



Organization for Security and
Co-operation in Europe
Mission to Bosnia and Herzegovina



Ensuring Justice for Victims of Trafficking in Human Beings:

Response of the criminal
justice system in
Bosnia and Herzegovina,
with recommendations

December 2021

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Published by the:
Organisation for Security and Co-operation in Europe
Mission to Bosnia and Herzegovina
Fra Anđela Zvizdovića 1
71 000 Sarajevo
Bosnia and Herzegovina
www.oscebih.org/bih
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Cover designed by DSO Print Services Tuzla
Designed by DSO Print Services Tuzla
Printed in Bosnia and Herzegovina by DSO Print Services Tuzla

Printed in Bosnia and Herzegovina

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ISBN 978-92-9234-039-1

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Executive summary

Human traffickers violate the basic rights of their victims. In Bosnia and Herzegovina (BiH), trafficking in human beings (THB) drastically increased in the mid to late 1990s when organized sex-trafficking rings transported thousands of women from across Eastern Europe into the country. Over the past two decades, the context has shifted. Today, the typical victim of trafficking in BiH is a citizen, often below the age of eighteen, and subject to sexual and labour exploitation, forced begging, or forced criminality.

This publication builds on the first public report of the OSCE Mission to Bosnia and Herzegovina (Mission) on the subject, *Trafficking in Human Beings and Responses of the Domestic Criminal Justice System: A Critical Review of Law and Emerging Practice in Bosnia and Herzegovina in the Light of Core International Standards*.¹ Given developments since the release of the 2009 report, the Mission identified a need for this second analysis, covering the period between 2009 and 2020.

The introduction explains the report's methodology and offers a short overview of the applicable international and national legal frameworks. The following section articulates challenges related to qualifying trafficking-related criminal conduct and examines practices in the prosecution of THB cases in BiH. The third section provides both quantitative and qualitative analyses of criminal sanctions imposed on those convicted of trafficking and related crimes. Finally, the fourth section describes the position of victims in criminal proceedings, examining practices and trends in the awarding of compensation.

BiH has adopted a number of measures to fulfil its international obligations related to combating THB. These include criminalizing THB in all four criminal codes, establishing the Anti-Trafficking Strike Force to co-ordinate law enforcement efforts on the entire territory of BiH, and adopting laws and regulations that aim to protect witnesses in criminal proceedings.

1 See <https://www.osce.org/files/f/documents/5/7/110139.pdf>

Despite these efforts, however, this report identifies pressing concerns regarding the investigation and prosecution of THB-related criminal conduct. These include the qualification of such crimes, often resulting in the prosecution of offenders under lesser charges. Other concerns include failures to promptly process cases and effectively investigate all circumstances of the case, to confiscate proceeds of crimes, and to prosecute legal persons and those using the services of victims of trafficking. The report's analysis of sanctioning practices in trafficking-related cases reveals that sanctions that courts impose in such cases rarely reflect the gravity of the offences committed. In addition to lenient sentencing, the criminal justice system demonstrated a tendency to treat victims as sources of information rather than rights-holders entitled to redress. The Mission also notes that, in some cases, criminal justice authorities treated victims in a manner that contributed to their retraumatization. Finally, the report finds that, despite the possibility to process compensation claims during criminal proceedings, even successful prosecutions rarely result in the awarding of compensation to victims.

The report closes with specific recommendations targeted at several key actors. These aim to improve the criminal justice response to human trafficking in BiH and include:

- Reviewing criminal legislation at all levels with a view to strengthen the position of victims of trafficking in criminal proceedings and to minimize the possibility of qualifying THB under lesser charges.
- Treating victims with the necessary dignity and respect.
- Improving the existing co-ordination and consultation mechanisms to ensure the application of a victim-centred approach during all stages of THB cases.
- Considering all aggravating circumstances before evaluating mitigating circumstances in THB cases.
- Empowering victims to exercise their right to seek compensation.

The Mission intends for this report and its recommendations to assist prosecutors and judges, law enforcement, legislators, and policymakers, as well as other relevant local and international actors in their continued efforts to combat human trafficking in BiH.

1. Introduction

This is the second public report by the OSCE Mission to Bosnia and Herzegovina based on the monitoring of human trafficking and related cases completed before courts in BiH.

Between January 2009 and December 2020, the Mission monitored 141 cases that were either legally qualified as criminal offences of trafficking in human beings (THB) as stipulated in applicable criminal legislation in BiH,² or were cases where salient facts indicated the existence of the required elements of THB offences (namely acts, means and purpose of exploitation, as detailed in the methodology of this report), even if the relevant authorities qualified these cases in another manner. Victims in the monitored cases were subjected to various forms of exploitation including sexual exploitation, labour exploitation, and forced begging. Of the 141 cases involving 220 defendants, 118 were completed and analysed in the observed period, and courts found 148 defendants guilty. Of these, 57 defendants received suspended sentences, while 91 defendants received prison sentences ranging from one month to 12 years.³

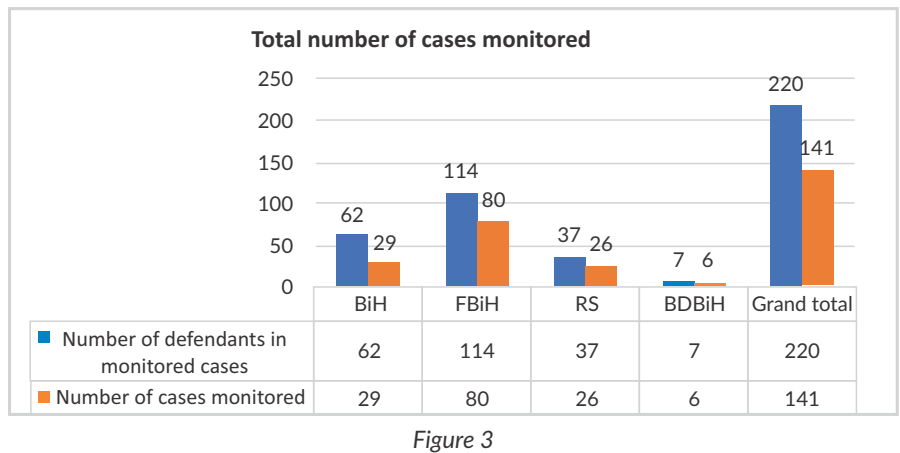
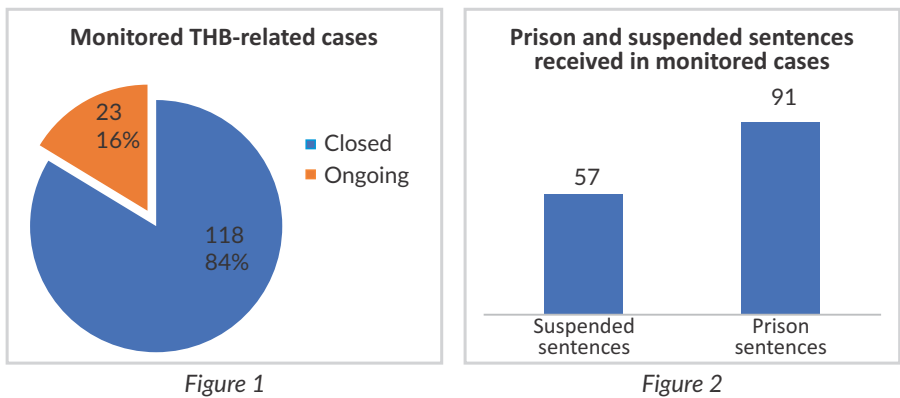


Figure 3

² Criminal codes (CC) of BiH, Federation of BiH (FBiH), Republika Srpska (RS), and Brčko District of BiH (Brčko District/BDBiH).

³ Throughout this report, in the charts and graphics, State-level statistics are indicated as "BiH", while aggregate country-wide data is noted as "Total for BiH".

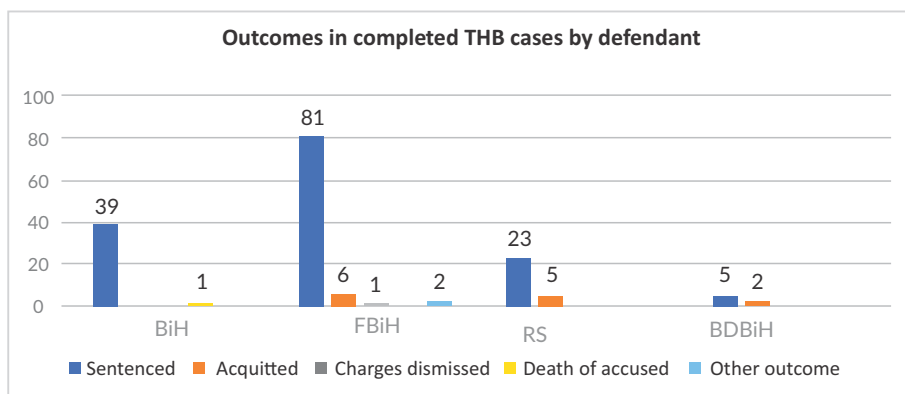


Figure 4

At the State level, from 1 January 2009 to 31 December 2020 the Court of BiH convicted 39 persons of THB and related crimes. In particular, the Court of BiH convicted 28 persons (25 men and three women) of the criminal offence of THB, nine persons of international enticement to prostitution,⁴ and one person of the establishment of slavery and transport of slaves⁵ (see Figure 5.) Out of the 28 persons convicted of THB, 20 were convicted of THB for the purpose of sexual exploitation, two of THB for the purpose of forced begging, and six of THB for the purpose of labour exploitation.

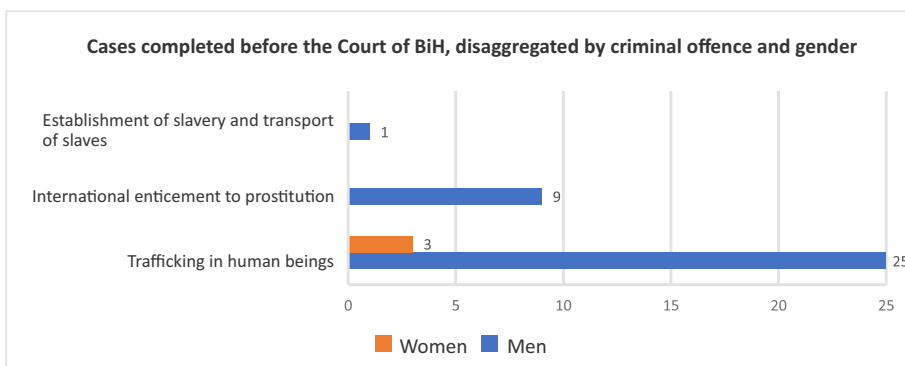


Figure 5

In its 2009 report, the Mission criticized the lack of a co-ordinated approach in prosecuting trafficking crimes, which, in combination with the fact that THB was only criminalized at the State level at the time, resulted in prosecuting THB as less severe crimes and lenient sentencing practices. To rectify the identified shortcomings, the Mission issued a number of recommendations. Annex V of this report contains a compilation of these recommendations together with the status of their implementation.

⁴ Art. 187 of CCBiH (*Official Gazette BiH*, 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 8/10, 47/14, 22/15, 40/15, and 35/18).

⁵ Art. 185 of CCBiH.

Human trafficking violates victims' human rights⁶ and as such, victims of trafficking as rights-holders have a legitimate expectation from the State – as the primary duty bearer – to offer redress for their suffering.⁷ Building on this understanding, this report examines the capacity of the criminal justice system in BiH to effectively prosecute cases of human trafficking, adequately punish those responsible for THB, treat victims with dignity while protecting them from crimes which traffickers forced them to commit, and facilitate the victims' right to seek compensation from offenders. The report concludes with a set of recommendations, directed at legislators, criminal justice practitioners, and members of the executive branch.

1.1. Methodology

For this report, the criminal justice response to human trafficking has been assessed vis-à-vis applicable national and international standards. As in similar Mission reports on criminal proceedings in BiH, the analysis and recommendations contained are based primarily on findings of the Mission's trial monitoring programme. In addition to this, the report utilizes information from court hearings and related documents, as well as opinions expressed by practitioners during events organized or attended by the Mission.

As mentioned above, the report examines all cases completed between 2009 and 2020 that were legally qualified as THB as stipulated in the applicable criminal legislation in BiH. Additionally, through its trial monitoring programme and by utilizing a list of cases provided by the High Judicial and Prosecutorial Council of BiH (HJPC) upon the Mission's request, the Mission identified criminal cases with clear indications of elements of THB for inclusion in this analysis, despite these cases being qualified differently. Due to resource limitations, this does not include potential THB cases processed as misdemeanours, but only those processed as criminal offences.⁸ Based on this identification process, the Mission conducted a detailed analysis of 89 indictments, 118 first instance court decisions, 48 second instance court decisions, and two third instance court decisions.

6 See OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (OSCE OSR/CTHB), 2015, Commentary to the OSCE Action Plan to Combat Trafficking in Human Beings (PC.DEC/557), the 2005 Addendum Addressing Special Needs of Child Victims of Trafficking for Protection and Assistance (PC.DEC/557/Rev.1); and the 2013 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: One Decade Later (PC.DEC/1107/Corr.11), Vienna, OSCE OSR/CTHB, (Commentary to the OSCE Action Plan to CTHB) p. 37.

7 European Union Agency for Fundamental Rights (FRA), 2019, Victims' rights as standards of criminal justice, Justice for victims of violent crime Part I, Luxembourg, Publications Office of the European Union (FRA, 2019), pp. 17-19.

8 Certain provisions of the laws prescribing minor offences – for example "enticement to begging" in Article 8(5) (b) or "prostitution or use of prostitution services" in Article 8(2)(c) of the Sarajevo Canton Law on Minor Offences of Public Peace and Order (Official Gazette Sarajevo Canton, 18/07, 7/08, 34/20) – create a risk of prosecuting traffickers under minor offence charges or to penalize victims for unlawful acts traffickers compelled them to commit. As noted in the 2020 US State Department Trafficking in Persons Report, authorities in BiH penalized victims of trafficking for the purpose of sexual exploitation, forced begging, and forced criminality with minor offence charges for petty crimes with some victims owing BAM 10,000 to 15,000 (\$5,740 to \$8,620) after receiving multiple fines, US Department of States 2020 Trafficking in Persons Report (<https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf>, 15/10/2020), p.114.

	Criminal offences per act	Number of cases
1.	Criminal offence of THB under Article 186 of the Criminal Code of BiH (CC BiH)	14
2.	Criminal offence of THB under Article 198a of the Criminal Code of Republika Srpska (CC RS)	1
3.	Criminal offence of trafficking in minors under Article 198b CC RS ⁹	2
4.	Criminal offence of THB under Article 210a of the Criminal Code of Federation of BiH (CC FBiH) ¹⁰	1
5.	Criminal offence of THB under Article 207a of the Criminal Code of Brčko District of BiH (CC BDBiH). ¹¹	4 ¹²
6.	Criminal offence of international enticement to prostitution under Article 187 CC BiH	6
7.	Criminal offence of enticement to prostitution under Article 210 CC FBiH	33
8.	Criminal offence of THB for the purpose of prostitution under Article 198 of CC RS ¹³	9
9.	Criminal offence of enticement to prostitution under Article 207 CC BDBiH ¹⁴	1
10.	Criminal offence of neglecting and maltreating of a child or juvenile (CC FBiH, Art. 219 - 25 cases; CC RS, Art. 207 - eight cases; 2017 CC RS, Art. 187 - one case; and CC BDBiH, Art. 216 - two cases).	36
11.	Criminal offences of the establishment of slavery and transport of slaves (CC BiH, Art. 185), abuse of a child or juvenile for pornography (CC FBiH, Art. 211), or unlawful deprivation of freedom (CC FBiH, Art 179).	11

⁹ CC RS, *Official Gazette RS*, (49/03, 108/04, 37/06, 70/06, 73/10, 1/12, and 67/13).

¹⁰ CC FBiH, *Official Gazette FBiH*, (36/03, 21/04, 64/04, 18/05, 42/10, 42/11, 59/14/76/14,/46/16 and 75/17).

¹¹ CC BDBiH, *Official Gazette BDBiH*, (19/20-consolidated text).

¹² These cases are shown as THB cases in Figure 6.

¹³ Though there may be a reference to THB in this particular article of the CC RS (*Official Gazette RS*, 49/03, 108/04, 37/06, and 70/06), this provision does not reflect the international definition of THB, and in fact refers to enticement to prostitution. See the 2009 Report, p. 20, and OSCE Office for Democratic Institutions and Human Rights (ODIHR)/Council of Europe (CoE), 2010, *Review of Legislation Pertaining to THB in BiH*, (<https://www.legislationline.org/legislation/section/legislation/country/40/topic/14,28/02/2021>), para. 55.

¹⁴ These cases are shown as enticement to prostitution in Figure 6.

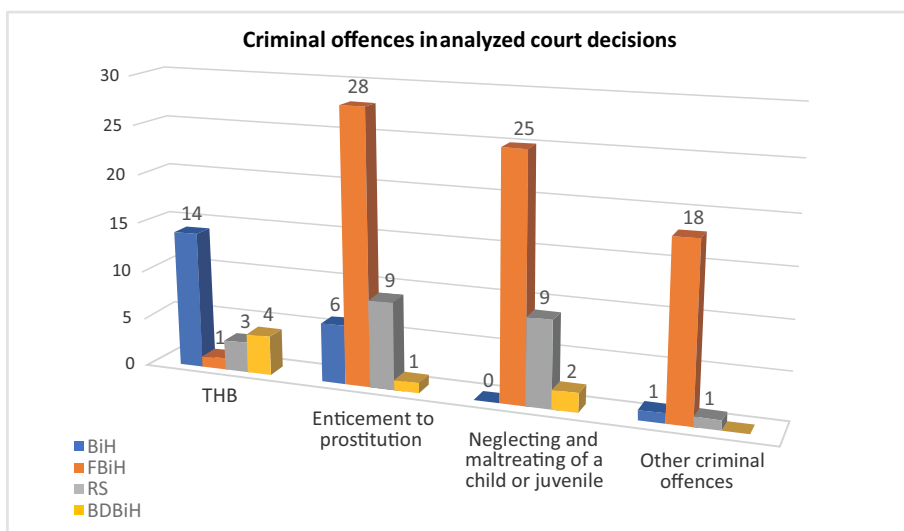


Figure 6

1.2. Legal frameworks

1.2.1. Relevant international standards

Although THB is not a new phenomenon, it has relatively recently become a subject of detailed regulation at both the international and national levels. The 2000 Palermo Protocol¹⁵ and the 2005 European Convention on Action against Trafficking in Human Beings (ECATHB)¹⁶ both contain an internationally-agreed definition of human trafficking.

According to these treaties, THB consists of three key elements:

1. **Acts** – recruitment, transportation, transfer, harbouring, or receipt of persons.
2. **Means** – threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability, or of the giving or receiving of payments or benefits to gain the consent of a person having control over another person.
3. **Purpose of exploitation** – the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs.

At the outset it is worth noting that under international law, the trafficking of children, i.e., persons below eighteen years of age, can be established even in the absence of the means element.¹⁷ Moreover, international law obliges States to criminalize conduct outlined in the internationally-accepted definition of human trafficking.¹⁸

15 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, 2000 (Palermo Protocol), Article 3.

16 Council of Europe, *Convention on Action against Trafficking in Human Beings*, 2005 (ECATHB), Article 4.

17 For the full text of the internationally agreed definition of human trafficking, see Annex I of this Report.

18 Palermo Protocol, Article 5, ECATHB, Article 18.

In criminal law terms, the first two elements can be described as the material elements (*actus reus*) of the crime, whereas the third element relates to the mental element (*mens rea*) of the crime.¹⁹ For THB to occur, at least one of the acts together with one of the means must be present and committed for the purpose of exploitation. The mental element reflects the state of mind of the alleged trafficker, requiring that a crime is committed with the intent to exploit another person. Therefore, actual exploitation does not need to occur.²⁰ Exploitation can include, among other forms, sexual exploitation, labour exploitation, and organ removal. If obtained by any of the means listed in the aforementioned definition, whether the victim consented to the intended exploitation is irrelevant to the establishment of the criminal offence of human trafficking.²¹

Several international instruments address THB. In addition to those that directly name THB,²² relevant instruments include those related to fundamental rights and freedoms,²³ the protection of children and women,²⁴ transnational and organized crime,²⁵ and workers' rights.²⁶

As “[v]iolations of human rights are both a cause and a consequence of trafficking”,²⁷ international standards require that relevant state authorities apply a human rights-based approach in all efforts to combat THB,²⁸ and “act with due diligence to investigate and prosecute traffickers.”²⁹ When there is credible suspicion that an individual was a victim of THB, criminal justice authorities have to conduct an independent, adequate, and prompt investigation³⁰ that is capable of leading to the identification and appropriate punishment of those responsible for the wrong done.³¹ Sanctions imposed against those convicted of human trafficking and related offences must take into account the gravity of the offence, give due regard to deterrence,³² and “clearly outweigh the benefits of the crime”.³³

19 United Nations Office on Drugs and Crime (UNODC), 2009, *Anti-human trafficking manual for criminal justice practitioners, Module 1: Definitions of trafficking in persons and smuggling of migrants*, New York, United Nations, (UNODC Anti-Trafficking Manual), https://www.unodc.org/documents/human-trafficking/TIP_module1_Ebook.pdf, pp. 2-6.

20 UNODC Anti-Trafficking Manual, p. 6.

21 See Annex I to this Report.

22 Palermo Protocol; ECATHB; EU Directive 2011/36/EU of the European Parliament and Council on preventing and combating trafficking in human beings and protecting its victims, 2011.

23 International Covenant on Civil and Political Rights, 1966; International Covenant on Economic, Social and Cultural Rights, 1966; Charter of Fundamental Rights in the European Union, 2000, Article 5.

24 UN Convention on the Elimination of All Forms of Discrimination against Women, 1979; UN Convention on the Rights of the Child, and Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2000.

25 UN Convention against Transnational Organized Crime, 2000 (UNTOC).

26 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990.

27 Office of the United Nations High Commissioner for Human Rights (OHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, UN Doc. E/2002/68/Add.1, May 20, 2002 (UN Recommended Principles and Guidelines), Guideline 1.

