



SUMMARY OF THE
COMPARATIVE REPORT
UPHOLDING RIGHTS!

Early Legal Intervention for
Victims of Trafficking

*The Immigrant Council of Ireland
in partnership with:
Bulgarian Gender Research Foundation
Klaipeda Social and Psychological Services Centre
Legal Services Agency
AIRE Centre
MONIKA Multicultural Women's Association*





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Scotland

Kirsty Thomson is a qualified solicitor who has a Scottish law degree and a Masters in International Human Rights Law. She has been the head of the Women and Young Persons' Department of the Legal Services Agency for 8 years. The Department has 5 human rights lawyers who provide a specialist legal service to refugee and migrant women and young people with a specific focus on human trafficking. Kirsty is a member of various advisory, operational and working groups on issues relating to human trafficking. For the last 8 years, she has actively contributed to research, policy and training in these issues at a local, national and European level.

Bulgaria

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Finland

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Project Partners

The Immigrant Council of Ireland (ICI)

The Immigrant Council of Ireland (ICI) is an organisation where migrant and Irish people work together to provide information, support and legal advice to immigrants and their families. The ICI's Information and Referral Service deals with more than 10,000 enquiries from migrants and Irish people each year. The ICI is a licenced Independent Law Centre, which allows the ICI to provide legal representation to clients as well as doing important legal policy and lobbying work. Cases are taken on when they are of strategic importance and may result in legislative or procedural change, or when the client is particularly vulnerable, for example, a victim of human rights abuses in Ireland such as exploitation as a victim of trafficking. The scope of ICI's work has expanded over the past decade. The organisation's expertise has been sought for a number of different European projects; ground-breaking research in a number of crucial fields has been undertaken and has helped shape public policies and discourse. The ICI is very active in lobbying for legislative and policy reforms and has contributed to some very specific reforms, as well as to attitudinal change and improved understanding of issues facing migrants in Ireland.

The AIRE Centre

The AIRE Centre is a UK based charity whose mission is to promote awareness of European law rights and assist marginalised individuals and those in vulnerable circumstances to assert those rights. Their work involves providing advice to individuals and legal advisers with regards to EU free movement law and the application of the European Convention of Human Rights. The AIRE centre also provides training to legal advisers and key stakeholders so as to increase awareness of using European Law to assist marginalised individuals. The AIRE Centre has previous experience in working on issues relating to human trafficking. They undertake UK based advocacy and litigation that specifically covers areas of law relating to human trafficking. They are currently managing two projects, in addition to the work on the ELI project, which tackles issues of Human Trafficking, another project on sexually exploited and trafficked young people, funded by Comic Relief, has focused on providing training for advisors working with young victims. The AIRE centre has also been able to undertake a legal project on trafficking and domestic violence with funding from the Esmée Fairbairn Foundation.

Bulgarian Gender Research Foundation

Bulgarian Gender Research Foundation was founded in 1998. BGRF focuses on on research, awareness raising, education, monitoring and proposing legislation and policy in the field of gender equality and protection of women against violence in all its forms – domestic violence, trafficking in women and sexual harassment at the workplace. The BGRF participated in the elaboration of the Anti-Trafficking law in Bulgaria in 2003-2004 and in the elaboration of the NRM for protection of trafficking victims within the National Commission for Combating Trafficking in Human Beings in the period 2007-2009. The BGRF is a member of the Steering Group with consultative functions to the Commission.

Legal Services Agency (LSA)

Legal Services Agency (LSA) is Scotland's largest law centre tackling the unmet legal needs of those in disadvantage. It does so through the provision of legal advice, representation in courts/tribunals, research, publications, seminars and education. LSA undertakes work in protecting the rights of refugee and migrant women and children, preventing homelessness, defended eviction and mortgage repossession, mental health, dementia and social welfare law. In the area of human trafficking, the LSA has a specific remit to provide an enhanced legal service to victims of human trafficking. In the last year, the Department worked with 78 women and young people who disclosed that they were victims of human trafficking. In terms of policy and research, the Department is part of national and local working groups on this issue working in partnership with key statutory and non-statutory partners. It is a member of the Sub Group on Victim Care and Support which feeds into the Scottish Government Progress Group on Human Trafficking. It is also a member of the Cross Party Group on Human Trafficking in the Scottish Parliament.

Klaipeda Social and Psychological Services Centre, Lithuania

Klaipeda Social and Psychological Services Centre, Lithuania has a vision where women, children, and families are socially and psychologically safe. In order to meet the social security and mental health needs of children, youth, women, and families the centre provides professional staff and volunteers. In addition, the centre raises civil responsibility. The centre works in cooperation with National and international NGO's, along with the Department of Social Support in the Klaipeda Municipality.

MONIKA – Multicultural Women's Association

MONIKA – Multicultural Women's Association, Finland operates as the umbrella organisation for several associations for women of ethnic minorities. Monika supports efforts to enhance cultural tolerance and promote a safe everyday life for everyone. Monika supports the well-being of migrant women in different forms. Monika encourages migrant women to participate actively in social issues and provides services and guidance to victims of domestic violence. Further, Monika actively lobbies decision makers and provides training to social and health professionals. The Association has an expert role in addressing issues around multiculturalism, ethnic relations, empowerment, social integration as well as violence towards migrant women.

Centre for Women War Victims, Croatia (CWWV)

Centre for Women War Victims, Croatia joined the present EC project in late 2014, replacing MONIKA Finland, and has not therefore participated in the national research activities. (CWWV) is a non-governmental, feminist organisation, founded in 1992 with the aim of supporting women in opposing war violence against women. As one of the oldest women's organisations in Croatia, the work focuses on public awareness and promoting women's rights through direct aid to women, sharing knowledge and experience, networking with women's organisations and lobbying to influence state institutions and legislation in favour of women.

