

Submission on Compensating Victims of Crime to the Law Reform Commission on their Fifth Programme of Law Reform

Irish Human Rights and Equality Commission
March 2023



Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas
Irish Human Rights and Equality Commission

Published by the Irish Human Rights and Equality Commission.

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The Irish Human Rights and Equality Commission was established under statute on 1 November 2014 to protect and promote human rights and equality in Ireland, to promote a culture of respect for human rights, equality and intercultural understanding, to promote understanding and awareness of the importance of human rights and equality, and to work towards the elimination of human rights abuses and discrimination.

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Introduction

The Irish Human Rights and Equality Commission ('the National Rapporteur') is both the national human rights institution and the national equality body for Ireland, established under the *Irish Human Rights and Equality Commission Act 2014*. In accordance with its founding legislation, the Irish Human Rights and Equality Commission is mandated to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and equality and to examine any legislative proposal and report its views on any implications for human rights or equality.¹

In October 2020, the Irish Human Rights and Equality Commission was designated as Ireland's Independent National Rapporteur on Trafficking of Human Beings,² in line with the obligation set forth in Article 19 of the EU's Anti-Trafficking Directive that introduced a legally binding requirement for all EU Member States to establish National Rapporteurs, or equivalent mechanisms.

The National Rapporteur welcomes the inclusion of the project *Compensating Victims of Crime* in the Law Reform Commission's (LRC) Fifth Programme of Law Reform and views such as an opportunity to have a profound positive effect on trafficking victims in regard to their right to compensation.³

In January, the National Rapporteur approached the Law Reform Commission to request the opportunity to input into the work of the Commission, as it relates to compensation. The National Rapporteur welcomes the opportunity to provide the Commission with this submission, from the perspective of compensation for victims of trafficking.⁴

¹ Section 10(2) of the Irish Human Rights and Equality Commission Act 2014

² In order to avoid any confusion due to the multiple use of the word 'commission' in this document, the Irish Human Rights and Equality Commission will be denoted in this submission as 'National Rapporteur'.

³ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 116

⁴ The LRC extended an invitation to the National Rapporteur on Human Trafficking to present a late contribution to the consultation, during a meeting that took place in the LRC offices on 26/01/2023. Full-Time Commissioner, Mr Richard Barrett, Méabh Smyth, Legal Researcher, and Dr Nusha Yonkova, Head of the Anti-Human Trafficking Unit at the IHREC National Rapporteur on Human Trafficking, attended the meeting.

This submission is based on the findings of the IHREC First National Evaluation Report of the National Rapporteur on Human Trafficking,⁵ published in June 2022. The National Rapporteur remains available to the Law Reform Commission to discuss or clarify any matters that may arise.

⁵ IHREC (2022) [*Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive*](#)

EU legal framework on compensation of victims of human trafficking

Victims of crime, including those of human trafficking, have a right to compensation enshrined in several instruments of EU law, outlined below.

The right to compensation for victims of human trafficking offences are specifically provided for in Article 17 of the EU Anti-Trafficking Directive (2011/36/EU), which requires Ireland to ensure that:

“victims of trafficking have access to existing schemes of compensation to victims of violent crimes of intent.”⁶

The Directive also clarifies that victims of trafficking:

"should be given access without delay to... legal representation, including for the purpose of claiming compensation.”⁷

In the spring of 2023 the European Commission reported that Ireland is one of only two EU Member States that have not fully transposed Article 17 of the EU Anti-Trafficking Directive, since Ireland does not compensate victims of trafficking for pain and suffering:

“In IE [Republic of Ireland], the existing scheme for compensation to victims of violent crimes (namely the Criminal Injury Compensation Schemes) only recovers verifiable expenses, and not pain and suffering.”⁸

Article 12.2 of the Compensation Directive (2004/80/EC) obliges the State to have a compensation scheme for victims of violent crime,⁹ and Article 16.1 of the Victims’ Directive establishes a victims’ right to compensation from offenders in criminal proceedings unless

⁶ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combatting trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101

⁷ Recital 19 of the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combatting trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101

⁸ European Commission (2022) [*Commission Staff Working Document Evaluation of the Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combatting trafficking in human beings and protecting its victim*](#), p. 40

⁹ Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims

national law allows for a decision on compensation in separate proceedings (alternative mechanisms of compensation).¹⁰ Yet, Article 16.2 of the Victims' Directive requires States to promote measures to encourage offenders to provide adequate compensation to victims.¹¹

It has to be noted that not all victims of trafficking are third country nationals. In fact, a sizeable number of victims are EEA nationals, and some are Irish citizens, with habitual residence rights. In that regard, the National Rapporteur refers to the recent Case C-129/19 BV, wherein the European Court of Justice clarified that the right to fair and adequate compensation applies to all victims of violent intentional crimes, namely, not only to cross-border victims but also to habitually resident victims.¹² 'Fair and appropriate' compensation was described as that which takes into account 'the seriousness of the consequences for the victims of the crime committed' and 'represent and appropriate contribution to the reparation of the material and non-material harm suffered'.¹³

¹⁰ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

¹¹ Directive 2012/29/EU of The European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

¹² *C-129/19 Presidenza del Consiglio dei Ministri v BV*. ECLI:EU:C:2020:566

¹³ *C-129/19 Presidenza del Consiglio dei Ministri v BV*. ECLI:EU:C:2020:566

National Rapporteur analysis of compensation to victims of trafficking in Ireland