28 See *Commentary to the OSCE Action Plan to CTHB*, Chapter 2 and Chapter, 4.3, and the UN Recommended Principles and Guidelines.

29 Principle 2 of the UN Recommended Principles and Guidelines.

30 ECtHR, *S.M. v. Croatia*, Application no. 60561/14, Judgment of 19 July 2018, paras. 59 and 60, ECtHR, *V.C.L. and A.N. v. the United Kingdom*, Applications no. 77587/12 and 74603/12, Judgment of 16 February 2021 paras. 155-156. See also CoE, 2021, Guide on Article 4 of the European Convention on Human Rights, Prohibition of slavery and forced labour, (https://www.echr.coe.int/Documents/Guide_Art_4_ENG.pdf, 28/04/2021) paras. 64-71.

31 See, among many others, ECtHR, *Aksoy v. Turkey*, Application no. 21987/93, Judgment of 18 December 1996, para. 98. On adequacy of criminal law and criminal sanctions see ECtHR, *X and Y v. The Netherlands*, Application no. 8978/80, Judgment of 26 March 1986, para. 27, ECtHR, *K U v. Finland*, Application no. 2872/02, Judgment of 2 December 2008, para. 43, or ECtHR, *Okkali v. Turkey*, Application no. 52067/99, Judgment of 17 October 2006, paras. 71-78.

32 Article 11, UNTOC.

33 UNODC, 2004, *Legislative Guide for the Implementation of the United Nations Convention Against Transnational Organised Crime and the Protocols Thereto*, New York, United Nations, (UNODC Legislative Guide), Part 1, p. 130.

European Union Agency for Fundamental Rights (FRA), 2019, *Victims' rights as standards of criminal justice, Justice for victims of violent crime Part I*, p. 29. (https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-justice-for-victims-of-violent-crime-part-1-standards_en.pdf)

The criminal justice system has to ensure that victims are heard, recognized, and taken seriously.³⁴ In other words, police officers, prosecutors, and judges must not perceive victims as mere witnesses needed to secure the conviction of the offender³⁵ but must recognize them as right-holders entitled to expect that the criminal justice system will not allow offenders to enjoy impunity.³⁶ In doing so, the criminal justice system must not only protect victims from the potential negative consequences that may result from their participation in criminal proceedings,³⁷ but also ensure that they are involved in proceedings to the extent necessary to safeguard his or her legitimate interests,³⁸ such as the right to obtain compensation from the offender.³⁹

1.2.2. Relevant national legal framework

According to its constitutional arrangement, the legislative framework for combating THB in BiH consists of legislation at the level of the State, the two entities (RS and FBiH), and the Brčko District of BiH (BDBiH).

Human trafficking became a distinct criminal offence under the 2003 BiH Criminal Code (BiH CC),⁴⁰ thus making the Prosecutor's Office of BiH and the Court of BiH the only competent criminal justice institutions for processing cases involving THB offences.⁴¹ The other three criminal codes contained provisions that tackle some forms of THB through other, less serious offences, such as enticement to prostitution or neglect and maltreatment of a child.⁴² As a result, some cases of THB were often qualified as less severe crimes by the entity prosecutors who hence failed to refer them to the State-level criminal justice institutions.⁴³

In 2013, the criminal codes in RS⁴⁴ and Brčko District⁴⁵ were amended to include THB as a distinct criminal offence.⁴⁶ Subsequently, in 2015 the BiH Criminal Code was modified to apply only to international cases of THB, namely to situations where a citizen of BiH is exploited abroad or a foreign citizen is exploited in BiH.⁴⁷

34 European Union Agency for Fundamental Rights (FRA), 2019, *Victims' rights as standards of criminal justice, Justice for victims of violent crime Part I*, p. 29. (https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-justice-for-victims-of-violent-crime-part-1-standards_en.pdf)

35 *Ibid.*, p. 9.

36 *Ibid.*, p. 17.

37 ECtHR, *S.N. v. Sweden*, Application no. 34209/96, Judgment of 2 July 2002, para. 47.

38 ECtHR, *S.M. v. Croatia*, Application no. 60561/14, Judgment of 19 July 2018, para. 60.

39 See ECATHB, Article 15.

40 *Official Gazette BiH*, 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10, 47/14, 40/15, 26/16, 13/17, and 50/18. Since 2003, the CC BiH has been amended on several occasions, while the legal description of the criminal offence of trafficking in human beings was specifically amended in 2004, 2005, 2007, 2010, and 2015. The most significant changes were made in 2010 and 2015. In 2010, the CC BiH was amended to provide for harsher punishment of THB crimes in cases where the victim is under 18 years of age, suffered serious damage to health, grievous bodily harm or death or where the perpetrator(s) acted as part of a criminal group or abused an official position (see Annex II).

41 According to the Article 12(1) of the Law on Prosecutor's Office of BiH (*Official Gazette BiH*, 49/09 and 97/09), the Prosecutor's Office of BiH is the authority competent to investigate the offences for which the Court of BiH is competent, and to prosecute offenders before the Court of Bosnia and Herzegovina, in accordance with the Criminal Procedure Code (CPC) of BiH and other applicable laws. The Court of BiH has jurisdiction over criminal offences defined in the CC BiH and other laws of BiH (Article 7(1) of the Law on Court of Bosnia and Herzegovina - *Official Gazette BiH*, 49/09, 74/09, and 97/09).

42 Compare OSCE ODIHR/CoE, 2010, *Review of Legislation Pertaining to THB in BiH*, (<https://www.legislationline.org/legislation/section/legislation/country/40/topic/14,28/02/2020>), paras. 55-56.

43 See the Mission's 2009 Report, pp. 12 and 35.

44 *Official Gazette RS*, 67/13.

45 *Official Gazette BDBiH*, 9/13.

46 See Annex III.

47 *Official Gazette BiH*, 40/2015.

This created an impunity gap for internal trafficking committed on the territory of FBiH due to the failure of the Parliament of FBiH to introduce the criminal offence of THB into the entity's criminal code (CC FBiH) before the CC BiH was amended. This gap was finally closed in June 2016 when amendments to the CC FBiH rectifying this issue entered into force. In 2017, the newly adopted CC RS retained key elements of the THB provisions from the 2013 amendments, while adding provisions on the non-punishment of victims.⁴⁸ The relevant articles of all criminal codes draw most of their elements from the Palermo Protocol and ECATHB.⁴⁹ Certain provisions of other legislation, such as laws on the protection of witnesses under threat and vulnerable witnesses, treatment of children in criminal proceedings, and on aliens and asylum, are also relevant to the anti-trafficking legal framework in BiH.⁵⁰

As a result of the various amendments to the criminal codes in the country, **international THB is prosecuted under the CC BiH while internal THB is prosecuted under the criminal codes of the entities and Brčko District.** In RS, under the 2016 Law on Fighting Corruption, Organized and most Severe Forms of Economic Crime,⁵¹ a Special Department of the same name was established within the Prosecutor's Office of RS to investigate cases of human trafficking. In FBiH, cantonal prosecutors' offices are competent to prosecute THB, while in BDBiH, the Prosecutor's Office of BDBiH investigates all criminal offences, including THB committed in the District.

2. Challenges in the effective prosecution of human trafficking

Bosnia and Herzegovina has adopted a number of measures to fulfil its international obligation to “investigate, prosecute, and adjudicate trafficking to the required standard of *due diligence*,”⁵² including criminalizing THB in all four criminal codes, establishing an anti-trafficking strike force to co-ordinate law enforcement efforts on the entire territory of BiH, and adopting laws and regulations to protect adult and child witnesses in criminal proceedings.⁵³

However, despite these efforts, the Mission has identified several areas of concern with regard to qualifying trafficking-related criminal conduct, both before and after the introduction of distinct THB offences in the entity and BDBiH

48 See Annex IV.

49 Criminal codes' provisions on criminal offence of THB are cited in Annexes II-IV.

50 A comprehensive overview of the anti-trafficking legislative framework can be found in the OSCE Mission to BiH, 2017, *Trafficking in Human Beings: A Training Manual for Judges and Prosecutors*, available at: <https://www.osce.org/mission-to-bosnia-and-herzegovina/376705>, Sarajevo, OSCE Mission to BiH, pp. 9-12. A full list of anti-trafficking laws and regulations in BiH can be found in *Guidelines for Work of Regional Monitoring Teams for combating THB in BiH*, pp. 33-35, available at <https://bih.ion.int/sites/default/files/TRAFIC/GUIDELINES%20FOR%20WORK%20OF%20REGIONALMONITORING%20TEAMS%20FOR%20COMBATTING%20TRAFFICKINGIN%20HUMAN%20BEINGS%20INBOSNIA%20AND%20HERZEGOVINA.pdf>.

51 *Official Gazette RS*, 39/16, 91/17

52 Gallagher, A.T., 2010, *The International Law of Human Trafficking*, Cambridge, Cambridge University Press p. 382.

53 See the GRETA Report (2017) concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bosnia and Herzegovina, Second evaluation round, paras. 15-19, 180-184, (<https://rm.coe.int/greta-2017-15-fgr-bih-en/1680782ac1>, 28 April 2021).

criminal codes. Other areas of concern in relation to the effective prosecution of human trafficking include failures to promptly process cases, effectively investigate all circumstances of the case, confiscate proceeds of the crime, and prosecute legal persons and users of the victims' services. Finally, shortcomings in the co-ordination of criminal justice responses to THB also hinder effective prosecutions.

2.1. Qualification of criminal conduct

The Mission's analysis of the selected indictments and verdicts reveals instances in which factors indicative of the criminal offense of THB are not recognized or qualified as such. This applies both before and after the introduction of distinct criminal offences of THB in the entity and BDBiH criminal codes and is addressed in sections 2.1.1 and 2.1.2 respectively. The consequences of these practices are analysed in section 2.1.3.

2.1.1. Failure to adequately prosecute THB before the introduction of distinct criminal offences of THB in the entity and Brčko District BiH criminal codes

Prior to the introduction of the criminal offence of THB into the entity and Brčko District BiH criminal codes, the Mission observed situations whereby prosecution authorities at all levels failed to properly recognize criminal cases of trafficking. This led to the improper qualification of the criminal conduct in question as offences carrying lower sentences and failures to refer cases to the Prosecutor's Office of BiH (POBiH), which was the sole institution competent for prosecuting THB offences at the time.

For example, in the *Marinković*⁵⁴ case tried before the Kalesija Municipal Court from 2012 to 2018, a married couple kept a girl in their house and on their property, forcing her to work in their household for more than four years. Despite elements in the case demonstrating the presence of the act (harbouring), the means (use of force), and the purpose of exploitation (labour exploitation), the defendants were charged with unlawful deprivation of liberty under the CC FBiH. This prosecution under lesser charges occurred as the PO BiH did not recognize the existence of all elements of trafficking in this case and therefore referred it to the Tuzla Canton Prosecutor's Office, which at the time lacked the necessary competences to investigate or prosecute criminal cases involving THB.

Prosecutors at the cantonal and district levels often charge trafficking for the purpose of sexual exploitation under the criminal offence of enticement to prostitution. For example, in *Mišković et al.*, tried before the Novi Travnik Cantonal Court, the defendant recruited a 17-year-old female victim by deception. In particular, he initially introduced himself using a fictitious name and started dating her. With a promise to marry the victim, he took her to his

54 All cases reviewed for the purpose of this Report with listed prosecutorial and court decisions relevant for a particular case can be found in the list of cases at the end of this Report.

night club where he held her captive in a room while also coercing her to have sexual intercourse with another man in exchange for money. Despite the clear presence of all elements of trafficking in persons – namely, an act (recruitment by seduction), means (use of physical force), and purpose (sexual exploitation), in 2003 the cantonal prosecutor, having received the case from the PO BiH, initially qualified the offence as an unlawful deprivation of liberty and forced sexual intercourse.⁵⁵ Failing to recognize the noted elements of THB, the cantonal prosecutor did not return it to the POBiH, which was the sole court in BiH able to prosecute cases of THB at that time. In 2015, the cantonal prosecutor re-assessed the charges as enticement to prostitution and rape under the CC FBiH, for which the first defendant was convicted and sentenced to a compound sentence of three years and six months' imprisonment.

In *Durić and Mehanović*, tried before the Istočno Sarajevo District Court in February 2013, the district prosecutor charged the defendant with enticement to prostitution, although the case involved allegations of sexual exploitation of children aged 15 and 17. According to the facts presented in the indictment, the defendant recruited two girls into prostitution for profit by promising that they would work as waitresses in his restaurant, and that they would be able to earn a lot of money by providing sexual services.⁵⁶ The case contained two necessary elements of the criminal offence of child trafficking, namely the *act* of recruitment for the *purpose* of sexual exploitation. Therefore, it could and should have been qualified as THB as provided for in Article 186(2) of the CC BiH applicable at the time, and subsequently prosecuted before the Court of BiH.

In addition to inadequate charging of trafficking for the purpose of sexual exploitation, the Mission observed several cases of forced begging that should have been prosecuted as THB before the Court of BiH, but the entity level prosecution authorities failed to refer them to the POBiH. For example, the *Ramić* case, tried before the Bugojno Municipal Court in 2010, concerned a person who exploited her underage relative by forcing her to beg. However, the defendant was charged and convicted of the much lesser crime of neglect or maltreatment of a child or juvenile, for which she received a suspended sentence of five months imprisonment with one year of probation.⁵⁷ Also, in the *Milanović* case, tried before the Mrkonjić Grad Basic Court in 2009, the defendant forced her underage son to beg and thus obtained financial gain.⁵⁸ It remains unclear why these cases were not prosecuted as human trafficking by the POBiH under Article 186 of the CC BiH which was applicable at the time.

55 The case file was originally in the POBiH, which also failed to recognize elements of THB, before being transferred to the Cantonal Prosecutor's Office in Travnik on 29 December 2003.

56 *Murat Durić and Senad Mehanović*, Istočno Sarajevo District Prosecutor's Office, Field Office Vlasenica, Indictment, 11 February 2012, p.2.

57 *Mirzada Ramić*, Bugojno Municipal Court, First Instance Verdict, 1 July 2010.

58 *Jovanka Milanović*, Mrkonjić Grad Basic Court, First Instance Verdict, 20 November 2009.

2.1.2. Failure to adequately prosecute THB even after its introduction into the entity and Brčko District BiH criminal codes

Even after the introduction of the criminal offence of THB in the entity and Brčko District BiH criminal codes, competent actors still fail to assess and charge cases appropriately.

For example, the Mission observed cases where the prosecution decided to process cases involving crimes with foreign victims under lesser offences. In *Ćosić et al.*, tried before the Court of BiH in 2013, the prosecutor initially filed an indictment for human trafficking against five defendants. In this case, several defendants following the given order by the defendant, Mario Ćosić, recruited women, mostly from the Republic of Serbia, by deception. They were promised that they would work regular jobs at a club for a salary however, once they arrived at the club, they became involved in prostitution. Even though all of the required elements were *prima facie* present in the case – *acts* (recruitment), *means* (deception), and *purpose* (exploitation of the prostitution of others) – the PO BiH amended the indictment at a later stage of proceedings and charged the defendants with the lesser degree crime of international enticement to prostitution. When asked by the Court for the reasons for requalification, the prosecutor answered that, at the time of raising the indictment, it had been “trendy” to press charges for human trafficking.⁵⁹ This remark suggests a failure to act with due diligence to secure a conviction for THB, potentially preventing the victims from getting justice.

As additional examples, in two cases tried before the Modriča Basic Court in 2017 (the *Okanović* case and the *Aljić and Aljić* case), and in the *Šukalić* case, tried before the Zenica Municipal Court in 2018, the evidence indicated that defendants had exploited their underage children for forced begging. The defendants, however, were charged with and convicted of the criminal offence of neglect or maltreatment of a child or juvenile under the relevant code. In the above cases, *prima facie* evidence existed that all elements of the criminal offences of THB per the applicable criminal codes were met, however none resulted in convictions for THB. This suggests that improper qualification of conduct that amounts to human trafficking might be still the result of a general lack of understanding of what constitutes THB among criminal justice actors.⁶⁰

However, the Mission did note cases where the prosecutor was able to correctly recognize THB. For instance, in the *Kurtović* case tried before the Sarajevo Cantonal Court in 2016, which concerned the sexual exploitation of a number of women and girls (citizens of BiH) over several years, the Mission noted that the cantonal prosecutor fully understood the elements of THB exhibited in this case,

59 Plea bargaining hearing in the *Mario Ćosić* case, Court of BiH, held on 27 December 2016, OSCE Trial Monitoring Database (OSCE TMDb), Daily Hearing Report (DHR) prepared by the OSCE Trial Monitor.

60 See the 2009 Report, p. 23. This conclusion is also supported by the results of tests given to participants at capacity building events organized by the Mission. For example, the pre-training test given before the training organized at the 2016 Prosecutorial Symposium on the topic related to the basics of THB and processing of THB cases involving children, only 38.6% of answers were correct. The post-training test results showed a slight improvement with 42.5 % correct answers.

although it had no option but to charge the defendants with enticement to prostitution due to the impunity gap for internal trafficking committed on the territory of FBiH at the time.⁶¹ However, the prosecution explained in the indictment that it was, in essence, a human trafficking case, citing the relevant provisions of the ECATHB.⁶²

2.1.3. Consequences of improper qualification

As noted above, the analysis of the monitored cases reveals a tendency to prosecute human trafficking under offences that carry lower sentences. Furthermore, the improper qualification of conduct inevitably leads to divergent judicial practices. This is because similar conduct is prosecuted and adjudicated under different charges. The following examples illustrate this but do not represent an exhaustive list of such cases.

In the *Janjić* case, the Court of BiH found that the defendant, by taking advantage of his role as a teacher, recruited his underage student for the purpose of sexual exploitation, and he was convicted for human trafficking pursuant to Article 186 of CC BiH.⁶³ However, in the *Hajrlahović* case, tried before the Bihać Cantonal Court, the conduct of two defendants who took advantage of their positions as guardians to recruit their underage niece for the purpose of prostitution was not considered trafficking. They were charged with and convicted of enticement to prostitution pursuant to Article 210(4) of the CC FBiH in force at the time.⁶⁴ In the *Mujić* case, the Tuzla Cantonal Court correctly found a father guilty of a human trafficking offence for forcing his children, and the children of his common-law partner, to beg.⁶⁵ By contrast, in the *Šečić and Nedić* case tried before the BDBiH Basic Court, which also involved the exploitation of children by forced begging, the defendants were convicted of neglecting or maltreatment of a child or juvenile.⁶⁶

The Mission notes that the failure to properly qualify criminal conduct undermines the principle of legal certainty, which should guarantee consistency in factually similar situations and contribute to public confidence in the legal system.⁶⁷ As the European Court of Human Rights (ECtHR) remarks, the persistence of divergent judicial practice “can create a state of legal uncertainty likely to reduce public confidence in the judicial system, whereas such confidence is clearly one of the essential components of a State based on the rule of law”.⁶⁸ Criminal justice actors in BiH must ensure that THB is treated uniformly throughout the country. Wherever the necessary elements of THB exist, the case should be prosecuted and adjudicated as a trafficking offence.

61 See above Section 1.2.2. Relevant national legal framework.

62 Samir Kurtović et al., Sarajevo Cantonal Prosecutor's Office, Indictment, 15 March 2016, pp. 41-42.

63 Jelenko Janjić, Court of BiH, First Instance Verdict, 11 September 2009.

64 Ema Hajrlahović et al., Bihać Cantonal Court, First Instance Verdict, 20 January 2011.

65 Enes Mujić, Tuzla Cantonal Court, First Instance Verdict, of 16 November 2017.

66 Fehret Šečić and Lejla Nedić, BDBiH Basic Court, First Instance Verdict of 17 October 2018.

67 See ECtHR, *Cupara v. Serbia*, App. no. 34683/08, Judgment of 12 July 2016, para. 34.

68 See ECtHR, *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], App. no. 13279/05, Judgment of 20 October 2011, para. 57.

On a positive note, most indictments for trafficking-related conduct have resulted in convictions (*Figure 9*). However, as *Figure 7* shows, despite a high conviction rate, the majority of the reviewed cases were qualified and tried as ordinary crimes, thus preventing the judicial and wider victim support system from recognizing the severity of these crimes and their impact on victims.

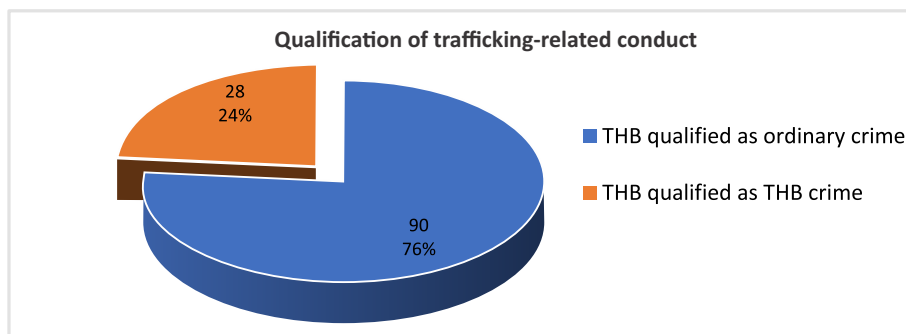


Figure 7

2.2. Adequate processing of trafficking cases: key concerns

In addition to the incorrect qualification of trafficking-related conduct, the Mission has noted several cases in which the relevant authorities failed to adequately investigate and prosecute THB and THB-related cases. More specifically, the Mission has observed cases where the responsible authorities have failed to promptly process cases, prosecute persons who use trafficking victims' services, determine the value of and confiscate proceeds of crimes, or prosecute legal persons who were involved in or benefited from trafficking crimes.

2.2.1. Efficiency of case processing

Although the Mission observed several cases in which law enforcement, prosecutor's offices, and courts promptly processed THB cases, positive examples are often overshadowed by the criminal justice actors' slow performance in other cases.

The *Malić and Omahić* case offers an initial positive example. In this case, which involved one female and one male who were charged with THB for the purpose of sexual exploitation involving one female victim, the Doboj District Court and the Supreme Court of RS finalized criminal proceedings against the defendants less than five months after the confirmation of the indictment. The second positive example is the above-mentioned *Mujić* case, tried before the Tuzla Cantonal Court, which marked the first application of the offence of THB following the amendments to the CC FBiH in 2016 that closed the impunity gap for internal trafficking in this entity. In this case, the investigation authorities applied special investigative measures (surveillance and phone tapping of the accused) and conducted forensic interviews with child victims.⁶⁹ The case was completed with

⁶⁹ Information obtained from the law enforcement and prosecutorial authorities through the Mission's monitoring programme.

a conviction reached via a plea agreement 78 days after the confirmation of the indictment.

