



Religious in Europe Networking
Against Trafficking and Exploitation



Bakhita Centre for Research on
Slavery, Exploitation and Abuse
Applied Research, Education and Training

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Founded and based in Den Bosch,
The Netherlands
Chamber of Commerce Number 17271216

ISBN 978-9928-07-730-1



9 789928 077301

Legal Assistance for Victims of Trafficking Across Europe

With Special Reference to six European Countries

Not for sale



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GEER, June 2021

CIP Katalogimi në botim BK Tiranë

RENATE

Legal assistance for victims of trafficking across Europe :
with special reference to six European countries / Religious
in Europe Networking Against Trafficking and Exploitation.

- Tiranë : Geer, 2021

96 f. ; 23.5 cm.

Bibliogr.

ISBN 978-9928-07-730-1

1.E drejta penale 2.Trafikimi i qënieve njerëzore
3.Viktima 4.Legjislacioni 5.Studime krahasuese
6.Evropë

343.54(4)

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Background to the Research

‘Religious in Europe Networking Against Trafficking and Exploitation’ (RENATE) has reinvented the Foundation over the last recent years to direct its energy towards the mission of the foundation and away from the focus of maintenance. The mission is to rid the world from the heinous crime of human trafficking by 2030. This has led to 9 new mission task groups emerging as tools for implementing the call to combat Human Trafficking. One of these newly developing task groups is focused on law and law enforcement. The victims and survivors of trafficking have little protection according to the law in nearly all European countries nor are lawyers trained in human rights law or as trauma informed. Victims and survivors are being hugely neglected.

In this research, RENATE wished to highlight not only the lack of legal aid services but the poverty of these services which neglect the dignity and human rights of the victims and survivors. There are ten dynamic and very active RENATE members leading this law task group which functions as a self-managing team. These members are all human rights and trauma informed according to the law. They are aware of the lack of the survivor and victims voice and protection in the law across Europe. Consequent to their great work, the need for research has emerged and particularly in the issues arising from the lack of legal aid services for victims and survivors of human trafficking in Europe and as a response to the voice of the same victims and survivors who have spoken of this essential need for justice. Indeed, this gap in the law also includes the lack of implementation of law even if these services are meant to be available. Another issue concerning this group is the massive gap between those victims and survivors who can access the law and those who cannot access it for many complex reasons. This includes the fact that law enforcement is weak in many countries of Europe.

To implement this research RENATE contacted Bakhita Centre, at St. Mary's University, Twickenham, UK, which focuses on the work of research to combat human trafficking, and invited them to conduct this initial pilot mini research. The hope is that the outcome would trigger the group to discern the next steps for a further research, at a deeper level, on this topic. Reading through this research: 'Legal Aid Support for Victims of Trafficking Across Europe', and noting its focus in Albania, Bulgaria, Germany, Romania, Spain and the UK, the researchers have to be congratulated for presenting such a clear analysis of legal aid provision in these six countries. The report highlights so clearly the many issues arising, and which have led to vulnerable people being made more vulnerable and the crime of human trafficking exploding in front of our eyes to this day.

It is highlighted over and over again that today's reality leaves us in a world where massive displacement and internal mobility, cybercrime, the covid reality, the increasing gap between the rich and the poor, a pandemic wave of corruption in states across the globe, greed and an inability for many to face the fast changing realities around us, has led to a clandestine criminal underworld which is challenging those who work for justice and leaving in their trail millions of victims struggling to be heard.

It is clear from the six country reports in this particular mapping exercise, that there is a lack of updated data at all levels of the crime of human trafficking and thus law and justice is not able to face what is not openly known in terms of analysis and facts and figures. The victims and survivors who are most in need have no access to law, partly through poverty, but also because of poverty, isolation and fear of retribution. This can be because if the true situation of being trafficked is pronounced and they acknowledge their trafficked and vulnerable position, the fear is they will be stigmatized because of local culture or even worse, condemned a criminal because of known forced involvement in crime, as forced into this by the traffickers. This truth is hidden. The statistics are just a shadow of the truth. It is hoped that this mapping of Legal Aid provision will lead to more action on the part of all the specialists in the field.

This is a pilot study, conducted by the Bakhita Centre, and we hope that in time this initial, magnificently conducted study, produced in such a short measure of time, will lead to a much greater in depth one, led by RENATE and implemented by the Bakhita Centre. Meantime RENATE calls on all protagonists working in

this field, to work more closely together and to heed the advice given in the many reports quoted in this document and in the research conducted in the field, over the last months. The aim of RENATE, as with the Sustainable Development Goals and Pope Francis in Rome, is to 'Rid the World of Human Trafficking by 2030'. Let us unite to achieve this goal.

Imelda Poole

RENATE President

Foreword

Working on this rapid response study commissioned by RENATE, researchers from the Bakhita Centre have produced a valuable, evidence-based report that highlights the many disparities in legal aid for victims of trafficking across Europe.

Both RENATE and the Bakhita Centre would particularly like to acknowledge the two main researchers who led this work:

Lead researcher: Diem - Tu Tran

Co-author: Anta Brachou

Both of these researchers are working at Bakhita Centre, St Mary's University, Twickenham.

It can be seen from reading the document that the level of professionalism accomplished in this excellent final report has been achieved by these two researchers at the highest quality of research expertise.

This task was supported by the expertise of the RENATE task group on law and law enforcement. It was through their guidance and enabling access to their networks that made this study possible in such a short time.

During the period of this study, the impact of the global pandemic is being experienced across all communities. However, as with other crises, such as war, conflict and natural disasters, it is usually those living in poverty, or on the margins of society that are most affected. Likewise, under these circumstances, trafficking thrives; victims are more isolated and have fewer opportunities to access support, including additional barriers to receiving legal aid. We hope that this report will shed light on the already existing barriers and encourage new partnerships to be formed to truly support victims to receive justice in a way that recognises their human rights and right to dignity. Partnerships

between academics, researchers, campaigners, practitioners and civil society are increasingly necessary to ensure victims receive justice in their question for recovery. The team at the Bakhita Centre hope that this report will be of value to practitioners and policy makers in each of the six countries investigated and that it will also prove useful as a foundation for future studies commissioned by RENATE on this topic in the future.

Dr. Carole Murphy

Acting Director Bakhita Centre

Acknowledgements

This report was written with funding from RENATE. It is part of the wider work RENATE undertakes to protect and support victims of trafficking across Europe. Supported by the RENATE Law task group the research was led by the Bakhita Centre for Research on Slavery, Exploitation and Abuse (BCRSEA).

The project was as a result of a huge amount of dedicated enthusiasm from many people, without whose help, we would have been unable to produce this report. Therefore, we would like to extend our sincere gratitude to all of them.

First of all, we would like to acknowledge the invaluable work and contributions from the RENATE Law Group Members:

- Annie Banister – United Kingdom
- Begoña Iñarra – Missionary Sister of Our Lady of Africa, Spain
- Brian O’ Toole – Presentation Interprovincial Justice Desk, Ireland
- Dilyana Giteva – First Project, Bulgaria
- Imelda Poole – RENATE, Albania
- Mariana Meshi – Different and Equal, Albania
- Mirjam Beike – Congregation of Our Lady of Charity of the Good Shepherd, UN, Geneva
- Sara Capaliku – Viadrina European University, Germany
- Shawn Kohl – International Justice Mission, Romania

Their continuous support and written input have been of paramount importance to this project. We would like to express our deepest appreciation to the President of RENATE, Imelda Poole MBE, who was the driving force of this initiative and also sought the support of other RENATE members.

This project could not have taken place without the participation of the various practitioners from Albania, Bulgaria, England and Wales, Germany, Spain and Romania. Their involvement is highly valued, and we would like to express our gratitude and heartfelt thanks to them.

Acronyms/Glossary of Terms

ANTIP	National Agency Against Trafficking in Human Beings, Romania
ATLEU	Anti-Trafficking and Labour Exploitation Unit, England and Wales
BCRSEA	Bakhita Centre for Research on Slavery, Exploitation and Abuse
BKA	Bundeskriminalamt/the Federal Criminal Police Office, Germany
CC	Criminal Code
CG	Conclusive Grounds decision, the decision from the SCA that someone is certainly a victim of modern slavery and recognised as such
CICA	Criminal Injuries Compensation Authority of the UK Government
CPC	Criminal Procedure Code
DCM	Decision of the Council of Ministers, Albania
DIM	Deutsches Institut für Menschenrechte/German Institute for Human Rights
ECF	Exceptional Case Funding
First Responder	A specific organisation or public body in England and Wales, which is permitted to refer a potential victim into the NRM
GRETA	Group of Experts on Action against Trafficking in Human Beings
KOK	Bundesweiter Koordinierungskreis gegen Menschenhandel e.V./ Nationwide Coordination Group against Human Trafficking, Germany
LASPO	Legal Aid, Sentencing and Punishment of Offenders Act 2012, UK

MSA	Modern Slavery Act 2015, UK
MSVCC	Modern Slavery Victim Care Contract
NGO	Non-profit organisation
NRM	National Referral Mechanism, the established framework in England and Wales responsible for identifying and supporting victims of modern slavery and human trafficking
RENATE	Religious in Europe Networking Against Trafficking and Exploitation
RG	Reasonable Grounds decision, the decision from the SCA that someone is a potential victim of modern slavery
SCA	Single Competent Authority, the decision-making authority in the NRM, part of the Home Office
SGBII	The German Social Codebook

Introduction

The Council of Europe Convention on Action against Trafficking in Human Beings and the EU Directive on Preventing and Combating Trafficking set out minimum legal standard requirements for EU Member States to identify, protect and assist victims of trafficking.¹ These legal instruments “stipulate the right of victims to a lawyer to protect their rights, to inform them about their role in the proceedings and to defend their interests”². Despite the widespread political acknowledgement of this key legal obligation, the legal aid situation for victims of trafficking and the differences and similarities of the legal assistance for victims across European countries is still poorly understood. Therefore, RENATE seeks to contribute to the knowledge about this important topic and provide a snapshot of the current legal aid situation for victims of trafficking in six European countries in which RENATE operates. Albania, Bulgaria, England & Wales, Germany, Romania and Spain were chosen for this report as they all are signatories to the above-mentioned Convention and present both source and destination countries for trafficking.³ By reaching out to practitioners and having input from RENATE members working in grassroot organisations, this report aims to provide an overall picture of the availability and quality of legal assistance for victims of trafficking across these countries by identifying key obstacles and best practices. RENATE and the Bakhita Centre believe that an increased shared understanding of the current provisions and challenges of legal assistance for victims of trafficking is required to improve support for this group and address any identified barriers faced by victims in terms of awareness, access and quality

1. [Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA \(europa.eu\)](#)

2. Netherlands Helsinki Committee (2017)

3. [Full list \(coe.int\)](#)

regarding legal aid. The research findings provide practice-oriented information and shall serve to lead to further discussions with partner organisations, various anti-trafficking stakeholders and policymakers to improve advocacy and service provisions to enable victims of trafficking to access legal assistance. This scoping research also hopes to give a sound understanding for potential donors in the field and create opportunities for discussion and future collaborations.

Note on Terminology

This report consciously uses the term ‘victims’ of trafficking whilst recognising that there are other expressions used in practice and academia to refer to individuals who suffered from trafficking or modern slavery. All terms have specific connotations and implications regarding the agency, resilience and vulnerability of this target group and are not without controversy. For the purpose of this research that focuses on the legal aid support for victims of trafficking, the term ‘victim’ is preferred as it complies with the terminology adopted in various international and national legal frameworks that grant particular rights to people who experienced different forms of exploitation. Hence, the report makes references to the term ‘victims’ in order to emphasise the statutory entitlement of trafficked people to legal aid.

Furthermore, this study uses legal assistance/aid as overarching terms and does not differentiate between NGO and state administered legal aid. We acknowledge that this might be a limitation but due to the different national contexts and scope of this report, we consider this the best approach.

1 Methodology

This report undertook a scoping review of relevant literature and national/international policy documents on the legal assistance situation in all selected countries. This type of review has the objective of identifying and mapping evidence that is available about a certain topic and therefore provides a broader ‘scope’ or overview of the existing literature and data.⁴ The broad nature of scoping reviews encourages the combined use of a variety of heterogeneous sources and hence this report drew upon evidence from a range of data such as official statistics, reports by NGOs, and academic journal articles. In the review, as is characteristic for a scoping exercise, the results were mapped and presented in a descriptive way rather than interpreted through meta-analysis. Given the lack of comparative studies on the legal aid support for victims of trafficking in the selected European countries, this scoping review was useful for examining the emerging evidence and highlighting both good practices and challenges at national and international level.

The scoping exercise was complemented by an online survey in order to evaluate the current legal aid support from the viewpoint of practitioners. The survey was disseminated to relevant actors and stakeholders who work in the anti-trafficking sector in the respective six countries. The RENATE Law Task Group members provided most of the contacts of service providers across these countries, who were invited to participate in the study. Due to the limited scope and timeframe for this research, victims were not invited to complete the survey, but rather through the survey questions the study sought to understand more about their experiences in relation to legal assistance. The questions in the survey were in English, but the accompanying Participant Information Letter was translated into the native languages of each respective country. Both open-ended and closed questions were used in the survey focussing on the challenges and best

4. Peters et al. (2020)

practices in relation to access to, awareness and quality of legal assistance for victims. In total, the survey contained 25 questions with some additional sub-questions. The survey was created using the platform JISC and in accordance with the research and ethics policy of St. Mary's University. Ethics approval for the study was granted by the Ethics Board at St. Mary's University.

2 Scoping review of the legal assistance situation by country

2.1 Albania

Human trafficking in Albania

Like most crimes, human trafficking in Albania is also an opportunistic crime. It emerged in a favourable environment while the country was going through a difficult transition period- trying to survive the privatisation of the economy, new ideologies of democracy and a fluidity of cultures promoted from the Western world. In the late 90s and early 2000s, human trafficking escalated in alarming figures. Three decades later, the phenomenon of trafficking remains a problem to Albanian society and feeds multiple political opinions and interventions by international agencies. The economic depression, political volatility and the convenient proximity to Western European countries have made Albania a perfect candidate for recruitment grounds and many victims continue to be lured into precarious journeys, as they aspire for better lives⁵. Open borders, and few visa restrictions have allowed traffickers to move the victims freely without any risk of detection at the stage of transportation⁶.

According to the US Department of State Report 2020⁷, Albania faces both internal and cross-border trafficking, as many victims are trafficked across Europe. This is also supported by the various statistics available from other countries, which list Albania as a main source country for potential victims of trafficking⁸. Predominantly, Albanian victims are exploited in sex trafficking

5. Asyls and ARC Foundation (2019)

6. Aronowitz (2003)

7. US Department of State Report (2020a)

8. National Crime Agency (2021)

in countries such as Kosovo, Greece, Italy, Belgium, Germany, Switzerland, Norway, the Netherlands, and the UK; but most recent data suggests that also Albanian migrants who seek employment in Western Europe find themselves exploited for forced labour and/or forced criminality, particularly in the UK⁹. However, the data is patchy and to some extent this prevents a thorough understanding of the nature and trends of trafficking from Albania¹⁰. Given the complexity and severity of the phenomenon, Albania is continuously making efforts to address human trafficking. Civil society is particularly involved in the fight against trafficking, and leads many of the frontline projects which support victims. However, despite good efforts to protect and support victims, the Group of Experts on Action against Trafficking in Human Beings (GRETA) has urged Albania to increase its efforts to prevent and identify cases of human trafficking during border controls and paying particular attention to unaccompanied children¹¹.

Legal framework and victims' rights

Over the years, the Albanian government has made several legislative amendments by improving the structure of legal provisions, as well as imposing severe punitive measures for offenders involved in human trafficking. Quite significant changes were introduced with the Law No. 9188, dated 12.2.2004, in the framework of the approximation of the domestic legislation with the Palermo Protocol. Albania has ratified the European Convention on Action against Trafficking in Human Beings and most of its efforts in this field consist of improving victim status and support provisions for victims of human trafficking.

Some of the state obligations that follow as a result of the ratified Convention include legislative and administrative actions, which provide the victims with assistance, relief and acceptance, return of trafficked persons without unnecessary delay, ensuring physical security to the victims of trafficking, and involvement in the legal system of victims of trafficking and the possibility of compensation for the damage that was caused. Specifically regarding access to legal assistance, Article 58 on the 'Rights of Victims' was amended by Law No. 35/2017, dated

9. US Department of State Report (2020a), Available at: [Albania - United States Department of State](#)

10. Hynes et. al (2017)

11. GRETA (2019a)

30.3.2017¹², which states that the victims have the right to choose a lawyer and, where appropriate, to receive free legal aid, according to the legislation in force; to be informed of the court proceedings at all times, including information about the arrest of the accused and their release, and communicate in their own language and be assisted by an interpreter, sign language interpreter or communication facilitator for persons with speech and hearing disabilities. These recent amendments to the Criminal Procedure Code (CPC) have certainly improved the position of victims of trafficking by enhancing the framework of their rights. According to the CPC, minor victims, sexually abused victims and victims of trafficking have a special status under the law, which entitles them to special measures for legal assistance and protection, including the right to seek criminal prosecution of the perpetrator as well as the right to obtain evidence, and the right to seek compensation.

However, despite the prescribed rights in law, the implementation of statutory obligations to uphold victims' rights remains a challenge. For example, in many cases both law enforcement and prosecutors treat statutory obligations as merely 'tick box exercises' and provide information to victims by simply providing a printed version of the law. According to Different and Equal¹³, victims are asked to sign these printed papers without necessarily understanding what information is provided and how to exercise their rights. Law enforcement agencies are mainly keen to engage with victims when they are willing to testify and provide evidence against perpetrators, but fail to take a safeguarding approach to protect victims and inform them of their legal rights. In practice, adequate information on legal assistance and how to access it is provided by shelters, where leaflets on victims' rights are also available in several languages¹⁴. Overall, Albania lacks a coordinating and monitoring authority over the actions of state institutions and organizations that assist victims or advocate for their rights¹⁵.

According to a UNDP study conducted in 2017¹⁶, there are several reasons why particularly women victims of trafficking or domestic violence do not receive

12. Law No. 35/2017 "On amending the Code of Criminal Procedure", Available at: [Kodi i Procedurës Penale-2017 date 30 gusht.pmd](#) (pp.gov.al), page 40

13. Different and Equal (D & E), [About Us - Different and Equal](#)

14. GRETA (2020)

15. D & E (2019)

16. Milatovic (2017)

proper information from the authorities, and some of these reasons include: lack of knowledge and training of police officers about their obligations under the law, lack of time and resources - “limited number of police officers” hampers their efficiency and does not give them sufficient time to inform victims in sufficient detail of their rights and lack of accountability by the authorities for non-compliance with their statutory obligations. Furthermore, as pointed out by GRETA¹⁷, access to justice is also hampered by the pervasive gender inequality and the prevalent gender stereotypes and stigma. It can be argued that legal provisions are to some extent gender insensitive in that they do not take into consideration women’s social status in the patriarchal society. Although these may not be specific to victims of trafficking, such gender insensitive provisions also affect victims of trafficking and have an impact on their prospects of accessing adequate legal assistance.

