



Meeting report:

“The least they could do is pay me as they promised.” Towards compensation for exploitation and violence against migrant workers’

2 December 2019

Recent developments in the victim support framework

Across Europe, we are failing victims of labour exploitation, particularly those with irregular or precarious status, who are often left without support in the wake of a crime or wage theft, and without access to effective redress. **PICUM, La Strada International** and **Victim Support Europe** collaborated with **MEP Domènec Ruiz Devesa (S&D – Spain)** to organise an event in the European Parliament addressing the current shortcomings in victim support, labour rights and compensation. The event brought together key actors from the European Commission, Members of European Parliament, the International Labour Organisation (ILO), the EU Fundamental Rights Agency (FRA) and a range of civil society organisations.

It came the day before EU justice ministers met to [adopt the Council’s conclusions on victim’s rights](#), calling on the Commission to draw up a new EU strategy to ensure that victims’ rights apply in practice and regardless of which member state the crime has occurred in, building on [recommendations](#) from the Special Adviser to the President of the European Commission on compensation for victims of crime. Participants put forward a number of legal, policy and practical measures to be taken at EU and national level to promote safe reporting, effective complaint mechanisms, and access to justice for all, including those with precarious or irregular residence status.

How do we make complaints mechanisms effective for all?

“Complaints mechanisms need to be effective for all, for individual access to justice but also as a means of prevention, to empower people” - Michele Le Voy, PICUM Director

Moussa Sangare, President and Coordinator of Ivorian Community of Greece and board member if the Greek Forum of Refugees gave an impactful account of his own experiences trying to access redress for labour rights violations and his recommendations for change, expressing his trust that the European institutions can find solutions, working closely with civil society. His input highlighted the disproportionate power of employers and personified the findings of the recent FRA [report](#) which is based on 237 interviews with workers and paints a bleak picture of widespread exploitation and lack of redress for victims, despite numerous rights being enshrined in international law. **Alice Hamilton of the Fundamental Rights Agency** chaired the following session focusing on the barriers to justice, and seeking to answer Michele Le Voy’s opening question: “How do we create grievance mechanisms that work for people?”. The concrete next steps for EU action on effective complaints mechanisms and victims’ rights for undocumented workers that were identified during the panel are outlined below.

Ruth Shrimpling of Victim Support Europe, called for a victim-centred approach that supports people through each stage in their journey to compensation and reparation. This means guaranteeing adequate support and protection for victims from the first step of reporting a crime through the application, procedure, compensation and enforcement of the compensation order. This approach should address the particular bottlenecks that exist at all stages for migrants. She noted that police

are usually key gatekeepers to compensation, as police reports are a prerequisite to obtaining compensation in the majority of EU Member States, which immediately excludes many victims at the reporting stage, particularly undocumented victims of crime who are at risk of arrest and deportation from any contact with law enforcement agencies. Mrs. Shrimpling outlined the importance of cultivating police forces who provide information and referrals to support services, as well as receive and investigate reports from undocumented victims, without them risking immigration enforcement.

Suzanne Hoff of La Strada International focused on the particular challenges faced by people trafficked for labour exploitation, with precarious or irregular status. Ms. Hoff highlighted shortcomings in the existing Directives and key barriers to obtain compensation successfully via court procedures. In practice, the threshold to be recognised as a victim of trafficking for example is very high and difficult to prove. Key issues highlighted by Ms. Hoff covered, in particular, access to qualified legal advice and representative, at every step of the procedure, including execution of compensation orders; and limited use of financial investigations, powers to seize assets, and state pre-financing and compensation mechanisms when perpetrators do not pay. In addition, she highlighted the need for enhanced coordination across EU borders along with harmonisation and guidance at EU level on compensation.

Lilana Keith of PICUM focused on access to justice through labour complaints mechanisms, both for those experiencing labour violations that amount to a crime and to enforce labour rights in general. Employment tribunals will treat undocumented workers' labour claims without informing immigration authorities in most EU countries, but there remain significant challenges in practice. There is a complex landscape of cooperation between many labour inspectorate authorities and immigration enforcement authorities, which makes their complaints mechanisms inaccessible in practice. There are some positive examples, such as Belgium and France. These grievance mechanisms need to work for all workers and all victims, ensuring people do not face immigration enforcement if they try to get paid for the work they have done, or as a result of seeking justice. Ms. Keith also highlighted the gendered dimensions of labour exploitation, with sectors where labour exploitation particularly rife often being extremely gendered, such as domestic work and fishing.

In order to combat these issues, the following steps were identified for EU action:

Improve coordination:

- Create a cohesive approach across the relevant Directorates (DGs) and Committees
- Include measures to support access to justice for undocumented workers in the planned EU Victims' Rights strategy and Gender strategy.
- Reinstate the network of national compensation authorities.

Fund wisely:

- Use EU funding to support everyday operations of quality services that assist victims across different service sectors,¹ without discrimination based on residence status.
- The European Commission (EC) should seek to ensure that member states' labour complaints mechanisms are effective for everyone, including those without

¹ Including victims' support services, workers' advice and legal counselling services, trade unions, anti-trafficking services, violence against women services, homelessness services.

authorisation to work, through the oversight of national programmes for AMF (Asylum and Migration Fund) and ESF+ (European Social Fund Plus).

