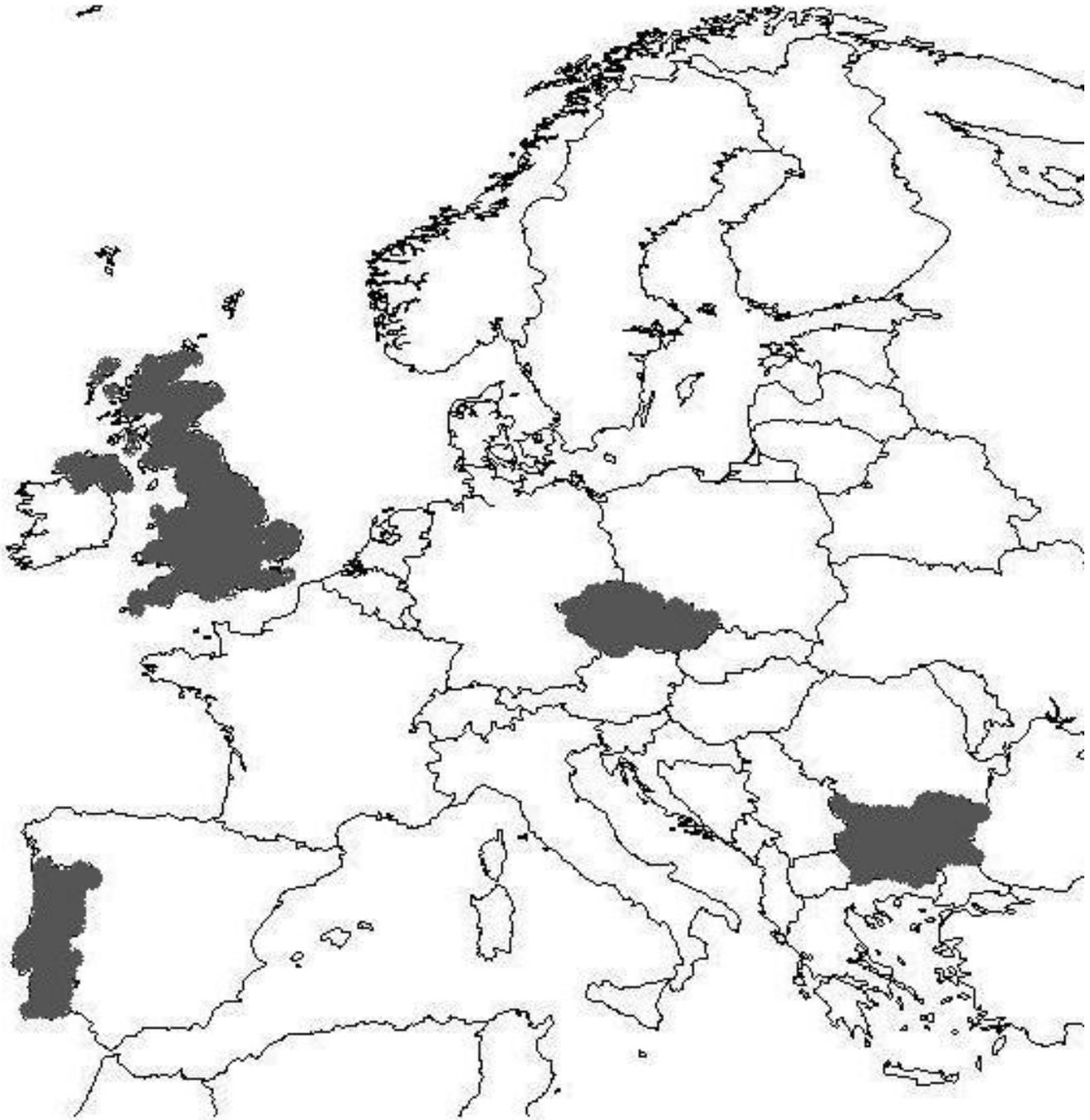


**COMPENSATION FOR TRAFFICKED PERSONS FROM STATE FUNDS:
ARE COMPENSATION FUNDS APPROPRIATE FOR TRAFFICKED PERSONS?**

A critical examination of four state compensation funds in Europe



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Foreword and Acknowledgements

This thesis is written as completion to the master International Crimes and Criminology, at the VU University Amsterdam. The master programme focuses on international crimes such as genocide, crimes against humanity and war crimes. The subject of this thesis, state funded compensation for trafficked persons, falls within the scope of the master's field because victims of human trafficking, as I will explain later, are almost always victims of human rights abuses. I have chosen to apply a human rights perspective to the concept, in line with the research field of the master.

The subject is selected in co-operation with La Strada International. La Strada International is an anti-trafficking network of eight human rights non-governmental organisations (NGOs), in support of all trafficked persons, but with a focus on women in Central, East and South East Europe. As part of their work, La Strada International develops and offers prevention activities and protection to trafficked persons and other affected groups. La Strada International is represented by an international secretariat based in Amsterdam.

La Strada International is a partner in the currently running project: European Action for Compensation for Trafficked Persons, also called the COMP.ACT¹ project. This project is an initiative in 14 European countries to improve access to justice and guarantee compensation for trafficked persons. During the project La Strada International noticed there was little information about the impact of state compensation funds on trafficked persons. In relation to this project La Strada International searched for a master student who was willing to write a thesis on state funded compensation for trafficked persons. I applied and linked my research question to the topic of compensation, fitting the framework of this COMP.ACT project, with the good hope that it has value for the COMP.ACT project.

Since April this year I have been conducting research on the topic. I have experienced this period as very interesting and instructive. At the beginning I had little knowledge of legal writing and the concept of compensation. However, I have been able to achieve a result I am very satisfied with. I would like to thank my supervisor from the University, Elinor Fry and Wiesje Zikkenheiner from La Strada International. Their valuable insights and directions gave me needful guidance to complete the research and write this thesis.

Lisanne de Weerd

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¹ <http://www.compactproject.org/>

Abstract

Human trafficking is a grave crime, receiving priority by both intergovernmental organizations and states in Europe. Since human rights violations are almost always inherent to human trafficking, people falling prey to this practice should be treated as victims of human rights violations. States have a responsibility towards victims of human rights violations and are obliged to provide effective remedies. One of these effective remedies is the right to compensation. Both nationally and internationally there is relevant legislation in place which provides for regulations for compensation for trafficked persons. One way to obtain compensation is to apply to a state compensation fund. Within Europe most states have compensation funds for victims of violent crimes in place. After exhausting other ways to compensation, trafficked persons are generally directed to these funds to apply for an award of compensation. This thesis questions the appropriateness of these funds for trafficked persons by studying four compensation funds in Europe and analyzing the difficulties trafficked persons experience when applying to the funds. This thesis outlines the legal framework of compensation, state compensation funds and the situation of trafficked persons and subsequently integrates these different concepts to show state compensation funds are difficult to access for trafficked persons. There is little data on this topic and therefore the research gives a theoretical analysis based on desk study.

Preface

The importance of assistance of victims of human trafficking is recognized by several states in official policy and legislation. Nevertheless, it seems victims do not effectively enjoy rights aimed at assistance in practice. According to research conducted by NGOs, such as Anti-Slavery International and La Strada International and also a study of the Organization for Security and Cooperation in Europe (OSCE) compensation for trafficked persons, and state funded compensation as part of that, is not effectively accessible to trafficked persons, because they face both procedural as well as practical obstacles.² Therefore, I decided to research the accessibility of state funded compensation.

For the research four countries within Europe were selected. These are Czech Republic, the United Kingdom (UK), Portugal and Bulgaria. The choice for the countries was based on some theoretical and practical considerations. Firstly, because the research is focused on state funded compensation, a selection was made of countries with a state fund for victims of crime. Furthermore, differences between countries in ratification of relevant treaties formed a component for the selection. It turned out that Czech Republic has not ratified the Council of Europe Convention against Trafficking in Human Beings. Therefore, I decided to include Czech Republic in the research, assuming that the fact the country has not signed or ratified the convention has a negative effect on the situation regarding state funded compensation. Just as I expected international legislation would have influence on the situation, I also expected experience with a state fund would be of influence. The UK has an already long-time existing state fund. That is why the UK is included in the study as a country which is expected to have a well-functioning state fund and prosperous situation on compensation. The choice to include Bulgaria in the study was more practical, based on relevant contacts in the country to assist with the collection of necessary data and information. Lastly, for geographical reasons I decided to include Portugal in the research as well.

Initially, the research was aimed at measuring the accessibility of state funded compensation for trafficked persons within Europe. Therefore, as described above, four states were selected. However, during the period of research I had to recognize that there was no sufficient information available to fully consider the situation and find an answer to my research question. It became clear to me that the United Kingdom has no data on the number of trafficked persons that applied for state funded compensation. The Criminal Injuries Compensation Authority (CICA), which is the deciding authority in the UK on

² Shrub, Tyurina & Naumovich 2010; Lam & Skrivankova 2008 & OSCE Office for Democratic Institutions and Human Rights 2008.

awarding state fund to victims of crime, bases the decision to award compensation on the injuries people sustain and not particular on the crimes of which people fall victim to. Therefore, this authority was able to provide figures about injuries for which they compensate but not for type of crime or victim. Also Czech Republic documents information on state funded compensation, but the data is not specified enough to make a distinction between types of victims that applied. Bulgaria has not provided state compensation to victims of human trafficking since the entry into force of the Bulgarian Crime Victim Assistance and Financial Compensation Act in 2007. Consequently, it was also not possible to assess the accessibility of state compensation in Bulgaria. Unfortunately, I was not able to determine whether applications were even made. Finally, the response and answers from organizations I contacted in Portugal regarding this topic was very marginal and I did not receive any information about the compensation fund.

Although it is not possible to assess the accessibility of compensation via state funds because of the missing data, it is an interesting question if trafficked persons are, in theory, able to access state funded compensation and if countries that have ratified relevant treaties meet the accompanying requirements. Therefore, I decided to compare the state funds of the UK, Czech Republic, Bulgaria and Portugal and analyze if the systems are appropriate for victims of human trafficking. Possible disadvantages and benefits of the compensation schemes will be addressed and the position within the international human rights framework will be described. Eventually, I will give recommendations to improve the position of trafficked persons with regard to state funded compensation.

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1. Introduction

'During a four-week stay in the Philippines, three offenders got in touch with a manager of dancers and, through a local agency and under the promise of good earnings, they hired seven Filipino women offering a job in the Czech Republic. They arranged their transfer by air to Prague. The Filipino women said that they had been recruited to work as dancers or waitresses in a club. The traffickers took advantage of the fact that the Filipino girls, being away from home, depended completely on them. They put forward the contracts signed by the girls and forced them to provide paid sexual services, including sexual intercourse, in the club Manila in Prague.'³

The story above is an example of human trafficking for the purpose of sexual exploitation. Human trafficking is a broad concept which can comprise multiple forms of exploitation. It is nothing new, but an ever existing practice which can be regarded as a modern form of slavery.⁴ Although it is nothing new, still a lot is uncertain about the nature and the scope of human trafficking. Improved knowledge on the phenomenon is important to be able to more effectively combat this grave crime and protect the victims who fall prey to the practice.

Over time views to the practice changed. Lately, with regard to human trafficking, a shift from the criminal- and immigration law approach to a more multidisciplinary approach slowly developed. Now, human trafficking is often approached from a human rights perspective. Or at least in theory, in practice the focus on criminal law is still dominant, at the expense of victims' rights.⁵ The human rights perspective, also called the victim-centred approach, addresses, as the words already implicate, the grave nature of the crime and the vulnerable position of the victim. The human rights approach takes the interests of victims into account and can improve the understanding of problems experienced by trafficked persons.⁶ This thesis addresses the crime from a human rights approach and the next paragraph will therefore firstly explain the value of this approach.

1.1 The value of the human rights approach

To approach human trafficking from a human rights perspective is important for several reasons. Firstly, it is indicated that victims who are respected, supported and protected will recover sooner from their injury, which enables them to get back to their normal lives

³ Trávníčková 2004, p. 65-66. Full case study (1) is added as appendix A to this thesis.

⁴ Snyman 2005, p. 281.

⁵ Rijken & Römkens 2011, p. 91.

⁶ Obokata 2006, p. 35.

quicker.⁷ This is not only of importance for the individual, but also for the social and economic situation of a society as a whole, because not meeting the needs of victims has significant hidden costs, such as health costs and financial costs due to lost income if someone is not able to work.⁸

The human rights perspective can also contribute to counter-trafficking policies, since it has a preventative effect on re-victimization of trafficked persons. Strengthening the position of victims reduces the chances that victims are retrieved to the situation of exploitation. The financial situation, for many victims the motive to accept work (abroad) in the first place, is often insufficient. Many victims have debts, sometimes real sometimes invented. Instead of making money (abroad) to, for instance, support family and improve their life, victims return empty handed. Therefore, it is not surprising that some of them see no other option than to accept a job-offer (abroad) again.⁹ This increases the risk of re-trafficking. Moreover, trafficked persons who receive protection and support are more likely to report the crime to the police and contribute to the investigation.¹⁰

Then, victims of crime are entitled to certain rights, but not all victims are aware of their rights. Especially for victims of human trafficking the protection and provision of these rights are very important, since many find themselves in situations of neglect and abandonment and are in need of recognition and care.¹¹ However, victims of human trafficking often experience a discrepancy between entitlements and reality. This discrepancy, for instance, exists with information on their rights. Contact with the police, as it is often the first contact with victims, is very important in this regard. After these initial contacts victims should receive information on their rights and the next steps in the process. Where needed, they should also be assisted by actions they can undertake themselves.¹² However, trafficked persons are often seen as illegal immigrants and consequently they are likely to face enforcement actions such as imprisonment and deportation.¹³ Hence, instead of receiving proper support victims often face secondary victimization.¹⁴

Addressing the rights of victims of trafficking has thus value for victims, enforcement agencies and the society at large.

⁷ Com 1999, p. 4.

⁸ SEC 2011, p. 6.

⁹ Brunovskis & Surtees 2007, p. 49.

¹⁰ Jorge-Birol 2008, p. 166.

¹¹ Van Boven 2009, p. 20.

¹² Com 1999, p. 5.

¹³ Obokata 2006, p. 80.

¹⁴ Amiel 2006, p 14.

1.2 The research question

One right of victims whereby shortcomings are known is the right to compensation. There are several manners to obtain compensation.¹⁵ Most victims find compensation important and prefer compensation from the offender over compensation provided by the state.¹⁶ Accordingly, most international legal instruments prefer offender-based compensation.¹⁷ However, it is not always possible to claim compensation from the offender since the offender of the crime is not always known and furthermore, offenders do not always have adequate assets to satisfy an award of compensation to the victim. Additionally, if there is not enough evidence to convict the trafficker, it is also not possible to claim compensation in criminal proceedings. If compensation is not fully available from an offender or other sources, states should make an effort to provide compensation to victims.¹⁸

Many European states have state funded compensation schemes in place. These compensation funds are mostly established for victims of violent intentional crime and should provide 'fair and appropriate compensation for injuries crime victims have suffered'.¹⁹ Due to the nature of human trafficking, trafficked persons differ from other victims of (violent) crime. Therefore, it is to be expected that trafficked persons may face difficulties when they apply to such funds. The funds have, indeed, occasionally been criticized for being inadequate in compensating some victims.²⁰ Nevertheless, trafficked persons are directed to these existing funds, with the underlying rationale if existing instruments on compensation can be used, then why developing new ones?

Currently, trafficked persons are treated the same as other victims of violent crime that apply to the funds. According to the European Council Experts Group on Trafficking, it should be considered to automatically qualify victims of human trafficking for these compensation funds.²¹

This all raises the question if trafficked persons are able to benefit from the existing state compensation funds and leads to the following research question:

To what extent are existing state funds for victims of violent crime appropriate for victims of human trafficking: an analysis of four funds in Europe.

¹⁵ This will be addressed in chapter three.

¹⁶ Pemberton 2009, p. 7.

¹⁷ Goodey 2003, p. 2.

¹⁸ Gallagher 2010b, p. 4.

¹⁹ The Council Directive relating to compensation to crime victims 2004/80/EC.

²⁰ Megret 2010, p. 134.

²¹ The European Council Group of Experts on Trafficking in Human Beings, constituted in 2008, is a group of 21 members with different backgrounds who write reports and opinions on human trafficking and has an advisory role to the European Commission.

The four state compensation funds analyzed are the funds of Bulgaria, Czech Republic, the United Kingdom (UK) and Portugal.²² To answer the question the next chapter firstly addresses the concept of human trafficking. Thereafter, in chapter three and four, attention is given to the concepts of compensation and the international legal framework. Then, the situation regarding the four state funds will be addressed. Subsequently, obstacles that victims of human trafficking face in accessing compensation will be discussed. Finally, the conclusion on the research question will be given followed by a discussion and recommendations. This thesis is written on basis of desk study. Questionnaires were conducted and e-mailed to stakeholders as well. Unfortunately, only four persons have responded to the questionnaire. Of these four persons, two are working at centres that adopt victims of trafficking in human beings (one in Bulgaria and one in Czech Republic) and two are lawyers who handle compensation cases for trafficked persons (in the UK and the Czech Republic). Their views are of value to this research and therefore some references to these responses are made.

