

## Annex I. Key international and European standards

### Legally binding instruments

Both the UN Convention on Transnational Organised Crime (UN TOC) and the Trafficking Protocol oblige States Parties to establish appropriate procedures to provide access to compensation and restitution for victims of trafficking. This may include the use of confiscated proceeds of crime or property to compensate victims.

#### **Organized Crime Convention, Article 14 & 25**

- Art. 14.2: Requires States Parties to give priority consideration to returning confiscated proceeds of crime or property to a requesting State Party for compensation of victims.
- Art. 25.2: Requires States Parties to establish appropriate procedures to provide access to compensation and restitution for victims.
- Art. 25.3: Requires States Parties to enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

The term restitution is not defined and has multiple meanings, including compensation. One can therefore assume that restitution in this context covers full damages for all types of losses, including unpaid wages.

#### **Trafficking Protocol, Article 6**

- Art. 6.2: Each State Party shall ensure that information on relevant court and administrative proceedings is provided to victims of trafficking in persons.
- Art. 6.6: Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

The Interpretative Notes to the Protocol indicate that this should apply both in the destination State and the country of origin of the victim.

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

- Art. 15.3: Each State Party shall provide, in its internal law, for the right of victims to compensation from the perpetrators. According to the Explanatory Report compensation may cover material injury (such as the costs of medical treatment) and non-material damage (the suffering experienced).
- Art. 15.4: Each State Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims, in accordance with the conditions under its internal law, for instance through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of measures provided in Art. 23 [monetary sanctions]. In deciding the compensation arrangements, the Explanatory Report refers to the principles contained in the *European Convention on the Compensation of Violent Crimes* (ETS no. 116), which limits the requirement that States pay compensation to cases of “serious bodily injury or impairment of health directly attributable to an intentional crime of violence” (Art. 2.1).

Para 1 & 2 oblige States Parties to ensure that victims have access, as from their very first contact with the competent authorities, to information on relevant judicial and administrative proceedings in a language they understand (15.1), and to provide for the right to legal assistance and to free legal aid for victims under the conditions provided by its internal law (15.2). In relation to the latter, the Explanatory Report refers to the ECtHR, which held that in certain circumstances there is a right to free legal assistance under Art. 6.1 ECHR (*Airey v. Ireland*, 9 October 1979). Effective access to a court may necessitate free legal assistance if someone is not in a position to present her or his case properly and satisfactorily without the assistance of a lawyer (*Golder v. UK*, 21 February 1975).

### **European Convention on the Compensation of Violent Crimes (ETS no. 116)**

- Art. 2.1 envisages a State funded compensation scheme which, at a minimum, covers nationals and permanent residents who are victims of “serious bodily injury or impairment of health directly attributable to an intentional crime of violence”.
- The compensation should be available even where the offender is not prosecuted or punished (Art. 2.2), and should cover at a minimum loss of earnings, medical, hospital and funeral costs, and maintenance for dependants (Art. 4).
- Art. 8 allows limitations on the eligibility of the claimant related to their character and antecedents, e.g. the conduct of the applicant before, during or after the crime, or in relation to the injury or death. This means that, e.g., a claimant can be denied compensation if s/he is deemed to have “provoked” the crime or when s/he has an unrelated criminal record.

### **ILO Protocol to the Forced Labour Convention, 2014.**

- Art. 1 requires States Parties to take effective measures to provide to victims protection and access to appropriate and effective remedies, such as compensation, and to sanction the perpetrators of forced or compulsory labour.
- Art. 4: requires States Parties to ensure that all victims of forced or compulsory labour, irrespective of their presence or legal status in the national territory, have access to appropriate and effective remedies, such as compensation.

### **ILO Forced Labour Conventions no. 29 (1930) and 105 (1957)**

The 1930 ILO Forced Labour Convention does not specify a right to compensation. However, the ILO Committee of Experts issued the following commentary to Art. 25, which deals with penalties for forced labour:

*Where a form of forced labour is found to exist, those responsible must be effectively punished in accordance with the penal sanctions established by law. The State has to ensure that the victims of such practices are able to complain to the competent authorities, have access to justice and obtain compensation for the harm they have suffered (ILO Forced Labour Survey 2007, p. 75, para. 139).<sup>1</sup>*

The ILO *Guidelines on Human Trafficking and Forced Labour Exploitation*<sup>2</sup> state that (in addition to criminal remedies) the availability of civil, administrative and labour law remedies is critical and that workers will often require assistance to bring claims. In particular, States are asked to use their administrative legal systems to protect foreign workers and provide them with remedies against exploiters (p. 26-29).

