



Funded by the Justice Programme of the European Union

Asociatia
PRO REFUGIU.org

caritas
international.be

CSD
CENTER FOR
THE STUDY OF
DEMOCRACY

TrAbe
INICIATIVAS PARA LA ECONOMIA SOCIAL Y SOLIDARIA



SCANDINAVIAN
HUMAN RIGHTS
LAWYERS



THE REFERRAL FOR LEGAL ASSISTANCE IN THE CASE OF VICTIMS OF HUMAN TRAFFICKING

JUNE 2018

AUTHORS

Silvia Berbec,

Lawyer, Bucharest Bar, Legal Expert Association Pro Refugi Romania (Chapter 3 and Chapter 6)

Clémentine Ebert,

Lawyer, Brussels and Paris Bars, Legal Expert Caritas International Belgium (Chapter 1 and Chapter 6)

Katia Melis,

Lawyer, Brussels bar, Legal Expert Caritas International Belgium (Chapter 1 and Chapter 6)

Miriana Ilcheva,

Senior Analyst, Law Program, Center for the Study of Democracy, Bulgaria (Chapter 5 and Chapter 6)

Nerea García,

Lawyer, Legal Expert of Association TRABE at Madrid City Council Concepción Arenal Center for Victims of Sexual Exploitation, Spain (Chapter 4 and Chapter 6)

Samara de las Heras,

Lawyer, of Association TRABE at Madrid City Council Concepción Arenal Center for Victims of Sexual Exploitation, Spain (Chapter 4 and Chapter 6)

María Díez,

Social Worker of Association TRABE at Madrid City Council Concepción Arenal Center for Victims of Sexual Exploitation, Spain (Chapter 4 and Chapter 6)

Pedro Ara,

Lawyer, Legal Expert of Association TRABE, Spain (Chapter 4 and Chapter 6)

Rocío Sánchez,

Lawyer, Legal Expert of Association TRABE at Pandora Safe House (Chapter 4 and Chapter 6)

Ruth Nordström,

Senior Legal Counsel, President Scandinavian Human Rights Lawyers Sweden (Chapter 2 and Chapter 6).

Rebecca Ahlstrand,

Legal Counsel, Vice-President Scandinavian Human Rights Lawyers Sweden (Chapter 2 and Chapter 6)

Fredric Strandh,

Legal Researcher, Scandinavian Human Rights Lawyers Sweden (Chapter 2 and Chapter 6)

Contributions

Petya Dobрева,

Director, Legal Aid Directorate, National Legal Aid Bureau, Bulgaria

Liliya Ilieva,

Attorney-at-law, Sofia Bar Association, Bulgaria

Hristo Botev,

Attorney-at-law, Sofia Bar Association, Bulgaria

Géraldine Debandt,

Legal expert on refugee and migration law, previously lawyer at the Antwerp Bar, Belgium

This publication has been produced with the financial support of the Justice Programme of the European Union. The contents of this publication are the sole responsibility of the authors and can in no way be taken to reflect the views of the European Commission

CONTENTS

Introduction	1
Chapter 1 Principles and deontological norms for lawyers who assist victims of human trafficking	2
Independence and Loyalty.....	3
Dignity and honor, trust and moral integrity.....	5
Professional Secret and Confidentiality.....	5
Incompatibility.....	7
Avoidance of conflicts of interest.....	8
Avoidance of “Pactum de quota litis”.....	9
The lawyer’s professional competence.....	10
Disciplinary liability if the lawyer harms the victim’s interests and does not respect the deontological principles.....	11
Chapter 2 Legal and extrajudicial assistance for victims of human trafficking	12
Chapter 3 Legal assistance referral procedures for victims of human trafficking	15
Modalities of identifying victims of human trafficking.....	15
Standard Operating Procedures for the Provision of Legal Assistance.....	16
Legal assistance provided by ex officio lawyers.....	23
Lawyers’ involvement in cross-border cases.....	25
Chapter 4 Training lawyers to assist victims of human trafficking	26
Training to assist victims of human trafficking.....	26
Interdisciplinary training.....	27
A national and cross-border training program for lawyers.....	27
Chapter 5 Monitor and evaluation of the legal assistance	33
The importance of a Legal Assistance Monitoring and Evaluation Committee..	33
Structure of a Legal Assistance Monitoring and Evaluation Committee.....	34
Responsibilities of the Legal Assistance Monitoring and Evaluation Committee.....	35
Transnational cooperation among Legal Assistance Monitoring and Evaluation Committees.....	38
The way forward – recommendations.....	38
Chapter 6 Anti-trafficking stakeholders in Romania, Belgium, Bulgaria, Spain, Sweden	40

INTRODUCTION

The publication “**Referral for legal assistance in the case of victims of human trafficking**” was developed in the project “Strengthening multidisciplinary cooperation to ensure an effective referral, assistance, rights protection for victims of human trafficking”, financed by the European Commission, Justice Programme. The project was implemented by Association Pro Refugiu Romania (Coordinator), Caritas International Belgium (Partner), Association Trabe Iniciativas para la Economia Social y Solidaria Spain (Partner), Scandinavian Human Rights Lawyers Sweden (Partner).

The necessity of implementing the project and implicitly the elaboration of the publication have started from a series of frequent challenges faced by victims of human trafficking - especially the issue of legal assistance and representation that should be available throughout the judicial proceedings.

Access to justice is generally recognized as one of the fundamental human rights. Yet, due to various reasons and obstacles, victims of human trafficking are prevented to fully exercise this basic right.

The development of a legal assistance referral strategy is more than necessary due to multiple reasons:

- in many countries, there is no proper strategy concerning the identification-referral-assistance for victims of human trafficking.
- the existence, in certain countries, of mechanisms for the identification-referral-assistance, but which are applied in practice incompletely with limited effectiveness - the aspects related to legal assistance being mentioned very succinctly, insufficiently.
- the almost nonexistent cross-border cooperation of the victims’ lawyers from countries of origin and destination, even if it is well-known the transnational dimension of human trafficking and that many times the trial means legal procedures in both types of countries.

The publication is structured in 6 chapters and the presentation mode makes it easy for the information to be taken over by different countries regardless of whether they are countries of origin and / or destination.

Chapter 1

Principles and deontological norms for lawyers who assist victims of human trafficking

The purpose of this Chapter is to recall the deontological norms and principles applied to the lawyer's profession.

In order to be able to apply the principles and deontological norms to lawyers of victims of human trafficking, it is necessary to recall those principles. Within Europe, all the bars in different countries have deontological norms and principles stipulated in a code or rules, compulsory for lawyers and comparable in all the EU countries despite the different interpretations¹.

At the European level, the Council of Bars and Law Societies in Europe (CCBE) adopted two founding documents that are both complementary and very different in nature.

The most recent one is the ***Charter of Core Principles of the European Legal Profession*** which was adopted in Brussels on 24 November 2006. The Charter contains a list of ten core principles common to the national and international rules regulating the legal profession. It is aimed at applying in all European countries, reaching out beyond the member, associate and observer states of the CCBE.

The ***Code of Conduct for European Lawyers*** was adopted on 28 October 1988 and was amended for the last time in May 2006. It is a binding text for all Member States: all lawyers who are members of the bars of these countries have to comply with the Code in their cross-border activities within the European Union, the European Economic Area, and the Swiss Confederation, as well as within associate and observer countries.²

These two texts will be used in the present chapter in order to simplify and homogenize the definitions of the main principles and deontological norms.

It is also very important to keep in mind that the deontological norms and principles apply to all lawyers regardless of the case and issues. This chapter will try, however, to draw ***practical guidelines regarding the principles and deontological norms of lawyers assisting victims of human trafficking***.

To begin with, in order to have an efficient defense of victims of human trafficking, the *pro bono* lawyer should be designated/appointed as early as possible. Indeed, within Europe, it is generally not the case. This is definitely useful, not only for the victims themselves, but also for a better administration of justice. Indeed, the

¹ The national codes of conduct can be found on <http://www.ccbe.eu/documents/professional-regulations/>

² Charter of core principles of the European Legal profession and Code of Conduct for European Lawyers. http://www.ccbe.eu/NTCdocument/EN_CCBE_CoCpdf1_1382973057.pdf

lawyers who are familiar with the process and the legislation will prepare their clients for the first interview with the police or judge and thus time could be gained; the victim would not lose his/her credibility and it would eventually reduce the cost of the investigation.

In addition, to be an efficient lawyer assisting victims of human trafficking, one should always keep in mind the particular vulnerability of the victims and even though a lawyer is not a social worker, nor a psychologist, in order to build a reliable relationship based on trust, the lawyer has to approach and deal with clients with a certain kindness. This is not a deontological norm, but rather a moral principle closely connected to the legal profession.

European lawyers are committed to the following core principles of deontological norms, which are essential for the proper administration of justice, access to justice and the right to a fair trial, as required under the European Convention on Human Rights. Bars and law societies, courts, legislators, governments and international organizations should seek to uphold and protect the core principles in the public interest.

I. Independence and Loyalty

I.1. Definition

In the Code of Conduct for European Lawyers, Independence is defined as: *“The many duties to which a lawyer is subject require the lawyer’s absolute independence, free from all other influence, especially such as may arise from his or her personal interests or external pressure. Such independence is as necessary to trust in the process of justice as the impartiality of the judge. A lawyer must therefore avoid any impairment of his or her independence and be careful not to compromise his or her professional standards in order to please the client, the court or third parties. This independence is necessary in non-contentious matters as well as in litigation. Advice given by a lawyer to the client has no value if the lawyer gives it only to ingratiate him- or herself, to serve his or her personal interests or in response to outside pressure. (...)”*³

That is to say that the lawyer must be independent from the State and other interests.

The lawyer must also remain independent of his or her own client if he/she is to benefit from the trust of third parties and the courts. Indeed, without this independence from the client there can be no guarantee of the quality of the lawyer’s work.

*“The lawyer’s membership of a liberal profession and the authority deriving from that membership helps to maintain independence, and bar associations must play an important role in helping to guarantee lawyers’ independence. Self-regulation of the profession is seen as vital in buttressing the independence of the individual lawyer”*⁴.