Create a legal framework that works for all victims and all workers:

- Real impacts and outcomes for workers and victims should be part of EC evaluations of the Employers Sanctions Directive, Compensation Directive, Victims' Directive and Anti-trafficking Directive. The European Parliament should commission an independent evaluation of the impacts of sanctions on employers of undocumented workers.
- Encourage ratification of ILO (International Labor Organisation) instruments, in particular on domestic workers, violence and harassment in the workplace and forced labour.
- Facilitate access to stable residence and work permits for victims. In particular, in the revisions of the Return Directive and Dublin procedure, strengthen provisions on access to permits during procedures, or at least guarantee that no return decisions will be issued or enforcement pursued during or as a result of engaging as a claimant, victim or witness in civil or criminal procedures.

Create meaning civil dialogue structures:

- The EU should listen to non-governmental bodies with direct experience when developing and evaluating policies. Victims' and workers' voices must be heard along with service providers.
- The European Labour Authority should consult with organisations representing migrant workers. NGO involvement in the European Network on Victim's Rights should be expanded.

What concrete action can be taken at EU Level? Reactions from EU Representatives

"There should be no first and second tier workers in Europe" - Domènec Ruiz Devesa, Member of the European Parliament

Lieve Verboven, Director of the ILO Office to the EU and the Benelux, chaired the following session, asking representatives of the European Commission and Members of European Parliament to comment on the recommendations presented and put forward their own suggestions on what can be done at EU level. Ms. Verboven also referred to the ILO core conventions which cover the rights of undocumented workers, and called for ratification of the [Convention C189 on domestic workers](#), particularly as they are very often excluded from national labour laws, as well as the very recent ILO [Convention C190](#) on violence and harassment in the world of work.

The Commission was represented by **Katarzyna Janicka-Pawlowska, Team Leader of the Victims' rights unit in DG Justice** and **Francisco Gaztelu Mezquiriz, Head of the Irregular Migration and Return Policy-unit, DG Home**.

Ms. Janicka-Pawlowska reiterated the need to evaluate the EU legal framework around victim's rights and compensation and outlined plans for the EU strategy on victims' rights to be developed in early 2020, and inclusion of a focus on migrant victims.



Mr. Gaztelu Mezquiriz addressed recommendations related to the evaluation of Employers' Sanctions Directive, committing to strengthen evidence gathering from member states and civil society, ask the right questions, and increase dialogue with stakeholders. He also shared the perspective on the potential for EU funds to be used to support complaints mechanisms for undocumented workers. While underlining his perspective and priorities as head of returns for the EC, Mr. Gaztelu Mezquiriz called for structural rather than ad hoc solutions and measures to ensure the rights of people who are not returned.

From the Parliament, participants heard commentary from **MEPs Ernest Urtasun (Greens vice-chair - Spain), Tineke Strik (Greens co-coordinator for LIBE - the Netherlands) and Estrella Durá Ferrandis (S&D - Spain).**

Ms. Durá Ferrandis and **Mr. Urtasun** shared Ms. Janicka-Pawłowska's commitment to protecting those groups most vulnerable to crime and labour exploitation and called for concrete solutions to increase visibility. Mr. Urtasun gave the example of the municipal registers in Spain, which allow undocumented migrants to safely register with local municipalities, as a good example of a measure to increase visibility and inclusion, while noting this system is currently under threat. He called on the European Commission to be more proactive around promoting effective complaints mechanisms, for example through exchanging good practices. Ratification of the ILO conventions, permanent structural dialogue with civil society and a possible role for the European Labour Authority were also raised.

Ms. Strik echoed the call for meaningful evaluation of the impacts of the EU legal framework, calling for an assessment which is cohesive, transparent and looks at the gaps, overlaps and reality of the situation rather than transposition and implementation of individual directives. She underlined the need for the authority which runs labour redress procedures to be independent, separate from the police and immigration. As Rapporteur for the Recast [Returns Directive](#), Ms. Strik expressed her interest in working to ensure access to residence permits for victims of trafficking and suspension of returns procedures for people in the process of claiming unpaid wages compensation.

Input from **civil society participants** expressed their needs and experience, calling for, for example:

- full, meaningful transposition of the relevant Directives,
- a review of the implementation and impacts of the Anti-Trafficking framework, and recognition of sex workers as key stakeholders in the issue,
- a shift in the narrative to protect victims,
- a focus on community policing approaches and
- measures to ensure that EU funding reaches the organisations working directly and daily with migrant workers and victims.

Promoting the firewall and best practice examples

In her closing, **Michele LeVoy of PICUM** emphasised the following concepts: firewalls; coordination while knowing your remit and maintaining independence; visibility; and accountability.

Ms. LeVoy underlined a common thread through all is the need for more evidence and cooperation. In her final reflections, she underlined that guidance should come from people working directly with migrant workers and those with lived experience of the failures in the current system, on how to reform it, and devise an effective one. Key to this is to ensure they are receiving the funding they need to do their essential work and participate in civil dialogue.



PICUM also published a short animation on the firewall in the context of labour justice systems available [here](#).