement issues in trafficking cases raise several important questions one of which is what could be a solution if the offender does not have funds to pay the awarded compensation.

Good practices in enforcement procedures against traffickers include:

- The legal representatives, respectively the public prosecutors, if this is within their powers, should ensure that a request is made to the court to have the perpetrator's assets frozen to prevent them being transferred.
- The tools used by the State for securing enforcement of confiscation orders should be equally available in the process of securing and enforcing victims' rights against the perpetrator.

1.3. FINANCIAL COMPENSATION BY THE STATE

Compensation mechanisms exist in most European states. The rules on the type of damages subject to compensation, the preconditions and procedures for awarding compensation vary. Compensation mechanisms may differ as to the legal options for compensation of moral damages. In Bulgaria, for example, only certain types of material damages are subject to compensation by the state, while compensation by the perpetrator cover material and moral damages.

Why seek compensation from the state?

- There is usually no need the perpetrator to be identified and prosecuted.
- Comparatively fast proceedings, streamlined and easy to access.
- In situations where the perpetrator has insufficient means to cover the awarded damages compensation from the State is an alternative.

Important: Sample applications and a list of necessary documents are available for most EU Member States at the website of the European Commission: European Judicial Atlas in Civil Matters, Compensation to Crime Victims:
http://ec.europa.eu/justice_home/judicialatlascivil/html/pdf/manual_cv_en.pdf

Disadvantages in seeking compensation from the state:

- Restrictive eligibility criteria may apply such as nationality and extent of cooperation with law enforcement.
- Tight time limits and prescription periods usually apply.
- Victims may be reluctant to take action against the state, especially if immigration issues are involved.

1.4. DAMAGES CLAIMS AGAINST THE STATE

The concept of damages claims against the State arises from the State's failure to comply with its international law obligation to ensure the protection of human rights on

their territory and to prevent human rights violations by non-State actors. State obligations under the Palermo Protocol are to "prevent and combat" trafficking in persons.

The ECtHR has established the applicability of international standards on trafficking as a human rights violation: the duty of the State to act with due diligence in investigating the circumstances of exploitation in the context of human trafficking as well as in implementing its positive obligations to identify and ensure protection of and assistance to victims. Among those rights are to ensure access to legal aid and compensation. Damages claims against the State are a legal mechanism appropriate to be used in cases where the State is not providing sufficiently accessible and adequate mechanisms for legal aid and compensation.

1.5. THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS RELATING TO COMPENSATION OF VICTIMS

At present there is no case law of the ECtHR which particularly considers the problem of compensation in the context of human trafficking. A couple of very recent judgments, however, review the level of compensation awarded in cases of breache of the ECHR.

W. v. Slovenia[71] (found violation of Article 3 - inhuman or degrading treatment - of the Convention)

Summary of the Facts:
The applicant, Ms W., a Slovenian national was raped by a group of men when she was 18 years old. After prolonged criminal proceedings of a total of seventeen years the offenders were sentenced to imprisonment. Relying on Article 3 (prohibition of inhuman or degrading treatment), Ms W. complained in particular that the long delays in the criminal proceedings had been in breach of the State's obligation to effectively prosecute the criminal offences committed against her. She was awarded compensation at national level for the distress she suffered as a result of the lengthy proceedings in the amount of 5,000 Euro - the statutory maximum, which she considered as insufficient redress.

Relevant considerations of the Court

- *"...the sums awarded may not be unreasonable in comparison with the awards made by the Court in similar cases. Whether the amount awarded may be regarded as reasonable falls to be assessed in the light of all the circumstances of the case."* (paragraph 81)

- *"...the Court considers that the duration and severity of the violation are among the factors to be taken into account in assessing whether the domestic award could be regarded as adequate and sufficient redress."* (paragraph 82)

- *"The Court is mindful that the task of making an estimate of damages to be awarded is a difficult one. It is especially difficult in a case where personal suffering, whether physical or mental, is the subject of the claim. There is no standard by which pain and suffering, physical discomfort and mental distress and anguish can be measured in monetary terms... The Court does not doubt that the domestic courts in the present case attempted to assess the level of mental distress and suffering sustained by the applicant as a result of the lack of effectiveness in conducting the criminal proceedings concerning her rape. However, this*

[71] Judgment of the Court of 23 January 2014, Application no. 24125/06, available at: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-140030

assessment was by definition limited by the statutory maximum of EUR 5,000, an amount which could not be exceeded regardless of the circumstances of the applicant's case ..... This amount, however, is substantially lower than the amounts awarded by the Court in other cases involving deficiencies in an investigation and/or a prosecution of cases of sexual abuse committed by private individuals (see M.C. v. Bulgaria, cited above; P.M. v. Bulgaria, cited above; C.A.S. and C.S. v. Romania, no. 26692/05, 20 March 2012; and D.J. v. Croatia, no. 42418/10, 24 July 2012)." (paragraph 83)

The case *W. v. Slovenia* sets a standard with respect to compensation in the context of Article 3, with the following requirements:

- The overall facts of the case have to be reviewed when determining the damages award by the State in order to take into account the duration and severity of the violation.
- Irrespective of whether a statutory limit is set, the award has to be reasonable in comparison with the awards made by the ECtHR in similar cases.
- EUR 5,000 in the case did not constitute sufficient redress.
- The Court awarded the applicant EUR 15,000 taking into account the compensation she has received at the domestic level.