Compensation plays a crucial role in combatting human trafficking as a key factor that contributes to the recovery of the victims. Best practice involves compensating victims of trafficking in a pecuniary manner, covering both material injuries (such as the cost of medical treatment or unpaid wages) and non-material injuries (such as pain and suffering resulting from the trafficking ordeal),¹⁴ which is often especially severe for victims of trafficking for the purposes of sexual exploitation.¹⁵ Compensation strengthens victims' access to justice, punishes perpetrators and can act as a prevention tool of the State against these heinous crimes.¹⁶

To the National Rapporteur's knowledge, no victim of trafficking has received compensation for the harms of trafficking, either in criminal or tortious action.¹⁷ The current compensation mechanisms for victims of trafficking are not effective.¹⁸ There is a lack of compensation for pain and suffering in the Criminal Injuries Compensation Scheme, which sets Ireland apart from other countries.¹⁹ Victims in the State continue to face obstacles to obtaining compensation, due in part to a lack of awareness of their rights,²⁰ a lack of understanding of the criminal and civil compensation proceedings,²¹ and the lack of legal representation.²²

¹⁴ GRETA (2022) '[Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings](#)', p. 20

¹⁵ Walby S. et al., (2016) [Study of the Gender Dimension of Trafficking in Human Beings](#). Luxembourg: Publications Office of the European Union, p. 34

¹⁶ GRETA (2022) '[Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings](#)', p. 20

¹⁷ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 115

¹⁸ OSCE (2020) [Conclusion and recommendations for Ireland following the visit by OSCE Special Representative and Co-ordinator for Combatting Trafficking in Human Beings](#), Valiant Richey, p. 8

¹⁹ European Commission (2022) [Commission Staff Working Document Evaluation of the Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combatting trafficking in human beings and protecting its victim](#), p. 40

²⁰ During the Survivors' Consultation performed in 2021-2022, the National Rapporteur learned that survivors were not informed about their right to compensation.

²¹ European Commission (2022) [Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Report on the Progress made in the Fight against Trafficking in Human Beings \(Fourth Progress Report\)](#), p. 15

²² GRETA (2022) '[Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings](#)', p. 24

Lack of support to pursue compensation (as distinct from legal advice) represents a major barrier for victims in Ireland.²³ In relation to obtaining compensation from the perpetrator, it should also be born in mind that traffickers often spend or transfer the proceeds of their crimes out of the country. Therefore, it is important to consider the utilisation of the confiscation and seizure of alleged perpetrator assets early in the criminal investigation process.²⁴

The Council of Europe has raised serious concerns around victims' access to compensation in Ireland, both from the State and the perpetrator. According to the Group of Experts, the access to information on seeking compensation is not guaranteed by the existence of a leaflet and website,²⁵ as victims might need expert assistance in completing forms and with providing additional supporting documents.²⁶ The National Rapporteur believes that compensation avenues should be provided to victims of trafficking, in an accessible and inclusive manner.

3.1 Avenues for compensation of victims of trafficking in Ireland

Article 17 of the EU Anti-Trafficking Directive specifically requires that victims of trafficking have access to existing schemes of compensation involving violent crimes of intent, in accordance with the existing national provisions. In relation to compensation for victims of trafficking, the National Rapporteur is of the view that the avenues for compensation have remained unworkable and have not benefitted victims of trafficking. The compensation avenues remain the same:

- Criminal Injuries Compensation Scheme;

²³ OSCE/ODIHR (2022) [National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons](#), p. 230

²⁴ OSCE/ODIHR (2022) [National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons](#), p. 230

²⁵ Legal Aid Board website, please see: <https://www.legalaidboard.ie/en/our-services/legal-aid-services/common-legal-problems/human-trafficking/legal-advice-for-potential-victims-of-human-trafficking.html>

²⁶ GRETA (2022) ['Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings'](#), p. 24

- Section 6 of Criminal Justice Act 1993, and;
- Civil legal action.

While employment-related compensation *may* be available to some victims of trafficking for the purposes of forced labour, this is separate from compensation of a person as a victim of trafficking crime *per se*.²⁷

Criminal Injuries Compensation Scheme

In 2021, the Minister for Justice, Helen McEntee, T.D., published the revised Criminal Injuries Compensation Scheme.²⁸ This is a long-standing State mechanism that provides compensation to victims of violent crime. The significant changes increased capacity and requires the publication of decisions. The monetary threshold has also been increased. The removal of the prohibition of the granting of awards where a member, or members of the same household committed the crime is also to be welcomed.²⁹

Still of concern to the National Rapporteur is the fact that the Criminal Injuries Compensation Scheme only provides compensation for ‘verifiable expenses’ and not for ‘pain and suffering’. This continues to render the Scheme wholly unusable to victims of trafficking.

Additionally, the tribunal adjudicating the Scheme will be able to accept applications on an ‘exceptional basis’ for up to two years after an incident – previously there was no time limit for receipt of consideration on an exceptional basis. Therefore, the introduction has, in effect, reduced the time period for applications.³⁰ Following a legal challenge, a recent judgement has found that the introduction of this two-year limit without a transitional provision for potential applicants to seek an extension breaches the legal principle of

²⁷ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 114

²⁸ Department of Justice (2021) Minister McEntee announces reforms to the Criminal Injuries Compensation Scheme [press release] 20 April

²⁹ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 115

³⁰ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 115

effectiveness.³¹ The Minister for Justice has agreed to amend the scheme following the judgement and pending Government approval.³²

GRETA has reported that the Criminal Injuries Compensation Tribunal has received two applications in which the applicants have stated they are victims of human trafficking; one of the applications was subject to plenary proceedings in the High Court and the other sent for decision in early 2022.³³ The National Rapporteur has no further information on the outcome of these two cases.

