

G R E T A

Group of Experts on Action
against Trafficking in Human Beings

COUNCIL OF EUROPE



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Third party intervention

**by the Group of Experts on Action against Trafficking
in Human Beings (GRETA)**

pursuant to Rule 44 § 3(a) of the Rules of Court

**concerning application No. 18269/18
W. v. Bulgaria**

Introduction

1. On 23 May 2021, the Vice-President of the Fourth Section of the European Court of Human Rights (hereafter: "the Court") invited, under Article 36 § 2 of the Convention and Rule 44 § 3 (a) of the Rules of Court, the Group of Experts on Action against Trafficking in Human Beings (GRETA) to intervene as a third party in the case *W. v. Bulgaria* (application no. 18269/18) and make written submissions on: "(a) whether the laws of the member States of the Council of Europe enable the victims of human trafficking to obtain from their traffickers compensation for loss of earnings, and, more specifically, (b) whether those laws enable former prostitutes to obtain from their former pimps compensation for prostitution earnings which the pimps have withheld from them".

2. GRETA has addressed the right of victims of human trafficking to compensation from the perpetrators extensively in the framework of both its country monitoring and general (annual) reports, and has issued a number of relevant recommendations to States Parties to the Council of Europe Convention on Actions against Trafficking in Human Beings (hereafter: "Anti-Trafficking Convention").¹

3. In this context, GRETA has emphasised that:

Compensation fulfils multiple purposes: payment of reparation for injury, loss or harm caused by the offender, access to justice, empowerment of victims, as well as being seen as a form of punishment and deterrence of traffickers. As such, compensation plays a crucial role in the fight against human trafficking, not only as an instrument of restorative justice, but also by way of prevention and recognition by States of their failure to meet their human rights obligations.²

Trafficking victims' right to compensation, including for loss of earnings

4. The obligation for States to enable victims of human trafficking to obtain compensation from their traffickers is enshrined in international law.

5. Article 15(3) of the Anti-Trafficking Convention states that "[e]ach Party shall provide, in its internal law, for the right of victims to compensation from the perpetrators." The Explanatory Report to the Anti-Trafficking Convention specifies that "compensation is pecuniary and covers both material injury (such as the cost of medical treatment) and non-material damage (the suffering experienced)."³

6. Further, Article 6 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (hereinafter: "the Palermo Protocol") states that "[e]ach State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered."

¹ All GRETA reports are available at: <https://www.coe.int/en/web/anti-human-trafficking/country-monitoring-work>

² See, for example, GRETA's 3rd report on Montenegro, paragraph 64; GRETA's 3rd report on Romania, paragraph 70.

³ Explanatory report, paragraph 197.

7. Moreover, Article 4(1) of the 2014 Protocol to the 1930 ILO Forced Labour Convention states that "[e]ach Member shall ensure that all victims of forced or compulsory labour, irrespective of their presence or legal status in the national territory, have access to appropriate and effective remedies, such as compensation."⁴ ILO Recommendation No. 203, accompanying the 2014 Protocol, specifies that the compensation from the perpetrators should cover "personal and material damages, including (...) unpaid wages and statutory contributions for social security benefits" (§ 12).⁵

8. According to the UNODC Model Law against Trafficking in Persons, "[a]n order for compensation may include payment for or towards: (...) (d) lost income and due wages according to national law and regulations regarding wages (...) (g) any other costs or losses incurred by the victim as a direct result of being trafficked and reasonably assessed by the court."⁶

9. The 2014 UN Basic Principles on the right to an effective remedy for victims of trafficking in persons⁷ emphasise that:

(§5) The right to an effective remedy encompasses both the substantive right to remedies and the procedural rights necessary to secure access to them. The right to an effective remedy reflects a victim-centred and human rights-based approach that empowers victims of trafficking in persons and respects fully their human rights.

The Basic Principles further specify that compensation includes "(§11(d)) Payment for material damages and loss of earnings, including loss of earning potential, lost income and due wages according to national law and regulations regarding wages."

10. Beyond the right to compensation from the perpetrator, Article 15(4) of the Anti-Trafficking Convention requires States Parties to guarantee compensation for trafficking victims. The means of guaranteeing compensation are left to the States Parties, but the Explanatory Report to the Anti-Trafficking Convention refers to existing EU and Council of Europe compensation schemes, including the European Convention on the Compensation of Victims of Violent Crimes, which applies to victims of "intentional crimes of violence, who have suffered bodily injury or impairment of health."⁸

11. Furthermore, Article 4 of the European Convention on the Compensation of Victims of Violent Crimes stipulates that "[c]ompensation shall cover (...) at least the following items: loss of earnings (...)."