By contrast, the Mission observed numerous cases that were not processed promptly.

In the *Mišković et al.* case, the prosecution issued an order to conduct an investigation eight years after the commission of the crime in 2003, while the indictment was raised ten years after the crime had been reported.⁷⁰ The criminal proceedings in this case lasted 14 years, which cannot be described as prompt or effective.

The *Mirić* case of THB for the purpose of sexual exploitation, tried before the Court of BiH, revealed significant inactivity of the prosecution. The case emerged in 2005 after one of the victims managed to escape and alert the police. The prosecution, however, only began to try to locate the defendant in 2010. The POBiH raised an indictment against the defendant in May 2011, around six years after the crime was first reported.⁷¹ The Mission has not been able to ascertain the reasons for these delays.

One drastic example where inefficient case processing resulted in impunity for the defendant was the *Ferhatović* case, tried before the Zvornik Basic Court. The case related to an offence committed by the defendant in 2009, when he kept a female adult victim locked in a motel room and forced her into prostitution. The defendant also withheld the victim's identification documents. The offence was qualified as THB for the purpose of prostitution under Art. 198 (1) of the CC RS in force at the time. In 2009, the Bijeljina District Prosecutor's Office indicted the defendant and proposed a suspended sentence.⁷² In April 2011, the defendant was finally sentenced by the Bijeljina District Court to six months' imprisonment.⁷³ However, he has never served his prison sentence due to the expiry of the statute of limitations for the execution of the sentence.⁷⁴

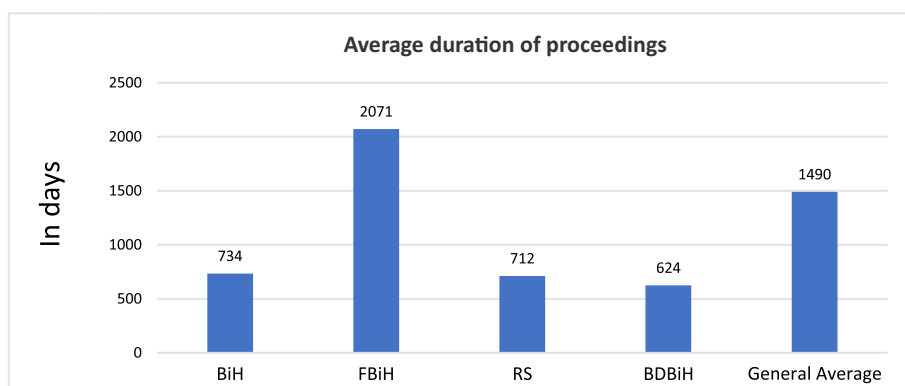


Figure 8

⁷⁰ See Dragan Mišković and Samir Zukan, Travnik Cantonal Prosecutor's Office, Indictment, 8 November 2013.

⁷¹ Milan Mirić, POBiH, Indictment, 23 May 2011.

⁷² Hakija Ferhatović, Bijeljina District Prosecutor's Office, Indictment, 20 July 2009.

⁷³ Hakija Ferhatović, Bijeljina District Court, Second Instance Verdict, 28 April 2011.

⁷⁴ Article 17. 1.point F of the FBiH CC statute of limitations for execution of punishment - Three years

2.2.2. Failure to effectively investigate all relevant circumstances of the case

In its recent judgment in *S.M v. Croatia*, the Grand Chamber of the ECtHR held that criminal justice authorities, while investigating human trafficking or forced prostitution cases, are obliged to effectively investigate all relevant circumstances of the case. This includes investigating the “true nature of relationship” between the defendant and the victim, following obvious lines of inquiry to gather evidence, and avoiding over-reliance on the victim's testimony.⁷⁵ The Mission, however, observed several cases in which criminal justice authorities failed to either investigate all relevant circumstances of the case or to expand the investigation against the alleged traffickers. It also noted cases in which prosecution authorities overly relied on victims' testimonies.

In the *Avdibašić* case tried before the Novi Travnik Cantonal Court, the prosecution filed an indictment 21 months after the crime was reported and charged a 19 year old female defendant for enticing two girls, aged 13 and 15, into prostitution.⁷⁶ In the course of criminal proceedings, one victim alleged that she had been drugged and filmed having intercourse with an unknown man.⁷⁷ The prosecution failed to examine these rape allegations as a distinct criminal act or to conduct an investigation that could have led to the identification of all persons involved in this event. The Mission also did not observe any efforts to examine the possible involvement of other persons in the sexual exploitation of the underage victims, namely, the owner and employees of the motel where the victims were forced into prostitution. The lack of such investigative efforts indicates that, in this case, the authorities failed to follow up on obvious lines of investigation as required by the ECtHR.

In child begging cases, the Mission regularly observes a lack of genuine efforts to investigate the true nature of the circumstances behind the case, for instance whether it is a case of a lack of parental care or rather the economic exploitation of children by their parents or guardians. Because of this, the prosecutors and subsequently the courts often fail to properly qualify the defendants' conduct as child neglect or human trafficking. The Mission notes that the observed light treatment of child begging cases has resulted in cases of child begging being prosecuted under the criminal offence of neglect and maltreating a child or juvenile, despite the *prima facie* presence of elements of human trafficking.⁷⁸

Also, in a number of cases prosecuted as enticement to prostitution, the Mission noted an absence of serious efforts to establish the true nature of the relationship between the defendant and the victim(s). In the *Kovačević (II)* case, tried before the Tešanj Municipal Court, the indictment indicated that the defendant

75 See ECtHR, *S.M. v. Croatia* [GC], App. no. 160561/14, Judgment of 25 June 2020, paras 336, 343. See also UN Recommended Principles and Guidelines, in particular Guideline 5, which encourages and supports the development of “proactive investigatory procedures to avoid over-reliance on victims' testimony”.

76 *Azra Avdibašić*, Travnik Cantonal Prosecutor's Office, Indictment, 29 November 2016.

77 Main trial hearing in *Azra Avdibašić* Case, Novi Travnik Cantonal Court, held on 30 June 2017, OSCE TMDB, DHR.

78 For example, *Đemail Zejnilović*, Sarajevo Municipal Court, First Instance Verdict, 20 June 2011, *Mustafa Demirović*, Bihać Municipal Court, First Instance Verdict, 10 April 2019, *Hasib Alimanović*, Sarajevo Municipal Court, First Instance Verdict, 12 August 2019.

organized the prostitution of his wife, thus failing to describe the dynamics of the relationship between the defendant and the victim. This demonstrates a failure on the part of the prosecution to establish the power the defendant had over the victim.⁷⁹ The case eventually resulted in the defendant's acquittal.⁸⁰ Similarly, in the *Čović-Gavran* case, tried before the Visoko Municipal Court, the authorities made no serious attempts to investigate a potential relationship of dependence between the defendant and the victim, who lived at the defendant's home. The prosecution also failed to include in the indictment the fact that the defendant was in the possession of the victim's identity documents.⁸¹

The Mission also noted several examples where prosecution authorities relied too heavily on the victim's testimony in trafficking and trafficking-related cases. In some instances, this led to unsuccessful prosecutions. For instance, in the *Tomić* case, tried before the Banja Luka Basic Court, the prosecution raised an indictment over 36 months after the completion of the investigation and charged the defendant with THB for the purpose of prostitution under Article 198(1) of the CC RS in force at the time. The prosecution built the case mainly on the victims' statements given to the police in the investigation stage. The defence successfully challenged the legality of the statements of the key witnesses, for the statements given in court did not correlate with those given during the investigation. Based on this, the court ruled that the prosecution did not prove beyond reasonable doubt that the defendant committed the criminal act with which he was charged.⁸²

These cases highlight the failure of criminal justice authorities to conduct prompt and thorough investigations of trafficking and trafficking-related cases. Such instances not only breach international standards but also undermine victims' trust in the justice system more broadly.

2.2.3. Failure to prosecute users of services provided by victims

International law obliges States to adopt measures to discourage the demand that fosters all forms of exploitation of persons, especially women and children that lead to trafficking.⁸³ Under Article 19 of the ECATHB, State parties must consider criminalizing the knowing use of the services of a victim of trafficking.⁸⁴ In 2010, BiH criminalized knowingly using the services of victims of trafficking in the CC BiH and similar provisions were later included in the criminal codes of the RS, FBiH, and Brčko District BiH.⁸⁵ However, these provisions have not been enforced by any jurisdiction in BiH.⁸⁶

79 *Amir Kovačević*, Zenica-Doboj Cantonal Prosecutor's Office, Indictment, February 2009 (*Kovačević II* Indictment).

80 *Amir Kovačević*, Tešanj Municipal Court, First Instance Verdict, 10 May 2010, Zenica Cantonal Court, Second Instance Verdict, 14 January 2011.

81 *Amra Čović-Gavran*, Zenica-Doboj Cantonal Prosecutor's Office, Indictment, 2 August 2010.

82 *Milutin Tomić*, Banja Luka Basic Court, First Instance Verdict of 15 October 2013.

83 Palermo Protocol, Art. 9(5), ECATHB Art. 6, Convention on Elimination of Discrimination against Women (CEDAW), Art. 6.

84 ECATHB Explanatory report, (<https://rm.coe.int/16800d3812>, 12 May 2021), para. 229.

85 See Annexes III and IV. For a more detailed explanation of domestic law provisions on the required mental element of user's criminal liability, see OSCE Mission to BiH, 2017, *Trafficking in Human Beings: A Training Manual for Judges and Prosecutors*, Sarajevo, OSCE Mission to BiH, p. 20.

86 The Mission noted, that one user of prostitution services, who was a state official, was charged and sentenced for corruption-related offence of accepting gifts and bribes. *Mirza Salihović*, Gradačac Municipal Court, First Instance Verdict, 15 March 2018.

The Mission noted several cases in which the prosecution could have applied these provisions but failed to invoke them. In the *Malić and Omahić* case, clients paid the defendants for access to the sexual services of a trafficking victim and even testified about doing so before the court.⁸⁷ Also, in the *Mujić* case involving labour exploitation of children, it was established that the defendant forced the child victims to work for a furniture company, where one child was subsequently injured. The owner of the company was questioned in the investigation phase and his statement was cited in the indictment as evidence against the defendant. The owner stated that he had known that the defendant had been bringing children into his company to collect waste generated in the manufacture of furniture. He further stated he paid the defendant for the work carried out by the children.⁸⁸ Bearing in mind that the victims were aged between 7 and 13, the factual circumstances suggest that the owner should have been aware that they were or might have been victims of exploitation of child labour which may be considered as human trafficking.

In the above cases, one may assume that the prosecution envisaged difficulties in securing evidence proving the users' knowledge that they were using services provided by victims of trafficking. In this regard, however, it is worth mentioning that the explanatory report to the ECTAHB refers to the growing acknowledgement that evidence of the user's knowledge or intent may be inferred from objective "factual circumstances" without injury to the principle of the presumption of innocence.⁸⁹

The failure of relevant authorities to enforce criminal law provisions prohibiting the knowing use of trafficking victims' services contradicts international standards that require States address the demand side of human trafficking.

2.2.4. Failure to prosecute legal persons

International law requires that legal persons should be held liable for human trafficking offences. Article 10 of the UNOTC obliges each State party to adopt the necessary measures to establish the liability of legal persons for, *inter alia*, human trafficking, as defined in Article 5 of the Palermo Protocol. Likewise, Article 22 of the ECATHB requires State parties to establish liability of legal persons.

All four criminal codes applicable in BiH contain provisions providing for the criminal liability of legal persons, including companies.⁹⁰ Despite the existence of these provisions, they have never been applied in practice in trafficking-related cases, although the Mission noted several cases in which these provisions could have been applied. In the *Kučević* case, for example, victims were subjected to sexual exploitation in a hotel, where the victims were charged BAM 10 for every half hour.⁹¹ However, despite financially benefitting from this arrangement, no

87 *Diana Malić and Mehmed Omahić*, Doboj District Court, First Instance Verdict, 18 June 2015, p. 9.

88 *Enes Mujić*, Tuzla Cantonal Prosecutor's Office, Indictment, 23 August 2017.

89 ECATHB, Explanatory report, para. 235.

90 Chapter XIV CC BiH, Chapter XIV CC FBiH, Chapter X CC RS, and Chapter XIV CC BDBiH. For a more detailed explanation on domestic law provisions on criminal liability of legal persons, see OSCE Mission to BiH, 2017, *Trafficking in Human Beings: A Training Manual for Judges and Prosecutors*, pp. 29-32.

91 *Kučević et al.*, Court of BiH, Second Instance Verdict, 21 April 2009, p. 7.

criminal proceedings were instituted against the hotel as a legal person. Also, in the *Cvitić and Karadža* case, the Court of BiH found that a number of women and girls were victims of labour exploitation that amounted to human trafficking while working as waitresses in a club.⁹² Again, no criminal proceedings were initiated against the club as a legal person.

Prosecutors should investigate and prosecute all those involved in human trafficking, whether persons or legal entities, to ensure a comprehensive criminal justice response to human trafficking and minimize its future occurrence. Failing to appropriately investigate and prosecute THB may contravene the obligation under international law to provide a suitable remedy to those who have suffered such a violation of their human rights.⁹³

2.2.5. Failure to confiscate proceeds of the crime

Despite being an egregious violation of the fundamental rights of victims, THB remains a highly lucrative and relatively low-risk activity.⁹⁴ To address this, international standards emphasize the importance of the confiscation of proceeds of human trafficking and related crimes.⁹⁵ Likewise, applicable domestic law provides provisions for the confiscation of material gain acquired through the perpetration of crime.⁹⁶ Despite this clear legal obligation to investigate and confiscate illicit gain, the Mission observed that these provisions are rarely used.⁹⁷ According to the Mission's findings, courts ordered the confiscation of criminal proceeds in only ten of the 118 cases analysed for this report.

The Mission understands that investigating and determining the proceeds of crime is a complicated endeavour, especially as traffickers usually do not keep records of their illegal gains. Despite this, the Mission has observed a promising practice with regard to the identification of income generated by trafficking crimes. In *Kučević, et al.*, the Court of BiH, based on the opinion of a financial expert and the testimony of victims on the prices charged for their sexual services and the average number of clients per day, established that the two defendants, leaders of a trafficking ring, acquired illegal material gain totalling BAM 286,400.⁹⁸ Having established this sum as the likely proceeds of the crime, the Court of BiH ordered that this be confiscated from the defendants.

However, the above practice is not regularly followed, preventing courts from ordering the confiscation of criminal proceeds. For instance, in the *Cvitić and Karadža* case which was tried before the Court of BiH and concerned labour

92 *Mato Cvitić and Edina Karadža*, Court of BiH, Second Instance Verdict, 22 November 2010, p. 6.

93 See OHCHR, 2014, *Fact Sheet no. 36, Human Rights and Human Trafficking*, https://www.ohchr.org/documents/publications/fs36_en.pdf, p.26.

94 Gallagher, 2010, p. 400.

95 ECATHB, 12(3) (a), UN Trafficking Principles and Guidelines, Principle 16 and Guideline 4.4.

96 Provisions on confiscation of property acquired through the perpetration of certain criminal offences, including THB, can be found in all criminal codes in BiH (see e.g. Arts. 110, 110a, 111 CC BiH, Arts. 114, 114a CC FBiH, Art. 83. CC RS, Arts. 114, 114a para. 2 CC BDBiH), as well as in the: Law on Confiscation of Proceeds of Crime in FBiH (*Official Gazette of FBiH*, 71/14), Law on Confiscation of Proceeds of Crime in RS (*Official Gazette of RS*, 12/10), and Law on Confiscation of Illegally Gained Property in Brčko District BiH (*Official Gazette of Brčko District BiH*, 29/16).

97 See Art. 111 CC BiH, Art. 115 CC FBiH, Art. 115 CC BDBiH, and Art. 84 CC RS. For a more detailed explanation on domestic law provisions on confiscation of proceeds of THB crimes, see OSCE Mission to BiH, 2017, *Trafficking in Human Beings: A Training Manual for Judges and Prosecutors*, Sarajevo, OSCE Mission to BiH, pp. 53-57.

98 *Tasim Kučević et al.*, Court of BiH, Second Instance Verdict, 21 April 2009, p. 52.

exploitation of a number of women and girls in a club, there was no investigation into the potential proceeds of the crime.

Another illustrative example before the Court of BiH is the *Ćosić, et al.* case, concerning the sexual exploitation of a number of women and girls for more than five years. Although the Court convicted the first defendant, it explained that it was not in a position to order the confiscation of illegal material gain because the prosecution failed to present evidence of such gains.⁹⁹

Given the potentially lucrative nature of THB, an effective criminal justice response requires that criminal justice actors intensify efforts to identify, seize, and confiscate criminal assets generated by trafficking offences. The failure to do so combined with lenient sentencing practices¹⁰⁰ makes human trafficking an appealing and low-risk crime.

2.3. Co-ordination of prosecution of human trafficking

Due to BiH's constitutional arrangements coupled with the complex nature of the criminal offence of THB, the co-ordination of criminal justice sector responses in this area is particularly important. For instance, a victim might be recruited in Brčko District BiH, subjected to ill-treatment in Bijeljina in RS, and harboured and exploited in Tuzla in FBiH, thus creating potential jurisdictional claims over the case for both entities and BDBiH.¹⁰¹ Moreover, as shown in Section 2.1 the prosecuting authorities might fail to recognize the crime of trafficking as such and decide to prosecute it under lesser charges, such as enticement to prostitution or neglect and maltreatment of a child.

ECATHB underlines the need for efficient co-operation between prosecutors and law enforcement agencies on the one hand, and within different branches of law enforcement on the other.¹⁰² Hence, the ECATHB in Article 29 places an obligation on State parties to ensure the specialization of those responsible for enforcing legislation in this field and that the system is co-ordinated.

In 2003, to ensure proper and effective co-ordination in trafficking cases, a specialized role was given to the Strike Force for Combating Trafficking in Human Beings and Illegal Migration (“Strike Force”).¹⁰³ As a body composed of the representatives of prosecutors' offices and law enforcement agencies¹⁰⁴ entrusted with collecting data on identified trafficking cases and mandated to ensure co-operation and co-ordination of work between the competent authorities involved in combating THB, the Strike Force should, in theory, provide a valuable mechanism for the planning and execution of investigations. Also, under the given constitutional arrangements of BiH, the Strike Force arguably represents a

99 As stated by the presiding judge at the hearing for the pronouncement of sentence in *Mario Ćosić* case, Court of BiH, held on 29 December 2016, OSCETMDB DHR.

100 See below Section 3. Sanctioning practice for human trafficking.

101 Compare Gallagher, 2010, p. 381, in the context of transnational co-operation.

102 Mission 2009 Report, p.10 referring to ECATHB Art. 7 (6).

103 Council of Ministers (CoM) BiH Decision, *Official Gazette of BiH*, 3/04.

104 The Strike Force is composed of the representatives of the POBiH, the POFBiH, the Public PORs, the POBDBiH, the Border Police BiH, State Investigation and Protection Agency (SIPA), the Ministry of Internal Affairs of the FBiH, the Ministry of Internal Affairs of RS, Brčko District BiH Police, the Tax Administration of the FBiH, and the Tax Administration of RS. It is chaired by the Chief Prosecutor of PO BiH.

key mechanism that might influence a prosecutor to conduct victim-centred investigations, to properly qualify criminal conduct, and if necessary refer the case to the competent judicial authority.¹⁰⁵ Additionally, the Strike Force's ability to co-ordinate the work of various law enforcement agencies can help the authorities to determine the financial gain and eventually confiscate illegal gains.

However, the monitoring of this mechanism reveals that a number of challenges have prevented the Strike Force from working to its full potential. Namely, although tasked to collect data on trafficking cases, the Strike Force has neither created a database of trafficking cases nor does it maintain data on trafficked victims or on indicted and convicted traffickers. Recording and analysing such data would be valuable in the identification of trafficking operations and in the development of policies to suppress such crimes.

Additionally, the Strike Force also could have an important role in ensuring consistent THB investigation and prosecution practices. The Strike Force, in this regard, could maintain a database of prosecutorial and judicial decisions in trafficking cases. Through an analysis of these decisions, the Strike Force could identify inconsistencies in the application of material and procedural criminal law provisions relevant for the processing of trafficking cases, and propose measures to tackle these. Measures could include proposals for specific capacity building or the harmonization of case law through existing mechanisms, such as harmonization panels among the highest courts.

Despite its mandate and potential impact, however, the Strike Force does not have its own standing personnel to help it maintain such a database or handle its administrative needs, which has an obvious impact on its functioning.¹⁰⁶ The repeated non-attendance of some members at meetings of the Strike Force combined with a lack of operational funds also undermine the effectiveness of this mechanism.¹⁰⁷ Furthermore, the Mission noted that, as of January 2018 with the influx of refugees, migrants, and asylum seekers, the Strike Force demonstrated a tendency to devote more time and energy at its meetings to the issue of smuggling of migrants, which is related to yet essentially distinct from THB.

Outside of the Strike Force, the Mission notes the establishment of an informal network of specialized prosecutors and investigators, convened to increase the efficiency and co-ordination of the criminal justice system's responses to THB. While this initiative has the potential to contribute to the work of the Strike Force and lead to an overall improvement of the criminal justice response to THB, it is too early to assess this mechanism. This notwithstanding, the continued tendency of criminal justice authorities to process cases of THB under inappropriate charges, as well as to carry out inadequate investigations, require improvements to existing criminal justice co-ordination mechanisms.

¹⁰⁵ Compare with observations in the 2009 Report, p. 12.

¹⁰⁶ The abovementioned CoM decision does not provide for staff or a budget for the Strike Force. This conclusion is also based on the information gathered by the Mission's staff attending the Strike Force meetings.

¹⁰⁷ See 2019 US State Department Trafficking in Persons Report, (<https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf>, 12 May 2021), p.104.

