

Position of victims of trafficking in human beings in criminal and other legal proceedings in Bulgaria, Slovakia and Romania

A Human Rights Based Approach

Joint regional report





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Trafficked Persons in Bulgaria, Romania and Slovakia with Emphasis on Legal Support“
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Foreword

This report is part of the 3-year project *“Promotion of the Rights of Trafficked Persons in Bulgaria, Romania and Slovakia with Emphasis on Legal Support – A Human Rights-Based Approach”*. The Project was financed by the Prevention of and Fight against Crime Programme of the European Commission - Directorate-General Home Affairs. The project was carried out by the Netherlands Helsinki Committee together with Animus in Bulgaria, Adpare and Pro Refugiu in Romania and Human Rights League in Slovakia.

The report provides a summary of the three national reports which were written in the first year of the project and which discussed the position of trafficked persons in criminal and other relevant proceedings, the protection of their rights and their treatment by the judicial system. It also includes the outcomes of a yearlong monitoring of court cases, carried out by the partner organisations. It is written in the hope to support NGOs, lawyers, law enforcement, judicial authorities, politicians and other stakeholders in their efforts to improve the protection of the rights of trafficked persons.

Despite increasing awareness that trafficking and the exploitation of human beings under forced labour or slavery-like conditions constitute severe human rights violations, states tend to focus on the prosecution and punishment of the perpetrators, while the protection of the rights of trafficked persons lags behind. Often victims are purely seen as an instrument for the prosecution with little regard for the far reaching impact testifying against their exploiters may have on their current and future wellbeing, safety and life.

One of the problems many countries have in common, including Bulgaria, Romania and Slovakia, is the lack of access of trafficked persons to legal aid. An adequate system which ensures that victims are informed about the relevant judicial proceedings and that their interests and rights are defended during criminal and other legal proceedings is missing. There are few lawyers trained in working with trafficked persons. State-funded legal aid is scarce and often limited to no more than the formal presence of a lawyer during the trial. Even if in theory victims have a right to claim

compensation for the damages they suffered, in practice such claims are rarely awarded and, if they are, hardly ever executed. Provisions that might protect victims are not effectively used and many actors in the judicial system, including police, prosecutors, judges and lawyers, lack knowledge about trafficking and its psychological, social and health impacts on its victims. As a result trafficked persons face major barriers in accessing justice and criminal proceedings often lead to their secondary victimization. At the same time, NGOs are not trained in providing legal counselling and only have limited funds to pay for legal aid and representation.

This project was developed to respond to some of the challenges listed above. It aimed at:

- Increasing the knowledge of lawyers and social workers about trafficking, its impact and the legal rights of trafficked persons
- Enhancing victims' access to legal counselling, aid and representation during criminal and other legal proceedings
- Increasing the capacity of NGOs and social workers to provide basic legal information and counselling to trafficked persons
- Enhancing the capacity of NGOs to effectively advocate for the protection and promotion of the rights of trafficked persons as victims and witnesses of a serious crime and human rights violation.

The first step was to map the current situation in regard to the position of victims in criminal and other relevant legal proceedings. To this aim a questionnaire was designed to guide the research, based on the minimum standards as laid down in EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, the CoE Convention on Action against Trafficking in Human Beings and other relevant international and European instruments. This resulted in three national reports on the current situation in Bulgaria, Romania and Slovakia.¹ These reports fed into national trainings of social workers and lawyers and acted as a basis for lobby and advocacy by the partner NGOs. The outcomes of the national researches were discussed in Round Table sessions with the relevant stakeholders, including law enforcement, judges and prosecutors.

¹ The reports and manuals are available at the website of Adpare <http://adpare.eu/> and Pro Refugiu <http://prorefugiu.org/en/> (Romania); Animus www.animusassociation.org (Bulgaria); and Human Rights League <http://www.hrl.sk/en> (Slovakia).

Based on the outcomes of the researches, a group of 15-20 social workers per country was trained to provide legal counselling and information to trafficked persons. Per country also 20 lawyers were trained to provide legal aid to trafficked persons and defend their interests and rights during criminal and other legal proceedings. For both groups manuals were developed. The trainings were followed by a number of expert meetings on different topics, depending on the national situation. The aim was to create a sustainable network of social workers and lawyers, able to provide legal counselling and aid to trafficked persons, which would continue to operate after the closure of the project.

During the project a leaflet was developed for trafficked persons to inform them about their rights. The leaflet was distributed among all actors that are or might come in contact with (potential) victims of trafficking, including NGOs, social welfare centres, police and embassies.

Next to the training of social workers and lawyers, a model was developed to systematically monitor court cases with respect to the treatment of trafficked persons and the protection of their rights and interests. The monitoring was carried out by law students who were specifically trained to this aim. Together with the legal analyses, the outcomes provide the relevant stakeholders with concrete recommendations on how to improve the situation of trafficking victims within the three legal systems in light of the relevant European and international standards.

In the third year a lobby & advocacy training was organized for the partner NGOs to optimally use the outcomes of the project for national, regional and international lobby & advocacy to enhance the position of trafficked persons in criminal and other relevant legal procedures. The training was followed by media events, Round Table meetings with national stakeholders, international experts and a selection of the trained lawyers and various other advocacy activities, depending on the country.

*Netherlands Helsinki Committee
Julia Koster and Marjan Wijers*

Introduction

This joint report is based on the national reports on the position of trafficked persons in criminal and other relevant proceedings and their treatment by the criminal justice system in Romania, Bulgaria and Slovakia, prepared by the project partners.

Next to an analysis of the legal provisions pertaining to the position of trafficked persons and their implementation, in each country court cases on trafficking were monitored during a period of one year. To this aim law students were trained and a questionnaire was developed focused on the treatment of victims. Questions included information on the parties in the court proceedings, legal representation of the victims, the protection of their privacy and safety, the manner of interrogation, their general treatment by the court, the prosecutor and the defence, the course and outcomes of the trial and compensation. The students were supervised by lawyers. *The outcomes of the monitoring are included in this report.*

In Romania 36 cases were monitored between November 2014 and October 2015: 18 cases before the Court of First Instance and 18 before the Court of Appeal. Some cases were monitored both in first instance and in appeal. The majority of cases concerned trafficking for prostitution/sexual exploitation (28). Other cases concerned trafficking for exploitation in agriculture or another industry (4) and forced begging (4). In total 104 defendants (75 men and 29 women) and 95 victims (57 women, 10 men and 28 minors) were involved in the monitored cases. Minor victims were mainly involved in cases of trafficking for prostitution (26) but also in trafficking for begging (2). In the begging cases also 2 adult female and 2 adult male victims were involved. All victims of trafficking for prostitution were female. In 28 cases both adult and minor victims were involved. In all cases the defendants were charged with trafficking in conjunction with formation of an organised criminal group.

In Bulgaria 40 court hearings in 4 different cities (Plovdiv, Petrich, Ruse and Varna) were monitored between May 2014 and April 2015. The hearings concerned 11 cases: 8 cases before the Court of First Instance and 3 cases before the Court of Appeal. Two of these cases were monitored both in first instance and appeal. All cases concerned trafficking for prostitution/sexual

exploitation. Eight cases involved the use of coercion, violence or deceit in accordance with the international and EU definition; three of the cases concerned consensual relations between adults.² In total 17 defendants (15 men and 2 women) and 26 victims (25 women and 1 man) were involved in the monitored cases. Two of the victims were minors at the time of the commission of the crime. In 4 cases the defendants were also charged with related crimes, such as kidnapping, deprivation of freedom, rape, possession of drugs, etc.

In Slovakia between January and June 2015 seven court hearings were monitored in 3 different cities (Presov, Nove Zamky and Michalovce). The hearings concerned 3 trafficking cases of, which two served before the Court of First Instance and one before the Court of Appeal. All cases concerned trafficking for prostitution/ sexual exploitation. In total 7 defendants (5 men and 2 women) and 19 victims (all women) were involved. The age of the victims at the time of the commission of the crime is not clear. However, one case involving 15 victims started in 2006, which implies that some of the victims must have been very young at the time that the case reached the court. The low number of monitored cases is caused by the small number of trafficking cases in Slovakia that reach the court, but also with the difficulties to access information on pending court cases. In addition 3 cases on smuggling were monitored on the presumption that smuggling cases may in reality be trafficking cases, as practice shows that this often happens. This hypothesis was not confirmed though: all 3 cases indeed related to smuggling.

Both the questionnaire that served as a basis for the legal analysis and the one used for monitoring court cases were based on European and international standards on the rights of trafficked persons, as contained in the following instruments:³

- UN Convention against Transnational Organized Crime and its *Travaux Préparatoires* (2000)

² According to the Bulgarian definition of trafficking the use of coercive or deceptive means is not required to qualify a case as trafficking.

³ For a more detailed overview of the rights of trafficked persons under EU law please see: *The EU Rights of Victims of Trafficking in Human Beings*, European Commission, 2013. Available at http://ec.europa.eu/anti-trafficking/EU+Policy/EU_rights_victims.

- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime
- Council of Europe Convention on Action Against Trafficking in Human Beings and its Explanatory Report (2005)
- EU Directive 2004/81/EC 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 (2004)
- EU Directive 2004/80/EC relating to compensation to crime victims (2004)
- EU Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (2009)
- EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (2011)
- EU Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography (2011)
- EU Dir. 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crime (2012)
- EU Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data (1995)

These standards are indicated in boxes at the beginning of each chapter. The instruments from which they are derived are indicated in the footnotes.

Abbreviations

CAT	Convention against Torture
CC	Criminal Code
CoE Traff Conv	Council of Europe Convention on Action Against Trafficking in Human Beings
CPC	Criminal Procedure Code
CRC	Convention on the Rights of the Child
Dir compensation	EU Directive 2004/80/EC on compensation to crime victims
Dir sanctions ag empl of illegally staying 3th country nationals	EU Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals
Dir sex abuse children	EU Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography
Dir temp. res. permit	EU Directive 2004/81/EC on a temporary residence permit for victims of trafficking who cooperate with the authorities
Dir THB	EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims
ECHR	European Convention on Human Rights
ECrHR	European Court on Human Rights
ICCPR	International Convention on Civil and Political Rights
ILO	International Labour Organisation
ILO C 143	Migrant Workers (Supplementary Provisions) Convention
ILO C 97	Migration for Employment Convention
PPS	Public Prosecution Service
UN TOC	UN Convention against Transnational Organized Crime
UN Traf Prot	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children
Victim Dir.	EU Dir. 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crime

1 Facts and figures

The prevalence of trafficking, at least the number of identified and prosecuted cases, varies widely between the three countries. In **Romania**, for example, more than 1000 victims of trafficking were identified in 2012 for various forms of trafficking (prostitution, pornography, forced labour in other sectors⁴, begging, petty thefts, etc.). The majority of cases concerned Romanian women – of whom more than half were minors – who were trafficked for prostitution. Cases concerned both internal trafficking (with a majority of minors) and cross-border trafficking (with a majority of adult women). In 2012 about 1000 victims in 676 cases were heard in the course of criminal investigations. The courts dealt with more than 420 trafficking cases: 161 persons were convicted for trafficking in adult persons, 255 for trafficking in minors and 11 for child pornography.