Firstly, a few notes on the research question and clarification of important concepts will be drawn here. The next chapter gives full attention to human trafficking, but who is a victim of human trafficking? A victim is someone who has been victim of a crime. The European Union (EU) has defined victim as 'a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by acts or omissions that are in violation of criminal law.'²³ Since human trafficking is a crime, any person subject to trafficking should be recognized as a victim. The recognition of a victim as such, i.e. the identification, has a major impact on the accessibility of rights and thus on compensation. However, it goes beyond the scope of this thesis to address the issue of identification. Therefore, the situation regarding accessibility of funding addressed in this paper will only apply to those persons identified as trafficked.

People can be trafficked for multiple purposes and trafficked persons are often exploited in more than one sector.²⁴ Yet, trafficking in women for sexual exploitation fulfils a large part of trafficking in human beings and has received most attention among researchers, public and governments.²⁵ Nevertheless, treaties in place are aimed at all forms of trafficking since all victims of trafficking are victims of human rights abuses. Therefore, this thesis will address all victims of trafficking.

The practice of human trafficking often crosses borders. In many cases there will be more than one country involved, although this is not a necessary prerequisite. Most victims depart

²² See the preface for explanation of chosen countries.

²³ Definition of victim under the Framework Decision of the Council of the EU of March 15, 2001.

²⁴ Omelaniuk 2005, p. 6.

²⁵ Kleemans 2011, p. 96.

on a voluntary basis, whether or not deceived by their traffickers, looking for better opportunities. The exploitation of a victim therefore usually starts after arrival at the destination.²⁶ Because the exploitative situation is often the part of the trafficking in which most human rights violations occur, this thesis addresses the application to state funds in the country of destination.

Through the thesis the terms state funded compensation and state compensation funds will be used interchangeably. The broad term state funded compensation could also encompass advanced payment by the state to a victim if an offender does not have enough means (yet) to pay compensation to a victim. However, through this thesis only the payment of compensation through state compensation funds is meant with the term state funded compensation. Also Trafficking in human beings and human trafficking will be used interchangeably, just as victim of human trafficking and trafficked person.

²⁶ Mahmoud & Trebesch 2009, p. 7.

2. Human trafficking

2.1 The concept of human trafficking

2.1.1 The definition

It is important to have a good understanding of the definition of the concept of human trafficking to assess who is a victim of trafficking and who is not.

The crime of human trafficking is a global phenomenon that receives, and surely deserves, growing attention from policymakers and researchers. Despite the overall acceptance that human trafficking is a serious practice that should be criminalized by laws and enforced with accentuation, it has been and still is an extremely complex issue to define. The constant changes in how the crime is executed and the fact that trafficking does not constitute a single act, but various actions that are committed over time as part of a larger process, makes consensus among states on the concept no simple task.²⁷ The fact that people are trafficked for multiple purposes, such as sexual exploitation, adoption, labour and human organs, makes the concept even more complicated. Because of the broadness of the concept, there are various definitions on human trafficking. However, there is one international recognized definition mostly adopted and discussed. This definition, created by the United Nations (UN), is laid down in the Trafficking Protocol.²⁸ According to the Protocol human trafficking shall mean:

‘The recruitment, transportation, transfer, harbouring or receipt of persons, by means of a threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.’

The important elements of this definition are *acts*, *means* and *purpose of exploitation*. These elements have to be met before a certain situation can be designated as human trafficking. The *acts* are the recruitment, transfer, harbouring or receipt of persons. The *means* are the use of (threat of) force, other forms of coercion, abduction, deception, fraud or abuse of

²⁷ Snyman 2005, p. 281.

²⁸ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organised Crime (Trafficking Protocol) adopted by General Assembly resolution 55/25 of November 15, 2000, UN Doc. A/55/383 (2000) and entered into force 29 September 2003. This treaty will be discussed in greater detail in chapter four.

power or abuse of a vulnerable position. Violence, implied or real, is common and almost ever present throughout the means of exploitation. Violence is a broad concept, encompassing threats and psychological abuse, but it can also refer to a more narrow definition of an act of violence itself. Violence may be integrated in personal relationships and economic dependency.²⁹ Providing false information regarding the type of job, travelling conditions, destination country, immigration rules and most notably the conditions of the job are forms of deception.³⁰

The last important element of the definition is *exploitation*. To provide more clarity on this element a short example of exploitation of a domestic worker in Portugal is given below:

'She made the girl work every day from 7.30 a.m. to 11.30 p.m. As if this were not enough, she was often woken up at night to cook for the woman's sons when they arrived home in the early hours of the morning. She only had one half-day off a week. The woman told her that a monthly wage of €250 was being paid into a bank account in her name, but the girl had no access to it. Her boss would give her small amounts of money from time to time.'³¹

Exploitation can already start before or during the trip, however most often the exploitation starts after arriving in the destination country.³² As a consequence, the use of force, coercion and abuse of power usually starts in the country of destination as well. A last noteworthy remark on the definition is that, when one or more means spelled out in the definition are used, consent of the victim is irrelevant.³³

Human smuggling, which is a different but close concept to human trafficking, is sometimes wrongly regarded the same as human trafficking. Trafficking leads to exploitation and involves one of the means described whereas smuggling happens on the basis of a consented agreement between smuggler and potential migrant. Furthermore, smuggling is always a cross-border practice whereas trafficking can also take place within a country.³⁴

The confusion on what human trafficking includes in combination with other factors influence the data on the scope and nature of trafficking in human beings, as will be shown in the next sub-paragraph.

²⁹ Kleemans 2011, p. 96.

³⁰ Van Liemt 2004, p. 14.

³¹ Pereira & Vasconcelos 2008, p. 42. Full case study (2) is added as appendix B to this thesis.

³² Van Liemt 2004, p. 14.

³³ Brunovskis & Surtees 2008, p. 57.

³⁴ Van Liemt 2004, p. 13.

2.1.2 Uncertainty about the scope and nature of the crime

A realistic view of the nature and extent of the practice will improve the assistance provided to victims of human trafficking and will lead to more relevant measures.³⁵ Unfortunately, there is much unknown and uncertain about the extent of human trafficking, because several difficulties exist regarding data collection and statistics. A complicating factor is that the individuals involved, both the victims as well as the perpetrators, belong to a *hidden population* due to their marginal position in society and the clandestine nature of the crime.³⁶ Most victims are kept in isolation. The rationale behind isolation is to prevent victims from establishing relations of trust with people from outside. People trafficked for domestic work, are an example of victims who have a high chance of ending up in an exploitative relationship due to isolation. In addition, victims often do not feel empowered enough to report offenders to the police.³⁷ This makes available statistics a mirror of the cases which came to attention of aid providers or the police.³⁸ The lack of common definitions and methods, the nature of the crime, mixed data on smuggling and trafficking and the large number of cases that go unnoticed make it difficult to measure human trafficking.³⁹

Not only about the scope, also on the nature of the crime a lot is uncertain. However, there is some information on causes and risk factors contributing to victimization. The most indicated cause of human trafficking is the economic inequality between the destination country and the country of origin and the social diversity, such as gender discrimination, within the country of origin.⁴⁰ Other risk factors contributing to the victimization are high rates of unemployment, lack of education and family violence. These are also called push factors. With regard to the crime of human trafficking itself, low risks and immense profits for the offenders on the one hand and high demand in destination countries on the other hand are known contributing factors.⁴¹ There are also pull factors, pulling the victims away from their current situation, such as expectations of well paid jobs and improvement of social status. The West is glamorized, which turns recruitment into an easy task.⁴²

2.2 Human trafficking: a human rights violation

2.2.1 State responsibility

It is a well-established rule of customary international law that a state has a responsibility to cease wrongful conduct and make adequate reparation after injuring a party, by act or

³⁵ Jahic & Finckenauer 2005, p. 28.

³⁶ BNRM 2009, p. 44.

³⁷ Paragraph 6.2 will address this in detail.

³⁸ Jorge-Birol 2008, p. 165.

³⁹ Antonopoulos & Winterdyk 2005, p. 139.

⁴⁰ Follmar-Otto & Rabe 2009, p. 22; Mahmoud & Trebesch 2009, p. 6.

⁴¹ Follmar-Otto & Rabe 2009, p. 22.

⁴² Jorge-Birol 2008, p. 165.

omission.⁴³ This doctrine of state responsibility has traditionally been applied between states. This means that a state owes a duty to repair harm resulting from wrongful conduct to another state. Under certain circumstances, as with human right violations, a state can have a responsibility towards an individual and the responsibility of repairing harm then applies beyond the inter-state relationship. If a state is held responsible for human right violations towards an individual, it has a duty to provide an effective remedy. The right to an effective remedy is one of the obligations states have towards individuals with regard to human rights violations, next to for instance the obligation to protect and investigate human rights violations. The responsibility of a state regarding human rights violations thus entails the obligation to an effective remedy. This right to an effective remedy encompasses 'the duty to provide effective domestic remedy by means of unhindered and equal access to justice'.⁴⁴ The right to a remedy is a substantive right, granted by both natural law as substantive law. A substantive right involves the protection of a human right of a person itself. However, only the existence of the substantive right to a remedy is not sufficient. The remedy has to be effective and therefore victims must have guaranteed access to an independent and competent authority to conclude on the facts.⁴⁵ Once the responsibility to a substantive right is established it has to be facilitated and accomplished with procedural rights. These procedural rights include access to relevant information, access to legal assistance and, with regard to trafficked persons, the regularization of residence status.⁴⁶ These procedural rights should be guaranteed as well. Nevertheless, despite the guarantee of the right to an effective remedy under international law, there can be a gap between provisions and practice.⁴⁷ The access to justice and success of well-intended measures is, namely, determined by the will to effectively implement these rights.⁴⁸ Thus, although states have obligations, the execution of the rights depends on the implementation of official policy and the people working in the field, like police officers and judges.

There are several human rights that can be violated by the practice of trafficking in human beings. Exploitation for instance, which lies at the heart of human trafficking, violates human dignity, a fundamental right. Furthermore, the exploitive situation very often results in forced labour and acts similarly to slavery. If human trafficking is classified as a modern form of slavery, the character of the crime is clearly a human rights violation. Also potential

⁴³ Vandeginste 2003, p. 149.

⁴⁴ Van Boven 2009, p. 22.

⁴⁵ Com 1999, p. 35.

⁴⁶ Ezeilo 2011, p. 5,6 & 11.

⁴⁷ Ezeilo 2011, p. 3.

⁴⁸ Snyman 2005, p. 132; Gallagher 2010, p. 6.

violations of other human rights could be listed here.⁴⁹ That trafficking is a serious human rights violation is widely agreed amongst European states.⁵⁰ Therefore, states have a responsibility towards victims of human trafficking.

As trafficking is often committed by private individuals or criminal networks, it may seem difficult to establish state responsibility in trafficking cases. However, state responsibility can also extend to wrongs committed by individuals against other individuals 'if states failed to take necessary measures to prevent the effects of the conduct of private parties'.⁵¹ Thus, if not a state but a private party violates human rights, a state can be held responsible if it failed to fulfil the required standard of care in responding to or preventing from a violation of that private party. As a consequence, the state is then obliged to provide an effective remedy for the resulted harm. This obligation is stretched out by the European Court on Human Rights as will be shown in the next paragraph.

2.2.2 *Siliadin v. France & Rantsev v. Cyprus and Russia*

Proper treatment of victims should correspond with a range of fundamental rights laid down in the European Convention on Human Rights (ECHR).⁵² This Convention is established by the Council of Europe (CoE) to protect basic human rights. According to jurisprudence belonging to this Convention, states have a positive obligation to prevent, investigate and punish human rights violations. There is also an obligation to provide effective remedies to victims.

Article 4 of the Convention prohibits slavery and forced labour. From both the *Siliadin v. France* and *Rantsev v. Cyprus and Russia* case can be concluded that human trafficking can fall within the scope of article 4.⁵³

In *Siliadin v. France* a 15 year old girl was taken from Togo to France under misleading information on the conditions and purpose of her stay in France. After arriving in France Siliadin was exploited, being an unpaid servant to various families. The European Court of Human Rights qualified Siliadin's situation as falling within the scope of article 4 of the ECHR. The following motivation was given by the Court:

'There can be no doubt that trafficking threatens the human dignity and fundamental freedoms of its victims and cannot be considered compatible with a democratic society and the values expounded in the Convention. In view of its obligation to interpret the Convention

⁴⁹ As the Human Rights Committee pointed out: possible violations of art. 3; art. 8; art. 24; and art. 26 of the ICCPR; BNRM 2009, p. 61.

⁵⁰ Jahic & Finckenauer 2005, p. 32.

⁵¹ Ezeilo 2011, p. 5.

⁵² Drafted in 1950, entered into force on 3 September 1953.

⁵³ *Siliadin v France* App no 73316/01 (ECtHR, 26 July 2005); *Rantsev v Cyprus and Russia* App no 25965/04 (ECtHR 7 January 2010).

in light of present-day conditions, the Court considers it unnecessary to identify whether the treatment about which the applicant complains constitutes 'slavery', 'servitude' or 'forced and compulsory labour'. Instead, the Court concludes that trafficking itself, within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, falls within the scope of Article 4 of the Convention.'

Consequently, the court concluded that France had a responsibility towards the victim and had the positive obligation to take measures to practically and effectively protect the victim.

The fact that human trafficking can be a violation of article 4 of the Convention is further addressed by the Court in the *Rantsev v. Cyprus and Russia* case.

In *Rantsev v. Cyprus and Russia* a Russian girl went to Cyprus to work as a cabaret artiste. Cabaret artistes in Cyprus often work as prostitutes and are commonly sexually exploited. After a few weeks Rantsev wanted to return to Russia. However, her manager took her to the police station claiming she was illegally living in Cyprus instead. The police requested her and the manager to come back a day later. That night Rantsev tried to escape from the manager. In her attempt to escape she fell of a balcony and died.

Her father brought a complaint to the Court. The Court stated that the positive obligations in this regard apply to all states implicated in trafficking and found both Cyprus as Russia had failed to comply with their positive obligations. The Court ordered both Cyprus as Russia to pay compensation to the family of the victim for the failure to provide for an appropriate administrative and legal framework to combat trafficking (Cyprus) and to properly investigate how and where the victim was recruited (Russia).

As the above jurisprudence shows, the obligation to provide an effective remedy for and protect victims of human rights violations can thus also apply to states with regard to victims of human trafficking. Also the Charter of Fundamental Rights of the European Union (EU Charter),⁵⁴ which lays down fundamental rights, prohibits trafficking in human beings. This results in duties for Member States regarding the victims.⁵⁵

There are also international human rights treaties (specific on human trafficking) which contain obligations that lay down how state parties must give effect to these responsibilities.⁵⁶ In the context of trafficking, the obligation to provide an effective remedy can thus be a consequence of the responsibility of a state for a direct violation of human rights (such as the above described violation of article 4 of the ECHR) or, when a treaty-based remedy applies to a certain situation, failure of that state to provide for such

⁵⁴ Drafted in 2000 and legally effective since the entry into force of the Treaty of Lisbon on 1 December 2009. The Charter is binding for the European Union and its Member States.

⁵⁵ Follmar-Otto & Rabe 2009, p. 30.

⁵⁶ Boerefijn 2009, p. 172.

remedies.⁵⁷ The relevant international treaties on human trafficking will be discussed in chapter four, which provides an elaborative overview of these instruments.

From the above can be derived that human trafficking is a human rights violation. The next paragraph shows that in some cases human trafficking can even fall within the scope of international criminal law as the act can constitute an international crime under certain circumstances.

2.3 Human trafficking as an international crime

Human trafficking is not treated as a self-standing international crime in any international criminal law instrument, but it does fall within the scope of transnational crimes. Transnational crimes are crimes which have transboundary effects or crimes which are intra-state crimes offending a fundamental value of the international community.⁵⁸ As other transnational crimes, human trafficking may in the future fall within the jurisdiction of an international court and be dealt with as international crime.⁵⁹ Currently, a transnational crime can be an international crime, when committed under certain circumstances. This is also the case with human trafficking, which can be a crime against humanity.⁶⁰ A crime against humanity is 'a serious violation of human rights, perpetrated either in peacetime or in war as part of a systematic or widespread attack against a civilian population'.⁶¹ Article 7 of the Rome Statute lists acts that can constitute a crime against humanity when committed under certain circumstances. The relevant listed acts in relation to human trafficking are: sexual slavery and forced prostitution, deportation or forcible transfer and enslavement. Also the following clause is relevant: 'Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health'. Some practices of human trafficking can be characterized as one or more of these acts.⁶² However, the crime of human trafficking is generally not 'committed as part of a widespread or systematic attack directed against any civilian population' and trafficking thus regularly does not reach the threshold applicable to all crimes against humanity.