⁴ See also Article 6(2) of the EU Employers' Sanctions Directive 2009/52/EC.

⁵ [Recommendation R203 - Forced Labour \(Supplementary Measures\) Recommendation, 2014 \(No. 203\) \(ilo.org\)](#)

⁶ UNODC, Model Law against Trafficking in Persons, Article 28.

⁷ [A/69/269 - E - A/69/269 -Desktop \(undocs.org\)](#)

⁸ Explanatory report, paragraphs 198 and 199.

States' implementation of trafficking victims' right to compensation from the perpetrators

12. Victims of human trafficking are entitled to claim compensation from the perpetrators in civil proceedings in all States Parties to the Anti-Trafficking Convention. In most States Parties victims' claims may include compensation for loss of earnings in accordance with States' general principles of tort law. In all but one State Party (Georgia),⁹ victims can also obtain compensation in the course of the criminal proceedings against their traffickers. In addition, certain categories of trafficking victims can obtain compensation for certain types of material and/or immaterial damages through other mechanisms. In particular, in a number of States Parties victims of forced labour can pursue a compensation claim for unpaid wages before an employment tribunal or other state body.¹⁰

13. In its 9th General Report, published in April 2020, GRETA noted that there are a number of obstacles preventing victims of trafficking from obtaining compensation from the perpetrators, and only a few countries have reported successful compensation claims.¹¹ In practice, victims of human trafficking rarely file a claim for compensation and in the even rarer cases in which compensation is granted, the rulings awarding compensation often remain unenforceable because nothing can be seized from the perpetrators.

14. Compensation of victims of human trafficking forms part of the thematic focus of the ongoing third evaluation round of the Anti-Trafficking Convention ("Access to justice and effective remedies for victims of human trafficking"). So far GRETA has published third-round reports on 11 States (Albania, Austria, Bulgaria, Croatia, Cyprus, Denmark, Georgia, Republic of Moldova, Montenegro, Romania and Slovak Republic) which provide detailed information, including examples of case-law, related to compensation of victims of trafficking. Domestic legislation in these 11 countries provides different options for trafficking victims to claim compensation from their traffickers, including for loss of earnings.

15. In September 2020 GRETA published a Compendium of good practices in addressing trafficking in human beings for the purpose of labour exploitation, which provides information from different countries on compensation awarded to victims, including for loss of earnings.¹²

16. In addition to the case-law referred to in the Compendium and the 11 third-round country reports which have been published so far, GRETA refers to the following cases:

- On 8 September 2020 the Paris Court of Appeal awarded 280,000 euros compensation for economic loss to a victim who was trafficked to France at the age of 12 and was illegally employed as a domestic worker without receiving salary during seven years;¹³
- In Serbia, in 2018 a first-instance criminal court decided partially on the compensation claim of a victim of the criminal offence of facilitation of prostitution, and ordered that 15,000 RSD be paid for "the fees she had earned as a waitress and the defendant had not paid", while the victim was referred to the civil suit for the rest of the compensation claim.¹⁴

⁹ GRETA's 3rd report on Georgia, paragraph 55.

¹⁰ See, for example, GRETA's 3rd report on Austria, paragraph 87; GRETA's 3rd report on Bulgaria, paragraph 100; GRETA's 3rd report on Cyprus, paragraph 60; GRETA's 3rd report on Romania, paragraph 81; GRETA's 3rd report on Slovakia, paragraph 82.

¹¹ 9th General Report on GRETA's activities (2020), paragraph 167.

¹² Pages 39 to 41, available at < <https://rm.coe.int/mpendium-of-good-practices-in-addressing-trafficking-in-human-beings-f/16809f9bef> > Additional examples from Belgium and the Netherlands can be found in International Labour Organisation, Access to protection and remedy for victims of human trafficking for the purpose of labour exploitation in Belgium and the Netherlands, 2021, available from < [ILO report: Access to protection and remedy for victims of human trafficking for the purpose of labour exploitation in Belgium and the Netherlands](#) >

¹³ Paris Court of Appeal, 8 September 2020, judgment no. 35L7-B7D-CAAPB.

¹⁴ NGO ASTRA, *Human trafficking victims in court proceedings: analysis of case law for 2018*, page 20.