Explanatory Note

Devolved powers in the UK and Scotland

The countries which make up the United Kingdom operate on a devolved basis. Devolved powers are statutory powers granted to the Parliaments and Administrations of Northern Ireland, Scotland and Wales. “Reserved powers” are those decisions that remain with the UK Parliament and government at Westminster. Westminster is also responsible for legislation and policy in England on all the matters that have been devolved. In terms of International and European legal standards, it is the UK Parliament which ratifies these on behalf of the UK and thus Scotland is bound by such ratifications. In terms of interventions in the area of human trafficking, immigration is a reserved matter. Consequently, Trafficking in Human Beings and the formal identification of victims of trafficking through the National Referral Mechanism are viewed by the UK government to fall within the area of immigration, and is therefore a reserved matter. Criminal law, victim care, education, health and the safeguarding and protection of children is devolved. In addition, Scotland has its own unique law enforcement, legal and justice system which differs to the rest of the UK. In terms of ELI, victim care and the provision of legal advice is the responsibility of the Scottish Government. Furthermore, there remains a difference in the service provision within Scotland from the rest of the UK.

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IMMIGRANT COUNCIL OF IRELAND

Foreword

Much of the public, media and political debate on the crime of human trafficking focuses on finding the guilty and making them face justice - this is hardly surprising given the extent of this trans-national crime and the ruthlessness shown by those behind it.

However it is important to remember that human trafficking is not a victimless crime, and that our policymakers, our courts and society as a whole must equally focus on the victims.

In a traumatic state they are often left stranded in a foreign country, with a distrust of the police and state agencies and unaware of their internationally recognised rights.

This publication, under the Early Legal Intervention (ELI) project, is an opportunity to correct the policy imbalance to ensure that countries give as much resources to upholding victims' rights as they do in jailing the guilty.

Our comparative study across six countries shows that while there is broad agreement on the benefits of early legal advice and representation being granted to victims there remains numerous gaps in implementation.

This report indicates there are no formal routes, protocols or procedures to ensure early legal intervention is always provided.

Key recommendations arising from this work include the need for standardised criteria across the EU on indicators, grounds and mechanisms for the formal identification of victims.

Together with our partners we are committed to the early legal intervention route as a mechanism for ensuring the non-criminalisation of victims and their compensation for the serious crimes committed against them.

The needs for greater education and training and closer inter-agency cooperation are also addressed. By making public authorities, medical staff and care professionals more aware about the indicators of trafficking and about the importance of early legal intervention, we will be able to reach out to more victims and ensure that they receive adequate and timely legal support.

The report also notes the low level of convictions for human trafficking and recommends further research to establish why this is the case. We believe that by upholding victims' rights we can help increase conviction levels – as it will make victims far more confident in providing testimony and evidence against their abusers.

Many of the recommendations do strike a chord with frontline agencies such as the Immigrant Council of Ireland. International criticism of Ireland's shortfalls in the areas of victim identification and accommodation has come from a range of quarters including the Council of Europe, the OSCE and the annual Trafficking in Persons Report from the US state Department.

Finally, we want to acknowledge the extra-ordinary cooperation between our partners in the ELI project and the financial support of the European Commission in producing what is a substantial body of work.

We believe this publication is an important contribution to a debate which Europe needs to have if it is serious in assisting those most affected by one of the fastest growing crimes of our time.

Denise Charlton

CEO Immigrant Council of Ireland

Nusha Yonkova

Anti-Trafficking Manager Immigrant Council of Ireland

Acronyms

BRGF	Bulgarian Gender Research Foundation
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CoE	Council of Europe
EC ISEC	European Community, Prevention of and Fight against Crime
EEA	European Economic Area
ELI	Early Legal Intervention
GRETA	Group of Experts on Action against Trafficking in Human Beings
ICI	Immigrant Council of Ireland
ILO	International Labour Organisation
IOM	International Organisation for Migration
KSPSC	Klaipeda Social and Psychological Services Centre
LSA	Legal services Agency
MS	Member State(s)
NGO	Non-Government Organisation
NRM	National Referral Mechanisms
OSCE	Organisation for Security and Cooperation in Europe
R&R	Recovery and Reflection
TIP	Trafficking in Persons
TRP	Temporary Residence Permission
UNODC	United Nations Office on Drugs and Crime
VoT	Victim(s) of Trafficking

SECTION 1: INTRODUCTION

1.1 European legal and policy context

The European Union has increasingly adopted measures which seek to strengthen the protection of victims of trafficking (VoT) and their right to legal intervention. Directive 2011/36/EU (replacing Council Framework Decision 2002/629/JHA) is the most recent indication of the commitment of the European Union to addressing human trafficking from a rights-based perspective. Article 12(2) requires states to ensure that victims have access without delay to legal counselling and legal representation, including for the purpose of claiming compensation which should be provided free of charge if the victim does not have sufficient financial resources. Member States (MS) shall also ensure that victims receive appropriate protection on the basis of an individual risk assessment, inter alia by having access to witness protection programmes or other similar measures. The Directive supplements a range of European level measures designed to combat trafficking in human beings. Of particular interest to this initiative are Council Decision 2007/125/JHA “Prevention of and Fight against Crime” which in Article 3(2)(c) and (d) seeks to ‘promote and develop best practices for the protection and support of witnesses and for the protection of crime victims’; EU Directive 2004/81/EC regarding the issuing of residence permits to third-country nationals who are VoT, or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities; EU Directive 2004/80/EC relating to compensation to crime victims; and EU Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime.