O'Keeffe v. Ireland,[72] (found violation of Article 13 - of the Convention)

Summary of the facts[73]*:*

The applicant alleged that she was subjected to sexual abuse by a teacher in 1973 when she was a pupil in a state-funded National School owned and managed by the Catholic Church. Most of the funding and the regulations of the school were provided by the state. The applicant complained in particular that the Irish State had failed both to structure the primary education system so as to protect her from abuse (Article 3 of the Convention) and that she had not been able to obtain recognition of, and compensation for, the State's failure to protect her (Article 13).

Relevant considerations of the Court

- The Court found that there were no remedies against the State shown to be effective in the case.

- *"Article 13 requires a mechanism to be available for establishing any liability of State officials or bodies for acts or omissions in breach of the Convention and that compensation for the non-pecuniary damage flowing therefrom should also be part of the range of available remedies. In particular, the Court's role is to determine whether, in the light of the parties' submissions, the proposed procedures constituted effective remedies which were available to the applicant in theory and in practice, that is to say, were accessible, capable of providing redress and offered reasonable prospects of success"* (paragraph 177).

The Court awarded the sum of EUR 30,000 in total as regards pecuniary and non-pecuniary loss.

The case *O'Keeffe v. Ireland* brings compensation in the context of Article 13 and for this purpose:

- Compensation, including for non-pecuniary damages, should be part of the remedies available to victims as part of the liability of the state.

[72] Judgment of the Court of 28 January 2014, Application no. 35810/09, available at: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-140235
[73] Information Note on the Court's case-law No. 170, available at: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=002-9263

• The procedures for obtaining compensation should be accessible, capable of providing redress and should offer reasonable prospects of success.

How to decide on the most appropriate mechanism to be pursued in each case?

In deciding on the most appropriate mechanism to be pursued in each case, there are a number of factors that need to be assessed and taken into consideration:

• The particular needs and goals of the victim are of foremost importance: if financial compensation might be what the victims is interested in.

• The personal circumstances of the victim must be considered before pursuing a remedy such as: is the victim well enough to pursue compensation in court proceedings, including to provide testimony and go through a lengthy trial, considerations of safety of the victim should also be reviewed.

• The specific national mechanism with highest likelihood of a positive outcome.

• Information on the trafficker: is the trafficker identified and prosecuted; are criminal proceedings against the trafficker anticipated, commenced or concluded; does the trafficker have sufficient funds to pay the compensation; is it possible to apply for a freezing order to prevent disposing of the available assets and property.

USEFUL RESOURCES

UN Office on Drugs and Crime (UNODC), *Anti-Human Trafficking Manual for Criminal Justice Practitioners*, August 2009,
available at: http://www.refworld.org/docid/4ab8d9a82.html

La Strada International, Anti-Slavery International, *Guidance on representing trafficked persons in compensation claims,* developed by COMP.ACT Project,
available at: http://www.ungift.org/doc/knowledgehub/resource-centre/CSOs/Guidance_on_representing_trafficked_persons_in_compensation_claims.pdf

Office for Democratic Institutions and Human Rights (ODIHR), *Compensation for Trafficked and Exploited Persons in the OSCE Region,* OSCE 2008,
available at: http://www.osce.org/odihr/32023?download=true

2. BULGARIA: RIGHT TO COMPENSATION OF VICTIMS OF TRAFFICKING

2.1. RIGHT TO CLAIM COMPENSATION BY THE OFFENDER IN CRIMINAL PROCEEDINGS

The Bulgarian Criminal Procedure Code allows victims or their heirs who have suffered harm by the criminal offense to bring civil action for compensation in the criminal proceedings.

Civil claims can be brought in criminal proceedings on tort grounds. The main civil law principle applies, namely that everybody is obliged to remedy the damages guiltily caused to another person. Where the wrongdoing is a crime, it is always tort as well. According to Interpretative Decision No. 1 of 4.02.2013, of the Supreme Cassation Court:

> *"In [Bulgarian] legal theory and jurisprudence ... it is acknowledged that the cause of the civil claim in the criminal process is the particular act subject to criminal prosecution. Therefore, this act constitutes the legal grounds for both the criminal and civil liability of the perpetrator. The legal means of establishing their occurrence and merits in criminal cases is the criminal process."*

Who can make claims for damages against the offender in the criminal proceedings?

- The Victim

In the first place, the victim who has suffered material or moral damages from the criminal offence has the right to constitute in the proceedings as an injured party. There are no restrictions with respect to nationality. It is also possible that two or more persons bring a joint civil action against the accused.

- The victim's heirs (or her/his heirs)

The victim's heirs may claim compensation from the perpetrator for their own damages suffered by the criminal offence: both material and moral damages are compensable.

- The prosecutor

The prosecutor also has standing to bring a civil action in criminal proceedings. This power may be exercised only in favour of certain categories of victims - those who being underage or of a physical or mental deficiency, are unable to defend their rights and legal interests.[74]

Important: The exercise of the powers of the prosecutor to bring civil claims in favour of the injured minor trafficking victims and protect their rights to compensation for the material and moral damages suffered is of high importance for enforcement of victims' rights.

At what stage of the proceedings should the action be brought?

The statutory term for bringing the claim is within seven days as of receipt of the notice for a date of court hearing in the case.[75] The term is not preclusive and does not limit the possibility of seeking redress for the victim until the commencement of the court investigation of the case.[76]

[74] Criminal Procedure Code, Article 51.
[75] Id., Article 255, paragraph 2.

