

Compensation for trafficked persons

- 1 Each Party shall ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings in a language which they can understand.
- 2 Each Party shall provide, in its internal law, for the right to legal assistance and to free legal aid for victims under the conditions provided by its internal law.
- 3 Each Party shall provide, in its internal law, for the right of victims to compensation from the perpetrators.
- 4 Each Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions under its internal law, for instance through the establishment of a fund for victims compensation or measures or programmes aimed at social assistance and social integration of victims.

Article 15, *Council of Europe Convention on Action against Trafficking in Human Beings*

What is compensation?

Compensation includes remuneration of unpaid wages and payment in restitution for both general damages and special damages suffered by victims of crime. General damages compensate the claimant for the non-monetary aspects of the specific harm suffered, such as physical or emotional pain and suffering. Special damages compensate the victim for the quantifiable monetary losses suffered, such as out-of-pocket medical expenses, repair or replacement of damaged property and lost earnings.¹

What the Anti-Trafficking Monitoring Group found

Although there are four avenues available under UK law through which trafficked persons could seek compensation², research by Anti-Slavery International in 2008³ identified numerous practical and legal barriers that trafficked persons face in the UK when trying to obtain compensation. Anti-Slavery's report found it unlikely that trafficked persons would receive compensation for their injuries and suffering either from their trafficker or from any statutory agency. Although this research was carried out before the introduction of the National Referral Mechanism (NRM), the Monitoring Group did not find any evidence to suggest that the NRM has improved this situation.

The Monitoring Group found that the issue of compensation for trafficked persons was receiving little attention



Photo: Anti-Slavery International

The Anti-Trafficking Monitoring Group is a coalition comprising Anti-Slavery International, Amnesty International UK, ECPAT UK, the Helen Bamber Foundation, the Poppy Project, Immigration Law Practitioners' Association, Kalayaan, TARA Project and UNICEF UK. The coalition was set up in May 2009 to monitor the UK government's compliance with the *Council of Europe Convention on Action against Trafficking in Human Beings* ('the Convention'), which the UK ratified in December 2008 and which came into force in the UK on 1 April 2009.

Between September 2009 and April 2010, the Anti-Trafficking Monitoring Group consulted information from public sources, conducted 90 interviews with professionals engaged in anti-trafficking work, and reviewed the cases of 390 trafficked persons. In June 2010 the Group published *Wrong kind of victim? One year on... an analysis of UK measures to protect trafficked persons*.

from statutory agencies. In the course of interviews with staff in statutory agencies, it became apparent that compensation is perceived to be one of the last stages in the process of supporting and protecting victims of trafficking, and consequently accorded low priority. However, compensation for trafficked persons plays a crucial role in combating trafficking: not only is it an instrument of restorative justice for trafficked persons, the financial security it affords victims is also central in the prevention of re-trafficking.

Contrary to suggestions made prior to the establishment of the NRM, the current policy governing residence permits does not foresee granting trafficked persons leave to remain in the UK specifically to seek compensation. In cases of trafficking for forced labour in domestic service, the lack of temporary residence permits for this purpose has been particularly detrimental. For many trafficked domestic workers, the Employment Tribunal remains the only viable route to access justice.

Since publication of the report in June 2010, the Monitoring Group has learned of individual cases in which ongoing civil claims have been cited amongst other reasons in the grant of discretionary leave to remain in the UK. This is a positive step, however, the practice of relying on the discretion of individual decision makers poses a significant barrier to trafficked persons exercising their right to seek compensation under Article 15 of the Convention.

Compensation and the National Referral Mechanism

By June 2010, the Monitoring Group had not heard of any case that had been referred through the NRM in which a trafficked person has received compensation. In the few instances known to the Monitoring Group where trafficked persons have received compensation, their proceedings had begun prior to 1 April 2009 (introduction of the NRM).

In the few instances when Employment Tribunal cases have been successful, there have been challenges in the enforcement of judgements and victims of trafficking are reported not to have received a penny of the money awarded in court.

Currently, neither those who receive positive 'reasonable grounds' decisions, nor those with positive

conclusive decisions are provided with information about compensation from the 'competent authorities', contrary to the requirements of Article 15.1 of the Convention, which requires the 'competent authorities' not only to provide victims with information from their first contact, but also to ensure it is done in the victim's own language.

The leaflet for victims published by the Ministry of Justice says that: *"You may be entitled to compensation either directly from the offender or via the Criminal Injuries Compensation Scheme. Further information is available from the Authority on 0800 358 3601 or by visiting www.cica.gov.uk."* Neither the Authority phone line nor website is available in other languages. The leaflet alone is insufficient to give effect to the UK's obligations under the Convention.

The Anti-Trafficking Monitoring Group is calling on the British government and devolved administrations to ensure that access to compensation and the real possibility of securing it is mainstreamed throughout the NRM process. Specifically, there is a need to uphold the UK's obligations under Article 15 of the Convention by:

- Ensuring that information about the right to compensation and the avenues for doing this is given to every potential victim of trafficking, on encountering the 'competent authorities', in a language they understand;
- Amending the policy guidance to give victims of trafficking access to residence permits in order to pursue a claim for compensation or other form of legal redress.

Making compensation work

The first successful Criminal Injuries Compensation Scheme (CICS) awards for trafficked people in the UK were made in July 2007 to two Romanian women who had been trafficked into the UK for sexual exploitation. The first woman, trafficked in 2002 at the age of 16, received £62,000, made up of £22,000 for the sexual abuse suffered and £40,000 for lost earnings and opportunity. The second claimant, trafficked in 2004 at the age of 13, received £36,500: £16,500 for sexual abuse and £20,000 for lost opportunity. Both women testified at the trial of their trafficker, who was subsequently convicted of rape and controlling prostitution and sentenced to 21 years in prison.

Three additional applications have since resulted in compensation awards of £30,547 and two for £16,500 for other women trafficked for sexual exploitation. By June 2010, at least four more applications were awaiting decision, in one of which the applicant had been awarded an interim payment of £22,000. The payments appear to herald increasing recognition and sensitivity to the injuries sustained by trafficked persons. The Authority's acceptance of the applicants' false imprisonment and forced prostitution as a basis of compensable injury solidifies the ability of trafficked persons to claim under the scheme. The CICS may also offer a potential remedy for persons trafficked to the UK for forced labour who meet the scheme's eligibility criteria, though test cases have not yet been brought.⁴

There have been a number of successful cases taken to the Employment Tribunal on behalf of workers subject to domestic servitude. However, these seem to be rare examples that were tested only in the London area. Employment tribunals do not offer an effective remedy for undocumented workers.⁵

Notes

¹ See 'Comp.act: European Action for Compensation for Trafficked Persons' at www.compactproject.org.

² Compensation order given in criminal proceedings; application to the Criminal Injuries Compensation Authority (CICA); civil litigation; and, where applicable, through an employment tribunal.

³ Lam, J. and Skrivankova, K., *Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK*, Anti-Slavery International, 2008.

⁴ Anti-Slavery International and The Poppy Project, *Rights and Recourse: A Guide to Legal Remedies for Trafficked Persons in the UK*, 2010, p.100.

⁵ Ibid, p.95.