³ Article 2.1 of the Code of Conduct

⁴ “A commentary on the Charter of core principles of the European legal profession”, http://www.ccbe.eu/NTCdocument/EN_CCBE_CoCpdf1_1382973057.pdf, p. 11

The independence of the lawyer goes with the principle of loyalty, defined by the Charter of core principles of the European legal profession: “*Loyalty to the client is of the essence of the lawyer’s role. The client must be able to trust the lawyer as adviser and as representative. To be loyal to the client, the lawyer must be independent, must avoid conflicts of interest and must keep the client’s confidences. Some of the most delicate problems of professional conduct arise from the interaction between the principle of loyalty to the client and principles which set out the lawyer’s wider duties – principle of dignity and honour.*”⁵

1.2. Application to lawyers assisting victims of human trafficking

Regarding the assistance of victims of human trafficking, it is clear that neither the government, nor any kind of administration or other bodies, such as international organizations (United Nations High Commissioner for Refugees *etc.*), not even NGOs specialized in human trafficking, should interfere with the lawyer of a victim of human trafficking in order to respect the very special relationship between the lawyer and his/her client.

In certain cases, the role of an accredited NGO working on human trafficking could be to collaborate with the lawyer of the victim, but special attention needs to be paid to the independence of the lawyer.

Throughout Europe, NGOs have been making their own informal lists of lawyers working for victims of human trafficking. In some cases, due to the lack of transparency and the impossibility to control these lists, there could be a conflict of interest, or the independence of the lawyer could be jeopardized⁶.

Also, considering the particular vulnerability of the victims of human trafficking and the difficulty in this very peculiar situation to create a climate of confidence, special attention should be paid to maintain the lawyer’s independence.

The lawyer should always keep in mind the best interests of his/her client and remain loyal to him/her and therefore respect his/her choices even if it means to accept the fact that the victim does not want to pursue the case.

In this respect, in order to avoid any interference with the independence of the lawyer, it may be considered to draw up a list of competent lawyers in each country (whether directly by each Legal Aid Office or by the National Bars) for victims of human trafficking. And that, to be included in such a list, the lawyer should follow a specialized training on human trafficking as well as pass an exam.

⁵ *Ibid*, p. 10

⁶ For example, if the lawyer starts to depend financially from the files sent by the NGO

II. Dignity and honor, trust and moral integrity

II.1. Definition

The Code of Conduct for European Lawyers states that *“The relationships of trust can only exist if a lawyer’s personal honour, honesty and integrity are beyond doubt. For the lawyer these traditional virtues are professional obligations.”*⁷

The Charter of Core principles of the European Legal profession precise that *“To be trusted by clients, third parties, the courts and the state, the lawyer must be shown to be worthy of that trust. That is achieved by membership of an honorable profession; the corollary is that the lawyer must do nothing to damage either his or her own reputation or the reputation of the profession as a whole and public confidence in the profession. This does not mean that the lawyer has to be a perfect individual, but it does mean that he or she must not engage in disgraceful conduct, whether in legal practice or in other business activities or even in private life, of a sort likely to dishonor the profession. Disgraceful conduct may lead to sanctions including, in the most serious cases, expulsion from the profession.”*⁸

II.2. Application to lawyers assisting victims of human trafficking

It should specifically apply to lawyers assisting victims of human trafficking, and especially to increase vigilance regarding the very likely attempt from the traffickers to corrupt a lawyer. Such an attempt should be obviously denounced by the lawyer.

There are examples in Europe, where lawyers have been approached by the trafficking network to conclude an annual contract with them in exchange of a significant amount of money in order to assist their “employees” (meaning : victims of human trafficking) if they would be arrested, or for any kind of problem. Not only can this constitute an offence, subject to criminal prosecution, but it also does not respect the core principles of deontological norms, and in particular trust and moral integrity.

In order to set an example, it is recommended to impose stronger disciplinary measures.

III. Professional Secret and Confidentiality

III.1. Definition

The Code of Conduct for European Lawyers states that *“It is of the essence of a lawyer’s function that the lawyer should be told by his or her client things which the client would not tell to others, and that the lawyer should be the recipient of other information on a basis of confidence. Without the certainty of confidentiality there cannot be trust. Confidentiality is therefore a primary and fundamental right and duty*

⁷ Article 2.2 of the Code of Conduct

⁸ “A commentary on the Charter of core principles of the European legal profession”, http://www.ccbe.eu/NTCdocument/EN_CCBE_CoCpdf1_1382973057.pdf, p. 11

*of the lawyer. The lawyer's obligation of confidentiality serves the interest of the administration of justice as well as the interest of the client. It is therefore entitled to special protection by the State. (...)*⁹

The Charter of Core principles of the European Lawyer Profession “stresses the dual nature of this principle - observing confidentiality is not only the lawyer's duty - it is a fundamental human right of the client. The rules of “legal professional privilege” prohibit communications between lawyer and client from being used against the client. In some jurisdictions the right to confidentiality is seen as belonging to the client alone, whereas in other jurisdictions “professional secrecy” may also require that the lawyer keeps secret from his or her own client communications from the other party's lawyer imparted on the basis of confidence. Principle (b) encompasses all these related concepts - legal professional privilege, confidentiality and professional secrecy. The lawyer's duty to the client remains even after the lawyer has ceased to act.”¹⁰

III.2. Application to lawyers assisting victims of human trafficking

Professional secrecy is a fundamental principle in the respect of the right to fair trial¹¹.

Regarding victims of human trafficking, this is a very important principle considering the real danger for the victim's life, if certain information is disclosed. In this matter, it is necessary to allow the possibility for the lawyer not to disclose certain information, sometimes even to the judge, such as the identity or the address of the victim. To ensure the security and integrity of the victims it is recommended that for the duration of the legal proceedings, they establish their place of residence at the lawyer's office (only for administrative purpose obviously).

Specific attention has to be paid during the first deposition at the police station. Indeed, no personal address should appear in the file (without the consent of the victim) in order to avoid the risk of the defendant finding out about the address when the file is disclosed to his lawyer at some point. There is a real danger for the security of the victim, but also in order to build a relation of trust with the victim, this practice should apply all the time. In this case, the victim could establish his/her place of residence at the lawyer's office.

In this matter and in order to avoid both the violation of the professional secret and any conflicts of interest, it is recommended the first time to meet the client alone (if necessary with the interpreter) in order to explain the role of each party and especially the differences between lawyers and NGOs. In this first meeting, it is also fundamental to explain to the client the confidentiality, the professional secrecy of the lawyer-victim relation and that the lawyer is representing his/her interests. Also, it is important to establish what the person really wants and explain the process as clearly as possible. Sometimes this means explaining in simple terms the process in order to be clearly understood.

⁹ Art. 2.3 of the Code of conduct

¹⁰“A commentary on the Charter of core principles of the European legal profession”, http://www.ccbe.eu/NTCdocument/EN_CCBE_CoCpdf1_1382973057.pdf, p. 11

¹¹ Article 6 of the European Convention on Human Rights

To illustrate the principle, if a lawyer is consulted by a person claiming to be a victim of human trafficking, but the lawyer finds out that the victim has also committed reprehensible actions linked to the human trafficking case, this revelation will be covered by the professional secrecy. Nevertheless, if the client, once the lawyer has decided to defend him/her as a victim, is finally tried in a criminal trial, it is recommended for the lawyer to advise his/her client to take another lawyer, so that the lawyer does not lose credibility. The line for the lawyer will of course always depend on the case and its circumstances.

The limit for the lawyer to withdraw or not, would be that from the moment when he/she learns something from the investigation that is not yet publicly known, the lawyer can continue to represent his/her client, but if there is a written conclusion or even a pleading, the lawyer should withdraw himself in order not to lose credibility before the courts and tribunals.

The question of professional secrecy can also appear in the framework of the collaboration of the lawyer and an NGO/Organization defending victims of human trafficking. In order to safeguard professional secrecy there should be disciplinary sanctions if a lawyer discloses information without the consent of the victim to police officers¹², communicates information to another client with no link to the trial¹³ or to another client in the same case¹⁴.

Also, the lawyers have to stay vigilant regarding the disclosure of certain information and notably by telephone. Indeed, certain NGOs or social workers will want to get information by telephone, but it is always recommended to give information face to face. Even though in the defense of victims of human trafficking and in the best interests of the victim there is a need of multidisciplinary cooperation, the professional secret has to be always kept in mind and respected.

IV. Incompatibility

IV.1. Definition

In the Code of Conduct for European Lawyers there are incompatible occupations: *“In order to perform his or her functions with due independence and in a manner which is consistent with his or her duty to participate in the administration of justice a lawyer may be prohibited from undertaking certain occupations.*

¹² For example, in France, it was considered a violation of the professional secret, trust and probity the information given to police officers by a lawyer about his client while the lawyer was in custody (Avis Déontologique n° 067553 et 172671, 28 avr. 2009: <http://codeonto.avocatparis.org/category-126699>)

¹³ For example in France, a lawyer disclosing information to another client with no connection to the relevant case was considered a violation of the professional secret. (AD n° 96.3047, 14 nov. 2005 : <http://codeonto.avocatparis.org/category-126717>)

¹⁴ For example in France, a lawyer sharing information from a client’s interview at the police station with another client involved in the same drug trafficking was considered a violation of the professional secret. (AD n° 25.0571, 28 mars 2006 : <http://codeonto.avocatparis.org/category-126717>)

A lawyer who acts in the representation or the defense of a client in legal proceedings or before any public authorities in a Host Member State shall there observe the rules regarding incompatible occupations as they are applied to lawyers of the Host Member State.

A lawyer established in a Host Member State in which he or she wishes to participate directly in commercial or other activities not connected with the practice of the law shall respect the rules regarding forbidden or incompatible occupations as they are applied to lawyers of that Member State.”¹⁵

Regarding incompatibility, lawyers must check in each national Bars where they work which occupations are incompatible with the lawyer’s profession. Often as a safeguard, in order to occupy another paid activity, the lawyer must seek the agreement from the Bars.

IV. 2. Application to lawyers assisting victims of human trafficking

As a lawyer assisting victims of human trafficking, it is recommended in order to preserve the independence and to avoid any risk of conflict of interest, to refrain from undertaking the following occupations (these are only examples and not an exhaustive list):

- Civil servant for the state
- Civil servant for an international organization linked with human rights and especially human trafficking (such as HCR or IOM)

V. Avoidance of conflicts of interest

V.1. Definition

The Code of Conduct for European Lawyers defines avoidance of conflicts of interest: *“A lawyer may not advise, represent or act on behalf of two or more clients in the same matter if there is a conflict, or a significant risk of a conflict, between the interests of those clients.*

A lawyer must cease to act for both or all of the clients concerned when a conflict of interests arises between those clients and also whenever there is a risk of a breach of confidence or where the lawyer’s independence may be impaired.