Section 6 of the Criminal Justice Act 1993

In the 2021 first successful trafficking for the purpose of sexual exploitation convictions, the National Rapporteur understands that Section 6 of the Criminal Justice Act 1993 was not applied. It has come to the attention of the National Rapporteur that a financial investigation uncovered that the defendants had assets in other countries.³⁴ The Judge did not order compensation to be paid by the convicted traffickers to the victims. The National Rapporteur notes with concern, that Section 6 compensation orders are the exception, rather than the norm. Nor is there any ring fencing of confiscated funds which is directed to supporting victims.³⁵

Civil Legal Aid for compensation claims

Access to Civil Legal Aid is not straightforward, particularly for victims of trafficking. Given the unique aspect of trafficking cases, victims may have difficulties satisfying the 'merit test'

³¹ Carolan M. (2023) [‘Minister to amend crime compensation scheme after two victims win legal challenge’](#). The Irish Times, 30 January [accessed 16 February 2023]

³² Carolan M. (2023) [‘Minister to amend crime compensation scheme after two victims win legal challenge’](#). The Irish Times, 30 January [accessed 16 February 2023]

³³ GRETA (2022) [‘Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings’](#), p. 24

³⁴ GRETA (2022) [‘Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings’](#), p. 21

³⁵ Council of Europe (2005) Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings, para. 198

to qualify for Civil Legal Aid.³⁶ Moreover,³⁷ the exceedingly long waiting lists; an absence of jurisprudence of civil suits for trafficking harms; the difficulty and fear in facing ones traffickers; and the possible re-traumatising effects of entering another legal process, all act to impede victims of trafficking.³⁸

Civil Legal Aid for tortious action is not part of the service the Legal Aid Board provides to victims of trafficking.³⁹ However, victims are entitled to receive free legal advice – as distinct from legal representation- in regards to such matters. If a victim wishes to seek free Civil Legal Aid, they must apply through the usual channels, which have a number of barriers for victims and there is no prioritisation of trafficking cases within the system as it currently operates.⁴⁰

From the National Rapporteur’s consultation with survivors in 2021, it transpired that the information provided to them was in the form of a leaflet. The leaflet is not in plain English and is not available on their website. It was clear from consultations with survivors that this was not sufficient to meet their needs. When asked whether they received information on compensation, all responded by saying that they had not. Therefore, it is not surprising that there have been no successful awards of compensation to victims of trafficking.⁴¹

The National Rapporteur is of the view that a victim-centred approach that supports trafficked victims with all their legal needs, whether that is criminal or civil, must be a priority in the proposed reform of the Legal Aid Scheme.⁴²

³⁶ “Depending on your case, if you want civil legal aid, your case will need to satisfy a “merits test “. The main purpose of the merits test is to see if a person paying for a lawyer out of their own money would be likely to pay for the case, and if a lawyer would advise a person to take a case, knowing that they would be paying for it themselves.” See Legal Aid Board (2016) Civil Legal Aid and Advice

³⁷ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 115

³⁸ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 116

³⁹ As distinct from free legal advice provided to victims of trafficking by the Legal Aid Board; see Legal Aid Board Legal Advice for potential Victims of Human Trafficking

⁴⁰ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 115

⁴¹ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 116

⁴² IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 116; Houses of the Oireachtas Seanad Éireann debate (2021) Commencement Matters: Legal Aid (17 February 2021)

Confiscation and use of criminal assets

According to Article 7 of the EU Anti-Trafficking Directive, competent authorities should be entitled to seize and confiscate instrumentalities and proceeds from human trafficking offences. Confiscation of assets of criminal organisations and individuals implicated in human trafficking remain an important element of the fight against crime in general, and against human trafficking in particular.⁴³

Ireland has a robust legislative framework in place allowing for the freezing, seizure and confiscation of assets that derive from criminal conduct.⁴⁴ Importantly, a recent decision of the Court of Justice of the EU held that civil proceedings for confiscation (that are unrelated to a finding of a criminal offence) are compatible with EU law.⁴⁵ As such, the legitimacy of the Criminal Assets Bureau⁴⁶ is further strengthened.⁴⁷

The confiscation and seizure architecture also includes Section 9 confiscation orders,⁴⁸ which apply to offences other than drug trafficking offences, and allows a court to order a convicted person to pay such sum as the court thinks fit to the Exchequer (to be used at the discretion of the Minister for Finance).⁴⁹

Recommendations

The National Rapporteur recommends that the Law Reform Commission considers the specific needs of trafficked victims in its review of compensation, especially in regards to: the inclusion of ‘pain and suffering’ as a ground for compensation from the Criminal

⁴³ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 59

⁴⁴ In accordance with the provisions of the Proceeds of Crime Acts 1996-2016, the Criminal Justice Act 1994, as amended, and related statutes, all confiscations relating to the proceeds of crime are transferred to the Minister for Finance to be paid into, or disposed of, for the benefit of the Exchequer

⁴⁵ ‘Komisia za protivodeystvie na koruptsiyata i za otnemane na nezakonno pridobitoto imushtestvo v, BP and others’ [2019] Case no. C-234/18.