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<sup>1</sup> See: [www.ilo.org/public/english/standards/relm/ilc/ilc96/pdf/rep-iii-1b.pdf](http://www.ilo.org/public/english/standards/relm/ilc/ilc96/pdf/rep-iii-1b.pdf)

<sup>2</sup> See: [www.ilo.org/sapfl/Informationresources/ILOPublications/lang--en/docName--WCMS\\_081999/index.htm](http://www.ilo.org/sapfl/Informationresources/ILOPublications/lang--en/docName--WCMS_081999/index.htm)

The ILO uses a wide definition of work as “any economic activity that people can do or can be forced to do”. This means that all ILO conventions related to work (as opposed to employment) cover sex work. This included the ILO’s fundamental rights conventions, such as the Forced Labour Conventions, which only speak about work and not about employment. The ILO Committee of Experts has always treated forced prostitution as a form of forced labour.

### **Other ILO Conventions**

- *ILO C 95 on Protection of Wages* regulates a number of areas relevant to the protection of trafficked persons’ rights, e.g. wages should be paid regularly, in full, direct to the worker, without unreasonable deductions or conditions as to how they should be spent, and there should be no deductions to pay an intermediary. Art. 15 obliges States Parties to ensure the existence of “adequate penalties and other appropriate remedies” for violations of the laws implementing the Convention. Appropriate remedies would include rights in civil or labour law and/or to negotiate a settlement via a trade union or a similar representative.
- *ILO C 181 on Private Employment Agencies* contains various regulations aimed at regulating such agencies to prevent abuses. These include the prohibition of the need to pay fees to such agencies (Art. 7). Art. 14.3 provides that “adequate remedies” should be in place for violations of the rights in this convention.

### **Migrant Workers Conventions**

- The *ILO Conventions on migrant workers* (no. 97 and 143) set standards to ensure migrants are not deprived of their rights to be paid for work they have performed. These standards are relevant to claims by exploited migrant labourers in civil or labour law for unpaid or underpaid wages and other loss and damage arising from abuse of employment law standards (e.g. health and safety at work, deprivation of holidays, excessive hours and others).
- Similar provisions are contained in the *International Convention on the Protection of Migrant Workers and Their Families* (Art. 25.3). However, both conventions are not widely ratified.

### **International Covenant on Social, Economic and Cultural Rights, Article 7**

Art. 7: Everyone has the right to enjoy just and favourable conditions of work. This includes the right to fair wages and equal remuneration for work of equal value, to safe and healthy working conditions, and to rest, leisure and reasonable limitation of working hours and periodic holidays with pay. Women should be guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work. The convention applies to everybody without any discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

### **EU law**

For Member States of the European Union the following legally binding, documents are particularly relevant:

#### ***Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims***

Art. 12 deals with the protection of victims of trafficking in human beings in criminal investigation and proceedings. Art. 12.2: Member States shall ensure that victims of trafficking in human beings have

access without delay to legal counselling, and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation. Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources. Art. 12.4 requires that, without prejudice to the rights of the defence and in accordance with national law and judicial discretion, Member States shall ensure that victims of trafficking receive specific treatment aimed at preventing secondary victimisation by avoiding, as far as possible the following: a. unnecessary repetition of interviews; b. visual contact between victims and defendants including during the giving of evidence such as interviews and cross-examination; c. the giving of evidence in open court; and d. unnecessary questioning concerning the victim's private life.

Art. 17: Member States shall ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crimes of intent.

Art. 11 establishes the victims' right to assistance and support before, during and after criminal proceeding. Such assistance shall be provided as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected to trafficking. Assistance and support shall not be made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial. This assistance shall include at a minimum at least standards of living capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate.

***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***

The Directive lays down a set of binding rights for victims and clear obligations on EU Member States to recognise and treat victims in a respectful and non-discriminatory manner based on an individual approach tailored to the victim's needs. Article 1 provides that the rights apply to all people who fall victim to crime in Europe without discrimination of any kind, including with respect to their residence status.

Chapter II of the Directive deals with the provision of information and support to victims and establishes key rights such as: the right to understand and to be understood (Art. 3); the right to receive information from the first contact with a competent authority including on how and under what conditions they can obtain protection, legal advice or compensation (Art.4); the right to support (Art. 8-9), the right to interpretation and translation (Art.7).