A lawyer must also refrain from acting for a new client if there is a risk of breach of a confidence entrusted to the lawyer by a former client or if the knowledge which the lawyer possesses of the affairs of the former client would give an undue advantage to the new client. (...)¹⁶

The Charter defines avoidance of conflicts of interest *“For the proper exercise of his or her profession, the lawyer must avoid conflicts of interest. So a lawyer may not act for two clients in the same matter if there is a conflict, or a risk of conflict, between the interests of those clients. Equally a lawyer must refrain from acting for a new client if the lawyer is in possession of confidential information obtained from another current or former client. Nor must a lawyer take on a client if there is a*

¹⁵ Art. 2.5 of the Code of Conduct

¹⁶ Art. 3.2 of the Code of Conduct

conflict of interest between the client and the lawyer. If a conflict of interest arises in the course of acting for a client, the lawyer must cease to act. It can be seen that this principle is closely linked to principles (b) (confidentiality), (a) (independence) and (e) (loyalty).

It can be seen that this principle is closely related to the principles of confidentiality, independence and loyalty.

V.2. Application to lawyers assisting victims of human trafficking

Applied to the case of victims of human trafficking, the avoidance of conflicts of interest is particularly relevant. Due to the particular vulnerability of the victims of human trafficking, this principle should be applied to its extreme and even the so called "**principle of precaution**" should be applied.

There is a difference between absolute prohibition and a recommendation. Regarding the defense of victims of human trafficking, it is obvious that it is strictly forbidden to be the lawyer of a victim and the lawyer of the defense in the same affair. In such a situation, it would be a direct conflict of interest and the lawyer must cease to act immediately.

In addition, in order to eliminate any risk of conflict of interest and any breach of confidence between the lawyer and his/her client, it should also be prohibited to be the lawyer of two or more victims of human trafficking in the same affair.

As mentioned above, the principle of precaution should apply when defending victims of human trafficking particularly vulnerable to pressure from the traffickers. Under this principle, it is strongly recommended not to be the lawyer of a victim of human trafficking in an affair and then the lawyer of a defendant in a human trafficking case, even in separate cases. Indeed, it is not really about conflict of interest as there will be not necessarily a conflict of interest in two separates affairs but rather a matter of competence and credibility of the lawyer.

In practice, if a lawyer wants to be nominated as a lawyer of a victim of human trafficking, he/she should "choose sides" in order to avoid any risk of conflict of interest and keep credibility both for his/her clients but also before the judges. Therefore, when appointed by the Office of the legal aid, the lawyer should choose his side and follow the relevant training.

VI. Avoidance of "Pactum de quota litis »

VI.1. Definition

The Code of Conduct for European Lawyers specifies that "A lawyer shall not be entitled to make a pactum de quota litis.

By "pactum de quota litis" is meant an agreement between a lawyer and the client entered into prior to final conclusion of a matter to which the client is a party, by virtue of which the client undertakes to pay the lawyer a share of the result regardless of whether this is represented by a sum of money or by any other benefit achieved by the client upon the conclusion of the matter.

"Pactum de quota litis" does not include an agreement that fees be charged in proportion to the value of a matter handled by the lawyer if this is in accordance with

an officially approved fee scale or under the control of the Competent Authority having jurisdiction over the lawyer.”¹⁷

VI.2. Application to lawyers assisting victims of human trafficking

Regarding lawyers assisting victims of human trafficking, “pactum de quota litis” is, like in all the other matters, strictly prohibited.

Pro bono lawyers should pay special attention when the situation of the client changes and does not allow him/her anymore to have access to free legal aid. Indeed, there is a clear risk of disguised “pactum de quota litis”. Therefore, if the lawyer is appointed by the free legal aid office, he/she should simply not make any agreement regarding possible future compensation or “success fees” and only be paid by the legal aid office due to the very clear risk of “pactum de quota litis” which would lead to the loss of the independence of the lawyer.

VII. The lawyer’s professional competence

VII.1. Definition

The Charter of core principles of the European legal profession stipulates the very important principle of a lawyer’s professional competence *“It is self-evident that the lawyer cannot effectively advise or represent the client unless the lawyer has the appropriate professional education and training. Recently, post-qualification training (continuing professional development) has gained increasing emphasis as a response to rapid rates of change in law and practice and in the technological and economic environment. Professional rules often stress that a lawyer must not take on a case which he or she is not competent to deal with.”¹⁸*

VII.2. Application to lawyers assisting victims of human trafficking

Regarding victims of human trafficking, it is crucial that lawyers are competent regarding the specific issues of human trafficking often involving multiple and complex legal proceedings. Therefore, each national or regional bar, and particularly the legal aid department, should organize regular and specific training on human trafficking. In this matter, the lawyer should undertake courses related to criminal and proceeding/administrative law, asylum and migrants’ rights, social law, as well as human rights training and especially on the issues of human trafficking.

The Law Societies and National Bars should co-operate with NGOs and specialized lawyers associations¹⁹ currently providing training to lawyers representing victims of human trafficking to devise and deliver comprehensive training to any lawyer who may be instructed to represent a victim who may have been trafficked in criminal or civil proceedings.

¹⁷ Art. 3.3 of the Code of Conduct

¹⁸ “A commentary on the Charter of core principles of the European legal profession”, http://www.ccbe.eu/NTCdocument/EN_CCBE_CoCpdf1_1382973057.pdf p. 12

¹⁹ Through Europe there is a lot of efficient lawyer’s associations organizing high quality training, such as ADDE in France

VIII. Disciplinary liability if the lawyer harms the victim's interests and does not respect the deontological principles

The respect of all these deontological norms and principles is extremely important, in addition that they are part of the profession, considering the particular vulnerability of the victims of human trafficking.

The lawyer shall have the reflex, especially in this field, to ask their bar association/authority for advice in the matter before he/she takes any action that could be irreversible, if he/she has any doubt on how to act to respect all the principles mentioned above, and his/her own national rules.

If it does not exist, the national bar association should create a specific and professional service, within the bar association, whose role is to answer those type of questions and advise lawyers.

When a lawyer does not respect these rules, as well as the national ones, he/she should be sanctioned.

There are two types of sanctions that could be mentioned.

First, a sanction from the Legal Aid Office which could lead to temporary (3, 6 months, 1 year and possible obligation to follow again the training and pass the exam) or permanent exclusion from the list of lawyers appointed to assist victims of human trafficking (if such a list exists).

For example, a lawyer who asks for money while he is appointed by the legal aid office should be excluded definitely from the list.

Secondly, a disciplinary sanction from the bar association, with a possibility of appeal, which can range from written warning, prohibition to practice for a certain amount of time, to exclusion from the profession, depending on the circumstances.

Chapter 2

Legal and extrajudicial assistance for victims of human trafficking

The lawyer has the specific purpose of ensuring the victim's interests and supporting the victim during the preliminary investigation and trial. During the trial, the victim's lawyer should work in collaboration with the prosecutor to defend the victim's rights. In particular, the lawyer will assist the victim's individual claim for damages against the defendant. Victims of human trafficking are especially vulnerable and require legal support, before and throughout the legal proceedings. Because of the traumatic experiences it is of utmost importance that the victim is given an understanding legal counseling from lawyers that have knowledge of the specific problems related to these victims and that are aware of the psychological risks and vulnerabilities associated with being a victim of human trafficking. It is also important that the same lawyer to be appointed for the entire process as this builds trust and helps minimize the risk of re-traumatization.

Legal support from lawyers is essential for victims of human trafficking and can involve different legal areas. Counseling can include correct information on the available legal alternatives and collateral rights. During this step the victim can be informed about the following possibilities:

- To cooperate with competent judicial authorities.
- To benefit from a reflection period.
- To be granted a temporary residence permit if the victim is a foreign citizen.
- To request compensation.
- To decide whether to return to his/her origin country.
- The victim should always benefit from his/her rights, no matter if she/he agrees to cooperate with the judicial or law enforcement bodies.
- To inform the victim about all services available for recovery and reintegration in society apart from the legal services.
- To inform about the limits and risks of the legal procedure (length, potential risks, financial compensation, etc.).

If the victim chooses to cooperate with the competent authorities it is important for the lawyer to prepare the victim for the trial in which she/he will be a witness and/or injured party.

The lawyer, is given the task to look after the victim's interests and give the victim support and assistance during both the preliminary investigation and the hearing. The lawyer should also assist the victim in the prosecution phase. Legal support is essential in order to minimize the risk of exposing the victim to a new trauma on the basis of her/his participation in the trial. The victim must feel secure and be able to tell her/his story.

It is also important to provide professional legal help to the individual, to apply for the expungement of the crimes, which the victim might have been forced to commit as a consequence of being subjected to human trafficking.

Legal support can also involve other areas. As there are many victims of cross-border trafficking they will often need legal assistance and support on issues concerning migration and asylum.

Victims of human trafficking can also be in need of legal support to have debts written off (loans, health insurance) and to receive updated information on any ongoing legal proceedings.

It is in the victim's interest to have the same lawyer throughout the entire legal proceedings and trial duration. Continuity builds trust and is valuable for the victim personally, beneficial to the legal proceedings in general. Conversely, a frequent change of lawyers would endanger the legal proceedings in general and would build distrust between the lawyer and the client. The national regulations and rules concerning change of lawyers differ in the EU countries. In some countries, a lawyer can only be changed if the victim presents exceptional reasons. Contradictions between the victim and the lawyer may in some cases constitute reasons, but not in general. Trust between lawyer and the victim is very important and the judicial body must make a correct assessment in each individual case. The court, prosecutor, legal aid office (depending on each country context) should always inform the victim that she/he has the right to change the lawyer if he does not represent the victim's interest and rights properly.

Victims of human trafficking have traumatic experiences that involve repeated episodes of violence (that range from repeated physical assaults, to rape, to torture) inflicted to the victim by another human being/s. One of the most difficult steps to be taken for a person who has been exposed to or witnessed a crime is to initiate a police report and a legal process. Psychological reactions to the crime like shock, denial and trauma can make difficult to understand that he/she has been subjected to a crime, and the social connections to the perpetrator are circumstances that can make the situation even more complex. It is important to understand that almost all victims come from a social background which includes distrust for all governmental / official institutes, authorities or uniformed individuals. In addition, sometimes for years, they have been indoctrinated by their exploiters to stay away from officials because of the risk of being incarcerated or deported.