Also in **Bulgaria** the majority of (identified) cases concerns trafficking for prostitution. In 2012 the National Commission for Combating Trafficking received 574 complaints related to trafficking for prostitution, 71 to trafficking for labour exploitation (without specification of the labour sectors concerned), 1 to trafficking for servitude (without further specification) and 38 complaints related to the selling of babies. In total 684 victims were involved. The number of cases that was actually investigated and prosecuted, however, is lower as not all complaints are reported to the Public Prosecution Services (PPS) and, if reported, not all of them result in a criminal investigation. In 2012, the courts sentenced 110 person for trafficking. Re-trafficking happens on a regular basis. Roma victims are in an especially vulnerable position because if they escape forced prostitution they are mostly rejected by their family and community. The same goes for homeless people in the case of forced begging.

In **Slovakia** there are very little (identified) trafficking cases. According to the Information Centre on Combating Trafficking in Human Beings of the Ministry of Interior Affairs there were only 3 court cases in 2012, 2 on forced labour (without specification of the sector) and 1 on illegal adoption. The number of identified victims is slightly higher (25 in 2012, of which 23 are nationals), but according to the authorities most of the

⁴ The available statistics do not specify in which sector.

victims do not file a complaint. There exists a state program for assistance to victims. However, many victims do not want to make use of it. Moreover, there are concerns that it is only accessible for victims if a criminal investigation has actually started. In some cases especially foreign victims may be refused entry to the program, for example because the Public Prosecution Services (PPS) decides to prosecute for another crime, such as abuse of a close and entrusted person. According to the 2014 US TIP report Slovakia is a source, transit and destination country for men, women and children subjected to trafficking for prostitution, forced labour in agriculture and construction, forced begging and petty crimes, fraudulent marriages and benefit fraud. Slovak women trafficked for prostitution comprise the majority of cases. Especially women, men and children of marginalised Romani communities are a vulnerable group.

A joint problem is the lack of reliable and comparable figures. Different state institutions have their own system of collecting information and gather different types of data, while also the (interpretation of the) definition of trafficking varies considerable between the three countries, as will be discussed in the next chapter.

2 Criminalisation of trafficking in human beings

2.1 Laws on trafficking

All three countries have criminalised trafficking in human beings as a separate crime according to the definition of the UN Trafficking Protocol, be it with various deviations.

Bulgaria, for example, deleted the requirement of coercion or deceit from the definition of trafficking, defining the use of one of the special means⁵ as aggravating circumstances. This implies that any mediation for prostitution is considered trafficking, irrespective the use of coercion, deception or force and regardless the will of the person involved. This puts sex workers on the same level as children, as also for children the use of coercion or deceit is not required. In theory it also raises a problem in regard to the purpose of removal of organs as consequently, according to the definition of trafficking, any recruitment, transport etc. for the purpose of the removal of organs is punishable, also when this is done for medical reasons and with the consent of the patient. In practice, however, only cases of consensual sex work are prosecuted under the trafficking article. Many trafficking convictions therefore concern situations which not necessarily involve coercion or deceit and which before the introduction of the trafficking article would have been prosecuted under 'recruitment for prostitution'. For the other purposes, such as forced labour and servitude, this is not as much a problem because these are inherently coercive. In addition, clients of trafficking victims are punishable, as are clients of minor prostitutes. Trafficking for begging is currently not covered by the definition, but a proposal to change this is pending. Forced labour and servitude are not separately criminalised.

Romania criminalised trafficking in accordance with the UN and EU

⁵ These include coercion, deceit, kidnapping, unlawful deprivation of freedom, the use of a condition of dependency, abuse of power, through promising, giving or receiving profits, when the crime is committed with respect to a minor or when the victim is a pregnant women with the purpose of selling her baby.

definition. Trafficking of children is penalised in a separate article. In addition, facilitating the entry or stay of a trafficked person, the use of the services of a trafficked person, child pornography, the exploitation of forced begging and the use of children for begging is punishable, as well as forced labour and slavery.

Also the **Slovakian** article on trafficking is in line with the UN and EU definition and explicitly includes forced begging and abuse to commit crimes. However, although coercion or deceit is not required in the case of children, in practice there tends to be confusion whether or not consent is relevant in the case of minors, due to the way it is formulated in the law. This is especially problematic because children above the age of 15 may give valid consent to sexual activities with an adult. Likewise adults are not criminally liable for engaging in sexual activities with children above 15, given the child's previous consent. Forced labour and servitude are not separately criminalised, but are prohibited in the Constitution.

A problem in all countries is the overlap of the trafficking article with other articles, such as pandering (with the use of coercion), unlawful deprivation of liberty to force somebody to prostitution and child pornography in Romania; recruitment for prostitution and illegal transplantation of organs in Bulgaria; and child labour, illegal adoption and procuring of minors in Slovakia.

2.2 Laws on prostitution

All three countries have criminalised pandering, procuring and/or profiting from the prostitution of another person. Sometimes these articles are used in trafficking cases when it is difficult to prove deceit or coercion and/or easier to fall back on one of the other articles. In addition, Slovakia has criminalised 'corrupting good morals of youth'.

In **Romania** sex workers themselves are punishable. Prostitution used to be a crime under Romanian law, but recently this has been changed into an administrative offence. Also minors can be convicted for prostitution. In 2012, 42 women were convicted for prostitution, including one minor. The latter is in violation of the Convention on the Worst Forms of Child Labour, which defines prostitution as one of the worst forms of child labour, from which children should be protected rather than punished.

Sex workers themselves are not directly criminalised under **Bulgarian** law, but 'earning an income in an immoral way' is.⁶ After having been a dead norm for years, this is again increasingly used in practice against sex workers, especially street workers. In 2012, 66 women were sentenced for prostitution.

A similar situation exists in **Slovakia**, where prostitutes are not criminalised but can be prosecuted and jailed for 'offending public morals', 'endangering public health or safety' and 'riotous conduct'. This is a rather general practice. Especially problematic is the overlap between the trafficking article and the procuring article in relation to minors. This has particular consequences for the identification and prosecution of child trafficking cases. Sexual intercourse with or sexual abuse of children younger than 15 is punishable.

In both Romania and Slovakia consent to prostitution is considered to be consent to coercion and abuse. According to the interpretation of the article on trafficking of the **Romanian** Supreme Court, sex workers cannot become a victim of trafficking. When the victim is a sex worker or knew she would work in prostitution the case is qualified as pandering (with the use of coercion as aggravated circumstance) and the victim is considered to be co-perpetrator and accordingly punished. This implies that sex workers are not protected against trafficking and can be trafficked and exploited with impunity. This reasoning only applies to trafficking for prostitution. In the case of trafficking for the purpose of, e.g., domestic labour, it is not considered relevant whether or not the person worked as a domestic worker before or knew she would do so.

In **Slovakia**, in theory, sex workers can (legally) become a victim of trafficking. However, in practice they are not considered to be trustworthy or reliable witnesses, in line with the public conception that prostitutes are morally corrupted women: "She knew what she was going to do, it just went wrong". It is therefore considered to be their own fault. The same reasoning is upheld in many cases of female victims of domestic violence, rape or other sexual offences, but sometimes also in cases of domestic or

⁶ Literally the article reads "A full age person who continuously remains uninvolved in publicly useful labour, receiving non-labour income in a forbidden or immoral manner, shall be punished..."

agricultural workers in degrading conditions. The widespread conception is that they “sought trouble”, that “it was their fault”, and that “they contributed to the fact that it all went bad”.

2.3 Publication of case law

In Bulgaria there are two privately run websites that collect and publicise case law. In addition, the National Commission for Combating Trafficking publicises news about arrests, investigations and court sentences in trafficking cases. In Slovakia all court decisions in first and second instance are published and easily accessible through state run websites. Judgements of the Supreme Court are published on the website of the Supreme Court, but the search system is not user friendly. Romania has two online portals that provide information on national jurisprudence. The first one is the result of a EU financed project under the criminal justice program, the second is managed by the Superior Council of the Magistracy.

3 General position of victims in criminal proceedings

One of the general problems is finding the balance between the interests of the prosecution and the rights of the suspect(s) vs. the rights and interests of the victim.

In **Bulgaria** a significant problem is the use of the initial (administrative) interview with the victim, carried out by front line police officers and meant to identify and inform the victim, as a classic criminal interrogation, despite the fact that the information from such interviews cannot be used as evidence in the criminal proceedings. As a result the guarantees under the Criminal Procedure Code to avoid re-victimisation of the victim are not observed. In addition it is often unclear for the victim if he or she is interviewed as victim or accused, in particular in the case of trafficking for prostitution or theft. One of the reasons is that victims often disappear after the initial interview or cannot be found anymore, so police tries to immediately get as much information from the victim as possible. Complaints filed by trafficked persons are taken with different degrees of seriousness, depending on the region and the different levels in the policy hierarchy.

Other problems are the lack of access to legal aid and representation, the large number of interrogations and the excessive length of proceedings. Both the pre-trial investigation and the trial can take years. The case can be endlessly dragged out by the suspect(s) and their lawyer(s) simply by not appearing at court hearings – a strategy which is widely used to postpone the case. One of the consequences is that victims lose faith in the judicial system and withdraw their statement. According to 2012 figures of the National Commission on Trafficking 95% of the victims withdraws or changes their statement by the time that the case reaches the court. Interestingly, according to Animus, victims generally have more faith in foreign legal systems than in the Bulgarian one.