Slavery is recognized as an aspect of the Trafficking Protocol and human trafficking is often linked to (a modern form of) slavery in literature. This apparent close relationship between the two suggests trafficking is in reality a form of slavery.⁶³ Slavery is a crime under

⁵⁷ Gallagher 2010, p. 5.

⁵⁸ Cryer et al., p. 334.

⁵⁹ Cryer et al., p. 335.

⁶⁰ Article 7 of the Rome Statute contains the provision on crimes against humanity.

⁶¹ Pocar 2007, p. 5.

⁶² Pocar 2007, p. 8.

⁶³ Tavakoli 2009, p. 84-85.

international criminal law, even in circumstances when it does not fulfil the requirements of a crime against humanity.⁶⁴ In line with this argument it could be stated that human trafficking should be redefined as an international crime.

Criminal law is intended to establish individual criminal responsibility for gross human rights violations.⁶⁵ If human trafficking is seen as a crime against humanity, then important remedial provisions of the Rome Statute could be triggered. The Statute contains provisions on compensation as well.⁶⁶ Human trafficking is not classified as international crime yet since the practice is limited to the threshold of a crime against humanity. However, as argued above, if human trafficking is classified as slavery this constitutes an international crime since slavery is an international crime in itself. However, it is not unanimous agreed yet that trafficking should be regarded as an international crime. If this changes in the future then, eventually, it could be derived that victims of grave cases of trafficking should be able to benefit from the trust fund of the International Criminal Court.

⁶⁴ Tavakoli 2009, p. 84-85.

⁶⁵ Follmar-Otto & Rabe 2009, p. 29.

⁶⁶ Obokata 2006, p. 37. - See article 75/79 of the Rome Statute.

3. Compensation

Compensation, which as part of effective remedies is also the responsibility of the state if human rights are violated, is important for victims. It is important because an award of compensation serves to 'affirm public respect for the victim and give recognition of the wrongdoer's fault in failing to respect basic rights'.⁶⁷ The present chapter addresses the history of compensation as well as the rationale behind state compensation and the different ways to obtain compensation.

Compensation refers to 'the overall concept of payment to a person, regardless of the source of payment or the mechanism used or the types of losses to be compensated'.⁶⁸

Ideally, compensation aims to put the victim in the situation in which he or she was before a crime took place. Thus, to put an injured person in the same position as he or she would have been without suffering. Also with regard to trafficked persons compensation is awarded on the basis of damage suffered. It aims to acknowledge pain and suffering and provides a first step towards overcoming abuse and trauma. In line with this, it aims to restore physical and mental health of trafficked persons to the extent possible, which can strengthen the feeling of accomplishing justice.⁶⁹ This can have a rehabilitative and preventive effect because it allows the trafficked person to start a new life, which subsequently decreases the danger of falling prey to a trafficker again.⁷⁰

3.1 History of compensation in Europe

In the Middle Ages victim compensation became integrated, as a component of punishment, into penal law.⁷¹ In this period crime victims played a central role in the restitution of their own conflicts and thus they received reparation by known offenders. Gradually, the role of the state intervening in the procedure concerning compensation increased. As the view that individuals had a responsibility towards community became more supported, crimes became reconstructed as a harm committed against the state instead of an act against a person. After some time the victims' right to compensation diminished and eventually disappeared. Compensation, traditionally paid to the victim, turned into a fine paid to the state.⁷² The replacement of compensation for fines was initially meant as a payment to the government

⁶⁷ Goodey 2003, p.1.

⁶⁸ OSCE Office for Democratic Institutions and Human Rights 2008, p. 15.

⁶⁹ Follmar-Otto & Rabe 2009, p. 66.

⁷⁰ Animus Association Foundation/La Strada Bulgaria 2010, p. 85.

⁷¹ Schafer 1970, p. 56.

⁷² Schafer 1970, p. 56.

for the participation in resolving violations of law.⁷³ The victim turned into a person through which crime was committed. Only in the second half of the Twentieth Century western nationals took the initiative to consider financial reparations to victims again.⁷⁴

In international law, human rights violations were addressed as state subjects and subsequently committed wrongful acts were a matter of interstate responsibility. After the Second World War remedies for victims developed and became a requirement to obtain justice. This was in response to the recognition that victims of human rights violations had a right to pursue their claims for redress and reparation before national and international justice mechanisms. Human rights were no longer a matter of exclusively domestic jurisdiction.⁷⁵ Due to this change, compensation for victims in cases of human rights violations received more attention. As a consequence the obligations of states regarding victims' rights including the payment of compensation received growing attention as well. The next paragraph addresses the rationale of state funded compensation.

3.2 The rationale behind state compensation

One of many arguments brought to the discussion of the responsibility of the state to provide effective remedies to obtain compensation is the argument that all members of a society share the risk of criminal victimization and therefore damages should be distributed over the people within society.⁷⁶ Apart from legal obligations to respect and fulfil requirements of treaties (i.e. the positive obligation to provide an effective remedy as described in chapter two), there are several philosophical and political rationales in favour of state compensation.

A first, philosophical argument is based on the social contract theory. The social contract of Thomas Hobbes, Jean-Jacques Rousseau and others intendeds to explain the relationship between a government and her citizens. This theory argues that individuals unite into political societies to protect themselves and one another from violence and other harms. According to this contract the state facilitates rules and people agree to abide these rules and accept corresponding duties in exchange for order. As a consequence, if states breach the social contract, a victim has a legitimate reason to make a claim against the state.⁷⁷

A next argument, connected to the former, is the state's monopoly of legitimate violence. The state is responsible for providing protection against damage and violence by criminal acts, due to her monopoly on the legitimate use of violence. If a state is not able to fulfil that

⁷³ O'Connell 2003, p. 4.

⁷⁴ Goodey 2003, p. 10.

⁷⁵ Van Boven 2000, p. 21.

⁷⁶ O'Connell, 2003, p. 10: This argument was brought to the debate by Margaret Fry, an English magistrate.

⁷⁷ O'Connell 2003, p. 4.

responsibility in individual cases, the state is obliged to redress the inflicted damage.⁷⁸ The state, due to the limitation of the rights of victims to self defence, is thus liable when it fails to protect her citizens. Nevertheless, states almost always deny such an obligation citing their sovereign immunity.⁷⁹

Another argument is the social welfare aspect. As welfare states developed, so did the significance of state compensation. The notion behind the social welfare argument is the idea that accession to public assistance for victims of crime should be in place because of solidarity and a humanistic thinking. This thinking calls upon the conscience of the civilized Twentieth Century person that is not willing to tolerate suffering of the helpless. According to this argument, state compensation is a component of the moral duty to help each other in a welfare state rather than an obligation of the state because of failing to protect rights.⁸⁰ Thus the support of people that are victim of a harm occurring on the territory of a certain state should be done on moral grounds.⁸¹ This moral duty is based on the idea that society is collectively responsible for the harm suffered by victims. This logically results in the finance of victim compensation. This morality contains out of a dual rationale, firstly, that the responsibility of the state exceeds that of the victim. And secondly, that criminal violence is endemic to society and the only tolerable way to sustain the damage caused by it is to share the damage in common.⁸²

A more practical argument for state compensation is the fact that it can also enhance crime prevention and law enforcement. The fact that victims receive money from a fund can strengthen them to cooperate with authorities and can also prevent victims from alienation of society. It can furthermore be a political step as a response to the problem of rising crime and increasing interpersonal violence. There is also a humanitarian thought that recognizes that criminal offenders are often without means to compensate or never found and so the state should intervene to make sure that victims receive some form of monetary compensation.⁸³

All these arguments for state compensation concern victims in general. The fact human trafficking violates human rights, enhance the rationales and arguments for compensation. Obviously, there are arguments against state compensation and in favour of compensation paid by the offender as well. Such as deterring careless conduct and exacting retribution

⁷⁸ Follmar-Otto & Rabe 2009, p. 66.

⁷⁹ O'Connell 2003, p. 12.

⁸⁰ Goodey 2003, p. 11.

⁸¹ Rijken & Van Dijk 2007, p. 28.

⁸² O'Connell 2003, p. 10.

⁸³ Goodey 2003, p. 1.

from offenders.⁸⁴ Therefore, and for completeness of the description of compensation the next paragraph gives a short overview of the most important ways to obtain compensation.

3.3 Ways of claiming compensation

There are multiple ways for a victim to seek compensation. These ways differ slightly between countries depending mainly on the legal system. There are particularly differences between common law systems (England, Wales and Ireland) and continental European jurisdictions. However, in general, there are four main routes to compensation. These are compensation claims through criminal proceedings, compensation through civil proceedings, compensation through labour courts and compensation paid through a state compensation fund. The first three differ from the latter with regard to the paying party, as with the first three options compensation is paid by the offender.

3.3.1 Compensation through criminal proceedings

A first manner to seek compensation is compensation through criminal proceedings. In some countries it is possible for victims to file a civil claim for damages against the suspect and append it to the criminal case. Other countries provide a possibility for the court to make an order for compensation.⁸⁵ Thus, criminal compensation is part of an action taken by the state against the suspect. The offender gets punished for his illegitimate action. The punishment depends on the character of the act, level of guilt and some other circumstances. The advantage of compensation through criminal proceedings is that whereas the offender gets punished the victim's rights are restored. However, the primary aim of the criminal case is to establish if a person is guilty and should be prosecuted, therefore there is a high standard of proof. If someone is acquitted from the alleged crime, then the compensation claim will be rejected as well.

Unfortunately, compensation through criminal proceedings is currently not available to most trafficked persons, because legislation on human trafficking is recent and complex. It is hard to prosecute the offender due to different interpretations of the law by judges, difficulties with the proof of evidence and unwillingness of victims and or witnesses to co-operate with proceedings. Consequently, the implementation of the law is not yet what it should be. Additionally there is frequently the impossibility to receive the full amount of compensation because of absence or insufficient means possessed by the offender.⁸⁶ This is also the case for labour and civil verdicts.

⁸⁴ Ashworth 1986, p. 88.

⁸⁵ OSCE Office for Democratic Institutions and Human Rights 2008, p. 24.

⁸⁶ Shrub, Tyurina & Naumovich 2010, p. 11.

3.3.2 Compensation through civil proceedings

To obtain civil compensation an individual claims the need for recovery of violated rights caused directly by the wrongdoer. This dispute takes place between private persons. One person declares another person liable, the state is not involved. The burden of proof is on the claimant who needs to prove the amount of the damage and the causal interrelation.⁸⁷ Most often this form of compensation is closest to the real value of the caused damage. Although this is a big advantage for the victim, for most trafficked persons civil compensation is often not considered an option because the procedure can be painful when victims relive the experienced trauma and the victims have to pay court fees themselves which can be problematic since they often lack the sources needed to do this. Furthermore, they face difficulties with negotiating within the civil legal system.⁸⁸

3.3.3 Compensation through labour courts

This avenue to receive compensation is affined with lodging a civil claim for compensation. The most important distinction between compensation through labour courts and civil compensation is the more limited specificity of the subject of the dispute for labour rights at labour courts.⁸⁹ When recovery of rights is sought through labour courts, a breach of a labour contract can be enforced against a wrongdoer. Also if there is no contract and regardless of the provisions of a certain contract there are some basic rights in labour law, which can be compensated when breached, such as discrimination.⁹⁰ For victims of trafficking with the purpose of labour exploitation this mechanism of compensation is mainly used. However, since in many countries prostitution is not perceived as labour activity, for victims of this type of trafficking it is commonly unfeasible to seek compensation this way.⁹¹ In the four countries analyzed in this thesis brothels are illegal but prostitution is legal though not regulated.

3.3.4 Compensation through state funds

Compensation through a state fund is often a mechanism complementary to compensation paid by the wrongdoer. When, for whatever reason, a wrongdoer is not able to pay compensation to a victim, a state fund can function as a safety net.⁹² In most countries, all other possibilities to obtain compensation must be exhausted in order claim compensation from the state.⁹³ Most states have a fund for victims of violent crime which defines the type of injury and following damage that can be compensated by the fund. The most important

⁸⁷ Shrub, Tyurina & Naumovich 2010, p. 9.

⁸⁸ OSCE Office for Democratic Institutions and Human Rights 2008, p. 27.

⁸⁹ Shrub, Tyurina & Naumovich 2010, p. 11.

⁹⁰ OSCE Office for Democratic Institutions and Human Rights 2008, p. 27.

⁹¹ Shrub, Tyurina & Naumovich 2010, p. 11.

⁹² Megret 2010, p. 135.

⁹³ Com 1999, p. 10.

advantage of a state compensation fund is the fact victims of crime can receive payment even though the wrongdoer is unknown or not able to pay compensation. However, the amount of money paid is sometimes far less than the damage suffered. Furthermore, there are restrictive eligibility criteria, as will be addressed in chapter five, which could hinder victims of crime in the achievement of compensation funded by the state.

4. International legal framework

As shown in chapter two, human trafficking is a human rights violation and states have to meet up with international standards. As explained, states have a responsibility towards victims of human trafficking. There are specified instruments, both national and international, providing provisions to ensure the rights of victims of human trafficking in particular. On the international level, mainly treaties provide regulations. There are both binding and non-binding instruments. Some instruments are only politically binding. These are the so called soft law instruments. Other instruments are legally binding when ratified by a certain member state. Most of the time only minimum standards are provided aiming to harmonise legislation in Europe. Within Europe there are multiple instruments in place containing provisions to protect the rights of trafficked human beings. It goes beyond the scope of this chapter to address all instruments somehow related to compensation and human trafficking. Yet, all the relevant instruments relating to compensation of trafficked persons will be discussed. Because the United Nations (UN), Council of Europe (CoE) and the European Union (EU) are the main international organizations within Europe with provisions regarding this topic, the provisions of these organizations will be described.

4.1 United Nations

The United Nations (UN) already brought an instrument protecting the rights of victims at the end of 1985: the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.⁹⁴ This instrument also contains principles relating to compensation. It states that parties, responsible for their behaviour, should make restitution to victims, their family or dependants.⁹⁵ Additionally, the establishment, strengthening and expansion of national state funds for compensating victims, is encouraged by the declaration.⁹⁶ The Declaration is not legally binding. Nevertheless, it contributed to the creation of legally binding instruments and positively influenced the interpretation of existing texts in many countries.⁹⁷

Also related to human trafficking is the Voluntary Trust Fund on Contemporary Forms of Slavery.⁹⁸ This Fund aims to extend humanitarian, financial and legal aid to persons whose basic rights have been seriously violated as a result of present-day forms of slavery.⁹⁹

To fight transnational organized crime, and human trafficking as part of that, the UN General Assembly established an ad-hoc committee to develop a new international instrument. This

⁹⁴ Adopted by General Assembly resolution 40/34 of 29 November 1985.

⁹⁵ Mattar 2010, p. 14.

⁹⁶ Mattar 2010, p. 21.

⁹⁷ Letschert & Groenhuijsen 2011, p. 18.

⁹⁸ Established by the General Assembly in 1991, A/RES/46/122.

⁹⁹ Megret 2010, p. 133.

resulted in the United Nations Convention against Transnational Organized Crime (UN TOC).¹⁰⁰ Human rights concerns, but mainly security and sovereignty issues surrounding trafficking and migrant smuggling were the driving forces behind efforts for collective action.¹⁰¹ The purpose of the Convention is to promote interstate co-operation in order to combat transnational organized crime effectively.¹⁰² In order to be able to apply the Convention, the referred crime must have some kind of transnational aspect and secondly an organized crime group must be involved.¹⁰³ Article 14(2)¹⁰⁴ and article 25(2)¹⁰⁵ of the Convention provide measures to access compensation and handling with confiscated assets. The Convention is supplemented by three additional treaties. One of these treaties is important with regard to human trafficking and that is the Trafficking Protocol (hereafter: the Protocol).¹⁰⁶ The Protocol has multiple purposes: to prevent and combat trafficking in persons, with particular attention to protection of women and children, and to promote and facilitate co-operation between state parties.¹⁰⁷ Section II of the Protocol explicitly comprises the protection of victims of trafficking in persons. Article 6(6) of the Protocol requests Member States to have sufficient legislation and measures to provide the possibility for trafficked persons to obtain compensation.¹⁰⁸ However, where the provisions address assistance and protection of victims, it does so in 'soft' language, using phrases like: 'Each State Party shall', resulting in not a substantive but a soft obligation.¹⁰⁹ The Protocol is the first legally binding international instrument to combat human trafficking. It establishes minimum standards and does not suggest the type of compensation. However, it ensures that at least one legal procedure is available to trafficked persons to access compensation. In addition, the Office of the High Commissioner for Human Rights (OHCHR) Recommended Principles and Guidelines on Human Rights and Human Trafficking strengthens the legal framework.¹¹⁰ Guideline 4 states that, where possible, legislation should specify that

¹⁰⁰ Adopted 15 November 2000, entered into force 29 September 2003.