Another aspect is that victims of human trafficking often do not like unpredictable situations and there might be a need to be very clear in explaining the situations that will follow and repeat several times what will happen, step by step, and in more detail. The lawyer needs to use friendly and simple language, avoiding complex legal terms that might not be understood in order for the victim to be aware of his/her rights. The better prepared the victim is for each stage of the case, the more comfortable he or she will feel, the better he or she will present, and the more confidence he or she will have in the assistance provided. The lawyer needs to explain and be clear with the victim about the right to confidentiality – this is

important when it comes to build trust, and to guarantee the right to protection and avoid stigmatization.

All the above mentioned aspects are better provided if there is the same lawyer throughout the legal proceedings. Building trust might be far more difficult than in any other given case. Describing traumatic experiences can also spark traumatic symptoms, and to avoid re-traumatization (which can lead to wounds stronger than previous ones) it is in the victim's interest not to change the lawyer during the legal proceedings. When a new lawyer is involved in the case, the victim often needs to describe his/her case and answer questions once more, which involves a higher risk of re-traumatization, endangering the victim's health and the entire case.²⁰

Another aspect concerning the legal assistance for victims of human trafficking is that that these victims benefit from a series of special measures, according to the Council of Europe Convention on Action against Trafficking in Human Beings²¹. This means that the interest of the victim is best defended by a lawyer who can follow the victim throughout these legal steps and that has specific knowledge of the rights and needs of these victims. The quality of the legal assistance given to victims of human trafficking will in most cases be higher and it will help protect them in the legal proceedings.

²⁰ Handbook for Legal, Social, Health Professionals Involved in the Protection of the Rights and the Assistance of Victims of Human Trafficking, November 2017 p 31 available at <http://ec.justice-project.prorefugiu.org/>

²¹ Available at <https://rm.coe.int/168008371d>

Chapter 3

Legal assistance referral procedures for victims of human trafficking

This chapter contains guidelines on the referral legal assistance, in order for the victims of human trafficking to have access to a lawyer. It contains a set of recommendations on how the procedures should function, in order for the victims to receive legal aid throughout the entire judicial process. A cooperative framework should exist between local bars –judicial bodies – NGOs with competencies in protecting victims' rights, in providing assistance services.

In practice victims of human trafficking are often deterred from participating in the legal proceedings because simple, easy accessible and timely legal advice is not always available for them when seeking assistance and support. Legal advice from an early contact with the law enforcement authorities should be always made available as part of the integrated support offered; it should be always timely provided in practice and not just stipulated in the law. Only an early and efficient access to specialized legal assistance from a lawyer can provide victims of human trafficking with the opportunity to have their rights protected prior to and during legal proceedings.

Before presenting how legal assistance should be provided, a series of references should be made on how victims are identified and the stakeholders that are competent to do so.

Modalities of identifying victims of human trafficking

Through judicial bodies (e.g. police) in the context of investigative activities aimed at collecting necessary evidences on the existence of the human trafficking offense.

Through the diplomatic and consular missions in other countries (often the victims' identification/travel documents are taken / destroyed and need support from these authorities).

Through non-governmental organizations, that can play an important role in the fight against human trafficking. They exercise a crucial function in identifying victims of human trafficking who may be reluctant to contact or cooperate with government agencies for fear of repercussions, especially deportation.

According to European and national legislation, a victim of human trafficking has the right to receive legal assistance throughout the entire trial duration. The victim can have a chosen lawyer or an ex officio lawyer. In the case of a chosen lawyer, it should be specified that he/she can offer a pro bono assistance, or can be paid with honorarium directly by the victim or with the financial support of other entities (e.g. non-governmental organizations). In practice, however, victims of human trafficking do not have the necessary financial support and therefore they

benefit from the services of *ex officio lawyers*, whose fees are paid by the state. A legal aid provided by an *ex officio lawyer* is the most common practice when it comes to legal assistance for this type of victims, and therefore these lawyers should be very well trained in providing quality legal aid for victims of human trafficking.

A comprehensive, accurate information about the legal procedures should be ensured by the lawyer. It is therefore particularly important for entities that have the competence to identify victims to have a close cooperation with local Bars, with lawyers' associations /networks.

Standard Operating Procedures for the Provision of Legal Assistance

SOP 1 – Identification of the legal needs

Measure (M)	Action
1	Initial screening of the legal needs and referral towards the legal aid service provider
2	Access to basic rights information
3	Language interpretation of the basic legal information



SOP 2 – First Legal Assistance

Measure (M)	Action
1	Information on the legal options
2	Intake and needs legal assistance
3	Legal assistance provision



SOP 3 Long –term legal assistance

Measure (M)	Action						
1	Individual plan for long-term legal assistance						
2	Consent procedure						
3	<table border="1"> <tr> <td>Long-term legal assistance in</td> <td>3.1. Investigation Phase</td> </tr> <tr> <td></td> <td>3.2. Prosecution Phase</td> </tr> <tr> <td></td> <td>3.3. Court Phase (criminal & civil procedures)</td> </tr> </table>	Long-term legal assistance in	3.1. Investigation Phase		3.2. Prosecution Phase		3.3. Court Phase (criminal & civil procedures)
Long-term legal assistance in	3.1. Investigation Phase						
	3.2. Prosecution Phase						
	3.3. Court Phase (criminal & civil procedures)						

A key challenge is to ensure that victims of human trafficking have full access to their rights, including the right to receive legal assistance and representation throughout the entire process. In some countries do not exist a national referral mechanism, while in other states it exists officially but when it comes to the provision of support and assistance (especially the legal aid) are not put into practice properly.

In the following will be presented a set of standard operating procedures (SOP) composed of certain measures to provide appropriate legal assistance to victims of human trafficking from an early identification phase until the end of a trial. These standard operating procedures can be adapted by each state, can be updated according with the anti-trafficking legal response over time.

SOP 1 – Identification of the legal needs

Measure (M)	Action
1	Initial screening of the legal needs and referral towards the legal aid service provider
2	Access to basic legal information
3	Language interpretation of the basic legal information

SOP 1 - M1. Initial screening of the legal needs and referral towards the legal aid service provider

The initial screening should be based on a set of questions to determine if the person is a victim of human trafficking. This should be performed as soon as the person gets into contact with the institution / organization that performed the “identification process”. It can be:

- Anti-trafficking agency.
- Law enforcement agency.
- Service provider (NGO, social service etc.).

The entity competent to perform the “identification process”, should always use a list with a set of indicators that can be used to develop further questions based on which to obtain the answers which can lead to the conclusion that a certain person is a victim of human trafficking and she/he has certain legal needs.

An important item to be determined at this early stage is the *legal status of the person*.

Item	Indicators
Legal status of the person	Irregular migration status (in case of foreign victims)
	Lack of documents (passport, ID Card etc.)
	Other

The initial screening should be performed only with the consent of the presumed victim, and the person should be always informed about the right to withdraw this consent. The interviewer must be aware of the fact that the person

could be unwilling to provide information on the legal status due to a fear of the law enforcement authority, distrust in others as result of the trafficking experience, the person might not remember all the data about the legal status.

SOP 1 - M2. Access to basic rights information

At this early phase (shortly after her/his release/escape from the exploitation), the person should receive a basic legal information delivered in a simple language/terminology, because a very detailed legal explanation is likely not be fully processed. A person, still traumatized, recently escaped from her/his traffickers will not be able to process a huge amount of legal information and explanation delivered in a short period of time.

The general legal information should be focusing on the person rights and obligations as a presumed victim of human trafficking.

The general legal information should be provided by legal professionals from the anti-trafficking agencies / law enforcement bodies / other service provider (NGO). The legal professionals (legal counsellor, paralegal, police officer etc.) should be very well-trained, in advance, on how to provide basic legal information to presumed victims of human trafficking.

SOP 1 - M3 Language interpretation of the basic legal information

This measure should be implemented in case in which the person is a *foreign presumed victim*.

The legal professionals (legal counsellor, paralegal, police officer etc.) should be accompanied by an interpreter that will help in providing the basic legal information to the foreigner. The interpreters should be special trained in working with vulnerable persons. All entities (institutions, organizations) that come into contact with foreign victims of human trafficking should have as staff members / a reference list with specialized interpreters.

SOP 2 – First Legal Assistance

Measure (M)	Action
1	Information on the legal options
2	Intake and needs legal assistance
3	Legal assistance provision

SOP 2- M 1 Information on the legal assistance options

The first assistance is crucial for the persons identified as victims of human trafficking. They should receive accurate data about available legal options. The objective of the first assistance SOP is to support the person(s) in taking the right legal decision.

It should consist in the delivery of accurate information on the existing legal options and rights. The information on legal options can cover various actions in relation to:

- the application for a temporary / long-term residence permit in the destination country (in case of foreign victims).
- the decision to cooperate or not with the competent judiciary authorities.
- the claim for compensation as part of the criminal trial or as a distinct action in front of a civil court.

This information should be provided by a *Lawyer* specialized in assistance of victims of human trafficking. Can be a *lawyer of an NGO* (service provider of legal aid) or a *state lawyer (ex-officio lawyer)* appointed by the local Bar at the request of the law enforcement authority/ anti-trafficking agency. To reiterate, the legal information should only be provided by lawyers specifically trained to assist this type of vulnerable group.

Item	Approach
How legal options should be presented / communicated to the victim	Orally and in writing in a language that the victim will understand.
	In a clear manner, avoiding complex legalistic vocabulary
	Encourage the person to address questions
	Using an interpreter in the case of a foreign victim
	Taking into consideration the development of the child abilities, in case of child-victims and having always the presence in the room of the legal guardian.

SOP 2 – M2 Intake and legal needs assessment

The intake procedure items may be different for a native citizen and for foreigners and can require more than one meeting. In the following table there are several Items with criteria that can be applied for the intake and legal needs assessment.

Intake and legal needs assessment	
Case File Data	
Item	Notes
1. Case file number	
2. Gender	
3. Date of Birth	
4. Nationality	
5. Country of residence	
6. Language	
7. Legal status	
8. Family status	
9. Type of exploitation	
10. Description of exploitation	
11. Description of possible risks (family situation, proximity with traffickers, etc.)	

12. Other additional aspects concerning rights and services.	
Legal Needs	
Item	Notes
1. Passport	
2. ID Card	
3. Residence permit	
4. Legal representation	
5. Other legal needs (e.g. family legal situation, etc.)	

The data should be compiled in accordance with the data protection policies in force at European and national level. The assisted person should always provide a prior consent and should be informed of the right to refuse to provide particular information or to withdraw her/his consent.

