



Law Society of Ireland

Blackhall Place, Dublin 7, tel 01 672 4800, fax 01 672 4801

DX: 79 Dublin E-mail: general@lawsociety.ie

Website: www.lawsociety.ie

SUBMISSION OF THE HUMAN RIGHTS COMMITTEE OF THE LAW SOCIETY TO THE NATIONAL ACTION PLAN ON THE PREVENTION AND COMBATING OF HUMAN TRAFFICKING

To whom it may concern

Further to the request for submissions to the National Action Plan for the Prevention and Combating of Human Trafficking, the Human Rights Committee of the Law Society wish to contribute to the debate by setting out below important provisions, which it considers fundamental to the development of any legislation in this area.

The Committee firmly believe that any developments in the area of human trafficking should reflect a dual purpose – the prevention and combating of human trafficking and the protection of human rights. The Committee is encouraged to hear that the National Action Plan will lead to the ratification of the *Council of Europe Convention on Action against Trafficking in Human Beings* (hereinafter referred to as the “Council of Europe Convention”). This is an important and inclusive Convention, which provides for fundamental rights for victims of human trafficking. With this in mind, the Committee would like to draw attention to Article 5(3) of the Council of Europe Convention which insists upon the development of a human rights based approach to the issue of human trafficking and which encourages the use of gender mainstreaming and child sensitive approaches in the development, implementation and assessment of all policies and programmes.

The Committee would propose that the National Action Plan should incorporate the following provisions into their consideration of this important topic.

Rights of Residence

Once a victim of trafficking is discovered, important questions emerge. Is the victim lawfully resident in the State? If so, then the victim is entitled to remain in the State and to pursue criminal or other proceedings against the perpetrator. If the victim is not lawfully resident in the State, the issue of asylum will arise. Applications for asylum should be facilitated, however, this may not always be a successful or appropriate route for a victim of trafficking. In such cases, the victim should be entitled to temporary



Law Society of Ireland

Blackhall Place, Dublin 7, tel 01 672 4800, fax 01 672 4801

DX: 79 Dublin E-mail: general@lawsociety.ie

Website: www.lawsociety.ie

residence. Under the provisions of *Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration* (hereinafter referred to as “Council Directive 2004/81/EC”) victims of trafficking are entitled to a six month residency permit once a number of condition are met. These include a requirement that the victim cooperates with authorities, assists in criminal or other proceedings and severs relations with the perpetrators. However, the Committee are concerned to ensure, in line with the Council of Europe Convention, that any assistance by the State is not based on the willingness of the victim to act as a witness against the perpetrators.

The Committee would therefore advocate that victims of trafficking should, initially, be entitled to a recovery and reflection period of at least 30 days as recommended by the Council of Europe Convention to decide whether to pursue criminal or other proceedings or to seek asylum. After this, the Committee would recommend that victims of trafficking should be entitled to six months temporary residence where asylum or other subsidiary protection is unavailable, in line with the *United Nations Protocol to prevent, suppress and punish trafficking in persons, particularly women and children* (hereinafter referred to as the “UN Protocol”) and the Council of Europe Convention.

In the case of minors, special considerations apply. The best interests of the child should be the primary consideration in such circumstances. Much concern has already been raised in relation to the legal status of minors who are victims of trafficking for whom no claim for asylum has been made. (See the Report of Dr. Conroy, International Organisation for Migration “Trafficking in Unaccompanied Minors in the European Union Member States – Ireland” (2003)). The Report of the Law Society’s Law Reform Committee “ Rights-based Child Law: A case for reform” (March 2006) suggests that temporary residence measures should be put in place for such minors, subject to periodic review. Council Directive 2004/81/EC provides for a six-month residency permit but again this is subject to the criteria of cooperation. As in the case of adults, the Committee would therefore recommend that minors who are victims of trafficking should be entitled to temporary residence where asylum or other subsidiary protection is unavailable. Periods of recovery and reflection should also be available to minors. It is also important that minors are provided with representation and that every effort is made to establish their identity and nationality and, if it is in the best interests of the child, to locate their family.

Assistance and Protection

Measures should be adopted to provide for the physical, psychological and social recovery of victims of trafficking as recommended by the UN Protocol. This should



Law Society of Ireland

Blackhall Place, Dublin 7, tel 01 672 4800, fax 01 672 4801

DX: 79 Dublin E-mail: general@lawsociety.ie

Website: www.lawsociety.ie

include measures to ensure that victims of trafficking can avail of a standard of living capable of ensuring their subsistence (Council of Europe Convention) such as housing (the UN Protocol). Counselling and information should be provided to all victims of trafficking and, in particular, they should be given information in relation to their legal rights in a language that they can understand. Certain rights such as employment, education and training opportunities should also be provided to minors and lawful residents. The physical safety of victims should be assured at all times and services should be provided in consultation with NGO's. It is important that all services are provided in a consensual and informed basis.

Compensation / Reparations

In every case, victims of trafficking should have access to relevant judicial and administrative procedures. Assistance should be provided to ensure that they are adequately represented and that free legal aid is available. Victims of Trafficking should have the right to seek compensation from perpetrators. This is provided for in the UN Protocol, in the United Nations Convention against transnational organised crime and in the Council of Europe Convention.

Repatriation

It is important to provide that all repatriations of victims of trafficking should, where possible, be a voluntary process. The repatriating state should have due regard for the safe return of the victim and provide assistance in securing the travel documentation required to ensure such a safe return.

Thank you very much for considering the views of the Committee. This is a very worthwhile endeavour and one that is essential for the protection of human rights in Ireland. The Committee looks forward to seeing the proposals adopted in the National Action Plan in due course.

Yours Sincerely,

Colin Daly, Solicitor

Chair of the Law Society's Human Rights Committee