Also in **Romania** the length of the criminal proceedings constitutes a problem. Cases can take years before a final verdict is reached. As is Bulgaria, the reflection period is often not respected and victims are heard by the police very soon after their escape from the exploitative situation without

a prior meeting with a lawyer or social worker. Other problems are the lack of adequate legal aid and representation in court, the lack of specialised judges, the trial of trafficking cases in open court, the hearing of victims in front of the suspect(s), and the publication of the names of victims. As a consequence of the lack of protection and the way they are treated by the judicial system, many victims change or withdraw their statement during the investigation or trial. A major problem in providing protection and assistance to trafficked persons is the bureaucracy, the multitude of regulations and parties involved, the lack of coordination between the different actors involved (various Ministries, the National Anti-Trafficking Agency, law enforcement, aliens' police, etc.), the lack of harmonisation and implementation of the different laws and regulations pertaining to (victims of) trafficking and the lack of budget. Ministries are assigned responsibilities, but no budget to fulfil them.

One of the problems in **Slovakia** is the dual interview system: initially the criminal police questions victims/witnesses, but they are not allowed to conduct formal evidential interviews with victims/witnesses and suspects. This must be done by the judicial police, which means a duplication of the interrogation by the police for the victim. Other problems are the routine confrontation of adults victim with the suspect(s), the lack of legal aid and representation of victims of trafficking in the criminal proceedings, and the frequent treatment of victims as someone who is guilty her or himself for what happened to them.

4 Access to legal aid

Victims have the right to (free) legal aid to protect their rights, to inform them about their role in the proceedings, to defend their interests and to have their views heard and considered in the criminal proceedings. This includes civil or other proceedings to claim compensation for the damage suffered. Access to legal counselling should be provided without delay.⁷

In all three countries access to qualified legal aid for trafficked persons is a problem. Although they all have some system of state subsidised legal aid, in practice this barely functions. At the same time victims are largely dependent on state appointed lawyers. Moreover, there are very few lawyers trained in representing trafficking victims.

According to the **Romanian** Anti Trafficking Act victims of trafficking may benefit from obligatory legal assistance. However, this only applies to the trial. When the victim cannot pay a lawyer, the judge will appoint a state lawyer. The right to free legal assistance does not apply during the criminal investigation nor to related procedures (e.g. on compensation, divorce or guardianship issues). This is particularly important as victims have to choose in the very beginning of the criminal proceedings between the status of witness or injured party. Romania does not know the figure of victim-witness: the victim is either witness (like any other 'third party' witness) or injured party. If the victim chooses the status of witness, she or he cannot benefit from the rights of the injured party, such as an appointed lawyer, joining a claim for compensation to the criminal case or submitting a request for closed court sessions. In principle the prosecutor decides about the legal quality of the victim, but the judge can change this during the trial.

Wherever available victim/witness coordinators or social workers try to fill this gap and provide information and support, also to ensure that justice is done and to reduce the number of victims changing their statements, dropping charges or renouncing to appear in court. In some cases NGOs

⁷ Art. 6 UN Traf Prot.; Art. 12 and 15(2) CoE Traf Conv; Art. 12(2) EU Dir THB.

offer legal aid through their own lawyers. The majority of victims, however, is dependent on state appointed lawyers. In principle legal aid is only granted if the victim notified the law enforcement agencies or the court within 60 days from the date of the crime. This does not apply to minors.

State appointed lawyers are generally overburdened and poorly paid, they do not or hardly communicate with the victim concerned, have little interest in defending the interests of the victim and are only obliged to be present at the court hearings. Due to the system, the difference that is made between various kinds of legal assistance and the length of criminal proceedings (3-5 year), in many cases the lawyer changes several times during the course of the proceedings. It also happens that after a number of hearings the victim lawyer changes position to act as lawyer for the defendant. There is a lack of specialised lawyers.

Most of the victims in the monitored cases had state lawyers. Many of them were not active in explaining their clients the legal procedures and their rights and manifested a lack of interest towards the victim's situation. They did not discuss too much with the victim before the sessions, did not have questions or objections and had no strong knowledge on the rights to which victims are entitled in court procedures. They were more a physical presence in the room. Most victims had no proper knowledge of the procedures in court and their rights. Their representation in court by state lawyers was mostly purely formal; they saw their state lawyers only in court for a few minutes. In the case of the few victims who had a chosen lawyer the attitude of the lawyer towards the victims was more pro-active, with more interest to defend their rights in the court.

In **Bulgaria** victims of trafficking have the right to be legally represented during the criminal proceedings. To qualify for free legal representation, the victim must prove that he or she does not have the financial means to pay a lawyer and it must be in the interest of justice. Moreover, the court can appoint an attorney to the victim *ex officio* if she/he cannot afford to pay the legal bills, wishes to be represented and this is in the interest of justice. In addition, the Victims' Assistance and Financial Compensation Act provides explicitly for free legal aid to victims of trafficking under the same conditions.

In practice, however, the investigation and prosecution authorities do not inform victims of their right to be legally represented. One reason is that they consider the victim as a witness only and not as a party in the proceedings – civil claimant and private prosecutor. Another is that the presence of an attorney during the investigation would bring transparency into their job. This is something which the authorities prefer to avoid, as is obvious from the victims' statements after the court proceedings when some of them were interviewed why they were not legally represented. During the pre-trial proceedings, victims rarely understand that they have the right to be legally represented and to free legal aid.

Further, it is rather difficult for victims to actually receive free legal aid, in particular because the system is so bureaucratic that it is almost impossible to submit an application for free legal aid, and certainly something that is impossible to do for a victim on her or his own. Moreover, the domestic case law concerning the criterion 'in the interest of justice' has not been developed. In addition, under the Legal Aid Act, the bar associations keep a separate register for attorneys who specialize in criminal law, but not a separate register for attorneys who wish to represent victims only. In general the quality of state funded lawyers is low and their payment poor. Moreover, lawyers are not knowledgeable about victim rights. In practice very few victims apply for free legal aid and are consequently not represented by a lawyer during the criminal proceedings.

In none of the monitored cases the victim requested free legal aid. Only in one case, monitored in both first and second instance, the victim was legally represented. This is despite the fact that local commissions for combating trafficking in human beings are operating in two of the cities where the monitoring took place, and the existence of local state funded crisis centers for victims of domestic violence, as well as NGOs offering services for victims of trafficking.

Formally victims have the possibility to consult a lawyer before they decide whether or not they want to file a complaint. In practice this possibility is never used. The earlier, however, the stage of the criminal proceedings, the greater the need for legal advice. In most cases the first interview by the police is done without the support of a lawyer or social worker and without

the victim having been informed about their rights. Often the police tells victims that it is their own fault, that they are themselves responsible and/or that they do not deserve help because they are prostitutes. It is no exception that the police uses vulgar language against victims. Many victims disappear from sight after the first hearing by the police or refuse further cooperation.

The early participation of a lawyer in the investigation is valuable not only as a guarantee against degrading treatment and incriminating questions, but also in relation to a future compensation claim, for example to request the freezing of assets of the trafficker(s). However, the widespread understanding is that lawyers are only needed when the case is brought to court. NGOs try to compensate the failure of the state funded system by providing at least basic information to victims on their rights and supporting their clients throughout the criminal process, but they are not legally trained nor qualified to legally represent victims. In some cases NGOs pay lawyers for their clients, dependent on funding by foreign donors. The lack of accessible and competent legal aid for victims of trafficking might be one of the reasons for the poor number of indictments.

A specific problem is the position of children in criminal proceedings. In most cases they are sold or exploited by their parents or relatives. This puts children in an impossible position and raises the question who will ensure that their rights and interests are defended in the criminal proceedings. Although children have the right to a lawyer, there is no clear practice how children can access legal aid.

Also in **Slovakia** victims lack access to legal aid and representation. The Centre for Legal Aid is in charge of providing free legal aid for people in material need, but solely covers the provision of legal aid in civil and administrative procedures, not in criminal procedures. Victims of trafficking are only entitled to free legal aid in criminal procedures if they claim compensation for damages and only once charges have been brought. In that case the judge, on the proposal of the prosecutor, may appoint an attorney when the victim can prove to have insufficient income to pay for a lawyer her or himself and it deems necessary to protect the interests of the victim.

Although the Program for support and protection of victims of trafficking is deemed to also provide legal aid, in practice there is no funding to do so even if the assisting organisation wants to refer the victim to a lawyer. At the same time, most NGO and state social workers lack legal training and are therefore not able to provide basic legal information and support. The lack of information may consequently cause victims to be afraid to initiate criminal or civil proceedings. In practice victims of trafficking rarely decide to file a criminal complaint or initiate civil proceedings. Many NGOs also experience secondary victimisation of their clients through the criminal or civil proceedings.

Moreover the number of lawyers who have developed expertise in representing victims of trafficking is still low and their services are expensive. Although some of them from time to time take cases on pro bono basis, this is no structural solution. In general, due to the small number of cases and the extremely lengthy and complex proceedings there is little motivation to specialise in this area. In practice victims are mostly supported by service providers from NGOs. These are also allowed to act in criminal proceedings on behalf of the victim/injured party when certain conditions are fulfilled. The proxy may legally represent the victim/injured party, submit evidence, file requests and claim compensation for damages. There is no requirement for the proxy to be legally trained.

In the case of children the legal guardian can authorise an organisation to act as the child's lawyer. If the child does not have a legal guardian, he or she is placed in foster care, or if the parents are involved in the trafficking, the court will appoint a guardian for the purpose of the criminal proceedings. However the Criminal Procedure Code (CPC) does not specify the reasons for appointing a guardian for a child victim. The legal guardian may appoint a lawyer for the child, but in practice this seldom happens.

In two of the monitored trafficking cases the victims had a lawyer from HRL, in the third case the victims had no lawyer.

5 Right to information

Victims have the right to information, in a language they understand, about their status, their rights and the relevant judicial and administrative procedures, including information on available remedies.⁸

In all three countries the right to information of victims is not or only very minimally guaranteed.

In **Romania** victims are in practice informed about their rights and the applicable procedures by the institution carrying out the identification (law enforcement or prosecutor), the National Agency (NAATIP) or the NGO service provider. However, even if they are informed about their rights during their first encounters with law enforcement, they are rarely explained how to obtain them. Moreover, it is so complicated to actually realise them that it borders to the impossible. In other words, on paper victims have a number of rights, but in practice these are more or less meaningless. Often victims are viewed as objects rather than as human beings with needs and rights. As they cannot consult a lawyer during the criminal investigation they are often not adequately informed on the relevant procedures before the trial starts.