Chapter 3 of the Directive deals with the rights in relation to victims' participation in criminal proceedings. It includes inter alia the right to be heard (Art. 10), the right to legal aid (Art. 13). Further Art.11 requires Member States to ensure that at least the victims of serious crimes have the right to a review of a decision not to prosecute. Art. 16 established the victim's right to obtain a decision on compensation from the offender in the course of criminal proceedings, within a reasonable time. Member States are also required to promote measures to encourage offenders to provide adequate compensation to victims.

Chapter 4 of the Directive articulates the rights to protection of victims and recognises victims with specific protection needs, such as victims of trafficking and child victims. It includes under Art. 22 the right to an individual assessment in order to determine their specific protection needs, and determine measures to protect them from both the offender and from risk of further harm that may arise in the course of proceedings (Art. 23 and 24 deal with the right to protection of victims with specific protection needs and child victim during criminal proceedings).

***Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers***

Art. 25 deals with mechanisms for the facilitation of complaints. It requires Member States to put in place effective mechanisms through which seasonal workers may lodge complaints against their employers directly or through third parties. Where appropriate, third parties may engage either on behalf of or in support of a seasonal worker, with his or her approval, in any administrative or civil proceedings, excluding the procedures and decisions concerning short-stay visas. Furthermore, Member States are required to ensure seasonal workers' access to measures protecting against dismissal or other adverse treatment by the employer as a reaction to a complaint.

***Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals***

Art. 6 deals with back payments to be made by employers. In case of infringements of the prohibition on employment of illegally staying third-country nationals, it requires that Member States shall ensure that the employer is liable to pay: (a) any outstanding remuneration to the third-country national in accordance with applicable laws on minimum wages, or collective agreements or in accordance with established practice in the relevant occupational sector; (b) amounts equivalent to taxes and social security contributions, including penalty payments for delays and relevant administrative fines; (c) where appropriate, any cost arising from sending back payments to the home country of the third-country national.

Furthermore, Art. 6 requires Member States to systematically inform illegally employed third-country nationals about their rights before the enforcement of any return decision. It stipulates that Member States are to enact mechanisms to ensure that illegally employed third-country nationals: (a) may introduce a claim for any outstanding remuneration, and eventually enforce a related judgment, including in cases in which they have, or have been, returned; or (b) where applicable may call on the competent authority to start procedures to recover outstanding remuneration without introducing a claim. An employment relationship of at least three months duration should be presumed unless proven otherwise. Where residence permits have been granted under Article 13(4), Member States shall define the conditions under which the permits may be extended until the third-country national has received any back payment.

***Council Directive 2004/80/EC relating to compensation to crime victims***

- Art. 1: sets up a system of cooperation to facilitate access to compensation for victims of violent intentional crime committed on their territory.

- Art. 12.2: requests States to establish a State-funded scheme for payments in these cases and to establish cooperation structures for individuals from other EU member States to ensure they can easily access the schemes from their home country.

***Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA)***

The framework Decision contains detailed guarantees that should be provided to all victims of crime in EU Member States, including the right to support and information about proceedings (including on compensation), the right to legal assistance and aid, the right to protection and trauma minimization during proceedings, the right of victims resident in other EU States to be accorded the same rights, and the right to compensation. Art. 9 provides that Member States shall ensure that victims of criminal acts are entitled to obtain a decision within reasonable time limits on compensation by the offender in the course of criminal proceedings (9.1) and that recoverable property belonging to victims which is seized in the course of criminal proceedings shall be returned to them without delay, unless urgently required for the purpose of criminal proceedings (9.3).

### **Relevant ECtHR Jurisprudence**

**ECTHR *Chowdury and Others v Greece*, Application No. 21884/15, 30 March 2017<sup>3</sup>**

The applicants are 42 Bangladeshi nationals who worked in Greece as strawberries pickers without work permits. They had been promised a wage of €22 for seven hours' work and €3 for each hour of overtime. They worked every day from 7 a.m. to 7 p.m. under the supervision of armed guards. They lived in very poor conditions without toilets or running water. At a certain point they went on strike demanding payment of their unpaid wages, but without success. One of the armed guards then opened fire, seriously injuring 30 workers, including 21 of the applicants. The wounded workers were taken to hospital. The investigation and judicial proceedings ended with a conviction of the armed guard and one of the employers of grievous bodily harm and unlawful use of firearms; their prison sentences were commuted to a financial penalty.