3. Sanctioning practices

International standards require that those convicted of human trafficking and related offences receive “effective, proportionate and dissuasive sanctions”.¹⁰⁸ Effective and proportionate criminal sanctions act as a deterrent, potentially preventing the occurrence of THB. This section examines whether BiH criminal justice actors meet this obligation. It first presents quantitative data on sanctions imposed against traffickers and then offers a qualitative analysis of the imposed sanctions vis-à-vis relevant international standards.

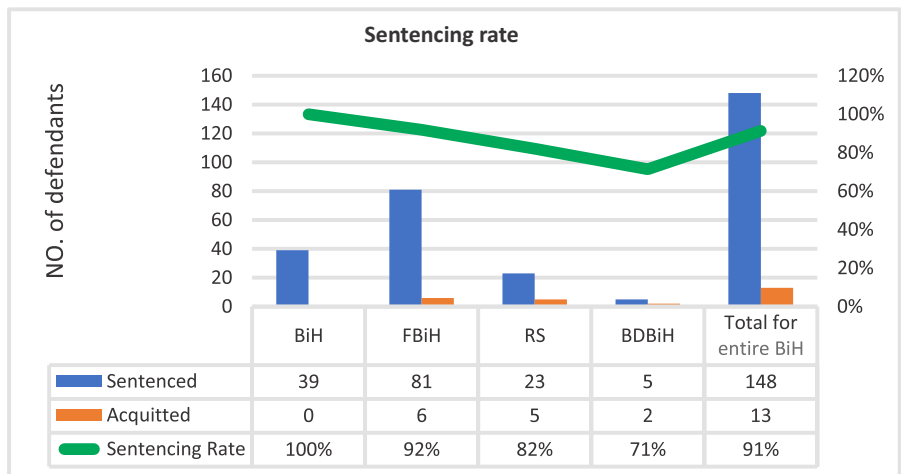


Figure 9

As shown in *Figures 9 and 10*, in 118 monitored cases related to human trafficking and completed before courts in BiH between 1 January 2009 and 31 December 2020, out of 165 indicted defendants, 148 defendants were found guilty: 57 defendants were given suspended sentences, while 91 defendants were sentenced to prison.¹⁰⁹ The shortest sentence imposed was one month while the longest pronounced sentence was 12 years in prison. The overall ratio between different types of sanctions imposed by courts in BiH is presented in the table below (*Figure 10*).

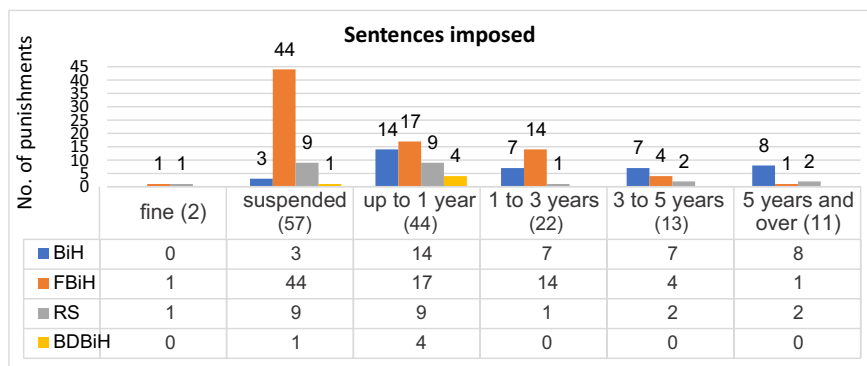


Figure10

¹⁰⁸ ECATHB, see also Principle 15 of the UN Recommended Principles and Guidelines.

¹⁰⁹ While 91 defendants received prison sentences, one prison sentence was converted to a fine, so only 90 prison sentences were imposed (see *Figure 10*).

In all trafficking-related cases before the Court of BiH, the Court imposed 35 prison sentences and three suspended sentences. The longest prison sentence imposed was 12 years, while seven persons received sentences of over five years. Fourteen persons were sentenced to between one and five years in prison, while the same number of defendants were sentenced to up to one year in prison. In the entities and BDBiH, most sentences were of one year or were suspended (*Figure 10*).

These statistics lead to the conclusion that, at the State level, despite a few long sentences, sentencing practice in trafficking cases can be described as lenient. Recalling that at the entity level crimes are often prosecuted and adjudicated under lesser charges, those courts impose even lighter sentences.

In its 2009 report, the Mission observed that courts at all levels demonstrated a tendency towards lenient sentences in trafficking-related cases, including in those involving child victims.¹¹⁰ The Mission then called for the introduction of harsher penalties in criminal legislation in two areas, namely, for THB committed by public officials and in cases where perpetrators exposed their victims to life-threatening conditions. Despite the introduction of the recommended amendments, the Mission's analysis reveals that sentencing practices remain troublingly lenient, despite a few positive examples.¹¹¹ Such sanctions do not reflect the gravity of THB or offer a sufficient deterrent and ultimately fail to demonstrate respect for victims.

The remainder of this section examines two central challenges in the application of adequate sanctions in trafficking cases: the extensive use of mitigating circumstances and sentencing practices in plea agreements.

3.1. Extensive use of mitigating circumstances

Although the Mission has observed several cases in which sentences pronounced against those convicted of trafficking crimes can be described as proportionate, sentencing practice has generally remained lenient throughout the reporting period.¹¹²

As shown in *Figure 10* above, only 11 defendants received prison sentences of five years or more, while the majority of convicted defendants (66) received a sentence of up to three years. Of these, 44 defendants were sentenced to less than one year

¹¹⁰ OSCE BiH, 2009 Report, p. 33.

¹¹¹ According to domestic legislation, courts impose sentences within the limits provided by law for the offence committed, having in mind the purpose of punishment and taking into account mitigating and aggravating circumstances, in particular: the degree of criminal culpability, the motives for perpetrating the offence, the degree of danger or injury to the protected object, the circumstances in which the offence was perpetrated, the past conduct of the perpetrator, his or her personal situation and conduct after the perpetration of the criminal offence, as well as other circumstances related to the personality of the perpetrator. Furthermore, the court may set the sentence below the limit prescribed by the law, or impose a milder type of punishment when the law provides for the possibility of reducing the punishment as well as when the court determines the existence of highly mitigating circumstances, which indicate that the purpose of sentencing can be attained by a lesser punishment. See Articles 48 and 49 of CC BiH and corresponding provisions of entity and Brčko District BiH criminal codes.

¹¹² See, among many others, ECtHR, *Aksoy v. Turkey*, Application no. 21987/93, Judgment of 18 December 1996, para. 98. On adequacy of criminal law and criminal sanctions see ECtHR, *X and Y v. The Netherlands*, Application no. 8978/80, Judgment of 26 March 1986, para. 27, ECtHR, *K U v. Finland*, Application no. 2872/02, Judgment of 2 December 2008, para. 43, or ECtHR, *Okkali v. Turkey*, Application no. 52067/99, Judgment of 17 October 2006, paras. 71-78.

in prison. The Mission is particularly concerned with the fact that 57 defendants, representing more than one-third of those convicted in the cases monitored, received suspended sentences (*Figure 11*).

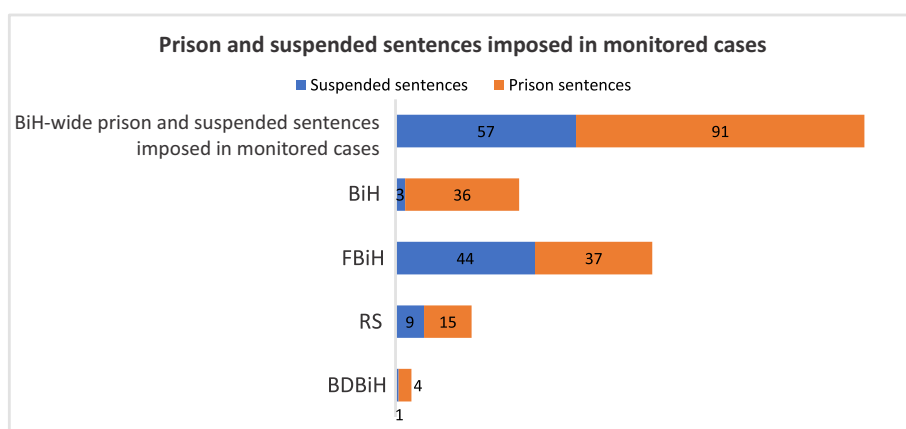


Figure 11

However, whilst light sentencing appear to be the rule, the Mission was able to note some positive exceptions. In *Kučević et al.*, the Court of BiH sentenced the head of an organized group that trafficked women and girls for sexual exploitation to a compound sentence of 12 years' imprisonment. The Court appropriately assessed a previous similar conviction as well as the fact that he committed this offence while serving a prison sentence as aggravating circumstances. The Court further accounted for the differing roles played by the defendants in this case, imposing harsher penalties on the head of the trafficking ring, his wife, who played a central role in the operation, and their accomplices. Other members of the group, whose acts were of an accessory nature, received much lighter sentences.¹¹³

However, in *Vuković et al.* concerning the trafficking of underage girls for sexual exploitation, the Trial Panel of the Court of BiH sentenced three traffickers to one year imprisonment each. When deciding on criminal sanctions, the Court, *inter alia*, took into account that the offence lasted only for a relatively short period, the defendants' good behaviour before the court, and their clean criminal records. The Trial Panel found no aggravating circumstances.¹¹⁴ By contrast, the Appellate Panel of the Court of BiH found that the identified mitigating circumstances could not be regarded as sufficient to justify a reduction of the sentence below the prescribed minimum. Additionally, it found a number of aggravating circumstances in relation to one defendant, such as unscrupulous behaviour toward child victims, evidenced by his threatening messages to victims and attempts to force one to have sexual intercourse with a group of people.¹¹⁵ The Appellate Panel sentenced two defendants to six years' imprisonment each, and one defendant to five and a half years. It should be emphasized that in both the

¹¹³ *Tasim Kučević et al.*, Court of BiH, Second Instance Verdict, 21 April 2009.

¹¹⁴ *Vuković et al.*, Court of BiH, First Instance Verdict, 26 May 2010.

¹¹⁵ *Vuković et al.*, Court of BiH, Second Instance Verdict, 3 March 2011.

Kučević et al. and *Vuković et al.* cases the appeals process resulted in sentences more commensurate with the gravity of the crimes than the first instance decisions.

Extensive use of mitigating circumstances¹¹⁶ by courts throughout BiH as grounds for imposing sanctions close to the prescribed minimum or reducing them even below this level has contributed to a *de facto* lenient sentencing policy in trafficking cases. For example, courts have frequently cited “the defendant's proper behaviour” before the court as a mitigating factor. In its earlier reports, the Mission expressed its concern over courts considering the expected behaviour of any person brought before the court as a factor to be assessed to significantly mitigate a sentence in serious cases, such as THB-related cases.¹¹⁷ Likewise, courts across all jurisdictions in BiH have regularly interpreted the “family situation” of defendants as a mitigating factor, even in those cases where those defendants subjected members of their family to sexual or labour exploitation.

Courts have also frequently cited “expressing remorse for their conduct” as a mitigating factor, however, the courts have not offered an explanation as to how this remorse was shown or how it was established. According to the ECtHR, the mere statement that the defendant showed remorse cannot be regarded as sufficient to justify the mitigation of the defendant's sentence; moreover, it might represent a violation of the ECHR because of the inadequacy of the sanction imposed as a result.¹¹⁸

Although sentencing should be individualized, the courts must avoid overreliance on mitigating factors to reduce sentences. The Mission observed that courts often follow the practice of interpreting multiple individual mitigating circumstances as one highly mitigating circumstance that allows for sentencing below the prescribed minimum. The Mission has observed this at the State as well as at the entity and BDBiH levels.

For example, in the *Cvitić and Karadža* case, the Court of BiH convicted two defendants for trafficking women and girls for the purpose of labour exploitation in a bar. The Appellate Panel sentenced the first defendant to five years and six months' imprisonment and the second defendant to three years' imprisonment for the criminal offence of THB as prescribed in Article 186(1) of CC BiH, which carries a sentence of between one and ten years, and Article 186(2) of CC BiH, which carries a minimum sentence of five years.¹¹⁹ The Court of BiH, deciding in the third instance, reduced the sentences imposed by the Appellate Panel. The Court assessed the personal circumstances of the first defendant (that he was a family man, a father of six, and disabled) and the second defendant (that she had

116 The Mission regularly observes the overreliance and uncritical use of mitigating factors to reduce sentences, not only in THB cases but in other criminal proceedings as well. See, for example, OSCE Mission to BiH, 2011, *Ensuring Accountability for Domestic Violence*, Sarajevo, OSCE Mission to BiH, or OSCE Mission to BiH, 2018, *Trial Monitoring of Corruption Cases in Bosnia and Herzegovina: Second Assessment*, Sarajevo, OSCE Mission to BiH.

117 OSCE Mission to BiH, 2011, *Ensuring Accountability for Domestic Violence*, Sarajevo, OSCE Mission to BiH, p. 22.

118 See ECtHR, *Okkali v. Turkey*, Application no. 52067/99, Judgment of 17 October 2006, para. 74.

119 *Mato Cvitić and Edina Karadža*, Court of BiH, Second Instance Verdict, 22 November 2010, See Annex II. The applicable criminal code in this case was the 2003 CC BiH.

been relatively young at the time of the commission of the crime, was pregnant, and was a mother of two) as highly extenuating circumstances. The Court then sentenced both defendants to below the prescribed minimum of five years. The first defendant was sentenced to four years and six months' imprisonment, and the second defendant to one year's imprisonment.¹²⁰ Again, although the circumstances taken into account by the Court are important in terms of the individualization of criminal sanctions, the imposed sanctions do not seem to reflect the gravity of the offence, demonstrate respect for the victims, or sufficiently deter others from committing similar offences.

In the *Jekić* case, the Court of BiH sentenced the defendant who trafficked four women for the purpose of sexual exploitation to four years' imprisonment, just one year above the prescribed minimum of three years.¹²¹ The Court cited the cruel treatment and reckless behaviour of the defendant towards the victims and the psychological consequences suffered by the victims as aggravating circumstances. However, despite this, the Court remarked that if the incriminating event was excluded, the defendant was a person of high moral quality,¹²² justifying a sentence close to the prescribed minimum despite the grave nature of the defendant's conduct.

Courts at the entity and BDBiH levels demonstrate similar leniency in their sentencing practices. For example, in the vast majority of forced begging cases, the defendants received suspended sentences. Even in cases involving forced prostitution, including of children, courts often opted to suspend the defendants' sentences.

In cases resulting in prison sentences, the Mission observed that courts often impose sentences close to or even below the prescribed minimum.¹²³ For example, in the *Mustafa Husejnović* case before the Brčko District Basic Court, the defendant was sentenced to one year's imprisonment for THB under Article 207a(1) of the CC BDBiH, although the law provides for a minimum of five years.¹²⁴ Even though the limit for reduction of the sentence set out in the relevant domestic legislation was not breached,¹²⁵ the pronouncement of such a low sentence seems disproportionate to the act, and it is doubtful that such a lenient sentence can serve the general purpose of criminal sanctions. In this case, the defendant's prior convictions for domestic violence, theft, and minor bodily injury were taken as aggravating circumstances. On the other hand, the fact that the defendant was a married man and father of three was treated as a highly extenuating circumstance, leading to such a reduction.

120 *Mato Cvitić and Edina Karadža*, Court of BiH, Third Instance Verdict, 20 April 2011, p.12.

121 See Annex II, in this case the applicable substantive law was the 2011 CC BiH.

122 *Mile Jekić*, Court of BiH, First Instance Verdict, 4 June 2013, pp. 35-36.

123 The Mission observed this trend of sentencing perpetrators below the prescribed minimum in other criminal proceedings such as those involving domestic violence, see OSCE Mission to BiH, 2011, *Ensuring Accountability for Domestic Violence*.

124 *Mustafa Husejnović*, Brčko District Basic Court, First Instance Verdict, 22 June 2017. See Annex III.

125 Article 51 of the CC BDBiH sets limits for reduction of punishment, prescribing that in case where a punishment of imprisonment of three or more years is prescribed as the lowest punishment for the criminal offence, it may be reduced to one year' imprisonment. In deciding on the extent of reducing of punishments, court has to take into special consideration the least and the most severe punishment prescribed for the particular criminal offence.

In 2015, in the *Handanović* case involving forced prostitution of a woman and her underage daughter, the Tuzla Cantonal Court, as the first instance court, sentenced the defendant to two years in prison. In its reasoning, the court stated that it did not find any aggravating circumstances, and it applied the facts that the defendant was married and a father of four and that the victims did not want to see him prosecuted as mitigating circumstances.¹²⁶ In its 2018 second instance verdict, the Supreme Court of FBiH placed even more emphasis on these circumstances and further reduced the sentence to one year and six months' imprisonment.¹²⁷

Similarly, in the *Malić and Omahić* case, tried before the Doboj District Court in the first instance, the criminal code applicable at the time of the commission of the crime prescribed a minimum penalty of three years. Despite this, the Supreme Court of RS overturned the first instance court's sentencing decision and reduced the sentences below the statutory minimum. The Supreme Court of RS reasoned that there were no aggravating circumstances, deliberating that the criminal activities lasted for a relatively short time (only 20 days).¹²⁸ This approach to sentencing, combined with the appellate court's reasoning, represents a failure to condemn THB.

The Mission notes that the rationale offered for the use of mitigating factors, sometimes even within a single court, suffers from a lack of uniformity. Further clarity on the application of mitigating and aggravating factors could better align sentencing practices with the nature of THB and the purpose of punishment in such cases.

3.2. Sentencing related to plea agreements

The analysis of sanctioning practices reveals that cases where plea agreements were concluded resulted in significantly lower criminal sanctions, even in cases involving organized crime.¹²⁹

Plea Bargain Agreements in THB cases before the Court of BiH			
Case name	Criminal offence	Prescribed sentence	Pronounced sentence
Almir Ahmetović	THB Art. 186(1) CC BiH	From 1 to 10 years	3 years suspended sentence with probation period of 3 years
Milan Mirić	THB Art.186(1) CC BiH	From 1 to 10 years	11 months
Novak Ćirić <i>et al.</i>	Organized crime Art. 250(2) in conjunction with THB Art.186 CC BiH	Minimum 5 years	1 year (replaced with community service)

¹²⁶ Jasmin Handanović, Tuzla Cantonal Court, First Instance Verdict, 16 April 2015, p.12.

¹²⁷ Jasmin Handanović, Supreme Court FBiH, Second Instance Verdict, 5 February 2018, p. 20.

¹²⁸ Diana Malić and Mehmed Omahić, Supreme Court RS, Second Instance Verdict, 14 September 2015, p. 4.

¹²⁹ Plea bargaining, in essence, permits defendant to negotiate a guilty plea with the prosecutor in exchange for a specific sentence, without the necessity of a trial. The procedures governing plea bargaining are found under Article 231 CPC BiH, Article 246 CPC FBiH Article 246 CPC RS, and Article 246 CPC BDBiH.

Saša Lipovac	Organized crime Art. 250(2) in conjunction with THB Art.186 CC BiH	Minimum 5 years	1 year and 9 months
Nenad Tatić	Organized crime Art. 250(2) in conjunction with THB Art.186 CC BiH	Minimum 5 years	2 years suspended sentence with probation period of 4 years
Enes Mujić	THB Art. 210a(2) CC FBiH	Minimum 10 years	5 years

In 22 cases involving criminal offences of THB tried before the Court of BiH, plea agreements were concluded in six cases (Table 1),¹³⁰ while such agreements were also concluded in 12 cases involving the criminal offence of enticement to prostitution under the relevant codes. All cases involving plea agreements before the Court of BiH resulted in criminal sanctions close to or even below the prescribed minimum.

Plea Bargain Agreements in THB-related cases				
Jurisdiction	Case name	Criminal offence	Prescribed sentence	Pronounced sentence
BiH	Miroslav Ćosić	International enticement to prostitution Art. 187 CC BiH	From 6 months to 5 years	6 months
BiH	Mario Ćosić	International enticement to prostitution Art. 187 CC BiH, Pandering Art 210 CC FBiH	From 6 months to 5 years	Art. 187 CC BiH - 9 months; Art 210 CC FBiH - 1 year and 1 month; Compound sentence: 1 year and 8 months
BiH	Aldin Zatagić	International enticement to prostitution Art. 187 CC BiH	From 6 months to 5 years	1 year
BiH	Jasmin Hodžić	International enticement to prostitution Art. 187 CC BiH	From 6 months to 5 years	1 year suspended with probation period of 2 years with forfeiture of BAM 3.622,80
FBiH	Suad Halilović	Sexual intercourse with a child Art. 207(1)CC FBiH Enticing into prostitution Art. 210(4) CC FBiH	From 1 to 8 years From 3 to 15 years	Art. 207 CC FBiH - 6 months; Art. 210(4) CC FBiH - 1 year; Compound sentence: 1 year and 4 months
FBiH	Duric <i>et al.</i>	Enticing into prostitution Art. 210 (1) CC FBiH , Enticing into prostitution Art. 210 (4) CC FBiH	From 6 months to 5 years From 3 to 15 years	1 st defendant - 2 years and 2 months; 2 nd defendant - 1 year and 4 months; 3 rd defendant - 1 year and 1 month (all compound sentences)

130 All six cases were tried before the Court of BiH.

FBiH	Melisa Šehovic	Enticing into prostitution Art. 210 (1) CC FBiH	From 6 months to 5 years	2 years with probation period of 5 years
FBiH	Valentina Omerović Dubravko Kojadin,	Enticing into prostitution Art. 210 (1) CC FBiH	From 1 to 5 years	1 st defendant - suspended sentence (1 year and six months suspended with probation period of 2 years); 2 nd defendant - suspended sentence (8 months with probation period of 1 year)
FBiH	Hajrlahović <i>et al.</i>	1 st and 2 nd defendant: Enticing into prostitution Art. 210 (4) CC FBiH; 2 nd defendant: 3 rd defendant: Lechery (Lewd behaviour) Art. 208 (2) CC FBiH	From 3 to 15 years From 6 months to 5 years	1 st and 2 nd defendant: 1 year; 3 rd defendant: 1 year suspended sentence with probation period of 2 years
RS	Veselko Đurđević	Enticement to prostitution Art. 198 2003 CC RS	From 6 months to 5 years	3 months plus fine in the amount of BAM 1,500
RS	Miodrag Regodić	Enticement to prostitution Art. 198 2003 CC RS	From 6 months to 5 years	6 months
RS	Emanuela Đurić	Enticement to prostitution Art. 198(4) 2003 CC RS Enabling Another to Enjoy Narcotics, Art. 225 (2)	From 2 to 15 years From 1 to 10 years.	10 months - 1 year compound

In the *Ahmetović* case, tried before the Court of BiH, the defendant who physically abused and exploited a disabled victim for forced begging and labour received, based on a plea agreement, a suspended sentence of 11 months' imprisonment followed by a three-year probation period. In its reasoning, the Court of BiH simply enumerated the evidence presented by the prosecution without further explanation.¹³¹ Similarly, in the *Hajrlahović* case involving forced prostitution of an underage girl entrusted to the custody of the defendants, the Bihać Cantonal Court accepted the sentences proposed in the plea agreement, two of which were below the prescribed minimum. The court explained that the proposed one-year sentence was commensurate with the gravity of the crime, the degree of the defendants' criminal responsibility, and their personal circumstances.¹³² It offered no further explanation as to why these factors meet the conditions for imposing such a sentence.