In the court the victims were briefly informed about their rights. The judges presented in general few information about the procedures that would take place in those particular court sessions. If there were issues the victims did not understand, the judges made a brief additional explanation.

In **Bulgaria**, despite the obligation of the police to inform victims about their rights once they are identified as such, this is very rarely done in practice. Interviews with victims show, for example, that they are not informed about the right to a reflection period and often have no idea about the proceedings and their role. The most important source of information for

⁸ Art. 6 UN Traf Prot; Art. 12 & 15 CoE Traf Conv.; Art. 12(2) EU Dir. THB; Art. 4 and 12 EU Victim Dir.

trafficked persons are other victims and NGOs. Most NGOs, however, are not experts when it comes to criminal proceedings.

Often the police omits the first step of an informative interview, aimed at the identification of the victim and informing her or him about his or her rights, and forces the victim to immediately give a statement, without their being adequately informed about their rights, including the right to a reflection period and free legal aid.

It was not clear in the monitored cases what type of information the victims had received on the proceedings and their rights before the judicial stage of the process. In only one case the victim was properly informed by the police during the investigation stage about her rights, including the right to compensation.

Furthermore, victims are formally informed in writing about their procedural rights at the end of the investigation and in the summons for the first hearing. Most often victims do not read this or do not fully understand it without further explanation.

In court, the judges gave information to the victims only in their capacity as witnesses. Only one of the victims, who was represented by a lawyer in both first and second instance, was recognised as a party (both as private prosecutor and civil claimant). The other victims were solely questioned as witnesses, which deprived them of their rights as victims, including legal and psychological/social support, as well as from access to compensation.

In **Slovakia** the police and/or prosecutor is responsible for informing victims in writing about their rights, but many victims do not file a complaint and consequently are not informed about their rights. However, if they do, the information by the police is provided in a very formal way, usually just by handing over a written form. In practice NGOs inform victims, but they are not legally trained and have little legal knowledge criminal proceedings, claiming compensation and immigration law.

There are no special provisions in relation to children, they get the same information as adults.

6 Right to protection of privacy and safety

Victims have the right to protection of their private life and identity. They have the right to request that their life and identity are protected during criminal proceedings and that the press and public are excluded from the court room. States should especially take measures to ensure that the identity of child victims is not publicly made known.⁹

In general little attention is paid to the protection of the identity and privacy of the victim. Public and media are rarely barred from court hearings, also during the testimony of victims, and the personal data of victims is publicly disclosed.

In **Romania** trafficking cases are as a rule dealt with in public court hearings, with the exception of cases in which minors are involved. However, if in a case both adult and minor victims are involved, the case will be treated in open court sessions, including the public disclosure of the personal data of the victim(s), such as name, address, birth date, family status, medical history, etc. Indictments and verdicts are published on publicly accessible judicial websites and contain the full name of the victim(s), irrespective of whether they are minors or adults. Moreover, calls to testify are not sent in (closed) envelopes, which means that even the postman can read them.

In almost all monitored cases the full names of the victims were publicly disclosed, appearing on the list with cases published at the entry of the court room and on the court's website. At the beginning of each court session the full names of the victims were mentioned in public court sessions. In one case the victim acted as witness (and not as injured party) and her full name did not appear on the list.

In various cases the judges kept the court session open when the injured parties were both adults and minors. There were, for example,

⁹ Art. 6 UN Traf Prot; Art. 11, 12(2) and 30 CoE Traf Conv.

cases in which from the 4 victims 1 was adult and the other 3 minors and in which the court was public. This implied that there were people present in the courtroom who were involved in other cases, waiting for their turn and at the same time listening to what was happening in the human trafficking cases. Many times in these public sessions it was a continuous coming and going in and out the court room which was very distressing for the victims, especially if they had to give a statement or answer to the judges' questions.

None of the victims/injured parties benefitted from special questioning procedures (separate rooms, audio-video means). For this reason, in the case of minors, the declarations were unclear, lacked consistence and coherence and were limited to a brief mentioning of the events, sometimes without keeping the chronology.

In two cases, the judges did not show a respectful attitude towards one of the victims, making gestures and speaking in a cynical tone.

Also in **Slovakia** it is common to hear the victim in open court. Although it is possible to conceal the identity of the victim or keep it confidential, in practice this is rarely applied.

All monitored court sessions were open to the public, including the media. With one exception, all victims were heard in open court and their personal data was publicly disclosed during the hearings, including their full name, address, personal history and health status. This included the address of the shelter in which one of the victims stayed, which may not only endanger the victims but also the personnel of the shelter.

In **Bulgaria** cases of trafficking for sexual exploitation and cases in which minors are involved are in principle heard behind closed doors. The court can apply the provisions concerned on its own initiative, without the need of a specific request on behalf of the victim or the lawyer. Both the CPC and the Action against Human Trafficking Act provide that the personal data of the victim are kept secret and her/his anonymity guaranteed. In practice this seldom happens.

During the monitored trials no measures were taken to protect the privacy and identity of the victims. In all cases the identity and personal data of the victims were publicly revealed during the court hearings. In most cases this included their full names, date of birth, place of living, place of work and their identification number. In one case the publication of the court judgement on the website of the judicial body concerned included the full names of the victims instead of their initials, as the law requires.

Almost all court hearings were held in public, thus every person present in the court room could obtain the details of the victim's personal data and life. Only 5 of the 40 hearings were held behind closed doors. The courts used this procedure when special investigation techniques were used (4 cases) and when, on their request, facts about peoples' intimate lives should be kept secret (1 case).

7 Right to witness protection and to be treated with respect and dignity; avoidance of secondary victimisation

Victims have the right to be treated in a respectful, sensitive, professional and non-discriminatory manner. If they testify in criminal proceedings they have the right to effective protection from harm, threats, insults, intimidation and any other assault by the offenders, their family or other associated persons before, during and after the investigation and prosecution. This may include giving testimony in a way that ensures their safety and protection of their identity during legal proceedings.¹⁰

Member States must ensure that victims of trafficking receive specific treatment aimed at preventing secondary victimisation by avoiding as far as possible unnecessary repetition of interviews; visual contact between victims and defendants; giving of evidence in open court; and unnecessary questioning concerning the victim's private life.¹¹

In the case of children interviews should take place without unjustified delay after the facts have been reported to the competent authorities; in premises designed or adapted for that purpose; by trained professionals and if possible by the same persons. Moreover, interviews should only be carried out where strictly necessary and the number should be as limited as possible. Special attention should be given to protection of minor victims against additional trauma resulting from the criminal proceedings, incl. access to a free lawyer. In all actions in regard to children the best interests of the child should be taken into account.¹²

¹⁰ Art. 25 UN TOC; Art. 6 UN Traf Prot; Art. 12(2) 28 & 30 CoE Traf Conv; Art. 12 Dir THB; Victim Dir.

¹¹ Art. 12(4) Dir THB.

¹² Art. 15(3) Dir THB; Dir sex abuse children; Art. 28 CoE Traf Conv.

The **Romanian** Criminal Procedure Code offers several possibilities to protect victims, including hearing the victim behind closed doors, outside the presence of the suspect or through video or audio link, exclusion of the public and/or the media from the court room, keeping the address or the identity of the victim secret, and providing physical protection. However, in practice these are not or hardly used. As a rule victims are interrogated in open court in the presence of the suspect(s). As a result victims sometimes withdraw their complaint. Direct confrontation between the victim and the suspect is possible, but does not often happen. If a victim acts as witness he or she is not entitled to protection measures, such as closed hearings. However, the judge can decide to change his or her status to that of protected witness. At the other hand, if the victim has the quality of protected witness she or he can lose this if the judge decides to change her or his status to injured party.

As a rule victims are interrogated 3-4 times by the police, 1-2 times by the prosecutor, and once during the trial. Court sessions often start with significant delays or are postponed due to tactics of the defence to gain time.

There is a special program for victim/witness coordination aimed at coordinating the activities of the different state institutions, authorities and assistance providers involved. Elements of the program include maintaining contact with the victim, providing victims with information about their rights and the available services, updating them about developments in the criminal proceedings and the provision of support in the different stages of the proceedings through the social assistants and psychologists of the National Agency (NAATIP).

There is a lack of specialised judges and in some cases the attitude of the judge is influenced by the social status of the victim. Often victims are intimidated or threatened by the suspects and/or their family or associates before, during or after the trial. However, there are few protection measures available outside the court.

During all monitored sessions gendarmes were present in the court room to maintain order. In most monitored cases there were no special measures to protect the safety of the victims before and after the sessions. In two of the trafficking in minors' cases the victims, who were

accommodated in specialized facilities, were escorted to and from the court by representatives of the National Agency against Trafficking in Persons and the gendarmerie.

In all cases the victims had to give their statement in public sessions. The questions were linked to the exploitation to which the victims were subjected. None of the parties (or their lawyers) posed inappropriate questions. In general the victims tried to stay calm but from their facial expression one could observe the uncomfortable feeling they had when talking about the exploitation. The public present in the court room kept a civilized attitude, there were no comments towards the victims. Even in the case of minor victims no special protection measures were taken, such as interviewing them from special rooms or by audio-video means. Particularly in the cases of minor victims their discomfort and uneasiness following the questions raised by the defendants' lawyers was noted. Questions intended to doubt the consistency of the declarations they had provided earlier before the prosecutor.

Most of the judges had a polite, professional attitude towards the victims. In one case, however, the judge showed a rigid and by times cynical attitude towards the victim's situation. From his attitude and words it seemed he had a preconceived idea that the minor was not in fact a victim of sexual exploitation, but rather had accepted to perform sexual acts with other men. The judge even addressed a question in the public session, while laughing a little, to one of the defendants asking him how it was to share his former girlfriend (the minor victim) with other men. Nobody from the persons present (lawyers/prosecutor) took offense to the judge's behavior.

In another case of trafficking of minors for sexual exploitation, the judge approached the victim with a cynical attitude by assuming that she had in fact used some of the money she produced by prostituting herself, finding it hard to believe that the entire amount of money would have been used by the trafficker.

The prosecutors had a more active role in cases in which minor victims were involved along with adults. In the other cases they just agreed with what the judge decided. They had quite a passive role in the court,

having very few questions or aspects that they considered to need clarification. There were no interactions between the prosecutor and the victims.