17. GRETA also refers to *Hounga (Appellant) v Allen and another (Respondent)*, issued by the Supreme Court of the United Kingdom on 30 July 2014.¹⁵ Prior to this judgment irregular migrant workers were unable to obtain compensation for unpaid wages under employment law due to the “doctrine of illegality”, because of their irregular immigration status. Reversing the decision of the Court of Appeal, the Supreme Court held in the case in question that to uphold the defence of illegality ran strikingly counter to the prominent strain of current public policy against trafficking and in favour of protecting its victims.¹⁶ GRETA welcomed this judgment as “a significant one in advancing the human rights of trafficked persons.”¹⁷

Compensation for earnings resulting from exploitation in prostitution

18. In reply to the Court’s second question, GRETA’s monitoring of the implementation of the Anti-Trafficking Convention shows that, based on the information made available to GRETA so far, only two State Parties (Bulgaria and Malta) do not allow victims of trafficking for the purpose of sexual exploitation to claim compensation from the perpetrators for earnings resulting from exploitation in prostitution.

19. In Bulgaria, victims of trafficking for the purpose of sexual exploitation have no legal ground to claim compensation for withheld earnings because prostitution is considered to bring “immoral earnings”, which are criminalised under Article 329, paragraph 1, of the Bulgarian Criminal Code.¹⁸ In Malta, victims of trafficking for the purpose of sexual exploitation cannot claim compensation for withheld earnings because prostitution is not considered to constitute employment.¹⁹ At the same time, both countries allow victims of trafficking for labour exploitation to claim unpaid earnings, even if the victims were not legally allowed to work.²⁰

20. In contrast, GRETA has found that in at least five countries (Austria, Belgium, Germany, the Netherlands and Norway) domestic courts have repeatedly granted compensation for withheld earnings for victims of trafficking exploited in prostitution. By way of example, reference is made to the following cases:

- **Austria:** loss of earnings from exploitation in prostitution was included in the lumpsum compensation awarded to trafficking victims in several judgments by the Vienna Regional Court for Criminal Matters;²¹
- **Belgium:** several Nigerian victims of human trafficking were awarded compensation for damages, including unpaid earnings from exploitation in prostitution. The victims had joined the criminal proceedings against their exploiters (Antwerp Criminal Tribunal, 20 November 2019;²² Antwerp Criminal Tribunal, 14 November 2018²³ and upheld by Antwerp Court of Appeal on 3 October 2019;²⁴ Antwerp Criminal Tribunal, 7 November 2018;²⁵ Antwerp Criminal Tribunal, 14 August 2018;²⁶ Brugge Criminal Tribunal, 20 September 2017²⁷ and upheld by Gent Court of Appeal on 1 June 2018);²⁸

¹⁵ [Hounga v Allen & Anor \[2014\] UKSC 47 \(30 July 2014\) \(bailii.org\)](#)

¹⁶ *Ibid.*, paragraph 52.

¹⁷ [7th General Report on GRETA’s activities \(2018\)](#), paragraph 187.

¹⁸ GRETA’s 3rd report on Bulgaria, paragraph 90.

¹⁹ GRETA’s 2nd report on Malta, paragraph 123.

²⁰ GRETA’s 2nd report on Malta, paragraph 119; GRETA’s 3rd report on Bulgaria, paragraph 100.

²¹ GRETA’s 3rd report on Austria, paragraphs 119 and 126; see also J. Planitzer & E. Probst, *Entschädigung für Betroffene des Menschenhandels. Rechtliche Verpflichtungen und Ihre Umsetzung in der Praxis*, Zeitschrift für Polizeiwissenschaft und polizeiliche Praxis (4/2019), pages 16-28.

²² [Tribunal correctionnel d’Anvers, 20 novembre 2019 | Myria](#)

²³ [Tribunal correctionnel d’Anvers, 14 novembre 2018 | Myria](#)

²⁴ [Cour d’appel d’Anvers, 3 octobre 2019 | Myria](#)

²⁵ [Tribunal correctionnel d’Anvers, 7 novembre 2018 | Myria](#)

²⁶ [Tribunal correctionnel d’Anvers, 14 août 2018 | Myria](#)

²⁷ [Tribunal correctionnel de Bruges, 20 septembre 2017 | Myria](#)

²⁸ [Cour d’appel de Gand, 1er juin 2018 | Myria](#)