¹⁰¹ Gallagher 2001, p. 976.

¹⁰² Article 1: The purpose of this Convention is to promote cooperation to prevent and combat transnational organized crime more effectively.

¹⁰³ Gallagher 2001, p. 978.

¹⁰⁴ When acting on the request made by another State Party in accordance with article 13 of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.

¹⁰⁵ Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.

¹⁰⁶ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organised Crime (Trafficking Protocol).

Adopted by General Assembly resolution 55/25 of November 15, 2000, UN Doc. A/55/383 (2000) and entered into force 29 September 2003.

¹⁰⁷ Article 2: The purposes of this Protocol are: (a) To prevent and combat trafficking in persons, paying particular attention to women and children; (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and (c) To promote cooperation among States Parties in order to meet those objectives.

¹⁰⁸ 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.

¹⁰⁹ Goodey 2008, p. 423.

¹¹⁰ http://www.ohchr.org/Documents/Publications/Commentary_Human_Trafficking_en.pdf

confiscated proceeds will be used for the benefit of trafficked persons and that consideration should be given to the establishment of a compensation fund for victims of trafficking. Furthermore, it stipulates that confiscated assets could be used to finance a fund.¹¹¹ The Protocol also obliges states to provide victims with information about the possibility to obtain compensation.¹¹² The Protocol can thus be seen as an important instrument to support the fight against trafficking in human beings. By enhancing outright action against trafficking, the instrument promotes and implements a human rights framework.¹¹³

Bulgaria, the United Kingdom and Portugal have ratified both the UN TOC and the accompanying Trafficking Protocol. Only the Czech Republic has neither ratified the UN TOC nor the Trafficking Protocol. However, the Czech Republic seems to meet most of the requirements of these instruments.¹¹⁴

4.2 Council of Europe

The Council of Europe (CoE) is a regional intergovernmental organization. The organization, consisting of forty-seven member states, is established to oversee protection and promotion of human rights within Europe and achieve greater unity between its members.¹¹⁵ Czech Republic, Bulgaria, the United Kingdom and Portugal are all members of the CoE and are consequently politically bound to the Council of Ministers Recommendations.¹¹⁶

As described in paragraph 2.2, human trafficking violates human rights laid down in the ECHR and states have a positive obligation to protect victims of human trafficking. However, since trafficking in persons is an offence to the integrity and dignity of a human being violating fundamental human rights the CoE started to address this topic with priority in the early nineties. The idea to create a comprehensive strategy to combat trafficking in Europe grew. Special focus was given to harmonization of definitions, criminal justice measures, research, international co-operation and assistance to victims.¹¹⁷ A proposal for a convention first emerged in 2002, ending in the draft of the Council of Europe Convention on Action against trafficking in Human Beings (CoE CAT).¹¹⁸ Up until today, only the Czech Republic (of the four countries addressed in this thesis) has not signed the Convention.

The Convention recognizes trafficking in human beings as a big human rights issue. It is the first legally binding European treaty on human trafficking. Consequently, this legally binding

¹¹¹ Mattar 2010, p. 21.

¹¹² OSCE Office for Democratic Institutions and Human Rights 2008, p. 19.

¹¹³ Obokata 2006, p. 165.

¹¹⁴ Kutálková 2010, p. 26.

¹¹⁵ Amiel 2006, p. 19.

¹¹⁶ OSCE Office for Democratic Institutions and Human Rights 2008, p. 20.

¹¹⁷ Obokata 2006, p. 109.

¹¹⁸ Adopted 16 May 2005, entered into force 1 February 2008 when a tenth Member State of the Council of Europe ratified the convention.

instrument, aiming to protect victims' rights, complement other international instruments on trafficking and designs an integral framework to improve standards for and protection of victims and witnesses.¹¹⁹ The Convention contains several articles addressing the promotion and protection of the rights.¹²⁰ Article 15 of the Convention, consisting of four paragraphs, encompasses compensation and legal redress. The first paragraph, article 15(1), provides for access to information and the second, paragraph 15(2) provides for the right to (free) legal assistance.¹²¹ 15(3) and 15(4) provide rules with regard to compensation itself.¹²²

According to the explanatory memorandum compensation can cover both material injury, such as costs of medical treatment, and non-material injury, such as experienced suffering. The Convention strengthens the right to compensation. Under the Convention not only the scope of compensation improved (to be able to get compensated for both pecuniary and non pecuniary harm), the Convention also has a wider application than the Trafficking Protocol and therefore represents a substantial improvement of the rights of victims.¹²³ Another benefit is that the Convention applies to all forms of human trafficking, both national and international, regardless of a connection with organized crime and independent of the victim's identity.¹²⁴

Furthermore, the Trafficking Protocol does not require states to compensate a victim if a trafficker is not in the position to pay compensation, but the Convention does require the state to do so. Since in practice there is rarely full compensation available for victims through the wrongdoer, whether it is because the trafficker has disappeared, not been found or without means to compensate, article 15 provides states to take steps to guarantee compensation of victims. The manner and means to guarantee compensation are left to the Member States. When states ratify the Convention they have to fully implement the obligations, rights and protections of the Convention into their own domestic law. The states are responsible for establishing the administrative framework, legal basis and the settlement of compensation schemes.

¹¹⁹ Council of Europe 2005, p. 8.

¹²⁰ Lam & Skrivankova 2008, p. 10.

¹²¹ Article 15(1): Each Party shall ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings in a language which they can understand.

Article 15(2): Each Party shall provide, in its internal law, for the right to legal assistance and to free legal aid for victims under the conditions provided by its internal law.

¹²² Article 15(3): Each Party shall provide, in its internal law, for the right of victims to compensation from the perpetrators.

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

¹²³ Becker 2010, p. 140.

¹²⁴ Lam & Skrivankova 2008, p. 9.

The issue of compensation from public funding for crime victims was already addressed by the CoE in the beginning of the 1970's, resulting in the European Convention on the Compensation of Victims of Violent Crime (ECCVVC).¹²⁵ The aim of this instrument was to introduce compensation schemes with minimum provisions.¹²⁶ The ECCVVC only requires states to compensate material damages in cases where the concerning offence was intentional and violent, resulting in mental or physical injury. Article 2(1)(a) and article 2(2) obligate states to contribute to compensation when victims met certain eligibility criteria, regardless of the possibility to prosecute or punish the offender.¹²⁷ To effectuate a state compensation fund, as is suggested in article 15(4) of the Convention (CoE CAT), reference is made to the model set out in the ECCVVC.

Another advantage of the Convention (CoE CAT) is the requirement of states to provide minimum standards to all victims, regardless of the type of exploitation and irrespective of the willingness of the trafficked persons to co-operate with criminal justice authorities.¹²⁸ And finally, more emphasis on the ancillary rights that make compensation effective such as free legal aid adds value to this Convention.¹²⁹

In 2006 the CoE issued the Recommendation on Assistance to Crime Victims (2006)8. This Recommendation contains rights of victims which are in some regard more elaborative compared to other instruments.¹³⁰

4.3 European Union

Czech Republic, Bulgaria, the United Kingdom and Portugal are all members of the European Union (EU). Therefore, the four countries are obliged to live up to the legislation and standards of the EU. The EU started to act against human trafficking mainly after the Treaty on European Union (TEU) entered into force,¹³¹ because it was this treaty that addressed human trafficking which was seen as a risk to the social security of the Union and its Member States.¹³² It was Title VI, named Provisions on co-operation in the fields of Justice and Home affairs, of this treaty which dealt with human trafficking. In accordance with the title joint actions and conventions were adopted,¹³³ such as the Council Framework

¹²⁵ Adopted in 1983.

¹²⁶ Goodey 2003, p. 3.

¹²⁷ Article 2(1)(a): When compensation is not fully available from other sources the State shall contribute to compensate: those who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence.

Article 2(2): Compensation shall be awarded in the above cases even if the offender cannot be prosecuted or punished.

¹²⁸ Obokata 2006, p. 127.

¹²⁹ OSCE Office for Democratic Institutions and Human Rights 2008, p. 20.

¹³⁰ Letschert & Groenhuijsen 2011, p. 22.

¹³¹ Signed in Maastricht on 7 February 1992, entered into force on 1 November 1993.

¹³² Obokata 2006, p. 87.

¹³³ Obokata 2006, p. 87.

decision on the standing of victims in criminal proceedings.¹³⁴ This document refers to victims of trafficking and is thus applicable to victims of trafficking. It enlists measures to protect persons who participate in criminal proceedings. Article 9 provides for the right to compensation in the course of criminal proceedings.¹³⁵ However, the Framework Decision only applies to victims that take part in criminal proceedings. Thus, it does not require states to provide support for victims that do not want to participate in criminal proceedings and there is also no obligation to provide broader support outside of the proceedings.¹³⁶ The goals of the Framework Decision are binding, although the Member States are left some discretion regarding the means they choose to comply with the document.¹³⁷

Also the Framework decision on combating trafficking in human beings is adopted pursuant to title VI of the TEU.¹³⁸ Although this instrument does not pay attention to compensation whatsoever, the replacing document, the Directive on preventing and combating trafficking in human beings and protecting its victims, does.¹³⁹ Article 12(2) and article 17 contain regulations regarding compensation and access to compensation schemes.¹⁴⁰

The Council Directive relating to compensation to crime victims facilitates access to compensation in the state of residence for victims of violent intentional crime that occurred in other Member States of the European Union (art. 1).¹⁴¹ Article 12(2) requests Member States for the provision of a national scheme on compensation.¹⁴² The Council Directive further entrust states to provide co-operation structures for victims of other EU states to facilitate access to schemes of their home country.¹⁴³

The application of the Council Directive by Member States who implemented the Council Directive is recently evaluated. The states have all schemes in place for victims to apply for

¹³⁴ Adopted pursuant to Title VI of the Treaty on European Union, 2001/220/JHA.

¹³⁵ 1. Each Member State 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, except where, in certain cases, national law provides for compensation to be awarded in another manner.

2. Each Member State shall take appropriate measures to encourage the offender to provide adequate compensation to victims.

3. Unless urgently required for the purpose of criminal proceedings, recoverable property belonging to victims which is seized in the course of criminal proceedings shall be returned to them without delay.

¹³⁶ Obokata 2006, p. 100.

¹³⁷ Letschert & Groenhuijsen 2011, p. 21.

¹³⁸ Adopted pursuant to Title VI of the Treaty on European Union, 2002/629/JHA.

¹³⁹ Of the European Parliament and the Council, 2011/36/EU.

¹⁴⁰ Article 12(2): Member states shall ensure that victims of human trafficking 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.

Article 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.

¹⁴¹ 2004/80/EC.

Article 1: Member States shall ensure that where a violent intentional crime has been committed in a Member State other than the Member State where the applicant for compensation is habitually resident, the applicant shall have the right to submit the application to an authority or any other body in the latter Member State.

¹⁴² All Member States shall ensure that their national rules provide for the existence of a scheme on compensation to victims of violent intentional crimes committed in their respective territories, which guarantees fair and appropriate compensation to victims.

¹⁴³ Working Group on Trafficking in Persons 2010, p. 7.

compensation. The evaluation shows only few victims make use of the option to apply for foreign compensation funds through sister organizations in their country of origin.¹⁴⁴

¹⁴⁴ Letschert & Groenhuijsen 2011, p. 28.

5. Compensation Schemes

This chapter describes the situation and criteria of the state funded compensation schemes for victims of (violent) crime of the four countries. The funds of each country are addressed separately and then there is a concluding paragraph comparing the four schemes with each other.

5.1 Czech Republic

The Czech Republic is a country of destination, transit and origin. Trafficking with the purpose of sexual exploitation is the most common form of trafficking the Czech Republic has to deal with.¹⁴⁵ Since 2000 there is a constant increase in number of females coming from mainly Eastern European countries as well as Asian countries who are forced into prostitution in the Czech Republic.¹⁴⁶ With regard to other forms of exploitation, persons coming from the former Soviet Union and Romania are trafficked into the Czech Republic. These people are usually coerced to do physically demanding work, fifteen or more hours a day, seven days a week.¹⁴⁷ Also children fall prey to trafficking. This can be differentiated in two distinct forms, namely inter-familial and extra-familial. With inter-familial trafficking family members are involved. Children are then for instance forced to contribute to the family budget through the carrying out of petty crimes.¹⁴⁸ The Czech Republic is a source country for people mostly trafficked to Western Europe. Since 2002, trafficking in human beings is criminalized and a specific offence in the Criminal Code.¹⁴⁹

5.1.1 The Crime Victim Compensation Program

The Czech Republic has a crime victim compensation program. This program falls within the scope of the Ministry of Justice and serves financial compensation to victims of violent crime who suffer physical injury.¹⁵⁰ There is a relevant act in this regard, namely the Act on Assistance for Victims of Criminal Offences.¹⁵¹ According to the act, some victims have a right to receive compensation from the State for their injury. To be able to pay the awards of compensation the Czech Republic has established a state compensation fund, which is funded with money originating from persons convicted of causing harm.¹⁵² The amount of compensation paid is corresponding to the victim's proven loss in earnings and proven cost

¹⁴⁵ Security Policy Department 2008, p. 8.

¹⁴⁶ European NGOs Observatory on Trafficking, Exploitation and Slavery 2010, p. 130.

¹⁴⁷ European NGOs Observatory on Trafficking, Exploitation and Slavery 2010, p. 130.

¹⁴⁸ European NGOs Observatory on Trafficking, Exploitation and Slavery 2010, p. 130.

¹⁴⁹ United Nations Office on Drugs and Crime 2009, p. 245;

<http://ec.europa.eu/anti-trafficking/showNIPsection.action?country=Czech%20Republic>

¹⁵⁰ <http://www.ojp.usdoj.gov/ovc/publications/infores/intdir2005/czechrepublic.html>

¹⁵¹ Act No 209/1997.

¹⁵² <http://www.ojp.usdoj.gov/ovc/publications/infores/intdir2005/czechrepublic.html>

of treatment, minus an eventual award of compensation received from other means. The awarded compensation takes the form of a one-time payment to the victim. The maximum amount that can be awarded under this programme is 150.000 Czech Crown (this is approximately 6.000 Euro).

The Ministry of Justice is the responsible authority for assisting the applicants and deciding on the applications.¹⁵³ Within three months following submission of the application and the other necessary documents the Ministry decides on the compensation request.¹⁵⁴ Upon deciding, the Ministry takes several criteria into account. These criteria will be described in the next sub-paragraph.

5.1.2 The eligibility criteria to claim fund

A first criterion is the nationality of the victim. The fund is available to Czech nationals who became victim of violent crime within or outside the Czech Republic. Nationals of a European Union Member State, long-term residents and people having been given asylum can apply to the fund if the crime took place within the Czech Republic. Also some asylum seekers and foreign nationals can apply to the fund under conditions and the extent laid down in any valid international agreement to which the Czech Republic is a party.¹⁵⁵

To claim compensation, the victims need to prove personal injury so severe it causes long-term deterioration in the welfare of the person affected. There is a point system with a certain number of points for every injury. The injury claimed has to be at least 100 points according to a decree of the Ministry of Health.¹⁵⁶

To prove the victimization and the following injury suffered concrete evidence is needed. Applicants have to add documents in evidence of the particulars of the nature and extent of the damage caused by the crime to the request. Costs that can be claimed from the compensation fund are: lost support, burial expenses, medical expenses and mental health counselling. Thus material damage can be claimed. Sometimes moral damage can be accepted if there is an elaborated, by justice system approved expert report. However, there is mainly not enough evidence to do this.¹⁵⁷

Another component is the conduct of the victim before and during the act. A victim cannot claim compensation for injury sustained if he or she took part in the crime. This criterion is aimed at violent crimes in general and is presumable directed at conflicts where a victim should not have provoked the violence or be in a way involved in the crime (unless it was out of self-defence).

¹⁵³ Application form can be found at:

http://ec.europa.eu/justice_home/judicialatlascivil/html/pdf/national_form1_cv_cze_en.pdf

¹⁵⁴ <http://www.ojp.usdoj.gov/ovc/publications/infores/intdir2005/czechrepublic.html>

¹⁵⁵ http://ec.europa.eu/justice_home/judicialatlascivil/html/cv_nationallaw_cz_en.htm

¹⁵⁶ This exception is mentioned in the questionnaire by a stakeholder. For further details please contact the author.

¹⁵⁷ This exception is mentioned in the questionnaire by a stakeholder. For further details please contact the author.