SOP 2 – M3 Legal assistance provision

It consists in supplying of the assistance services in order to meet the victims' legal needs that were previously identified.

The legal assistance contract should be concluded either directly between the lawyer and the victim, or between a lawyer and the NGO - if the lawyer is a collaborator of that entity.

During the provision of legal information, the case manager of the institution / NGO (service provider) should also be present alongside the lawyer. It is recommended to have the prior consent of the client.

At the end of the first legal assistance period, the victim should be able to decide if:

- she/he wants to go back to the country of origin or to stay in the country of destination.
- she/he wants to cooperate with the competent judicial authorities as part of the criminal trial and to claim financial compensation.

SOP 3 Long –term legal assistance

Measure (M)	Action	
1	Individual plan for long-term legal assistance	
2	Consent procedure	
3	Long-term legal assistance in	3.1. Investigation Phase
		3.2. Prosecution Phase
		3.3. Court Phase (criminal & civil procedures)

The length of a process may vary (one or more years). Therefore, the victim always needs long-term legal assistance.

The long-term legal assistance is to be provided to national and foreign victims of human trafficking who have agreed to accept the legal aid, to be involved in the legal procedures, to join a support programme in the destination or origin country.

SOP3 – M 1 Individual plan for long-term legal assistance

It consists in a clear and detailed description of all the identified needs, legal measures/steps to be performed by the lawyer. It is a tailor-made plan based on the specifics of each legal case.

The long-term legal assistance will take place either:

- after the return of the person in the country of origin.
- in the country of destination, if the person decided to stay there (after the reflection and recovery period).

The individual plan for long-term assistance should be drafted by the lawyer with the support of an interpreter (in case of foreign victim) and in collaboration with the case manager.

SOP 3 – M 2 Consent procedure

This measure determines whether the person understands and agrees / disagrees with the legal assistance offered and with the associated legal terms and conditions. The person should give her/his consent only after the service options have been clearly explained by the lawyer.

SOP 3 – M 3 Long – term assistance in investigation / prosecution / court phases

It is the delivery of professional legal support, by the lawyers:

- Preparing the victim to deal with interviews with law enforcement agencies.
- Preparing the victim for the court procedures where she/he will be injured party / witness.
- Assisting the victim in the trial as injured party / witness.
- Assisting the victim to claim financial compensation as part of the criminal trial or through a distinct action in front of a civil court.
- Assisting the victim to apply for temporary / long-term residence permit in front of the immigration authorities.
- Assisting the victim to apply for asylum.
- Give updated information of any legal procedure in place.
- Other legal issues which require legal assistance and/or legal representation.

Legal procedures and judiciary systems vary according to domestic law of the destination and origin countries. In any case, the lawyers involved should:

- Provide accurate legal information orally and in writing in a language that the victim understands.
- Be confidential and not use and/or transfer any information on the assisted person without her/his consent.

- Help to re-orient and assess the available legal options.
- Respect any legal decision taken by the victim on a fully informed basis.
- Make sure the victim has understood the legal procedures and the related legal consequences.
- In the case of a child-victims, provide legal information in a sensible manner and with a language appropriate to the developmental abilities of the child; and ensure the legal guardian is in the room.

Team meetings should be held to assess the legal situation of the assisted person and, in case of bottlenecks, to identify possible legal solutions. Team meeting case manager – lawyer – police officer and / or prosecutor.

Long – term legal assistance in investigation / prosecution / court phases	
Investigation and Prosecution Phases	Long –term assistance (in what it consists)
<p>It consists in the collection of evidences by police; prosecution’s accusations concerning the traffickers. Evidences might include testimony, documents, photos, videotapes etc.</p> <p>For a pro-active involvement of the victim in these phases, she/he should receive detailed explanation about each legal step. In practice, usually the information is delivered by the police officer and/or prosecutor. Victims should be prepared, in advance, by <i>lawyers</i> in collaboration with the case manager and / or the psychologist.</p> <p>The victim should be always accompanied by her/his lawyer at the police unit and /or at the prosecutor office.</p>	<p>Inform both orally and written in a language that the victim understands. Inform and legally assisted by the lawyer.</p> <ul style="list-style-type: none"> -what are the victims’ rights and responsibilities related to the evidence gathering (including medical and psychological certificates). -how it will be the interview at the police/prosecutor office. - legal consequences that may arise if the victim deliberately delivers false information. -rights and responsibilities if she/he decides to press charges against the trafficker(s) and to further cooperate with the judicial bodies. -what legal measures police and /or prosecutor can take to ensure the victim’s personal safety and of his/her family members. -confidentiality and the risk of information disclosure. -other legal issues that may arise during investigation/prosecution phases. <p><i>To the extent that multiple meetings with the police / prosecutor are required for several weeks and / or months - the victim should always be accompanied by her/his lawyer.</i></p>

Court Phase	Long –term assistance (in what it consists)
<p>Before the legal proceedings in court take place, the lawyer must always provide the victim with details of how things will take place in court, what are her/his rights and obligations, what can happen at each judgement term.</p>	<p>Information provided by the lawyer on:</p> <ul style="list-style-type: none"> -the victim’s right to attend hearings. -the victim’s right to adequate interpretation (foreign victim). -the victim’s right to present new evidence’s and to pose questions in court. -the victim’s right to a close-door trial. -the victim’s right to request compensation as part of the criminal trial or through a distinct action in front of a civil court (financial compensation from the offender or using special state-funded compensation schemes) <p>As result of the information provided the victim should be fully aware of the value of the testimony, of the different persons’ roles in the trial (injured party, civil party, defendant etc.)</p> <p><i>Although in practice situations are encountered when case managers, psychologists present such legal information, it is particularly important to underline that the person most able to provide comprehensive legal information is the victim’s lawyer.</i></p> <p>In front of the court, the lawyer must be able to provide adequate protection of the victim's rights and legal interests. The lawyer should always request the court to reject any questions that might be offensive and / or lead to the re-victimization of his/her client.</p>

Legal assistance provided by ex officio lawyers

As a component structure of each Bar, there should be a special department with responsibilities on legal assistance. In the database of such department should be registered annually all the *ex officio lawyers that want to assist victims of human trafficking*. The Bar should have a regulation stipulating that the distribution of files to assist victims of human trafficking should be given only to lawyers who have the necessary training in the field of criminal law and other relevant areas, who received a prior training to assist such victims.

The practice to be implemented (irrespective of the EU Member State) is that the victim of human trafficking to receive legal assistance from the same *ex officio lawyer* and not to allow the lawyer to change in relation to each stage of the trial (except for disciplinary deviations, if the lawyer does not provide the victim with an appropriate legal assistance, other situations of force majeure). The relationship between lawyer and client - the victim of human trafficking- is a complex one, must be based on good communication, trust and should evolve during the trial. The frequent change of *ex officio lawyer* can affect the quality of the professional relationship and the possibility of ensuring a proper protection of the victim's rights.

Judicial Authority – Bars – Ex officio lawyers

An initial assessment of the victim's legal needs should be carried out and after that, having the victim's consent, the legal service provider should be contacted (local Bar).

The judicial body (police, prosecutor, court) should always submit a written request to the Bar to appoint an *ex officio lawyer* to provide the mandatory free legal assistance to which the victim should always be entitled to. The legal assistance to which a victim of human trafficking is entitled should not be subjected to the requirement to submit documents to prove the limited financial resources that he or she might have.

Upon receipt of the written request from the judicial body, the specialized service / department of the Bar should contact the *ex officio lawyers* who have expertise in victims' assistance (should be avoided criteria such as: assignment of cases to lawyers who at that time earned lower income as *ex officio lawyers*, junior lawyers without sufficient expertise on human trafficking cases).

The appointed *ex officio lawyer* must confirm his/her availability to provide the legal aid. If he/she refuses, without raising objective reasons, he/she should no longer be assigned for cases as an *ex officio lawyer*.

The appointed *ex officio lawyer* should appear in due time in front of the judiciary authority and have sufficient time to discuss with the victim and to properly study the case, in confidentiality terms.

To the extent that the victim of human trafficking also needs extra-judicial assistance, the legislation and practice (regardless of the EU Member State) should allow the same *ex officio lawyer* who provides legal assistance to ensure also the extra-judicial assistance.

Non-governmental organizations – Bars – Ex officio lawyers

Links and referrals between NGOs that identify/assist victims and local bars should be encouraged as a multi-faced response in providing victims' support. A unique service provider cannot fulfill all the needs of the diverse types of victims of human trafficking. The NGO that is coming into contact with the victim should inform her/him about the possibility to receive legal aid from a specialized lawyer.

The referral for legal aid should be done by the NGO to a lawyer which is collaborating with the organization, or if there exist any cooperation agreements with local Bars, the NGO could facilitate the access to a lawyer by requesting legal aid from the Bar on behalf of the victim.

Cooperation is the key for ensuring a proper rights protection for victims of human trafficking, therefore cooperation agreements should be concluded between non-governmental organizations and Bars, containing clear provisions on how such organizations could request legal aid for the victims in order for the Bar to appoint ex officio lawyers.

It is necessary for the victim to receive correct information on the existing legal alternatives and on her/his rights. The victims should have access to a lawyer even before deciding if she/he would want to cooperate with the law enforcement authorities. This type of legal aid could be considered as part of the extra-judicial assistance if the victim is still not officially injured party in the trial. To receive comprehensive legal advice from an identification phase it would help the reluctant victims to understand why is important to be involved in the trial and finally to have an active contribution throughout the entire duration of the process.

Lawyers' involvement in cross-border cases

Legal cooperation in cross border cases should not include only the one that takes place in general between the judicial bodies. It should include also the cooperation of lawyers and the creation of networks that at least should be composed of lawyers collaborating with NGOs with attributions in the identification and assistance of victims. As cross-border cases require many times legal procedures in origin and destination countries, it would be recommended for the victim to benefit from free legal aid provided by lawyers from both countries, lawyers who should be periodically in contact on the legal steps to be performed during investigation-prosecution-court phases.

Chapter 4

Training lawyers to assist victims of human trafficking

Training to assist victims of human trafficking

Training is basic to guarantee the quality of lawyers' performance and the compliance with international standards. It also enables a good legal assistance for victims of human trafficking.

Training must be implemented in accordance with the international and European legislation. The principle of **due diligence** refers to these aspects and also includes the obligation to remove obstacles in the detection and assistance to victims of human trafficking. Both **actions and neglect** are responsibility of states. They must provide and implement effective and efficient measures to ensure a complete and accurate training of professionals.