In most of the cases the lawyers of the defendants did not try to approach or talk directly with the victims. In court the questions were addressed through the judge. In one trafficking in minors case the questions addressed by the defendants' lawyer on the victim's consent and the family's acceptance of her involvement in prostitution were approved by the judge, even though the prosecutor requested them not to be considered.

There are several specific provisions for minor victims. Hearings of children should take place behind closed doors, in the presence of the parent of legal representative and with the support of a child psychologist or a representative of the Child Protection Directorate.

A major problem in **Bulgaria** is the number of interrogations of victims, in which they have to recount all the details again and again, including direct confrontation(s) with the suspect(s). Although the Court strives to reduce the number interrogations of the victim to a minimum, this is not the case with the pre-trial investigation authorities. The average number of interrogations during the pre-trial investigation is four, but there are cases known of children being interrogated seven times. The interrogations are severely traumatising and no measures are taken to prevent re-victimisation. Direct confrontation between the victim and the offender(s) is common and seen as an important means to establish the truth. In many cases there are several suspects, which can mean that the victim is subjected to confrontation with a series of offenders. The police interrogators are mostly men.

During the trial the victim has to testify at least once but sometimes several times, often in open court, unless the accused confessed to the crime. There are no separate waiting rooms for victims and victims are regularly threatened and intimidated by (family members of) the suspect during the trial or put under pressure to withdraw their statement, sometimes against payment. The defence is allowed to question the victim about her/his (sexual) history. This is generally considered to be important evidence, despite the fact that the Supreme Court of Cassation held that the question what

kind of work a person did before she became a victim of trafficking (in this case whether the victim worked as a prostitute) is irrelevant.¹³ Formally there is no possibility to accept pre-trial testimonies as evidence in the trial in the case of adult victims.

Under the Bulgarian legislation, two kind of witness protection programs exist. According to the first one, personal physical guards can be assigned to the witness and/or the identity of the witness can be kept secret. This type of protection is temporary. The second protection program is under the Protection of Individuals Threatened in Connection with the Criminal Procedures Act. Such protection can be temporary or permanent and may include physical protection of the witness and/or his/her property, accommodation in a safe place, a change of place of residence, job or school, as well as a complete change of identity. The first is sometimes applied, especially in the case of minors. The latter is rarely used. Sometimes the victim has a fixed state official with whom she or he keeps in constant contact. This considerably adds to a feeling of security.

Most of the victims in the monitored cases were questioned in the presence of the suspects. In addition, most of them were questioned multiple times. In most cases the victims were completely alone during the hearings, without any support of a family member, social worker, psychologist or a lawyer. In one case the victim was accompanied by her mother, but the latter was not allowed to enter the court room as the hearing was held behind closed doors.

The judicial authorities, the prosecutors or police did not take any measures during the monitored cases to protect the safety of the victims. Neither was the option for victims under the Combating Trafficking in Human Beings Act applied to be granted special protection, given that she/he agrees to cooperate with the authorities of the pre-trial procedure to disclose the perpetrator.

In only one of the cases at the Court of Appeal, the victim received support by the court but only in order to secure evidence. In this case the victim was accompanied by the Judicial Police in order to undergo a

¹³ Judgement of 9/11/2011, case 2510/2011.

combined psychological and psychiatric examination in the interest of the proceedings. This is a specialized medical conclusion to be drawn by an expert on her medical and mental status after the trafficking for sexual exploitation was committed. She was later accompanied by the Judicial Police to her relatives in order to ensure her safety.

In general, as most of the victims were, one way or another, involved in prostitution before they were trafficked, all parties in the court proceedings lacked sensitivity towards them, perceiving them as 'just prostitutes' who obviously did not require the same respectful treatment as other victims.

At the hearing of one of the cases at second instance in Plovdiv, the victim was questioned by the defendants' lawyers about her sexual habits and taste, as well as how she could have been raped when she is a prostitute. There was also a question about the usual number of men she was having intercourse with during her 'working day'. The court and the prosecutor, however, strongly opposed to such questions. They were not allowed and the victim did not have to reply. Both the court and the prosecutor were sensitive towards the victim during their interrogation. Nevertheless, from time to time, all parties in the proceedings were treating the victim as 'just a prostitute' and not as a victim. The motives of the court verdict partly expresses the attitude of the parties and the society as a whole, stating that this trafficking case is not a 'classic' one as the victim was a prostitute at the time of the trafficking, so she was to expect some negative behaviour on behalf of her male clients. Although a guilty verdict was pronounced, the relatively low punishment is in itself an expression of such attitude.

In another case which involved 6 victims, one of whom a man, all of them were questioned rudely in the court room as they were involved in prostitution at the time the trafficking took place. Because they did not cooperate with the authorities by not being present at the hearing when they were summoned, some of them were fined with 100 BGN and were forced to testify through the Judicial Police. The court did not take into account their statements that the police officers who interrogated them in the beginning of the proceedings had forced them to make particular statements.

In one of the hearings of a case involving two victims, the judge made a statement after the questioning of one of them saying: "You are in between the ditch and the sidewalk but, surely, sooner or later, you will fall in the ditch as you are a prostitute at the age of 20 and you are arrogant and brutal".

In contrast, in a case when the victim was no longer a prostitute but had a regular job, family and children, the parties questioned her with more respect to her dignity.

Neither the judicial authorities nor the prosecutor or police took any measures to protect the safety of the victims during the monitored cases. None of the victims was protected during the court sessions. In two of the monitored cases the victims testified that after the beginning of the penal proceedings they were pressured by the defendants, or their friends and relatives to change their testimony.

In most of the cases the court hearings were delayed due to the defendants' lawyers. The lawyers, e.g., were often getting 'sick', for which reason the court was not able to conduct the hearings as the defendants expressed their will to be legally represented by their lawyers, or they submitted irrelevant procedural requests. Several times the lawyers requested irrelevant information, which the court, however, allowed every time.

With the exception of one case the parties – judges, prosecutors and lawyers – communicated unofficially between themselves in and out of the court room and expressed almost friendly relations and knowledge of their personal lives: they had each other's phone numbers, discussed common vacations, common friends, common relatives, etc. In one of the cases, the judge was asking, unofficially, the prosecutor and the defendants' lawyer to make an agreement because she was not in a mood to decide the case.

Very often the prosecutors in the cases changed which led to confusion as they did not know the facts of the case and made irrelevant requests and remarks.

Since 2010 the CPC provides that a child victim who was interrogated in the pre-trial investigation in front of a judge and in the presence of the accused and his/her lawyer shall not be interrogated again during the court stage. In practice the interrogation of children takes place in a so called 'blue room' (a one way mirror room). The interrogation is videotaped and later used in the court case.

Like in Bulgaria also in **Slovakia** victims are heard multiple times: first by the criminal police, then by the judicial police, next by the prosecutor and finally during the trial. The dual interview system (criminal/judicial police) makes interviews prolonged and necessarily involves changes in interviewers. In some cases police officers try to work together when planning interviews to reduce duplication. There are few units officers specialised in hearing vulnerable witnesses, including trafficking victims and children. The interrogation is often done by inexperienced police officers, interviews are carried out in a patronising manner in an atmosphere of distrust and victims are seen and treated as suspects. Often a psychological/psychiatric vetted expert opinion on the victim is requested. There are only one situations known where the same was asked for the suspect.

The law provides for several possibilities to protect victims. It is possible to keep the identity of the victim confidential if disclosure would put a risk to the life, health or physical integrity of the witness or that of persons close to him or her; there is a witness protection program for threatened or protected witnesses (which is not accessible for foreign victims); and it is possible to not provide the personal data of the victim/witness and to hear the victim outside the presence of the accused or in closed court. It is also possible to hear the victim through audio-visual means so that he or she does not have to testify again at the trial. However, these provisions are rarely used. Face-to-face confrontations between the victim and the offender(s), both during police interrogations and in court, are routine and considered to be an important method in case of discrepancies between the statement of the victim and that of the offender. In the pre-trial stage, the investigating police officer has the legal duty to remove inconsistencies in the accounts of the parties so he may decide at his/her discretion to call a confrontation, where the victim directly meets and is confronted with the defendant. The prosecutor may order the investigator to carry out a confrontation if deemed necessary. The prosecutor may also not allow

a confrontation to take place if the victims is considered to be vulnerable, however, this depends on the views of the prosecution.

Victims can also encounter the suspects and their associates in the hallway of the police station or the court building or they have to wait in the same waiting room.

In the Presov case the victim was regularly confronted with the defendant while waiting in the corridor of the court room. In this case the lawyer requested the victim to be heard outside the presence of the suspect, which the judge allowed at the first hearing. During the first and final court hearing, on her request, the victim was accompanied by two police officers of the Unit to combat illegal migration which also investigates trafficking cases. Their presence significantly helped the victim to overcome her fear. However, even though the victim could testify in the absence of the defendant in one session, in the other sessions the defendant was present. The victim was present at all 5 monitored sessions and continued giving her depositions. The presiding judge was at the beginning very unpleasant and insensitive to the victim in his behaviour. For example, at the first hearing, after the victim had given her statement (which she also already had given in the pre-trial investigations) the judge commented: "If I find out that you are lying, I will make you pay for that". He also was rude and put her under pressure because she could not remember the exact date when she was served with the summons. During her testimony in the following hearings, the presiding judge changed his behaviour a bit to the better. However, he insisted on her repeated testimony despite the objections of the victim's lawyer. The victim was most of the time afraid of the presiding judge. The presence of her lawyer and the monitoring HRL lawyer, as well as the presence of her social worker and two police officers she trusted, much helped to empower the victim. Also the prosecutor played an active role, she asked questions in a sensitive manner, was considerate and her treatment of the victim was not prejudiced. Vetted expert opinions on the psychological health of the victim were crucial in this case as they served as basic reference for the court regarding the credibility assessment of the victim. After the judgment was pronounced, one of the jurors approached the victim in the corridor in front of everybody present and said loudly "And to you: I do not believe you" and left.

In the Michalovce case none of the three victims had a lawyer. The defendant was not present since she lived abroad. Despite her absence, the victims felt intimidated by the court. They could not defend their rights properly and had problems in expressing themselves, partly due to the language barrier (they were Romani, spoke Hungarian and Romani and did not speak Slovak well; they had Hungarian interpretation). Other reasons were the fact that they had little education in combination with coming from a discriminated against Romani community.