⁴⁶ CAB is a multi-disciplinary body, made up of members of An Garda Síochána, officials from the Office of the Revenue Commissioners (Taxes and Customs), officials of the Department of Social Protection, together with staff from the Department of Justice, including the Bureau Legal Officer, Forensic Accountants, Financial Crime Analysts, IT experts and Administrative Staff

⁴⁷ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 59

⁴⁸ Criminal Justice Act 1994

⁴⁹ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 59

Injuries Compensation Scheme; the need to make provision for expert witness reports to substantiate claims related to ‘pain and suffering’ in compensation claims, and; the use of Section 6 Orders⁵⁰ as a means of compensating victims within the criminal process.⁵¹

The National Rapporteur recommends that the State explores the feasibility of establishing a ring-fenced fund to compensation victims of trafficking with the confiscated proceeds of crime from trafficking and other related offence.⁵²

3.2 Employment Related Compensation

The line between labour exploitation and trafficking for forced labour remains less than clear. However, in Irish law a contractual right depends on the existence of a valid and legal contract.⁵³

A key ingredient of a valid contract is consent, whereas trafficking is characterised by an absence of consent: the victim’s acquiescence is obtained by fraud, deceit, coercion or abuse of vulnerability. Another difficulty is that a contract, which is illegal, is normally unenforceable.⁵⁴ Where, for instance, the victim has no right to be in the State, any contract of employment between that person and the trafficker will be unenforceable except in the very narrow circumstances covered by sections 2B and 2C⁵⁵ of the Employment Permits Act

⁵⁰ *Criminal Justice Act 1993*

⁵¹ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 116

⁵² IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 116

⁵³ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 117

⁵⁴ *Quinn v. IBRC* [2016] 1 IR 1

⁵⁵ Section 2B of the Employment Permits Acts 2003-2014 seeks to provide a route for migrant employees, without valid immigration permissions, to recover monies owed to them by their employer. The Acts empower such employees (or the Minister for Employment Affairs and Social Protection) to take “civil proceedings for an amount of money to recompense the foreign national for such work done or services rendered.” However, “Civil Proceedings” does not include claims brought before the WRC or the Labour Court because “[i]n law, the Labour Court was not such a court” but is instead a “quasi-judicial tribunal exercising a specialist jurisdiction in respect to statutory employment rights.” The Labour Court’s reasoning was that “civil proceedings” were not defined by the Acts to include the Labour Court. The Labour Court considered that the Acts used “civil proceedings” only to distinguish from criminal proceedings.

2003, as amended in 2014. Furthermore, if the agreement concerned something illegal — such as to cultivate cannabis— then it will likewise be illegal and unenforceable.⁵⁶

Following the recent decision of the Labour Court in *TA Hotels Limited et al*,⁵⁷ employees without valid immigration permissions will be prevented from bringing employment rights claims through the statutory bodies set up to deal with such claims.⁵⁸ The consequences of this decision reach far beyond victims of trafficking, by severely undermining the protections for irregular migrant workers per se. Likewise, this may affect victims of trafficking who wish to recoup unpaid wages owed to them. Notably, this will not be an avenue for all forms of trafficking (such as those trafficked and exploited in illegal trades such as the drug or sex trade). However, it may have particular relevance for some victims, particularly in the context of labour exploitation and those who may not wish (or are unable or unsuccessful) to pursue criminal proceedings against their exploiters.⁵⁹

For those legally employed, seeking compensation for unpaid wages, loss of earnings and other employment breaches is possible through the Workplace Relations Commission adjudication service and the Labour Court.⁶⁰ Legal practitioners have stated that it is rare for victims of trafficking to take civil proceedings against perpetrators due to the lack of legal aid, among other reasons⁶¹ (as outlined above, LAB provides legal advice as distinct from legal representation). Seeking redress in the Workplace Relations Commission is especially challenging for victims of trafficking mainly due to fear of repercussions such as losing their employment and immigration permit.⁶²

⁵⁶ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 117

⁵⁷ *t/a Lynam's Hotel v Vireshwarsingh Khoosye and TA Hotels Limited t/a Lynam's Hotel v Preeti Khoosye* [2019] 12 JIEC 0408

⁵⁸ Such as the WRC and the Labour Court.

⁵⁹ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p.p. 117- 118

⁶⁰ GRETA (2022) ['Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings'](#), p. 21

⁶¹ GRETA (2022) ['Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings'](#), p. 21

⁶² GRETA (2022) ['Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings'](#), p. 21

The lack of protections for irregular migrants inevitably create an anomalous situation in which employers found in breach of labour laws may face lesser financial penalties where they have employed undocumented workers. A serious question arises for the State as to whether the current framework provides an incentive for potentially rogue employers involved in human trafficking chains.⁶³

In 2019, Ireland ratified the Protocol to the ILO Convention No. 29 on Forced Labour, which provides for access to compensation to victims of forced labour irrespective of their immigration status. Given the analysis outlined above (and elsewhere in this submission) the National Rapporteur remains concerned that the rights of irregular migrants who are victims of forced labour and/or trafficking are not being sufficiently upheld, potentially, bringing the State out of compliance with its obligations under the ILO Convention and the EU Anti-Trafficking Directive.⁶⁴

Recommendations on labour exploitation

The National Rapporteur recommends, with a view to fostering better possibilities for compensation for victims of trafficking for forced labour, that the Law Reform Commission recommends that the State consider:

The introduction of an effective criminal compensation scheme that compensates for unpaid wages where there has been trafficking and labour exploitation;

A legislative amendment to permit irregular migrant workers access to the WRC and the labour court;

The expansion of free legal aid to employment and equality cases to ensure appropriate access to justice.⁶⁵

⁶³ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 118

⁶⁴ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 118

⁶⁵ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 118

LRC Consultation - relevant questions for the National Rapporteur

In this section, the National Rapporteur provides observations and comments in relation to some questions of the Law Reform Commission survey.

Chapter 3 Legislating for Victim Compensation

Q 3.1 Do you agree that legislation is necessary to underpin Ireland's criminal injuries compensation process?