The Court held that there had been a violation of Article 4 (prohibition of slavery, servitude and forced labour) of the Convention (para. 101). The Court reiterated that the applicants' working conditions, showed clearly that they amounted to human trafficking and forced labour, and fell within the scope of Article 4 of the Convention (para. 100). The Court noted that exploitation through labour was one aspect of human trafficking (para 93). Further, the Court established that there had been a violation of Article 4 § 2 of the Convention on account of the State's failure to fulfil its positive obligations under that provision, namely to prevent the human trafficking situation complained of, to protect the victims, to conduct an effective investigation into the offences and to punish those responsible for the trafficking (para.128). Further, under Article 41 (Just satisfaction) of the Convention, the Court held that Greece was to pay each of the applicants who had participated in the proceedings before the assize court €16,000, and each of the other applicants €12,000 in respect of all the damage sustained, plus €4,363.64 to the applicants jointly in respect of costs and expenses (para. 129-134).

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<sup>3</sup> *Chowdury and Others v. Greece*, no. 21884/15, ECHR 2017. See also ECHR, Press Release, ECHR 112 (2017), 30.03.2017.

**ECtHR reference: L.E. v. Greece (no. 71545/12), 21 January 2016**

This case concerned a complaint by a Nigerian national who was forced into prostitution in Greece. She had lodged a criminal complaint alleging to be a victim of trafficking but had been required to wait more than nine months before the justice system granted her that status.

The Court held that there had been a violation of Article 4 (prohibition of slavery, servitude and forced labour) of the Convention. The Court further found a number of shortcomings with regard to the effectiveness of the preliminary inquiry and subsequent investigation of the case. The Court found multiple delays and failings with regard to the Greek State's procedural obligations. The Court found a violation of Article 6 § 1 (Right to a fair trial within a reasonable time) of the Convention since the length of the proceedings in question had been excessive for one level of jurisdiction and did not meet the "reasonable time" requirement (para. 95-98). Further, the Court held that there had been a violation of Article 13 (Right to an effective remedy) of the Convention, on account of the absence in domestic law of a remedy by which the applicant could have enforced her right to a hearing within a reasonable time (para. 99-100).<sup>4</sup> Further, under Article 41 (Just satisfaction) of the Convention, the Court held that Greece was to pay L.E. €12 000 in respect of non-pecuniary damage and €3,000 in respect of costs and expenses (para. 104, 107).

**ECtHR - Rantsev v. Cyprus and Russia, Application no. 25965/04, 10 October 2010<sup>5</sup>**

The case concerns Ms Rantseva, a Russian national, who arrived in Cyprus on a "cabaret-artiste" visa in 2001. Shortly after, she was found dead and an inquest held in Cyprus concluded that Ms Rantseva had died in circumstances resembling an accident. The applicant, father of Ms Rantseva complained against the Cypriot and Russian authorities in relation to the death of his daughter.

The Court found, unanimously, that trafficking in human beings, although not explicitly mentioned in the ECHR, fell within the scope of Article 4 (prohibition of slavery, servitude and forced labour). Trafficking in human beings by its very nature threatens human dignity and the fundamental freedoms of its victims, and cannot be considered compatible with the values expounded in the Convention, and is per se prohibited by Article 4 of the Convention (para. 282). The Court affirmed that Cyprus had violated Article 4 of the Convention failing to comply with its positive obligations. In particular, the Court considered that: "the spectrum of safeguards set out in national legislation must be adequate to ensure the practical and effective protection of the rights of victims or potential victims of trafficking. Accordingly, in addition to criminal law measures to punish traffickers, Article 4 requires member States to put in place adequate measures regulating businesses often used as a cover for human trafficking. Furthermore, a State's immigration rules must address relevant concerns relating to encouragement, facilitation or tolerance of trafficking".<sup>6</sup> In addition, the Court found a failure by the Cypriot authorities to take measures to protect

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<sup>4</sup> *L.E. v. Greece*, no. 71545/12, 21 January 2016. See also ECtHR Factsheet on Trafficking in Human Beings, 2017.

<sup>5</sup> *Rantsev v. Cyprus and Russia*, no. 25965/04, ECHR 2010. . See also ECtHR Factsheet on Trafficking in Human Beings, 2017.