1.2 International instruments

EU Directives on the legal rights of victims reinforce a number of provisions within international instruments. Article 6 of the UN Palermo Protocol contains a general commitment to the provision of information to VoT on court proceedings and assistance in enabling their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders. The Council of Europe (CoE) Convention states in Article 12 that state parties shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. It is important to note that assistance to a victim is not to be made conditional on his or her willingness to act as a witness. In relation to compensation and legal redress Article 15 of the CoE Convention states that parties 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. The right to legal assistance and to free legal aid shall be ensured within internal law including the right of victims to compensation from the perpetrators.

1.3 Upholding Rights! Early Legal Intervention (ELI)

Despite these international instruments and numerous European Directives, the EU Strategy towards the Eradication of Trafficking in Human Beings 2012 recognises that there continue to be significant difficulties in relation to the provision of information to VoT regarding their rights in MS. They state that over the past number of years correspondence to the Commission has highlighted a number of problems that VoT are confronted with in relation to:

‘Contacting the appropriate authorities or organisations in order to receive clear information on their rights to assistance and health care, their right to a residence permit and their labour rights, their rights regarding access to justice and to a lawyer, and on the possibilities of claiming compensation’

Within this context the EC ISEC funded Upholding Rights! Early Legal Intervention (ELI) project is timely in seeking to examine whether these theoretical commitments translate into effective, measurable outcomes for VoT. This transnational project aimed to identify and analyse ELI for victims in five MS namely Bulgaria (BG), Finland (FI)¹, Ireland (IE), Lithuania (LIT), Scotland and the United Kingdom (UK)². The concept of ELI incorporates the provision of confidential legal counsel and advocacy at first encounter between victims and authorities; risk assessment of immediate protection needs; decision on the best/most appropriate route for protection by the state for all potential victims, including EU citizens; ensuring the obtaining of Recovery and Reflection permits prior to any investigation interviews/statements; assessing criminalisation risks e.g. immigration offences; and seeking alternative protection routes, including asylum, in case the exploitation is not part of a human trafficking crime, in the full legal term.

The project recognised that in order to analyse ELI in the five MS it was necessary to gather an overall picture of the response to trafficking and how legal aid and legal intervention functioned within that. Consequently, the comparative research report examines a number of aspects of the legislative and policy frameworks in each country including ratification of international instruments; national legislation and national structures to address trafficking; the identification of VoT and the provision of services; the right to legal aid and legal intervention; training and inter-agency cooperation; monitoring and evaluation. The research informed the development of a model of best practice and three pilot projects on ELI. It is intended that the outcomes of this project will impact on national and EU anti-trafficking responses to enhance the support and protection of victims, including their key role as witnesses and to improve the civil society/state cooperation in upholding the victims’ human rights. The project builds on this international consensus that the fight against trafficking must include a rights-based approach and supports the development of prompt collaboration between the state and civil society in upholding the rights of victims.

1 Due to changed circumstances, the Finish project partner had to withdraw from the project at the end of the research phase and was replaced by a Croatian partner with approval of the European Commission.
2 See explanatory note on devolved powers in relation to Scotland and the UK

SECTION 2: METHODOLOGY

2.1 Methodological tools

The primary methodological tools of the research element of the ELI project were:

- Policy and legislative template completed and returned by the six original partners
- Consultation day to ensure consistency and clarity on the gathering of baseline data
- Interviews with key stakeholders in each country with a remit in relation to trafficking
- Six national reports submitted to researcher for analysis

The baseline data gathered from interviewees, combined with the data gathered for the policy templates was enhanced by current research and formed the basis of national reports. A comparative analysis was conducted and the full research report is available at the project's website. These findings are not exhaustive and cannot capture the detail and nuances of each individual state response to trafficking. However, they draw together a comprehensive picture in relation to the overall response and in particular to ELI across the six countries. The following sections are a summary of the findings in relation to the response to adult victims of trafficking.

SECTION 3: INTERNATIONAL INSTRUMENTS AND EUROPEAN DIRECTIVES

3.1 Ratification and transposition

Ratification of the key international instruments has been a relatively smooth process in the six countries. In relation to the EU Directives, all six have transposed EU Directive 2011/36/EU and EU Directive 2004/80/EC relating to compensation to crime victims. Although Lithuania is the only country to have transposed EU Directive 2012/29/EU, the other five states are committed to doing so by 2015. However, in relation to EU Directive 2004/81/EC regarding residence permits issued to third-country nationals, it is worth noting that Finland, Ireland and the UK (and thus Scotland) have opted out of this Directive, whilst Bulgaria and Lithuania are committed to transposition but are awaiting amendments to existing laws.

Ratification and transposition of international and European instruments and directives has brought about the introduction of comprehensive legislative and policy frameworks on trafficking in all MS of the European Union, which has resulted in the identification, protection and support of thousands of victims. However, international and European monitoring bodies have continued to identify the gaps in implementation, and the need for improved measures which can effectively fulfil MS obligations in relation to VoT.

3.2 International and European monitoring

The key international and European monitoring bodies including the committee for monitoring the Convention to Eliminate All Forms of Discrimination against Women (CEDAW); the Group of Experts on Action against Trafficking in Human Beings (GRETA) responsible for monitoring implementation of the CoE Convention; the Organisation for Security and Cooperation in Europe (OSCE); and the Trafficking in Persons reports (TIP) from the U.S. Department of State, continue to raise critical issues in relation to further progress needed in the six countries to ensure better outcomes for VoT and the prevention and prosecution of trafficking. A considerable emphasis is placed on the need to intensify efforts to identify all victims proactively and the need for improvement in relation to National Referral Mechanisms (NRM) and increased cooperation between law enforcement and NGOs.