During their questioning in open court, the judge asked the victims questions relating to their sexual life and trafficking experience which were very detailed, victimizing and not necessary for the evidence of the case. The court also commented at one point "They sell it and weigh it as merchandise over there", referring to the statement of one of the victims that she was afraid of being sold to someone else. Or when the victim responded that she did not know, the judge started shouting: "How come you do not know? This is a Court of Second Instance that is asking you the question!" Also, one of the members of court played with his mobile phone during the court session. Although one of the victims said during her testimony and the detailed questions asked by the court that she did not want to remember the things she went through, the court insisted. The prosecutor did not object to irrelevant questions or disrespectful comments of the court.

In the Nove Zamky case the victims were not present at the hearings. While waiting for a court ruling outside the courtroom, some of the defendants, their attorney and the prosecutor engaged in familial and friendly communication.

Another problem is that the courtrooms do not provide sufficient distance for the victims from the defendant. In all monitored cases eye contact between the victim(s) and the defendant(s) was not avoided.

In the case of children, face-to-face confrontations with the suspect(s) are not allowed. When questioning victims below the age of 18, the presence of a pedagogue, child psychologist or social officer is mandatory. The interview is usually video recorded to avoid that the minor has to testify again

in a later stage. They may be interviewed in a later stage only when necessary and during the pre-trial stage only with the consent of the prosecutor. However, interviews with children often take place at the police station in a child-unfriendly environment. When parents are absent or involved in the trafficking of the minor, a guardian has to be appointed.

8 Right to compensation

Trafficked persons have a right to an adequate and effective remedy. States should ensure that there is a legislative and practical possibility for trafficked persons to obtain compensation for (material and non-material) damages suffered. A priority option is to use confiscated assets to compensate victims. Where such compensation cannot be obtained from the trafficker there is a provision for payment of compensation from the State. They have a right to be paid for the work they have performed, independent of the lawfulness of their stay.¹⁴

In all three countries the victim can claim financial compensation for material and immaterial (moral) damages as part of the criminal proceedings, to be paid by the offender. However, if damages are awarded the victim her/himself is responsible for the enforcement of the court judgment. This implies that in practice it hardly ever happens that victims actually receive compensation, even if awarded by the court. Although all three countries also have a State Fund to which victims can apply for (material) compensation, in practice only few victims benefit from this possibility. This has several reasons, varying from lack of information to the complexity of the procedures concerned.

Under **Romanian** law victims can claim compensation for damages suffered by joining a civil claim to the criminal case, by applying to the State Fund or by starting a separate civil action. However, victims who plead as witness cannot join a civil claim to the criminal procedure, nor can they claim compensation from the State Fund. In practice the number of victims who are awarded compensation in the criminal case is very low, as are the amounts of compensation awarded. Sometimes claims are only partly accepted by the court. In the case, for example, of seven victims (including two minors), who were exploited in the forest industry in the Czech Republic, the court only awarded 1500 Euro for moral damages. The claim for compensation of their travel costs back to Romania, which they

¹⁴ Art. 14(2) & 25(2) UN TOC; Art. 6(6) UN Traf Prot; Art. 15(3) & (4) CoE Traf Conv; Dir on Compensation; Dir on sanctions against employers of illegally staying 3th country nationals; ILO C 97 & 143.

had to pay themselves after their escape despite involvement of the Romanian Embassy, was rejected.¹⁵

If the claim is awarded, the victim her/himself is responsible for its enforcement. Most victims do not have the financial resources to do so. The same goes for starting a separate civil action. In theory, the State can confiscate criminal assets and use these to secure compensation for the victim. However, this possibility is rarely used in practice.

It is not possible for victims of trafficking for prostitution to claim compensation for the (often considerable amounts of) money they were forced to earn and hand over to the trafficker, as these are considered immoral earnings. This of course does not stop the state from confiscating the money and in that sense profiting from it.

In most of the monitored cases there was a civil action to demand compensation for moral and material damages as part of the criminal case. In most of the cases the judges decided to award the claim (with amounts around 5000 Euro/victim). In the case of material redress compensation was granted to cover the value of personal belongings the victims had been deprived of by the traffickers, such as mobile phones, clothing, bags, etc.; in the case of moral redress to compensate victims for their psychological and physical distress. In the case of minor victims redress was requested also by the prosecutor on behalf of the minor victims. In two cases the judge dismissed the civil claim for being formulated too late. This situation appeared because the victims were not informed by their state lawyers about this right and the procedures to be followed. However, this was not considered sufficient reason by the judge, who rejected the civil action as filed too late.

A final opportunity is to claim compensation through the State Fund. Especially in cases of cross-border trafficking the procedures are, however, extremely complicated. Moreover, compensation of the State Fund is only awarded on the basis of the final judgement, which can take years. *De facto* a claim is rarely granted.

¹⁵ Covasna Tribunal, criminal sentence no. 54/27.12.2012.

Like in Romania, also the **Bulgarian** law offers the possibility to join a civil claim for compensation to the criminal proceedings. Although the law imposes a duty on the court and the prosecution to inform victims of their right to file a claim for compensation, it most often remains unclear for the victim what the substance of this right is.

In practice very few victims file a claim for compensation. If they do and the claim is awarded they have to hire a private bailiff for the execution of the judgment, if there (still) is any money or property left to begin with. Although the prosecutor and the (lawyer of the) victim have the right to request the court during the preliminary stage of the criminal proceedings to freeze the assets of the suspect(s) as a guarantee for future claims, in practice this seldom happens. According to one of the interviewed prosecutors, even if the prosecutor does so the court always rejects such requests in trafficking cases as ill-founded. Without such preliminary measure, it becomes very difficult or even impossible to implement the verdict.

The criminal court can also dismiss the civil claim if it would delay or hamper the trial. Moreover, if the suspect confesses, the prosecutor can end the case with a proposal for an agreement. From that moment the participation of the victim in the criminal procedure ends. The only option left for the victim then is starting a civil case, which is more difficult, expensive and can take years. The victim, moreover, has to pay a considerable fee to open a civil or labour case and risks having to pay for the costs of the entire procedure, including the costs of the lawyer of the trafficker, in case she or he loses the case.

Generally the courts allow compensation for non-material damages as these are easy to prove. In theory it is also possible to claim material damages in the form of unpaid or due wages. In cases of trafficking for prostitution a claim could be made for compensation of the money the victim was forced to earn and hand over to the trafficker. This could be a well-founded claim as prostitution is not illegal in Bulgaria. All interviewed judges, however, were of the opinion that such a claim and particularly the amount of damages would be impossible to prove. Some judges moreover considered the money not a direct result from trafficking, but from some relation between the prostitute and her pimp, which should be dealt with by the

civil court.¹⁶ Only one case is known where a victim of trafficking claimed compensation for the money she was forced to earn for the trafficker. In this case the court refused to accept the claim for consideration, arguing that it concerned financial means gained through lechery activities and that according to Bulgarian legislation “sources of income, acquired in a way that contradicts the sexual moral cannot be awarded. Furthermore, they are not an element of the crime and fall out of the subject of proof”.¹⁷

Only one victim in the monitored cases filed a claim for compensation and was constituted as both private prosecutor and civil claimant in both instances. She was also the only victim who was represented by a lawyer. All other victims participated in the court proceedings solely as witnesses. The victim in question filed a civil claim for compensation of material damage, claiming the profits yielded from her exploitation in Bulgaria and abroad, as well as non-material damage. The Court awarded compensation for immaterial damages at the amount of BGN 60 000 (approximately 30.725 Euro). The claim for compensation of material damages was rejected with the motive that it is not possible to grant compensation for the money the victim had earned and was forced to hand over to the trafficker as it concerned immoral earnings.

Finally, victims can apply with the State Fund for material damages, such as medical costs, the costs of a lawyer and court fees, or lost wages. Police officers and NGOs should inform victims about this possibility. In practice, however, victims do not understand or are not aware of this right and, as a consequence do not collect or keep the required written evidence. As a result each year a considerable part of the Fund remains unused.

The inability of victims to *de facto* receive compensation is one of the reasons for the common distrust of victims in the judicial system.

In Slovakia the victim/injured party can claim compensation for material, moral and other damages, submit evidence, consult the criminal file and present his or her views. If the victim files a claim for compensation, the

¹⁶ This might also be inspired by the fact that the trafficking article does not distinguish between consensual and coerced relations.

¹⁷ Sofia District Court, criminal case 9403/13.

court can assign a lawyer if the victim can prove to have insufficient funds to pay for a lawyer him or herself. It is also possible to secure the claim for the necessary value by the property of the accused. This, however, is extremely rarely done as it involves parallel financial investigations. Up till now, as far as known, there is only one victim of trafficking who has filed a claim for compensation and whose claim was awarded. As a rule the criminal court refers claims for compensation to the civil court. But even if the court would award the claim, it is up to the victim to execute the order.

Apart from this, the victim can claim compensation under the Act on compensation for victims of violent crime if the accused is found guilty and the judgement is final. This possibility is only open to citizens of Slovakia or another EU member state and citizens of a member state of the Council of Europe. The decision lies with the Ministry of Justice, which will also pay the compensation. There is no data on the use of this possibility in the case of trafficking victims.

In none of the three monitored cases the victims were awarded compensation. In the Presov the victim had a lawyer of HRL and had submitted a claim for compensation. At the outset of the hearing the legal representative of the victim wanted to present a calculation of the damages and a report from a psychiatrist. The presiding judge initially refused to take these documents saying that he didn't care about them and that the legal representative should submit them only to the parties. Later he accepted them. The claim, however, was rejected. The lawyer has appealed this part of the judgment. In the Nove Zamky case, dating back to 2006, the HRL lawyer became only involved in the final stage and the case was settled through plea bargaining. In cases where the judge suggests plea bargaining, the parties agree and plea bargaining is reached, victims cannot be awarded compensation in criminal proceedings. In the Michalovce case none of the victims had a lawyer and consequently none of them had submitted a claim for compensation in time, i.e. before the end of the pre-trial proceedings.

9 Non-punishment

Victims of trafficking should not be detained, charged, prosecuted or punished for prostitution, violations of immigration law, involvement in criminal activities or other illegal acts they were compelled to commit.¹⁸

All three countries have a non-punishment clause. Still in practice this is not always applied.