Procedure of submission

The request for joining the case has to be made to the court orally or in writing. The application must specify:

- The identification of the offender;
- Details of the crime which has caused the damages;
- The nature and details of the damages caused; both material and non-material (moral) damages can be sought;
- The amount of the requested compensation;
- An interest on the amount of the compensation may be sought, the initial moment from which interest may be calculated being the date of committing the crime.

Important: The State fee for a civil claim in criminal proceedings is not owed by the victim.

The court may refuse to constitute the victim as a civil party in the process, taking into account the complications that would result for the criminal proceedings. Civil action cannot be a reason to delay the criminal case.[77] The speed of the proceedings is also a leading factor.[78]

The ruling, by which the joining of a civil action in the criminal process is denied, is not subject to appeal.

What evidence should be provided in support of the claim?

Available evidence supporting the claim has to be enclosed. Such evidence for example may be:

- Documents of payments for medical treatment in case of physical damages sustained;
- Expert opinions on loss of ability to work due to physical damages sustained by the crime;
- Witness testimony on the extent and duration of moral damages sustained by the victim – a practice in Bulgaria that has been criticised by the ECHR which stated that common sense should be the leading principle.

In claiming moral damages it is always important psychological expert statement to be provided on the psychological state of the victim.

Important: Even in the absence of specific evidence, the court is obliged to clarify the facts of the case and, also, to collect evidence for the facts relevant for the judgment in the civil action.

What rights are available for the victim as civil claimant?

The victims or their heirs must be notified by the court about the date of hearing of the case. Such obligation constitutes a fundamental procedural guarantee for the protection of the rights of crime. Failure to observe this right would be a reason for revocation of the final court judgement on the grounds of substantial procedural violation.

[76] Id., Article 85, paragraph 3.
[77] Id., Article 88, paragraph 2.
[78] Id., Article 22.

The victim as a civil claimant has the following rights:[79]

- Take part in court proceedings;
- Request security for the civil claim;
- Examine the case-file and obtain excerpts;
- Produce evidence;
- Make requests, comments and raise objections, as well as to file appeal from acts of the court which infringe upon his or her rights and legal interests.

The limits to the exercise of those procedural rights are limited solely to proving the civil action.

Possible outcomes of the proceedings on the civil claim

Upon completion of the criminal proceedings, if the accused is found guilty of committing the offense, the court determines whether the civil claimant is entitled to redress, and in what form.

If the court finds the defendant not guilty, the victim still has the right to subsequently bring a separate civil action against the offender.

Enforcement against the trafficker

One of the major questions relating to compensation is the actual possibility of the victim to receive the awarded amount from the trafficker. Even when a compensation claim is successful, in practice it is particularly difficult to enforce the judgement against the trafficker.

Requests for freezing the defendant's assets are usually made by prosecutors in order to secure the receivables of the State where the criminal sanction could be fine or confiscation of property. [80] Such a right is also ensured for the victim who can request enforcement of a forthcoming civil claim of the victim upon her or his request in pre-trial proceedings or during trial.[81] Jurisdiction to hear the request to freeze assets and secure the claim has the first instance trial court in the criminal case.

Important: In pre-trial proceedings, the request for freezing of assets needs to be filed with the investigator or prosecutor leading the proceedings and is then forwarded to the first instance court for ruling.

The freezing rules under Bulgarian criminal proceedings make a reference to the general rules for freezing and seizure of assets in civil procedures. The civil proceedings, however, set high requirements on the claimant in proving the reasons and necessity for freezing the assets. When applied in criminal proceedings, the civil rules turn to be cumbersome and extremely difficult to satisfy.

The issue has been reviewed in a recent Interpretative Judgment of the Bulgarian Supreme Cassation Court.[82] Among the main arguments of the court, the following are of general importance for freezing of assets in criminal proceedings in Bulgaria:

[79] Id., Article 87, paragraph 1.
[80] Id., Article 72.
[81] Id., Article 73, paragraph 2 and 4.
[82] Interpretive Judgment No. 2 of 11/10/2012 of the Supreme Court of Cassation in interpretive case No. 1/2012.

Excerpt from Interpretive Judgment No. 2 of 11/10/2012 of the Supreme Court of Cassation in interpretive case No. 1/2012

"The mechanical application of civil procedure rules in criminal proceedings without taking into account the specific characteristics of both type of proceedings and the different objectives they pursue, is unacceptable.

Unlike civil proceedings, where the action is initiated by a claimant who makes a claim and is required to prove it ... in the criminal process the prosecutor has the accusatory function to prove the charges and the purpose of the request is to secure the future enforcement of the fine and / or confiscation in case of conviction. Therefore, the prosecutor cannot be required to provide evidence in the scope referred to in article 391 of the Civil Procedure Code.

The Court, on the other hand, when dealing with a request for taking security measures, shall, before granting the request decide on its admissibility and merits independently evaluating whether all required statutory prerequisites are at hand, including whether at that moment there is evidence to accept that the charges are well-founded and there is enough degree of probability for the realisation of the criminal responsibility of the accused, as well as whether, without them, the enforcement of the verdict will be impossible or difficult."

The same reasoning should apply in cases where the request for security measures and freezing of assets are raised by victims of trafficking. Victims should also benefit from the facilitated manner of application of such measures in order to be able to enforce their right to compensation in practice.