<sup>6</sup> *Ibid.* para. 284.



Ms Rantseva; the Court stated that: “Article 4 may, in certain circumstances, require a State to take operational measures to protect victims, or potential victims, of trafficking [...] In order for a positive obligation to take operational measures to arise in the circumstances of a particular case, it must be demonstrated that the State authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked or exploited within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention”.<sup>7</sup> The Court held that there had been a violation by the Russian authorities of their procedural obligation under Article 4 to investigate alleged trafficking, and in particular “the authorities took no steps to identify those involved in Ms Rantseva’s recruitment or the methods of recruitment used”.<sup>8</sup> The Court further held that there has been a procedural violation of Article 2 of the Convention by Cyprus because of the failure to conduct an effective investigation into Ms Rantseva’s death (para. 242).

With regard to the assessment of damage, the Court awarded the sum of €40,000 in respect of the damage sustained by the applicant; the Court noted that “the applicant must be regarded as having suffered anguish and distress as a result of the unexplained circumstances of Ms Rantseva’s death and the failure of the Cypriot authorities to take steps to protect her from trafficking and exploitation and to investigate effectively the circumstances of her arrival and stay in Cyprus”. The Court further recalled that it had found a procedural violation of Article 4 in respect of Russia and awarded the applicant the sum of € 2,000 in non-pecuniary damage in respect of the damage sustained by him by the conduct of the Russian authorities (para. 343).

### Politically binding instruments

#### **ILO Recommendation on supplementary measures for the effective suppression of forced labour, Recommendation, 2014 (No. 203)**

Para 12. Members should take measures to ensure that all victims of forced or compulsory labour have access to justice and other appropriate and effective remedies, such as compensation for personal and material damages, including by:

- ensuring, in accordance with national laws, regulations and practice, that all victims, either by themselves or through representatives, have effective access to courts, tribunals and other resolution mechanisms, to pursue remedies, such as compensation and damages;
- providing that victims can pursue compensation and damages from perpetrators, including unpaid wages and statutory contributions for social security benefits;
- ensuring access to appropriate existing compensation schemes;
- providing information and advice regarding victims’ legal rights and the services available, in a language that they can understand, as well as access to legal assistance, preferably free of charge; and
- providing that all victims of forced or compulsory labour that occurred in the member State, both nationals and non-nationals, can pursue appropriate administrative, civil and criminal remedies in

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<sup>7</sup> Ibid. para. 286.

<sup>8</sup> Ibid. para. 308-309.



that State, irrespective of their presence or legal status in the State, under simplified procedural requirements, when appropriate.

Para. 13. Members should take action to strengthen the enforcement of national laws and regulations and other measures, including by:

- giving to the relevant authorities, such as labour inspection services, the necessary mandate, resources and training to allow them to effectively enforce the law and cooperate with other organizations concerned for the prevention and protection of victims of forced or compulsory labour;
- providing for the imposition of penalties, in addition to penal sanctions, such as the confiscation of profits of forced or compulsory labour and of other assets in accordance with national laws and regulations;
- ensuring that legal persons can be held liable for the violation of the prohibition to use forced or compulsory labour in applying Article 25 of the Convention and clause (b) above; and
- strengthening efforts to identify victims, including by developing indicators of forced or compulsory labour for use by labour inspectors, law enforcement services, social workers, immigration officers, public prosecutors, employers, employers' and workers' organizations, non-governmental organizations and other relevant actors.

**Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (UN GA Res. 40/34 of 29 November 1985)<sup>9</sup>**

Restitution and compensation should be available for crime victims, their families or dependants. Restitution should include the return of property or payment for harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, provision of services and restoration of rights (paragraph 8).

Government should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions (paragraph 9).

When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes (paragraph 12).

States should encourage the establishment, strengthening and expansion of national funds for compensation to victims of crime (paragraph 13).

Paragraph 4, 5 and 6 contain provisions obliging other assistance that should be provided to victims including information on their rights to redress and assistance throughout the proceedings.

**Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN GA Res. 60/147 of 16 December 2005)<sup>10</sup>.**

Reparation includes both restitution and compensation.

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<sup>9</sup>See: [www2.ohchr.org/english/law/victims.htm](http://www2.ohchr.org/english/law/victims.htm)

<sup>10</sup>See: [www2.ohchr.org/english/law/remedy.htm](http://www2.ohchr.org/english/law/remedy.htm)

Restitution should, wherever possible, restore the victim to the original situation and includes restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property (para. 19).