131 Almir Ahmetović, Court of BiH, First Instance Verdict, 28 September 2011.

132 Ema Hajrlahović, *et al.*, Bihać Cantonal Court, First Instance Verdict, 20 January 2011.

In *Vučenović et al.* (SerbAz case), which involved allegations of trafficking of hundreds of persons from BiH and the region for forced labour at construction sites abroad, the Court of BiH convicted four persons on the basis of plea agreements.¹³³ All of them received mild sentences: one defendant was sentenced to one year and nine months' imprisonment, one received a suspended sentence, and two defendants were sentenced to one year of imprisonment, which the court¹³⁴ replaced with 90 days of community service. The Court took into account several mitigating factors, including the defendants' promise to co-operate with the prosecution and testify against other members of the group.¹³⁵

At some plea bargain hearings, the Mission noticed that prosecutors, in order to persuade the court to accept the agreement, used arguments that minimized the harm done to victims. In one case, for example, the prosecutor initially indicted five persons for organized trafficking for the sexual exploitation of a number of women and one female minor.¹³⁶ More than two and a half years after filing the indictment, the prosecutor changed the legal qualification from THB¹³⁷ to the criminal offence of “international procurement to prostitution,” for which a lesser punishment is prescribed,¹³⁸ and concluded three separate plea agreements with the head and two members of the group. The head was sentenced to one year and eight months' imprisonment,¹³⁹ one member of the group was sentenced to one year in prison,¹⁴⁰ while the third member received a six-month prison sentence.¹⁴¹ At the plea bargaining hearing concerning the head of the group, the prosecutor stated that the fact the criminal offence was committed against the then-underage victim was an aggravating circumstance but reasoned that “she insisted on prostituting herself when she realized how much money she was about to make”.¹⁴²

133 *Božo Vučenović, et al.*, POBiH, Indictment, 27 June 2014. In this case the POBiH indicted 14 persons for human trafficking. Four persons were convicted on the basis of plea agreements concluded with the prosecution: *Saša Lipovac*, Court of BiH, First Instance Verdict, 28 February 2017, *Nenad Tatić*, Court of BiH, First Instance Verdict, 10 July 2017; *Novak Ćirić and Slaviša Kojić*, Court of BiH, First Instance Verdict, 28 March 2018. In December 2019, the Court of BiH acquitted all of the remaining defendants in the first instance. At the time of writing of this report, the first instance verdict was upheld in the second instance decision passed in April 2021, however the Mission was not in the possession of the written verdict at the time of drafting this report.

134 Article 43 of the CC BiH.

135 *Novak Ćirić and Slaviša Kojić*, Court of BiH, First Instance Verdict, 28 March 2018, p.14.

136 POBiH, Indictment, 31 December 2013.

137 Art. 186 CC BiH.

138 Art. 187 CC BiH. *et al.*, POBiH, Amended Indictment, 7 March 2016.

139 Court of BiH, PBA Verdict, 29 December 2016.

140 Court of BiH, First Instance Verdict, 19 January 2017.

141 Court of BiH, First Instance Verdict, 7 March 2017.

142 Court of BiH, plea bargaining hearing, 27 December 2016. OSCE TMDB, DHR. Problematic practices with regards to the treatment of victims are discussed further below in 6.1.

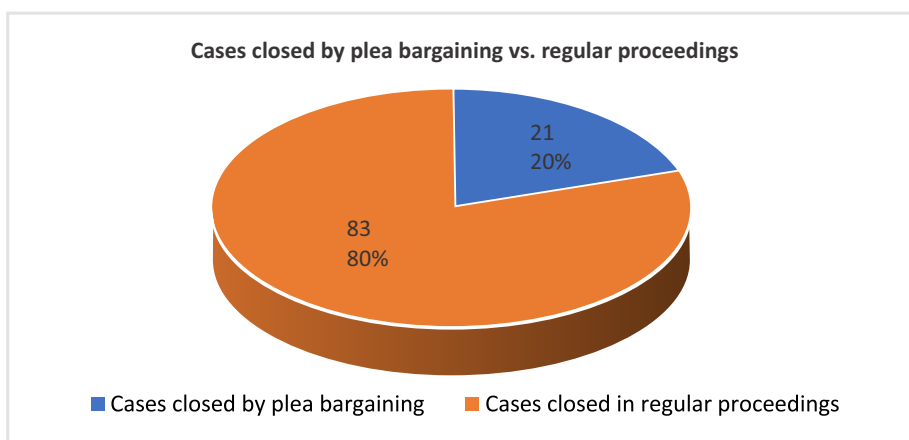


Figure 12

In summary, while plea agreements have many advantages, such as their ability to expedite proceedings or to secure the testimony of a member of an organized criminal group against other members of the group,¹⁴³ they should not be used at the expense of victims' rights. Moreover, their use should not contradict international standards vis-à-vis sentences in cases of human trafficking and related offences. In this regard, the Mission notes that the Group of Experts on Action against THB (GRETA), an expert body that monitors the implementation of the ECATHB, raised concerns about the application of plea agreements in THB cases because of the low number of convictions involving deprivation of liberty. The Group even called for the exclusion of THB from the plea bargaining procedure, underlining the stringent sentencing approach that should be taken to such crimes.¹⁴⁴

¹⁴³ It should be noted that the Mission has already voiced concerns about a lack of mechanisms to ensure the defendant's fulfilment of co-operation clauses that may be included in a plea agreement in relation to the use of plea-bargaining in war crimes cases. See OSCE, 2011, *Delivering Justice in Bosnia and Herzegovina: An Overview of War Crimes Processing from 2005 to 2010*, Sarajevo, OSCE Mission to BiH, (<https://www.osce.org/bih/108103?download=true>), pp. 55.

¹⁴⁴ GRETA (2017), *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bosnia and Herzegovina*, Second evaluation round, (<https://rm.coe.int/greta-2017-15-fgr-bih-en/1680782ac1>, 12 May 2021), paras. 178-179.

4. Position of victims in criminal proceedings

Although international standards demand that the human rights of victims be at the centre of all actions in the fight against trafficking,¹⁴⁵ the monitored proceedings reveal that criminal justice professionals often regard victims as sources of information rather than persons whose rights have been violated and are entitled to justice. Despite domestic legal provisions related to the protection of witnesses and child victims, this treatment of victims is unsurprising given the traditionally weak position of victims in criminal proceedings in BiH, which the 2003 criminal procedure code reforms further weakened.¹⁴⁶ Criminal legislation in BiH, unlike that of certain other countries in the Western Balkans,¹⁴⁷ does not contain definitions of “victims of crime”, does not define victim's rights, and does not stipulate the provision of free assistance to victims in the course of criminal proceedings.

In essence, the applicable criminal procedure rules in BiH, apart from the rarely used possibility for the injured party to seek compensation from the offender, has practically reduced the role of the victim in proceedings to that of a witness.¹⁴⁸ Moreover, the Mission monitored cases in which the rights of victims and witnesses appear to not have been recognized at all.

This section focuses on the capacity of the criminal justice system to treat victims with dignity and to protect them from the potential harmful consequences of their involvement in criminal proceedings, as well as its ability to provide a remedy for the harm caused by the crime in the form of compensation. Thus, it first examines how judicial actors treat victims. Second, it highlights the identified deficiencies related to the questioning of victims as witnesses. Third, it points to shortcomings regarding the protection of victims from retaliation and intimidation. Fourth, it explains the failures of the criminal justice system to protect victims' privacy. Finally, the section focuses on practices in the awarding of compensation to victims for the harm done by the offender.¹⁴⁹

145 ee UN Recommended Principles and Guidelines, paras 1-3.

146 Hanušić, A., 2015, *Enforcement of damage compensation claims of victims of war crimes in criminal proceedings in Bosnia and Herzegovina – situation, challenges and perspectives*, (https://trial.ba/wp-content/uploads/2021/02/ENG_Ostvarivanje-zahitjeva-za-naknadu-stete-zrtava-ratnih-zlocina-u-okviru-krivinih-postupaka-u-Bosni-i-Hercegovini-%E2%80%93-stanje-problemi-i-perspektive-.pdf, 12 May 2021), p.11. See also Filipović, Lj., 2009, POLOŽAJ OŠTEĆENOG U KRIVIČNOM POSTUPKU, *Pravo i pravda*, 8, (1), pp. 295-329, for a detailed analysis of the position of an injured party in criminal proceedings in BiH.

147 See, for example, Art. 21(4), CPC of North Macedonia, available at: https://www.legislationline.org/download/id/6377/file/FYROM_CPC_am2010_en.pdf; or Chapter 5 and Article 202(11), CPC of Republic of Croatia, available at <https://www.zakon.hr/z/174/Zakon-o-kaznenom-postupku>. Introduction of a definition of victims and their rights in CPC in Croatia has been completed in order to transpose EU Directive 2012/29/EU of the European Parliament and the Council of 25 October establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. For more on this process see .

148 Compare Hanušić, 2015, p.11.

149 Compare Commentary (<https://www.osce.org/files/f/documents/0/1/210391.pdf>) to the OSCE Action Plan to CTHB, p. 79.

4.1. Victims' right to be treated with dignity and protected against ill-treatment and intimidation

Victims of trafficking are often crucial witnesses in criminal proceedings, with their testimonies seen as “necessary to secure convictions of traffickers.”¹⁵⁰ International law recognizes the special position of victims of trafficking in criminal proceedings, as well as their unique vulnerabilities, including the risk of them suffering retaliation and intimidation.¹⁵¹ In line with international standards, victims of crime and their relatives have to be treated with compassion and respect for their dignity.¹⁵² This duty is particularly relevant in the context of questioning, regardless of whether the questioning “is carried out by the police, a prosecutor or a judge in court.”¹⁵³ Furthermore, victims and their relatives or persons close to them must be protected from intimidation, retaliation, or reprisal as a consequence of their testimony or participation in criminal proceedings.¹⁵⁴ In THB cases, measures should also be taken to ensure that a victim's participation does not put him or her at risk of repeat traumatization.

Domestic legislation on the protection of vulnerable witnesses and witnesses under threat¹⁵⁵ and on the treatment of children in criminal proceedings¹⁵⁶ outline numerous protective measures for adult and child victims during criminal proceedings. These measures include enabling victims to use audio-visual equipment to provide testimony, removal of the defendant during testimony, measures to ensure witnesses' anonymity, and special procedures for the questioning of vulnerable witnesses and witnesses under threat.

The Mission has observed several cases in which the relevant authorities applied witness protection measures or where victims were assisted by a witness support officer or a representative of an NGO during the investigation or trial. These include the *Jekić* case, tried before the Court of BiH, from which the public was excluded from a trial hearing to protect the victims' privacy. Moreover, the victims were assisted by the NGO “Astra” from Belgrade, specialized in providing support to victims of trafficking. In the *Mujić* case, tried before the Tuzla Cantonal Court, child victims were interviewed by officers specialized in conducting forensic interviews with child victims of crime.¹⁵⁷ In the *Arapović* case, tried before the Brčko District Basic Court, the child victims provided their testimonies from a separate room by means of audio-visual equipment. In the *Pavličević* case,

150 Gallagher, 2010, p. 317.

151 See UNTOC, Arts. 24 and 25 (1) ECATHB, Arts. 12, 28, Council of Europe Recommendation No. R (97)13 of the Committee of Ministers to member States concerning intimidation of witnesses and the rights of the defence, adopted on 10 September 1997.

152 Principle 4 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, A/RES/40/34.

153 OHCHR, 2003, Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers, New York and Geneva, United Nations, p. 762.

154 See, e.g. UNTOC, Art. 24, ECATHB, Arts. 19 (1) (d) and 20.

155 Law on protection of witnesses under threat and vulnerable witnesses BiH (Official Gazette BiH, 21/03, 61/04, and 55/05); Law on protection of witnesses under threat and vulnerable witnesses FBiH (Official Gazette FBiH, 36/03); Law on protection of witnesses under threat and vulnerable witnesses of Brčko District BiH (Official Gazette of Brčko District BiH, 10/03, 8/07, and 19/07); and Law on protection of witnesses in criminal proceedings RS (Official Gazette RS, 48/03).

156 Laws on protection and treatment of children and juveniles in criminal proceedings adopted in 2010 in RS, 2011 in Brčko District BiH, and 2014 in FBiH.

157 See, *Enes Mujić*, Tuzla Cantonal Prosecutor's Office, Indictment, 23 August 2017.

tried before the Doboj District Court, the victims were questioned from a separate room in the presence of a social worker and psychologist, the latter of whom also conducted an assessment of the trauma sustained by the victims.¹⁵⁹

However, despite these positive examples, the Mission is concerned that, in a number of monitored cases, the criminal justice authorities exhibited insensitive and inappropriate treatment of victims of trafficking.

4.1.1. Trauma-informed approach to victims

Several cases raised serious concerns about the treatment of victims during the investigation and the main trial. In one case, the investigation phase lasted more than nine years and no one from the prosecutor's office contacted or met the victim. During the main trial, the victim was not given the possibility of testifying outside the courtroom, despite the presence of the defendants and the availability of such facilities and equipment. Based on her behaviour in court, participation in the main trial appeared to re-traumatize the victim as the defence required her to testify in two consecutive hearings. The victim later stated that she would not have testified had she known that she would be sitting in the same room as the defendant.

The Mission notes a sole positive example from this case: citing the panel's access to the victim's statements from prior hearings and concern that it would constitute mistreatment of the victim, the presiding judge denied the prosecutor's request that the defendant confront the victim to determine the validity of their respective statements.¹⁶⁰

In another case, during the main trial victims were asked to confront some of the "clients" who had paid for their sexual services. Both victims, after a short period spent in safehouse accommodation, still lived in the same village where the offence occurred and regularly encountered the defendant, his family, and clients. The victims' statements were inconsistent with regard to important details relevant to the legality of the evidence, which may have resulted from inadequate support and ongoing trauma. For instance, the victims initially stated that they were interrogated by the police without the presence of a representative of the Centre for Social Work (CSW), while at a later stage they confirmed that a representative of CSW had been present. It is probable that the living conditions of the victims were not conducive to an effective trial, highlighting the importance of a trauma-informed approach.

158 *Arapović Nedžad*, Brčko District Basic Court, Main Trial Hearing held on 28 December 2015, OSCETMDB DHR.

159 *Savo Pavličević*, Doboj District Court, First Instance Verdict, 6 June 2014, p.3.

160 The Mission withheld the information on the case in order to protect identity of minor victims.

161 At the time of writing this Report, to the Mission's knowledge, institutions employing a full-time witness support officer with external or central funding were: Court of BiH, Prosecutor's Office of BiH, Banja Luka District Court, Bihać Cantonal Court, Bihać Cantonal Prosecutor's Office, Brčko District Basic Court, Brčko District Prosecutor's Office, Doboj Public District Prosecutor's Office, Istočno Sarajevo District Public Prosecutor's Office, Istočno Sarajevo District Court, Mostar Cantonal Prosecutor's Office, Prijedor Public District Prosecutor's Office, Sarajevo Cantonal Court, Sarajevo Cantonal Prosecutor's Office, Travnik Cantonal Prosecutor's Office, Novi Travnik Cantonal Court, Trebinje District Prosecutor's Office, Tuzla Cantonal Prosecutor's Office, Zenica Cantonal Court, and Zenica Cantonal Prosecutor's Office.

The above cases illustrate the importance of the involvement of witness support mechanisms for victims of trafficking and related crimes from their earliest contact with the criminal justice system. Adequate involvement of institutional¹⁶¹ or non-governmental¹⁶² witness support mechanisms in trafficking-related proceedings are crucial not only to minimize the potential negative consequences of the victims' involvement but can also contribute to the quality of victims' testimonies.

4.1.2. Inappropriate interview techniques and approaches

The questioning of victims must be kept to a minimum to protect them from retraumatization and to avoid harming their dignity. In this regard, the Mission underlines the importance of appropriate interview techniques and sensitive approaches to victims of trafficking by all criminal justice actors at all stages. A lack of sensitivity, accompanied by inappropriate interrogation techniques, not only violates the victims' rights to be treated with dignity and respect, but also jeopardizes criminal proceedings as it may discourage victims and witnesses from providing honest and detailed testimony. This is particularly relevant in situations where victims and witnesses are persons with mental disabilities or of a young age. In the case of minor victims, such questioning should ideally be only conducted once.¹⁶³

The Mission, however, has observed that victims, even children, are questioned on multiple occasions at all stages of criminal proceedings. For example in the *Vuković et al.* case, tried before the Court of BiH, one victim was questioned five times during the investigation phase.¹⁶⁴ Moreover, she was confronted by six witnesses on the same day and three more on another day.¹⁶⁵ Two other victims in this case were questioned three times during the investigation phase.¹⁶⁶ Poor trial management by Sarajevo Cantonal Court in the *Kurtović et al.* case exposed the victims to additional traumatization: as the court failed to respect certain procedural time limits, the victims were forced to return to court to re-testify.¹⁶⁷

In the *Arapović and Tahirović* case, tried before the Brčko District Basic Court,¹⁶⁸ the Mission observed that in the hearings of 18 January 2016 and 1 February 2016, four witnesses significantly changed their statements from those given during the investigation stage. The witnesses were, according to the judgment in this case, illiterate with very poor general knowledge and vocabulary. This left them unable

¹⁶² See above (4.1) on assistance to victims provided in the *Jekić* case.

¹⁶³ UNODC, 2009, Handbook for Professionals and Policymakers on Justice Matters involving Child Victims and

¹⁶⁴ Witnesses of Crime, New York, United Nations, p. 80. In BiH, in accordance with the laws on protection and treatment of children and juveniles in criminal proceedings adopted in 2010 in RS, 2011 in BDBiH, and 2014 in FBiH, a child witness can be questioned up to two times.

¹⁶⁵ *Slaviša Vuković et al.*, PO BiH, Indictment, 12 June 2008 evidence no. 41, p. 16.

¹⁶⁶ *Ibid*, evidence nos. 46 and 50, p. 16-17.

¹⁶⁷ *Ibid*, evidence nos. 53, 58, p. 17.

¹⁶⁸ *Kurtović et al. case*, Sarajevo Cantonal Court, Main Trial Hearing, 12 July 2017, OSCE TMDB DHR. See Article 266(3) CPC FBiH, which, *inter alia*, prescribes that the main trial that has been adjourned must be recommenced if the adjournment lasts longer than 30 days. In such cases, witnesses have to be questioned again unless the parties (the defendant and the prosecutor) and the defence attorney gave consent that testimony of the witnesses given at the prior main trial be used.

¹⁶⁹ *Nedžad Arapović and Suad Tahirović*, Brčko District Prosecutor's Office, Indictment of 28 August 2015– *Arapović* was charged with human trafficking pursuant to Art. 207a(1)(2) CC BDBiH, *Tahirović* with neglect or maltreating a child or juvenile under Art. 216(2) in connection to Art. 216 (1) CC BDBiH.

to review their statements and the record was not read back to them. During the hearing, the victims stated that they signed their respective statements without understanding what they were signing. In such cases, with no audio record of their statements, it becomes difficult to ensure the consistency of evidence between statements given during the investigation and the main trial, as well as to protect victims from additional traumatization during legal proceedings.

4.1.3. Failure to protect victims' privacy

International law protects trafficked persons from further exploitation and harm.¹⁶⁹ For a number of reasons, this protection is “inextricably linked” with the protection of victims' privacy.¹⁷⁰ Failure to protect victims' privacy can increase the chances of their intimidation by defendants, their families, or associates. It can contribute to a victim's stigmatization and compromise their recovery, risking humiliation and consequent retraumatization.

In the one case, tried before the Court of BiH, the responsible authorities made an effort to protect the victims' privacy by using their initials, but due to a lack of diligence their identities were revealed. Namely, the indictment contained a detailed description of the appearance of two victims, and it stated the first name of one of the victims, along with the full names of the mothers of all three victims.¹⁷¹ Similarly, the first instance verdict revealed the victims' identity in several places.¹⁷²

The duty to protect the privacy of victims goes beyond justice actors refraining from revealing identities: it also requires that positive action be taken. The non-observance of a victim's privacy was noted, for example, in the *Rustemović* case which involved trafficking for sexual exploitation. During proceedings, the victim asked the judge whether it was possible to receive the court summons at an address different from the one provided at the beginning of the trial. The victim said that she got married and moved away from her parents to leave the past behind her, suggesting that the victim's current partner might not be aware of her past. The judge, however, denied the request, instructing the victim not to tell her how to do her job.¹⁷³

Such behaviour contravenes a victim-centred approach to combating human trafficking, which requires that relevant authorities, including judges, put the rights of the victim at the centre of all efforts to combat THB. As stated in the *Commentary on the Recommended Principles and Guidelines on Human Rights and Human Trafficking*, “protection from further harm is inextricably linked to the protection of the trafficked person's privacy”.¹⁷⁴ Failure to protect their privacy

169 UN Recommended Principles and Guidelines, Principle 8. See also Article 6 of the Palermo Protocol which specifically obliges State parties to protect the privacy and identity of victims of trafficking, for example, by making legal proceedings relating to such trafficking confidential.