The National Rapporteur is of the view that legislative change is required to underpin and strengthen the criminal injuries compensation process for victims of trafficking, in particular for the broader application of Section 6 Compensation orders. Senior criminal law practitioners at the meeting of Irish lawyers with GRETA, organised by the Bar Council in December 2021, told GRETA that while a compensation order can be made in criminal cases under the Criminal Justice Act 1993, compensation in this context is usually something that is offered by a defendant when they are admitting their guilt.

As outlined above, victims of trafficking do not have viable avenues to compensation for pain and suffering, which sets Ireland apart from other countries.⁶⁶ Recently, the European Commission reported that Ireland is one of only two EU Member States that have not fully transposed Article 17 of the EU Anti-Trafficking Directive (ensuring trafficking victims' access to existing schemes of compensation to victims of violent crimes of intent) since Ireland does not compensate victims of trafficking for pain and suffering:

“In IE [Republic of Ireland], the existing scheme for compensation to victims of violent crimes (namely the Criminal Injury Compensation

⁶⁶ European Commission (2022) [*Commission Staff Working Document Evaluation of the Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combatting trafficking in human beings and protecting its victim*](#), p. 40

Schemes) only recovers verifiable expenses, and not pain and suffering.”

67

The National Rapporteur recommends that the Law Reform Commission consider the specific needs of trafficked victims in its review of compensation, especially in regard to: the inclusion of ‘pain and suffering’ as a ground for compensation from the Criminal Injuries Compensation Scheme; the need to make provision for expert witness reports to substantiate claims related to ‘pain and suffering’ in compensation claims, and; the use of Section 6 Orders⁶⁸ as a means of compensating victims within the criminal process.⁶⁹

With a view to fostering better possibilities for compensation for victims of trafficking for forced labour, the National Rapporteur recommends the introduction of a functioning criminal compensation scheme that compensates applicants for unpaid wages where there has been trafficking *and* labour exploitation.

The lack of protections for irregular migrants, which victims of trafficking often are, inevitably create an anomalous situation in which employers found in breach of labour laws may face lesser financial penalties where they have employed undocumented workers. The National Rapporteur recommends legislative amendment to permit irregular migrant workers access to the WRC and the labour court.

Q 3.2 The Commission seeks to identify the guiding principles that should be reflected in any legislation, so as to ensure that the provision of state compensation to victims of crime accords with a more modern, trauma responsive approach to the needs of crime victims. Do you agree that the following would be appropriate guiding principles to be included?

- (1) Reparation;**
- (2) Compensation as of right;**
- (3) Acknowledgement and solidarity; and**
- (4) Minimisation of secondary victimisation.**

⁶⁷ European Commission (2022) [Commission Staff Working Document Evaluation of the Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combatting trafficking in human beings and protecting its victim](#), p. 40

⁶⁸ Criminal Justice Act 1993

⁶⁹ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 116

Are there additional or different guiding principles that should be reflected in legislation in this context?

The National Rapporteur recommend that any relevant new or amended legislation is proofed from the perspective of victims of trafficking, including those who do not have verifiable expenses or loss of earnings but have nonetheless endured serious pain and suffering. Such persons are often illegal migrants without the necessary permissions to work or reside. An approach that includes such victims of trafficking is recommended.

Q 3.3 The Commission considers that a steady and consistent funding model is essential to the effective and efficient functioning of any victim compensation scheme. The Commission seeks consultees' views as to whether some of that funding should come from court fines and the confiscated proceeds of crime and/or sources other than the Exchequer.

According to Article 7 of the EU Anti-Trafficking Directive, competent authorities should be entitled to seize and confiscate instrumentalities and proceeds from human trafficking offences. Confiscation of assets of criminal organisations and individuals implicated in human trafficking remain an important element of the fight against crime generally, and against human trafficking in particular.⁷⁰

Ireland has a robust legislative framework in place allowing for the freezing, seizure and confiscation of assets that derive from criminal conduct.⁷¹ Importantly, a recent decision of the Court of Justice of the EU held that civil proceedings for confiscation (that are unrelated

⁷⁰ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 59

⁷¹ In accordance with the provisions of the Proceeds of Crime Acts 1996-2016, the Criminal Justice Act 1994, as amended, and related statutes, all confiscations relating to the proceeds of crime are transferred to the Minister for Finance to be paid into, or disposed of, for the benefit of the Exchequer

to a finding of a criminal offence) are compatible with EU law.⁷² As such, the legitimacy of the Criminal Assets Bureau⁷³ is further strengthened.⁷⁴

The confiscation and seizure architecture also includes Section 9 confiscation orders,⁷⁵ which apply to offences other than drug trafficking offences, and allows a court to order a convicted person to pay such sum as the court thinks fit to the Exchequer (to be used at the discretion of the Minister for Finance).⁷⁶

The National Rapporteur has called on the State to re-examine the possibility of establishing a dedicated compensation fund for victims of trafficking, including a contribution from any proceeds confiscated in the course of criminal proceedings against perpetrators of human trafficking.⁷⁷

Q 3.7 If other measures should form part of its functions:

- (1) What services could or should be provided?**
- (2) What professions and skills are required?**
- (3) How should the body be structured?**
- (4) How might such a body intersect with existing state- and NGO provided victim services?**

The National Rapporteur recommends that any proposed compensation scheme should include effective and accessible access to translation, interpretation and cultural mediation.

Q 3.8 In addition to administering the compensation scheme, should a specialist body function as a “one-stop-shop” for victims? Should it have responsibility for providing information and assistance to victims going through the criminal justice system?