It is acknowledged by all the monitoring bodies that MS have made considerable progress in the delivery of services to VoT. However, a number of inadequacies are identified in relation to the provision of adequate assistance and protection to all victims, including those who do not cooperate with the police or the authorities and the need for VoT to be offered access to appropriate shelters affording sufficient safety and privacy. Monitoring bodies also highlight the need to improve the provision of legal advice and representation to victims on matters including the NRM, asylum systems, criminal proceedings and compensation and that all VoT are, in practice, able to access legal services as soon as there is an indication of trafficking. States are urged to enhance efforts to investigate, prosecute, and convict trafficking offences, including labour trafficking offences and ensure adequate penalties are in place and that the vast majority of convicted offenders receive custodial sentences.

3.3 Conclusion

The role of external monitoring mechanisms is critical in ensuring that MS comply with their obligations under European and international directives. Whilst each MS has a unique legal and policy framework, it is clear that there are common issues and challenges across all countries in relation to identification and support for VoT and the prosecution of traffickers. Holding states accountable demands a continued rigorous examination of the practice and the outcomes within each MS to which this project aims to contribute. It is expected that the transposition of the 2011/36/EU will be assessed in the near future, which will result in recommendations and if necessary infringement procedures with regard to MS that have not implemented the European law as intended.

SECTION 4: NATIONAL LEGISLATION AND IDENTIFICATION OF VICTIMS

4.1 National legislation

Obligations under international instruments and European directives have led to the introduction of dedicated laws on trafficking and/or the amendment of national laws in all MS of the European Union. In Bulgaria, Finland, Ireland and Lithuania dedicated legislation has been enacted and laws are currently being drafted in the UK and Scotland. The definition and the forms of trafficking included in the trafficking legislation reflect the UN Palermo protocol and contain severe penalties ranging from two to fifteen years for convicted offenders. Provision is made for imposing heavier sentences which take into account additional elements including the use of severe violence, placing someone at risk of death, the age and mental capacity of a victim, the number of people trafficked and trafficking by a public authority/figure, which can result in the imposition of a life sentence.

4.2 National structures and frameworks

National structures have been established in the six countries which are located within central government and have a mandate for the development and implementation of state policy and the co-ordination of responses to trafficking. Overall responsibility for the areas of prevention, protection and service provision fall within their remit, and they liaise with the key statutory and NGO sectors to ensure a comprehensive and co-ordinated approach to the identification of VoT and the provision of adequate protection and support. National coordination structures also play a key role in the gathering and dissemination of data. The police forces of all six countries have established dedicated units to investigate and prosecute trafficking offences with an increasing number of police officers developing specialist expertise in the area.

4.3 The identification of victims of trafficking

The increased identification of VoT is a stated priority of the European Union which has resulted in national structures and frameworks being established in all MS. The importance of identification is critical for victims in establishing their *entitlement* to rights, even though some of those rights may be accessible without being formally identified by the state. In theory, international and European legal standards are clear that being afforded the formal status of a VoT should not define whether someone is or is not in fact a VoT, and accordingly all potential victims should be eligible for assistance and legal representation. But in practice, formal identification does have a significant impact in relation to accessing rights and services and in particular for third-country nationals in being granted or refused residency permits with all the legal rights accruing from these permits, including welfare support, accommodation, access to education and employment and long-term residency rights.

NGOs, state agencies, police and border authorities all play a critical role in the early recognition of the indicators of trafficking and in the identification of potential and suspected VoT in MS. However, as Table 1 indicates the power or competence to *formally* identify a VoT rests with state authorities in five of the six countries, in particular police, and in cases where there is an immigration issue, border control and

immigration authorities. National frameworks for the referral of potential/detected/suspected VoT into state authorities for formal identification, assistance and protection, (NRM), have been established in most countries

Table 1: Authorities with the power to identify victims of trafficking and National Referral Mechanisms (NRM)

Country	State Authority with power to identify VoT	NGO Identification	NRM	Formal MOU	Referral Form
Bulgaria	National Anti-Trafficking Commission/Ministry of Interior Structures/Police	No	Yes	Yes	Yes
Finland	National Assistance System/Police/Border control	No	No ³	No	No
Ireland	Garda (Police) National Immigration Bureau	No	Yes	No ⁴	No
Lithuania	Ministry for the Interior/Police/NGOs	Yes	Yes	No	No ⁵
Scotland	UK Human Trafficking Centre/UK Visas and Immigration	No	Yes	No	Yes
UK	UK Human Trafficking Centre/UK Visas and Immigration	No	Yes		Yes

Undoubtedly, the introduction of NRM (or equivalent structures) has resulted in improved co-ordination and cooperation between the statutory and NGO sectors in the identification of VoT and the referral of an increasing number of detected/suspected VoT to state authorities. However, respondents highlighted major differences between the number of detected/suspected victims by NGOs and other services, the number of people referred to NRM and/or state authorities and the number of VoT who are officially identified by the state. Some respondents expressed concern at the developing practice of not referring some vulnerable and exploited persons into the NRM in the first place, as the service provider is aware that the criteria for VoT identification is unlikely to be met, and there will be a negative decision. Some respondents highlighted the particular needs of women exploited in prostitution who are not being identified as VoT because of the difficulty of proving non-consent especially where the tactics of traffickers do not necessitate direct violence and coercion. Furthermore, a number of respondents raised concerns that once a referral has been made, there is a lack of transparency in relation to positive and negative decisions, with very little information being given by the state authorities on the grounds for refusing identification. Overall it would appear that there is scant information on the outcomes for those who are identified as experiencing severe exploitation in MS but who do not fit within the definition of trafficking.