Legal assistance for victims of trafficking

In June 2018, Albania passed Law No. 111/2017 on ‘State Guaranteed Legal Aid’¹⁸, whereby the beneficiaries of legal aid also include victims of trafficking. According to this law, all victims, whether Albanian nationals or foreign nationals, can access legal assistance, irrespective of their status or type of exploitation. As clearly stipulated in the legislation, it is the responsibility of the prosecutor or judicial police officer to inform the victim on how to exercise the right to free legal aid and provide information on the process of benefiting from this support¹⁹. According to this legal provision, there are three types of legal aid for victims of trafficking, namely Primary Legal Aid, Secondary Legal Aid, and exemption from paying court fees and legal charges. Primary Legal Aid consists of the provision of information regarding the Albanian legal system, current legislation in force, the rights and obligations of victims and the process of exercising such rights. Under the Primary Legal Aid packages, victims can also access legal counselling, advice on mediation procedures, assistance in drafting and compiling necessary documents to initiate legal proceedings

17. GRETA (2020)

18. Law No. 111/2017 on ‘State Guaranteed Legal Aid’, Available at: [Ligj-nr.111-2017.pdf \(differentandequal.org\)](#)

19. GRETA (2020)

and representation before administrative bodies. This type of legal assistance is offered mainly by Legal Aid Service Centres, Law Clinics based in Higher Education Institutions and authorised non-profit organisations (NGOs) working with victims of trafficking. Currently twelve NGOs are authorized to provide legal assistance but funding to deliver such work has not started yet²⁰.

The Secondary Legal Aid package, on the other hand, includes legal representation in court proceedings. A lawyer is allocated to the victim and addresses the court or the prosecutor's office on their behalf. According to Albanian legislation, Article 61 - 62 of the Criminal Code, a victim of human trafficking has the right to be protected by a criminal lawyer only in cases when he or she is participating in a criminal proceeding with the status of a civil plaintiff to seek compensation from the offender. However, there appear to be challenges when it comes to implementation of such Articles, and few victims meaningfully access legal assistance and even fewer get compensation at the end of these proceedings.

The right to compensation for victims of trafficking in Albania is particularly challenging and is regulated in the same way as for victims of other criminal offences and allows for the victim to seek damages as a civil claimant in criminal proceedings (Article 58/1/g CPC). A victim may claim material and moral damages in a separate civil procedure, according to Articles 608 and 625 of the Civil Code. Experts are involved in the process of determining the damage: a psychologist to assess moral damage and a forensic expert to assess physical damage. These experts have specific ways to determine the amount of damage caused to the victim. However, claiming compensation in a civil procedure is costly and time consuming and there are impediments to the execution of the compensation order. The literature consulted for this report suggests that no victims of trafficking have been paid compensation by perpetrators. The challenges in such cases are related to both, cumbersome court litigation processes but also the lack of an effective mechanism which guarantees victim compensation. Furthermore, according to GRETA, there is reportedly a lack of lawyers trained and specialised to represent victims of trafficking, which obstructs the effective access of victims of trafficking to justice and, in particular, compensation. However, there are pockets of good practice, as organisations

20. The list of the 12 authorised NGOs that can offer legal assistance: <https://www.drejtesia.gov.al/wp-content/uploads/2020/09/REGJISTR-I-ORGANIZATAVE-JOFITIMPRURESE-QE-OFROJNE-NDIHME-JURIDKE-PARESORE.pdf>

such as Different and Equal are doing impactful work to inform and train lawyers.

As a result of the ongoing efforts to enter the EU, Albania has taken further steps in relation to the provisions of legal aid, not only to victims of trafficking. In 2019, the Ministry of Justice set up a new structure which is the Directorate of Free Legal Aid, which aims to provide and oversee all the free legal assistance provided across the country. This new structure administers seven Legal Aid Centres in Albania and is supported by UNDP and Open Society Foundation. These centres are located in Tirana, Durrës, Fier, Lezhë, Lushnje, Pogradec and Gjirokastër. These centres mainly focus on providing primary legal aid and although this is a move in the right direction, it can be argued that for victims of trafficking there are still gaps in terms of secondary legal aid, as many of them need legal representation in trials and support with compensation cases.

Implementation challenges

Despite legal improvements and efforts to enhance victim protection and support, implementation and delivery of free legal assistance for victims of trafficking remains a challenge. The newly set up scheme established by the Law No. 111/2017 mentioned above, although it is an important advancement from a pragmatic point of view, it does not necessarily guarantee effective legal assistance and protection for victims of trafficking. Some of the challenges faced under the current framework are as follows:

- Despite the ‘special status’ given to victims of trafficking, they are not exempted from the laborious and bureaucratic procedures. Victims are required to fill in standard forms and present documents, which might be difficult or impossible to locate due to their special circumstances.
- Authorised NGOs that are part of the national scheme to provide legal assistance can only provide primary legal aid. This creates a significant gap in terms of provisions for secondary legal aid, which is more complex and sought after due to the intricate cases victims have.
- Furthermore, the prescribed list of lawyers who provide secondary legal aid does not include a group of lawyers trained and specialising in representing and protecting the interests of victims of trafficking.

- The procedure for obtaining the status of victims of trafficking remains unclear and is flawed. This procedure is partially regulated by the Decision of the Council of Ministers (DCM) No. 499, dated 29.8.2018 “On the approval of standard action procedures for the protection of victims and potential victims of trafficking”, which fails to include appeal rights in case of refusal of status after the formal interview. The institution that issues the certificate for granting the victim status is also not clearly defined.
- Recent amendments to the Criminal Procedure Code regarding the competence to handle trafficking cases, which has been transferred to the Prosecutions and District Courts, have made it difficult to provide legal aid because there is a lack of specialized structures at the district level to guarantee adequate assistance.
- Overall, statutory institutions including the Courts, the Prosecution Service, and the Police continue to adopt offender-focused approaches and are less victim-centred. As a result, victims are often not provided with the adequate legal assistance they require.

2.2 Bulgaria

Human trafficking in Bulgaria

Bulgaria represents a key source country of victims of trafficking in the EU and, to a lesser degree, a transit or destination country. The majority of victims are female and exploited for sexual purposes within the country in the capital but also in adjacent areas and especially Western EU countries²¹. Individuals of Roma and Turkish ethnicity constitute a particularly vulnerable group of becoming sex trafficking victims. The Roma population is frequently overrepresented in official numbers of victims. The majority of the sex industry in Bulgaria is under the control of organised crime and therefore most of the people offering sexual services are potentially forced to threats from the organised crime groups and eventually pay some of their earnings to them²². These sex workers usually fear losing their income and therefore tell the police that they work for themselves if arrested. The Bulgarian police treat such statements as evidence of voluntary work and consequently hardly screens these individuals for trafficking indicators. Consequently, they are never identified as victims of trafficking and have little legal protection against trafficking.

Forced labour is a further form of trafficking in which Bulgarian women and men including children become victims, especially in the construction and agriculture industries or in the form of street begging or pickpocketing²³. Traffickers tend to target marginalized communities, mentally disadvantaged and those with disabilities and recruit people from specific regions in Bulgaria.

Legal framework

The Bulgarian government established a statutory basis for the provision of assistance to victims of trafficking²⁴. Since its EU accession, a number of

21. European Commission (2018); Paunova (2011)

22. Dobрева (2013)

23. US Department State (2020b)

24. GRETA (2019b)

legislative reforms including the transposition of the Directive 2011/36/EU were undertaken at the national level in order to meet the EU and other international criteria linked to human trafficking²⁵. Bulgaria was among one of the first states that ratified international agreements such as the Suppress and Punish Trafficking in Persons Especially Women and Children (the Palermo Protocol) and the Council of Europe Convention on Action against Trafficking in Human Beings. Key national policies that deal with human trafficking and victim protection in the country are the following²⁶: The Criminal Code (CC), the Action against Human Trafficking Act, the Legal Aid Act and the Assistance and Compensation Act and the National Anti-Trafficking Strategy 2017 - 2021 (adopted in 2017). Articles 159a-159d of the CC denounce sex trafficking and labour trafficking as crimes with penalties of several years of imprisonment and high fines for offences involving both adult and minor victims²⁷.

In 2004, a National Anti-Trafficking Commission was set up, followed by the gradual establishment of Local Commissions for Combatting Trafficking in Human Beings with ten municipalities in Bulgaria, to guarantee the implementation of the Action against Human Trafficking Act across the country²⁸. This national body is responsible for the coordination of the interaction of local authorities, institutions and organisations including NGOs that work in the sphere of human trafficking. For example, the commission carried out a number of workshops and training sessions for personnel in the judicial system and non-governmental sector in 2019 in order to enhance the knowledge and skills of the actors who have direct contact with victims of trafficking. The focus of these sessions was placed on the identification of victims, the use of the national referral mechanism, as well as anti-trafficking best practices. In addition, authorities in Bulgaria not only increased efforts to prosecute, convict and extradite more traffickers but also introduced preventative measures that specifically aimed at improving the situation of the Romani children and overall Roma community in the country²⁹.

25. European Commission (2018)

26. Dobрева (2013); European Commission (2018)

27. US Department State (2020b)

28. European Commission (2018)

29. US Department State (2020b)

Deficits of legal instruments and their implementation

Despite the fact that the Bulgarian government shows clear and continuous efforts to address human trafficking, a number of barriers remain in order to effectively protect victims and meet their needs³⁰. One key area of concern refers to the detection of potential victims where law enforcement staff did not identify victims of trafficking among particularly vulnerable individuals such as asylum seekers or Romani people. According to NGOs, this difficulty could be rooted in cultural differences but also law enforcement actors were reported to have disparaging attitudes towards the Roma community assuming that this is their lifestyle and therefore they do not require protection or assistance. Previous research highlighted that lack of sensitivity towards victims of trafficking and little knowledge about its social and psychological impact on the victims and trafficking indicators in general resulted in the authorities not identifying victims³¹. Consequently, victims of trafficking are unable to access legal aid if they are not detected as victims in the first place. Another problematic aspect is that some authorities try to get as much information as possible from the victims and do not always inform them about their rights in a precise and understandable way.

In the Bulgarian context, corruption among law enforcement staff and the judiciary represents a further significant and continuous issue that facilitates some crimes associated with trafficking and impedes progress in the elimination of trafficking³². Although some officials who were suspected to have enabled trafficking-related crimes went through investigation procedures, they were rarely sentenced to prison. In some cases, no prosecution of complicit officials even took place. In the wake of a re-structuring of Bulgarian law enforcement, the police work force saw a high turnover leading to fewer police officers having specialist knowledge in inspecting cases associated with trafficking.

Legal assistance for the victims of human trafficking

In Bulgaria, the right to be consulted by a lawyer arises from the moment individuals are officially identified as victims by authorities during the first

30. US Department State (2020b)

31. Dobрева (2013)

32. US Department State (2020b)

encounter³³. Officials are mandated to inform victims about the right to have a reflection period and their entitlement to consult an ex-officio lawyer during this time. This means that victims can be consulted by a lawyer before deciding if they wish to cooperate with authorities in investigations. However, in practice a lawyer is often not appointed for victims during this period. A study by Dobрева³⁴ further found that authorities tend to unofficially interrogate victims in these first encounters without legal aid. In such interrogations authorities have been found to treat victims in an inhuman and insensitive manner. Furthermore, victims of trafficking also have the right to be legally represented by a state-funded lawyer in criminal proceedings once they have agreed to cooperate with investigation authorities. It must be noted that authorities do not appoint a lawyer, but victims of trafficking need to proactively request a legal representation and provide evidence of low income. Access to a lawyer during trial is important to claim compensation and to effectively address potential inadequate treatment of the victim or deal with incriminating questions. For example, lawyers can help victims in exercising the right to request a freezing of the assets of the trafficker.

Victims can also access free legal assistance via legal staff members at NGOs³⁵. However, NGOs often lack training in providing legal assistance for victims and have scarce financial resources to pay for their clients' legal representation. Previous research highlighted that there is a lack of access to legal assistance and counselling for victims of trafficking in Bulgaria. Victims' access to legal assistance is first hampered by the absence of a sufficient referral system which guarantees that officials in their first encounter with victims inform them about their basic rights and the legal proceedings. Second, the application process for state-funded legal aid is complex and bureaucratic. As a result, victims, especially when they are illiterate, often need (professional) support, for example from NGOs to apply for the free legal assistance provided by the state. Whilst legal aid for victims of trafficking is funded by the Bulgarian government, lawyers have only limited capacity and are rarely trained in the rights of people who were trafficked. These lawyers also need to be registered in the national legal aid register of the National Legal Aid Bureau which also covers the legal

33. Dobрева (2013)

34. Dobрева (2013)

35. Dobрева (2013)

assistance fees. Moreover, the quality of ex-officio (state-funded) lawyers are not monitored via an independent quality check. A further issue that adversely affects the quality of the legal aid is that lawyers provided by the state usually receive a small remuneration and hence tend to take on many cases at once despite the fact that trafficking cases can be lengthy.

According to the Act on the Assistance and Financial Compensation of Victims of Crimes (or Assistance and Compensation Act), victims are entitled to claim compensation for the damages they suffered during their trafficking experience³⁶. The right to compensation has a restorative meaning as its award is a sign of the government recognising the damages and suffering that the victim endured³⁷. Moreover, compensation represents an instrument for preventing re-trafficking because it can encompass the “remuneration of unpaid wage and payment in restitution for both general damages and special damages suffered by a victim of crime. General damages compensate the claimant for the non-monetary aspects of the specific harm suffered, such as physical or emotional pain and suffering”³⁸. However, victims in practice often struggle with the compensation procedure as it is bureaucratic and those working in the judicial system lack specialist knowledge about trafficking and its far-reaching impact on victims³⁹. As a result, in practice victims’ hardly ever succeed in receiving compensation. These issues illustrate that victims face significant challenges in accessing justice as existing protection mechanisms are not effectively employed and victims of trafficking run the risk of being victimised a second time.

Those victims who chose to cooperate with law enforcement as long as criminal proceedings take place, are able to remain and work in Bulgaria⁴⁰. However, this law, according to US State Department, was not used by any foreign victim in 2019. On the other hand, victims of trafficking who do not want to be involved in criminal proceedings are entitled to a recovery period of 40 days for adult victims and 70 days for minor victims. After this time span, they will be subject to repatriation.

36. Dobрева (2013)

37. Paunova (2011)

38. Paunova (2011: 6)

39. Dobрева (2013); US Department of State (2020b)

40. US Department State (2020b)

With respect to victims' rights during criminal proceedings, the identity of victims should be anonymised before and during trials as required by law. Nevertheless, Bulgarian authorities were found to frequently ignore this provision. Consequently, victims were threatened and coerced by traffickers to change their statements. It is also important to understand that victims tend not to trust Bulgarian authorities, fearing that they would not provide them with sufficient protection or convict traffickers effectively. Furthermore, interrogations during criminal proceedings are numerous and can be very lengthy⁴¹. Similarly, pre-trial investigations can take up to several months or be pending for years. These challenges can lead to victims becoming discouraged and losing trust in the judicial system. Against this background, it is not surprising that many victims decide not to work or to discontinue their collaboration with officials. In general, there seems to be a widespread lack of trust among victims of trafficking towards the Bulgarian judicial system with victims not believing that the criminal proceedings will benefit them.

A recent report by GRETA⁴² particularly stressed the vulnerability of minor victims identified in Bulgaria. Child victims of trafficking are usually supported by social workers who assess the child's social environment or accompany them to relevant meetings. One of the key issues is that there is no effective monitoring strategy in place that ensures the children's long-term reintegration. Furthermore, often children's relatives were proactively involved in their trafficking, for example for the purpose of pickpocketing, but hardly any adequate risk assessments are carried out by authorities or legal advice sought to prevent the children from being re-trafficked. In particular, boys who were subject to sexual exploitation are not always referred to any assistance or legal aid by officials or service providers. This highlights that there is no established practice for child victims to access legal aid⁴³.

41. Dobрева (2013)

42. GRETA (2019b)

43. Dobрева (2013)

2.3 England and Wales

Human trafficking and the legal framework

In England and Wales, human trafficking and various forms of exploitation are listed under the overarching term of ‘modern slavery’. The UK is considered as a destination country for many victims across the globe, but British victims of modern slavery appear to lead the list of potential victims according to national statistics⁴⁴. Presently, there is no definitive and sole source of data to exactly measure the extent of the phenomenon in the country, but several official data point out to alarming numbers of victims of modern slavery⁴⁵. According to the Salvation Army, which is the main service provider for victims of modern slavery and manages the Modern Slavery Victim Care Contract⁴⁶ (MSVCC), the majority of victims supported in 2019 had either experienced labour exploitation (48%) or had been sexually exploited (39 %) ⁴⁷. In the last year, national statistics point to a surge in potential victims referred for criminal exploitation, which accounts for 3568 potential victims, the majority of those being minors and male⁴⁸.

The key piece of legislation that aims to address human trafficking and other types of exploitation is the Modern Slavery Act (MSA) 2015. Although crimes categorised as modern slavery were not unheard of in England and Wales and were previously sanctioned by other legal acts, the new MSA introduced maximum penalties and life imprisonment for such crimes and stated its aim to improve victim protection and support provisions. Since it came into force six years ago, the Act has had a positive impact on awareness, reporting and identification of victims and developments in support services. The Act has also been significant in relation to law enforcement, as modern slavery offences

44. Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, Quarter 1 2021 - January to March - GOV.UK (www.gov.uk)

45. Office for National Statistics (2020)

46. The Salvation Army (2021), Available at: New victim care contract | The Salvation Army

47. The Salvation Army Report (2020)

48. National Referral Mechanisms Data (2021), Available in the link above (40)

recorded by the police have increased considerably⁴⁹. Recently, pursuant section 49 of the Act, the government has also provided Statutory Guidance for England and Wales, which includes the arrangements for providing assistance and support to persons that are potential victims of slavery or human trafficking⁵⁰.