- **Germany:** Cologne Regional Court, 30 April 2014,²⁹ awarding, *inter alia*, 750 euro in compensation for withheld earnings from exploitation in prostitution;³⁰
- **Netherlands:** Amsterdam Court, 8 October 2020, awarding two victims material damages totalling 427,815 euro for unpaid earnings from up to seven years of exploitation in prostitution;³¹ Amsterdam Court, 2 April 2020, awarding a victim material damages of 111,000 euro for unpaid earnings from two years of exploitation in prostitution;³² Court of North Holland, 13 January 2020, awarding a victim material damages of 295,480 euro for unpaid earnings from six and a half years of exploitation in prostitution.³³ In these judgments the calculation of the victims' loss of earnings was based on information collected during the police investigation about the hourly rates charged to the victims' clients, as well as the average number of working days per week and year.

21. GRETA also refers to relevant case-law from **Norway**. In 2016 the Norwegian Supreme Court, in an unanimous judgment, ruled that the perpetrators had to return the earnings (approximately 100,000 euro) they had taken from three victims of human trafficking for the purpose of sexual exploitation, even though the compensation claim derived from prostitution which the court found "an undesirable activity harmful to society".³⁴ The Supreme Court motivated its conclusion by referring to the relevant provisions of the Palermo Protocol and the Anti-Trafficking Convention which require States Parties to provide effective protection to the victims of human trafficking against financial losses. The Supreme Court stated that it would be unreasonable and contrary to the desire to effectively protect the victims if the latter were barred from claiming earned income back from their exploiters.³⁵

Conclusion

22. In conclusion, GRETA reiterates that the right of victims of human trafficking to compensation from their traffickers is firmly established in international law. Although in theory nearly all State Parties to the Anti-Trafficking Convention allow victims to claim compensation from their traffickers, GRETA has frequently identified practical obstacles preventing victims from obtaining compensation from the perpetrators, including compensation for loss of earnings. Nevertheless, GRETA is encouraged by the growing number of court decisions from an increasing number of States Parties to the Anti-Trafficking Convention awarding victims of human trafficking compensation from their traffickers, including compensation for loss of earnings.

23. Based on the information available to GRETA, there are currently only two States Parties (Bulgaria and Malta) that do not allow victims of human trafficking to claim compensation for unpaid earnings resulting from exploitation in prostitution. On the other hand, the courts of at least five States Parties have explicitly awarded compensation claims for loss of earnings resulting from exploitation in prostitution. In GRETA's view, to deny victims of sexual exploitation compensation from their traffickers for loss of earnings because prostitution is considered illegal, immoral or undesirable, would run contrary to the object and purpose of the international instruments created to provide effective protection to victims of all forms of human trafficking, in particular Article 15 of the Anti-Trafficking Convention. In determining the question of compensation for loss of earnings, the crucial issue is not whether prostitution is (il-)legal or constitutes

²⁹ [LG Köln 30.10.2014: Aktenzeichen 102 Kls 16/14 - KOK - Bundesweiter Koordinierungskreis gegen Menschenhandel \(kok-gegen-menschenhandel.de\)](#)

³⁰ Additional examples can be found in GRETA's 2nd report on Germany, paragraphs 202-204.

³¹ [ECLI:NL:RBAMS:2020:4875, Rechtbank Amsterdam, 13/728190-15 \(zaak A\) en 13/730065-17 \(zaak B\) \(ter terechtzitting gevoegd\) \(rechtspraak.nl\)](#)

³² [ECLI:NL:RBAMS:2020:2080, Rechtbank Amsterdam, 13/731022-17 \(Promis\) \(rechtspraak.nl\)](#)

³³ [ECLI:NL:RBNNE:2020:99, Rechtbank Noord-Nederland, 18/850076-18 \(rechtspraak.nl\)](#)

³⁴ Judgment of 8 December 2016, HR-2016-2491-A, available from < [Straffutmåling og sivile krav ved domfellelse for menneskehandel til prostitusjon | Norges Domstoler](#) > (in Norwegian)

³⁵ Ibid., paragraph 90-92; see also Norwegian government's reply to GRETA's 3rd questionnaire, pages 5-6, available at < <https://rm.coe.int/greta-2018-26-nor-rep-en/1680a10811> >

an undesirable activity harmful to society, but what option would provide better and more effective protection to victims of human trafficking in line with the object and purpose of the Anti-Trafficking Convention.

24. GRETA respectfully requests the Court to take these observations into account in its deliberations.