Also the conduct of the victim after the crime is important for a successful application. The victim has to co-operate with the law enforcement authorities. The criminal act has to be reported to the police without unnecessary delay. Compensation will furthermore not be awarded if the victim has not given consent, where required, to the prosecution of the offender.¹⁵⁸

The most recent decision of a law enforcement authority or the report of the crime should be added to the request. If this is not possible, the victim should indicate which law enforcement authority was last dealing with the crime and the particulars of the suspected offender. Co-operation is thus a prerequisite but a conviction or prosecution of the alleged offender is not necessary.¹⁵⁹

In first instance the obligation to pay compensation should be with the offender of the crime, only if the offender is for some reason not able to pay (full) compensation the victim can apply to the fund. The Act explicitly states that compensation will only be awarded if the personal injury caused has not been fully compensated by other means. Therefore it will be examined whether the victim has exhausted all legal means to obtain compensation from the offender.¹⁶⁰

A common ground for declining state funded compensation in Europe is the applicant's financial situation.¹⁶¹ Also in the Czech Republic details of the victim's assets and income should accompany the claim.

There is a time limit of one year for applying to the scheme, starting on the day the criminal act took place or the day the victim became aware of the impairment caused by the crime. The time limit cannot easily be waived or extended if the impairment is not observed.

5.2 Bulgaria

Trafficking significantly affects Bulgaria, although exact numbers of victims are not known.¹⁶² Bulgaria is mainly a country of origin and transit of trafficking in human beings. According to a social worker in Bulgaria most accommodated persons in the crisis centre she works are Bulgarian nationals. The crisis centre has almost no victims who are third country nationals.¹⁶³ To a lesser extent Bulgaria is also a country of destination.¹⁶⁴ Bulgarian victims are trafficked for different purposes such as sexual exploitation, labour exploitation, adoption,

¹⁵⁸ On file with author.

¹⁵⁹ On file with author.

¹⁶⁰ http://ec.europa.eu/justice_home/judicialatlascivil/html/cv_nationallaw_cz_en.htm

¹⁶¹ Goodey 2003, p. 12.

¹⁶² European NGOs Observatory on Trafficking, Exploitation and Slavery 2010, p. 119.

¹⁶³ This view is expressed in the questionnaire by a stakeholder. For further details please contact the author.

¹⁶⁴ <http://ec.europa.eu/anti-trafficking/showNIPsection.action?country=Bulgaria>

begging and delinquency.¹⁶⁵ Victims often come from dysfunctional families and child institutions.¹⁶⁶

The last decade the Bulgarian authorities have increased effort to combat human trafficking. Since 2002, trafficking of individuals or groups with the purpose to use them for forced labour, removal of organs, sexual activities or holding them in forceful subjection is criminalized by the Bulgarian Penal Code.¹⁶⁷

5.2.1 The Crime Victim Assistance and Financial Compensation Act

In Bulgaria there is a possibility for victims of crime to receive assistance and financial compensation from the State via a state fund. This state compensation fund for victims of crime is regulated by the Crime Victim Assistance and Financial Compensation Act (CVAFCA), which came into effect the first of January 2007.¹⁶⁸ The fund is paid with budget of the Ministry of Justice. An authority was established, as part of the Ministry of Justice, to assist the victims and also to decide on the applications.¹⁶⁹ This is the National Council for Assistance to Victims of Intentional Violent Crimes (hereafter: the Council). The Council determines the exact amount of compensation, given in the form of a one-time payment, no later than three months after receiving the filled application and further required documents.¹⁷⁰ The amount of compensation can vary between 250 and 5.000 Bulgarian Leva (this is approximately between the 125 and 2.500 Euro).¹⁷¹ Just as the Czech Republic fund, certain eligibility criteria have to be met before compensation will be paid. The next subparagraph provides an overview of these criteria.

5.2.2 The eligibility criteria to claim fund

According to the Act, a trafficked person has to be a Bulgarian national, a national from a European Union Member State or a foreign national in case Bulgaria is party to an international agreement that encompasses the provision to have the right to financial compensation from the state.¹⁷² Only Bulgarian nationals can apply for acts committed outside the country. However, the Council will then forward the application to the competent authority of that country.

¹⁶⁵ Surtees 2005, p. 164.

¹⁶⁶ European NGOs Observatory on Trafficking, Exploitation and Slavery 2010, p. 120.

¹⁶⁷ Section IX, Art. 159 a.

¹⁶⁸ Promulgated in State Gazette No. 105/22.12.2006 and effective since 01.01.2007.

http://www.compensation.bg/Pages/recent_legislation/default.aspx

¹⁶⁹ Application form can be found at:

http://antitraffic.government.bg/images/info_files/1255424061.pdf

¹⁷⁰ <http://antitraffic.government.bg/m/9/cat/8/type/2/lang/en/>

¹⁷¹ Animus Association Foundation/La Strada Bulgaria 2010, p. 85.

¹⁷² Animus Association Foundation/La Strada Bulgaria 2010, p. 87.

The CVAFCA appoints all the crimes where compensation can be claimed for if people have suffered damages as a result of that crime.¹⁷³ Trafficking in people is one of the listed crimes. Thus the possibility for trafficked persons to claim compensation from the State is explicitly laid down in Bulgarian legislation. The applying person has to present documents proving the damages. Therefore, copies of documents verifying the pecuniary damage have to be added to the application.¹⁷⁴ Only compensation for pecuniary damages which are a direct consequence of the crime itself can be claimed. The different forms of pecuniary damages that can be claimed are: medical expenses (except for the expenses paid by the budget of the National Health Insurance Fund), lost income, funeral expenses, lost support to dependents, legal fees and litigation costs and other material costs.¹⁷⁵ Compensation for non-pecuniary damages is not awarded by the State since non-material damages may only be granted to victims by justice and as a result compensation for non-material damages is always provided by a judge.¹⁷⁶

Another criterion entails the victim has not been sentenced for a crime within the last five years prior to applying for financial compensation.¹⁷⁷ The victim has to report the crime to the competent authorities. Unless the victim has a valid reason for not reporting the crime, compensation cannot be awarded. Before compensation can be provided by the State a guilty verdict or court instrument reporting criminal proceedings are dismissed or discontinued based on the failure to identify the offender has to come into force.¹⁷⁸

Only if there were no other means that compensated the damages of the victim, compensation is provided by the State. Lastly, only damages suffered from crimes committed after June 30 2005, fall within the scope of the act and damages dating from before June 30 2005 can thus not be claimed.¹⁷⁹

The application has to be sent within 2 months after the entry into force of the guilty verdict or prosecutorial instrument. When the application is not submitted in time, compensation from the state fund is not accessible anymore.¹⁸⁰

5.3 The United Kingdom

The UK is a major destination country for human trafficking for different forms of trafficking, such as sexual exploitation, forced labour, forced criminal activities (for example in cannabis

¹⁷³ Article 3(3).

¹⁷⁴ Animus Association Foundation/La Strada Bulgaria 2010, p. 86.

¹⁷⁵ Article 14.

¹⁷⁶ <http://www.compensation.bg/Default.aspx>

¹⁷⁷ Referred to in article 3(3).

¹⁷⁸ Article 12.

¹⁷⁹ Act, transitional and final provisions §4 (1).

¹⁸⁰ <http://antitraffic.government.bg/m/9/cat/8/type/2/lang/en/>

factories) and forced begging. People are trafficked to the UK from all over the world and also internally.¹⁸¹ The UK has several provisions with regard to human trafficking.

The Sexual Offences Act (SOA) 2003, sections 57-60 cover offences of trafficking within, into or out of the UK for any form of sexual offence.¹⁸² The offence of trafficking for exploitation, which covers non-sexual exploitation, is included in the Asylum and Immigration Act of 2004.¹⁸³ The UK is focussing on the identification and arrest of offenders and on victim support as part of its anti-trafficking policies.¹⁸⁴

5.3.1 The Criminal Injury and Compensation Scheme

The UK has a long existing state compensation fund, the Criminal Injury Compensation Scheme (CICS), established in 1964. This makes the UK having one of the oldest existing compensations schemes. It is the most generous state scheme within the European Union. Although Portugal, Spain and Belgium make larger average payouts, it is to a smaller percentage of the population.¹⁸⁵ Under this scheme, people suffering from injuries of violent crimes have the possibility to apply for compensation.¹⁸⁶ Government payments are the sources funding the CICS. The Criminal Injuries Compensation Authority (CICA) is both the assisting and the deciding authority. The CICA awards compensation via a fixed tariff system, the maximum amount is 250.000 British Pound (this is approximately 290.250 Euro).¹⁸⁷ If there were losses of earnings and various expenses to cover, the amount can increase to a maximum of 500.000 British Pound (this is approximately 580.500 Euro).¹⁸⁸ A victim can generally expect to receive a decision on the award of compensation a year or more after submitting the application.¹⁸⁹ This depends merely on the complexity of the case.¹⁹⁰

5.3.2 The eligibility criteria to claim fund

The CICS is only available for victims of violent crime, physically or mentally injured in the UK.¹⁹¹ The victim does not need to be a British citizen, but can be anyone of any nationality. Compensation can be provided to victims of violent crime who have suffered psychological or physical injury which is 'not purely minor' such as a black eye.¹⁹² If a victim only claims mental injury he or she has to demonstrate that he or she was brought in reasonable fear of

¹⁸¹ European NGOs Observatory on Trafficking, Exploitation and Slavery 2010, p. 214.

¹⁸² Came into force May 2004.

¹⁸³ United Nations Office on Drugs and Crime 2009, p. 291; These provisions do not concern Scotland, Scotland has own provisions contained in the criminal Justice (Scotland) Act 2003.

¹⁸⁴ <http://ec.europa.eu/anti-trafficking/showNIPsection.action?country=United%20Kingdom>

¹⁸⁵ House of Commons Committee of Public Accounts 2008, p. 3.

¹⁸⁶ Obokata 2006, p. 76.

¹⁸⁷ CICA 2011, p. 5.

¹⁸⁸ House of Commons Committee of Public Accounts 2008, p. 3.

¹⁸⁹ The application form can be found at:

<http://www.justice.gov.uk/downloads/global/forms/cica/compensation-following-single-incident.pdf>

¹⁹⁰ Anti-Slavery International 2010, p. 97.

¹⁹¹ For injuries sustained in Wales, Scotland or England; Northern Ireland has a separate scheme.

¹⁹² OSCE Office for Democratic Institutions and Human Rights 2008, p. 109.

immediate physical harm to him or herself.¹⁹³ Evidence is needed, such as written statements of a doctor or employer, for the CICA to determine whether the victim is entitled to compensation and how much.¹⁹⁴

Thus, the injury has to be a result of a violent crime. There is no definition of this crime, however the CICA states it expects the crime has involved a physical attack. But there are exceptions, such as: an award can also be claimed for assault, wounding, injury as a result of arson, a deliberate attempt to poison the victim or if an animal was set on to the victim with the intent of causing injury. Personal injury award can be received for own pain and suffering, mental (temporary mental anxiety, medically verified, or a disabling mental illness confirmed by psychiatric diagnosis), physical and disease (a medically recognised illness or condition). The disease or mental injury that can be claimed may result directly from physical injury or a sexual offence or without any physical injury.¹⁹⁵ Loss of earnings and special expenses could in some circumstances also be claimed. Loss of earnings may be claimed if the victim could not work for 28 weeks or more from the date of injury. This has to be a direct result of the injury.

The conduct of the person applying is also considered by the CICA. The victims have to be blameless. It is not clear what this vague term exactly includes. However, this term encompasses agreeing to take part in a crime in which you were injured.

The conduct of the applicant before, during or after the act may not be conflicting with the appropriateness of giving full or any award.¹⁹⁶ Also if a victim has a criminal record this can lead to refusing or lowering payment of compensation.¹⁹⁷ An award is only made if there is no likelihood that an assailant would benefit if an award is made.¹⁹⁸ If, at the time when the injury was sustained, the victim and the assailant (any) were living in the same household as members of the same family application for compensation can be declined. A man and woman living together as husband and wife (whether or not they are married) will be treated as members of the same family in this regard.¹⁹⁹

Although there is no need for a conviction to receive compensation via the state fund, the CICA notes that it finds it important that the victim does what he can to help the police. The applicant should give all reasonable assistance to the CICA or other body in connection with the application.²⁰⁰ The decision on the claim may be affected by the assistance to law enforcement authorities. This assistance consists of reporting the crime to the police within

¹⁹³ CICA 2008, p. 5.

¹⁹⁴ CICA 2007, p. 4.

¹⁹⁵ CICA 2008, p. 5.

If mental injury is claimed without occurrence of physical injury some conditions have to be met before compensation can be paid. See paragraph 9 of the Criminal Injuries Compensation Scheme 2008.

¹⁹⁶ CICA 2008, p. 6.

¹⁹⁷ CICA 2007, p. 4.

¹⁹⁸ CICA 2008, p. 7.

¹⁹⁹ CICA 2008, p. 7.

²⁰⁰ CICA 2008, p. 6.

48 hours, helping the police investigating the case and being prepared to go to court and give evidence if the offender comes to trial.²⁰¹

There is a time limit of two years between the suffered damages and the rendering of the application. An exception can be made if the applicant provides a good reason why he or she did not apply before. Poor English and a learning difficulty could be reasons for late application.²⁰² Lastly, the crime where compensation is claimed for must have taken place after August 1964.

5.4 Portugal

Portugal is a country of origin, but mainly a transit and destination country for victims of trafficking with the purpose of sexual exploitation and forced labour. Sexual exploitation takes place mostly in bars and apartments in large urban centres. Victims are generally recruited with the promise of false jobs.²⁰³ Many of the victims come from Brazil, but also Moldova, Russia, Romania, Ukraine and some African countries are common source countries of persons trafficked into Portugal.²⁰⁴ Of the identified trafficked persons about fifty percent is regularly residing in the country.

Human trafficking with the purpose of sexually exploiting a person is a crime under the Criminal Code in Portugal since 1995.²⁰⁵ Only in 2007 the trafficking law was amended to include other forms of trafficking such as removal of organs and trafficking for forced labour.²⁰⁶

5.4.1 The Portuguese state fund for victims of violent crime

The 1982 Penal Code of Portugal envisaged that legislation will ensure the compensation of any injured party who cannot be compensated by the offender.²⁰⁷ With regard to violent crimes such legislation was enacted in 1991, coming into force in February 1993.²⁰⁸ The law regulates ever since the right of crime victims in Portugal to obtain publicly funded compensation. At the time the law was developed there was also an authority created to assist and decide on applications.²⁰⁹ This authority is the Commission for Protection of the Victims of Crime (hereafter: the Commission). The Commission commenced its work in April

²⁰¹ CICA 2007, p. 4.

²⁰² CICA 2007, p. 3.

²⁰³ European NGOs Observatory on Trafficking, Exploitation and Slavery 2010, p. 190.

²⁰⁴ <http://gvnet.com/humantrafficking/Portugal.htm>

²⁰⁵ Article 217.

²⁰⁶ United Nations Office on Drugs and Crime 2009, p. 271.

²⁰⁷ Article 129. Decree-Law No. 400/82 (Penal Code), 23 September 1982.

²⁰⁸ By law No 423/91 of 30 October 1991 (Modified by law No. 136/99 of 28 August and Decree Law No. 62/2004 of 22 March 2004).

²⁰⁹ Greer 1996, p. 504.

that same year. The Commission should review the application and conclude its investigation within three months and forward a recommendation to the Ministry of Justice.²¹⁰

The award of compensation is the responsibility of the Ministry of Justice. Therefore, the Ministry will make the final decision.²¹¹ The Portuguese Association for Victim Support (APAV) can assist victims by completing and submitting the application.²¹² The scheme is funded with the social insurance budget of the State.²¹³ The award of compensation is subject to maximum limits and restricted to losses resulting from the injury. The maximum award is 29.928 Euro per person and the total amount may not exceed 90.000 Euro per incident.²¹⁴ The claim has to follow a procedure set out in the law. Only when the requirements are met, compensation from the State can be awarded.

5.4.2 The eligibility criteria to claim fund

A first criterion includes the requirement the injury has to be sustained on Portuguese territory (also Portuguese aircrafts and ships). Foreign nationals can apply to the fund as well.²¹⁵ Nevertheless, compensation can also be awarded to Portuguese nationals injured by an intentional act of violence abroad if that country does not provide the right to compensation from the state to a Portuguese national.²¹⁶

Only serious personal injury, resulting directly from an intentionally violent crime, can lead to a successful application to the fund.²¹⁷ Compensation will only be awarded if the serious injury results in permanent disability, death or temporary total disability to work for at least 30 days. Also, it is necessary that the injury causes a considerable disturbance to the lifestyle of the victim. Surprisingly, the grave offence rape is not included as a serious violent act.