Identified potential victims are referred and supported through the National Referral Mechanism⁵¹ (NRM), which is the established framework for identifying and supporting potential victims of human trafficking and modern slavery in England and Wales. The NRM provides support pathways for adult potential victims of trafficking and the support packages are delivered by various voluntary sector organisations that are sub-contractors of the Salvation Army and responsible for the delivery of services according to the standards set out in the MSVCC. The NRM referral process enables First Responders⁵² to exercise their 'duty to notify'⁵³ and refer persons whom they believe might be victims of trafficking. However, referrals are voluntary, and the adult person must provide consent in writing before being referred to the NRM. Once the referral has been made, the Single Competent Authority (SCA) part of the Home Office, assesses the case and decides if there are reasonable grounds to believe that someone is a potential victim of modern slavery - the Reasonable Grounds (RG) decision. Upon a thorough assessment of the cases, the SCA decides whether someone is definitely a victim of modern slavery - the Conclusive Grounds (CG) decision. Provided that potential victims of trafficking receive a positive RG decision, they can then access various support services, which would enable their 'reflection

49. Office for National Statistics (2020)

50. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/993172/Modern_Slavery_Statutory_Guidance_EW_Non-Statutory_Guidance_SNI_v2.3.pdf

51. [National referral mechanism guidance: adult \(England and Wales\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/612212/national-referral-mechanism-guidance-adult-england-and-wales.pdf)

52. In England and Wales, a 'first responder organisation' is a recognised authority that is authorised to refer a potential victim of modern slavery into the National Referral Mechanism, for example: police forces, Border Force, Immigration Enforcement, National Crime Agency, local authorities, Salvation Army and other VCC sub-contractors.

53. Since the enactment of MSA 2015, certain public bodies are obliged to notify the Home Office (Single Competent Authority) about any potential victims of modern slavery they encounter in England and Wales.

and recovery journey'. During this period, potential victims are provided with practical, emotional and financial support, accommodation, counselling, and legal assistance.

Legal assistance for victims of human trafficking

Legal assistance is a crucial part of the support provisions victims of trafficking in England and Wales are entitled to. Due to the high number of foreign national victims in the NRM, in addition to legal assistance with compensation claims and criminal proceedings, many victims require assistance to stabilise their immigration status. In other cases, legal assistance is required to access safe and suitable accommodation and additional support services depending on the multiple and complex needs that victims have. Key areas of need for free legal assistance in England and Wales include key immigration/asylum, criminal defence, public law issues especially related to support and accommodation, rights at judicial review stage and compensation. In addition to the MSA 2015 and the subsequent Statutory Guidance, the legal framework regulating legal aid is set out by the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012. According to LASPO 2012, potential or recognised victims who go through the NRM process can access free legal assistance provided they also meet eligibility criteria related to their means⁵⁴. Legal aid is not available for victims pre-NRM stage, although it is possible for their advocates to apply on their behalf for Exceptional Case Funding⁵⁵ (ECF) and access legal assistance before a reasonable grounds decision. This is considered to be a limitation, particularly as many victims choose not to enter the NRM.

Given the importance of legal assistance throughout the reflection and recovery journey, this area has been continuously discussed and researched. Due to the great significance and impact legal aid can have to ameliorate victims' recovery process, this area is also constantly scrutinised and modern slavery advocates have made pivotal interventions to improve legal assistance. One of the key cases, which brought about significant change to legal aid provisions

54. Legal Aid, Sentencing and Punishment of Offenders Act 2012, Available at: [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2012/42)

55. Exceptional Case Funding is only accessible in cases that fall outside the scope of legal aid.

for victims of trafficking, is *R (LL) v Lord Chancellor* CO/3581/2017⁵⁶. The decision provided in this case has provided more clarity on the scope of legal aid and confirmed that victims of trafficking are entitled to free legal aid where they need advice on leave to enter or remain and also where they argue they should be granted discretionary leave to remain as a victim of trafficking, as in many cases victims might not have an asylum claim pending and need to acquire leave to remain.

Although there is much good practice to share, particularly if we were to compare with some of the other countries in focus of this scoping study, there are still considerable gaps identified so far from previous studies and literature. One of the most recent research studies led by the University of Liverpool, highlighted some of the shortcomings of legal aid by drawing from the knowledge and expertise of legal practitioners in the North of England and the Midlands⁵⁷. The study shed light on limitations of the current funding structures and the fixed fees that have an adverse effect on the way trafficking cases are handled and treated by legal practitioners⁵⁸. Given such limitations and the unsatisfactory payments for legal practitioners, the quality of legal aid is also questioned. For example, immigration cases for victims of trafficking are paid on a fixed fee basis⁵⁹ despite their high level of complexity and prolonged timeframes. The barriers to disclosure and the time needed to establish a relationship of trust, as well as the multiple different legal frameworks that must be considered mean these cases often exceed the fixed fee paid for immigration cases and either some work undertaken on these cases simply goes unfunded or the legal practitioner will not dedicate the adequate amount of time due to the limited resources⁶⁰. With regards to victim compensation claims, these can either be done as part of a criminal case, although with limited chances of success, or through a civil claim process, where fee arrangements are also in place and are often offered

56. Thomas (2018), Available at: [Legal Action Group | The Legal Aid Agency has finally conceded over immigration advice for victims... \(lag.org.uk\)](https://www.lag.org.uk/news/2018/06/20/legal-action-group-the-legal-aid-agency-has-finally-conceded-over-immigration-advice-for-victims...)

57. Currie and Young (2021), Report available at: [Legal-advice-report.pdf \(modernslaverypec.org\)](https://www.modernslaverypec.org/legal-advice-report.pdf)

58. Ibid.

59. Young Legal Aid Lawyers (YLAL) (2020), Report available at: [200621 YLAL trafficking report.pdf \(younglegalaidlawyers.org\)](https://www.younglegalaidlawyers.org/200621-YLAL-trafficking-report.pdf)

60. Wilding (2019); YLAL (2020); Currie and Young (2021)

as conditional fee arrangements (*'No win No fee'*). In practice, this means the victim will not need to find any funds to pay up front for the legal action but only liable to pay the legal costs once the compensation is awarded. The most likely civil route for compensation would be via an application to the Criminal Injuries Compensation Authority (CICA)⁶¹, which can be done directly by the victim or through a solicitor offering assistance on a *No win No fee* basis. However, any claims going through the CICA must be for harms suffered in the last 2 years and the compensation awarded is often very low. Higher compensation awards are normally handled and secured by using a personal injury solicitor but given the *No win No fee* arrangement, solicitors might feel discouraged to take on complex trafficking cases and therefore, information they provide on options for compensation might be limited.

Additionally, according to the Anti-Trafficking and Labour Exploitation Unit (ATLEU), one of the reasons there are so few lawyers undertaking work for victims of trafficking on legal aid are that cases take such a long time to conclude. On most cases involving victims of trafficking the Legal Aid Agency does not make payments until the case is closed and organisations are required to use their own resources before they are reimbursed. Such cases are not merely time-exhaustive but also require additional resources to ensure satisfactory outcomes. In many cases, legal practitioners need to pay upfront for various expert reports and interpreters, and when unfortunately, it is not possible to do so, this is done to the expense of the victim. All these issues have an impact on the quality of legal aid provided and consequently the outcome of the cases.

Furthermore, according to ATLEU, victims of trafficking and modern slavery are unable to get legal advice when they need it⁶². This is because legislation too narrowly defines what is in scope for legal aid, procedural issues around how and when cases are funded, and the way decisions are made within the Legal Aid Agency. This results in unnecessary bureaucracy and deters many providers from undertaking this work, resulting in advice deserts for victims of trafficking and modern slavery nationally⁶³. For instance, although urban areas, such as

61. [Cica | MAKING A CLAIM - Cica \(cica-criminal-injury-uk.com\)](#)

62. ATLEU (2016), Article available at: [ATLEU judicial review leads to government urgently reviewing legal aid to victims of modern slavery and trafficking – ATLEU](#)

63. Joint submissions to GRETA (2020), Available at: https://www.antislavery.org/wp-content/uploads/2020/03/GRETA_submission_Final-Feb20.pdf

Greater London, are arguably well covered in terms of legal aid providers, in other regions in England and Wales such providers are scarce, and this means victims have limited access to legal assistance or have to face several obstacles to access it in areas far away from their accommodation. In an earlier research⁶⁴ conducted by ATLEU, other access barriers were related to victims' distrust and fear of authorities and also language and cultural barriers, which resulted in a lack of understanding of their entitlements and the legal aid process.

64. Ministry of Justice (2016), Report available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/577351/tmscc-review.pdf

2.4 Germany

Human trafficking in Germany

Germany is primarily a country of destination for trafficked individuals and to some extent a country of origin and of transit⁶⁵. The BKA states that victims of sexual exploitation represented the largest group of victims of trafficking with 427 victims identified in 2019. In comparison to the previous year, the number of this type of exploitation remained unchanged. The majority of the victims were female with 94.8% of the identified victims being women and girls. In terms of nationalities, most of the victims were German nationals, followed by Thai and Romanian nationals. Other identified sex trafficking victims were particularly from China, Nigeria, and other parts of Africa⁶⁶. The BKA⁶⁷ suspects that the high number of German victims may be linked to the fact that these individuals have a higher 'victim awareness' as they are more knowledgeable about their rights and have more trust in law enforcement authorities than foreign victims.

The second common type of trafficking in the German context is trafficking for the purpose of labour exploitation which saw a clear decrease in 2019 (-31,7%) compared to 2018. Most of the victims were male and Ukrainian citizens who were largely subject to exploitation in the construction industry but also restaurants and private homes with an increased number of unaccompanied minor victims⁶⁸. Other top countries of labour trafficking victims were Macedonia, Romania and Vietnam.

Legal framework

Germany ratified the Council of Europe Convention on Action against Trafficking in Human Beings in 2011⁶⁹. Positive aspects in the German legislation are reflected in the Criminal Code (Sections 232 and 233 inter alia) which

65. BKA (2019)

66. US Department of State (2020)

67. BKA (2019)

68. US Department State (2020c)

69. DIM (2019)

criminalises trafficking for the purposes of sex and labour exploitation with penalties of up to 10 years imprisonment. Cases in which victims are younger than 21 require no evidence of coercion to prosecute suspected traffickers⁷⁰. The Prostitute Protection Act of 2016 requires those who work in the commercial sex industry to register for a specific licence as well as to attend a counselling session with the aim to inform individuals about health-related and legal rights. As part of this law, authorities are mandated to search for potential signs of trafficking during registration processes in order to detect people who might experience some kind of coercion or fraud.

The German government generally recognises other types of exploitation such as forced begging, forced criminality and the removal of organs which reflect the three pillars - action, means and aim of exploitation - of the Convention's definition of human trafficking⁷¹. Moreover, the Residence Act provides that victims of trafficking are granted residence permit - and their relatives in certain circumstances - in order to cooperate with authorities in criminal proceedings. Those victims who agree to testify are also entitled to work in Germany during the period of the trial. This law further strengthens the right of the victims by also offering them a temporary residence permit after criminal proceedings have concluded for humanitarian, personal or public reasons that requires them to remain in Germany. Under this Act, victims of trafficking as residence permit holders are able to access social benefits within the German Social Codebook (SGBII). Furthermore, victims can have access to a lawyer as well as psychological assistance funded by the state during court proceedings. Despite these positive developments in the national legal framework, the single states in Germany do not apply this Act equally. In fact, Germany does not fulfil the minimum standards in substantial areas in order to eliminate trafficking⁷². These deficits will be outlined in the next section.

Legal assistance for victims of human trafficking

In terms of the identification of victims of trafficking, some states created guidelines for detecting victims, but not all states take all forms of trafficking

70. US Department State (2020c)

71. GRETA (2019a)

72. US Department State (2020c)

into consideration and may exclude forced begging or forced criminality. For instance, only some states have referral agreements for victims of all types of trafficking. This issue of inconsistency is reflected in GRETA's⁷³ recent assessment regarding official figures of identified victims of trafficking in the German context, stressing that the published numbers do not conform to the actual cases of trafficking. This is due to the fact that the German government does not have a national comprehensive strategy in place to identify victims. Moreover, NGOs in Germany do not have any formal role or have not received consistent indicators as well as required resources by the state for identification of trafficking victims⁷⁴. As mentioned elsewhere, identification of victims of trafficking is essential in order for them to access further support such as legal aid.

According to the Criminal Code, adult victims of criminal offences including victims of trafficking enjoy the right to free legal representation if the offence carries a minimum penalty of one year's imprisonment⁷⁵. Child victims are also entitled to free legal representation and can be represented by lawyers during the investigation. According to the German government, police officers or public prosecution usually give victims of trafficking detailed information about their entitlement to legal representation in initial hearings. As concerns the right to compensation, investigation officials also inform injured victims about their compensation rights by handing out information sheets available in multiple languages and/or through interpreters. In addition, specialised counselling centres also inform victims of these rights.

Counselling centres usually arrange the free legal representation through the use of the legal aid system or advisory aid vouchers in civil or labour law cases. However, GRETA⁷⁶ states that "(...) according to the counselling centres, access to free legal aid is not guaranteed, as applications for advisory aid vouchers are sometimes refused".

73. GRETA (2019a)

74. DIM (2019)

75. GRETA (2019a)

76. GRETA (2019a: 42)

Deficits of legal instruments and their implementation

One key area of concern is the absence of a national German identification and referral system that encompasses all forms of trafficking across all states that can ensure a more equitable treatment of victims⁷⁷. At the federal level, there is also no appointed national rapporteur who can give independent reviews of the authorities anti-trafficking efforts in order to effectively tackle human trafficking⁷⁸. Furthermore, Germany has not established a uniform and comprehensive data acquisition system to gather information, for example about the gender, age, exploitation type of victims or how many victims of trafficking were granted the three-month period for reflection to decide if they would testify in court. Instead, most data about victims of trafficking are generated by the police. Quantitative data are also non-existent in terms of how the government ensures that victims make use of their rights to social and medical support, compensation or temporary residence permit. In other words, it is concerning that there is no overall system in place which determines what data are collected by which institute and through which method in order to evaluate the developments and effectiveness of state measures against trafficking.

Victims of trafficking have the possibility to claim compensation and damages during criminal proceedings in a civil court under the Crime Victims Compensation Act. In cases where victims returned to their country of origin, such claims can still be brought forward if the defendant resided in Germany or lived in another EU country and the damage happened in Germany. Nevertheless, the right to compensation is subject to the condition that victims have a legal residence status in Germany. State compensation is further restricted by the fact that it is only available to those individuals who sustained physical violence. This is concerning as not all trafficked victims were subject to direct bodily violence but rather psychological violence. A further difficulty for victims to receive any indemnification is that administrative procedures are often very long and laborious⁷⁹. Legal practitioners who assist victims to exercise the right to compensation require more capacity and more training. In summary, there is no effective access to state compensation for victims of trafficking including children.

77. US Department State (2020c)

78. DIM (2019)

79. DIM (2019)

With regards to criminal proceedings, there are a number of deficiencies in the German justice system that aims to ensure that victims are fully legally assisted⁸⁰. Investigations and prosecutions are within the competence of each state in Germany, with the result that states established their own referral systems in which victims are either sent to NGO-based or state-funded assistance⁸¹. Notably, the majority of states, but not all set up a special investigation unit against human trafficking.

It should be positively noted that German state-funded NGOs and the government provided a number of anti-trafficking (legal) training to law enforcement officials, prosecutors, job centre personnel and social workers including those working with minors in recent years⁸². Although these training courses were not mandatory for judges, many still participated on a voluntary basis. Despite these state efforts, there is still a considerable lack of expertise in human trafficking among law enforcement employees and judicial authorities.

Judges on adjudicating trafficking cases still often do not have specific knowledge or have not received special training in the field of human trafficking⁸³.

This issue is also prevalent among German investigators, prosecutors, and courts leading to delays in bringing cases to trial or protracted court cases. In some instances, court cases were dismissed because victims discontinued their participation in prolonged proceedings or due to the statutory limitation period. Particularly in trial processes involving victims of labour trafficking, experienced prosecutors are not present to assist victims and cases are often handled by financial or economic crime sections. This suggests that labour trafficking is not sufficiently prioritised by German authorities.

Services for victims of trafficking including legal assistance, accommodation, medical and psychological care or immigration-related support are provided by the state-funded NGO network against human trafficking (KOK). This network is responsible for the coordination and oversight of the victim support across the country⁸⁴. NGO counselling centres often have an explicit mandate

80. GRETA (2019a)

81. US Department of State (2020c)

82. US Department of State (2020c)

83. GRETA (2019a); US Department of State (2020c)

84. US Department of State (2020c)

to assist victims of sex trafficking, whereas long-term assistance for children and male victims of trafficking are inconsistent across the existing services and shelters⁸⁵. More specifically, a key concern in Germany's legal framework pertains to the vulnerability of children and their legal protection⁸⁶. Given that Germany has not adopted a national action plan against human trafficking that takes into account all kinds of trafficking, child trafficking for example is not explicitly recognised as a type of trafficking. For child victims, procedures and resources for special identification and signposting to child-oriented assistance is missing at the national level⁸⁷. In fact, there is no process in place that ensures a systematic provision of care for child victims in Germany⁸⁸. In addition, the lack of a comprehensive national strategy also means that labour exploitation largely remains an unrecognised type of trafficking in Germany. Given that mainly men are subject to labour exploitation, there is a lack of services and accommodation for male victims. A study further revealed that there are hardly any court rulings and consequently no compensation for individuals who were trafficked for the purpose of labour exploitation⁸⁹.

Identified asylum-seeking victims have access to social care and are temporarily protected from deportation to another EU country or their country of origin. In contrast, unidentified victims who applied for asylum in Germany are especially vulnerable as they could be subject to deportation to the first EU country in which they arrived as a migrant without having access to protection first⁹⁰. Moreover, these third-country individuals face structural discrimination due to their asylum status which prohibits them from accessing any long-term integration aid and the labour market, e.g. specialised job training⁹¹.

Although a number of services are available to victims of trafficking, recent research found that support and legal assistance provided in Germany are often not gender-specific or culturally sensitive, especially with regard to female victims⁹².

85. KOK (2017)

86. GRETA (2019)

87. DIM (2019)

88. US Department of State (2020c)

89. KOK (2017)

90. US Department of State (2020c)

91. Wells et al. (2020)

92. Wells et al. (2020)

One significant area is the lack of support that addresses the needs of particularly victims from non-European countries and those who have not been identified as victims of trafficking yet. For example, language barriers were found in the case of Chinese victims leading to their isolation and limited access to support services including legal aid. Furthermore, the cultural and religious-spiritual backgrounds of female victims from Nigeria are often not fully understood and hence not addressed by service providers, such as fear of spiritual violence as part of occult practices like 'juju' in traditional African religions. Overall, the legal assistance and other support given to victims of trafficking are often not trauma-sensitive meaning that victims' psychological needs are not sufficiently met, and victims lack a 'person of trust' who they can turn to if needed.