Specialized training is a way of tackling human trafficking, to prevent it, to protect the victims and to prosecute the perpetrators. It is also a requirement of the international treaties.

Each EU Member State should decide on who, how and when to make these trainings. It could be performed by local, regional or state-level institutions. Also, by professional institutions such as local bars. It will depend on how functions are distributed in each country.

The need for specialized training of those professionals participating in the assistance of victims of human trafficking, - from a legal, social and/or psychological point of view- is a must. Training should include the systematization of experience from each services, together with the exchange of experience among entities.

Specific training for lawyers is a key issue as they participate during the whole process of assistance of victims of human trafficking. They participate in detection and protection measures, and, specially, in the cases when victims decide to initiate a criminal proceeding to prosecute the traffickers and seek compensation for the damages and for the violation of rights.

As a practice, a specific training curriculum should be considered - **a specific training curriculum for professionals working as lawyers assisting victims of human trafficking**²².

²² As example, Madrid Bar has such a training put in practice. Other Spanish Bars are also preparing specific training on human trafficking.

The Spanish Foundation for the Law Professional's approved a guide on the detection and protection of victims of human trafficking for sexual exploitation and another good practice is that of the Protocol of action for duty lawyers in charge of cases on trafficking for sexual exploitation.

Interdisciplinary training

Services for victims of human trafficking require a comprehensive and interdisciplinary approach involving legal, social and psychological support during the whole process.

The interdisciplinary approach is essential, since the phases prior to the identification as victim, during the long judicial process, and also afterwards.

Article 10 of the Council of Europe Convention on Action against Trafficking in Human Beings of May 16th 2005 sets up the obligation of the competent authorities to adopt the measures needed for the identification of victims of human trafficking. Article 2 of the Convention establishes a period of recovery and reflection that must be guaranteed. From a comprehensive approach, this period could not be assured without an assistance that cares not only for the legal situation of victims, but also for the social and psychological ones.

Social and psychological consequences that human trafficking could have on victims must be taken into account during the whole assistance process and with an individual approach that allows to understand the specific needs of each person.

The recognition of each victim's specific needs make the process of restorative justice easier. This process is a key to achieve victims 'complete recovery and should not be limited to a mere legal approach. Assistance should take care of each victim's welfare and guarantee the access to the resources available: health care, training and employment services, economic aids, etc.

In this sense, the legal framework provided by the Istanbul Convention²³ should also be remarked. It states the fact that there is no need for the victim to testify or cooperate on the criminal investigation to have access to her/his rights as a victim. It also sets the need of legal, social and psychological assistance according to each person needs and wishes.

It is an ***approach that puts people in the centre***. This is necessary to provide a comprehensive assistance and it is the reason why specific training of each professional intervening in the process is necessary, especially when vulnerability circumstances may arise²⁴.

A national and cross-border training program for lawyers

I. Human Rights approach and the gender perspective.

A training from a *human rights approach* puts the victim in the centre of the process and avoids to act from a paradigm that only takes into account the prosecution of the crime or the illegal immigration aspects. Human trafficking is a

²³ Council of Europe Convention on preventing and combating violence against women and domestic violence, <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210>

²⁴ This is also a recommendation included in the Brasilia Rules on the access to justice for vulnerable people. These rules were ratified in the 2008 Latin America Legal Summit and state that access to justice must take into account specific vulnerability circumstances.

violation of human rights such as dignity, equality, not to be subject of torture, punishment, humiliation or cruel treatment. That is the reason why the human rights approach should be the basis of any training.

The *gender perspective* should also be in the centre of the training and therefore of the assistance, both as a comprehensive aspect and also when providing assistance to each victim. The main reason is the fact that several human trafficking types are specially targeting women; figures show women are the main victims of sexual exploitation, forced marriage and certain varieties of human trafficking for labour exploitation - domestic service.

Another key element of the training would be that of *mechanisms and protocols to guarantee a consistent coordination and derivation at all levels*, - local, provincial, regional, national- and with all special entities - Law Enforcement Agents, Public Prosecutor, lawyers. Moreover, coherence and consistency implies the participation of specialized organizations. Therefore, participation of different speakers from different sectors who are assisting victims of human trafficking should be always considered.

The training should be addressed to all professionals working with people that suffered the violation of the fundamental rights mentioned. Even in the case of trainings for legal professionals, participation of professionals from other disciplines, such as social work or psychology should be included. In this way, training will have an interdisciplinary perspective. At the same time, this common training with different professionals will build a good bonding of trust and security with the victim/survivor, under the following clues:

- To get to know each women/men, beyond “the victim status”, to be able to provide a good assistance. In this way it will be possible to trace her/his life story and to establish an Individual Assistance Plan.
- To promote each women/man recovery process in all aspects and the accomplishment of future projects through the implementation of the Individual Assistance Plan, *bearing in mind the fact that the criminal proceeding is not the basic aim.*
- A good knowledge of each person’s life story, its fears and expectations to be able to have a good social assistance.
- To be able to identify possible physical and psychological symptoms derived from post-traumatic stress disorder and to respect each person’s recovery rhythm. As a matter of fact, the legal proceedings should be done according to the recovery rhythm and not the other way round.
- To assist respecting cultural differences and special features of each specific case.
- To help each person recovery of skills, promoting their resilience positively and providing the adequate tools and measures for it.
- Empowerment: women/men are the ones who will decide. This means that professionals should not decide for them.
- To assist victims in the preparation of the statement.
- To prepare social and psychological reports to support the Prosecutor’s Office.

II. International legal framework on Human Rights to guarantee due diligence.

Legal training should include an introduction on the Human Rights International Treaties, including, at least, the following legal texts:

- The Chart of the United Nations, 1945.
- International Charts of Human Rights, including: the Universal Declaration of Human Rights (1948), the International Pact on Civil and Political Rights and the International Pact on Economic, Economical and Cultural rights (1966), together with their protocols.
- International Conventions: Convention on the elimination of all forms of discrimination against women, (CEDAW 1979); Convention against torture and other cruel, inhumane or degrading treatments (1984); Convention on the Rights of the Child (1989); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

Specific training on the CEDAW (1979) and its recommendations would be also useful. Attention should be paid specially to the following recommendations:

- Number 24, related to the basic obligations of the Member States: protection implications.
- Number 33: on women's access to justice.
- Number 12, 19 and 35: on violence against women. Recommendation 35 is a recent one - 2017, and includes specific sections on victims of human trafficking.

III. European legal framework on human trafficking (Council of Europe and European Union): the rights of victims. No obligation to participate in the criminal proceedings in order to access rights.

As concerns legal standards of the Council of Europe, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence²⁵ (Istanbul 2011) should be tackled in detail, as well as relevant aspects of the Cybercrime Convention and the Convention against Sexual exploitation of Children.

It is also key to have a good knowledge on the European Union's law. For example, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims²⁶ is particularly relevant, as well as Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims.

These legal texts provide a framework on the assistance for victims of human trafficking - *a specialized and early assistance independent from the person will to testify or to cooperate in the criminal investigation.*

²⁵ Available at <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210>

²⁶ Available at <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32011L0036>

This norm also puts emphasis on the right to access safe and adequate housing, psychological assistance, medical treatment, information and advice, assistance in the criminal proceedings and access to employment advice and services. All of them should also be included in the training, so that lawyers will get to know all the services available.

Another key training section should be about the Directive 2012/29/EU , together with each Member State legal framework. This Directive demands that information and advice provided by the competent authorities to the victim must be comprehensible. It must be clear and easy to understand, using common words, but with the necessary detail and also respectful, so that the victim is able to take an informed decision. The Directive also states that assistance to the victim must be guaranteed through the whole process. Interpretation must be provided taking into account the knowledge the victim has on the language used to provide the information, his/her age, maturity, intellectual and emotional capacity, literacy and any mental or physical disability.

IV. National legal framework and constitutional protection.

A context on the country's human trafficking situation should be included in the training programme for lawyers. It will help to understand the complexity of the phenomenon and to get to know specific data and analyses produced by specialized entities or public authorities.

Getting to know the phases of a human trafficking process – recruitment, reception, exploitation, etc.-, the forms of exploitation and the detection indicators will allow lawyers to prepare an informed and accurate legal defence and will help them to gather proofs in a more efficient way.

A specific part related to work on stereotypes and on how to avoid secondary victimization is also recommended. CEDAW 35 Recommendation stresses the need to change social norms and stereotypes that support violence, in the context of a resurgence of narratives threatening the concept of gender equality in the name of culture, tradition or religion.

Psychological and health situations of victims should also be approached. Lawyers should understand the importance of getting to know each victim's life story, possible physical symptoms of trauma, cultural behaviour, etc. This approach would also help to build a good bonding with them and will have a positive impact in the case in which victims decide to testify as part of the criminal proceedings.

The constitutional framework on victims' protection and the representation should also be part of a training for lawyers.

V. Law enforcement agents, judges, lawyers

The training should include a section on the criminal proceedings on human trafficking in the country, including at least:

- 1) **Crimes types**, criminal aggravating and attenuating circumstances.
- 2) **Preventive measures** that could be requested, such as restraint orders, protection orders and other legal means that could be used in relation to compensations.

- 3) **Law enforcement bodies due diligence**, coordination between law enforcement agents and specialized legal entities; national and transnational legal measures for victims and against the perpetrators, etc. Legal professionals must be aware of security and coordination measures among countries and on how to work with them.
- 4) **Mechanisms and procedures for the identification of victims**. Each EU country has its own models for the identification of victims and therefore all options should be included. Relevance should be given to rights access even when the option chosen is not that of denouncing. Specialized lawyers must know all the legal options in order to provide the best advice to the victims and to avoid pressing victims to be involved in the trial, especially in the case that this decision could put other family members at risk.
- 5) **Criminal legal proceedings**. Topics such as proofs, witness protection options should be included in the training programme.
- 6) **Relevant Sentences** (national and European jurisprudence)
- 7) **Restorative justice**. Recovery is a key aspect of the assistance for victims. Lawyers must know how to request compensations, know about the services available (psychological, social, housing, services, economic aids), and other measures, including security measures to prevent re-trafficking.
- 8) **Participation in the victims 'criminal proceedings**. Legal professionals must have a detailed information on the transposition of the European Directives.

VI. Complementary law:

VI. 1. Access to residence permit and other rights

A training programme on immigration law and its relation with the legal situations faced by victims on human trafficking is a must. It will provide specific knowledge on residence and work permits for victims from other EU Member States and for victims from third-countries. It will also provide information on the legal framework concerning the victim's family members that depend on her/him, especially children.