Compensation should be provided for any economically assessable damage, such as physical or mental harm, lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damages (such as pain and suffering, loss of reputation, emotional distress); and costs required for legal or expert assistance, medical, psychological or social services (para. 20).

Only applicable to a limited category of victims, e.g. where State actors are involved in trafficking. The envisaged source in all cases is the State given the inherent State responsibility for human rights violations.

### **UN HCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking**

Principle 16 & 17: States shall ensure that trafficked persons have access to effective and appropriate legal remedies, and that, to the extent possible, confiscated assets shall be used to support and compensate victims.

Guideline 4.4 (ensuring an adequate legal framework): States should consider making legislative provision for confiscation of the instruments and proceeds of trafficking and related offences. Where possible, legislation should specify that the confiscated proceeds of trafficking will be used for the benefit of victims of trafficking. Consideration should be given to the establishment of a compensation fund for victims of trafficking and the use of confiscated assets to finance such a fund.

Guideline 9 (access to remedies): Trafficked persons, as victims of human rights violations, have an international legal right to adequate and appropriate remedies. States should consider ensuring that victims have an enforceable right to fair and adequate remedies; providing information as well as legal and other assistance to enable trafficked persons to access remedies; making arrangements for trafficked persons to remain safely in the country in which the remedy is being sought for the duration of any criminal, civil or administrative proceedings.

### **ILO Migrant Workers Recommendation (no. 151, 1975)**

Art. 34: A migrant worker who leaves the country of employment should be entitled, irrespective of the legality of his stay therein, to any outstanding remuneration for work performed, including severance payments normally due.

### **Council of Europe Recommendation (2006) on Assistance to Crime Victims**

Art. 8 asserts that compensation should be provided by the state for victims of serious, intentional, violent crimes, including sexual violence (8.1) and, importantly, that State-sponsored compensation schemes should apply "irrespective of the victim's nationality" (8.2). It, moreover, encourages cooperation between CoE member states along the same lines as those required in the EU.

### **Council of Europe Recommendation (2000) on Action against trafficking in human beings for the purpose of sexual exploitation**

Only states that Member States should ensure that "victims can also take their claim to civil courts which are competent to rule ... and award them compensatory damages".

### **OSCE Action Plan to Combat Trafficking in Human Beings (Decision no. 557, 2003)**

Section III, paragraph 1, art 1.5: Recommends considering legislative provisions for confiscation of the instruments and proceeds of trafficking and related offences, specifying, where not inconsistent with national legislation, that the confiscated proceeds of trafficking will be used for the benefit of victims of trafficking. Giving consideration to the establishment of a compensation fund for victims of trafficking and the use of the confiscated assets to help finance such a fund.

## **Children**

### **Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims**

Art. 15.2 establishes that Member States shall, in accordance with the role of victims in the relevant justice system, ensure that child victims have access without delay to free legal counselling and to free legal representation, including for the purpose of claiming compensation, unless they have sufficient financial resources.

### **Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA**

**Art. 20 2.** establishes that Member States shall ensure that child victims have, without delay, access to legal counselling and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation. Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources.

### **UN HCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking**

Guideline 8 (special measures for the protection and support of child victims of trafficking), paragraph 8: States should consider adopting measures necessary to protect the rights and interests of trafficked children at all stages of criminal proceedings against alleged offenders and during procedures for obtaining compensation.

### **UN Guidelines on Justice for Child Victims and Witnesses of Crime (ECOSOC 2004/27)**

Child victims and witnesses should receive reparation in order to achieve full redress, reintegration and recovery. Procedures for obtaining and enforcing reparation should be readily accessible and child sensitive (paragraph 36) and where possible dealt with simultaneously with the criminal case (paragraph 37). Reparation may include restitution from the offender ordered in criminal court, aid from victim compensation programmes administered by the State and damage ordered to be paid in civil proceedings. Where possible, costs of social and educational reintegration, medical treatment, mental health care and legal services should be addressed. Procedures should be instituted to ensure automatic enforcement of reparation orders and payment of reparation before fines (paragraph 38).

### **UNICEF Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe** (based on the Guidelines for Protection of the Rights of Child Victims of Trafficking).

Includes the requirement to provide information and assistance to child victims and contains an extensive list of types of damages and loss that should be compensated, including material and moral damages and regardless of the nature of the work.