⁷² ‘Komisia za protivodeystvie na koruptsiyata i za otnemane na nezakonno pridobitoto imushtestvo v, BP and others’ [2019] Case no. C-234/18.

⁷³ CAB is a multi-disciplinary body, made up of members of An Garda Síochána, officials from the Office of the Revenue Commissioners (Taxes and Customs), officials of the Department of Social Protection, together with staff from the Department of Justice, including the Bureau Legal Officer, Forensic Accountants, Financial Crime Analysts, IT experts and Administrative Staff

⁷⁴ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 59

⁷⁵ Criminal Justice Act 1994

⁷⁶ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 59

⁷⁷ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 60

The National Rapporteur welcomes the introduction of ‘one-stop-shop’ approach to compensation of victims, on the basis that victims of trafficking at present do not seem to be sufficiently taken into account and included in the working of different compensation mechanisms that exist in Ireland.

Chapter 4 Awards of Compensation

Q 4.1 Should provision be made for the awarding of damages for pain and suffering (or, in the language of the BV case, damages for “non-material loss”) in all claims (not limited to fatal claims)?

Victims of trafficking do not have viable avenues to compensation for pain and suffering, which sets Ireland apart from other countries.⁷⁸ Recently, the European Commission reported that Ireland is one of only two EU Member States that have not fully transposed Article 17 of the EU Anti-Trafficking Directive (ensuring trafficking victims’ access to existing schemes of compensation to victims of violent crimes of intent) since Ireland does not compensate victims of trafficking for pain and suffering:

“In IE [Republic of Ireland], the existing scheme for compensation to victims of violent crimes (namely the Criminal Injury Compensation Schemes) only recovers verifiable expenses, and not pain and suffering.”

⁷⁹

The National Rapporteur recommends that the Law Reform Commission consider the specific needs of trafficked victims in its review of compensation, especially in regards to: the inclusion of ‘pain and suffering’ as a ground for compensation from the Criminal Injuries Compensation Scheme; the need to make provision for expert witness reports to substantiate claims related to ‘pain and suffering’ in compensation claims, and; the use of Section 6 Orders⁸⁰ as a means of compensating victims within the criminal process.⁸¹

⁷⁸ European Commission (2022) [Commission Staff Working Document Evaluation of the Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combatting trafficking in human beings and protecting its victim](#), p. 40

⁷⁹ European Commission (2022) [Commission Staff Working Document Evaluation of the Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combatting trafficking in human beings and protecting its victim](#), p. 40

⁸⁰ Criminal Justice Act 1993

⁸¹ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 116

Chapter 5 Eligibility and Exclusion

Q 5.2 European Union law requires fair and appropriate compensation to be paid to victims of violent intentional crime. There is a lack of clarity in the terms of the Scheme on the entitlements of victims without physical injury to receive compensation. Do you agree that psychological injury should be expressly included within the definition of a crime of violence in a statutory reformed scheme?

The National Rapporteur agrees with the explicit inclusion of psychological injury within the definition of a crime of violence in any reformed statutory scheme. Victims of trafficking, especially those sexually exploited, suffer severe and enduring mental health impacts. It has been reported that victims of rape (often an aspect of sexual exploitation) suffer

“over four times the rate of Post-Traumatic Stress Disorder (PTSD), twice the lifetime level of depression and ten times the level of eating disorders, higher rates of attempted suicide and completed suicide amongst women who have been raped compared to other crime victims.”⁸²

Q 5.4 A standard feature of most criminal injury compensation schemes is that the applicant/victim is required to “provide all reasonable assistance” in the compensation process and also to the police in the investigation of the offence.

(1) Is it fair and appropriate to refuse an award of compensation if an applicant has withdrawn their complaint from the Garda Síochána?

The National Rapporteur believes that compensation for victims of trafficking should not be contingent on their cooperation with An Garda Síochána in the criminal investigation.⁸³ Specifically, the National Rapporteur has recommended that the condition requiring victims of trafficking to cooperate in investigations in order to be referred to assistance and support

⁸² Walby S. et al., (2016) [Study of the Gender Dimension of Trafficking in Human Beings](#). Luxembourg: Publications Office of the European Union, p. 35

⁸³ In its third reporting cycle on Ireland’s implementation of the Council of Europe Trafficking Convention, published in September 2022, GRETA urges the Irish authorities to make efforts to guarantee effective access to compensation for victims of THB, in line with Article 15 (4) of the Convention, including by: reviewing the eligibility criteria for state compensation with a view to making it available in practice to victims of trafficking, and ensuring that eligibility is not affected by the failure of the victim to inform the authorities of the crime or to cooperate with them.

be removed in the new National Referral Mechanism, which includes access to compensation.⁸⁴

Q 5.5 No compensation is payable where the Tribunal is satisfied that the victim was responsible for, and contributed to, because of provocation or otherwise, the offence giving rise to their injuries, and the Tribunal may reduce the amount of an award where, in its opinion, the victim has been partially responsible for the offence.

(1) How should reference to an applicant's contribution to their injuries be defined for the purpose of limiting eligibility?

(2) Should intoxication of the victim form part of an assessment of "contribution to their injuries"?

According to the United Nations High Commissioner for Human Rights:

"Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons."⁸⁵ [emphasis added]

Similarly, Guideline 4(5) provides that States should consider:

"Ensuring that legislation prevents trafficked persons from being prosecuted, detained or punished for the illegality of their entry or residence or for the activities they are involved in as a direct consequence of their situation as trafficked persons."

In 2005, for the first time, an explicit reference to these ideas was included in Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings:

"Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so."

The National Rapporteur is of the view that any compensation scheme should honour fully the non-punishment/prosecution requirement.