This section should also include information on the reflection and recovery period and on the rights derived from this. In the case when there are specific ways of cancelling the return orders these issues must be duly studied.

Apart from learning about immigration law, there should also be a focus to train lawyers on the **Asylum law** and other legal aspects concerning migration. This section could be taught by NGOs, entities working with migrants and/or refugees, UNHCR.

Other contents that should be included in the training are those related to safe return of victims to their home countries when they do not want to remain in the destination country.

According to the training design and each country context, other related legal topics could be approached, for example, family rights for foreigners with children and also the rights of the child.

The knowledge of specific protocols, strategies and plans of action could also be interesting for lawyers. A training with public services is recommended. Mutual

coordination would be fruitful, both to avoid secondary victimization of victims and also to obtain evidences - e.g. psychological reports or social reports provided to lawyers by these services.

Training should include also aspects concerning the **deontological codes**. Lawyers should have a deep knowledge of these codes.

Trafficking of human beings is **a transnational phenomenon**. A **comprehensive** approach, - with professionals from different fields- and a **coordinated** approach – among services and among states- are vital. The efficient coordination between destination, transit and origin countries applies not only to law enforcement agents but also to the rest of legal professionals.

VI.2. Training on labour law

The importance and particularity of human trafficking for labor exploitation requires a specific training section. This part should include:

- 1) Basic information on international labor law, including International Labor Organization (ILO) recommendations. Other key notions to be mentioned: decent working conditions, ethical recruitment, limitations to labor rights when trade union rights are limited, the meaning of “exploitation”, and the 2030 Agenda for Sustainable Development, etc.
- 2) Information on international organizations ruling and protecting workers rights. Also, information on labor administrative institutions, labor information services and labor specific Courts. Details on the ways to collaborate with administrative institutions to access a residence permit, even when the victim is not a witness in a criminal proceeding.
- 3) Demand procedures on labor rights and mechanisms to prove situations that could entail exploitation. Also, procedures to prove any infringement of labor security norms and any attack on human dignity.
- 4) Guarantees on labor proceedings and coordination with Prosecutors Office department to also guarantee human rights protection, in this specific jurisdiction.
- 5) Compensations (economic) in the labor area related to the violation of workers’ rights, (apart from any criminal sentence on human trafficking grounds).

Such training should be delivered to professionals related to the labor field, such as civil servants, lawyers specialized in labor law, trade unions.

Chapter 5

Monitor and evaluation of the legal assistance

The importance of a Legal Assistance Monitoring and Evaluation Committee

Legal assistance to victims of human trafficking, is an extremely important element in their overall support and participation in the criminal proceedings against the perpetrators. Indeed, the 2012 Directive on the rights of victims²⁷ lists the information about where and how to receive legal aid among the primary information entitlements of victims from the first contact with a competent authority. Legal aid is also a specifically listed right in relation to victims' participation in criminal proceedings.

At the same time, victims of human trafficking present specific challenges. In view of their particularly vulnerable situation, both in terms of trauma, practical and financial situation, competent stakeholders and lawyers providing legal aid may find themselves lacking specialized skills and training to support this group. In addition, few authorities and service providers might have specialization in the highly complex international and domestic legal frameworks on human trafficking and the vast array of obligations states have towards its victims, in addition to the complex, often cross border nature of trafficking networks.

Thus, the creation of a specialized Legal Assistance Monitoring and Evaluation Committee in each country or entrusting another body of more general portfolio in legal aid or human trafficking with such functions would prove an indispensable tool for states to overcome the above mentioned and other difficulties:

- lacunae in the intersections of legislative frameworks on criminal justice, on legal aid, on victim support, on human trafficking and possibly on foreigners, as a number of trafficking victims may turn out to be third country nationals;
- lack of specialized training among authorities and legal aid providers, concerning victims of human trafficking;
- lack of common action and co-ordination between legal aid institutions and NGOs providing legal assistance to victims, as the latter are often at the forefront of legal support to such group;
- scarce monitoring of the quality of legal aid provided to victims of human trafficking and deciding on specific measures to improve it;
- lack of periodic evaluation of the quality of legal aid and gathering of uniform data on such legal aid; therefore inability to construct informed and effective policies on streamlining legal support efforts and ultimately providing more timely and adequate legal aid to victims of human trafficking.

²⁷ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

Structure of a Legal Assistance Monitoring and Evaluation Committee

For the creation of a Legal Assistance Monitoring and Evaluation Committee, or entrusting such functions to another body of more general portfolio, an argument can be made for a number of authorities and other entities to be represented:

- Firstly, those are the **authorities managing legal aid** in the respective country – legal aid bureaus, or boards, or councils, independent or with Ministries of Justice, or in various other institutional settings. The inclusion of such authorities in a body, monitoring and evaluating legal assistance to victims of trafficking, would be indispensable as they would be instrumental in implementing the policies and measures decided on to improve such legal aid. They would also be in best position to follow the development of the system of legal aid and the profiles of its beneficiaries and to point to areas in need of monitoring and evaluation. On the other hand, such authorities' managing bodies may also comprise different institutions with responsibilities in the area, thus ensuring even wider institutional engagement.²⁸
- Secondly, those are **the representatives of the local bars** – be it as governed by bar councils, or in their personal capacity as (potential) legal aid providers. Lawyers are key players in providing legal aid to those in need as they are (almost) the only ones having procedural capacity to represent parties during criminal and other proceedings. As such, they will have the best knowledge about what victims of trafficking actually need in terms of primary legal aid and procedural representation. In addition, they have a relationship of trust with their victim clients which is lacking in victims' encounters with authorities.
- Thirdly, **authorities in charge of criminal proceedings** (judiciary, investigative police, prosecution) should be duly represented on such a committee – they would be the ones most often appointing legal aid providers to those in need and would be very much aware of the strengths and weaknesses of such assistance during pre-trial and trial against traffickers, and respective needs;
- Next, **anti-trafficking agencies** would be indispensable to sit on such a body as they are the ones providing interinstitutional co-ordination in the multi-faceted response to human trafficking and uniting the efforts of criminal justice, legal aid and other support authorities. Due to the close links between

²⁸ By way of example, the *Scottish Legal Aid Board* is responsible for managing legal aid in Scotland and has 11-15 Board Members with backgrounds in business, the advice sector and the wider community as well as solicitors and advocates and a person with knowledge of court procedure and practice. The Board monitors the availability and accessibility of legal aid in Scotland and human trafficking is among the main areas of law covered. Please see more at <https://www.slab.org.uk/about-us/what-we-do/policyanddevelopmentoverview/Accessstolegalservicesreferencegroup/>.

human trafficking and gender based violence, representation could also be sought by **institutions dealing with gender based violence**.²⁹

- The participation of **asylum and migration authorities and service providing NGOs**³⁰ should be very much considered as victims of human trafficking are often of foreign origin and more and more links are established between migration flows and the trafficking networks;
- Last but not least, **representatives of NGOs** need to be included in such a body as their efforts are often primary in providing legal aid to a very specific group of beneficiaries with multiple vulnerabilities like victims of human trafficking. The relationship of trust victims have with lawyers is even deeper when it comes to NGOs in view of the widespread distrust victims have to institutions.

Based on the subordination chain it is put under, or on being a separate independent structure, the Committee may have various types of *structure and mechanisms for taking decisions*. Nevertheless, it is recommendable for it to be a *collective interinstitutional body*, taking decisions by *ordinary or qualified majority*. *Binding power* of its decisions for the authorities represented may be sought on *legislative level and/or by a joint memorandum/monitoring and evaluation mechanism*, signed/approved by the heads of the respective authorities sitting on the Committee.

In terms of regularity of its meetings, it may hold sessions *once or twice a year* as the diverse profile of its participants would practically preclude more frequent gatherings.

The Committee should also be supported by specially designated *permanent administration* or officers seconded from/combining functions in other authorities, as its functions will involve gathering and analyzing vast amounts of data and co-ordination and communication with a number of institutions and organizations.

Responsibilities of the Legal Assistance Monitoring and Evaluation Committee

A committee on legal assistance monitoring and evaluation will inevitably have a number of responsibilities, which can be divided into several different areas:

²⁹ *The Observatory against Domestic and Gender Violence in Spain* puts forward initiatives and measures within the justice system aimed at eradicating domestic and gender-based violence. Among its goals are studying and analyzing judicial decisions and proposals for the improvement and reform of legislation, statistical monitoring of the legal aid in connection with the justice system, providing specialized training to judges, public prosecutors and other personnel working within the justice system. Please see more at: <http://www.poderjudicial.es/cgpj/en/Subjects/Domestic-and-gender-violence/Spanish-Observatory-on-Domestic-Violence/>

³⁰ By way of example from the asylum and migration area, often very closely related to human trafficking, the ECRE (European Council for Refugees and Exiles) is a European network of 95 NGOs in 40 European countries. It prepares papers including recommendations, provides written analysis on legal aid, and represents the refugee protection sector in policy processes and policy debates. ECRE did a large survey on legal aid for asylum seekers in Europe in 2010. Please see more at: https://www.ecre.org/wp-content/uploads/2016/07/ECRE-ELENA-Survey-on-Legal-Aid-for-Asylum-Seekers-in-Europe_October-2010.pdf; <https://www.ecre.org/our-work/>

- Firstly, it will play a vital role in *coordinating services* with competencies in providing legal aid – it will be, for example, the forum where all legal support NGOs, implementing various projects, will be able to co-ordinate with legal aid management bodies the division of labor in supporting victims of human trafficking, i.e. who will be supporting who in which cases. Where on the other hand, within the framework of the committee judicial and other relevant authorities will be able to design together referral mechanisms for victims in need of legal aid.
- Secondly, it will have significant responsibilities in training NGO and state-paid lawyers who are providing legal services to victims of human trafficking, as well as training other judicial authorities coming in contact with victims about the specificities of their situation and legal needs;
- Statistics will be the third priority area of the Committee: it is bound to gather both statistics from relevant authorities on the practical implementation of legal aid to victims (how many victims, how many hours of legal aid, per how many cases, at which procedural stage, and other indicators) and on the client satisfaction with legal services provided. The tools for client satisfaction surveying can also be developed under the auspices of the Committee as part of its statistical and coordinating functions.
- Monitoring will play a substantial part of the work of the Committee – it will use statistics gathered to make some conclusions but also, where possible, proactive methods like monitoring and site visits, trial monitoring, etc.
- In terms of reporting, it is recommendable for the Committee to issue an annual report, with possible subsequent submission to the respective state's Council of Ministers/Ministry of Justice, where quantitative data and qualitative findings and recommendations from the Committee's yearly work will be summarized³¹