Award on moral damages: recent Bulgarian case law

Excerpt from Verdict №121/2012 in criminal case №1980/2011 of District Court - Varna

"Regarding the non-material damages the following evidence was collected - the testimony of St. V. [forensic psychological expertise], confirming psychological trauma suffered because of the assault as well as deep negative resonance in the privacy of the person. The duration of the recovery period should also be taken into consideration as well as the behaviour of the victim, which is characterised by constant fear, inadequacy when dealing with strangers... In view of the powers of the Court under article 52 of the Obligations and Contracts Act [to decide on moral damages based on justice and equity] *and having regard to the foregoing, the Court considers that equitable compensation for non-pecuniary damages should be awarded to the amount of BGN 2,000 and the remaining amount of the claim - dismissed as unfounded. Compensatory interest from the date of the injury should not be awarded because it was not requested by the victim. The latter is a discretionary right and shall not be awarded automatically by the Court."*

Excerpt from Verdict No. 28 in criminal case No.104/2013 of Regional Court - Varna

"The Court considering the lack of lasting harmful effects on the life and health" of the victims, and the "actual possibility of the defendant to compensate the victims" finds a fair amount of compensation of BGN 5,000."

Criminal case No. 4143/2009 of District court - Pleven

The victims in case 4143/2009 of District court - Pleven are two minor girls M.N. and S.N., adopted by the family of the accused in the case. Among the defendants is also the grandmother of the girls, mother of one of the adoptive parents. From the outset of the adoption, S.N. and M.N. were trained, and then forced to perform petty theft. The victims were brought up with the idea that they will be sold for wives, but against the price that will be given to them, they will have to repay by continuing to steal for the benefit of their new families. Thus, the minor M.N. was sold to a Croatian citizen and trafficked to Croatia. With respect to S.N., an attempt was made to be sold in England, but she escaped and then was placed in a crisis centre.

In the criminal proceedings, the victims were constituted as civil claimants and private prosecutors. Also, due to conflicting interests between the victims and the defendants, special attorney-representative of the girls was appointed. The special representative brought civil actions "*in the amount of BGN 100,000 for S.N. and BGN 50,000 for M.N. for non-material damages suffered. The court is requested to grant the civil actions in their full size taking into account the psychological trauma inflicted on the victims.*"

All three defendants have been convicted of cross-border trafficking of the minor M.N. to be used for forced labour and held in forced submission through abuse of parental power and state of dependency of minors and solicitation of a minor to live as a wife with an adult person without being married. Separate sentences were issued for coercion of S.N. and M.N. to commit theft.

District Court - Pleven found that the civil claims of the victims were justified to the amount of 30,000 BGN for S.N. and 20,000 BGN for M.N. and ordered the defendants to jointly repay the damages caused. In determining the amount of compensation the court acknowledged the following facts, established by the forensic examination, as being of major importance: "*the requirements of fairness and the consideration of the depth of the physical and mental disabilities caused, the length and scope of the recovery process*".

Upon appeal, the appellate court reversed the conviction in its civil action part holding that the trial court "*ruled on invalid civil action, thus causing a procedural irregularity, and issuing a wrong judgment in its civil action part*".[83] To reach this conclusion, Regional Court-Pleven found that the civil claims for compensation were made in vague and incomplete form without sufficient legal description on which criminal acts the amounts of the claims were based, and against whom of the defendants the claims were directed.

Criminal case No. 491/2011 of District court - Pleven

The victim G.Y. joined the criminal proceedings as civil claimant and private prosecutor. The defendants in the criminal proceedings were two persons, one of which charged with cross-border human trafficking for sexual exploitation and the second charged with incitement to perjury. A claim for compensation for moral damages caused to the victim by the two criminal offenses committed by the two defendants for the sum of BGN 10,000 was brought. Having found the two defendants guilty to the charges, the Pleven District court ordered them to pay jointly and severally the damages claimed to the victim.

Upon appellate review, Regional Court - Pleven revoked the verdict in its civil part on the following grounds: „*The civil action is inadmissible. First, the two defendants were charged with different crimes. This excludes joint and several liability under Article 53 of the Obligations and Contracts Act* [if the wrongdoing is caused by several persons, all of them are liable jointly and severally]. *In this case, it was necessary for the civil claimant to specify what compensation for which damages, arising out of which crime is claimed and what is the*

[83] Judgment No. 254 of 24.06.2011 2011 in criminal case No. 341/2011 of District court - Pleven.

nature of the damages suffered from each crime. Apart from this, it is a controversial issue whether [an individual] *may be qualified as a victim of crime under article 293, paragraph 1 of the Criminal Code* [incitement to perjury], *which is directed against justice as a function of state authority. In this sense, by accepting and respecting a civil action which is legally inadmissible, the District Court has violated the procedural rules."*

Right of the victim to have the civil action reviewed if the criminal proceedings are terminated

One of the questions debated in Bulgaria in the recent years is if the victim has a right to a review of its claim for compensation from the offender if the criminal proceedings have been terminated for reasons other than finding the perpetrator not guilty.

According to a recent Interpretative Judgment of the Bulgarian Supreme Cassation Court[84], the proceedings on victims' claims for compensation should be continued and a judgment on the claim should be issued even if the criminal proceedings are terminated based on: (i) death of the perpetrator, (ii) expiration of the limitation period to persecute, or (iii) in case of amnesty given to the perpetrator. In order to reach its conclusions, the Court has made an explicit reference to Article 16, paragraphs 1 and 2 of Directive 2012/29/EU.