170 United Nations, *Commentary on the Recommended Principles and Guidelines on Human Rights and Human Trafficking*, November 2010, HR/PUB/10/2, (<https://www.refworld.org/docid/4d2eb7cf2.html>, 30/01/2021, (OHCHR, 2010, UN Recommended Principles and Guidelines, Commentary), p. 146.

171 POBiH, Indictment, 12 June 2008.

172 The victim's full name was disclosed on page one page, while her first name was disclosed on two other pages of the verdict. Court of BiH, First Instance Verdict, 6 May 2010.

173 *Fatima Rustemović*, Živinice Municipal Court, Main Trial Hearing, 22 September 2014, OSCE TMDb DHR.

174 OHCHR, 2010, UN Recommended Principles and Guidelines, Commentary, p.146.

not only increases the risk that an offender will intimidate a victim or their family but can also compromise their ability to move past their trauma. In order to secure their recovery, all actors should work to avoid exposing victims to the shame and stigmatization attached to trafficking.¹⁷⁵ In cases where a victim moved to a new social environment, the victim may, for example, have justifiable reasons to request that the court summons are sent to an alternative address of their choosing. As mentioned above, witness support officers can be instrumental in informing the court as well as the victim of the need for such arrangements.

4.1.4. Failure to protect victims and witnesses from retaliation and intimidation

In addition to the instances of inappropriate and insensitive treatment of victims and victim-witnesses during criminal proceedings, the Mission observed cases that raise concerns about the authorities' failure to protect victims and members of their families against retaliation, ill-treatment, and intimidation, beyond the basic matter of protecting victims' identities.

In the *Ćosić et al.* case, tried before the Court of BiH, at the trial stage the victims reportedly could not be reached by the prosecution or the Court since they were residing in the Republic of Serbia. However, the defence managed to contact them and secure their presence at the hearing.¹⁷⁶ Once they appeared before the Court, they drastically changed their statements in comparison with those made during the investigation phase. As far as the Mission can determine, the prosecutor failed to investigate the circumstances that led to this extreme change, meaning that one cannot exclude the possibility that the defendants exerted influence over the victims. In a similar vein, during the main trial hearings in the *Rustemović* case, the defendant repeatedly interrupted the victims' questioning, saying "congratulations" in a sarcastic manner ("svaka čast").¹⁷⁷ The mother of one of the victims also said that the defendants had called her to ask her to change the statement by both threatening her and offering her money.¹⁷⁸ To the best knowledge of the Mission, these threats or attempts at undue influence were not investigated further.

During the proceedings in *Kučević et al.*, the defendant attacked the relatives of a victim in front of the Court of BiH. The Court Police failed to react on time and Kučević managed to slap the victim's aunt, while his bodyguard prevented a TV journalist from helping the woman following the attack.¹⁷⁹

¹⁷⁵ Compare *Ibid.*

¹⁷⁶ Based on information gathered during the Mission's trial monitoring. OSCE TMDB DHR concerning *Miroslav Ćosić*, Court of BiH, Main Trial Hearing held on 20 February 2017.

¹⁷⁷ *Fatima Rustemović* case, Živnice Municipal Court, Main Trial Hearing of 22 September 2014, OSCE TMDB DHR.

¹⁷⁸ *Senahid Rustemović*, Živnice Municipal Court, First Instance Verdict, 14 November 2013, p. 4.

¹⁷⁹ See RTV TK, 2009, *Za šamaranje ispred Suda BiH Tasim Kučević osuđen na dvije godine i 4 mjeseca zatvora* (<http://www.arhiva.rtvtk.ba/home/arhiva/81-world/europe/6434-tasim-kuevi-zbog-nasilnikog-ponaanja-u-krugu-suda-bih-osuen-na-dvije-godine-i-etiri-mjeseca>, 20 May 2021). It should be noted that Tasim Kučević was sentenced to imprisonment for a term of 2 years and 4 months for this act of violent behaviour. See *Tasim Kučević*, Sarajevo Municipal Court, 26 June 2009, and *Tasim Kučević*, Sarajevo Cantonal Court, 28 September 2010.

In cases where victims substantially changed their earlier statements or refused to testify against the alleged perpetrator, there is a very real possibility that the defendant used threats or intimidation. In such cases, all relevant criminal justice actors must act diligently to provide victims and witnesses with appropriate protection. Failure to do so not only endangers victims but also jeopardizes efforts to bring perpetrators to justice.

4.2. Victims' right to compensation

According to international standards, victims of trafficking and their relatives have a right to compensation.¹⁸⁰ There are multiple benefits of awarding damages to victims in criminal proceedings, such as:

- Recognizing the wrong done to victims and hence facilitating redress.
- Providing another form of punishment, thus creating an additional deterrent.
- Expressing the societal condemnation of trafficking crimes.¹⁸¹
- Contributing to the overall effectiveness of the judiciary.¹⁸²

Although the applicable legislation in BiH provides for the possibility for victims of trafficking to claim compensation for pecuniary and non-pecuniary damages from the offender in criminal proceedings,¹⁸³ such cases are very rare. In its first evaluation report on the implementation of the ECATHB, GRETA noted that whilst victims can claim compensation, it “understands that such claims are discouraged in practice”.¹⁸⁴ In its second evaluation report in 2017, among other recommendations, GRETA urged the BiH authorities to adopt measures to facilitate and guarantee access to compensation for victims of trafficking.¹⁸⁵

According to all criminal procedure codes in BiH, the prosecutor and the court both must inform an injured party about their right to claim pecuniary and non-pecuniary damages from the offender during the criminal proceedings.¹⁸⁶ Furthermore, prosecutors are obliged to collect evidence to support such compensation claims.¹⁸⁷ The Mission understands that when courts and prosecutor's offices do provide this information, it is often done *pro forma*, using

180 ECATHB, Article 15; Palermo Protocol, Articles 14 and 25.

181 Compare Delbyck, K., 2016, *Compensating Survivors in Criminal Proceedings: Perspectives from the Field: A report by TRIAL International office in Bosnia and Herzegovina*, (https://trialinternational.org/wp-content/uploads/2016/11/TRIAL-International_compensation-publication_EN_web.pdf, 27 April 2021), p. 6

182 OSCE Mission to BiH, 2010, *The Processing of ICTY Rule 11bis Cases in BiH*, Sarajevo, OSCE Mission to BiH, p. 21.

183 According to the applicable criminal procedure rules - CPC BiH, (Official Gazette BiH 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10, 47/14, 22/15, and 40/15) CPC FBiH, (Official Gazette FBiH, 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, 42/11, 59/17, 76/14, 46/16, and 75/17), CPC RS, (Official Gazette RS, 64/17, CPC BDBiH, Official Gazette BDBiH, 33/13 and 26/16) - victims as injured parties may file a motion to pursue a compensation claim with the prosecutor or the court (see, e.g. Art. 195(1) CPC BiH). This compensation claim may be related to pecuniary or non-pecuniary damages resulting from a criminal offence. Also, prosecution authorities or the court have to ask victims whether they wish to file a compensation claim in cases where victims are questioned as witnesses. (See e.g. Art. 258(4) CPC BiH, Art. 273(4) CPC FBiH, Art. 273(4) CPC RS, Art. 258(4) CPC BDBiH). The court is obliged to advise an injured party that he or she may submit a motion to pursue this claim no later than the completion of the main trial, or the sentencing hearing (Art. 195(2) CPC BiH, Art. 209(2) CPC FBiH, Art. 105(2), CPC RS, Art. 195(2) CPC BDBiH).

184 See GRETA (2013), *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bosnia and Herzegovina*, First evaluation round, available at <http://www.coe.int/en/web/anti-human-trafficking/bosnia-and-herzegovina>.

185 See GRETA (2017), *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bosnia and Herzegovina*, Second evaluation round, para. 138.

186 See, e.g., CPC BiH, Art. 12., Art. 86(10).

187 See CPC BiH, Arts. 35(2) (g), and 197(1), Art. 211(1) CPC FBiH, Art. 107(1) CPC RS, Art. 197(1) CPC BDBiH.

legal terms that are not easily understood by a layman, and additional guidance is usually not provided. Even when prosecutors do formally fulfil their obligation of advising the injured parties of their right, they often fail to fulfil their obligation to collect the evidence necessary for these proceedings.

In the period between 2009 and 2019, courts in BiH awarded compensation to victims of trafficking only on three occasions. Out of these three, compensation was awarded in criminal proceedings in two cases. In *Janjić*, which was tried before the Court of BiH and involved the sexual exploitation of an underage victim by her teacher, the Court granted the victim's compensation claim in part, ordering the perpetrator to pay the victim a lump sum of 5,000 BAM. In the Court's opinion, this amount would help the victim in alleviating some of the consequences and seeing justice done, while enabling her to initiate civil proceedings for full compensation. The Court stated that "...compensation for the victim of a crime establishes the principle of social justice", and further reasoned:

*"From a sociological point of view, the principle of victim compensation should have the same importance as the punishment principle as a form of societal reaction to criminal activity. Specifically, the purpose of the judicial process must not be solely to repress the perpetrator of the crime, but to strive for the full restoration of the situation harmed by crime."*¹⁸⁸

The second THB case in which a court awarded compensation was tried before the Banja Luka District Court and involved the trafficking of an underage girl for the purpose of sexual exploitation. On 19 February 2019, the court convicted the defendant and sentenced him to five years' imprisonment, awarding the victim her entire compensation claim totalling 7,500 BAM for non-pecuniary damages.¹⁸⁹ After the trial panel reminded the prosecutor of the necessity to inform the victim about the option to file a compensation claim during criminal proceedings, the prosecutor contacted the NGO "*Centar ženskih prava*" (Centre of Women's Rights), which agreed to represent the victim and collected evidence to support the compensation claim. On 10 September 2020, the RS Supreme Court confirmed the first instance decision.¹⁹⁰

In addition to the above-mentioned cases, a third case relates to civil proceedings against two traffickers previously convicted by the Court of BiH in criminal proceedings.¹⁹¹ On 22 October 2014, the victims represented by a lawyer from the NGO "*Vaša Prava*" ("Your Rights") initiated civil proceedings against the traffickers before the Doboj Basic Court. After their claim was initially rejected, upon re-trial on 8 December 2017, the Doboj Basic Court ordered both co-defendants to compensate two victims a total of 24,000 BAM for non-pecuniary damages. The court also ordered the first defendant alone to pay to two further

188 *Jelenko Janjić*, Court of BiH, First Instance Verdict, 11 September 2009, p. 16.

189 *Mehmed Odobašić*, Banja Luka District Court, First Instance Verdict, 20 February 2019.

190 *Mehmed Odobašić*, Supreme Court RS, Second Instance Verdict, 10 September 2020.

191 *Verica Munčan*, Court of BiH, First Instance Verdict, 9 July 2012, *Mile Jekić*, Court of BiH, First Instance Verdict, 4 June 2013, *Mile Jekić*, Court of BiH, Second Instance Verdict, 10 October 2013. In criminal proceedings, the Court of BiH found the defendants guilty of human trafficking and advised the victims that they may pursue their compensation claims in civil proceedings.

victims a total of 9,600 BAM for non-pecuniary damages.¹⁹² The civil court based its ruling on facts and evidence gathered during the criminal proceedings, which spared the victims the trauma of having to re-testify.¹⁹³ On 19 March 2018, the Doboj District Court confirmed the first instance decision.¹⁹⁴

These positive examples notwithstanding, several challenges prevent victims from exercising their right to obtain compensation from the offender, including:

- Lack of information from the relevant authorities.
- Concerns about the length of proceedings.
- Lack of obligation of the court to substantively decide on compensation claims.
- Performance assessments of judges and prosecutors do not account for the processing of compensation claims or the failure to do so.
- Non-involvement of victims in the plea-bargaining process.
- Lack of effective legal aid.
- Issues related to the enforcement of compensation claims.

Despite the obvious benefits to overall judicial efficiency of awarding damages in criminal proceedings and thereby avoiding civil proceedings for this purpose,¹⁹⁵ compensation claims are rarely awarded to victims of trafficking due, in part, to concerns that this would prolong criminal proceedings.¹⁹⁶ Courts have no obligation to decide on the substance of compensation claims in criminal proceedings, and making such decisions does not positively impact the given judge's performance assessment.¹⁹⁷ Similarly, a prosecutor's failure to inform a victim about the possibility to file a compensation claim in criminal proceedings or their failure to collect evidence in support of such a claim does not affect their performance assessment.¹⁹⁸ This creates a lack of incentive for judicial officials to support victims in pursuing compensation claims.¹⁹⁹

A further explanation, linked to the above, is that victims are simply not aware of the option to pursue compensation, as judges and prosecutors do not properly advise them of this possibility.²⁰⁰ For example, in one case tried before the Novi Travnik Cantonal Court concerning the sexual exploitation of two girls, the prosecutor never contacted the victims before the trial and, as such, the victims

192 Šipoš et al. v. Jekić and Munčan, Doboj Municipal Court, First Instance Judgment, 8 December 2017

193 See ASTRA, *First legally binding and final ruling of a court in Bosnia and Herzegovina on a damage claim for victims of human trafficking*, (<https://www.astra.rs/en/first-legally-binding-and-final-ruling-of-a-court-in-bosnia-and-hercegovina-on-a-damage-claim-for-victims-of-human-trafficking/>, 12 May 2021).

194 Šipoš et al. v. Jekić and Munčan, Doboj District Court, Second Instance Judgment, 19 March 2018.

195 Streamlining the decision on compensation claim with criminal proceedings promotes judicial economy and efficiency by avoiding a separate procedure before civil courts.

196 See, for example, Article 12 of the CPC BiH. Also see the GRETA's observation in its 2017 Second evaluation report on the implementation of ECATHB by BiH, para. 134, noting that although prosecutors should inform victims about possibility to file a compensation claim in criminal proceedings, victims are often discouraged in practice to submit such claim because it would prolong the procedure.

197 Statement of one judicial professional at the event organized by the Mission in February 2016 in Banja Luka.

198 Compare *Rulebook on Orientation Criteria for the Work of Prosecutors in Prosecutor's Offices*, available at: <https://www.pravosudje.ba/vstv/faces/vijesti.jspx?sessionid=450d619e93628707501177eee3244f66b5d1e909d285d63a242d4c2a6960f05f.e34TbxyRbNiRb40Pbx4LaN0Maxj0>, see also, *Criteria for the assessment of prosecutors*, (*Official Gazette BiH*, 1/21).

199 With this in mind, it is worth noting that as soon as a victim files a compensation claim in the criminal proceedings, the courts and prosecutors are obliged to respect the victims' right to a trial within a reasonable time guaranteed by Article 6 of the ECHR under its civil limb. See, for example, ECtHR judgments in cases of *Boris Stojanovski v. FYRM*, App. no. 41916/04, Judgment of 6 May 2010 and *Ristić v. Serbia*, App. no. 32181/08, and Judgment of 18

200 January 2011.

See, for example, Article 12 of the CPC BiH.

received no information about the option to file compensation claims before the hearing. While the court asked one victim if she would like to file a compensation claim, it failed to explain what such a claim is even though the victim seemed to not understand the judge.²⁰¹

As explained above, prosecutors frequently opt to negotiate plea agreements with defendants. In the cases monitored by the Mission where such agreements were reached, they did not incorporate an obligation for the defendant to pay damages to the victim(s). While it is true that the relevant criminal proceedings rules do not require the prosecutor to discuss victims' compensation claims in the process of plea bargaining²⁰² or even to take the victim's and/or their representative's opinion into account during these proceedings,²⁰³ nothing prevents them from doing so. Indeed, the Mission has observed war crimes cases where a victim's right to compensation was included in the plea agreements.²⁰⁴ In this regard, it can be observed that a victim's right to claim compensation from an offender in criminal proceedings empowers them to be more than just a witness.²⁰⁵ By contrast, failure to ensure the victim's involvement in the plea bargaining procedure not only disempowers the victim but could even give rise to a violation of the ECHR.²⁰⁶

Another important factor that contributes to compensation seldom being awarded during criminal proceedings is victims' lack of access to legal aid. According to criminal procedure rules in BiH, victims may be represented by a lawyer during criminal proceedings. However, victims are not entitled to obligatory legal representation, as is the case in other neighbouring jurisdictions.²⁰⁷ In principle, victims can hire a lawyer or apply for free legal representation in accordance with the relevant laws on free legal aid in BiH, RS, cantons in FBiH, and BDBiH. They can also contact a number of civil society organizations. Generally speaking, eligibility for legal aid depends on the financial status of the person in question, although some domestic laws explicitly recognize victims of trafficking as being entitled to free legal aid.²⁰⁸ Even though there are possibilities for obtaining free legal aid, the Mission observed that victims are rarely represented by private or legal aid lawyers in criminal proceedings.

201 OSCE TMDB DHR on Plea Bargaining Agreement hearing before Novi Travnik Cantonal Court,

202 The relevant criminal procedure codes merely prescribe that in the course of deliberating the plea bargain agreement the court must ensure that the injured party was given an opportunity before the prosecutor to give a statement regarding her compensation claim. See Article 231(6)(e) of CPC BiH, Article 231(6)(e) of CPC BDBiH, Article 246(6)(e) of CPC FBiH, and Article 246(6)(d) of CPC RS.

203 Some European jurisdictions recognize the importance of inclusion of compensation in plea bargain agreements, see, for example, Albania, CPC Article 406e, Bulgaria CPC Article 382, Montenegro, CPC Article 301, Serbia CPC Article 314, Slovenia CPC Article 450c; see Parliamentary Assembly BiH, the Research Division, 2018, *Alternativni kazneni postupak u politici kaznenog procesuiranja u Jugoistočnoj Evropi*, (<https://www.parlament.ba/Publication/Read/13780?title=alternativni-krivicni-postupak-u-politici-krivicnog-procesuiranja-u-jugoistocnoj-evropi&pagelid=0>, 28 March 2021).

204 Plea Bargain Agreement, T01 O KTRZ 0007263 11, concluded between the Cantonal PO of Una-Sana Canton and Redžep Beganović on 18 March 2016, para. 7.

205 OSCE Mission to BiH, 2017, *Towards Justice for Survivors of Conflict-Related Sexual Violence in Bosnia and Herzegovina: Progress before Courts in BiH 2014-2016*, Sarajevo, OSCE Mission to BiH, p. 83.

206 See McBride, J., *The Case Law of the European Court of Human Rights on Victims' Rights in Criminal Proceedings*, (<https://rm.coe.int/council-of-europe-georgia-european-court-of-human-rights-case-study-vi/16807823c4htmlfile/Shell/Open/Command>, 12 May 2021), para. 74, also ECtHR, *Ünsper Paket Servisi SaN. VeTic. A.Ş. v. Bulgaria*, App. no. 3503/08, Judgement of 13 October 2015. See also, among many others, ECtHR, *Gorou v. Greece* (No. 2) [GC], App. no. 12686/03, Judgement of 20 March 2009, paras. 25-26.

207 CPC North Macedonia, Arts. 57, 232(2).

208 See, e.g., the Canton Sarajevo Law on Providing Free Legal Aid, Article 9(1)(b), (*Official Gazette of Canton Sarajevo*, 1/12, 26/14, and 40/17).

Victims' lack of legal representation in criminal proceedings hinders trafficked persons from accessing justice and seeking compensation from the offender, as filing a compensation claim generally requires basic legal counselling. Such counselling would help victims to formulate their compensation claim precisely, enabling criminal courts to render a decision on the substance of their claims rather than referring them to civil proceedings. As noted, courts granted compensation claims to victims on only three occasions, and in two of those, the victims were represented by lawyers during the criminal proceedings, which was likely crucial to the claims' success.

The enforcement of court-ordered damages presents the final significant challenge that prevents the full realization of the victim's right to compensation. To the Mission's knowledge, at the time of writing this report none of the aforementioned compensation awards had been paid. While challenges related to the low number of criminal proceedings in which compensation is awarded can be solved through capacity building and awareness-raising, the issue of non-enforcement may require more systemic responses. Possible solutions include measures implemented through (generally State-level) government compensation schemes, including the establishment of a special fund and/or enforcement by the relevant authorities of the court-ordered damages against the defendant.²⁰⁹

209 For an overview of measures that can be taken to implement the victim's right to compensation from the perpetrator, see GRETA, 2016, *Compendium of good practices on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings*, available at <https://edoc.coe.int/en/trafficking-in-human-beings/7203-compendium-of-good-practices-on-the-implementation-of-the-council-of-europe-convention-on-action-against-trafficking-in-human-beings.html>, pp. 19-21.

5. Conclusions and recommendations

In the 12 years following the Mission's 2009 report on this subject, authorities in BiH have made several attempts to improve the criminal justice response to THB. These efforts include:

- The introduction of the criminal offence of THB into entity and BDBiH criminal codes.
- The creation of harsher penalties for offenders who are public officials and for perpetrators whose acts resulted in the death or serious health issues and bodily injuries of the victim.
- The inclusion of the principle of non-punishment for victims of trafficking in the criminal codes of BiH, the entities and BDBiH.
- The creation of special laws governing the treatment of children in criminal proceedings.
- Movement towards the specialization of prosecutors and law enforcement officers working on trafficking-related cases.

Unfortunately, significant shortcomings regarding the capacity of the BiH criminal justice system to provide effective, human rights-based, and victim-centred responses to human trafficking remain. These include an inclination of prosecuting authorities to qualify THB crimes as other, less serious offences, such as enticement to prostitution or neglect and maltreatment of a child. This tendency, combined with deficiencies in the co-ordination of anti-trafficking prosecution efforts, results in inconsistent case law, with similar factual circumstances being prosecuted and adjudicated under different qualifications.

This report's analysis of sentencing practices further reveals that sanctions imposed in trafficking cases rarely reflect the gravity of the offences committed. In addition to lenient and inconsistent criminal sanctions, a failure to conduct financial investigations often enables traffickers to retain the proceeds of their criminal activities. This renders trafficking in BiH a relatively low-risk crime for perpetrators. Additionally, provisions on the criminal liability of those who knowingly use the services of victims of trafficking, as well as on the criminal liability of legal persons, have not been applied in practice.

Criminal justice authorities often treat victims as sources of information rather than right-holders entitled to redress. Moreover, in some cases, criminal justice authorities have treated victims in a disrespectful and degrading manner, which contributed to their secondary victimization. Finally, despite the possibility of seeking compensation for victims in criminal proceedings, even successful prosecutions rarely result in the awarding and enforcing of such claims.