3 Although there is no structure named as a NRM in Finland, detected/suspected VoT are referred into a National Assistance Programme for identification, assistance and protection by the state, which effectively operates as an NRM.

4 In Ireland, a Statement of Roles and Responsibility has been developed but this is not a formal referral protocol or procedure.

5 A referral form is being developed

4.4 Recovery and Reflection periods and Temporary Residence Permits

Recovery and Reflection (R&R) periods are issued to a person who is suspected to be a VoT on application to the relevant authority (named above) and Temporary Residence Permits (TRP) are subsequently issued to those VoT who are deemed to require permission to have residency in the state. As Table 2 indicates there are variations in length of time of these periods and permits and the conditions under which they are granted in the six countries:

Table 2: Issuing of permits

Country	R&R period	Flexible/ can be extended	Dependent on cooperation with police	TRP	Renewable	Dependent on cooperation with police
Bulgaria	30 days	Yes	No	30 days	Yes	Yes
Finland	30 days	Yes	No	6 months - 1 yr	Yes	Yes
Ireland	60 days	No	No	6 months	Yes	Yes
Lithuania	30 days	Yes	No	6 months	Yes	Yes
Scotland	45 days	Yes	No	366 days	Yes	No
UK	45 days	Yes	No	366 days	Yes	No

As we can see, R&R, and thus rights to VoT specific services, may be granted to all detected victims while considering cooperation with the police and criminal investigations in all states except Ireland, where those within the asylum system, EEA and Irish citizens are not formally identified nor granted R&R periods as they are deemed to have existing permission to remain in the state.

The granting of a TRP permit is dependent on cooperation with the police in most states. However, in the UK and Scotland, although one set of grounds for this type of permit is assisting with police inquiries, there are also two further grounds on which one can be granted a permit, namely where the individual's personal circumstances necessitate a permit such as the need to complete a course of medical treatment or the individual needs to remain in the country in order to pursue compensation. Similarly, in Finland, if a VoT is in a particularly vulnerable position the requirement to co-operate with the police may be waived.

Overall, there is little data available on the reasons for not granting permits and the resulting immediate and long-term outcomes for those who are refused. The lack of transparency in relation to the criteria, the grounds and the decisions to refuse identification and negative decisions in relation to the issuing of permits by the authorities was raised by many respondents. Given the relationship between formal identification and the rights of VoT to assistance and protection, including legal representation, this issue warrants further research.

SECTION 5: SERVICE RESPONSES

5.1 Definitions and indicators used by agencies

The definition of trafficking in the UN Palermo Protocol has been adopted by the majority of agencies with responsibility to respond to trafficking. This is increasingly being supplemented and combined with, and/or replaced by the expanded definition from the Trafficking Directive. The issue of internal trafficking is included in definitions adopted by agencies in all countries. Statutory and non-governmental organisations use a number of internationally recognised recommended guidelines and indicators such as the International Labour Organisation (ILO) Delphi set of indicators and the OSCE police guidelines for identification. Country specific ones have also been developed but there was no uniformity across or within individual states on the adoption of an agreed set of indicators that would be followed by both statutory and non-governmental agencies. A number of NGOs emphasised that they do not apply indicators rigidly and that all vulnerable clients who present to their service receive support and help, even if the indicators are not sufficient to identify a person as a VoT. Victims of forced labour and women in prostitution, for example, do not always fit the definition of a VoT but may be subjected to severe exploitation and abuse.

5.2 Specialist services

The provision of support, counselling, welfare and accommodation is provided by specialist NGOs and state services in each country. Front line practitioners play a crucial role in ensuring that VoT have access to the necessary information regarding their rights and the different forms of assistance VoT are entitled to. They carry out risk and safety assessments and provide information regarding the availability of protection and assistance arrangements. Services are also responding to the psychological impacts of trafficking and sexual exploitation and the symptoms and consequences of traumatic experiences.

Integrated services to women in prostitution and women who have been trafficked for sexual exploitation are provided by specialist NGOs in Scotland, the UK, Ireland and Lithuania, all of which have raised the issue of severe levels of abuse and exploitation in the sex trade of destination countries. Victims of forced labour and trafficking for labour exploitation also have dedicated services in some countries and have highlighted the particular sectors into which people are vulnerable to being trafficked, including the domestic, social care and agricultural sectors. Services are not only providing crisis support, they are also involved in the long-term care of VoT helping them to re-integrate into society, reunite with their family in the country of origin, and in some cases to organise a safe return to the home country, if this is desired by the victim. Advocating for welfare and appropriate safe housing, access to education and training, and developing entry routes to employment is a core aspect of their work in order for VoT to build sustainable independent lives.

5.3 Services providers and legal advice

Service providers also provide legal advice and information to VoT in relation to a number of areas including how to regularise their presence in the jurisdiction; applications for international protection, social welfare issues and family reunification; the various forms of legal redress and compensation; and how the civil and criminal justice systems operate. However, as many of the partners have pointed out, access to advice and information on legal rights is *not* the same as access to professional, legal advice and in particular legal representation. Specialist services and NGOs indicated that they seek to ensure ELI for their clients and endeavour to refer to legal practitioners with expertise in trafficking as soon as possible.

SECTION 6: ACCESS TO LEGAL AID AND LEGAL INTERVENTION

6.1 Access to state legal aid

Laws have been enacted in MS which make provision for legal aid to be available on a means-tested basis for those who cannot afford private legal representation, in specified civil and criminal cases. In relation to trafficking, these provisions have been extended in all countries to include VoT, thus once a person has been detected as a suspected VoT in Bulgaria, Lithuania, Scotland and the UK, legal aid can be sought, prior to referral into the NRM for formal identification. In Ireland and Finland the only means to be allocated legal aid is, however, after referral to the state authorities, which in practice means cooperation with the police prior to being granted legal aid.