2.5 Romania

Human trafficking in Romania

Romania is primarily a country of origin for victims of trafficking and constitutes one of the top five source states in the EU context⁹³. The most prevalent form of trafficking is sexual exploitation, with Romanian nationals being trafficked within Romania and mainly to Western European countries such as Germany, France or Spain. Labour exploitation is another top form of trafficking predominantly present inter alia in agriculture, construction or domestic services⁹⁴. But also trafficking within the country represents a major issue with around half of all registered victims in Romania being minors⁹⁵. In recent years, a higher rate of minor victims were detected than adult victims and therefore the Romanian government has adopted a National Strategy against Trafficking in Persons (2018-2022) that has a strong focus on the situation of potential adolescent victims of sexual exploitation⁹⁶. Children living in shelters run by the state, disabled and Romani children were found to be especially targeted by traffickers for the purpose of forced begging and sexual exploitation in Romania as well as other European states⁹⁷. Sham marriages in which Romanian women are coerced into commercial sex after their marriage are on the rise, especially in Western European countries.

Legal framework

The Romanian government has ratified the Council of Europe Convention on Action against Trafficking in Human Beings, the UN Convention on the Rights of the Child and the ILO Convention on the worst forms of child labour⁹⁸.

93. Tomsa et al. (2019)

94. US State Department (2020d)

95. European Commission (2018)

96. Tomsa et al. (2019)

97. US State Department (2020d)

98. Netherlands Helsinki Committee (2017)

Further EU Directives including the EU Victim Directive and the Directive on compensation of victims have been transposed into national law to prevent and fight human trafficking. The rights of victims of trafficking to legal aid and other support services in Romania are especially provided for in the following national laws: no. 678/2001, no. 211/2004 and Order no. 335 of 29 October 2007. These laws were designed in a very elaborate way to ensure the Directive 2012/29/EU of the European Parliament are effectively transposed into national law⁹⁹. These national legal documents aim at protecting and addressing the needs of victims of trafficking by requiring authorities to inform them of their rights such as access to free legal aid, psychological counselling and financial compensation for possible damages they experienced as victims of trafficking. Both governmental and non-governmental actors can offer these services to victims depending on their level of expertise. Furthermore, victims of trafficking have the right to protected accommodation, rehabilitation assistance, job counselling and more generally to information in relation to their rights and freedoms as registered victims in general. It is positive to note that the Romanian government changed its previous punitive legislation and no longer makes protection of victims of trafficking conditional on them cooperating with authorities in the judicial system or testifying in criminal proceedings¹⁰⁰.

Romania also set up a national mechanism for the identification and referral of victims of trafficking¹⁰¹. Within the Ministry of Internal Affairs, a national rapporteur-like mechanism was set up that assigns the National Agency Against Trafficking in Human Beings (ANTIP) to organise, assess and monitor the implementation of policy measures against trafficking, especially in relation to the referral mechanism¹⁰². In the first contact with victims, the police in Romania usually contacts a regional ANTIP member who takes on special responsibility for the person and assesses the victim's needs. This member should also prepare the victim for the entire criminal proceedings¹⁰³.

99. Hall et al. (2016)

100. Armeanu (2019)

101. Netherlands Helsinki Committee (2017)

102. European Commission (2018)

103. Netherlands Helsinki Committee (2017)

Deficits of legal instruments and their implementation

From a legislative point of view, Romania has adopted positive and efficient legislative instruments to strengthen the protection for victims of trafficking and to prevent as well as combat trafficking-related crimes¹⁰⁴. Nevertheless, observations and empirical studies highlight several weaknesses in the application of the legal instruments. The European Centre for Education and Research¹⁰⁵ pointed out some important shortcomings concerning Romania's anti-trafficking policies and data collection. With reference to the number of identified victims of trafficking reported by ANITP, the centre stressed that Romania's latest figures were 50% lower than those provided by the EU. This indicates that there might be a significant issue with the identification of victims which is a vital requirement for victims of trafficking to access protection and rights granted to them by law¹⁰⁶. Furthermore, corruption issues among authorities, particularly police officers in the area of child trafficking, are also prevalent in the Romanian context and this was recognised by the Minister of Justice. However, there is no evidence that the government introduced concrete preventative or punishment measures to tackle this problem¹⁰⁷.

Legal assistance for the victims of human trafficking

As stated above, Romanian law accords victims of trafficking the right to free legal aid which for individuals who suffered grievous physical violence, rape and those whose relatives were murdered¹⁰⁸. This provision is however subject to the condition that victims' do not earn more than the statutory minimum wage. For the whole duration of criminal proceedings, victims are given a compulsory ex-officio lawyer to assist them with their claim.

However, a range of obstacles and issues were identified regarding the legal representation of victims of trafficking in Romania¹⁰⁹. In practice, these lawyers

104. Hall et al. (2016)

105. European Centre for Education and Research (2020)

106. Armeanu (2019)

107. European Centre for Education and Research (2020)

108. Netherlands Helsinki Committee (2017)

109. Tomsa et al. (2019)

do not receive the clients' contact details before the trial and hence victims cannot consult the legal assistance and prepare for their hearing in advance which negatively affects how lawyers defend victims. This is linked to the issue that lawyers are only granted access to client's file a short time before the hearing in court. The consultation between lawyer and client then takes place in the presence of authorities and hence can be intimidating for victims¹¹⁰. Overall, this can lead to victims not feeling that their rights are fully represented and defended. Moreover, lawyers cannot act on behalf of child victims in cases of compensation. It was also found that lawyers do not always inform victims about the possibility of claiming financial compensation.

In terms of legal representation during criminal proceedings, the quality of the legal assistance provided by state-funded lawyers is questionable as these lawyers receive very low fees and consequently tend to accept a high number of clients¹¹¹. A further challenge relates to the qualification of assigned lawyers given that many are still not particularly qualified or have little experience in the rights of victims of trafficking¹¹². This is not surprising given that the appointment of these lawyers is based on a randomised system and there is no legal requirement for them to be trained in human trafficking. Concerns also pertain to the fact that state-funded lawyers do not always consistently represent victims of trafficking in trials and thus there is an issue of continuity¹¹³. In fact, it was found that lawyers change each session which prohibits any trust building and familiarity with the case.

Victims can also request legal representation such as private lawyers through NGOs. Although a few NGOs in Romania have contacts of pro-bono lawyers, these organisations have only limited time and financial resources to pay for private lawyers as they are themselves dependent on external funds¹¹⁴. Another problematic aspect refers to the fact that NGOs have struggled to access state funds from agencies. This is due to the legal requirement that NGOs must have a licence in order to be able to provide certain type of services such as legal aid.

110. Netherlands Helsinki Committee (2017)

111. Tomsa et al. (2019)

112. US State Department (2020d)

113. Hall et al. (2016); Netherlands Helsinki Committee (2017)

114. Netherlands Helsinki Committee (2017)

In cases where NGOs can support victims of trafficking with legal assistance, the Committee stressed that lawyers arranged by NGOs are often specialised in the legal representation of victims of trafficking and have a stronger trust-based relationship with them as they assist clients throughout the whole duration of proceedings. However, victims need to be aware of which NGOs work in the anti-trafficking field and can offer legal aid. There is no official list that shows which NGOs offer such legal service. Therefore, victims still rely on state-funded lawyers.

For the Romanian context, regional differences were also found in terms of the quality and range of support that is available to victims in each county. In some, particularly urban areas, the presence of a network of NGOs means that more services can be offered to victims of trafficking such as legal aid, healthcare or long-term shelters.

When it comes to criminal cases, victims of trafficking enjoy a number of rights¹¹⁵:

- "a) to be informed of their rights;
- b) to propose production of evidence by the judicial bodies, to raise objections and to make submissions;
- c) to file any other applications related to the settlement of the criminal part of the case;
- d) to be informed, within a reasonable term, on the status of the criminal investigation, upon explicit request, provided that they indicate an address on the territory of Romania, an e-mail address or an electronic messaging address, to which such information can be communicated;
- e) to consult the case file, under the law;
- f) to be heard;
- g) to ask questions of the defendant, witnesses and experts; to receive an interpreter, free of charge, when they cannot understand, cannot express themselves properly or cannot communicate in the Romanian language;
- h) to be assisted or represented by a counsel; i) to use a mediator, in cases permitted by law;
- j) other rights set by law."

115. Hall et al. (2016: 176)

In addition, victims are also legally entitled to anonymisation of their identities and protection of their residence during criminal cases. Despite these granted rights, in practice victims who cooperated with law enforcement experienced a range of inadequate assistance and issues with their personal protection¹¹⁶. For example, in cases taking place in 2019, the names of all witnesses including child victims in trials were disclosed online by the Romanian government. Previous research confirms this continued issue and emphasised that victims' exact home addresses were also published on the court's website¹¹⁷. This reflects a lack of specialisation among Romanian actors who work in the judicial system who should understand the vulnerable situation of victims of trafficking.¹¹⁸

Moreover, in cases where victims wanted to exercise their right to reparation from the traffickers, victims often did not have the financial means to pay for the fees to initiate civil trials or to pay those authorities who collect the money from the offenders¹¹⁹. These practices show that the legislative framework and policies make it difficult for victims to be awarded civil compensation and in fact violate European law that requires EU countries to promote mechanisms to encourage traffickers to compensate victims of trafficking in criminal cases¹²⁰. In the light of the above, it is not uncommon that victims distrust law enforcement and hesitate to work with authorities.

In terms of legal representation of children, minor victims of trafficking or those who have a legal guardian have the right to legal aid regardless of whether they filed a complaint (Art. 16 Law no. 211/2004)¹²¹. However, a recent evaluation by GRETA¹²² raised concerns about the reintegration of child victims in Romania and whether the children's interests are fully considered. The Department of Social Assistance and Child Protection has the duty to monitor the wellbeing and provide specific protection of repatriated child victims in Romania for at least half a year after their return. Observers, however, emphasised that this state structure does not carry out a risk assessment of children before they

116. US State Department (2020d)

117. Hall et al. (2016)

118. Netherlands Helsinki Committee (2017)

119. US State Department (2020d)

120. Armeanu (2019)

121. Netherlands Helsinki Committee (2017)

122. GRETA (2019b)

return. Furthermore, they do not effectively evaluate the situation of returned minor children. The lack of protection is especially concerning in cases where the children's parents or other family members enabled the trafficking in the first place. This means that such children are at high risk of being re-trafficked. This raises concerns about whether child victims are adequately legally protected in Romania in terms of the guardianship system but also when it comes to legal aid.

2.6 Spain

Human trafficking in Spain

Spain mainly represents a destination country for foreign victims of trafficking and to a lesser extent a country of origin or transit to other destinations such as the United Kingdom¹²³. Protection services for victims of trafficking are based on immigration legislation in Spain and therefore many victims identified in Spain are of foreign origin. Individuals who are subjected to forced labour are both female and male and originate mostly from Romania and Bulgaria as well as Vietnam and China. According to the US State Department¹²⁴, victims exploited for labour purposes work inter alia in the area of construction, beauty, agriculture or domestic service.

However, trafficking in human beings in the Spanish context was found to be mostly associated with sexual exploitation of women and unaccompanied migrant children¹²⁵. Women forced into prostitution are predominantly from Eastern Europe, Latin America, East and South Asia as well as the Dominican Republic and Nigeria¹²⁶. Online criminal networks increasingly use online platforms to rent apartments and recruit victims which impedes the identification and tracking of these illicit activities. It must also be noted that the Spanish law does not permit or prohibits prostitution per se and therefore NGOs in Spain fear that most of the women involved in the commercial sex industry are subjected to trafficking.

Legal framework and deficits of legal instruments and their implementation

The Spanish government has transposed the Directive 2011/36/EU into national law and consequently provides a legal framework that fulfils the minimum

123. de Liévana and Waisman (2017); US Department of State (2020e)

124. US Department of State (2020e)

125. Soria et al. (2018)

126. US Department of State (2020e)

standard to tackle trafficking in human beings¹²⁷. In particular, the Spanish Criminal Code has been amended to adopt the Directive's definition regarding the crime of human trafficking and additionally implemented 36 laws that reflect its principles.

However, de Liévana and Waisman¹²⁸ emphasised that the transposition of the Directive into Spanish legislation has numerous shortcomings. First, only four of these national laws concern the crime and prevention of trafficking or addresses the protection of victims. This means that the majority of these legal instruments deal with other types of crimes and different components of the Spanish justice system. Second, another deficit refers to the lack of legally binding norms that ensure the protection of victims in terms of their human rights. The current approach of the government does not offer a comprehensive legal framework to eliminate and prevent trafficking in Spain. This inadequate implementation of the EU Directive neglects gender-based aspects such as providing appropriate strategies to identify trafficked girls. Further concerns of state protection for victims of trafficking pertain to the lack of information and scientific evidence about sex trafficking¹²⁹. Overall, it must be noted that the translation of the Directive into Spanish law does not effectively protect the victims' rights from a human rights and gendered perspective¹³⁰.

Furthermore, the efforts of the Spanish government have been too one-dimensional by focussing solely on sexual exploitation and hence mechanisms to address trafficking for other purposes are insufficient or missing¹³¹. This limited focus led to the lack of identifying victims of other forms of exploitation and consequently made it more difficult for potential individuals to access basic rights. For example, previous research found that there was a considerable lack of legal protection or even identification of those victims in particular who were trafficked for the purpose of criminal exploitation¹³². This type of trafficking concerns individuals who are forced to carry out illegal or antisocial activities such as cultivating drugs. Although the Criminal Code in Spain includes a

127. de Liévana and Waisman (2017)

128. de Liévana and Waisman (2017)

129. Soria et al. (2018)

130. de Liévana and Waisman (2017)

131. de Liévana and Waisman (2017)

132. Villacampa and Torres (2019)

specific clause of non-punishment of victims of trafficking, there are constraining criteria for the applicability of this principle based on the consideration of the proportionality between the criminal act and the coercion involved. Victims were usually considered for non-punishment only when the committed offence was regarded as less serious, for example, growing cannabis. One major issue of the state's failure to identify victims is that they do not receive support that they are legally entitled to and are being put at risk of re-trafficking.

Legal assistance for the victims of human trafficking

In Spain, the main state actors that are involved in the identifying, protecting and supporting victims of trafficking are the police and law enforcement¹³³. Although professionals from NGOs, medical services or the police detect victims, it must be noted that the Spanish system only authorises the national police to assess whether someone is a victim¹³⁴. One crucial issue that has been identified is the absence of any protocol which explicitly explains how the identification process should take place which leaves it open for arbitrariness¹³⁵. The imperative mandated by the Directive to provide a multidisciplinary team assisting the potential victim during the identification process (Article 11.5) is clearly not met by the Spanish procedures. In general, potential victims are not granted the right to have legal representation during the identification procedure.

Especially when it comes to identifying minor victims of trafficking, there is no systematic strategy to detect this vulnerable group. There is also a lack of written and translated information about the rights of victims which means that they are often not sufficiently informed of their rights and only have limited knowledge of the assistance that should be offered to them after being granted victim status. For example, de Liévana and Waisman¹³⁶ pointed out that Spanish police officers often inform victims about a reflection period by handing out a leaflet upon their arrival without in-depth explanation. Consequently, in practice a very low number of female victims make use of the reflection period.

133. de Liévana and Waisman (2017)

134. Villacampa and Torres (2019)

135. de Liévana and Waisman (2017)

136. de Liévana and Waisman (2017)

The situation of victims of trafficking held in detention centres has been particularly considered as alarming as they only have limited legal guarantees¹³⁷. When police officers question women, their attorneys are not always notified or interpreters are not available. Despite the fact that legal actors have contact with potential victims in detention centres, they are not seen by authorities as key actors in relation to identification and protection. In fact, no formalised procedure is established that allows a proactive identification of detainees, but potential victims need to identify themselves and request protection. Victims who remain unidentified are frequently treated as undocumented migrants and risk deportation.

When individuals are not granted victim status, then such a case should follow a standard court procedure without taking into account the victims' circumstances¹³⁸. The timely and correct identification of victims of trafficking is paramount in order for them to access a range of rights and protection services, e.g. access to Spain's healthcare system. In light of the aforementioned issues regarding Spain's legal framework and identification of victims of trafficking, scholars rightly stress that the identification and assistance of victims is not a priority for the Spanish government which leads to their overall inadequate protection:

“The failure to correctly identify a trafficking victim or a potential victim is in itself a violation of the rights and obligations derived from the Directive. At the same time, the lack of identification leads to a denial of a number of other rights as well as to unsuccessful criminal investigations and the impunity of traffickers”.¹³⁹

In terms of criminal proceedings, a number of shortcomings were identified. In 2017, the Spanish government published an annex which inter alia extended the protocol on Spain's public healthcare response in the area of gender-based violence¹⁴⁰. Although this annex aimed at improving the detection of victims of sexual exploitation and provided guidelines to ensure comprehensive support and protection for victims of trafficking, they are not protected if they are

137. de Liévana and Waisman (2017)

138. Villacampa and Torres (2019)

139. de Liévana and Waisman (2017: 510)

140. Soria et al. (2018)

unwilling to participate in the filing of a criminal complaint. In other words, Spanish authorities tend to grant victim status and provide protection only to those victims who cooperate with them relating to the identification and prosecution of traffickers¹⁴¹.

Victims of trafficking are also unlikely to receive benefits in cases where the information provided was deemed insufficient by authorities to arrest ringleaders¹⁴². For example, this study found that the judicial investigation in Spain primarily focussed on obtaining information from victims to tackle drug trafficking rings than examining the victimisation conditions. This kind of treatment not only led to the issue of victims not being identified as such, but this study revealed that legal professionals tended to treat victims who had committed a crime as offenders. This practice is highly problematic as it leaves the victims unprotected and does not consider the vulnerability of victims such as their fear that traffickers could threaten their relatives or themselves being re-trafficked in case of deportation.

The treatment of victims in the Spanish criminal justice system is strongly criticised from a human rights perspective stressing that trafficking cases are not fully prosecuted: “A common feature of the treatment received by all trafficking victims once they entered the criminal justice system was that they were often treated more as a source of evidence than as subjects of rights”¹⁴³. If cases do not go forward due to reasons that victims cannot control, then victims will no longer receive protection and are unlikely to be granted compensation which is a requirement of the EU Directive¹⁴⁴.