To rectify the observed shortcomings and improve the criminal justice response to human trafficking in BiH, the OSCE Mission recommends the following:

To legislators, in consultation with the relevant ministries:

- a) Review and amend substantive and procedural criminal legislation at all levels, with the view to strengthening the position of victims of trafficking in criminal proceedings, and, in that regard:
 - i) Include the definition of a victim of crime in both procedural and substantive criminal legislation.
 - ii) Define the rights of victims of crimes in accordance with international standards.
 - iii) Include provisions allowing the appointment of a free legal counsel or authorized representative to assist the victim in protecting their rights in criminal proceedings, including the right to seek compensation from the offender.
- b) Review the relevant legislation to ensure harmonization of provisions regulating human trafficking and related offences and avoid overlap of the essential elements of THB crimes with other crimes and petty offences, thus minimizing the risk of qualifying THB under lesser charges.

To the judiciary, prosecutors and law enforcement officials, and the relevant ministries, as applicable:

- a) Continue efforts to improve the existing co-ordination and consultation mechanisms to ensure the uniform and victim-centred application of criminal law in THB cases.
- b) Consult the Strike Force for further action and guidance should questions arise regarding the qualification of criminal conduct containing the elements of THB.
- c) Intensify efforts to:
 - i) Conduct prompt and thorough investigations of trafficking allegations to ascertain the existence of all the elements of the trafficking and/or related crimes.
 - ii) Whenever legally possible, consider the application of special investigative measures to reduce reliance upon witness and victim testimony and minimize potential harmful consequences that the criminal proceedings might have on the victim(s).
 - iii) Address the demand side of human trafficking, including by prosecuting persons who used the services from victims of trafficking.
 - iv) Investigate and prosecute legal persons involved in trafficking-related criminal offences.
 - v) Systematically open and conduct financial investigations in trafficking cases.
 - vi) Ascertain and confiscate material gain acquired through the commission of trafficking-related crimes.

- d) Ensure victims are treated with required dignity and respect in all interactions with the law enforcement and judicial authorities and others involved in the criminal proceedings, and in that regard ensure that the competent authorities act with empathy and understanding for the individual situation of each victim.
- e) Develop and implement the binding instructions to ensure that victims of trafficking are systematically advised of their right to claim compensation in criminal proceedings and the procedures to be followed, including information on access to free legal aid.
- f) Where plea bargaining is utilized, inform victims of the plea bargaining process and explain their role in it in a clear and timely manner.
- g) Carefully analyse sentencing practice in trafficking-related offences, including the application of aggravating and mitigating circumstances, and consider imposing penalties for convicted parties that are more commensurate with the gravity of the crime, the culpability of the perpetrator, and the impact on the victim(s). In this regard consider eliminating the possibility of suspended sentences in trafficking-related cases.

To the Judicial and Prosecutorial Training Centres and institutions responsible for training law enforcement agencies:

- a) Provide multi-sectoral training focusing on:
 - i. Elements of THB and the application of the victim-centred and trauma-informed approach to processing trafficking cases.
 - ii. Investigating human trafficking and related crimes.
 - iii. Relevant penal law.
 - iv. Techniques for assessing mitigating and aggravating circumstances and other factors relevant in determining the criminal sanction and justification of application of these factors.
 - v. Compensation for victims of trafficking and confiscation of proceeds of crime.

To members of the international community:

- a) Support efforts aimed at the specialization of criminal justice actors to improve their response to THB.
- b) Support activities aimed at improving the legislative framework and capacities of stakeholders to apply human rights-based and victim-centred responses to THB.
- c) Support initiatives aimed at empowering victims of trafficking to claim their rights before domestic and international bodies and tribunals.
- d) Strengthen the capacities of legal aid providers to assist victims of trafficking from the moment of their first contact with criminal justice authorities.
- e) Support efforts on improved co-ordination of activities carried out by the international community.

LIST OF CASES ANALYSED FOR THIS REPORT

COURT OF BiH

Ahmetović

- *Prosecutor v. Almir Ahmetović*, Case no. KT - 414/09, Indictment of 12 February 2010
- *Prosecutor v. Almir Ahmetović*, Case no. X-K-10/882, PBA of 14 June 2010

Bešić

- *Prosecutor v. Pezer Bešić*, Case no. T 20 0 KT 0000568 10, Indictment of 7 February 2011
- *Prosecutor v. Pezer Bešić*, Case no. T 20 0 KT 0000568 10, Amended Indictment of 22 September 2011
- *Prosecutor v. Pezer Bešić*, Case no. S1 3 K 004249 11 K, First Instance Verdict of 28 September 2011
- *Prosecutor v. Pezer Bešić*, Case no. S1 3 K 004249 11 Kž, Decision on Quashing First Instance Verdict of 13 March 2012
- *Prosecutor v. Pezer Bešić*, Case no. S1 3 K 004249 12 Kžk, Second Instance Verdict of 30 January 2013

Cvitić and Karadža

- *Prosecutor v. Cvitić Mato and Edina Karadža*, Case no. KT 365/06, Indictment of 4 July 2008
- *Prosecutor v. Cvitić Mato and Edina Karadža*, Case no. K 49/08, First instance verdict of 14 December 2009
- *Prosecutor v. Cvitić Mato and Edina Karadža*, Case no. KžK 03/10, Second Instance Verdict of 22 November 2010

- *Prosecutor v. Cvitić Mato and Edina Karadža*, Case no. S1 3 K 005524 11 Kžž 1/11 (link to no. KžK--Ž 1/11), Third Instance Verdict of 20 April 2011

Ćosić et al.

- *Prosecutor v. Mario Ćosić, Josip Varešković, Ivan Ćosić, Miroslav Ćosić, Aldin Zatagić*, Case no. T20 0 KT 000 2291 13, Indictment of 31 December 2013 (Ćosić et al., Indictment)
- *Prosecutor v. Mario Ćosić, Josip Varešković, Ivan Ćosić, Miroslav Ćosić, Aldin Zatagić*, Case no. T20 0 KT 000 2291 13, Amended Indictment 07 March 2016
- *Prosecutor v. Mario Ćosić*, Case no. S1 2 K 023838 16 K, PBA Verdict of 29 December 2016
- *Prosecutor v. Aldin Zatagić*, Case no. S1 2 K 024116 6 K, PBA Verdict of 19 January 2017
- *Prosecutor v. Miroslav Ćosić*, Case no. S 1 2 K 014792 14 K, PBA Verdict of 7 March 2017 (Miroslav Ćosić, PBA Verdict)

Related case before Novi Travnik Cantonal Court

- *Prosecutor v. Mario Ćosić*, Case no. T06 0 KT 0007540 12, Indictment of 30 January 2013
- *Prosecutor v. Mario Ćosić*, Case no. T06 0 KT 0007540 12 of 02 September 2013 (Amended Indictment)
- *Prosecutor v. Mario Ćosić*, Case no. 06 0 K 005117 14 K 2, First Instance Verdict of 30 December 2014

Janjić

- *Prosecutor v. Jelenko Janjić*, Case no. Kt-208/08, Indictment of 10 October 2008
- *Prosecutor v. Jelenko Janjić*, Case no. K-76/08, First Instance Verdict of 11 September 2009
- *Prosecutor v. Jelenko Janjić*, Case no. KŽ-61/09, Second Instance Verdict of 9 March 2010

Jekić and Munćan

- *Prosecutor v. Mile Jekić and Verica Munćan*, Case no. KT 365/06, Indictment of 26 March 2012
- *Prosecutor v. Verica Munćan*, Case no. K 49/08, Verdict of 9 July 2012
- *Prosecutor v. Mile Jekić*, Case no. K 49/08, First Instance Verdict of 4 June 2013
- *Prosecutor v. Mile Jekić*, Case No. KŽK 03/10, Second Instance Verdict of 10 October 2013

Karahasanović et al.

- *Prosecutor v. Alija Karahasanović, Atilla Aksoy and Jasmin Hodžić*, Case no. T20 0 KT 0012936 16, Indictment of 4 September 2017 (Karahasanović et al., Indictment)
- *Prosecutor v. Alija Karahasanović and Atilla Aksoy*, Case no. T20 0 KT 0012936 16, Amended Indictment of 4 March 2019 (Karahasanović et al., Amended Indictment)
- *Prosecutor v. Alija Karahasanović and Atilla Aksoy*, Case no. S1 2 K 023299 17 K, First Instance Verdict of 15 April 2019

- *Prosecutor v. Alija Karahasanović and Atilla Aksoy*, Case no. S1 2 K 023299 17 K, Second Instance Verdict of 17 September 2019
- *Prosecutor v. Jasmin Hodžić*, Case no. S1 2 K 027991 18 K, PBA Verdict of 23 March 2018

Kučević et al.

- *Prosecutor v. Tasim Kučević, Meliha Pjević, Enver Spahić, Zoran Trbara, Admir Fazlić, Mirzet Đulović, Nedžad Đulović, Almir Šabić, Mirsad Mujkić, and Edževit Gusinac*, Case no. Kt-228/05, Indictment of 17 March 2006
- *Prosecutor v. Tasim Kučević, Meliha Pjević, Enver Spahić, Zoran Trbara, Admir Fazlić, Mirzet Đulović, Nedžad Đulović, Almir Šabić, Mirsad Mujkić, and Edževit Gusinac*, Case no. X-K-06/181, First Instance Verdict of 21 September 2007
- *Prosecutor v. Tasim Kučević, Meliha Pjević, Enver Spahić, Zoran Trbara, Admir Fazlić, Mirzet Đulović, Nedžad Đulović, Almir Šabić, Mirsad Mujkić, and Edževit Gusinac*, Case no. X-KŽ-06/181, Decision on revoking the first instance verdict and scheduling a new trial before the Appellate Division Panel of 7 February 2008
- *Prosecutor v. Tasim Kučević, Meliha Pjević, Enver Spahić, Zoran Trbara, Admir Fazlić, Mirzet Đulović, Nedžad Đulović, Almir Šabić, Mirsad Mujkić, and Edževit Gusinac*, Case no. KŽ-06/181, Second Instance Verdict of 21 April 2009

Mirić

- *Prosecutor v. Milan Mirić*, Case No. KT-263/05, Indictment of 23 May 2011
- *Prosecutor v. Milan Mirić*, Case no. S1 3 K 005415 11 K, PBA of 11 October 2015
- *Prosecutor v. Milan Mirić*, Case no. S1 3 K005415 11 Kvl, First Instance Repetition of Criminal Proceedings of 2 November 2015
- *Prosecutor v. Milan Mirić*, Case no. S1 3 K005415 11 Kž2, Second Instance Repetition of Criminal Proceedings of 12 January 2016
- *Prosecutor v. Milan Mirić*, Case no. S1 3 K005415 11 Kvl2, Repetition of Criminal Proceedings of 20 October 2016

Osmanović

- *Prosecutor v. Abdija Osmanović*, Case no. T20 0 KT 0006949 13, Indictment of 14 September 2015
- *Prosecutor v. Abdija Osmanović*, Case no. S 1 3 K 013872 15 K, First Instance Verdict of 27 April 2016
- *Prosecutor v. Abdija Osmanović*, Case no. S1 3 K 013872 Kž 3, Second Instance Verdict of 5 October 2016

Rodić

- *Prosecutor v. Violeta Rodić*, Saša Rodić, Case no. KT 561/09, Indictment of 5 March 2010
- *Prosecutor v. Violeta Rodić*, Saša Rodić, Case no. X-K-09/850, First Instance Verdict of 5 July 2010
- *Prosecutor v. Violeta Rodić*, Saša Rodić, Case no. X-KŽ-09/850, Second Instance Verdict of 24 November 2010

Vučenović et al. (SerbAz case)

- *Prosecutor v. Božo Vučenović, Milan Vučenović, Rade Čjubičić, Saša Lipovac, Safet Turanović, Rasim Turanović, Nenad Tatić, Slaviša Kojić, Zoran Dmitrović, Zoran Kalajdžić, Novak Ćirić, Nedeljko Vučenović, and Miroslav Vučenović*, Case no. T20 0 KTO 0001099 09, Indictment of 27 June 2014
- *Prosecutor v. Saša Lipovac*, Case no. S1 2 K 024459 17 K, PBA of 28 February 2017
- *Prosecutor v. Nenad Tatić*, Case no. S1 2 K 025666 17 K, PBA of 10 July 2017
- *Prosecutor v. Novak Ćirić and Slaviša Kojić*, Case no. S1 2 K 028061 18 K, PBA of 28 March 2018

Tanjo and Hadžiahmetović

- *Prosecutor v. Edib Tanjo and Almir Hadžiahmetović*, Case no. T20 0 KT 0012239 16, Indictment of 27 December 2017
- *Prosecutor v. Edib Tanjo and Almir Hadžiahmetović*, Case no. S1 3 K 022096 18 K, Verdict of 20 February 2019
- *Prosecutor v. Edib Tanjo and Almir Hadžiahmetović*, Case no. S1 3 K 022096 18 Kž 2, Verdict of 10 May 2019

Vuković et al.

- *Prosecutor v. Goran Jevtić, Slaviša Vuković, Davor Cvijanović, Nović Milivoje, Branislav Nović and Čedo Markelić*, Case no. KT 429/07, Indictment of 12 June 2008 (Jevtić et al., Indictment)

- *Prosecutor v. Slaviša Vuković, Davor Cvijanović, Milivoje Nović, Branislav Nović and Čedo Markelić*, Case no. KT 429/07, Amended Indictment of 20 April 2010, (*Vuković et al.*, Indictment)
- *Prosecutor v. Slaviša Vuković, Davor Cvijanović, Milivoje Nović, Branislav Nović and Čedo Markelić*, Case no. K 54/08, First Instance Verdict of 26 May 2010, (*Vuković et al.*, First Instance Verdict)
- *Prosecutor v. Slaviša Vuković, Davor Cvijanović, Milivoje Nović, Branislav Nović and Čedo Markelić*, Case no. Kž 31/10 (link to Kž 54/08), Second Instance Verdict of 3 March 2011
- *Prosecutor v. Davor Cvijanović*, Case no. SI 3 K 005873 11 KžK, Second Instance Verdict of 27 October 2011

BIHAĆ CANTONAL COURT

Hajrlahović et al.

- *Prosecutor v. Hajrlahović et al.*, Case no. 01 0 K 0004725 10 K, First Instance Verdict of 20 January 2011

BOSANSKA KRUPA MUNICIPAL COURT

Sadik

- *Prosecutor v. Đuđa Sadik*, Case no. 18 0 K 042104 18 K, First Instance Verdict of 26 February 2019

BIHAĆ MUNICIPAL COURT

Beganović

- *Prosecutor v. Džafer and Ferida Beganović*, Case no. 17 0 K 092435 18 Kps, First Instance Verdict of 13 September 2018

Arapović

- *Prosecutor v. Melvid Arapović*, Case no. 17 0 K 001713 08 K, First Instance Verdict of 9 February 2010

Balić

- *Prosecutor v. Đenana Balić*, Case no. 17 0 K 092371 18 Kps, First Instance Verdict of 8 April 2019

Muslić

- *Prosecutor v. Enes and Safeta Muslić*, Case no. 17 0 K 080142 16 K, First Instance Verdict of 9 March 2017

Demirović I

- *Prosecutor v. Mustafa Demirović*, Case no. 17 0 K 046964 13 K 2, First Instance Verdict of 13 December 2013

Demirović II

- *Prosecutor v. Mustafa Demirović*, Case no. 17 0 K 096530 19 K, First Instance Verdict of 10 April 2019

Sulić

- *Prosecutor v. Mersija Sulić*, Case no. 17 0 K 089325 18 Kps 2, First Instance Verdict of 17 February 2018

Mehonić

- *Prosecutor v. Mirhet Mehonić*, Case no. 17 0 K 048526 13 K, First Instance Verdict of 8 July 2013

Osmanović

- *Prosecutor v. Sefudin Osmanović*, Case no. 17 0 K 015015 10 K, First Instance Verdict of 20 September 2010

Nuhanović

- *Prosecutor v. Suad Nuhanović*, Case no. 17 0 K 089325 17 Kps, First Instance Verdict of 17 January 2018

Alibegić

- *Prosecutor v. Emira Alibegić*, Case no. 17 0 K 031131 11 K, First Instance Verdict of 24 February 2012

Mušić

- *Prosecutor v. Asmir Mušić*, Case no. 17 0 K 039033 12 K, First Instance Verdict of 9 May 2012

GRADAČAC MUNICIPAL COURT

Muratović

- *Prosecutor v. Osman Muratović*, Case no. T03 0 KT 00 16692, Indictment of 2 December 2011 (Osman Muratović Indictment)
- *Prosecutor v. Osman Muratović*, Case no. 28 0 K 026925 12 K, First Instance Verdict of 23 February 2016 (Osman Muratović First Instance Verdict)
- *Prosecutor v. Osman Muratović*, Case no. 28 0 K 026925 17 Kžk, Decision on cessation of criminal proceedings of 24 November 2017 (Order of cessation of criminal proceedings)

Salihović

- *Prosecutor v. Mirza Salihović*, Case no. 28 0 K 0654266 15 Kžk, First Instance Verdict of 15 March 2018

Džidić

- *Prosecutor v. Sanel Džidić*, Case no. T03 0 KT 0081708 19, Indictment of 19 August 2019
- *Prosecutor v. Sanel Džidić*, Case no. 28 0 K 072453 19 K, Verdict

based on PBA of 12 September 2019

Agić

Prosecutor v. Edis Agić, Case no. T030KT0002497, Indictment of 27 May 2011
Prosecutor v. Edis Agić, Case no. 28 0 K 024129 11 K First instance Verdict of 4 February 2015 (guilty plea)

Mravik

Prosecutor v. Sadika Mravik, Case no. Kt 890 08 Indictment of 9 June 2008
Prosecutor v. Sadika Mravik, Case no. 28 0 K 003439 08 K First Instance Verdict of 24 April 2014
Prosecutor v. Sadika Mravik, Case no. 280 K 003439 14 Kz Second Instance Verdict of 5 August 2014 (Tuzla Cantonal Court)

Jašarević

Prosecutor v. Rabija Jašarević, Case no. Kt 889 08, Indictment of 9 June 2008
Prosecutor v. Rabija Jašarević, Case no. 280K003451 08 K, First Instance Verdict of 11 February 2014 (guilty plea at the main trial)

Mustafić and Smajić

Prosecutor v. Senahid Mustafić and Enver Smajić, Case no. Kt 1700 07, Indictment of 11 January 2008
Prosecutor v. Senahid Mustafić and Enver Smajić, Case no. 280K002744 08 K, First Instance Verdict of 17 October 2012
Prosecutor v. Senahid Mustafić and Enver Smajić, Case No. 280K002744 12 Kž, Second Instance Verdict of 14 February 2013

ŽIVINICE MUNICIPAL COURT

Rustemović

- *Prosecutor v. Fatima Rustemović and Senahid Rustemović*, Case no. T030KT 0006722 10, Indictment of 30 March 2011
- *Prosecutor v. Fatima Rustemović*, Case no. 330K034365 11 K, First Instance Verdict of 15 January 2015
- *Prosecutor v. Senahid Rustemović*, Case no. 330K024762 11 K, First Instance Verdict of 14 November 2013
- *Prosecutor v. Senahid Rustemović*, Case no. 330K24762 14 K2, First Instance Verdict Renewed of 15 October 2015
- *Prosecutor v. Senahid Rustemović*, Case no. 330K24762 Kz8, Second Instance Verdict of 28 January 2016 (Tuzla Cantonal Court)

KALESIJA MUNICIPAL COURT

Marinković M.

- *Prosecutor v. Milenko Marinković et al.*, Case no. T030KT0021824, Indictment of 11 June 2012
- *Prosecutor v. Milenko Marinković*, Case no. 290K016769 13 K, First Instance Verdict of 22 January 2013

Marinković S.

Prosecutor v. Slavojka Marinković, Case no. T030KT002182412, Indictment of 11 June 2012 (changed 08 July 2013)

Prosecutor v. Slavojka Marinković, Case no. 290K014942 12 K 2, First Instance Verdict of 17 April 2018

Prosecutor v. Slavojka Marinković, Case no. 290K014942 18 Kz 5, Second Instance Verdict of 26 March 2019 (Tuzla Cantonal Court)

Savić

- *Prosecutor v. Cvijeta Savić*, Case no. Kt 2366 07, Indictment of 25 May 2009
- *Prosecutor v. Cvijeta Savić*, Case no. 290K003856 09 K, First instance Verdict of 1 April 2014
- *Prosecutor v. Cvijeta Savić*, Case no. 290K003856 14 Kž 5, Second Instance Verdict of 18 November 2014 (Tuzla Cantonal Court)

CANTONAL COURT TUZLA

Handanović

- *Prosecutor v. Jasmin Handanović*, Case no. T030KT0017372 11, Indictment of 30 January 2012
- *Prosecutor v. Jasmin Handanović*, Case no. 030K009437 15 K, First instance Verdict of 16 April 2015
- *Prosecutor v. Jasmin Handanović*, Case no. 030K009437 17 KzK, Second Instance Verdict of 5 February 2018

Durić et al.

- *Prosecutor v. Mejra Durić et al.*, Case no. T030KT0056120 16, Indictment of 3 October 2016
- *Prosecutor v. Mejra Durić et al.*, Case no. 03 0 K 015135 16 K, Verdict based on PBA of 16 May 2017

Mujić

- *Prosecutor v. Enes Mujić*, Case no. T030KT0064969 17, Indictment of 23 August 2017
- *Prosecutor v. Enes Mujić*, Case no. 030K016017 17 K, First Instance Verdict (PBA) of 16 November 2017

TUZLA MUNICIPAL COURT

Dakić

- *Prosecutor v. Slavica Dakić*, Case no. T030KT0025778 12 K, Indictment of 2 February 2015
- *Prosecutor v. Slavica Dakić*, Case no. 320K208303 15 K, First Instance Verdict of 26 October 2015

Majdančić et al.

- *Prosecutor v. Majdančić et al.*, Case no. . T03 0 KT 0 000 3703 10, Indictment of 15 September 2010
- *Prosecutor v. Majdančić et al.*, Case no. 32 0 K 027994 10 K, First Instance Verdict of 6 November 2014
- *Prosecutor v. Majdančić et al.*, Case no. 32 0 K 027994 15 K 2, First Instance Verdict renewal of 11 January 2016
- *Prosecutor v. Majdančić et al.*, Case no. 320K027994 16 Kz3, Second Instance Verdict of 22 August 2016 (Tuzla Cantonal Court)

Zahirović et al.