⁸⁴ IHREC (2022) [Trafficking in Human Beings in Ireland. Evaluation of the Implementation of the EU Anti-Trafficking Directive](#), p. 80

⁸⁵ Office of the High Commissioner for Human Rights, [Recommended Principles and Guidance on Human Rights and Human Trafficking](#), para. 7

Chapter 6 Procedural Issues

Q 6.7 The Commission seeks the views of consultees as to whether applicants require legal advice and/or representation in the compensation process. If it is considered that legal assistance is necessary and desirable, should provision be made for legal aid?

The National Rapporteur considers that for victims of human trafficking to effectively access their right to compensation access to legal advice and representation is necessary and, as such would require amendment of the Civil Legal Aid Act.

Chapter 7 Interaction with Compensation in the Criminal Process

Q 7.1 The Commission is keen to learn of consultees' insights into how frequently orders under section 6 of the Criminal Justice Act 1993 are made at sentencing.

As stated above, to the National Rapporteur's knowledge, in the first successful trafficking convictions the prosecution did not request a Section 6 compensation order, despite a financial investigation showing that the defendants had assets in other countries.

Q 7.4 The Commission is keen to determine if the process of court-ordered compensation could be restructured so that it offers protection for accused persons from prejudice, while maintaining the integrity of the sentencing process and providing reparation for victims. The Commission is inclined to the view that the current process of waiting for the conclusion of criminal or civil proceedings to decide on an application for compensation under the Scheme is potentially inefficient. It may also cause financial hardship for victims.

(1) Do you have any views or suggestions on how to better integrate these parallel processes in a clear and efficient manner for victims?

(2) Could the compensation order at the conclusion of the criminal trial operate notionally in favour of the victim, with provision for the order in fact to operate in favour of the state criminal injuries compensation fund, so that the cost of compensation is not unnecessarily borne by the taxpayer?

Regard must be had to the important reforms proposed in the General Scheme of the Criminal Justice (Criminal Law and Trafficking) Bill 2022 and the substantial amendments recommended by the National Rapporteur in its submission to the Joint Oireachtas Committee. The Rapporteur would urge the Commission to consider these in detail and align their recommendations fully with the new National Referral Mechanism.

Given the exceedingly low prosecution rates for trafficking offences and the likely under identification of victims, all avenues for compensation need to be reformed, including legal

advice and representation for tortious action, Section 6 compensation orders, and reform of the Criminal Injuries Compensation Scheme.

Annexes

Annex1: International Obligations on Compensation of Victims of Trafficking

Beyond the EU legal framework, at international level, both the UN Trafficking Protocol of Palermo, 2000 (Article 6(6))⁸⁶ and, more comprehensively, the Council of Europe Trafficking Convention of Warsaw, 2005 (Articles 15(3) and 15(4))⁸⁷ observe the rights of victims of trafficking to obtain compensation. Article 15(3) of the Warsaw Convention establishes the right to compensation for victims of trafficking from their perpetrators and Article 15(4) obliges Parties to adopt the necessary measures to guarantee such compensation *in accordance with national law through the establishment of a compensation fund or other similar programmes* to assist and integrate victims using proceeds of trafficking offences.

The Warsaw Convention observes a right to compensation that

‘is pecuniary and that covers both material injury (such as the cost of medical treatment) and non-material damage (the suffering experience)’ based on a claim against the traffickers.⁸⁸

The Convention recognises the difficulty of obtaining compensation from the perpetrators (due to not being found or a lack of assets *inter alia*) and requires the Parties to guarantee State’s compensation of victims through their chosen means.⁸⁹

The OSCE Permanent Council has called participating States to consider compensating victims of trafficking through the confiscation of the perpetrators’ assets obtained from trafficking and related offences (such as money laundering) and the establishment of compensation fund for victims funded from such proceeds.⁹⁰

⁸⁶ Article 6(6) of the Palermo Protocol provides that ‘Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered’.

⁸⁷ Council of Europe Convention on Action against Trafficking in Human Beings 2005

⁸⁸ Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings 2005, para. 196

⁸⁹ Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings 2005, para. 197

⁹⁰ OSCE/ODIHR (2022) [National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons](#), p. 229

Annex 2: International Monitoring of compensation to victims of trafficking in Ireland

In 2020: OSCE Special Representative and Co-ordinator for Combatting Trafficking in Human Beings

In its most recent evaluation of the State's measures for compensation of trafficked persons, the Special Representative notes that victims can seek civil and criminal compensation from offenders through civil proceedings in the courts, the Personal Injuries Board, Labour Court and criminal compensation in the courts through Section 6 of the Criminal Justice Act 1993 or the Criminal Injuries Compensation Tribunal. Victims of labour exploitation can seek compensation through Workplace Commission. While taking note of the various channels through which victims could claim compensation, the Special Representative notes that no victims of sex trafficking have been granted compensation which suggests significant deficiencies in practice between the point of identification and granting of compensation.⁹¹ It recommends to the State to:

“Review and assess the effectiveness of the compensation scheme currently available to trafficked victims and develop separate actions on how to improve the current gap in compensation claims/ grants made to victims.”⁹²

In 2022: Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA)

In its third reporting cycle on Ireland's implementation of the Council of Europe Trafficking Convention, published in September 2022, GRETA urges the Irish authorities to make efforts to guarantee effective access to compensation for victims of THB, in line with Article 15 (4) of the Convention, including by:

- ensuring that the collection of evidence about the harm the victim has suffered, including the financial gain from the exploitation of the victim, is