The application should be accompanied by a last income tax return, police document reporting the crime and medical report proving the injuries suffered. Only material damages can be compensated. These include medical expenses, loss of support for the dependants of victims, lost wages, burial and funeral expenses and rehabilitation of disabled victims. Psychological damages are not attended.²¹⁸

The conduct of the victim, before, during and after the criminal act and the relationship with the offender or with the offender's milieu are taking into consideration by deciding on the application. Compensation will not be paid to victims that are immediate family of the

²¹⁰ <http://www.ojp.usdoj.gov/ovc/publications/infores/intdir2005/portugal.html>

²¹¹ The application form can be found at: <http://www.apav.pt/portal/pdf/REQINIC.pdf>

²¹² <http://www.ojp.usdoj.gov/ovc/publications/infores/intdir2005/portugal.html>

²¹³ <http://www.ojp.usdoj.gov/ovc/publications/infores/intdir2005/portugal.html>

²¹⁴ <http://www.ojp.usdoj.gov/ovc/publications/infores/intdir2005/portugal.html>

²¹⁵ <http://www.ojp.usdoj.gov/ovc/publications/infores/intdir2005/portugal.html>

²¹⁶ Greer 1996, p. 502; Article 12.

²¹⁷ Article 1.1.

²¹⁸ Council of Europe 2006, p. 233.

offender or live together with the offender.²¹⁹ And lastly it would also be viewed, if the award of compensation would be contrary to public policy or the sense of justice.²²⁰ It is not necessary to report the event to the police, though proof that a crime has occurred is required.²²¹ Usually, this condition is satisfied with a police report, thus if a crime is not reported to the police the victim should prove in another way a crime took place.

If the identity of the offender is not known, or the person concerned cannot be prosecuted or found guilty of an offence for some reason, compensation may be awarded by the State.²²² This makes it a prerequisite that no effective reparation has been paid by the offender to the victim through criminal proceedings. Further, it may not be reasonable foreseeable that the offender will compensate. The victim has to show that no other means of effective and sufficient compensation are available. However, state funded compensation does not depend on the prosecution or conviction of the alleged offender.²²³

Just like the other states, state funded compensation in Portugal is based on a concept of social solidarity. Thus, the intervention of the State is subsidiary to compensation paid directly by the wrongdoer. Only if victims of violent crime have failed to receive compensation through criminal proceedings or failed to enforce their civil compensation awards against the respective offender, compensation from the Portuguese State may be, under certain circumstances, awarded.²²⁴ The state compensation authority can offer advanced payment by providing an expedited or emergency compensation award.²²⁵ This is considered on a case-by-case basis.

Income and need are considered by the award decision. The claim must be made to the Ministry of Justice within one year from the date of the committed criminal offence. But, if criminal proceedings are started against the offender, the deadline to apply for compensation can be extended. The claim has to be made then within one year from the date judgement is given.²²⁶

5.5 Comparison of the funds

Since there is no sufficient data of applications to the state funds by victims of human trafficking it is difficult to establish if the funds are appropriate for victims of trafficking. The funds can thus not be compared in their actual functioning. However, the criteria of the funds

²¹⁹ Greer 1996, p. 502.

²²⁰ Greer 1996, p. 502; Article 3(1).

²²¹ <http://www.ojp.usdoj.gov/ovc/publications/infores/intdir2005/portugal.html>

²²² Greer 1996, p. 501.

²²³ On file with author

²²⁴ Council of Europe 2006, p. 233.

²²⁵ Council of Europe 2006, p. 233.

²²⁶ Greer 1996, p. 504.

to claim compensation, described in the former paragraphs, can be compared.²²⁷ This comparison can improve the understanding and the knowledge of the function(ing) of state compensation funds in Europe. This can subsequently give insight in the problems trafficked persons are likely to face when applying to a state compensation fund in Europe.

The Czech Republic scheme is funded with money from persons convicted. The other three schemes are funded with government money. The fund is coming from very different jars though. In Bulgaria the scheme is funded with budget of the Ministry of Justice whereas in Portugal the fund is paid of the social insurance budget. The deciding period varies between the states as well. Whereas Czech Republic and Bulgaria promise to decide upon an application within three months the UK states it can take more than one year depending on the difficulty of the case. There is an immense difference between maximum amounts of compensation paid by the states.

All four compensation funds award compensation to victims of violent crime. The Bulgarian fund is the only fund that lists crimes for which compensation can be claimed. Trafficking in people is one of these listed crimes. The other three funds do not have an explicit list of crimes for which compensation can be claimed and trafficked persons have to show that they were victim of a violent crime to be able to apply to one of these funds. The CICA, the deciding authority in the UK, has made it clear that trafficking refers to circumstances of an injury rather than an injury as such.²²⁸ Thus, in order to apply to the fund, victims have to show that their injury is a result of a violent crime. This subsequently implies that the victims of human trafficking need to be injured to be eligible to apply to the fund.

All funds compensate victims who possess the own nationality or are citizens of a European Union Member State. Portugal and the UK compensate all nationalities. Czech Republic and Bulgaria have laid down in their legislation that also foreign nationals who are a national of a country where the state has an international agreement with in this regard are entitled to apply to the fund. Czech Republic furthermore provides the opportunity for long term residents and people with asylum status to apply to the fund.

All four countries take the conduct of the victim into account. The victims have to be blameless in order to apply. This criterion is based on the rationale that an award of compensation should not conflict with the society's sense of justice.

All countries state the importance of co-operation of the victim with the criminal investigating authorities. Although it is not necessary to report the crime to the police in Portugal and the UK, both countries indicate the absence of reporting the crime to the police can have negative effects on the decision to award compensation. The police report serves as

²²⁷ A table with an overview of the eligibility criteria of the four countries is included as appendix C.

²²⁸ Hutt & Dykes 2011, p. 328.

evidence the crime took place and that the victim is indeed a victim of a certain crime. If a police report does not exist the victim has to prove in another way the fact that he or she has been a victim of a violent crime. In the Czech Republic and Bulgaria, the report of the crime to the police is a criterion to claim fund. But in Bulgaria an exception can be made if there was a valid reason for not reporting the crime to the police. In Portugal, the UK and Czech Republic it is not necessary that the offender is convicted in order to award compensation. Bulgaria only pays state compensation after a guilty verdict or a court instrument stating criminal proceedings are dismissed or discontinued based on the failure to identify the offender.

The funds work on a complementary basis and all explicitly state that compensation only can be claimed if other means to obtain compensation failed. Thus, only if the injury cannot be compensated by the offender the state fund will eventually compensate. The compensation funds serve as a safety net to the victims who fail to receive compensation via another way.

The UK is the only country that also award compensation for psychological damage. The other three countries only compensate material damage, stating what type of costs can be claimed to be compensated by the fund. Costs that can be claimed for lost income as a result of injury are in particular relevant for trafficked persons.

The applications to the funds need to be accompanied by documents (such as receipts and medical reports) to prove the damage suffered from the injury. All four funds have time limits in place to apply for compensation from the fund. The UK maintains the longest period: victims can apply up to two years after the injury took place. Czech Republic and Portugal both maintain a period of a year and in Bulgaria victims have to apply within two months after the guilty verdict is known. Portugal and the UK furthermore have a criterion regarding the victim being a relative of or in cohabitation with the wrongdoer. The rationale behind this criterion is the risk that the award will in the end be in the benefit of the wrongdoer.

Some criteria make it difficult, sometimes even impossible, for trafficked persons to claim compensation from the state fund. The next chapter will address these difficulties.

6. The situation of trafficked persons regarding state compensation funds

'Setting a standard is not enough, the challenge is to maintain this standard.'²²⁹

This quote also covers the issue of compensation for trafficked persons. As described in chapter two states have a responsibility towards victims of human trafficking and as described in chapter four there are several treaties in place which set the legal framework regarding these obligations. European states thus set a standard for the right to compensation of trafficked persons. In line with this standard there are state compensation funds. Four of these funds, including their eligibility criteria, are described in the former chapter. The present chapter will illustrate that these eligibility criteria can be problematic for trafficked persons. Due to the barriers trafficked persons face when they apply to a fund it is a challenge to maintain the standard in practice.

The state compensation funds are evaluated by the European Union Agency for Fundamental Rights (FRA).²³⁰ According to the FRA the funds comply with requirements and provide fair and appropriate compensation for victims of violent intentional crimes.²³¹ However, as will be shown below, some criteria of the funds form an obstacle for victims of human trafficking and subsequently it is very difficult for trafficked persons to obtain compensation from a state. The applications of trafficked persons are likely to be rejected because the victims probably fail to meet all the criteria. As there is little data on applications of trafficked persons to state funds, this chapter gives a theoretical overview of expected problems trafficked persons face.²³² For instance, of the CICA it is known that relatively high numbers of applications were declined in 2010-2011 because the injury did not result from a crime of violence, the applicant's criminal record/character, the applicant failed to co-operate with the police in bringing the assailant to justice and due to the conduct of the applicant before, during or after the crime. Together, these reasons to decline count for 49,4% of the disallowed applications.²³³ Injury that was not serious enough to qualify for the minimum award of 1.000 British Pounds (about 1.170 Euro) was the most common reason to decline an application (28%). These criteria could be problematic for trafficked persons. These, and other criteria which could be an obstacle to trafficked persons, will be addressed in the third paragraph. Firstly, attention is given to the awareness and willingness to apply to state funds and the special conditions trafficked persons are subject to.

²²⁹ A quote of Jan Peter Balkenende during a lecture to the General Assembly of the United Nations on the International Criminal Court at 25th of September 2010.

²³⁰ The funds evaluated are the funds of member states of the Council of Europe.

²³¹ European Union Agency for Fundamental Rights 2010, p. 136.

²³² See the preface.

²³³ CICA 2011, p. 12.

6.1 Prior to the application process

6.1.1 Awareness of the possibilities

The first step in addressing the accessibility of state funded compensation is to determine awareness amongst victims. This awareness consists of a double layer. Firstly, the victim has to be aware he or she is a victim of crime and secondly he or she has to be aware of the possibility to claim compensation from a state fund. Awareness of being a victim encompasses perceiving oneself as a victim. People differ in how they perceive what was inflicted on them and they regularly fail to perceive oneself as a victim.²³⁴ This presumably applies even more for victims of forced labour, because their exploitation is less frequently enforced with physical violence and thus less blatant.²³⁵ Furthermore, some people do not want to be identified as such, since it may be at odds with how the person views himself.²³⁶

Awareness of the possibility to claim fund depends on the success of authorities to accurately decide who is and who is not a victim of crime. If victims are not identified as such they will not receive appropriate assistance. In the UK a report on the CICS has shown victims of violent crime (in general) are not made sufficiently aware of the existence of state funds.²³⁷ With regard to trafficked persons it is to assume even less persons are aware of the possibility to claim compensation since trafficked persons are not always identified as a victim of crime and consequently do not receive information on their rights. This makes awareness of the right to compensation amongst victims an aspect to improve.

The awareness of being a victim of crime and the possibility to claim fund (after other ways to compensation are exhausted) does not automatically result in an application to the fund by the victim. The decision to claim fund also depends on the will to apply for compensation.

6.1.2 Willingness to use the possibilities

There are several reasons why people decide not to apply for compensation. For instance, the insecurity of victims about their immigration status can be a reason not to apply for compensation. Victims may prefer their current situation over the situation they come from or they have not fulfilled their original migration motive yet.²³⁸ Victims feel they have little to gain, because their weak legal status enhances the chance they are deported after being identified instead of receiving proper help.²³⁹ Due to this fear victims of trafficking often do not want to come forward. Other victims choose to decline assistance and compensation because they do not want to be

²³⁴ Huyse 2003, p. 60.

²³⁵ Smit 2011, p. 190.

²³⁶ Obokata 2006, p. 57; Brunovskis & Surtees 2007, p. 142.

²³⁷ House of Commons Committee of Public Accounts 2008, p. 3.

²³⁸ Smit 2011, p. 190.

²³⁹ Smit 2011, p. 190; Mahmoud & Trebesch 2009, p. 5.

reminded of the crime.²⁴⁰ Victims can also suffer from PTSS symptoms, which can make them not ready (yet) to be thinking of practical help such as compensation. Another reason, as an effect of possible trauma, may be the disbelief anything can be done to help.²⁴¹ Furthermore, feelings of shame, guilt or humiliation can withhold victims from seeking assistance and compensation. If victims feel responsible for making the wrong choice and see their victimization as a result of stupid behaviour of themselves, they will probably be less likely to seek for restoration of their costs. Sometimes victims also fear stigmatisation. 'A stigma is based on identified differences that others negatively evaluate and construct into 'spoiled identities'.²⁴² A stigma affects the human dignity of a person and has an impairing impact on the self-esteem of the victim.²⁴³ The fear of victims for a stigma can consist out of shame towards family and friends. This plays especially a role for victims of sexual exploitation. The shame often originates from feelings of personal default and feelings of embarrassment for dishonourable activities.²⁴⁴ In some cultures a persistent negative stigma is attributed to women who are considered a prostitute.²⁴⁵ Claiming compensation enlarges the risk other people find out about activities undertaken by the victim. As a result victims are cautious to address their situation.

6.2 Special situation of trafficked persons

Victims of human trafficking and victims of other violent crimes differ from each other. Different factors influence their decision to apply to state funds. For a state fund to be appropriate for trafficked persons, it is important to consider these factors. It goes beyond the scope of this research to elaborate on the decision of victims to apply to a state compensation fund. Therefore, the analysis on the appropriateness of state compensation is limited to the situation in which victims are aware of the possibility to claim compensation and willing to apply. This paragraph addresses the situation most trafficked persons find themselves in though. It is necessary to take their situation into account when analyzing and describing why it is difficult for them to apply for state compensation.

²⁴⁰ House of Commons Committee of Public Accounts 2008, p. 9.

As is also recognized by a Stakeholder who filled in the questionnaire: 'It should be pointed out that survivors of trafficking are willing to forget everything that happened to them and do not want to remember and repeat all details about the exploitation. Claiming compensation requires interrogation of the trafficked person and this can provoke a flashback'.

²⁴¹ Huyse 2003, p. 60.

²⁴² Lanier & Henry 2004, p. 197.

²⁴³ Jansen 2007, p. 152.

²⁴⁴ Jansen 2007, p. 86.

²⁴⁵ OSCE Office for Democratic Institutions and Human Rights 2005, p. 120; Jorge-Birol 2008, p. 175.

6.2.1 Control of the trafficker over the victim

Several features of the practice of human trafficking are of influence on the victim's application to state funded compensation. Very important in this regard is the control traffickers have over their victims.

Traffickers have different modus operandi in the recruitment of their victims. One of the methods is to mislead the victim about the type of work the victim is going to exercise.²⁴⁶ This method is also used by the traffickers in case study 1, introduced in chapter one. The Filipino women were told they were going to work in a club as dancer or waitress. Once the victims decided to agree with the proposal to work abroad, the preparations for the journey to the Czech Republic were taken. If victims are deceived about the purpose of their departure, it is usually not necessary to force the victims to travel to the country of destination. And also if victims are not deceived about the work they are going to undertake, they are probably not aware of the conditions they have to work under so there is no need to control the victims yet. Once victims have arrived at the destination and are in the possession of the traffickers, traffickers usually take control over the victims.

Traffickers typically have physical and psychological control over their victims. Control is often manipulative and brutal using beating, rape, starvation, physical exhaustion, drugs, captivity, deception and threats to force the victim to obey orders and rules.²⁴⁷ Traffickers threaten victims with death, to use violence, to arrange deportation and in case of sexual exploitation they are threatening victims with making the activity of the victim public. These threats are underlined partly by myths and partly by knowledge of what happened to other victims.²⁴⁸

Furthermore, traffickers often keep their victims in isolation.²⁴⁹ Effort is made by employers to hide the workers from the local population in remote locations. Because accommodation is often linked to a job, victims are afraid to lose both.²⁵⁰ As the exploitative world is the only world the victims see, it influences their standards and make them more dependent on the traffickers.

Victims are also controlled by taking away the valid passport of the victim.²⁵¹ In case study 1, the victims stated in their testimonies their passports had been seized immediately after arriving in the Czech Republic, as well. Traffickers also control their victims using debt bonding and contracts. Then, the traffickers do not use violence but take advantage of a quasi-contractual obligation of the victim to pay the trafficker. The victims are likely to live up to these 'agreements', even if the level and the source of the debt are invisible.²⁵² Also in the case study the traffickers did put forward the contracts signed by the girls and forced them in this way to provide paid sexual services.

²⁴⁶ Tavakoli 2009, p. 81.

²⁴⁷ Tudorache 2004, p. 20; Tavakoli 2009, p. 81.

²⁴⁸ Helfferich, Kaveman & Rabe 2011, p. 130.

²⁴⁹ Bullens & Van Horn 2000, p. 33.

²⁵⁰ Smit 2011, p. 191.

²⁵¹ Helfferich, Kaveman & Rabe 2011, p. 131.