Victim's rights to compensation in case of settlement (plea bargain) between the prosecution and the defendant

The plea bargain (settlement) is a procedural tool that is motivated by "*the idea of a rapid conclusion of the substantive legal relationship between the state and the offender*"[85],as well as the conduct of fast and efficient proceedings. At the initiative of the prosecutor or the defence counsel, a settlement can be reached in the pre-trial or trial proceedings.

There are limited possibilities for victims' participation in case resolution by plea bargaining. The option for the victim to join the proceedings as a civil claimant and, accordingly, to file a civil claim for damages, is excluded if the settlement is reached pre-trial.

However, where the settlement is reached after the institution of court proceedings, consent to the plea bargain is required by all parties. This implies the legal right for the victim to be constituted as a party to the proceedings even if a settlement is reached, as long as the trial has started.[86] According to recent Bulgarian case law if the plea bargain is approved in violation of this requirement, it is subject to revocation.[87]

It is a very important statutory requirement that a plea bargain may only be approved if the material damages caused by the crime are compensated or their compensation is secured.[88] This requirement is intended to ensure full protection of the violated property rights of the crime victim.

[84] Interpretative Judgment No. 1 of 4 February 2013.
[85] Judgment No. 901/08.11.2005 in case No. 340/2005 of the Supreme Cassation Court.
[86] Interpretative Decision No. 2 of 05.02.2005 in case No. 2/2003 of the General Assembly of the Criminal Chamber of the Supreme Cassation Court.
[87] In this connection see for example Judgment No.142/11.03.2013 in case No.249/2013of the Supreme Cassation Court
[88] Criminal Code, Article 381, paragraph 3.

Another guarantee to protect the interests of the victims for redress in case of settlement is the obligation of the court to inform the victims or their heirs for the approved agreement, indicating that they can file a civil claim for moral damages before a civil court.[89]

Advisable practices when claiming compensation in criminal proceedings

The following issues should always be considered by lawyers in bringing claims for compensation in criminal proceedings.

- Always claim compensatory interest from the date of the injury. Awarding of interest is a discretionary right and cannot be awarded automatically by the Court without a specific request.
- Make a request to freeze the trafficker's assets and to secure the civil claim in pre-trial proceedings, thus ensuring enforcement of the awarded amount of damages.
- When drafting the civil claims for compensation, provide detailed and complete description of the facts, including their concrete legal relation to the particular criminal act that gives rise to the claim.
- In cases of more than one defendant, be cautious if joint liability arises. If the defendants are charged with different crimes, usually no joint and several liability arises. In case of more than one defendant in a criminal case, make sure to explicitly point out which claim and amount by which of the defendants is related to which particular damages.
- If providing consent to a plea bargain, make sure that a restitution of all material damages to the victim has taken place, including lost income.

2.2. RIGHT TO CLAIM COMPENSATION BY THE OFFENDER IN CIVIL PROCEEDINGS

Victims of trafficking have the right to claim material and moral damages on tort grounds before civil court under the Civil Procedure Code[90]. In most cases, such an action would be brought after the final verdict of the criminal court. There are two main reasons for this.

- The verdict in the criminal case is binding on the civil court in matters relating to whether the harmful act was unlawful and if the perpetrator was guilty.[91]
- If there is an entered into force verdict, trafficking victims may claim compensation for the offence from which the damages were suffered before a civil court without paying state fees.[92]
- The settlement approved by the court has the effect of a final verdict.[93] Hence, no state fees are due if damages are claimed based on settlements in human trafficking cases as well.[94] In cases where the criminal proceedings ended up with a settlement, only moral damages can be claimed by the victim in civil proceedings.

[89] Criminal Procedure Code, Article 382, paragraph 10.
[90] Civil Procedure Code, promulgated in State Gazette No. 52/20.07.2007, last amended State Gazette No. 53/27.06.2014.
[91] Id., Article 300.
[92] Id., Article 83, paragraph 1, item 4.
[93] Id., Article 383, paragraph 1.
[94] See Ruling No. 33 of 12.01.2011 in case No. 713/2010, of the Supreme Cassation Court.

Award on moral damages in a civil case: recent Bulgarian case law

Judgment No. 457 dated 29.11.2013 in civil case №172/2013 of Regional Court- Sliven

A claim for non-material damages to the amount of BGN 100,000 was brought before the Sliven District court by D.G., a female victim of human trafficking. The defendant was a person convicted with a plea bargain approved by the Sliven District Court of international trafficking for the purposes of sexual exploitation of D.G. The imposed sentence was conditional imprisonment of three years (without effective time in jail) and a fine of BGN 10,000. D.G. had been trafficked to Spain, where for eight years was subjected to prostitution, from which the defendant was enriched financially.

Coercion of the victim was caused "*by constant threats of beating [...] by threats of compromising her by showing her parents pornographic images of her; by deprivation of simple means for living; through the retention of her personal documents and factual restricting of her freedom of movement including a simple daily walk.*"

In determining the amount of compensation, the court took into account the period for which the applicant was trafficked and her age, forms of coercion that ware carried out, and the consequences of the crime on her health.