The situation of victims of trafficking is further exacerbated by the fact that lawyers are not allowed to speak with the victims before they make their statements in criminal proceedings and to explain to the judge that the committed offences resulted from the victims’ fears and threats they experienced¹⁴⁵. In addition, due to the widespread lack of awareness of the non-punishment clause among the professionals involved, and how they understood the scope of its applicability

141. de Liévana and Waisman (2017)

142. Villacampa and Torres (2019)

143. Villacampa and Torres (2019: 6-7)

144. de Liévana and Waisman (2017)

145. Villacampa and Torres (2019)

presented crucial concerns; victims of trafficking were often not exempted of the liability of the unlawful activities due to possible trafficking. In these cases, lawyers defending these victims tend to only reduce the sentence by referring to extenuating circumstances. Furthermore, if the victim only suffered from the criminal exploitation, then legal practitioners can hardly establish a case for victim status as the victim is not viewed as a 'pure victim' (e.g. someone has been sexually exploited).

A further major issue is the lack of specialised training among legal practitioners in the area of human trafficking¹⁴⁶. This can further lead to problems such as prejudices among legal practitioners and can negatively affect the assistance they offer to victims of trafficking. For instance, they might be less able to differentiate between seeking the truth and holding the victim responsible for their situation. Moreover, a key challenge in the work of Spanish legal practitioners is the absence of a specific law that protects the identity of victims of trafficking, so that traffickers cannot identify them in criminal proceedings. A criminal proceeding in Spain can be victimising for victims of trafficking due to a lack of specific protocol of action and inadequate communication between professionals that assist the victims and the defendants.

A further key shortcoming is evident in victims' participation in criminal proceedings and the lack of ability of legal practitioners to ensure that victims fully understand the risks of their testimony against traffickers¹⁴⁷. Legal practitioners do not always prepare the victims sufficiently about the internal workings of internal proceedings in which victims often tend to be asked to give a detailed account of their trafficking experience.

The lack of training of Spanish judges represents another significant challenge leading to issues of stereotypes in terms of the judgement of the credibility of victims' testimonies, for example in relation to consistency and plausibility of victims' statements. This is crucial as judges are responsible for the regulation of processes and the ultimate verdict.

The lack of availability of trained interpreters and cultural mediators presents an additional problem when it comes to legally supporting victims of trafficking.

146. Soria et al. (2018)

147. Soria et al. (2018)

Whilst an interpreter acts as a mouthpiece for victims, a cultural mediator prepares them for their testimonies and can accompany them during oral trials. Lack of funding or the issue that the interpreter is hired for both the victim and the trafficker can cause difficulties finding a specialised translator or cultural mediator.

In terms of access, previous research pointed out that lack of information among professionals who assist victims of trafficking also leads to the problem that potential victims are not being referred to agencies that are particularly trained to assist them in their specific situation. In cases of doubt, it could also mean that professionals do not seek specialist assistance themselves.

There is also a lack of personal protection and specific laws to support victims of trafficking and their family members. This is a key reason for survivors of sexual exploitation not to cooperate with law enforcement¹⁴⁸. For example, lack of international cooperation between Spain and the victims' countries of origin can result in insufficient safeguarding of relatives of victims. Poor professionalism evident in interventions leading to incomprehensive care was an additional reason why victims of trafficking are not willing to work with law enforcement.

Furthermore, insufficient specialised training for professionals such as regarding the victim's culture or the action protocols to follow were found to be a consistent issue which can impede the state's identification of victims of trafficking. In addition, available information is often inconsistent and existing statistics are unreliable which leads to a lack of social resources and support mechanisms for victims.

148. Soria et al. (2018)

3 Survey on legal assistance across Europe

3.1 General information

As outlined in the scoping review, there are differences in the access to and quality of assistance for victims of trafficking depending on whether those working in the anti-trafficking sector provide their service in an urban or rural setting. Therefore, the survey was interested to find out whether respondents work in a rural or urban area. The first part of the questionnaire sought to gather some general information about the respondents which will be presented in the following section. Overall, 48 individuals participated in the online survey (Figure 3.1). The results show that the majority of respondents (93.6%) work in an urban area, whereas the remaining (6.4%) in a rural area.

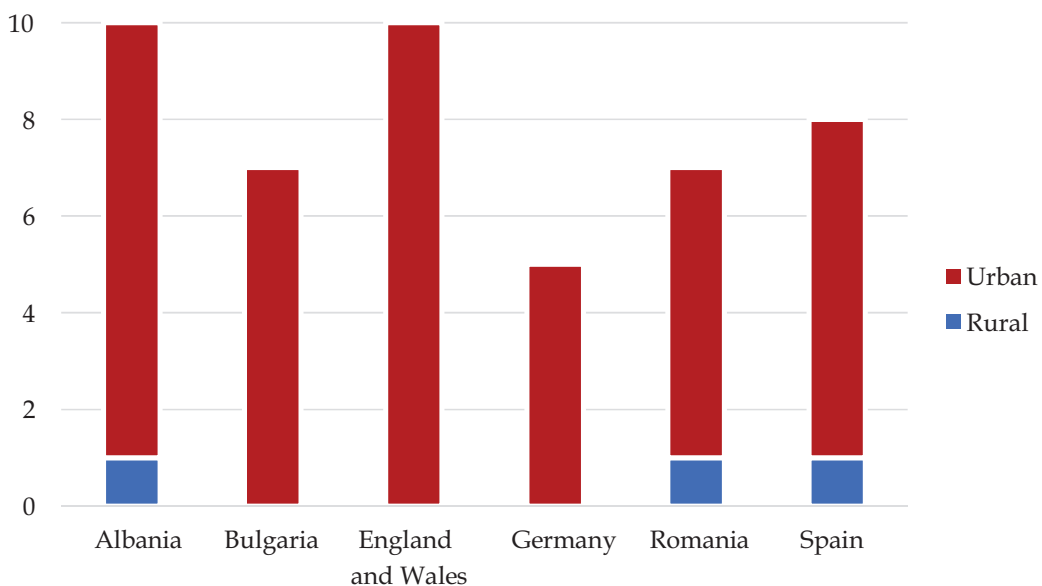


Figure 3.1: Country in which the respondents' organisation is located

Furthermore, respondents were asked to provide information about their job title as well as the type of assistance they offer to victims of trafficking. The most common job titles among respondents were project manager, legal officer, or social worker inter alia (see **Figure 3.2**). Around one in five participants chose the 'other' option to specify their roles. Their job titles and roles that can be summarised as follows: researcher, lawyer, organisation president, partnerships and advocacy lead, specialist in free legal aid, head of operations, consultant and managing/medical/executive/administration director. The majority of respondents work frontline with victims on a daily basis.

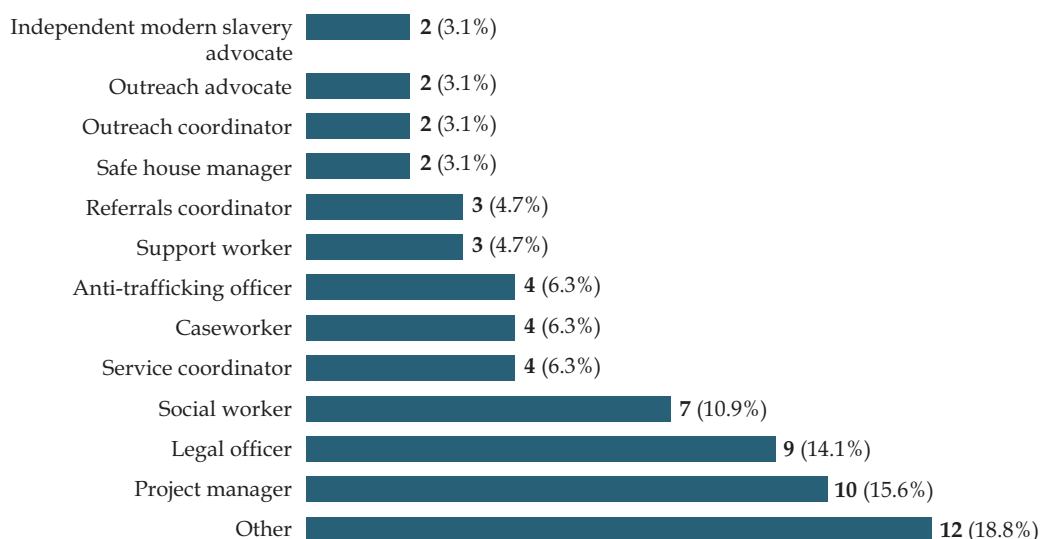


Figure 3.2: *Job titles of respondents*

The answers to the question pertaining to the type of support that respondents offer to victims of trafficking highlights that the majority of the respondents provide casework, advocacy and advice as well as legal aid, as shown in **Figure 3.3**. Furthermore, the answers given in the 'other' section comprise the following kinds of support: social assistance including for children or employment purposes, identification of potential victims, prevention of trafficking, psychological and emotional counselling, writing psychiatric reports, community activities, counselling for victims of crime and mentoring.

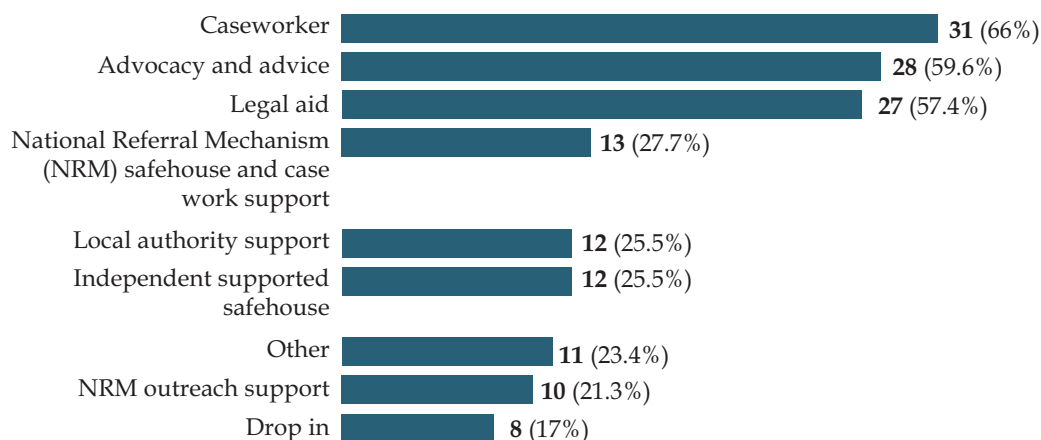


Figure 3.3: Type of support respondents provide for victims of trafficking

3.2 Awareness on legal assistance

The second part of the survey examined the extent to which victims of trafficking are aware of the free legal assistance provided by the government of the host society. First, the survey asked if government authorities inform the victims of their basic rights, such as the right to a reflection period or to free legal advice, after the victim was identified. Two in three respondents replied that officials only sometimes inform victims of their fundamental rights, whereas only one in three replied that this is always the case (see **Figure 3.4**). This indicates that most of the time, it is uncertain whether victims are aware of their basic rights. However, it is positive to note that only one respondent stated that victims of trafficking are never informed about their basic rights:

“They are not informed or very rarely included in the process.”

(Romanian respondent)

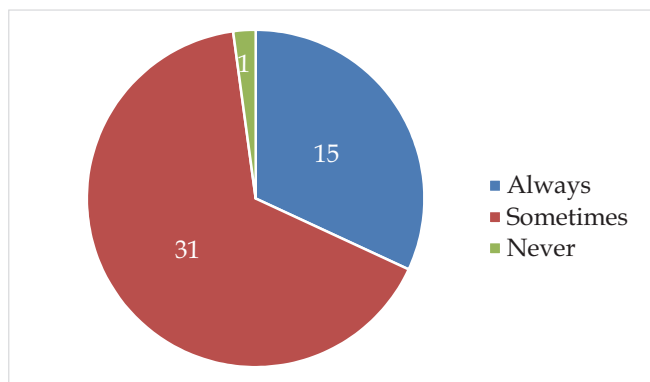


Figure 3.4: Government informs victims of their basic rights after identification. The frequency of the given three answer categories is indicated in the pie chart.

A closer examination of the responses from each country reveals that in Albania it is more likely that victims are informed about their rights by authorities after their identification than in the other countries. Whilst the respondents from the remaining states mostly noted that victims only received information regarding their basic rights in some cases, one participant from Romania noted that this was never the case in the Romanian context. Although difficult to generalise, the responses hint that there is certainly room for improvement when it comes to the adequate information provided to victims on their right to legal assistance.

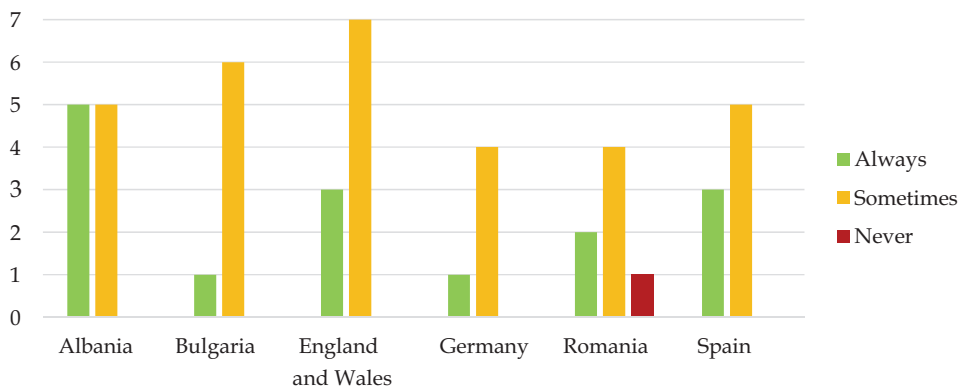


Figure 3.5: Government informs victims of their basic rights after identification, by country

In terms of obstacles that victims may face when it comes to accessing legal information, respondents named a range of issues that either referred to the victims themselves, or failures on part of the government or existing support system.

Lack of language skills among victims and the lack of interpreters were frequently identified as obstacles that lead to victims not fully understanding the legal information given to them. Moreover, respondents further emphasised that victims often do not possess sufficient knowledge about their rights, for example how to find a lawyer or how to access the social support system in place. In terms of the legal information provided by government authorities, respondents stressed that the information is often limited, not given at all or too complex for victims to comprehend. These obstacles were highlighted by respondents from almost all countries. Albanian respondents were the only practitioners who also remarked that lack of financial means further prevents victims from accessing legal information and assistance. For example, this includes cases in which victims live far away from a legal aid provider and also cannot afford Internet, transportation or postage fees to request legal assistance and liaise with their legal representatives. Furthermore, lack of trust towards or even fear of authorities such as police officers were particularly voiced by Albanian, Romanian and Spanish respondents and thus regarded by participants as another barrier to victims accessing legal information. The lack of specialist lawyers was a further issue named mostly by respondents from Germany, Romania and Bulgaria. On overview of all answers provided are categorised as follows:

Table 3.2: Obstacles to access legal information for victims

Type of obstacle	Answer examples
Victims' language skills and/or lack of interpreters	<p><i>"We also work with children so the information should be adapted to their level of maturity."</i></p> <p><i>"The language is often not understandable to the victims in terms of terminology."</i></p> <p><i>"In cases of foreigners, there may be obstacles in communication, when a translator cannot be immediately provided."</i></p> <p><i>"Language barriers - clients who speak limited English are reliant on caseworkers to communicate where communication is via email (e.g. outside of meetings with legal rep where interpreter is present)."</i></p>

Victims' knowledge	<p><i>"Don't know how to find a lawyer."</i></p> <p><i>"No knowledge of social infrastructure."</i></p> <p><i>"Fear due to no legal papers and due to false information from the human traffickers."</i></p> <p><i>"At these first stages of their stay in Europe, women do not identify themselves as victims."</i></p>
Victims' fear of authorities and/or traffickers	<p><i>"Not trusting the criminal justice system."</i></p> <p><i>"They are afraid of their traffickers. They find themselves unprotected by the government authorities. They distrust the government authorities. The government authorities don't inform them about their choices."</i></p>
Lack of specialised lawyers	<p><i>"Lack of specialized representation from specialized lawyers for victims rights."</i></p> <p><i>"The information is provided mainly by specialists, and not all victims have a connection with such."</i></p> <p><i>"Access to legal information is not granted; very few legal experts in Bulgaria are trained on THB and Human rights."</i></p>
Lack or absence of information from authorities	<p><i>"Usually they have to initiate the formal identification process in order to get the information from the authorities. NGOs are a secondary source of information through awareness sessions and outreach units."</i></p> <p><i>"The law on legal aid and the system itself is new and this poses many challenges in terms of efficiency, starting from funding, lack of proper information, specialized representation etc."</i></p> <p><i>"Most get immigration advice of some kind, but it's often spotty if they've been informed that there is legal aid for victims of trafficking to apply for Discretionary Leave. Some also need help finding support with family law, or complex compensation claims, or getting criminal convictions overturned."</i></p>

System failures	<p><i>“Operational problems to the internal efficiency of the justice system, such as: Lack of cooperation between different bodies within the justice system; lack of multiagency approaches; lack of pre-trial counselling; and the expense of bringing a case to court.”</i></p> <p><i>“An understanding of their rights. It is not enough to be provided with information.”</i></p> <p><i>“Insufficient awareness and information campaigns.”</i></p>
Support services	<p><i>“Lack of supporting services.”</i></p> <p><i>“Inability to access it without support.”</i></p> <p><i>“Lack of support services for justice, psychological counselling.”</i></p>

The survey also sought to shed light on whether victims of trafficking proactively ask for legal assistance. Across all countries, two in three respondents keep records of clients who ask for legal assistance. Most of the participants who stated that they have a system of record keeping further specified that between 25% and 75% of their clients asked for legal assistance in the last 12 months (see **Figure 3.6**).

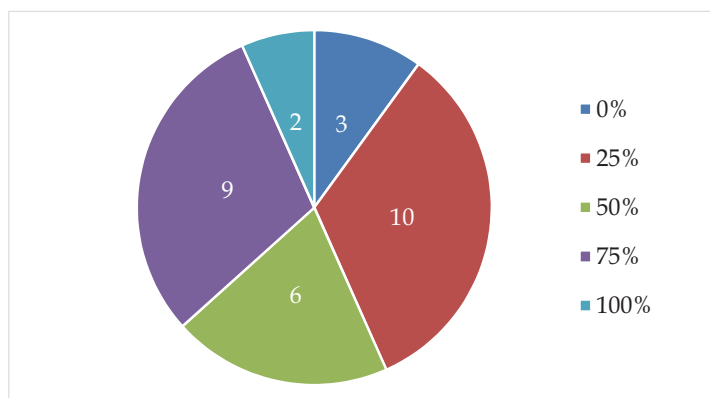


Figure 3.6: *Proportion of victims who asked for legal assistance in the last 12 months.* There were five discrete answer categories (0, 25, 50, 75, 100%). The sizes of the pie sections correspond to the number of responses, which are indicated in each section.

However, the proportion of victims who asked for legal assistance in the last 12 months differs at the national level (see **Figure 3.7**).