In all countries, instead of a R&R period or a TRP has been issued, legal advice and legal representation is provided. State legal aid to VoT in all countries covers specific areas regarding the different aspects of trafficking cases, namely participation as a witness in criminal investigation and criminal trials on trafficking; representation in criminal cases where the victim has been charged in relation to immigration violations or criminal offences which occurred as a result of being trafficked; immigration and asylum applications including family re-unification and compensation. These are outlined in Table 3 below.

Table 3: Access to state legal aid and legal representation

Country	Criminal investigation	Criminal trial	Non-prosecution/immunity	Compensation	Immigration/Asylum	Family reunification
Bulgaria	Yes	Yes	Yes	Yes	Yes	No
Finland	Yes	Yes	Yes	Yes	Yes	No
Ireland	No	No ⁶	No	No	No/Yes	No
Lithuania	Yes	Yes	Yes	Yes	Yes	Yes
Scotland	No	No	Yes	Yes	Yes	Yes
UK	No	No	Yes	No	Yes	Yes

Overall, respondents highlighted a gap between the right to legal aid in theory, and the actual reality in terms of availability and the quality of those legal services, which is further expanded upon in Section 6.2. Compensation mechanisms exist in all countries, including procedures to obtain compensation from the perpetrators and state-funded compensation schemes. However, respondents believed that in practice this was rarely successful and that compensation was one of the weakest protected rights and often the most inaccessible. Similarly, in theory, witness protection measures could be provided if required, but

⁶ Legal aid during criminal process is afforded to the victim/witness in cases where her/his sexual behavior/past are discussed

with so few prosecutions there was little evidence regarding their use in practice. In relation to trafficking for labour exploitation, respondents also highlighted the absence of state legal aid and representation in relation to employment and labour tribunals.

An issue reflected across the six countries is that there is no formal route, protocol or procedure in place to ensure that access to early legal advice is provided to all victims, regardless of the legal processes they are involved with. Routes into legal advice and representation may depend on where the individual is within the legal process, the type of exploitation suffered and the support they are accessing.

6.2 The complexity of trafficking cases and access to specialised legal practitioners

As indicated above, trafficking cases are complex and extensive. Proceedings relating to immigration and international protection, seeking leave to remain in the country and applications for residency permits can be lengthy, involving numerous statements to the police and the provision of detailed documentary evidence. In relation to the prosecution of trafficking offences, pre-trial investigations and criminal proceedings appear to be extremely difficult. Lawyers need to spend time with witnesses explaining the consequences of an investigation or trial, the length of a trial and witnesses' duties. In many cases interpreters are needed and documents must be translated. VoT also have multiple immediate and long-term needs and legal advice is also often required in the areas of social welfare and housing rights and family reunification. It is not surprising therefore, that the importance of legal advocates who had developed high levels of expertise was recognised in all countries and service providers seek to refer to them where possible.

However, in many cases services were dependent on legal practitioners within the state system or private solicitors who do not have the specialised knowledge or sufficient experience, particularly in rural areas. Furthermore, legal practitioners working within the state legal aid scheme may be limited in relation to the time allocated to a case, which fails to take into account the lengthy proceedings in trafficking cases. In some cases, a VoT may have already been allocated a legal aid solicitor who has no knowledge in relation to trafficking, prior to the specialist service being involved. In particular, within the criminal legal aid system, the right to immunity from crimes committed whilst being trafficked was seriously compromised where the person was not identified as a VoT, resulting in prosecution and in some cases imprisonment. Likewise, failure to recognise the indicators of trafficking has resulted in many VoT remaining unidentified within the asylum process. In relation to compensation claims, there are strict time limitations and failure to act in a timely manner may limit the possibility of a successful claim.

Given these considerations, the benefit of dedicated, specialised, independent law centres such as LSA in Scotland and ICI in Ireland, in providing enhanced legal service provision for VoT is obvious. They have developed specialised knowledge and experience and can dedicate the necessary time to complex cases; provide holistic victim care and representation including on housing, health care and welfare; provide advice to VoT as witnesses in criminal cases; represent victims in employment or labour tribunals and appeals tribunals; ensure non-prosecution; pursue compensation claims which lie outside the legal aid schemes; and seek protection of family members through family reunification.

Specialised independent legal practitioners play a key role in up-skilling and liaising with legal practitioners in the state schemes who are representing VoT and provide much needed training on a national basis. Independent law centres are also in a position to challenge the state on issues of human rights

infringements, to act as watchdogs in relation to the fulfilment of state obligations under international human rights instruments and ensure that external review bodies are fully informed of the practice in each state. They also actively campaign and lobby for political change to ensure the rights of VoT are protected.

6.3 Benefits of early legal intervention for victims of trafficking

The vast majority of respondents in all countries agreed that ELI plays a critical role in ensuring that VoT can make informed choices which will ensure they can realise their rights and obtain a better overall outcome in relation to their recovery and reintegration. ELI was seen as ensuring victims have the right information at the right time, allowing them to fully participate and realise their rights within a complicated legal framework and make an informed choice at the earliest possible stage. Having access to a specialised lawyer, trained to deliver this information in a manner that a victim understands, ensures that a victim is obtaining consistent information regarding their rights. Specific benefits named included:

- **ACCESS TO RIGHTS:** Victims who receive ELI can benefit from early identification which affords victim-specific protections and access to VoT rights. This can be contrasted with persons who are not advised about the immigration arrangements for VoT at an early stage, and who may spend many years in unsuitable accommodation in the asylum system; who remain as undocumented migrants unable to come forward; and are imprisoned for immigration or other offences.
- **AVENUE TO RECOVERY:** Having agency and control over their lives, when this was previously taken away from them, and knowing that they can build a better life is an empowering aspect for VoT. Victims feel safer, better supported and more confident knowing that somebody is looking out for their rights and is representing their case. Building a relationship with the legal practitioner from an early point was considered important as was imparting complex legal information in a clear and accessible manner.
- **NON-PUNISHMENT:** ELI is critical to avoiding criminal punishment of the victim, and legal advocates' experience is that building a defence of human trafficking at a later stage has a greatly diminished response. Cases were cited where a client was prosecuted for offences linked with being a VoT before legal advice was given on the matter, and extensive inquiries and submissions were required to overturn those offences and have them removed from a client's record.
- **REDUCING THE RISK FOR RE-VICTIMISATION:** ELI is also seen as key to preventing re-victimisation by repeating traumatic accounts and re-trafficking of victims. Failure to provide adequate legal advice and to recognise the indicators of trafficking can result in threat and reality of deportation which makes a VoT highly vulnerable to further exploitation.

6.4 Benefits of early legal intervention for the supporting agencies

Agencies recognised the benefits of ELI not just for VoT, but also for their own work. Advocates and practitioners recognise the complexity of navigating the legal system in relation to VoT and consider ELI as hugely beneficial in establishing the legal route for their clients. Specific benefits highlighted included:

- ELI helps agencies to develop appropriate supports and care plans ensuring that all aspects of the needs of clients are met and ensuring a collaborative approach with the VoT in advocating for their rights.

- ELI avoids delays and speeds up the process in identifying the most appropriate legal routes at an early stage, reducing trauma and uncertainty for the VoT, enabling effective legal representation and resulting in the speedier resolution of cases.
- ELI increases the possibility that VoT will cooperate with police and be more effective witnesses in criminal cases, increasing the possibility of successful prosecutions of traffickers.
- ELI strengthens the possibility of timely and successful applications for compensation.
- ELI enhances coordination between different agencies as practitioners are clear about the legal routes open to the VoT and the role of each agency in ensuring positive outcomes.
- ELI ensures that the rights of the VoT are upheld by the state and all statutory agencies involved which reduces the risks for future claims against the state and/or negative international evaluations.

6.5 Location and timing of early legal intervention

ELI is currently provided in numerous locations including legal offices, shelters, police stations, prisons, immigration offices and accommodation centres for asylum seekers and refugees. In relation to expanding the locations for ELI, some respondents suggested airports, border/entry points to the country, health institutions, hospitals and community centres as possible points of access. It was also suggested that centres and organisations that respond to the needs of people who may have a high risk of trafficking in some countries, such as Roma people, people with mental health difficulties and foster children, would be a further way to provide ELI to victims and potential victims. Brothel raids were also considered as important in reaching women trafficked for sexual exploitation.

However, many respondents emphasised that for initial contact with vulnerable people in crisis it is specialist services, in cooperation with the police and the state authorities, which are better suited to making that initial contact in order to ensure immediate safety and support. The general view was that legal practitioners should be called as soon as was practicable and that close cooperation between police and specialist services was crucial. This highlights the importance of an integrated, inter-agency approach in which ELI can be most effective.

SECTION 7: TRAINING, INTER-AGENCY COOPERATION AND MONITORING

7.1 Training and inter-agency cooperation

International organisations including OSCE, UNODC, the International Organisation for Migration (IOM) and European exchange projects have facilitated the dissemination of knowledge and expertise in relation to many aspects of trafficking including: recognition of indicators of trafficking; identification; recording of information; NRM; support services; and increasing access to ‘hard to reach’ victims. Multi-disciplinary and cross-sectoral training has facilitated greater understanding and knowledge regarding the critical importance of a coordinated approach in ensuring an effective response to the multiple needs of VoT. Inter-agency fora, strategic working groups and networks have been developed in many countries at a local and national level, where agencies collaborate and share information and expertise.

There was general recognition that the communication and partnership amongst agencies had improved greatly over the past number of years, with the development of the NRM and increased referral and cooperation on cases of trafficking between key stakeholders. Respondents had mixed views, however, on the quality of inter-agency work. They highlighted the importance of personal contacts and relationships with individuals, but also expressed concern that in the absence of memoranda of understanding and formal protocols and policies, good practice was dependent on those individual contacts, who may leave the agency.

7.2 National rapporteurs

The importance of independent external review mechanisms is clearly critical in ensuring that theoretical commitments are implemented fully and translate into visible progress and outcomes. This is particularly true in the absence of national independent monitoring mechanisms in five of the six countries. Finland has an independent National Rapporteur. The Ombudsman for Minorities in Finland is an independent and impartial authority responsible for the advancement of the status of ethnic minorities. The Ombudsman is also the independent rapporteur on trafficking in human beings. In the UK an independent Anti-Slavery Commissioner was appointed. He is a delegate commissioner until the Modern Slavery Bill achieves royal assent.

SECTION 8: CONCLUSIONS AND RECOMMENDATIONS

8.1 Conclusions

The enactment of dedicated trafficking legislation and/or amendment of existing laws have resulted in major advancements in addressing the trafficking of human beings, within and across the borders of the six countries reviewed in this study. National structures have been established to implement state policy and ensure a comprehensive and coordinated approach to the identification of VoT, and the provision of adequate protection and support by both statutory and voluntary agencies. Police forces have established dedicated trafficking units and police officers have developed expertise in the identification and protection of VoT and liaise with the specialised statutory and NGO agencies in the delivery of vital services. Frontline practitioners in the six countries now have considerable experience in carrying out safety and risk assessments, and provide critical information regarding rights and the different forms of protection and assistance to which VoT are entitled. They also respond to the long-term needs of their clients, in relation to psychological support, welfare and housing.