⁹¹ OSCE (2020) *Conclusion and recommendations for Ireland following the visit by OSCE Special Representative and Co-ordinator for Combatting Trafficking in Human Beings*, Valiant Richey, p. 7

⁹² OSCE (2020) *Conclusion and recommendations for Ireland following the visit by OSCE Special Representative and Co-ordinator for Combatting Trafficking in Human Beings*, Valiant Richey, p. 8

part of the criminal investigation, with a view to supporting compensation claims in court;

making full use of the legislation on the freezing and forfeiture of assets, as well as international co-operation, to secure compensation to victims of THB, and ensure that recoverable property which is seized in criminal proceedings is returned as soon as possible to the victim or used to compensate the victim;⁹³

enabling victims of trafficking to effectively exercise their right to compensation, by ensuring access to legal assistance and free legal aid;

including compensation in the training programmes of legal practitioners, prosecutors and the judiciary, encouraging them to use all the possibilities the law offers to uphold compensation claims by victims of THB, and requiring courts to state, where applicable, why compensation is not considered;

ensuring that the right to compensation is not limited to pecuniary costs and that non-pecuniary damages are eligible for compensation in criminal and civil proceedings as well as under the state compensation scheme;

reviewing the lack of recourse to mechanisms for the recovery of unpaid wages in cases of undocumented workers;

reviewing the eligibility criteria for state compensation with a view to making it available in practice to victims of trafficking, and ensuring that eligibility is not affected by the failure of the victim to inform the authorities of the crime or to cooperate with them.⁹⁴

⁹³ GRETA (2022) '[Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings](#)', p. 24

⁹⁴ GRETA (2022) '[Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings](#)', p. 25

Furthermore, GRETA invites the Irish authorities to consider setting a special compensation fund for victims of THB, funded by the assets confiscated from perpetrators (see paragraph 99).⁹⁵

In 2023: Proposal for a Directive of the European Parliament and of the Council on preventing and combatting trafficking in human beings and protecting its victims

Article 17 of the Directive requires Member States to ensure that victims of THB have access to existing schemes of compensation to victims of violent crimes of intent. All but two Member States have fully transposed Article 17 of the Directive (In IE, the existing scheme for compensation to victims of violent crimes (namely the Criminal Injury Compensation Schemes) only recovers verifiable expenses and not pain and suffering). Such measures include compensation for non-material damages, such as physical and psychological suffering (AT, FI, SK), dual system compensation (BG, CZ, ES, IE, LT, MT, NL, PT, SE), fund for victims of violent crimes (BE, FR and HR), or other special compensation measures.⁹⁶

⁹⁵ GRETA (2022) '[Evaluation Report Ireland. Third Evaluation Round. Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings](#)', p. 25

⁹⁶ European Commission (2022) [Commission Staff Working Document Evaluation of the Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/36/EU on preventing and combatting trafficking in human beings and protecting its victim](#), p. 40

Annex 3: International Good Practice

The UK Courts can make reparation orders to compensate victims when a confiscation order shows that the perpetrator has assets available, and give reasons if it decides against it. The courts can also impose reparation orders where no confiscation order has been made.

When the perpetrator lacks funds to pay the fine and the compensation, preference must be given to compensating the victim. Court's reparation orders must also take into account the perpetrator's means and may be reduced or the trafficker given additional time to pay. The UK also counts a Compensation Scheme, which can award compensation for pain and suffering and is restricted to victims of violent crime. Victims must have been formally identified by a competent authority under the UK NRM or have been granted temporary protection, asylum or humanitarian protection. Yet, victims have no access to legal aid in order to apply.

In the Netherlands, victims can obtain compensation from perpetrators by court orders as the primary mechanism, or through the Violent Offences Compensation Fund (90% of victims that have applied for compensation from the fund have been awarded it).⁹⁷

Under Swedish law, trafficking victims that are part of criminal proceedings can lodge a claim for compensation of damages to be paid by the perpetrator, and the prosecutor (upon request by the party) presents this action provided that it will not result in a major disruption.⁹⁸ Alternatively, victims of crime may lodge a separate claim for compensation from the offender within 10 years from the injury or damage suffered, or longer depending on the limitation period to bring charges for the offence.⁹⁹ Compensation from the State may be granted also when the offender is unable to pay (following a conviction or summary

⁹⁷ GRETA (2018) [*Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Netherlands*](#), pp. 35-36

⁹⁸ GRETA (2018) [*Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden. Second Evaluation Round*](#), para. 157

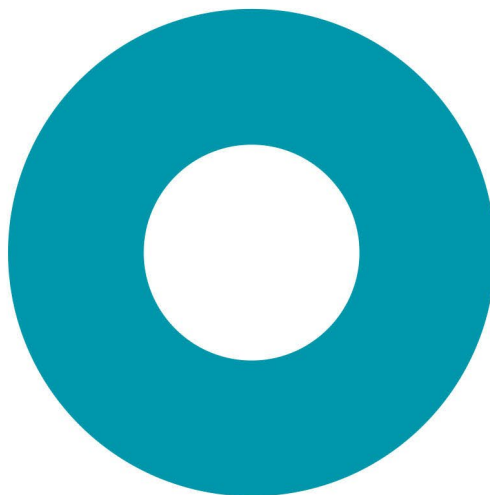
⁹⁹ GRETA (2018) [*Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden. Second Evaluation Round*](#), para. 157

imposition of a fine) or is not possible to identify (after an inquiry confirming that the victim has been subjected to a criminal act), including for pain and suffering.¹⁰⁰

¹⁰⁰ GRETA (2018) [*Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Sweden. Second Evaluation Round*](#), para. 158



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an Duine agus Comhionannas
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