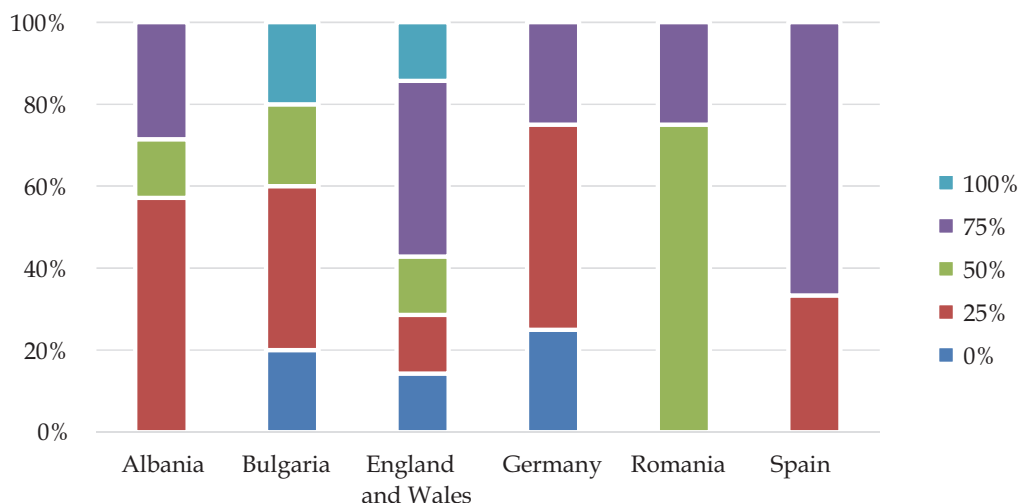


Figure 3.7: *Proportion of victims who asked for legal assistance in the last 12 months, by country.* There were five discrete answer categories (0, 25, 50, 75, 100%). The length of the different bar charts within each country corresponds to the number of responses for each answer category.

When asked about the type of legal assistance that respondents offer to their clients, the majority stated that they either provide immigration assistance or criminal assistance with prosecution, followed by support with compensation claims (see **Figure 3.8**). Those who chose the option ‘other’ named the following types of legal assistance that they offer to victims of trafficking: family-specific law and rights, civil cases, assistance for minors and administrative legal aid.

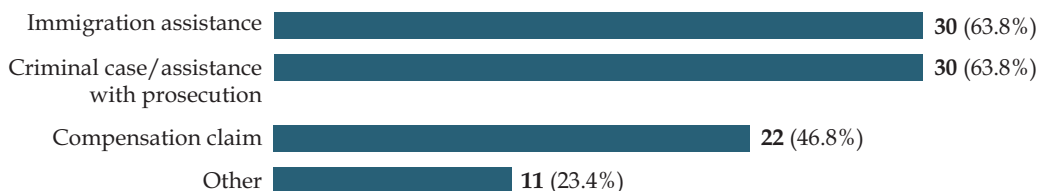


Figure 3.8: *Type of legal assistance provided to victims*

A closer examination of the answers given by country shows that respondents from Germany, England and Wales and Spain have a stronger focus on

immigration assistance when it comes to legal assistance provided to victims (see **Figure 3.9**). This is not surprising given that these countries are mainly destination states for victims of trafficking and hence have more foreign national victims. Across all countries, compensation claims and criminal assistance with prosecution are the main areas in which victims require legal assistance.

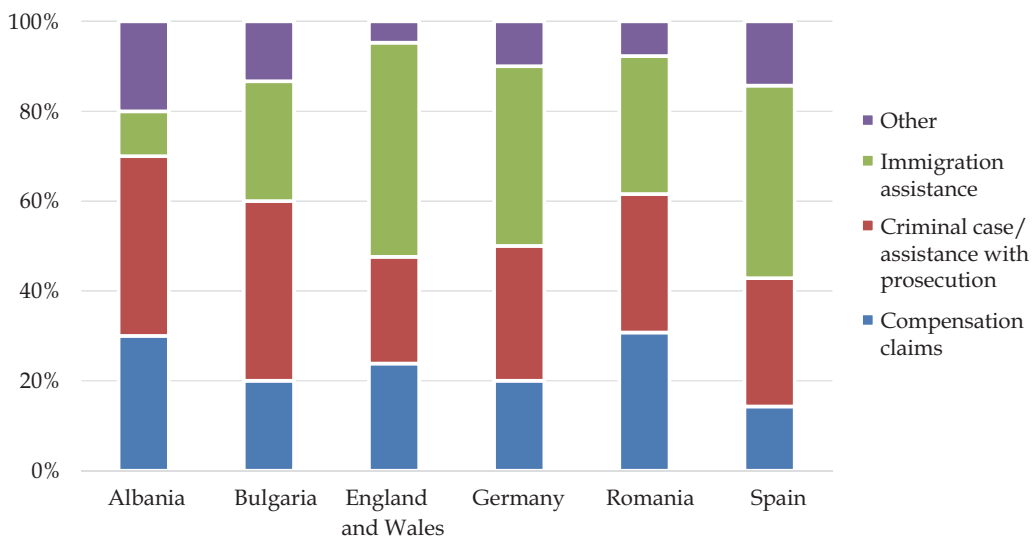


Figure 3.9: *Type of legal assistance provided to victims, by country.* The length of the different bar charts within each country corresponds to the number of responses for each type of legal assistance.

3.3 Access to legal assistance

This section examines the responses about the access to legal aid for victims of trafficking. Over 80% of the participants responded that their clients are referred to free legal assistance between under a month (50%) to three months which suggests that those victims who receive free legal advice, do so relatively quickly (see **Figure 3.10**). A possible explanation could be that the majority of survey participants work in urban areas where usually more support services including legal aid are available for victims of trafficking than in remote areas. In contrast, one in five respondents stated that this process takes between four and up to 12 months.

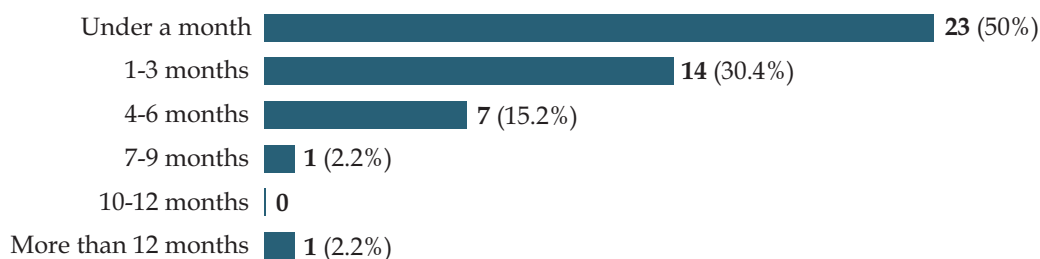


Figure 3.10: Duration to refer a client to free legal assistance

The country-based analysis illustrates that in Albania and Germany it takes on average up to three months for victim of trafficking to be referred to legal assistance, whereas respondents from Bulgaria and England and Wales stated that clients wait up to six months (see **Figure 3.11**). In contrast, few respondents also suggested that in Romania clients can wait up to nine months and in Spain over twelve months to be referred for legal assistance.

However, the survey responses reveal that not every client who has been referred eventually receives free legal assistance. In fact, only 17.8% of the respondents stated that all of their clients received legal assistance in the last twelve months, whereas the majority of participants indicated that between 25% and 75% of their clients are eventually legally assisted. More concerning is the fact that one in ten stated that none of their clients receives free legal aid.

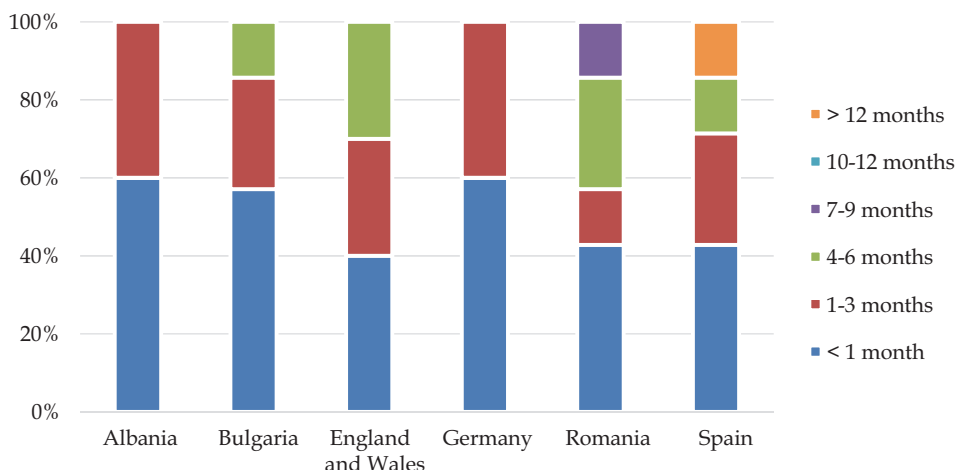


Figure 3.11: Duration to refer a client to free legal assistance, by country. There were six discrete answer categories (under 1 month, 1-3, 4-6, 7-9, 10-12, over 12 months). The length of the different bar charts within each country corresponds to the number of responses for each answer category.

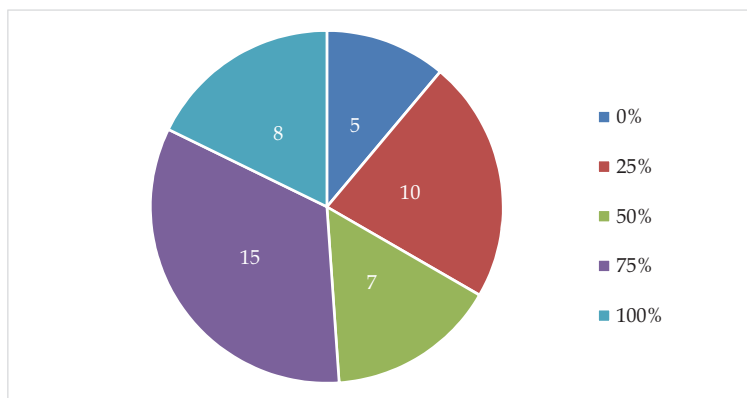


Figure 3.12: Proportion of victims who eventually receive legal assistance. There were five discrete answer categories (0, 25, 50, 75, 100%). The sizes of the pie sections correspond to the number of responses, which are indicated in each section.

A further look at each country's answers shows that there are stark differences when it comes to how many victims eventually receive legal assistance (see **Figure 3.13**). It is conspicuous that in Romania in particular, but also in Spain and Albania clients sometimes are not legally supported at all. In comparison, respondents from Bulgaria and England & Wales stated that the majority of their clients receive legal consultation.

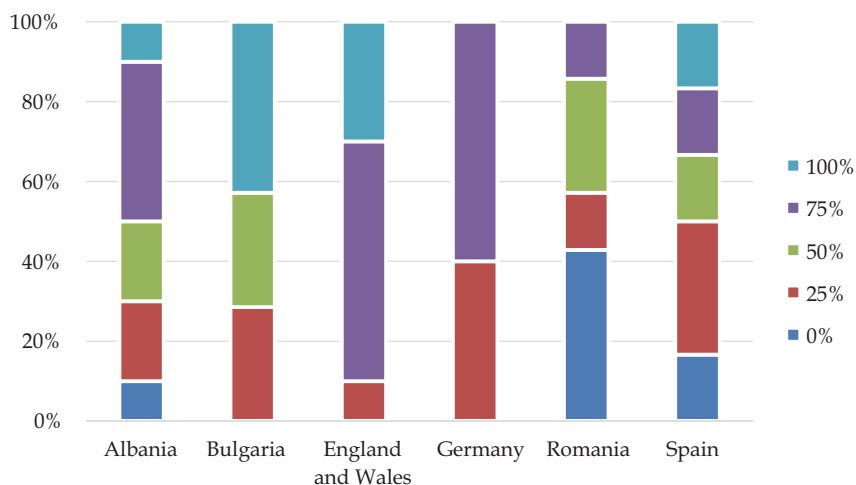


Figure 3.13: Proportion of victims who eventually receive legal assistance, by country. There were five discrete answer categories (0, 25, 50, 75, 100%). The length of the different bar charts within each country corresponds to the number of responses for each answer category.

The analysis of the obstacles to free legal assistance shows that respondents are concerned with a number of aspects in relation to government policies and official procedures (see **Table 3.3**). Respondents from Albania and Bulgaria particularly raised concerns about complicated procedures and the official requirements that need to be met by victims in order to access state-funded legal assistance. Victims therefore seek free legal assistance from NGO-based lawyers who have only limited capacities and funding. The responses further indicate that obstacles to access free legal assistance are closely linked with the obstacles mentioned by the respondents to access legal information such as lack of training of lawyers and limited awareness of victims (see Table 3.2).

Table 3.3: Obstacles for victims to access free legal assistance

Type of obstacle	Answer examples
Complicated procedure	<p><i>"The procedures are really complicated, because to benefit from legal aid guaranteed from state you have to make a court request and even a court hearing."</i></p> <p><i>"Complicated administrative procedure if legal assistance is provided by the state. No obstacles if legal assistance is provided by NGO based lawyer. The second type of assistance is project based and therefore limited."</i></p>
Lack of victim-oriented support	<p><i>"Lack of cooperation with Local Chambers of Advocacy. According to the legislation in force, the Local Chambers of Advocacy have the duty to appoint a lawyer within 8 hours of receipt of the request from the court for the provision of secondary legal aid. In most cases, this obligation is not implemented on time, causing delays and thus violating the legal rights of the applicant."</i></p> <p><i>"The procedure for obtaining the status of victims of trafficking remains unclear and was flawed. Justice institutions including the Courts, the Prosecution, and the Police continue to have a perpetrator-oriented approach."</i></p> <p><i>"The client might have not been informed of their entitlements whilst in the NRM. Having no recourse to public funds post and pre NRM."</i></p>

Deficits in legislation	<p><i>"The basic criteria for receiving free legal aid are not established."</i></p> <p><i>"Lack of fulfilment of the criteria provided by law."</i></p>
Lack of specialist lawyers	<p><i>"Finding lawyers that have received training to work with specific vulnerable groups such as children, migrants, victims of domestic abuse, among others."</i></p> <p><i>"Only very few lawyers available that have experience in this field, fees are rather small thus making it not attractive for lawyers to engage in these cases."</i></p> <p><i>"Solicitors not having capacity to take cases on."</i></p> <p><i>"Survivors of trafficking are provided different lawyers at different stages of the case. They typically only attend the in person statement or hearings with very little or no meeting with the client and no prep."</i></p> <p><i>"They all receive some free legal assistance, but many times it is limited to having a lawyer present when giving statements. Lawyers change in different phases of criminal proceedings and are often not engaged enough in the legal process. Our clients receive legal assistance from us, which is free for them (not us). But it is not because they can't have free legal assistance. It's because it helps them to have someone specialized in HT crimes and it helps us fulfil our mission."</i></p> <p><i>"The professionals do not receive enough specialized training courses and such training is not required for the lawyers by the government authorities. Another important fact, is that the lawyers are not concerned about the consequences on the victims of human trafficking and the current law regulations do not protect the victims."</i></p>

Lack victims' knowledge	<p><i>"Lack of experienced advisers who work under legal aid contracts; some regions are worse than others and often we need to search farther afield and be persistent. Lack of capacity amongst good and experienced advisers."</i></p> <p><i>"Lack of information on their rights when accessing the legal aid and to what extent do they have the legal support."</i></p> <p><i>"That women do not identify as victims, in spite of the abundance of trafficking indicators. We receive them at early stages. The approach should be that of secondary prevention."</i></p>
Mistrust of victims	<p><i>"Sometimes the clients don't believe that the free legal assistance will be qualitative enough."</i></p> <p><i>"Fear; Disbelief in the justice system; Pressure from pimps/perpetrators."</i></p> <p><i>"They are afraid. They think that it is costing a lot."</i></p> <p><i>"It is very difficult for the women to trust and tell things to other people, even more when since the first moment they have a lawyer of reference who is the one with whom they work their stories, they open up to her and a bond of trust is generated. For this reason, although lawyers are appointed because the women so wish, the lawyer of reference is always present in all the coordination and accompaniment and even while accessing the files, the preparation of the indictment document, and the preparation of the statement is done together by both lawyers."</i></p>

Respondents from Germany and Romania pointed out that those lawyers who offer free legal assistance to their clients are not always qualified in the field of human trafficking and are often not fully engaged in the legal process, for example due to low payment. In the context of England & Wales and Spain, participants reiterated that victims are not fully informed or know about their rights and the existence of free legal assistance resulting in them not exercising this right.

In light of the various obstacles outlined above, the survey also asked respondents to state how many of their clients who could not access free legal assistance and thus had to go to a private legal provider or pro-bono lawyer. The answers provided were very similar in both cases. Over half of all participants stated

that their clients had to go to either a pro-bono lawyer or private legal provider (see **Figure 3.14** and **3.16**). Most of these respondents answered that one in four of their clients either received support from a pro-bono lawyer or private legal provider. In the case of Bulgaria, one respondent noted the following:

“There are no pro-bono lawyers, but some lawyers receive their fees paid by NGOs”.

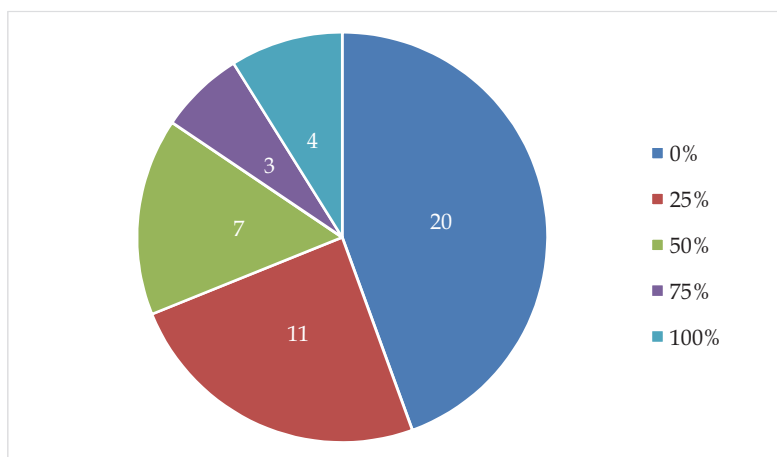


Figure 3.14: *Proportion of victims who had to go to a private legal provider.* There were five discrete answer categories (0, 25, 50, 75, 100%). The sizes of the pie sections correspond to the number of responses, which are indicated in each section.

The country-specific analysis reveals that there are differences in terms of how many victims had to ask a private legal provider for support, but it is interesting to note that only respondents from Bulgaria, Romania and Spain stated that this was the case for all their clients (see **Figure 3.15**).