²⁵² Helfferich, Kaveman & Rabe 2011, p. 131.

Violence is frequently used to control victims, although, not all victims are physically abused by their traffickers. Physical violence is less frequently imposed on victims of other forms of exploitation than sexual exploitation.²⁵³ The methods traffickers apply to have power over a person shift to less-violent practices. Bulgarian traffickers, for instance, hardly use physical abuse but instead apply 'soft methods' for recruitment. These methods consist of psychological and emotional abuse as well as manipulation in order to make the victims willing to follow the trafficker.²⁵⁴ On the contrary, other research describes Balkan based trafficking groups frequently use violence to control their victims.²⁵⁵

Traffickers thus do not have a single technique to control their victims. How victims are controlled seems to be partly dependent on the conditions and personal features of the traffickers. Personal features that play a role are the degree of aggressiveness and unpredictability.²⁵⁶ Also the personalities of the victim and the form of exploitation have influence on the manner a trafficker takes control over a victim. How this control over the victim influences the application of trafficked persons will be shown in paragraph 6.3.

6.2.2 Unfamiliarity with the country

Most cases of human trafficking crosses borders, the victims are from other countries and they are in a weak position because they are outside their social and cultural safety networks and a stranger to the system of the countries they are exploited.²⁵⁷ Victims are thus often unfamiliar with the country where they are exploited. This can also be seen in the case study, where Filipino women are trafficked to the Czech Republic. The traffickers in the case study took advantage of the fact that the women, being far away from home, depended completely on them. This is not an exception.

Many victims of labour exploitation are migrants with limited language skills.²⁵⁸ This was different in the case study though, one of the selection criteria of the victims was their knowledge of English. Recruiters generally select victims because of their lack of knowledge of a language and discourage them to learn it. Victims are dependent on fellow workers or their employers for interpretation and translation of information. In addition, victims regularly face discrimination and racism from the society and lack knowledge of workplace rights and protections. This unfamiliarity with the country impedes their application as will be shown in the next paragraph.

²⁵³ Smit 2011, p. 191.

²⁵⁴ Petrunov 2011, p. 168.

²⁵⁵ United Nations Office on Drugs and Crime 2010, p. 3.

²⁵⁶ Bullens & Van Horn 2000, p. 31.

²⁵⁷ Tudorache 2004, p. 19 – 20.

²⁵⁸ Van Liemt 2004, p. 7.

6.3 Problematic eligibility criteria

Although the requirements of a fund can be troublesome for all applicants, trafficked persons face some additional problems due to the situation trafficked persons find themselves into. Because the funds are developed for victims of violent crime, the application to a fund by a victim of human trafficking is even more difficult. The eligibility criteria that form possible barriers to trafficked persons to obtain compensation are addressed in this paragraph.²⁵⁹

6.3.1 Co-operation with the police

In Bulgaria and the Czech Republic it is mandatory to co-operate with the police. In Bulgaria also a guilty verdict or report on the failure to identify the offender is a prerequisite to apply for compensation. Although this is not mandatory in Portugal and the UK, those countries also stipulate that co-operation with police authorities can have influence on the decision on the award of compensation. The present sub-paragraph explains why this can be problematic for trafficked persons.

As described in paragraph 6.2 the trafficker has control over the trafficked person and the trafficked person is often unfamiliar with the country. As a consequence, trafficked persons are often completely dependent on their traffickers. This makes it difficult for the trafficked persons to detach themselves from the situation in which they find themselves. Traffickers seem to try to recruit naïve and credent persons.²⁶⁰ They indoctrinate and manipulate their victims with horrible stories and depict the police as the enemy.²⁶¹ Additionally, they make victims distrusting of authorities and reluctant to contact them. Even if victims do not let the traffickers influence and indoctrinate them, their unfamiliarity with the country and the system makes it hard to go to the police. Furthermore, due to the isolation in which many victims are kept it is difficult to seek help. In addition, with sexual exploitation for instance, some victims are emotionally bound to their traffickers. Some victims are in love and do not want to take action against their trafficker. There are even stories about girls who ran away but returned to their trafficker.²⁶² It is a big decision and step for most victims to co-operate with the police and especially to make an official statement against the traffickers. The involvement of intimate relationships can be an explanation why many victims feel reluctant to report their traffickers to authorities. In addition, if the victim refuses to testify against the offender on grounds of the relationship between the victim and the offender, this can form another barrier to compensation.

On top of these factors, there is another feature which is probably most crucial in the decision of the victims to co-operate with the police. This is the anxiety of victims about their own safety and of their friends and family.

²⁵⁹ A table with an overview of the problematic eligibility criteria is included as appendix D.

²⁶⁰ Bullens & Van Horn 2000, p. 33.

²⁶¹ Bullens & Van Horn 2000, p. 34.

²⁶² Bullens & Van Horn 2000, p. 33.

In the UK there is an example of an application for compensation to the CICS that failed because of the failure of the applicant to inform the police. The applicant in question, made a statement to the Serious Organised Crime Agency (SOCA), but did not wish to report the matter to the police due to fear of reprisals and because she was mistrustful of the police in general. This mistrust was an outcome of being raped in the past by a policeman in a third country and afterwards being arrested by the policeman for illegal prostitution. The CICA found that this applicant had failed to co-operate with the police in attempting to bring the assailant to justice.²⁶³

Traffickers regularly threaten and bribe victims after victims went to the police in order to discontinue co-operation of the victim with the police and make them withdraw (if made) their official statement.²⁶⁴ The traffickers also direct threats against family members of the victims. The victims fear reprisals of their traffickers.²⁶⁵ If a trafficker is arrested and faces punishment, victims still wonder what will happen when the trafficker leaves prison, because the penalties are relatively low compared to other illicit activities.²⁶⁶ Thus, if a victim decides to apply to the fund, mandatory co-operation with police authorities could form a bar to obtain compensation.

6.3.2 Time limits

The four countries maintain strict time limits for the application to the state fund. In Bulgaria the time limit, coupled to the guilty verdict, is rather short. The other three countries have longer periods, but these could still be too short for trafficked persons. Although the countries provide the possibility to apply for compensation after the time limit has expired the Czech Republic is very strict with exceptions.²⁶⁷ The present sub-paragraph explains why this can be problematic for trafficked persons.

Victims of serious crimes experience acute stress and adverse physical, financial and practical effects which have direct negative effects on the health of a person.²⁶⁸ And although reactions of victims are specific to the person involved and the type of crime, most research suggests that psychological distress is the dominant reaction to victimization.²⁶⁹ This is something all victims of violent crime and human trafficking experience more or less. If a person is still in the process of overcoming the experienced trauma he or she goes through a long stabilization phase before disclosing what has happened to him or her.²⁷⁰ This is also recognized by a social worker in Bulgaria: 'If a trafficked person has been sexually exploited for a long time, beaten and threatened, in order to overcome the trauma it can take a long time to recover and therefore it can take a long time before the person is ready to claim compensation'.²⁷¹ If reparations are

²⁶³ Hutt & Dykes 2011, p.331.

²⁶⁴ Bullens & Van Horn 2000, p. 36.

²⁶⁵ Obokata 2006, p. 77; Goodey 2008, p. 425.

²⁶⁶ This view is expressed in the questionnaire by a stakeholder. For further details please contact the author.

²⁶⁷ Matrix Insight 2009, p. 39.

²⁶⁸ Tudorache 2004, p. 19 – 20.

²⁶⁹ Hoyle & Zedner 2007, p. 465.

²⁷⁰ Follmar-Otto & Rabe 2009, p. 77.

²⁷¹ This view is expressed in the questionnaire by a stakeholder. For further details please contact the author.

granted before the victim is psychologically ready, this reparation can be expected to leave the victim feeling dissatisfied.²⁷² This obviously conflicts with the rationale of compensation.

Moreover, if victims are ready to apply to a fund, they probably experience difficulties with understanding and completing the form. Research on the English compensation fund has shown that applying to the scheme is complex and long and almost one fifth of the applicants thought it was difficult to complete the form.²⁷³ If this is already the case for 'traditional victims', it is probably especially hard for people unfamiliar with the situation and country to fill in and complete the form.

Strict time limits are thus not desirable with regard to trafficked persons due to the often long period needed to overcome their trauma. Also the complexity of the application in combination with their unfamiliarity with a country will lengthen the time needed to complete the application.²⁷⁴ Time limits can thus form a barrier for trafficked persons to seek and obtain compensation.

6.3.3 Behaviour of the applicant

When deciding on an award of compensation, the deciding authorities of the four countries also take the behaviour of the applicant into account. The rationale behind this criterion is obvious. It would be against people's sense of justice if a person receives money while he or she is not totally innocent. Victims have to be reliable, but trafficked persons often do not fit the profile of the usual image of a victim and are commonly not addressed as reliable by enforcement authorities.²⁷⁵ The discretion to reduce or refuse an application on basis of the behaviour of the applicant makes the outcome of trafficking applications to the schemes difficult to predict.²⁷⁶ The present sub-paragraph shows how the behaviour of the applicant can constitute a barrier for trafficked persons to obtain compensation.

Firstly, and maybe most striking is the fact some trafficked persons initially consented to being assisted to migrate irregularly and became trafficked after arriving in the country of destination by coercive means as debt bondage or violence.²⁷⁷ Their illegality will influence the application and could form an obstacle.

And how will it be judged if persons accept a situation of exploitation because it is the best option available to them? From these persons it cannot be said that they are blameless or have not taken any part in the crime. The CICA decided negatively upon an application for compensation in this regard. An applicant had been in contact with the police while she was working as a prostitute. However, she had never told the police during this period that she had been trafficked and was forced to work as a prostitute. The deciding authority inferred from this that the applicant,

²⁷² Hamber 2000, p. 220.

²⁷³ House of Commons Committee of Public Accounts 2008, p. 3.

²⁷⁴ The Anti Trafficking Monitoring Group 2010, p. 92.

²⁷⁵ Jorge-Birol, p. 175.

²⁷⁶ Hutt & Dykes 2011, p. 324

²⁷⁷ Askola 2007, p. 207.

once in the UK, had agreed to work as a prostitute in preference to returning to her home country.²⁷⁸

Furthermore, some victims are coerced by their traffickers to commit illegal activities. For instance, people who are forced to work in cannabis factories in the UK or people who are forced to pickpocket or other petty crimes. For them it is potentially difficult to access state compensation.²⁷⁹

Common to human trafficking cases is the often complex interaction between offenders and victims. The general victim-perpetrator dichotomy does not correspond to the complex reality. This can be illustrated with trafficking for the purpose of sexual exploitation. The roles of victim and offender are not per se opponents but can be intertwined. The traffickers uphold internal protection measures, making some victims an accessory to the crime.²⁸⁰ Victims can become facilitators or perpetrators by taking a role somewhere during the process.²⁸¹ For instance, a victim can be placed in a role which makes her also responsible for the supervision of other victims. In this way, the victim is given a double role. She is a victim, but under pressure she is also co-operating with the traffickers. Furthermore, with regard to sexual exploitation, it is important to take the legality of prostitution into account. If prostitution is illegal this directly affects the decision on the behaviour of the applicant.

Some trafficked persons are living together with their traffickers or are related to the trafficker. This can constitute another barrier in the way to compensation from the state. In many cases victims are recruited by someone they know.²⁸² Intimate relationships are often involved, such as parents or relatives who force children into prostitution. If the trafficker is a partner or relative of the victim, a close relationship of abuse and dependency is created.²⁸³ An example of such close relationship where dependency is created can be found with women having a dependent residence permit for marriage or family reunification. These women often have full access to the labour market, but could fall victim to exploitation by their own relatives who treat them as unpaid house servants or confiscate their entire income. This type of exploitation does often go together with physical and sexual abuse.²⁸⁴

A victim of trafficking as described in the example above should have access to a state compensation fund. As the UK and Portugal have criteria in place with regard to co-habitation and relatives this could form a bar for trafficked persons. This criterion aims to prevent offenders from forcing victims to apply to the fund and then collecting the money from the victim later. Thus this criterion aims to prevent abuse of the fund. Although this is an understandable criterion,

²⁷⁸ Hutt & Dykes 2011, p. 331.

²⁷⁹ The Anti Trafficking Monitoring Group 2010, p. 92.

²⁸⁰ Bullens & Van Horn 2000, p. 35.

²⁸¹ Oude Bruil, Siegel, Van Reenen & Roos 2011, P. 41.

²⁸² Surtees 2005, p. 165; Kleemans 2011, p. 96.

²⁸³ Goodey 2008, p. 428.

²⁸⁴ Smit 2011, p. 190.

especially with domestic violence in mind, this can constitute a troublesome criterion for trafficked persons.

6.3.4 Nature of the injury

The UK, Portugal and Czech Republic maintain a threshold regarding the severity of the injury to apply to the state compensation fund. In Czech Republic different injuries are listed to stand for an amount of points and the injury applied for has to sum up to a certain amount of points. The UK upholds a minimum of 1.000 British Pound (about 1.170 Euro) of damage and Portugal looks at the period of time someone is not able to work due to the injury and if the injury does considerable disturb the lifestyle of the victim. Bulgaria lists human trafficking as a crime where compensation can be claimed for through the fund and thus no minimum of injury is requested. The problems addressed in this sub-paragraph therefore not include the situation in Bulgaria, but account for most state funds in Europe.

The criterion of injury is probably the most substantial and problematic obstacle for trafficked persons aiming to receive money from a state fund. Because the funds are aimed at victims of violent crime, it is necessary to prove the injury, or at least the genuine fear of being directly threatened with violence. However, as described earlier in this chapter, traffickers do not always use violence to control their victims. The high thresholds of funds regarding injury are therefore not always met by trafficked persons.

The most obvious crime to apply for compensation for would be a violent crime. The applicant should therefore review the injuries where compensation can be claimed for by a scheme (like the injuries listed in the tariff system of the CICS in the UK) and establish if he or she has suffered any of the injuries.²⁸⁵ As explained in paragraph 6.2 trafficked persons are controlled by their traffickers whereby different controlling methods are used. If a trafficker uses violence to control the victim, the victim may be able to claim compensation for a crime of violence. However, the victim has to prove this injury which has to be so severe it meets the threshold applied. Due to the control of the trafficker it can take a long time before trafficked persons detaches themselves from the exploitative situation. As a consequence, evidence of physical injury may have been disappeared.

If no violence is used to control a trafficked person, the person has to search for another crime to claim compensation for. Of human trafficking with the purpose of sexual exploitation it is known that rape is used by traffickers as a method to control their victim. Most state funds have included rape as a violent crime where compensation can be claimed for (Portugal is an exception). Claiming compensation for being raped could then be an alternative, if it is not possible to obtain compensation for physical abuse. It can be relatively straightforward to obtain compensation in respect of rape under the CICS, although it has to be established that the rape took place.

²⁸⁵ Hutt & Dykes 2011, p. 326.

Moreover, with regard to sexual exploitation where a victim is not raped by a trafficker, but is coerced to work as a prostitute, it can be argued that the victim has been raped by clients since the sexual acts were not really consensual.²⁸⁶

In literature and political debate most attention is given to human trafficking for the purpose of sexual exploitation. Subsequently, most information on the modus operandi of traffickers and the exploitive situation of this form of trafficking is known. It is difficult to apply for state funded compensation for persons sexually exploited. But how about human trafficking with another purpose of exploitation, for instance with regard to forced labour? Victims are exploited in several sectors, such as construction, agriculture and domestic and care work.²⁸⁷ Also in these sectors victims may experience threats and abuse, reduced or no pay, debt bondage and withholding of identity documents.²⁸⁸ Sexual violence is then less often used, just as physical violence. Furthermore, persons may have more often illegally entered a country (with the help of smugglers) in the first place. What about these victims who are not controlled by violent means but by different means such as debt bondage, taking away the identity papers, drugs or captivity? As addressed in paragraph 6.2 these means are also used to control a trafficked person. It seems that it would be impossible for these persons to apply to a state compensation fund.

6.3.5 Proof of injury and damages

Connected to the former criterion of the nature of the injury is the requested evidence by state compensation authorities to prove the injury. All four compensation funds require documents demonstrating the damage suffered. As described in the former paragraph not all victims of trafficking are victims of violent crimes. However, if they are, they face a potential barrier regarding the proof of their injury.

Most state compensation funds compensate material damages, i.e. pecuniary damages such as medical costs and lost income. Compensation should be available for 'any financially assessable damage including loss of profits insofar as it is established'.²⁸⁹ Thus, to claim compensation an applicant has to show he or she is victim of a certain crime and due (directly) to this crime has sustained injury where he or she is claiming compensation for. The problem for trafficked persons lies in the fact they often do not have the documents, including receipts from pharmacies and doctors' examinations, to prove these damages and injuries due to the exploitative situation they were subject to. If a fund does compensate non-pecuniary damages, such as the UK fund which effectuates fixed payments for certain injuries, it can be a problem with a practice such as human trafficking to determine how to assess suffered harm and damages.²⁹⁰

²⁸⁶ Hutt & Dykes 2011, p. 326.