In terms of *indicators and processes* to describe, enhance and evaluate legal aid to victims of human trafficking, examples could be sought in the work of specialized legal aid boards, anti-trafficking agencies and other entities involved in the national anti-trafficking or legal support mechanisms. Data could be analyzed on **trends in legal assistance and supply**, supplementing this with other sources of data about legal services. This could be done by **seeking the views of stakeholders**, including service providers and users, on topics:

- anticipated to be at the potentially highest risk of problems; and/or
- those in which legal aid plays a substantial role; and/or

³¹ See, for example, the work of Myria (the Belgian Federal Migration Centre) is an independent public body, which, among others, is involved in combating human smuggling and trafficking as independent component of the mechanism of the National Rapporteur on Human Trafficking Myria draws up an independent public evaluation report describing the developments and results of legal support in the fight against international trade in human beings. It analyses progress and developments in the fight against human trafficking and smuggling. It is sent to the government and to parliament. Please see more at <http://www.myria.be/en/test>

- directly relevant to the broader policy issues of the day, so as to maximize the relevance of monitoring work to a range of stakeholders.³²

Other anti-trafficking agencies have **monitoring and assessment systems** which enable them to monitor the legal assistance provided to victims, understand the size and dynamics of the trafficking in persons phenomenon, monitor victims of trafficking in human beings during the assistance process or, according to the case at hand, the criminal trial.³³ Trainings for lawyers and authorities could also be organized to streamline legal service provision.³⁴

In addition, a lot of expertise has been accumulated in *evaluating legal aid to asylum seekers* in view of the complex migrant situation of recent years. Some of the indicators used which can be adapted to the victims' context are:

- the position of legal aid for such persons within the general legal aid regime;
- legal aid providers and in particular the respective roles of lawyers and legal advisors;
- access to legal aid;
- the availability and the role of legal aid during the procedure;
- the challenges concerning the provision of legal aid in specific procedures and legal aid specifically for unaccompanied children;
- complaint procedures and other methods to monitor the quality of legal aid provided;³⁵

The experience of UNHCR could also be analyzed. It has looked at effective access to legal information and assistance as prescribed by international and regional standards in order to make an evaluation and has analyzed first instance decisions to identify and address shortcomings.³⁶

Among the other law and policy aspects to be constantly monitored are current and proposed legislation in the area of human trafficking and legal aid, and state and project-based budgetary allocations to legal aid operations.³⁷

³² Example taken from the work of the Scottish Legal Aid Board. Available at: <https://www.slab.org.uk/about-us/what-we-do/policyanddevelopmentoverview/Accessstolegalservicesreferencegroup/>

³³ Example taken from the work of the National Agency against Trafficking in Persons in Romania. Please see more at <http://www.anitp.mai.gov.ro/>

³⁴ Example taken from the work of the National Commission for Combatting Trafficking in Human Beings in Bulgaria, Please see more at <http://antitrafficking.government.bg/en/#>

³⁵ Developed by ECRE, please see more at https://www.ecre.org/wp-content/uploads/2016/07/ECRE-ELENA-Survey-on-Legal-Aid-for-Asylum-Seekers-in-Europe_October-2010.pdf; <https://www.ecre.org/our-work/>

³⁶ Project in partnership with the EHRC (Estonian Human Rights Center) "Monitoring of quality of status determination procedures and access to the state legal aid in the Republic of Estonia". Please see more at <https://humanrights.ee/en/activities/varjupaigamenetluse-monitooring/>

³⁷ An example is the Law and Justice Foundation (New South Wales) established in 1967 is an independent body to improve access to justice in NSW, particularly for socially and economically disadvantaged people. Items analyzed by the Law and Justice Foundation are:

Transnational cooperation among Legal Assistance Monitoring and Evaluation Committees

Once created, or entrusted as functions to other entities, legal assistance monitoring and evaluation committees throughout EU Member States are bound to get into co-operation due to the cross-border nature of the phenomenon of human trafficking.

In this respect, several avenues of cooperation could be sought:

Firstly, committees should designate **contact points** via which other Member States' officials can quickly and easily contact their respective counterparts and react promptly and efficiently on a concrete case.

Secondly, Committee chairs and experts should use existing judicial and lawyers' cooperation mechanisms to form a **network** of monitoring and evaluation committees under the auspices of which country data and recommendations can be exchanged and common strategies can be built on how to better respond to needs of trafficking victims.

Thirdly, common transnational **trainings** should be organized by monitoring and evaluation committees and/or their network(s) for legal aid providers and responsible authorities so that professionals be 'on the same page' about what the current requirements towards them are.

The way forward - recommendations

In order to streamline the system of monitoring and evaluation of legal aid provided to victims of human trafficking, and victims of crime in general, Member States can be given the following recommendations:

On a **legislative level**, monitoring and evaluation of legal aid to victims should be included as a primary task both for legal aid and anti-trafficking (inter-institutional) managing bodies. Such task should be put in both primary and secondary legislation, the latter including regulations, as well as (inter-institutional) referral mechanisms.

-
- the number of successful legal aid service outcomes delivered by legal aid commissions
 - the number of early intervention services delivered by legal aid commissions
 - the total number of services delivered by legal aid commissions
 - the development and implementation of an information and referral strategy that ensures comprehensive access to information and seamless referral for preventative and early intervention services.

Please see more at: <http://www.lawfoundation.net.au/about#goals>

[http://www.lawfoundation.net.au/ljf/site/articleIDs/18C587ECBD959D50CA257D9D00021AAF/\\$file/JI_16_Effectiveness_paper_FINAL.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/18C587ECBD959D50CA257D9D00021AAF/$file/JI_16_Effectiveness_paper_FINAL.pdf)

On a **policy level**, institutional engagement with periodically evaluating legal aid should be strengthened by emphasizing this component in relevant strategy documents and action plans. The engagement should be reiterated during policy fora and consultations.

On a **practical level**, formal and informal links between anti-trafficking and legal aid agencies, as well as service providing NGOs should be strengthened to give potential working basis for creation of a Legal Assistance Monitoring and Evaluation Committee. The potential of (EU funded) projects and other initiatives should be duly used.

Chapter 6

Anti-trafficking stakeholders in Romania, Belgium, Bulgaria, Spain, Sweden

Institutions and non-governmental organizations with attributions in fighting against human trafficking, assistance for victims, justice system.

ROMANIA

- National Agency against Trafficking in Persons <http://www.anitp.mai.gov.ro/>
- Directorate for Investigating Organized Crime and Terrorism <http://www.diicot.ro/>
- Romanian Courts <http://portal.just.ro/SitePages/acasa.aspx>
- Association Pro Refugiu <http://prorefugiu.org/home/>
- Foundation People to People <http://www.people2people.ro/>
- Association Betania <https://www.asociatiabetania.ro/ro/>
- Association Generatie Tanara <http://www.generatietanara.ro/>
- Association AIDROM <http://aidrom.ro/english/>

BELGIUM

- PAG-ASA vzw <http://www.pag-asa.be/content.aspx?l=007&lang=EN>
- PAYOKE vzw <http://www.payoke.be/>
- SŪRYA asbl <http://www.asblsurya.org/>
- Minor-Ndako <https://minor-ndako.be/>
- Espéranto www.esperantomena.org
- Legal Aid Offices <https://avocats.be/fr/bureaux-daide-juridique-baj>
<https://www.advocaat.be/Een-advocaat-raadplegen/Wat-kost-een-advocaat/Pro-Deo>
- Caritas International Belgium <https://www.caritasinternational.be/en/>

BULGARIA

- National Commission for Combatting Trafficking in Human Beings www.antitraffic.government.bg
- National Legal Aid Bureau www.nbpp.government.bg
- National Council for Assistance and Compensation to Crime Victims www.compensation.bg
- Animus Association Foundation www.animusassociation.org
- Alliance for Protection Against Gender-Based Violence with 10 member organizations throughout the country www.alliancedv.org

SPAIN

- Concepción Arenal Centre for Victims of Sexual Exploitation (Madrid City Council)
- TRABE Association <http://www.trabe.org.es/trabe/>

- Association for the Prevention, Reintegration and Care of Prostituted Women (APRAMP) <https://apramp.org/>
- MZC. Mujeres en Zona de Conflicto <http://www.mzc.es/>
- Women's Link Worldwide <http://www.womenslinkworldwide.org/>
- Médicos del Mundo <https://www.medicosdelmundo.org/>
- Villa Teresita-Auxiliares del Buen Pastor <http://www.villateresita.org/>
- Adoratrices Esclavas del Santísimo Sacramento y de la Caridad /Project HOPE <http://www.proyectoesperanza.org/>
- Fundación Cruz Blanca <http://www.fundacioncruzblanca.org/fundacion-cruzblanca>
- ACCEM <https://www.accem.es/>
- Red española contra la trata <http://redcontralatrata.org/>

SWEDEN

- NMT: www.nmtsverige.se
- Justice Department www.regeringen.se/sveriges-regering/justitiedepartementet/
- Swedish Crime Victim Compensation and Support Authority <https://www.brottsoffermyndigheten.se/eng>
- Swedish Gender Equality Agency //
- //Jämställdhetsmyndigheten www.jamstalldhetsmyndigheten.se
- County Administrative Board: www.lansstyrelsen.se
- Swedish Courts <http://www.domstol.se/>
- Police Authority <https://polisen.se/>
- Swedish Prosecution Authority <https://polisen.se/>
- Mika Reception Centre Stockholm / Malmö / Gothenburg: Mikamottagningen: www.stockholm.se
- Migration Agency: www.migrationsverket.se
- Safehouse for Children <https://polisen.se/Om-polisen/Olika-typer-av-brott/Brott-mot-barn/Barnahus/>
- Unga Kvinnors Värn: ukv.se
- Unizon: www.unizon.se
- Talita – shelter for victims of human trafficking: www.talita.se
- Frälsningsarmén / Salvation Army – shelter for victims of human trafficking: fralsningsarmen.se
- Advokatbyrå Elisabeth Fritz: www.advokatfritz.com
- Asylbyrå: asylbyran.se
- Scandinavian Human Rights Lawyers <http://humanrightslawyers.eu/>
- Noomi | Hela Människan i Malmö <http://www.noomimalmo.se/>
- Swedish Platform Civil Society Against Human Trafficking <https://manniskohandel.se/>