Thus, the Court found that the suffering caused to the claimant has been "*commensurate with permanent health disorder, not dangerous for her life*" and evaluated it at BGN 30,000, but noted that it is "*outside the judgment of the court the fact of deprivation of the claimant of the opportunity to receive for herself revenues in the period May 2003 - June 2011.*" This comment of the court refers to the fact that only moral damages are subject to the claim while the deprivation of the right to have revenues is part of the right to material damages of the victim, which were supposed to have been covered by the settlement. The court further ordered the defendant to pay compensation in the amount of statutory interest for delay with the starting date being the initial moment of trafficking.

2.3. COMPENSATION BY THE STATE

Along with other victims of violent premeditated crimes, the Bulgarian Act on Assistance and Financial Compensation to Crime Victims provides access to the victims of human trafficking to financial compensation provided by the State.

The competent body responsible for reviewing of applications and provision of compensation is the National Council for Assistance and Compensation of Victims of Crime (the National Council).

What are the prerequisites for receiving compensation?

Financial compensation is provided after completion of the criminal proceedings with a guilty verdict or with a prosecutorial or court act by which the criminal proceedings are discontinued.[95]

Financial compensation may be provided for crimes committed in the Republic of Bulgaria, or for crimes committed abroad only if the victim is a Bulgarian national.[96] If the crime is committed abroad, the victim may file a request to the competent authorities

[95] Act on Assistance and Financial Compensation to Crime Victims, Article 12.
[96] Id., Article 4.

of the other state as long as this state is a member of the EU.[97] The procedure for applying for compensation to another member state is through the National Council.

Damages subject to compensation

The compensation covers material damages directly caused by a crime and consisting in:

- Medical expenses, except for expenses covered by the budget of the National Health Insurance Fund;
- Lost income;
- Legal fees and litigation costs;
- Lost support to dependents;
- Funeral expenses;
- Other material damages.[98]

Compensation is not due for moral damages.

Procedure

A sample application form must be submitted to the National Council or to the governor at the current address of the victim, who has the obligation to forward it to the National Council.[99]

The sample application form in Bulgarian language can be accessed at the website of the National Council: http://www.compensation.bg/Pages/rights/default.aspx

The documents that need to be presented with the application for financial compensation include:

- A judicial act which may be:
- A guilty verdict;
- A prosecutorial or court act by virtue of which the criminal proceedings are dismissed for failure to identify the perpetrator of the crime;
- A prosecutorial or court act by virtue of which the criminal proceedings are discontinued for reasons including: the perpetrator is not criminally responsible due to amnesty, expired limitation period; the perpetrator has passed away or is in a state of lasting mental derangement; a transfer of criminal proceedings to another country took place;
- A certificate of past conviction of the victim;
- A copy of personal identification document;
- A certificate of current residence in Bulgaria;
- A document certifying legal representation or guardianship in case of minors;
- A certificate of inheritance, in case the application is filed by heirs of the victim;
- Copies of the documents proving the expenses incurred, for example medical expenses (except for expenses covered by the National Health Insurance Fund which are not subject to compensation), funeral expenses and others;
- A document certifying the income of the victim for a period of 6 months prior to commitment of the crime;
- A court certificate regarding expenses made in relation with court proceedings;
- Documents certifying other material damages.

[97] Id., Article 19, paragraph 1.
[98] Id., Article 14.
[99] Id., Article 18.

Time limits

The time limit for filing the request for compensation is two months as of entry into force of the verdict.[100] The National Council should rule on the application within three months.[101]

Amount of the compensation

The Act on Assistance and Financial Compensation to Crime Victims allows only financial compensation for material damages directly caused by the offense. The amount awarded may be between BGN 250 and 5,000.[102] In case of death of the victim, the compensation to the heirs may reach BGN 10,000.

Good practices and recommendations relating to the right to compensation by the State in Bulgaria

The benefits of the established with the Act on Assistance and Financial Compensation to Crime Victims procedure for compensation include the following:

- It is free, less formal and bureaucratic than court proceedings for compensation;
- Upon successful proof of the damages caused to the victim, the payment of compensation is guaranteed.

Still, requests for compensation to the Council by victims of trafficking are rare. The main reasons for this are:

- Lack of information about the existence of this mechanism of compensation and its tight time limits to exercise the right (two months of the entry into force of the verdict);

In this regard, the Council has adopted a good practice in favour of the victims: if an application for compensation is late, enquiry may be sent to the Ministry of Interior if the victim was actually informed of its rights under the AAFCCV. In the event that the victim was not properly informed by the Ministry of Interior of their rights, including the right to compensation for the material damages caused, the Council accepts that there was "a good cause"[103] for not filing on time the request and accepts it for consideration.

- The practice of the Council to reject requests from victims in trafficking cases which ended up with a plea bargain;
- Difficulties in proving damages by victims of trafficking.

The documents for proving damages needed to support the application are rarely available to the victim. An alternative approach allowing for a minimum amount of compensation to be awarded if not all require documents are available could be beneficial to victims.

- Free legal aid to claim compensation by the State is not permissible.

The legal complexities in proving the damages suffered by the victim are sufficiently high to justify legal counsel and assistance in the process of applying for financial compensation from the state. This is especially important in cases where transnational proceedings are involved.

[100] Id., Article 18, paragraph 3.
[101] Id., Article 24, paragraph 1.
[102] Id., Article 13, paragraph 1.
[103] Id., Article 18, paragraph 5.