In **Bulgaria**, for example, there are cases in which the victim is prosecuted, e.g. for earning an income in an immoral way, for illegal border-crossing or for not having identity documents. A related problem is that, although the CC explicitly states that consent is irrelevant, as soon as a woman declares to voluntarily work as a prostitute, police officers stop seeking for indications of trafficking. This happens even when there are clear indicators, such as the fact that the woman does not dispose over her identity documents – which often is the reason why they are arrested and fined – , is not able to leave the place of work, her telephone conversations are controlled, she has visible marks of violence, is not allowed to refuse clients, etc.

In **Slovakia**, despite a non-punishment clause in the Criminal Code, trafficking victims may be prosecuted for offences committed as a result of their being trafficked. They can e.g. be sanctioned for irregular immigration status or illegally or unauthorised work or any other offence provided for by the CC. It is not known how often this happens.

Also the **Romanian** law contains a non-punishment clause. However, since cases of trafficking for prostitution are qualified as pandering (with the use of coercion) when the victim is a sex worker or knew she would work in prostitution, the non-punishment clause does not apply and the victim will be prosecuted and punished. Other problems include the improper identification of foreign victims and victims of trafficking for forced begging, constraint to commit petty crimes, illegal donation of organs and mixed exploitation both in destination countries and Romania.

¹⁸ Art. 26 CoE Traf Conv; Art. 8 Dir. THB.

In none of the monitored cases victims were prosecuted for prostitution or other offences directly related to their being victims of trafficking. In all cases the victims had not worked in prostitution before.

10 Non-detention

Trafficked persons should not be detained or held in closed shelters or other welfare centres akin to detention. Detention, defined as “the condition of any person deprived of personal liberty except as a result of conviction for an offence” can cover a wide range of situations. Victims may be e.g. detained as irregular/undocumented migrants or as a result of their engagement in illegal activities, such as prostitution or unauthorized work (even if correctly identified as victims). Trafficked children should not be placed in closed facilities unless it can be demonstrated that it is in their best interest and there is no reasonable alternative for protection, it is for the shortest possible period of time and is subject to periodic review.¹⁹

In principle victims can be detained in **Bulgaria** for any of the above mentioned reasons, such as illegal border crossing, earning income in an immoral way, or not having identification documents. It also happens that victims of trafficking are taken in custody for 24 hours for any of these reasons. According to the Migration Directorate no trafficked person has been detained in the Aliens Centres.

Very disturbing is the situation with child-victims, because all shelters for victims under 18 are closed. The children are locked in and not allowed to go outside without an adult companion. The front door is always locked and the windows have bars. Due to their limited budget and lack of personal there is no guarantee that children go out regularly and according to their needs. For placement a court decision is needed. The maximum accommodation period is 6 months. Until a court decision is taken the child can be placed on an administrative order. Usually the court confirms the administrative order. There are rare exceptions, when a report of a social worker does not prove that a closed shelter is the best solution or when parents or relatives disagree with good reasons. In big towns, however, court decisions can take more than 6 months and are consequently only taken when the placement has already ended. Placement in a close shelter negatively affects the psychological wellbeing of the child and

¹⁹ Art. 9 & 12 ICCPR; Art. 5 ECHR; Art. 25 and 37(b) CRC.

often causes resistance. Many children escape from the shelter, which is indicative for the fact that many of them do not experience the shelter as a service but as a punishment.

According to the **Romanian** law, adult trafficking victims cannot be held in closed centres. Children can only be held in a closed centre if they have mental problems, a physical handicap or when they are considered a danger for society. In practice, however, closed and semi-closed shelters do exist, especially in the case of abused, neglected or exploited children and persons with disabilities or mental health problems. People live here in large shelters, often in quite remote areas with few options for activities and cannot go out unless accompanied. There are very few specialised centres for child victims of trafficking and they have only a few places. The remaining child victims are held in the state centres for abused or neglected children. In general there aren't many shelters specialised and equipped to respond to the needs of trafficked persons, especially male victims and victims with physical or mental difficulties.

According to the **Slovakian** Aliens Law vulnerable persons, including foreign victims of trafficking, cannot be taken or held in detention. However, chances are high that a considerable number of foreign victims end up in aliens' detention and is deported without ever being identified as victims of trafficking.

Any decision on detention of foreigners becomes invalid once the person is registered in the Assistance Program of the Ministry of Interior. However, they only can get access to the assistance program upon the issuance of a tolerated residence permit and such permit is only issued when there is no detention order.

11 Reflection period, temporary & long term residence, asylum and non-refoulement

Victims have the right to a reflection period of at least 30 days. Undocumented/migrant victims have the right to a temporary residence permit for the duration of the criminal and other proceedings when, at the end of the reflection period, they decide to cooperate with the authorities.²⁰

Trafficked persons are protected from summary deportation or return when there are reasonable grounds that this would constitute a risk for the person or his or her family.²¹

If return would compromise their life and safety, trafficked persons have the right to apply for asylum or a residence permit on humanitarian grounds. Trafficked persons are not returned to another state where there is a serious risk they will be subjected to persecution, torture or other forms of ill treatment.²²

Formally trafficking victims are entitled to a reflection period of up to 90 days in **Romania**. During this period they have a right to counselling, medical and social assistance, food and (on their request) accommodation in a shelter or (in the case of foreign victims) a special asylum centre. They should also be informed about the applicable legal and administrative procedures and their rights. In practice the reflection period is often not applied, especially not if the victim is identified by the police. Moreover, various laws and regulations conflict with each other. Foreign victims are not adequately identified and only have very limited access to assistance and protection.

²⁰ Art. 12-14 CoE Traf Conv; Art. 6-9 Dir on a temp res. permit; Art. 11 (1) Dir THB.

²¹ Art. 8(2), 8(3), 8(4) and 9(1)(b) UN Traf Prot; Art. 16 CoE Traf Conv.

²² Art. 14 UN Traf Prot; Art. 40(4) CoE Traf Conv; Art. 3 ECHR; Art. 31 & 33 Refugee Conv; Art. 3(1) and 14 CAT; Art. 7 ICCPR; Art. 22 CRC.

At the request of the prosecutor foreign victims can be granted a temporary residence permit (tolerated stay) which is strictly tied to the duration of the criminal proceedings. In that case they have access to the labour market on the same footing as Romanian nationals. If return would endanger their life or safety they can apply for a residence permit on humanitarian grounds or asylum. In practice, hardly any case is known in which this happened.

In **Bulgaria**, both internally and cross-border adult victims of trafficking have the right to a one-month reflection period and child victims to a two-month period. However, like in Romania, the reflection period is rarely applied. In practice it is not clear how and by whom the decision to start the reflection period is taken and victims are generally forced to immediately give a statement in their first contact with the police. In theory victims have access to free legal aid during the reflection period. In practice this seldom happens.

When victims decide to cooperate with the authorities they are entitled to a temporary residence permit during the criminal proceedings, but there has not been such a case the last two years. During the reflection period and temporary staying permit they are entitled to the same social, psychological, legal, medical and financial assistance as Bulgarian victims. However, formally victims have only access to psychological aid after they agreed to cooperate with the authorities. This is in violation of both the CoE Trafficking Convention and the EU Trafficking Directive.

If return would compromise the victim's safety they have the right to apply for asylum or a residence permit on humanitarian grounds. According to social workers, however, the employees of the State Agency for Refugees are not trained to identify victims of trafficking and refuse to do so, arguing that it is not their task. In the one case that is known the application was rejected. There are no cases known in relation to child victims.

According to **Slovakian** law, on the request of the prosecutor, victims are entitled to a reflection period of 90 days, but this only applies to foreign victims ('tolerated residence'). It is not exactly clear when the reflection period starts. Foreign victims can only get assistance and protection when they are registered in the Assistance Program of the Ministry of Interior, but cannot register if they are in aliens' detention (and cannot be released from aliens' detention when they are not registered).

The same problem occurs in relation to temporary residence permits. Victims can get a temporary residence permit ('tolerated stay') on the request of the prosecutor if their presence is deemed necessary for the criminal proceedings and they are registered in the Assistance Program, which means that in practice this is as good as impossible. Tolerated residence is exclusively tied to the criminal proceedings and does not include civil or administrative procedures for compensation. During tolerated residence victims are legally entitled to appropriate accommodation. Access to assistance is dependent on registration in the Assistance Program of the Ministry of Interior. They do not have the right to work, study or have insurance coverage and are thus fully dependent on the support of NGOs.

The law does not provide the possibility for a residence permit on humanitarian grounds nor is trafficking recognised as a ground for asylum, though there is a possibility to grant asylum on humanitarian grounds. There is, however, mandatory screening during the asylum procedure aimed at identification of factors that might indicate the person is a victim of trafficking. Victims may potentially be granted a long term residence permit if they are considered an endangered or protected witness and the granting of a permanent residence permit is necessary for the provision of protection and assistance, or if this is in the interest of the Slovak Republic. As far as known this has never happened.

If a victim has a staying permit tied to an employer, husband or family member who are actually the exploiters and he or she escapes the situation, their residence permit used to be cancelled and they faced detention and expulsion. This has recently been successfully challenged by HRL. According to a judgement of the Supreme Court, before canceling the residence permit, the police must investigate whether the person may fall under the category of vulnerable persons, which includes victims of trafficking.

There are no specific provisions on the reflection period, staying permits or asylum for children. Unaccompanied minors will generally be automatically granted tolerated stay (if they do not apply for asylum) based on the fact that they are minors.

12 Repatriation and guarantees for non-repetition

Victims have the right, if they wish so, to return to their home country without unnecessary or unjustified delay and with taking care of their safety. Return of trafficked persons is, where possible, voluntarily, takes place with due regard for their rights, safety and dignity, avoids re-victimization and respects the right to privacy. The safety of the trafficked person and their family should be taken into account in any decision on repatriation. They are protected from summary deportation or return when there are reasonable grounds that this would constitute a risk for the person or his or her family.²³

There is no state budget in **Romania** for the organisation and payment of the return to Romania of victims who are trafficked to a foreign country. Repatriation is sometimes difficult due to bureaucracy and lack of funds. Return of Romanian victims is mostly organised and paid for by the IOM and foreign NGOs. The repatriation of foreign victims to their home country is only facilitated up to the Romanian border.

There are specific provisions for the repatriation of unaccompanied Romanian children. If the family does not consent with the return of the child or cannot be found, the National Authority for Child Protection will be involved.

In principle foreign victims in **Bulgaria** can return at any moment that they want. If they agreed to cooperate with the authorities return can be delayed because the authorities first want to interrogate her or him before a judge.