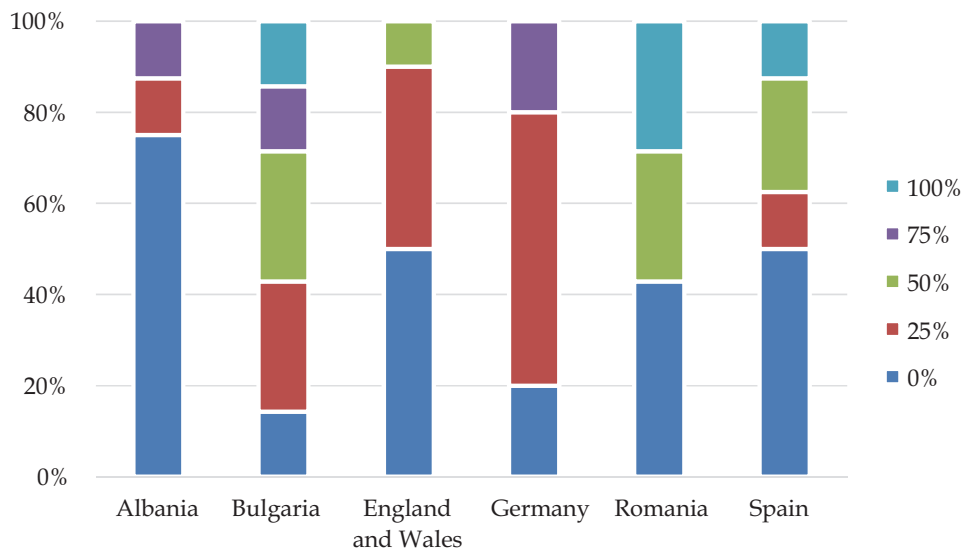


Figure 3.15: *Proportion of victims who had to go to a private legal provider, by country.* There were five discrete answer categories (0, 25, 50, 75, 100%). The length of the different bar charts within each country corresponds to the number of responses for each answer category.

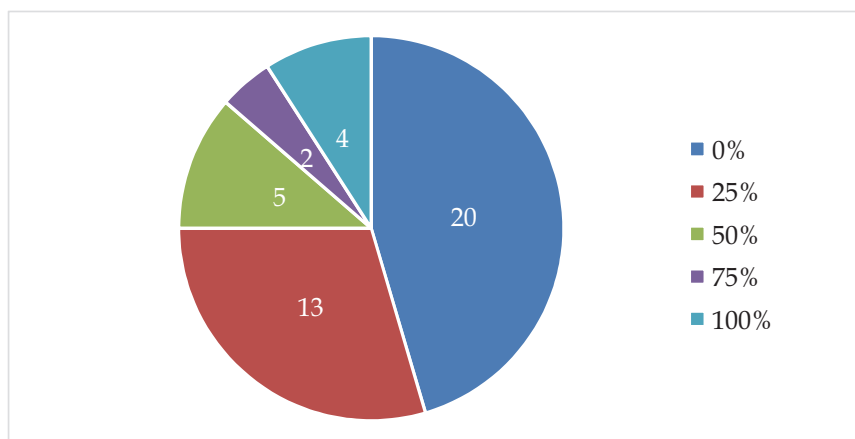


Figure 3.16: *Proportion of victims were supported by a pro-bono lawyer.* There were five discrete answer categories (0, 25, 50, 75, 100%). The sizes of the pie sections correspond to the number of responses, which are indicated in each section.

It is interesting to note that those countries, namely Bulgaria, Romania and Spain, in which victims are sometimes not supported by private legal providers, are also the only countries for which respondents stated that victims received

support from pro-bono lawyers (see **Figure 3.17**). Answers from respondents from England & Wales and Germany suggest that the availability of pro-bono lawyers in these countries is rather scarce.

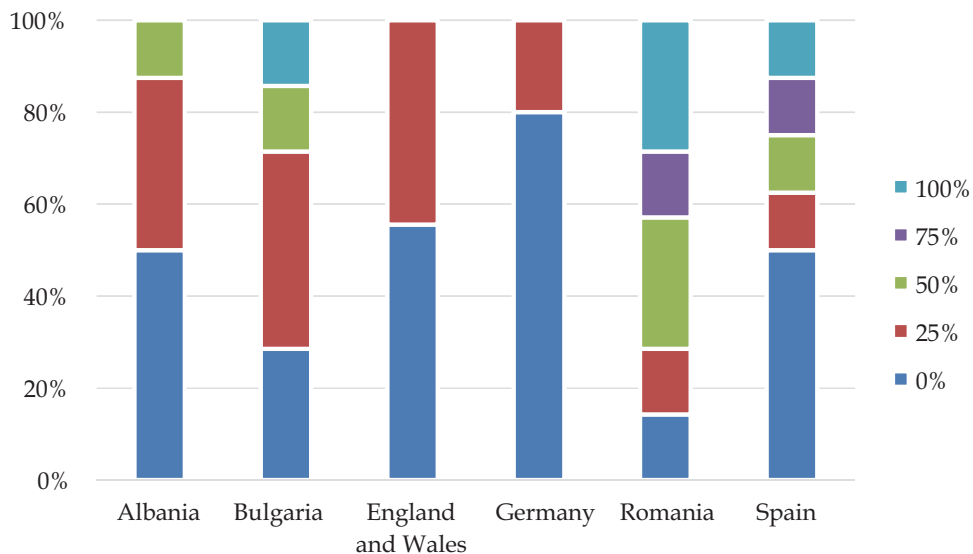


Figure 3.17: *Proportion of victims who were supported by a pro-bono lawyer, by country.* There were five discrete answer categories (0, 25, 50, 75, 100%). The length of the different bar charts within each country corresponds to the number of responses for each answer category.

This study was also interested in the legal aid situation for repatriated victims and asked whether victims of trafficking still have access to legal assistance once they returned to their country of origin. 41.3% of all respondents said ‘yes’ and the same percentage stated that they do not know, whereas 17.4% of the participants answered in the negative (see **Figure 3.18**). These results indicate that there might be a lack of knowledge in this area.

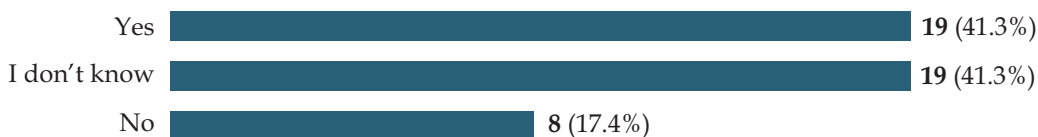


Figure 3.18: *Repatriated victims are supported to access legal assistance in their home country*

The overview of respondents by country shown in **Figure 3.19** indicates that participants from Albania, Bulgaria and Romania appear to know most about the legal assistance for victims of trafficking in their home countries given that they are themselves key source countries for victims of trafficking.

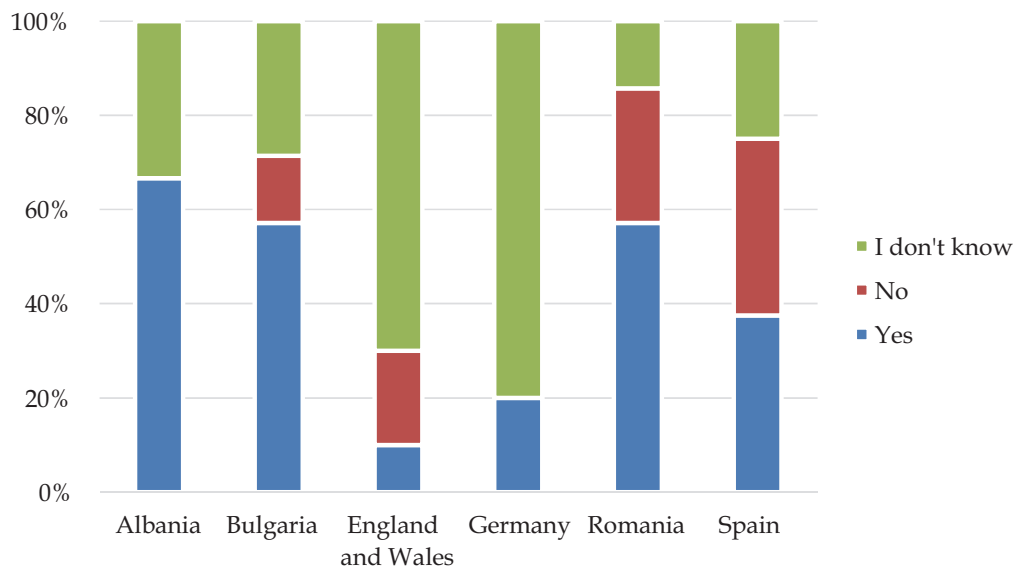


Figure 3.19: Repatriated victims are supported to access legal assistance in their country of origin, by country. There were three discrete answer categories (I don't know, no, yes). The length of the different bar charts within each country corresponds to the number of responses for each answer category.

In relation to the last question, the survey asked if repatriated victims are able to pursue pending legal cases in the country of destination in which they were exploited. Whilst the majority of respondents did not know if this was possible for their clients, one in three said that victims can do so (see **Figure 3.20**). Out of those who responded 'yes', the following answer categories were given that outlined how repatriated victims of trafficking are supported with their legal cases:

- Collaboration with partner NGOs/foreign agencies in the countries of origin: connecting repatriated victims with these NGOs or pro-bono firms that help them to pursue pending legal cases; respondents' organisation partly finances these services

- Cooperation between national authorities/law enforcement agencies in respondents' country and the destination countries
- Victims receive continued legal assistance from their appointed lawyers in the respondents' country, for example in order to pursue compensation claims

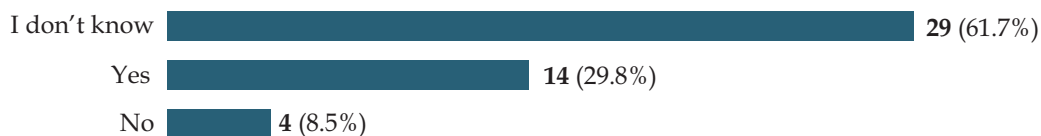


Figure 3.20: *Repatriated victims can pursue pending legal cases in destination countries*

It is interesting to note that respondents from Germany and Spain mostly said 'yes' regarding the possibility of victims pursuing pending legal cases in their destination country. It is also conspicuous that only participants in Albania and Spain said that this is not possible for their clients.

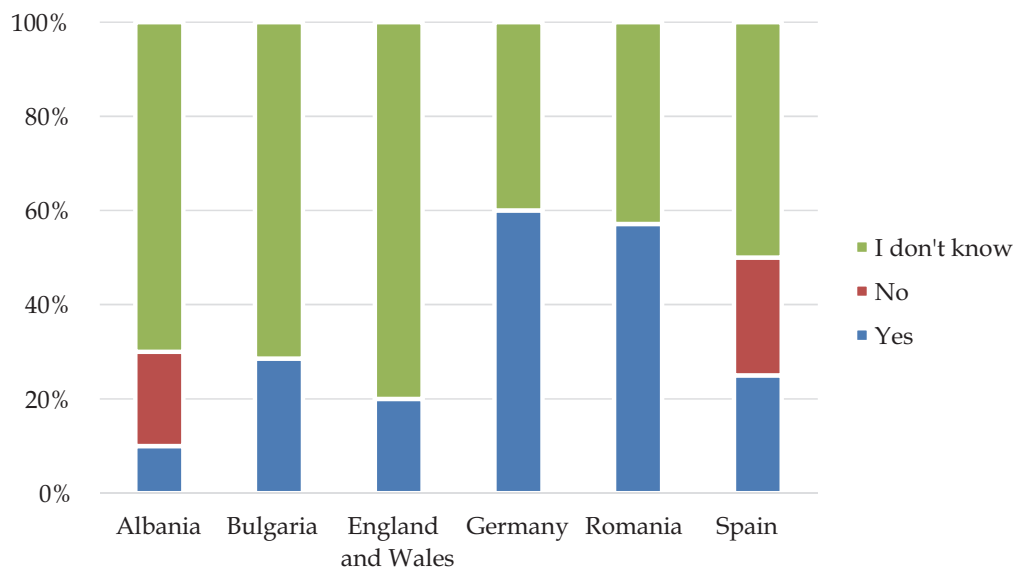


Figure 3.21: *Repatriated victims can pursue pending legal cases in destination countries, by country.* There were three discrete answer categories (I don't know, no, yes). The length of the different bar charts within each country corresponds to the number of responses for each answer category.

The answers provided by respondents suggest that repatriated victims clearly depend on either the professional network from the respondents' organisations or their already appointed lawyer in the host country to pursue pending legal cases in their home countries.

3.4 Quality of legal assistance

In order to gain a better understanding of the quality of legal aid provided to victims of trafficking, the survey asked respondents about differences in urban and rural areas, the feedback from victims and the qualification of lawyers. With respect to the latter, half of all respondents stated that legal aid lawyers in their countries are specially trained in the rights of victims of trafficking (see **Figure 3.22**). On the other hand, 38.8% noted that this was not the case indicating a serious defect in the quality of the legal aid provided to victims.

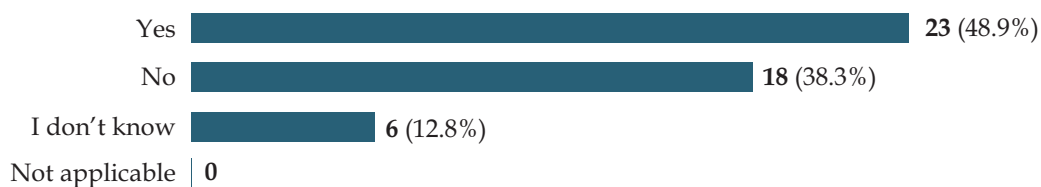


Figure 3.22: Legal aid lawyers have a specialist expertise in the rights of trafficked people

One striking finding is that amongst all six states, respondents from England & Wales stated that lawyers in their country are specialists in the rights of victims of trafficking (see **Figure 3.23**). In terms of the remaining countries, most of the participants gave conflicting answers which indicates that lawyers supporting trafficked people are not always trained in this area. Romania is the only country for which the respondents mainly said that the lawyers assisting victims of trafficking are in fact not qualified in this particular area.

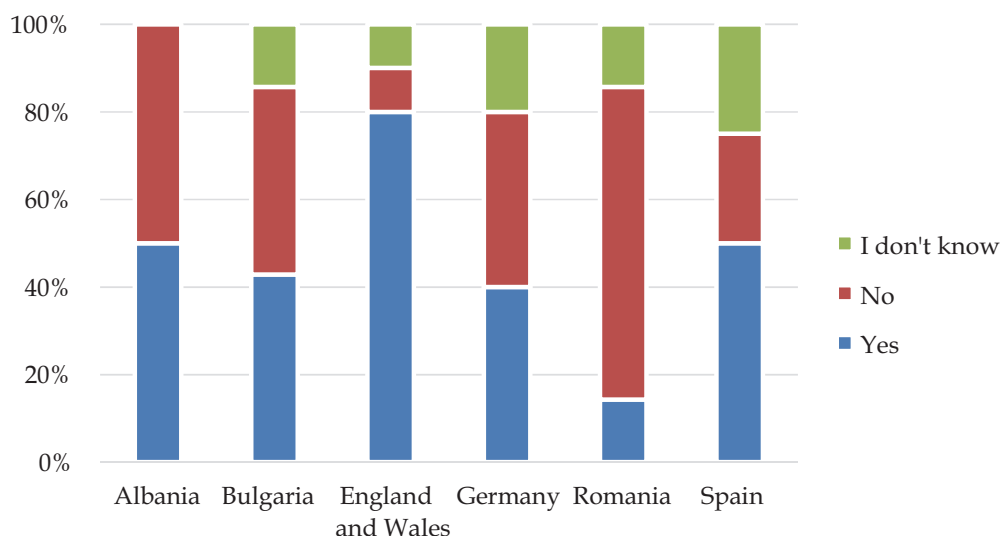


Figure 3.23: Legal aid lawyers have a specialist expertise in the rights of trafficked people, by country. There were three discrete answer categories (I don't know, no, yes). The length of the different bar charts within each country corresponds to the number of responses for each answer category.

In addition, respondents were asked to assess the quality of the legal advice that their clients receive. It is a positive sign that 21.7% of the respondents deemed the quality of the legal advice very good and 37% good, with most of the responses referring to Albania, Bulgaria and England & Wales (see **Figure 3.24** and **Figure 3.25**). However, as explained further below in **Figure 3.25**, this positive evaluation of the legal aid quality mainly refers to the legal service provided by NGOs. In comparison, respondents from Germany predominantly ranked the quality of legal advice as mediocre, whereas the answers from Spain are more divided between very poor/poor or good/very good quality. Respondents from Romania with a few exceptions regarded the legal advice as predominantly poor. One respondent explains this further by emphasising the issues with free legal assistance in Romania:

“Free legal assistance is granted to all victims but the ex-officio lawyers are not always trained to provide specialized assistance to victims of trafficking and very often they change during the trial. There are no option beside what

the NGOs offer. They all receive some free legal assistance, but many times it is limited to having a lawyer present when giving statements. Lawyers change in different phases of criminal proceedings and are often not engaged enough in the legal process. Our clients receive legal assistance from us, which is free for them (not us). But it is not because they can't have free legal assistance. It's because it helps them to have someone specialized in human trafficking crimes and it helps us fulfil our mission."