²⁸⁷ Andrees 2008, p. 30.

²⁸⁸ Kleemans 2011, p. 96.

²⁸⁹ Du Plessis 2003, p. 630.

²⁹⁰ Du Plessis 2003, p. 649.

Evidence of lost income is another complicating factor for trafficked persons. A trafficked person may not have official papers of a former job which is often requested by the funds as a starting point for calculations. Moreover, since trafficked persons generally do not possess receipts or payslips, it is almost impossible to show evidence that they have not received enough payment during the period of exploitation. In addition, compensation for lost income may be rejected because the deciding authority does not establish causation between the injury and the resulted lost income. As of the CICA it is known the authority rejected an application because the loss of earnings resulted of the trafficking in general, rather than from the injuries specified in the tariff.²⁹¹ To proof damages as result of lost income seems thus difficult for trafficked persons.

6.3.6 Nationality

In the UK and Portugal persons of any nationality can apply to the state compensation fund, although there is no obligation to compensate victims who are not legally residing in the country.²⁹² Czech Republic and Bulgaria uphold criteria on the nationality of the victim. In these two countries people from some countries outside the EU are possibly not eligible to apply to the fund. The eligibility depends on the existence of an international agreement, between the countries of origin and destination. Since human trafficking often crosses borders and people are trafficked all over the world, this criteria forms another barrier for some trafficked persons.

²⁹¹ Hutt & Dykes 2011, p. 329.

²⁹² This view is expressed in the questionnaire by a stakeholder. For further details please contact the author.

7. Concluding Remarks

7.1 Conclusion

In this thesis the appropriateness of state compensation funds for victims of human trafficking is analyzed. In order to answer the research question, the compensation funds for victims of violent crime of Bulgaria, the Czech Republic, Portugal and the UK are examined. The funds are based on the European Convention on the Compensation of Victims of Violent Crime. It is thus not surprising that the funds show various similarities regarding the eligibility criteria to claim fund. However, victims of human trafficking differ from victims of violent crime and therefore some criteria form a potential barrier for trafficked persons in their way to obtain compensation.

Eligibility criteria which seem to be problematic for trafficked persons are the co-operation with the police, the time limits maintained, the behaviour of the applicant, the nature and proof of the injury and lastly the nationality of the applicant. Trafficked persons are controlled by their traffickers and usually unfamiliar with the country in which they are exploited. These features have a negative influence on the ability of trafficked persons to fulfil the requirements of the funds. Furthermore, because trafficked persons sometimes play a role in the trafficking process their behaviour is not likely to be considered blameless. In addition, the fact people are trafficked all over the world may have a negative impact as the nationality of the trafficked person may fall outside the scope of nationalities which are eligible to apply to the fund.

The eligibility criteria of the Czech Republic and Portugal are almost identical. An advantage of the Portuguese scheme compared to the Czech Republic scheme is that it applies to all nationalities. However, the Portuguese scheme has a criterion on cohabitation/relatives which could be negative for trafficked persons whereas the Czech Republic has not such criteria. The fact the Czech Republic has not ratified international legal instruments on trafficking does not seem to influence the accessibility of the state fund. A real advantage of the Bulgarian fund is that human trafficking is listed as a crime where compensation can be claimed for. However, the strict requirements on mandatory co-operation with the police and the prerequisite of a guilty verdict or a report on the failure to identify an offender are in practice likely obstacles to compensation from the fund. The fact no award of compensation has yet been paid to a trafficked person may confirm this assumption, but we cannot be sure since it is unknown if applications were ever made. The main advantage of the scheme of the UK, compared to the other schemes is that compensation can be awarded for immaterial damages. The awards paid, differ widely between the states. If compensation is paid through the fund it is probably far from the amount suffered, so even when compensation is accessible it is not likely to be appropriate and thus not effective.

From the analysis on these funds a conclusion to the research question of this thesis, to what extent existing funds for victims of violent crime are appropriate for victims of human trafficking, can be drawn. Although there are (soft) legal provisions in place on state compensation funds for trafficked persons, the eligibility criteria of these funds seem to form a barrier for trafficked persons if they apply for an award of compensation. Because there is no sufficient data, it can not be concluded which state compensation fund is most appropriate for trafficked persons but it seems that the combination of the eligibility criteria of the funds makes it a challenge for trafficked persons to obtain compensation from a state. Therefore, it can be concluded that existing state compensation funds for victims of violent crime are currently inappropriate for trafficked persons. To make the funds more appropriate to victims of human trafficking in the future, the eligibility criteria should be revised. To improve the situation of trafficked persons, provisions should be changed from soft language to hard obligations or states should give more priority to the rights of trafficked persons. However, first and foremost, data should be collected in order to establish to what extent the eligibility criteria form a barrier to obtain compensation in practice.

7.2 Discussion

Although compensation is important for trafficked persons, it will probably remain a difficult part in the accession of justice. Human trafficking is a crime which often occurs in an organized context and the money flows are often hidden through money laundering practices. However, traffickers make high profits and it is very important to improve the (financial) criminal investigation. It is often difficult to collect enough evidence to convict the offender and to trace the assets of the trafficker. Additionally, many victims are not willing to make an official statement against the trafficker out of fear or other reasons. However, if criminal investigating authorities are more successful and make progress on the punishment of traffickers, victims are more likely to make an official statement. Better financial investigation will furthermore improve the situation on compensation in criminal proceedings. Nevertheless, precisely because of these difficulties to obtain compensation from the offender it is important to have well functioning state compensation funds.

There are great differences between the (maximum) amounts of compensation paid by the states. Since human trafficking often crosses-borders victims may have been exploited in multiple countries. If a victim escapes from the situation of exploitation and tries to receive compensation for suffered damage through a state fund it is questionable if it is fair if a person receives less compensation because the country responsible awards smaller amounts of compensation than other countries. And if the victim wants to redress damage suffered in multiple countries, the victim has to go through multiple application procedures. This seems very cumbersome and undesirable. The solution for the discrepancy between compensation awards paid by states and the international character of the crime may be found in the establishment of a European fund for

victims of human trafficking. However, improving existing mechanisms is in my opinion preferable over developing new ones.

Compensation funds are mainly established out of social considerations and not because of a legal liability to pay compensation. However, with regard to human rights violations this is different. How can an award for psychological harm resulting from a human rights violation be measured? This is a difficult question with no simple answer. However, states should take the best interest of victims into account when deciding on compensation. Although there are many arguments in favour of compensation, it should be acknowledged that victims are different and subsequently have different needs. Consequently, it is very important to establish the individual needs of victims and allocate funding to the right needs. Hence, states should improve their knowledge on the nature and scope of human trafficking so projects and funding are rightly and usefully allocated. As long as there is much uncertain on the practice it remains unsure if policy is addressed in a right way.

Also with conducting this research the uncertainty on the nature and scope of the crime was of influence. Trafficking in human beings is a broad concept. Because I did not make a selection to research only one type of human trafficking and also because I addressed multiple countries, many different features of trafficking were to be distinguished. This made it sometimes hard to give a clear and full explanation on the expected difficulties trafficked persons face when applying to a state compensation fund. Because the research is based on assumptions and no data on applications was available it is not possible to make hard conclusions on the appropriateness of state compensation for trafficked persons. However, it is an important matter and the only way to determine if the conclusion of my analysis is in fact true, is to collect data on the issue and study the real applications of trafficked persons to state compensation funds.

7.3 Recommendations

The following recommendations are directed to the four countries examined in this thesis but also apply to other countries in Europe:

- ✓ More research on the scope and nature of human trafficking should be conducted and reliable data should be available so policy developments and funding can be effectively directed to the right practices.
- ✓ States have possibilities to confiscate illegally obtained assets from criminals. Prioritizing financial investigations can improve this mechanism, since financial investigations may give insight in money-flows and provide evidence on criminal assets. These criminal assets should subsequently be used to fund the state compensation funds.
- ✓ States should collect statistics on the application of trafficked persons to state compensation funds and on the award decisions in order to have insight to what extent compensation

through the funds is accessible to trafficked persons and shortcomings can be tackled. Therefore, the crimes for which compensation is awarded should be registered precisely.

- ✓ The applications to state funds should be monitored and evaluated so problems can be addressed and the system can be improved. These evaluations should be public. The funds of the states are similar and subsequently states are able to learn from each other and to prevent facing the same problems.
- ✓ There should be more clarity on the eligibility criteria and possible bars to compensation. This can be achieved with brochures about the procedure to apply for state compensation.
- ✓ There should be a broader focus on the phenomenon and several forms of human trafficking, so more victims can be reached and remedies provided including the right to compensation.
- ✓ The identification procedure of trafficked persons should be improved, since this is a first and important condition to obtain compensation. Therefore it is important to train police officers and support workers to recognize signals of human trafficking.
- ✓ The provision of information on victims' rights to trafficked persons should be improved to increase the awareness among trafficked persons on their rights.
- ✓ Better legal assistance to trafficked persons should be provided in order to assist trafficked persons in their claim to compensation.
- ✓ Human trafficking should be enlisted within the regulations of the compensation funds as a crime where compensation can be claimed for.
- ✓ In order to better fit the needs of trafficked persons and award appropriate compensation, states should award compensation for immaterial damages.
- ✓ Time periods to apply to compensation funds should be extended and there should be a possibility to make an exception to the rule if there are reasonable grounds for a delayed application.
- ✓ The (possible) illegal status of trafficked persons during the period of exploitation should not play a role in the decision on the compensation award.
- ✓ The causal relation between lost income and suffered injury should be applied less strict to trafficked persons. Lost income as result of human trafficking should be accepted as ground for compensation. Outcomes of financial criminal investigation (if present) should be used to support the calculation of lost income.
- ✓ To strengthen the rights of trafficked persons the Czech Republic should furthermore ratify the Council of Europe Convention on Action against trafficking in Human Beings and Bulgaria should ratify the European Convention on the Compensation of Victims of Violent Crime.

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Appendix A Case Study 1

'During a four-week stay in the Philippines, three offenders got in touch with a manager of dancers and, through a local agency and under the promise of good earnings, they hired seven Filipino women (including one minor girl) offering a job in the Czech Republic. They selected the dancers on the bases of their appearance, previous experience and knowledge of English, and they arranged their transfer by air to Prague. The Filipino women said that they had been recruited to work as dancers or waitresses in a club.

The defendants took advantage of the fact that the Filipino girls, being away from home, depended completely on them. They put forward the contracts signed by the girls and forced them to provide paid sexual services, including sexual intercourse, in the club Manila in Prague. The criminal activity of the defendants was planned and designed so as to decrease the danger of being prosecuted. To ensure smooth operation of the club, the perpetrators obtained long-term residence permits from the Foreign Police Office, work permits as dancers from the Prague Municipal Employment Agency, and subsequently, trade licences for sex massages for the Filipinos victims.

A guest of the club paid 3,500 CZK per hour, and 2,000 CZK per half an hour. This amount included a sex massage as agreed with the customer.

Before the journey to the Czech Republic, the Filipino women received an advance payment, out of which they paid a fee to the Filipino manager. In addition to a sum per customer, the women earned a fixed monthly wage and received money for food. The club manager arranged their medical examinations with a doctor.

A few customers allegedly wanted to marry the Filipino girls. To discourage them, the perpetrators named the price 500,000 CZK for a girl to be allowed to leave the club. It was proven that all the defendants, in various set functions and in a planned and coordinated way, attended in mutual cooperation to the whole operation of the Manila club, in such a way as to obtaining a financial profit. In addition to the Filipino women, the defendants recruited, through advertising and other means, other women to provide sexual services to the club customers. The defendants claimed that they could not know what exactly would go on in the rooms, and that the girls were warned in advance that sexual acts with customers was prohibited. During the police raid in the club, one of the defendants was holding the Filipino passports, allegedly to deal with various formalities. According to the victims' testimonies, their passports had been seized immediately after their arrival in the Czech Republic and it did not occur to them to report the fact to the Czech police. The embassy of the Republic of the Philippines is in Hungary and the women did not have enough money to travel there.

All the three defendants were convicted by the court of first instance for trafficking in women and procuring, in accordance with the indictment. Moreover, in relation with the first offence, they were also found guilty as members of an organised criminal group, according to Para 2 a) of §

246 of the Criminal Code. However, in the appeal proceedings, they were cleared from the charges of procuring and found guilty only of trafficking in women. Their prison sentences were altered to conditional sentences. The court of appeal justified the latter decision on the basis the long time that had passed since the commission of the crime; in addition, one of the offenders was the father of two underage children and another one was seriously ill.²⁹³

²⁹³ Trávníčková 2004, p. 65-66.

Appendix B Case Study 2

'A 16-year-old African girl was brought to Portugal in 2002 by a Portuguese woman who said she needed a domestic worker. The girl entered Portugal on a temporary visa, and her status remained irregular. The Portuguese woman had promised the girl's mother that she would give her a contract, pay her above average wages, and help her to integrate into Portuguese society. What she actually did, however, was to completely subjugate the girl. As soon as they arrived, the woman confiscated all her documents, and never gave them back. She didn't give her an employment contract either. She made the girl work every day from 7.30 a.m. to 11.30 p.m. As if this were not enough, she was often woken up at night to cook for the woman's sons when they arrived home in the early hours of the morning. She only had one half-day off a week. The woman told her that a monthly wage of €250 was being paid into a bank account in her name, but the girl had no access to it. Her boss would give her small amounts of money from time to time. Her movements and telephone calls were closely monitored. When she asked for her documents her boss told her that she would only return them when she put her on a return flight home. She had worked for three years without being paid when she got in touch with the Centro Nacional de Apoio ao Imigrante (National Immigrant Support Centre (CNAI)). The CNAI began taking steps to get her documents back for her and started the procedure for regularising her status. However, the girl never came back to the CNAI, and the case was not pursued any further. Later, a Portuguese colleague of the girl said that she had still not managed to untangle herself from the situation.'²⁹⁴

²⁹⁴ Pereira & Vasconcelos 2008, p. 42.

Appendix C Table overview of eligibility criteria of the four compensation funds

Criteria	Bulgaria	Czech Republic	Portugal	United Kingdom
Nationality	Bulgarian nationals, nationals of the EU, foreign nationals if an international agreement applies	Czech nationals, nationals of the EU, long-term residents, asylums, foreign nationals if an international agreement applies	anyone of any nationality who sustains a criminal injury in Portugal	anyone of any nationality who sustains a criminal injury in England, Wales or Scotland
What can be claimed?	Pecuniary damages	Pecuniary damages	Pecuniary damages	Non-pecuniary damages & Pecuniary damages
Co-operation with (law enforcement) authorities	Mandatory	Mandatory	Not mandatory	Not mandatory
Behaviour of the applicant	Conduct before, during and after the crime is taken into account	Conduct before, during and after the crime is taken into account	Conduct before, during and after the crime is taken into account	Conduct before, during and after the crime is taken into account
Conviction offender	Guilty verdict or report on failure to identify the offender	Not necessary	Not necessary	Not necessary
Time limit	Two months after guilty verdict	One year after crime	One year after crime	Two years after crime
What kind of evidence is needed?	documents in evidence of material damages	documents in evidence of material damages	Documents in evidence of material damages	documents in evidence of (im)material damages
Cohabitation/ Relatives	Not mentioned	Not mentioned	No claim against a relative (or cohabitant)	No claim against a relative (or cohabitant)
Complementary	Yes	Yes	Yes	Yes
Injury	Human trafficking is listed as crime	Personal injury so severe it causes long-term deterioration in the welfare of the person affected (point-system)	serious injury resulting in a considerable disturbance to the lifestyle of the victim	psychological or physical injury which is 'not purely minor' (tariff-system)
Maximum award	€2.500	€6.000	€29.928	€580.500

Appendix D Table overview possible barriers for trafficked persons

Eligibility Criteria	Possible Barriers
Co-operation with the police	<ul style="list-style-type: none"> - Control of trafficker over victim (isolation, fear for violence and family, dependence) - Unfamiliarity with the system
Time limits	<ul style="list-style-type: none"> - Psychological consequences of trafficking situation - Unfamiliarity with country and rights
Behaviour of the applicant	<ul style="list-style-type: none"> - Initially consented to receive assistance to migrate - Coerced by their traffickers to commit illegal activities - Facilitating or perpetrating by taking a role during the trafficking process - Living together with or being a relative of the traffickers
Nature of the injury	<ul style="list-style-type: none"> - Absence of physical injury/ no crime of violence (or not severe enough)
Proof of injury and damages	<ul style="list-style-type: none"> - No evidence of injuries - No evidence of lost payments
Nationality	<ul style="list-style-type: none"> - Nationality may not be covered by the scheme