Before a victim is repatriated a detailed risk assessment is made based on

²³ Art. 8(2), 8(3), 8(4) and 9(1)(b) UN Traf Prot; Art.16 CoE Traf Conv.

different sources, including information from NGOs. In practice there are very few foreign victims. The National Commission reported one foreign victim who returned in 2012.

Like in Bulgaria there are very few identified foreign victims in **Slovakia**. Assistance in voluntary return is part of the Assistance Program of the Ministry of Interior and is facilitated by a contracted service provider – in practice the IOM – based on the consent of the Information Centre on Combating Trafficking of the Ministry of Interior. This applies both to foreign victims and to Slovakian victims abroad who want to return to Slovakia.

According to the law, if a victim wants to return to his or her country or if the period of tolerated stay ends, he or she is issued a detention order and placed in a detention facility pending his or her return. Only persons who are issued a detention order can enrol in the IOM program for voluntary return. Given the lack of foreign trafficking victims, there is no experience on how this works in practice. There is no formalised risk assessment before the repatriation of foreign victims, nor any guarantee that a victim will not be detained pending his or her return.

In the case of victims returning to Slovakia, the service providers contracted in the framework of the Assistance Program must develop a plan for reintegration which has to be approved by the Ministry of Interior. NGOs are therefore under close scrutiny of the Ministry of Interior. Before trafficked adults or minors return to Slovakia the IOM will make a risk assessment.

There are no specific legal provisions for the repatriation of child victims, only the general provisions for the protection of the wellbeing of children apply.

13 Conclusions and recommendations

Although improvements in legislation are certainly possible, the main problem is not the lack of laws, but their implementation. In most cases, the law provides for several possibilities to protect the rights of victims, but they are not or hardly used.

Victim lawyers are key in accessing these rights and protecting victims against secondary victimisation. However, precisely the lack of access of trafficked persons to qualified legal aid and representation is one of the core problems in all three countries. This constitutes a serious barrier for trafficked persons to access justice.

A wide spread idea seems to be that either victims do not need a lawyer or they only need a lawyer at the trial, rather than from their very first contact with the authorities. This may reflect a general trend to see victims only as instruments for the prosecution, rather than human beings with a life and rights of their own. For victims, on the other hand, it is difficult to reconcile the idea of justice with the feeling that first they were instruments for the traffickers to produce money and next they are instruments for the prosecution to produce evidence, as if they do not matter.

Core rights which are currently not sufficiently secured include the right to information and to make informed decisions, to protection of privacy, to compensation of damages, to be treated with respect and dignity and the avoidance of secondary victimisation. The reflection period is not or hardly applied, victims are not adequately and timely informed about their rights and the relevant procedures, personal data of victims are publicly disclosed and sometimes even publicised on judicial websites, only very few victims effectively receive compensation, in some cases they are treated in a disrespectful and degrading way by the police and judicial authorities, and often criminal proceedings lead to their secondary victimisation.

As to the latter, the EU Directive on trafficking²⁴ is clear on the obligation states have to take measures to prevent secondary victimisation by avoiding as far as possible:

- Unnecessary repetition of interviews during investigation, prosecution or trial
- Visual contact between victims and defendants including during the giving of evidence such as interviews and cross examination, by appropriate means including the use of appropriate communication technologies
- Giving of evidence in open court
- Unnecessary questioning concerning the victim's private life.

However, despite the fact that this is binding law for all three countries it is still far from being implemented in practice. In all countries victims are subjected to repeated interviews, direct confrontation between the victim and the suspect(s) is often still seen as an important method to 'find the truth', the possibility of closed court sessions is hardly used, and irrelevant questions – or even degrading comments – on the victim's private life are no exception. As a justification Article 6 of the European Convention on Human Rights, the right to a fair trial, is often put forward. This, however, does not prohibit states to find a balance between a fair trial for the suspect and the protection of the victim, especially in the case of vulnerable victims, as confirmed in several judgments of the European Court.²⁵

Moreover, there is generally little knowledge among the judiciary and prosecution (and lawyers) about the physical and psychological health consequences of trafficking for its victims. In addition there is a high level of prejudice against in particular prostitutes and Roma.

In regard to the public disclosure of the personal data of victims it should be noted that this not only puts a risk to their safety, but also may have severe consequences for their opportunities to rebuild their lives.

²⁴ Art. 12(4) Directive 2011/39/EU.

²⁵ See e.g. Sarkizov and others v. Bulgaria, Appl. nos. 37981/06, 38022/06, and 44278/06, 17 April 2012.

A final issue is the variation in (the interpretation of) the definition of trafficking and the exclusion of sex workers from protection against trafficking and exploitation.

13.1 Access to legal aid

Access to legal aid from the first contact of the authorities is not only important to ensure adequate identification, to allow to make an informed decisions, and as a guarantee against degrading treatment, but also in relation to a future compensation claim, for example to request the freezing of assets of the trafficker(s). The widespread understanding is, however, that lawyers are only needed when the case is brought to court. At that point, however, essential rights of the victim may not have been employed during the criminal investigation, for example the possibilities to protect the privacy and safety of the victim, to minimise the number of interrogations, to prepare the victim for interrogations so he or she knows what to expect and to create as safe and favourable as possible conditions. Moreover, lawyers can act as watchdogs in balancing the rights of the victim and the suspect and ensuring that victims are treated in a respectful and sensitive manner.

This is also in the interest of an effective prosecution and punishment of the offenders. The willingness of victims to report to the police and cooperate in criminal proceedings is strongly related to their treatment by the police and judicial authorities, the protection of their safety and privacy, the availability of information and assistance and the risks they incur of being arrested, detained, prosecuted or deported for offences resulting from their being trafficked. Research show that victims who are treated well are more willing to cooperate and that law enforcement officials tend to be more successful in securing convictions when the trafficked person's rights are respected.

Although all three countries have a system of free legal aid there is a number of serious problems for victims to actually access qualified legal aid and representation:

- Victims are not informed about the possibilities for free legal aid and representation
- The procedures to access free legal aid and representation are so

- complicated that in practice they form an insurmountable barrier
- Lawyers are not appointed from the very first contact of the victim with the authorities but only later in the process
- State funded legal aid does not guarantee lawyers who are specialised in trafficking and in defending the rights of victims
- The quality of state funded legal aid is low, as is the remuneration. Often the role of state appointed lawyers is limited to their formal presence at the trial
- There is a lack of specialised lawyers. But even if there are specialised lawyers there is no system to ensure that victims are actually appointed a specialised lawyer.

To improve this situation and bring the practice in line with international standards it is key that

- The police informs victims about their right to free legal aid and representation at the very first contact and before any official statement is taken
- Victims get appointed a lawyer immediately after their identification and before they have to decide whether or not they want to cooperate with the authorities and/or before they make an official statement (for example through the police, the shelter or NGOs)
- Procedures to access free legal aid and representation are simple and accessible
- Only lawyers who are trained in trafficking cases and the rights of victims are qualified to represent victims of trafficking
- A system is put in place through the bar associations or the bureaus of legal aid to certify lawyers who are qualified to provide legal aid to trafficked persons and to ensure that trafficking victims are appointed a specialised lawyer.

13.2 Compensation

Although all countries provide for the possibility of compensation as part of the criminal proceedings, in practice only very few victims benefit from this possibility for various reasons. One reason is that they lack legal aid and proper information to do so. Another is that, even if there is a possibility to freeze or confiscate assets of the suspect(s) to guarantee compensation of the victims, this rarely happens. Moreover, in Bulgaria and Romania

it is not possible for victims of trafficking for prostitution to claim compensation for the (often considerable amounts of) money they were forced to earn and hand over to the trafficker, as these are considered immoral earnings. In practice this means that only the state can profit from such earnings, while leaving the victims with empty hands. Often also victims are referred to civil proceedings, which are complicated, expensive and time consuming, while the chances to actually receive compensation are negligible.

However, even if the court awards compensation it is up to the victim to enforce the order, which in practice is either very expensive and time consuming or impossible because by that time the suspects have ensured that there is nothing to be gained from them. Even apart from intimidation and threats from the part of the offenders and the fact that trafficking often is linked to organised crime and that very few victims will feel comfortable to deal with such groups. Also when there is a State Fund procedures are complicated, the kind of damages that can be claimed is limited or claims can only be made after the verdict has become final, which can take years. This effectively makes the right to compensation illusory.

Also here, the EU Directive and the Council of Europe Convention on Action against Trafficking, as well as the European Court of Human Rights are clear on the obligations of states in this respect. Of particular importance is the judgment of the European Court in the *Rantsev* case,²⁶ in which the Court recognises trafficking in human beings as a violation of Article 4, the prohibition on forced labour, slavery, servitude and slavery-like practices. This implies that states not only have a positive obligation to prevent, prosecute and punish trafficking and to protect its victims, but also to provide victims with an effective remedy.

Changing this situation requires an effort of all parties:

- of the police to properly inform victims of the possibilities for compensation
- of the police and the prosecution to ensure that the collection of

²⁶ *Rantsev v Cyprus & Russia*, 7 January 2010, Application no. 25965/04.

evidence about the damages the victim suffered, including the financial gain of traffickers from the exploitation of their victims, makes part of the criminal investigation in order to support compensation claims in court

- of the prosecution and judges to freeze or confiscate assets of the suspects to secure compensation claims of the victim
- of the judges to take claims for compensation seriously and use all the possibilities the law offers them to award such claims, even if this means exploring new ways
- of the legislature to make the necessary law amendments, in particular shifting the responsibility for the execution of compensation orders from the victim to the state.

And last but not least of lawyers to use all their knowledge, skills, creativity and tenacity and to walk all the roads the law offers to secure that their clients are provided an effective remedy and justice is done.



This report is part of the 3-year project “Promotion of the Rights of Trafficked Persons in Bulgaria, Romania and Slovakia with Emphasis on Legal Support – A Human Rights-Based Approach”. The project was carried out by the Netherlands Helsinki Committee together with Animus in Bulgaria, Adpare and Pro Refugiu in Romania and the Human Rights League (HRL) in Slovakia.

The report provides a summary of the three national reports which were written in the first year of the project and which discussed the position of trafficked persons in criminal and other relevant proceedings, the protection of their rights and their treatment by the judicial system. It also includes the outcomes of a yearlong monitoring of court cases, carried out by the partner organisations.



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