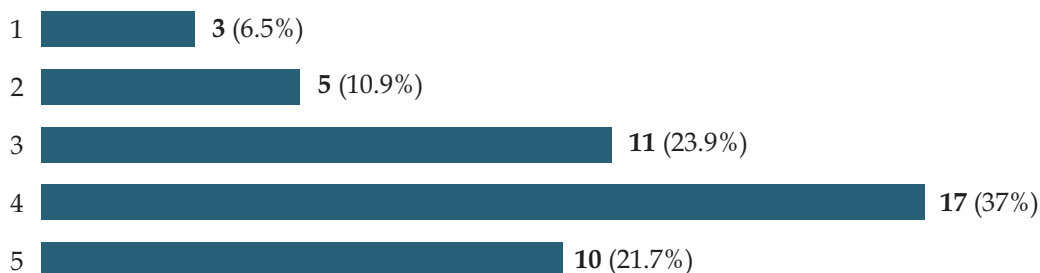


Figure 3.24: Quality of legal advice (1 = poor, 5 = very good)

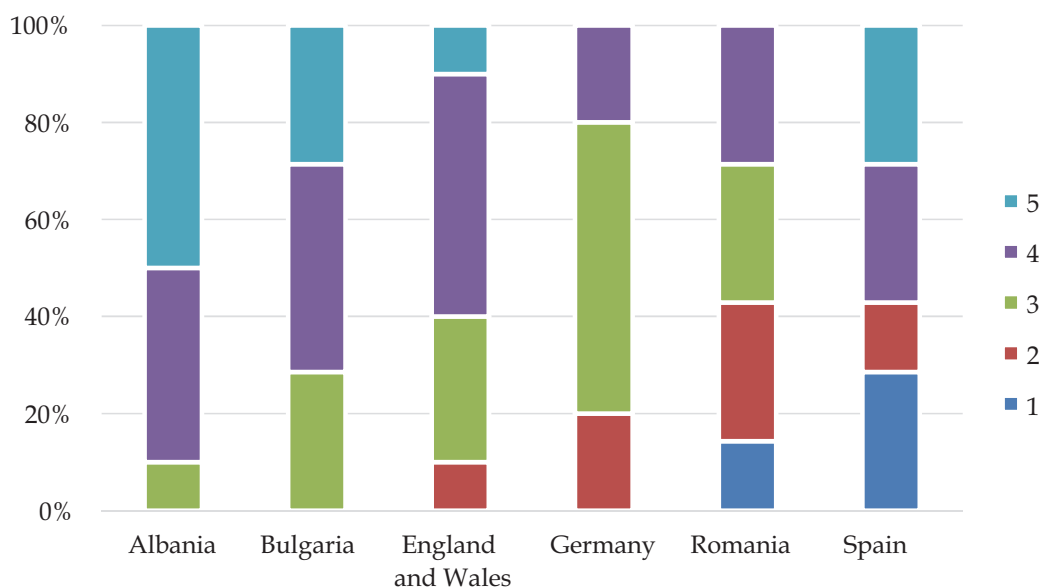


Figure 3.25: Quality of legal advice (1 = poor, 5 = very good), by country. The length of the different bar charts within each country corresponds to the number of responses for each answer category.

The survey also sought to capture the views of the victims by asking the respondents about the overall positive and negative feedback received from their clients in relation to legal assistance. The positive responses mostly highlight that the victims are primarily satisfied with the legal assistance provided by the respondents' organisations compared to the legal aid provided by state institutions. The answers frequently stressed that specially trained lawyers at NGOs contribute highly to the clients' satisfaction. The victim-oriented support and the fact that the advice given is free of charge are additional crucial factors that are often appreciated by clients. The following answers illustrate the aspects outlined:

"Usually victims are content with the legal aid offered. They prefer our assistance more than the legal aid offered by the state Institutions."

"Very good if provided by NGO specialized lawyer."

"I ranked with 5 because I have in mind that our organization is supported by trained lawyers. But this is not the case for every organization in Bulgaria."

"People are thankful for the attention and that someone has helped them."

"That they feel heard and informed for every step of the process."

"They are amazed the advice is free and people want to support them."

"Better understanding of their position and rights. Gratitude for making the process more bearable and accessible and for having a positive outcome achieved (if/when that happens)."

"Where communication with client is clear and regular. Clients often give positive feedback when legal rep explains clearly what legal processes are involved, next steps, etc. using terms they understand. Where legal rep communicates primarily with client, and communicates with caseworker where client requests or is necessary."

"When having a good lawyer they feel heard and are able to own their story."

In terms of the negative feedback received by the clients, respondents emphasised with few exceptions that the quality of the service provided by state lawyers is not very high due to high workloads, limited time, lack of sensitivity, etc. Moreover, the justice system and procedures are criticised for lack of transparency; long

and complicated procedures; lack of protection for victims and their relatives; and barriers to receiving financial compensation. The following shows some examples of this feedback:

"We have noticed that state lawyers don't offer a qualitative service for victims of crime."

"Average if provided by random lawyer from the State Legal Aid Bureau."

"Solicitors ignoring them, having really high case loads, sometimes not understanding the nuance of trafficking specific advice."

"They do not show empathy when asking for sensitive information and usually when interpreters assist, the process becomes even more overwhelming."

"It is formal; Procedures are long; they have been questioned number of times; protection is not secure."

"Lack of contact and updates from advisers - bare minimum of work completed therefore not improved awareness of their rights."

"It is not so much about the legal assistance rather than the judicial review which in most cases is belated, unfair and not efficient."

"In relation to criminal cases, we had clients going through the NRM that were sentenced for offences linked to the trafficking experience."

"Slow procedures, degrading interrogations by the investigation authorities, big number of interrogations, survivors are asked embarrassing questions, not connected with the investigation, no way to receive compensation - the possessions of the perpetrator are confiscated by the state and there are assets when the survivor initiate executive procedure; the executive procedure is very expensive - no state aid; no possibility to receive compensation by the state for non-pecuniary damages, only for part of pecuniary."

Lastly, the respondents were asked to state if there is a difference of the quality of legal assistance provided in the urban and rural areas. 38.3% of all participants as shown in **Figure 3.26** noted that they do not know, whereas 21.3% said that there is no quality-related difference.



Figure 3.26: Difference of the quality of legal advice between urban and rural areas

The breakdown of the analysis concerning the quality of legal advice between urban and rural settings reveals that stark differences seem to exist especially in Bulgaria, followed by Spain, Germany and to some extent Romania. In comparison, the responses from Albania indicate that the region does not seem to affect the quality of legal advice for victims in this national context. Despite such responses, it is worth mentioning that support services in rural areas are rather scarce in Albania, and most victims are supported by organisations based in the main cities – although they can provide outreach support. For England and Wales, most participants did not know if there are any differences.

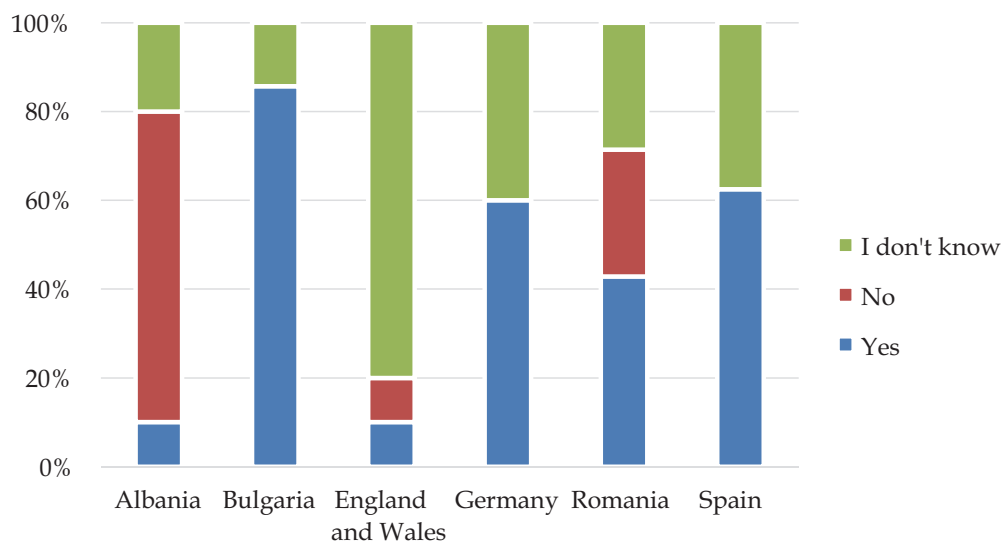


Figure 3.27: Difference of the quality of legal advice between urban and rural areas, by country. There were three discrete answer categories (I don't know, no, yes). The length of the different bar charts within each country corresponds to the number of responses for each answer category.

Those who said 'yes' (40.4%) were asked to specify the differences that they see in the quality of legal assistance in urban and rural regions. The responses show a clear consensus about numerous disadvantages in terms of the quality of legal

aid assistance in rural areas. **Table 3.4** illustrates the key differences based on answer examples from respondents which focus mainly on the limited resources and the lack of specialised lawyers in rural areas. One respondent highlighted the main disadvantages as follows:

“In rural areas there is less access to specified counselling and supporting organizations, as well as trained lawyers of human trafficking. Also, in rural areas often the police is not too well informed or has ever dealt with a case of human trafficking and is therefore not able to support or even able give the victim all information needed.”

However, another participant pointed out that victims who live in rural areas usually are still legally assisted by lawyers in urban settings:

“I would say the difference is between more urban centres and less urban. Most people from rural settings will receive support from lawyers in urban settings. The trial takes place in cities, not villages.”

This still suggests that victims living in rural areas are disadvantaged as they have to travel to bigger cities in order to be able to access legal assistance.

Table 3.4: Differences of the quality of legal assistance in urban and rural area

Rural	Urban
<i>“Even more difficult in rural areas to find qualified or specialised lawyers.”</i>	<i>“Urban areas have more qualified lawyers, they have more cases.”</i>
<i>“In rural areas, legal specialists may not have the required legal preparation and may not know how to react and identify victims of trafficking.”</i>	<i>“Urban areas have a higher caseload and attract more qualified lawyers.”</i>
<i>“Rural areas don’t have any specialized resources.”</i>	<i>“More options to choose from and more experienced advisers tend to work for bigger firms located in urban areas.”</i>
	<i>“More specialized in urban areas; often they speak more foreign languages.”</i>

4 Key conclusions

Across all six countries, victims of trafficking receive legal assistance mainly for the purpose of criminal case/assistance with prosecution and claiming compensation. For Germany, England and Wales and Spain, which are all relevant destination countries for victims of trafficking, the responses highlight that immigration matters are also key motivations for victims to seek legal advice.

The comparative analysis shows that victims of trafficking experience the least challenges in terms of access to and quality of legal aid in Albania and England and Wales when it comes to NGO-based legal aid, whereas there is a need for improvement in the remaining countries with Romania and Bulgaria in particular showing a relatively poor provision of legal assistance provided by the government.

Awareness

The 'awareness' part of the survey sought to shed light on how well informed and aware victims of trafficking are regarding their basic rights and in particular concerning their entitlement to free legal advice. In all participating countries, victims of trafficking have the right to free legal advice, provided that they are identified by officials as victims and they are in need of financial support.

Apart from Albania where victims are more likely to be informed about their rights, the survey results highlight that authorities in the other countries under examination only sometimes inform victims about their basic rights after identification. Respondents from most countries named the following barriers for victims in terms of receiving legal information and/or understanding the information given to them:

- On the part of the victims - limited language skills, little knowledge about their rights and relevant contacts

- On part of the government - lack of interpreters, legal information provided insufficient and/or too complex for victims to understand

A lack of trust among victims towards authorities was especially named as a further challenge in the Albanian, Romanian and Spanish context and therefore viewed by respondents as another hurdle for victims to access legal information.

Access

One concerning finding is that it is not uncommon for victims to wait between nine months or even over a year to be referred to free legal assistance in Spain and Romania. On a more positive note, the waiting time is clearly shorter in the remaining countries with Albania and Germany having the shortest periods of maximum three months. These outcomes are not surprising when looking at the obstacles to free legal assistance outlined by the respondents that mainly concern the government policies and formal processes to access legal assistance. High levels of bureaucracy and complex criteria make it difficult for victims especially in Albania and Bulgaria to access state-funded legal aid. As a consequence, victims therefore seek free legal assistance provided by NGOs. However, the latter have only limited capacities and funding and therefore victims are still often dependent on state-funded legal assistance. Only respondents from Bulgaria, Romania and Spain stated that some of their victims had to ask a private legal or a pro-bono lawyer for assistance.

The responses further indicate that obstacles to access free legal assistance are associated with issues regarding lack of training and low payment of lawyers, especially in Germany and Romania, as well as victims' limited awareness and knowledge about free legal assistance in Spain and England and Wales.

In terms of repatriated victims and their access to legal aid, it is not surprising that respondents from Albania, Bulgaria and Romania, which are key source countries, answered in the affirmative to the question about the existence of legal assistance for victims of trafficking in their home countries. Germany and Spain have relationships with NGOs in countries of origin of victims, as respondents from these countries knew of the possibility for victims to pursue pending legal cases in their destination countries. Legal aid for repatriated victims is an under-researched area and certainly a pressing matter given the cross-border nature of trafficking and the high number of foreign victims in the European countries.

Quality

The analysis of the quality of legal aid provided to victims of trafficking revealed that the predominantly positive feedback mainly referred to the quality of legal assistance provided by NGOs, whereas negative assessments clearly concerned state-funded legal assistance. The quality of the legal aid given by NGOs Bulgaria, England and Wales and Albania were especially highly ranked as they were able to offer victim-oriented legal advice and clients felt their interests were defended. This underlines the vital role that NGOs play in the area of legal assistance for victims of trafficking and the realisation of their rights. In contrast, the quality of state-funded legal assistance received more negative evaluation. The reasons referred to were lack of qualifications and high workloads of ex-officio lawyers and lengthy as well as complicated criminal proceedings that often neglect the interests of the victims. These challenges were especially prevalent for Romania and Bulgaria.

From a regional perspective, the results indicate that stark differences in the quality of legal advice between urban and rural settings mainly exist in Bulgaria, Spain, Germany and to a lesser degree in Romania. There was a wide agreement among respondents that the quality of legal aid assistance in rural areas is lower than in urban settings due to limited resources and the lack of specialised lawyers in rural areas.

5 Recommendations

In light of the research conclusions outlined above, the following recommendations are suggested to ensure that victims of trafficking are aware of their rights and can access free legal aid that puts their interests and needs at the centre:

- State-funded legal aid: lawyers should put more time in assisting and defending victims of trafficking in order to build a relationship of confidentiality; this should also be reflected in higher payments for ex-officio lawyers; specialist certified training and qualifications should be a requirement for all lawyers who assist victims of trafficking as this is essential to defend the interests and special needs of the victims; victims should be consulted by one lawyer only who is familiar with their case and assists them through the entire process
- Criminal proceedings: trials need to be more victim-oriented and guarantee that victims' rights and identity are protected throughout; this requires that judges and other law enforcement actors also need to be trained in the sphere of human trafficking
- Legal aid provided by NGOs: more and accessible funds are needed for NGOs and their legal practitioners in order to strengthen their role in legally assisting victims of trafficking
- Victim identification: NGOs should also be enabled to identify and inform victims about their basic rights as identification is the key criteria for their entitlement to free legal aid

In terms of future research, this report suggests the following areas for further study in order to better understand and improve the legal aid support for victims of trafficking:

- Interviews with victims of trafficking would be recommended in order to shed light on challenges and good practices of legal aid support from

their perspective. What are their major concerns/desires/hopes when seeking legal assistance? How would an 'ideal' /effective legal aid and protection look like for them? How can the judicial system be improved for them to feel better protected?

- In terms of geographical area, more research is needed to understand why in some countries the regional location appears to affect the quality of legal aid for victims of trafficking and not in others.
- In some of the selected countries, respondents were more knowledgeable about the availability and were more involved in the legal assistance of repatriated victims. What does the legal aid support look like in the country of return? What are the differences/similarities or good practices/challenges in a European country, e.g. Romania, and non-European country, e.g. Nigeria? How do NGOs support repatriated victims? Are there national differences in the quality of legal that repatriated victims receive?

Overall, this report captures some key challenges facing victims with regards to legal aid. It has highlighted disparities across the different countries participating and has made some strong recommendations for immediate action as well as identified some areas for potential further research.

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Appendix

Survey questions

Consent form

Name, Surname

I agree to take part in the above research. I have read the Participant Information Sheet which was sent by e-mail. I understand what my role will be in this research, and all my questions have been answered to my satisfaction

I understand that I am free to withdraw from the research at any time, for any reason and without prejudice.

I have been informed that the confidentiality of the information I provide will be safeguarded.

I am free to ask any questions at any time before and during the study.

Data Protection: I agree to St. Mary's University processing personal data which I have supplied. I agree to the processing of such data for any purposes connected with the Research Project as outlined to me.

General information

- In which country is your organisation located?
- Do you work in a rural or urban area?
- Which organisation do you work for?
- What is your job title?
 - Anti-trafficking officer
 - Caseworker
 - Independent modern slavery advocate
 - Legal officer
 - Outreach advocate

- Outreach coordinator
- Project manager
- Referrals coordinator
- Safe house manager
- Service coordinator
- Social worker
- Support worker
- Other
 - If you selected Other, please specify
- What type of support do you provide to clients?
 - Advocacy and advice
 - Casework
 - Drop in
 - Legal aid
 - Local authority support
 - National Referral Mechanism (NRM) safehouse and case work support
 - Independent supported safehouse
 - NRM outreach support
 - Other
 - If you selected Other, please specify

For the purpose of this survey ‘free legal assistance’ means legal advice and representation provided/funded by government.

Awareness

After the identification of the victim, do the government authorities inform the victims of their basic rights, such as the right to a reflection period or to free legal advice? Never/Sometimes/Always

If victims are not informed of their rights by government officials, how do they learn about their basic rights and legal assistance options?

What are the obstacles that victims may face, if any, in terms of access to legal information?

Do you keep records of clients asking for legal assistance? Yes/Sometimes/No

If yes, how many clients have asked in the last month 12 months?
0%/25%/50%/75%/100%

What kind of legal assistance do victims usually ask for? Please tick all that apply

- Immigration assistance
- Criminal case/assistance with prosecution
- Compensation claims
- Other
 - If you selected Other, please specify

Any further comments you would like to make about the section 'Awareness on Legal Aid':

Access

How long does it take to refer a client for free legal assistance?

Under a month/1-3 months/4-6 months/7-9 months/10-12 months/More than 12 months

How many of your clients eventually receive free legal assistance?
0%/25%/50%/75%/100%

What are the possible obstacles to accessing free legal assistance?

How many of your clients could not access free legal assistance and had to go to a private legal provider? 0%/25%/50%/75%/100%

How many of your clients could not access free legal assistance and were supported by pro-bono lawyers? 0%/25%/50%/75%/100%

Are repatriated victims supported to access legal assistance once returned? Yes/No/I don't know

Can repatriated victims pursue pending legal cases in destination countries?
Yes/No/I don't know

- If yes, how are they supported to do so?

Any further comments you would like to make about the section 'Access to Legal Aid':

Quality

Do legal aid lawyers in your country have any specialist expertise in the rights of victims of trafficking? Yes/No/I don't know/Not applicable

How would you rank the quality of the legal advice that your clients receive?
Poor (1) (2) (3) (4) (5) Very good

What is the overall positive feedback received from victims in relation to the legal assistance?

What is the overall negative feedback received from victims in relation to the legal assistance?

Is there a difference of the quality of legal assistance in the urban and rural areas? Yes/No/I don't know

- If yes, please specify:

Any further comments you would like to make about the section 'Quality of Legal Aid':

If you are happy to be contacted for further clarification on your given answers, please insert your contact information here:

Thank you for your participation and time!