3. GREECE: RIGHT TO COMPENSATION OF VICTIMS OF TRAFFICKING

3.1. RIGHT TO CLAIM COMPENSATION BY THE OFFENDER IN CRIMINAL PROCEEDINGS

Until recently, victims of trafficking in Greece had only the possibility to obtain compensation from the offender. According to Articles 63 and 64 of the Greek Code of Criminal Procedure: victims of trafficking can be compensated by the offender within the context of criminal proceedings. The victim has the right to join proceedings instituted against the trafficker as a civil party[104] and to seek primarily the conviction of the offender and secondarily the compensation for moral damage or mental anguish. Criminal prosecution of the trafficker is initiated by the Public Prosecutor *proprio motu* and the victim is usually summoned as a witness.

In case the victim is only filing for non-pecuniary damages (moral damages) then no written statement is necessary, but he/she can declare his/her intention orally in court. The fee for filing a civil action is 60 Euros.

The damages awarded in criminal proceedings are usually nominal and the amount does not reflect the actual loss suffered.

In their majority, the victims depart after the conclusion of the preliminary investigation, and do not give testimony or participate as civil parties in the ensuing trials. The reason is that they do not have legal representation and that legal proceedings are extremely lengthy. The absence of the victim usually makes a conviction harder to achieve.

3.2. RIGHT TO CLAIM COMPENSATION BY THE OFFENDER IN CIVIL PROCEEDINGS

The victim may file a separate lawsuit against the perpetrator before civil courts, either after the payment of the usually symbolic compensation from the criminal court or pending the criminal trial.

The compensation awarded by the civil courts is based on the general provisions for torts in Articles 914 and 932 of the Greek Civil Code and covers material damages, both physical and moral, including loss of earnings as well as non-material/moral damages.

Usually, NGOs that provide legal aid to victims of trafficking prefer to wait for the outcome of the criminal trial and then proceed to the civil courts to request compensation. Although the civil proceedings are not influenced by the criminal proceedings, if a

[104] Greek Code of Criminal Procedure, Article 226B.

conviction is secured by the criminal court against the offender, then this becomes a powerful tool for the successful outcome of the civil action.

Important: Due to the length of civil proceedings in Greece, victims of trafficking may face the problem that their residence permit as victims of trafficking might expire before the end of the civil proceedings, as this type of residence permit is renewed till the conclusion of the criminal proceedings. This means that trafficked persons who wish to pursue compensation from civil courts will either need to leave the country if they are not able to acquire a different type of residence permit or they will stay in the county illegally.

3.3. COMPENSATION BY THE STATE

Law 3811/2009 relating to compensation to crime victims establishes the **Hellenic Authority of Compensation**, which is the competent authority to decide upon compensation requests on behalf of the Greek State (and not the offender).

Who is entitled to compensation by the State?

Article 3 paragraph1 of Law 3811/2009 provides that
"Victims of intentional crimes of violence committed in the Greek territory, who have their domicile in Greece or in any other EU member, are entitled, upon application, to receive equitable redress by the Greek State."
The right to compensation according to Law 3811/2009 is applicable for crimes committed after 1.1.2006.

What is a crime of violence?

According to Article 3 paragraph 4 of Law 3811/2009,"violent crime" is defined as:
a) any criminal intentional act that is committed with bodily violence or with threat of bodily violence and results in the death or serious bodily/mental harm of the victim and b) any criminal act committed intentionally with the use or threat of use of bodily violence and is punishable with incarceration (prison term of 5-20 years). In 2013, when Greece ratified the 2005 CoE anti-trafficking convention, the law was amended to specifically include trafficking in human beings among the violent crimes for which compensation can be sought. (see Article 1 paragraph 1of Law 3811/2009)

When can victims of trafficking ask for compensation by the State?

Victims of trafficking have the right to ask for compensation by the State in cases where:

- The offender may lack the necessary means to satisfy a judgment on damages. In this case the victim must have secured the irrevocable criminal conviction of the perpetrator.

- No compensation can be received because the offender cannot be identified or prosecuted. In this instances the case must be officially closed and placed on file by the prosecutor.

The application has to be submitted within a year from receiving an irrevocable criminal decision on the case. In cases where the perpetrator cannot be identified, then an application has to be made within one year from the placement of the case on file.

The compensation covers:

- Medical and hospital expenses;
- Loss of income for a reasonable period;
- Funeral expenses where applicable.[105]

In order to calculate the amount of compensation, the concurring liability of the victim (if any) is taken into consideration.

Time-limit

The application for compensation by the State must be lodged within a year from the date when the victim acquired the right to compensation, i.e. within a year from receiving an irrevocable criminal decision on the case, or in cases where the perpetrator cannot be identified, within a year from the placement of the case on file.

If the victim has its residence in another member state, the Hellenic Authority of Compensation is under the obligation to receive the application and transmit it to the assisting authorities of the latter State and disclose the following information:

- The contact person or the department responsible for handling the matter;
- An acknowledgment of receipt of the application;
- If possible, an indication of the approximate time by which a decision on the application will be made.

A victim of trafficking is denied compensation if he/she did not cooperate during the criminal proceedings by refusing to testify and concealing or failing to provide evidence.[106]

The application form as well as all relevant supporting documentation is in Greek.[107] Any request may be dismissed in case the payment receipt of a required fee of one hundred (100) euros is not submitted to the Authority of Compensation prior to the examination of the request. The decisions of the Hellenic Compensation Authority can be appealed before the Administrative Court of First Instance.[108]

It appears that no victims of trafficking have applied yet to the Hellenic Authority of Compensation.