Despite such progress, this report highlights some of the critical flaws in fulfilling state obligations which ensure that all those suspected and detected of being trafficked are afforded adequate protection and assistance. The identification process continues to be problematic, with major differences arising between those referred into NRM and those who ultimately are formally identified by state authorities, and consequently afforded all rights accruing to the status of a VoT. There is also a lack of transparency and information in relation to the grounds on which negative decisions are made by states in relation to both identification and the issuing of R&R and temporary and long-term residency permits.

In theory, state legal aid is available in all six countries but there are numerous gaps in the implementation of full access to early legal advice and legal representation for detected and identified VoT. The legal complexity of trafficking cases is highlighted throughout this report and service providers endeavour to ensure that they refer their clients to specialised legal practitioners at the earliest possible time. However, this report indicates that there are no formal routes, protocols or procedures in place to ensure that access to ELI is always provided and referrals to legal advice and representation may depend on where the individual is within the legal process, the type of exploitation suffered, the location in which they are first detected, and the support they are accessing. There was a very positive response across all countries on the benefits of ELI provided by specialised legal practitioners and in particular, by independent law centres who can deliver a dedicated, holistic model of care and legal representation.

Finally, whilst there is consistent inter-agency collaboration in all countries there was overall agreement on the need to formalise existing arrangements; enshrine the rights of VoT in legislation; ensure that the responsibilities and roles of all agencies are placed on a statutory basis; and provide sufficient funding for services in order to deliver good quality and accountable assistance and protection programmes to VoT.

8.2 Recommendations

The following recommendations have arisen across the six countries in relation to the improvement of the overall response to VoT and in particular to the provision of ELI.

8.2.1 Identification

- Establish standardised criteria across the EU on indicators, grounds and mechanisms for the formal identification process.
- Ensure that all detected/suspected victims have the right to be formally identified as a VoT with the entailing rights and assistance, which does not discriminate with regard to legal status and nationality, and the right to seek asylum.
- Ensure that all police officers and border guards are fully trained and informed in relation to the identification, referral, and appropriate treatment of victims.
- Increase resources for policing the sex trade to enable early identification of VoT and those experiencing severe exploitation.
- Ensure that grounds for refusal are transparent and communicated to the individual and that appropriate responses are made to vulnerable people who are refused, within the limits of confidentiality.

8.2.2 Early legal intervention

- Establish access to ELI as a right for all detected and identified VoT, encompassing comprehensive and freely accessible legal advice and representation in every aspect of civil, criminal and administrative law.
- Put robust procedures in place for specialist services so as to ensure that a victim is referred for legal intervention at the earliest possible opportunity.
- Ensure all detected but not yet identified VoT are given legal advice, protection and support and that R&R periods are issued prior to engagement with police authorities.
- Make resources available for specialised legal practitioners throughout MS so as to provide expert legal advice at the earliest possible time.
- Provide training to all legal practitioners in the civil, criminal and asylum systems, in recognising the indicators of trafficking.
- Pilot and resource dedicated, specialised, independent law centres such as LSA in Scotland and ICI in Ireland.
- Establish an EU network of legal practitioners and law centres for exchange of information and expertise in the area of ELI for VoT.

8.2.3 Service provision

- Establish minimum standards in relation to the accommodation of VoT ensuring that the accommodation is safe and secure and poses no risks to further exploitation, particularly in the case of women who have been trafficked for sexual exploitation. The use of unsuitable direct provision accommodation for asylum seekers should be discontinued.

- Make available adequate funding by MS to support the invaluable work of specialist services including their role in multi-agency and national frameworks and as advocates for better responses to VoT.
- Provide resources to meet the long-term needs of vulnerable VoT including in the areas of health, welfare, training, education, employment and housing.

8.2.4 Training and education

- Ensure training on recognising indicators of trafficking is integrated into the training of social and health care professionals, medical staff and public authorities in order to encourage disclosure and increase identification.
- Improve judicial understanding of trafficking and sensitivity towards victims of sex trafficking.
- Create opportunities for more in-depth practitioner and multi-disciplinary team training for specialist services, including cross-jurisdictional training.
- Provide training for frontline services on documenting and carrying out qualitative research, which would inform future policy and service provision.
- Increase education and public awareness campaigns to reach potential and current victims and alleviate fears of coming forward to the authorities, particularly for migrants who are unfamiliar with the assistance programmes.
- Provide public awareness campaigns so as to increase public understanding of trafficking and create conditions in which VoT can integrate into communities.

8.2.5 Interagency work

- Ensure that agency responsibilities are clear, roles are formalised and that memoranda of understanding are introduced.
- Pilot the introduction of multi-agency case conferences with the VoT present, where all agencies can commit to fulfilling their role and responsibility to the victim.
- Ensure greater co-ordination of systems, exchange of information and transparency across all agencies.

8.2.6 Research

- Fund longitudinal studies in order to evaluate the long-term outcomes for those who have been afforded VoT status and residency in destination countries.
- Conduct in-depth analysis on the discrepancy between the number of people detected/suspected as potential VoT, the numbers referred into the NRM and/or the state authorities and the number of VoT formally identified by the state.
- Carry out research on the consequences for those who do not fit the state definition of trafficking and/or are refused identification status or permits, but who have experienced severe exploitation, including women in prostitution and migrant workers in specific sectors of the economy, including domestic work and agriculture.
- Conduct research into the factors which are prohibiting successful prosecutions of traffickers, considering the relatively small number of convictions of traffickers to date.
- Undertake research on the impact of the timing and quality of legal intervention on the recovery and outcomes for VoT and the impact of ELI on the success or otherwise of prosecutions.



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