[105] Law 3811/2009, Article 8.
[106] Law 3811/2009, Article 9.
[107] The relevant forms are available at the premises of the Ministry of Justice, Transparency and Human Rights and on line at the Ministry's web site: www.ministryofjustice.gr
[108] Law 3811/2009, Article 12 and 6.

APPENDIX 1
References to Bulgarian Anti-trafficking Legislation

Act on Assistance and Financial Compensation to Crime Victims: promulgated in State Gazette No. 105/22.12.2006, effective 1.01.2007, amended State Gazette No. 32/ 27.04.2010, effective 28.05.2010

Act for Combating Human Trafficking: promulgated in State Gazette No. 46/20.05.2003, latest amendments and supplements State Gazette No. 84/27.09.2013

Act for Protection of Individuals at Risk in connection with Criminal Proceedings: promulgated, State Gazette No. 103/23.11.2004, effective 24.05.2005, latest amendments and supplements State Gazette No. 53/27.06.2014

Control of Juvenile Anti-social Behaviour Act: promulgated State Gazette No. 13/ 14.02.1958, last amendments State Gazette No. 15/15.02.2013, effective 1.01.2014 and State Gazette No. 68/2.08.2013, effective 2.08.2013

Civil Procedure Code, promulgated in State Gazette No.52/20.07. 2007, last amended State Gazette No. 53/27.06.2014

Child Protection Act, promulgated State Gazette No. 48/13.06.2000, last supplemented State Gazette No. 84/27.09.2013

Criminal Code: promulgated State Gazette No. 26/2.04.1968, effective 1.05.1968, latest amendments SG No. 53/27.06.2014

Criminal Procedure Code: promulgated State Gazette No. 86/28.10.2005, effective 29.04.2006, latest amendments and supplements State Gazette No. 21/08.03.2014

Legal Aid Act: promulgated State Gazette No. 79/4.10.2005, effective 1.01.2006, latest amendments and supplements State Gazette No. 53/27.06.2014

Minister of Internal Affairs, Order No. Із-93/18.01.2013 regarding the distribution of 450 information boards on the rights of victims of crimes as provided by the Assistance and Financial Compensation to Victims of Crime Act

Obligations and Contracts Act: promulgated State Gazette No. 275/22.11.1950, effective 1.01.1951, latest amendments and supplements State Gazette No. 50/30.05.2008, effective 30.05.2008

Prosecutor General, Instruction И-301/2007, amended by Instruction И-283/2008 on information activity of the Prosecution Office of Bulgaria

Regulation for Application of the Social Assistance Act, promulgated Council of Ministers Decree No. 243/05.11.1998, last amendments State Gazette No. 73/ 20.08.2013, effective 01.01.2014

Regulation for the payment of legal aid, promulgated State Gazette No. 5/17.01.2006; last amendment State Gazette No. 31 of 15.04.2011

Social Assistance Act: promulgated State Gazette No. 56/19.05.1998, latest amendments and supplements State Gazette No. 15/15.02.2013, effective 1.01.2014, State Gazette No. 66/26.07.2013, effective 26.07.2013

APPENDIX 2
References to Greek Anti-trafficking Legislation

Law 4251/2014 "Code of Immigration and social integration and other provisions", G.G. vol. A' 80/1.4.2014, entered into force 1.6.2014

Law 4198/2013 "Preventing and Combating Trafficking in Human Beings, Protection of Victims and Other Provisions", GG vol. A. 215/11.10.2013

Law 4216/2013 "Ratification of the Council of Europe Convention on Action against Trafficking in Human Beings", GG vol. A'226/10.12.2013

Law 3875/2010 "Ratification and Implementation of the UN Convention against transnational organized crime and its three Protocols thereto and other provisions, GG vol. A', 158/20.09.2010

Law 3811/2009 "Compensation to victims of violent crime committed with intent and other provisions", GG vol. A' 231/18.12.2009

Law 3692/2008 "Ratification of a Bilateral Agreement between the Government of the Hellenic Republic and the Council of Ministers of Albania for the protection and assistance of children victims of trafficking" GG vol. A' 173/25.8.2008

Law 3625/2007 "Ratification and implementation of the Optional Protocol to the Convention of the Rights of the Child on the sale of children, child prostitution, child pornography and other provisions", G.G. vol. A' 290/24.12.2007

Law 3226/2004 "Provision of legal aid to citizens of low income and other provisions", GG vol. A' 24/4.2.2004

Law 3298/2004 "Memorandum of Understanding on the operation of the anti-trafficking centre in Vlora" GG vol. A' 260/23.12.2004

Law 3080/2002 "Ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict", G.G. vol. A' 312/10.12.2002

Law 2952/2001 "Ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women" GG vol. A' 248/22.10.2001

Law 2010/1992 "Ratification of the Convention on the Rights of the Child" G.G. vol. A' 192/2.12.1992

Law 1342/1983 "Ratification of the Convention on the Elimination of All Forms of Discrimination against Women" GG vol. A' 39/1/4/1983

Greek Criminal Code

Greek Code of Criminal Procedure

Greek Civil Code

Project 'Lawyers against Trafficking'
Towards improved access to justice and compensation of victims of trafficking in Bulgaria and Greece
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