- *Prosecutor v. Zahirović et al.*, Case no. 2120/07, Indictment of 4 March 2008
- *Prosecutor v. Zahirović et al.*, Case no. 32 0 K 025587 08 K, First Instance Verdict of 29 March 2013

- *Prosecutor v. Zahirović et al.*, Case no. 32 0 K 025587 14 Kž 2, Second Instance Verdict of 30 May 2014(Tuzla Cantonal Court)

Marhošević et al.

- *Prosecutor v. Marhošević et al.*, Case no. T03KT0028568 Indictment of 30 May 2013
- *Prosecutor v. Marhošević et al.*, Case no. 320K197278 14 K First Instance Verdict of 17 January 2019
- *Prosecutor v. Marhošević et al.*, Case no. 32 0 K 197278 19 Kž, Second Instance Verdict of 2 September 2019 (Tuzla Cantonal Court)

NOVI TRAVNIK CANTONAL COURT

Halilović

- *Prosecutor v. Suad Halilović*, Case no. T06 0 KT 0006068 12, Indictment of 19 December 2013
- *Prosecutor v. Suad Halilović*, Case no. 06 0 K 004665 13 kps, First Instance Verdict (PBA) of 24 June 2014.

Mišković et al.

- *Prosecutor v. Dragan Mišković and Samir Zukan*, Case no. T06 0 KT 0003651 11, Indictment of 8 November 2013
- *Prosecutor v. Dragan Mišković and Samir Zukan*, Case no. T06 0 KT 0003651 11, Amended Indictment of 31 March 2015
- *Prosecutor v. Dragan Mišković, Samir Zukan*, Case no. 06 0 K 006325 14 K, First Instance Verdict of 3 April 2015
- *Prosecutor v. Dragan Mišković and Samir Zukan*, Case no.06 0 K 006325 14 Kž, Second

Instance Verdict of 29 June 2017 (Supreme Court FBiH)

Alić

- *Prosecutor v. Elvis Alić*, Case no. T06 0 KT 0015822 15, Indictment of 29 May 2015
- *Prosecutor v. Elvis Alić*, Case no. 06 0 K 008165 15 K, First Instance Verdict of 27 January 2016
- *Prosecutor v. Elvis Alić*, Case no. 06 0 K 008165 15 Kž, Second Instance Verdict of 22 September 2017 (Supreme Court FBiH)

Avdibašić

- *Prosecutor v. Azra Avdibašić*, Case no. T 06 0 K 0015466 15, Indictment of 29 November 2016
- *Prosecutor v. Azra Avdibašić*, Case no. 06 0 K 007953 15 K, First Instance Verdict of 23 October 2017
- *Prosecutor v. Azra Avdibašić*, Case no. 06 0 K 007953 15 Kž, Second Instance Verdict of 23 January 2018 (FBiH Supreme Court)

TRAVNIK MUNICIPAL COURT

Beganović

- *Prosecutor v. Hamša Beganović*, Case no. KT-12/09, Indictment of 18 February 2009
- *Prosecutor v. Hamša Beganović*, Case no. 51 0 K 018862 09 K 2, First Instance Verdict (guilty plea) of 9 July 2009

Kojadin et al.

- *Prosecutor v. Dubravko Kojadin, Valentina Omerović*, Case no. T06 0 KT 0009768 13, Indictment of 18 July 2013 (*Kojadin et al.* Indictment)

- *Prosecutor v. Dubravko Kojadin and Valentina Omerović*, Case no. 51 0 K 073060 13 Kps, Verdict (PBA) of 19 September 2013

A.N.

- *Prosecutor v. A.N.*, Case no. T06 0 KTM 0011918 13, Order to Initiate preparatory proceedings of 30 January 2014
- *Prosecutor v. A. N.*, Case no. 51 0 KM 082431 14 KM, Decision on Discontinuation of Proceedings

Mrakić

- *Prosecutor v. Mirsada Mrakić*, Case no. T06 0 KT 0011238 13, Indictment of 23 February 2015
- *Prosecutor v. Mirsada Mrakić*, Case no. 51 0 K 102306 15 K, Verdict (guilty plea) of 12 April 2017

Bajrić et al.

- *Prosecutor v. Amira Bajrić and Omer Bajrić*, Case no. T06 0 KT 0019545 16, Indictment of 27 February 2017 (*Bajrić et al.* Indictment)
- *Prosecutor v. Amira Bajrić and Omer Bajrić*, Case no. 51 0 K 122475 17 K, Verdict (guilty plea) of 6 April 2017

Bajrić et al. (II)

- *Prosecutor v. Amira Bajrić and Omer Bajrić*, Case no. T06 0 KT 0022930 18, Indictment of 2 April 2018 (*Bajrić et al.* Indictment)
- *Prosecutor v. Amira Bajrić and Omer Bajrić*, Case no. 51 0 K 137285 18 K, Verdict (guilty plea) of 13 September 2018

BUGOJNO MUNICIPAL COURT

Ramić

- *Prosecutor v. Mirzada Ramić*, Case no. 1048/08, Indictment of 6 February 2009
- *Prosecutor v. Mirzada Ramić*, Case no. 46 0 K 008347 09 K 2, Verdict (Guilty plea) of 1 July 2010

Suljaković *et al.*

- *Prosecutor v. Mujo Suljaković, Šerifa Suljaković, Nermin Čolić, and Enesa Čolić*, Case no. T06 0 KT 0015038 14, Indictment of 29 December 2014 (Suljaković *et al.* Indictment)
- *Prosecutor v. Mujo Suljaković, Šerifa Suljaković, Nermin Čolić and Enesa Čolić*, Case no. 46 0 K 055107 14 Kps, Verdict (Guilty plea) of 14 April 2015

VISOKO MUNICIPAL COURT

Čović-Gavran

- *Prosecutor v. Amra Čović-Gavran*, Case No. T04 0 KT 0001071 10, Indictment of 2 August 2010
- *Prosecutor v. Amra Čović-Gavran*, Case No. 41 0 K 017836 10 K, First Instance Verdict of 5 September 2017

Ajkunić

- *Prosecutor v. Eldin Ajkunić*, Case no. T04 0 KT 0034746 18, Indictment of 2 April 2018
- *Prosecutor v. Eldin Ajkunić*, Case no. 41 0 K 071070 18 K, Verdict (guilty plea) of 20 August 2018

ZENICA MUNICIPAL COURT

Tešnjak

- *Prosecutor v. Mirsad Tešnjak*, Case no. T04 0 KT 0002830 10, Indictment of 17 January 2011
- *Prosecutor v. Mirsad Tešnjak*, Case no. 43 0 K 043327 11 K, First Instance Verdict of 16 July 2014

Rizvić-Jeitner

- *Prosecutor v. Benjamin Rizvić-Jeitner*, Case no. T04 0 KT 0002830 10, Indictment of 17 January 2011
- *Prosecutor v. Benjamin Rizvić-Jeitner*, Case no. 43 0 K 043327 11 K, First Instance Verdict of 10 December 2014
- *Prosecutor v. Benjamin Rizvić-Jeitner*, Case no. 43 0 K 043327 15 Kž 2, Second Instance Verdict of 14 May 2015

Jašarević

- *Prosecutor v. Fadil Jašarević*, Case no. T04 0 KT 0020478 14, Indictment of 23 February 2015
- *Prosecutor v. Fadil Jašarević*, Case no. 43 0 K 116011 15 K, First Instance Verdict of 14 December 2016
- *Prosecutor v. Fadil Jašarević*, Case no. 43 0 K 116011 17Kž, Second Instance Verdict of 15 May 2017

Šukalić

- *Prosecutor v. Adila Šukalić*, Case no. T04 0 KT 0035539 18, Indictment of 21 June 2016
- *Prosecutor v. Adila Šukalić*, Case no. 43 0 K 160867 18 K, First instance verdict of 22 November 2018

Bajrić

- *Prosecutor v. Bisera Bajrić*, Case no. T04 0 KT 0036625 18, Indictment with a Warrant to Pronounce a Sentence of 18 February 2019
- *Prosecutor v. Bisera Bajrić*, Case no. 43 0 K 168614 19 K, First Instance Verdict of 4 December 2019

TEŠANJ MUNICIPAL COURT

Kovačević I

- *Prosecutor v. Amir Kovačević*, Case no. KT-409/07, Indictment of 18 June 2007
- *Prosecutor v. Amir Kovačević*, Case no. 39 0 K 000164 07 K, First Instance Verdict of 17 December 2008
- *Prosecutor v. Amir Kovačević*, Case no. 39 0 K 000164 07 Kž, Second Instance Verdict of 21 May 2009

Kovačević II

- *Prosecutor v. Amir Kovačević*, Case no. KT-V-1742/08, Indictment of 12 February 2009 (*Kovačević II* Indictment)
- *Prosecutor v. Amir Kovačević*, Case no. 39 0 K 002941 09 K, First Instance Verdict of 10 May 2010
- *Prosecutor v. Amir Kovačević*, Case no. 39 0 K 002941 10 Kž, Second Instance Verdict of 14 January 2011 (Zenica Cantonal Court)

Solo

- *Prosecutor v. Kasim Solo*, Case no. T 04 0 KT 0022670 15, Indictment of 29 December 2015
- *Prosecutor v. Kasim Solo*, Case no. 39 0 K 041225 16 K, First Instance Verdict of 18 July 2018

SARAJEVO CANTONAL COURT

Kurtović

- *Prosecutor v. Samir Kurtović et al.*, Case no. T09 0 KTO 0084920 15, Indictment of 15 March 2016
- *Prosecutor v. Melisa Šehović*, Case no. 09 0 K 026828 16 K, First Instance Verdict of 8 September 2016 (Melisa Šehović, Trial judgement)
- *Prosecutor v. Kurtović and Nemanja Janković*, Case no. 09 0 K 023899 16 K, First Instance Verdict of 14 May 2018
- *Prosecutor v. Kurtović and Nemanja Janković*, Case no. 09 0 K 023899 18
- K3, First Instance Verdict of 21 June 2019
- *Prosecutor v. Kurtović and Nemanja Janković*, Case no. 09 0 K 023899 19 Kž, Second Instance Verdict of 16 December 2019
- *Prosecutor v. Kurtović and Nemanja Janković*, Case no. 09 0 K 023899 20 Kžk, Third Instance Verdict of 15 December 2020

Elkaz

- *Prosecutor v. Alen Čengić et al.*, Case no. T09 0 KTK 0076532 14, Indictment of 1 April 2016
- *Prosecutor v. Kemal Elkaz*, Case no. 09 0 K 023702 16 K4, First Instance Verdict of 6 June 2017 (PBA)

SARAJEVO MUNICIPAL COURT

Karaman

- *Prosecutor v. Karaman and Bašić*, Case no. T09 0 KT 097642 16, Indictment of 15 September 2016

- *Prosecutor v. Enisa Karaman*, Case no. 65 0 K 599998 17 K, First Instance Verdict of 10 October 2018
- *Prosecutor v. Enisa Karaman*, Case no. 65 0 K 599998 19 Kž, Second Instance Verdict of 3 July 2019 (Sarajevo Cantonal Court)

Alimanović

- *Prosecution v. Hasib Alimanović*, Case no. T09 0 KT 0081106 15, Indictment of 30 October 2018
- *Prosecution v. Hasib Alimanović*, Case no. 65 0 K 731500 19 K, First Instance Verdict of 12 August 2019

Zejnilović

- *Prosecutor v. Đemail Zejnilović*, Case no. T09 0 KT 0013329 10 K, Indictment of 15 December 2010 (Đemail Zejnilović, Indictment)
- *Prosecutor v. Đemail Zejnilović*, Case no. 65 0 K 178012 11 K, First Instance Verdict of 20 June 2011

Bostandžija

- *Prosecutor v. Alema Bostandžija*, Case no. T09 0 KT 0051960 13 K, Indictment of 15 July 2014
- *Prosecutor v. Alema Bostandžija*, Case no. 65 0 K 448574 14 K, First Instance Verdict of 26 January 2017
- *Prosecutor v. Alema Bostandžija*, Case no. 65 0 K 448574 18 Kž, Second Instance Verdict of 17 October 2018 (Sarajevo Cantonal Court)

Ćatić and Pičuga

- *Prosecutor v. Jasmin Ćatić and Jasmin Pičuga*, Case no. T09 0 KT 0039029 12 K, Indictment of 11 October 2012
- *Prosecutor v. Jasmin Ćatić and Jasmin Pičuga*, Case no. 65 0 K 275790 12 K, First Instance Verdict of 24 May 2013

LIVNO MUNICIPAL COURT

Bosančić

- *Prosecutor v. Patricija Bosančić*, Case no. 68 0 K 000359 08 K, First Instance Verdict of 9 July 2009

RS

BANJA LUKA DISTRICT COURT

Regodić

- *Prosecutor v. Miodrag Regodić*, Case no. 11 0 K 011096 12 Kps-p, First Instance Verdict of 28 January 2013 (PBA)

Đurić

- *Prosecutor v. Emanuela Đurić*, Case no. 11 0 K 001048 09 K, First Instance Verdict of 19 September 2009

Miljević

- *Prosecutor v. Miodrag Miljević*, Case no. 110K013097 13 K-p, First Instance Verdict of 5 June 2014
- *Prosecutor v. Miodrag Miljević*, Case no. 11 0 K 013097 4 Kž, Second Instance Verdict of 30 September 2014 (Supreme Court RS)

Odobašić

- *Prosecutor v. Mehmed Odobašić*, Case no. 11 0 K 020196 18 K, First Instance Verdict of 19 February 2019
- *Prosecutor v. Mehmed Odobašić*, Case no. 11 0 K 020196 19 Kž, Second Instance Verdict of 10 September 2020 (Supreme Court RS)

DOBOJ DISTRICT COURT

Malić and Omahić

- *Prosecutor v. Diana Malić and Mehmed Omahić*, Case No. 13 0 K 003360 15 K, First Instance verdict of 18 June 2015
- *Prosecutor v. Diana Malić and Mehmed Omahić*, Case No. 13 0 K 003360 15 Kж 5, Second Instance Verdict of 14 September 2015 (Supreme Court RS)

Pavličević

- *Prosecutor v. Savo Pavličević*, Case no. 13 0 K 002934 14 K, First Instance Verdict of 6 June 2014
- *Prosecutor v. Savo Pavličević*, Case no. 13 0 K 002934 14 Kž, Second Instance verdict of 11 November 2014 (Supreme Court RS)

BANJA LUKA BASIC COURT

Buzadžija

- *Prosecutor v. Milan Buzadžija*, Case no. 710K09272410K, First Instance Verdict of 28 December 2011

Jajčević

- *Prosecutor v. Ivica Jajčević*, Case no. 71 0 K 011347 07 K, First Instance Verdict of 25 September 2010

Tomić

- *Prosecutor v. Milutin Tomić*, Case no. 71 0 K 105755 12 K, First Instance Verdict of 15 September 2013

F. DŽ and F. R

- *Prosecutor v. F. DŽ. and F. R.*, Case no. Kt-1087/05, Indictment of 23 November 2005
- *Prosecutor v. F. DŽ and F. R.*, Case no. 71 0 K 011625 05 K, First Instance Verdict of 29 May 2009

GRADIŠKA BASIC COURT

Đurđević

- *Prosecutor v. Veselko Đurđević*, Case no. 72 0 K 008429 09 K, First Instance Verdict of 18 February 2010

Rašković

- *Prosecutor v. Živko Rašković*, Case no. T13 0 KT 0028874 16, Indictment of 19 April 2016
- *Prosecutor v. Živko Rašković*, Case no. T13 0 KT 0028874 16, First Instance Verdict of 25 May 2016

TESLIĆ BASIC COURT

Nedić

- *Prosecutor v. Dule Nedić*, Case no. T15 0 KT 0010279 12, Indictment of 25 November 2014
- *Prosecutor v. Dule Nedić*, Case no. 87 0 K 017991 15 K, First Instance Verdict of 29 August 2016
- *Prosecutor v. Dule Nedić*, Case no. 87 0 K 017991 15 Kž, Second Instance Verdict of 15 March 2017

MODRIČA BASIC COURT

Okanović

- *Prosecutor v. Ema Okanović*, Case no. T15 0 KT 0011188 12, Indictment of 10 July 2014
- *Prosecutor v. Ema Okanović*, Case no. 86 0 K 034122 17 K, First Instance Verdict of 13 April 2017

Aljić and Aljić

- *Prosecutor v. Rukija Aljić and Senahid Aljić*, Case no. T15 0 KT 0011188 12, Indictment of 10 July 2014
- *Prosecutor v. Rukija Aljić and Senahid Aljić*, Case no. 86 0 K 043255 17 K, First Instance Verdict of 6 February 2017

MRKONJIĆ GRAD BASIC COURT

Milanović

- *Prosecutor v. Jovanka Milanović*, Case no. KT. 232/08, Indictment of 11 March 2009
- *Prosecutor v. Jovanka Milanović*, Case no. 75 0 K 007525 09 K, First Instance Verdict of 20 November 2009

BIJELJINA BASIC COURT

Hidanović and Džafić

- *Prosecutor v. Danijela Hidanović and Nermina Džafić*, Case no. T14 0 KT 0018688 17, Indictment of 13 December 2017
- *Prosecutor v. Danijela Hidanović and Nermina Džafić*, Case no. 80 0 K 092852 18, First Instance Verdict of 29 October 2019
- *Prosecutor v. Danijela Hidanović and Nermina Džafić*, Case no. 80 0 K 092852 19 kž,

Second Instance Verdict of 18 December 2019 (Bijeljina District Court)

Beganović

- *Prosecutor v. Maid Beganović*, Case no. T14 0 KT 0011430 14, Indictment of 16 September 2014
- *Prosecutor v. Maid Beganović*, Case no. 80 0 K 060804 14 K, First Instance Verdict of 19 March 2015

ZVORNIK BASIC COURT

Erić and Pustivuk

- *Prosecutor v. Miroslav Erić and Predrag Pustivuk*, Case no. T14 0 KT 0017040 16, Indictment of 21 July 2016
- *Prosecutor v. Miroslav Erić and Predrag Pustivuk*, Case no. 83 0 K 032586 16 K, First Instance Verdict of 25 June 2018

Ferhatović

- *Prosecutor v. Hakija Ferhatović*, Case no. KT – 411/09, Indictment of 20 July 2009
- *Prosecutor v. Hakija Ferhatović*, Case no. 83 0 K 003679 10 K 2, First Instance Verdict of 04 February 2011
- *Prosecutor v. Hakija Ferhatović*, Case no. 83 0 K 003679 10 Kž , Second Instance Verdict of 28 April 2011

ISTOČNO SARAJEVO DISTRICT COURT

Durić and Mehanović

- *Prosecutor v. Murat Durić and Senad Mehanović*, Case no. T17 2 KT 0000867 12, Indictment of 11 February 2012

- *Prosecutor v. Murat Durić and Senad Mehanović*, Case no. 14 0 K 001884 13 K, First Instance Verdict of 28 April 2014
- *Prosecutor v. Murat Durić and Senad Mehanović*, Case no. 14 0 K 001884 14 Kž, Second Instance Verdict of 7 October 2014

FOČA BASIC COURT

Kratovac

- *Prosecutor v. Alisa Kratovac*, Case no. T16 0 KT 0007168 16, Indictment of 7 February 2017
- *Prosecutor v. Alisa Kratovac*, Case no. 94 0 K 027368 18 K, First Instance Verdict of 7 November 2018

BRČKO DISTRICT BRČKO DISTRICT BASIC COURT and APPELLATE COURT

Arapović and Tahirović

- *Prosecutor v. Nedžad Arapović and Suad Tahirović*, Case no. KT 9263/15, Indictment of 28 August 2015
- *Prosecutor v. Suad Tahirović*, Case no. 96 0 K 94594 16 K, of 16 January 2016, the case was severed from the case of *Nedžad Arapović*
- *Prosecutor v. Suad Tahirović*, Case no. 96 0 K 94594 16 K, First Instance Verdict of 4 February 2016 (PBA)
- *Prosecutor v. Nedžad Arapović*, Case no. KT 9263/15 Amended Indictment of 22 July 2016
- *Prosecutor v. Nedžad Arapović*, Case no. 960 K 91113/15, First Instance Verdict of 2 August 2016C

- *Prosecutor v. Nedžad Arapović*, Case no. 960 KZ 91113/17, Second Instance Verdict of 5 April 2017

Husejnović and Husejnović

- *Prosecutor v. Mustafa Husejnović aka Muće and Osman Husejnović aka Omo*, Case no. KT 5864/13 Indictment of 17 December 2013
- *Prosecutor v. Osman Husejnović aka Omo*, Case no. 78903/14, of 30 May 2014, the case was severed from the case of *Mustafa Husejnović*
- *Prosecutor v. Osman Husejnović aka Omo*, Case no. KT 5864/13, Amended Indictment 22 April 2015
- *Prosecutor v. Osman Husejnović aka Omo*, Case no. 78903/14, First Instance Verdict of 22 May 2015
- *Prosecutor v. Osman Husejnović aka Omo*, Case no. 78903/16 KZ, Second Instance Verdict of 17 March 2016
- *Prosecutor v. Mustafa Husejnović aka Muće*, Case no. KT 5864/13 Amended Indictment 06 May 2016.
- *Prosecutor v. Mustafa Husejnović aka Muće*, Case no. 72686/13, First Instance Verdict of 15 July 2016
- *Prosecutor v. Mustafa Husejnović aka Muće*, Case no. 72686/16 KZ, Decision of 12 January 2017
- *Prosecutor v. Mustafa Husejnović aka Muće*, Case no. 72686/17, Second First Instance Verdict of 22 June 2017
- *Prosecutor v. Mustafa Husejnović aka Muće*, Case no. 72686/17 KZ, Second Instance Verdict of 16 January 2018

Sijamhodžić

- *Prosecutor v. Samir Sijamhodžić*, Case no KT 10526/17, Indictment of 27 February 2017
- *Prosecutor v. Samir Sijamhodžić*, Case no. 98618/17K, First Instance Verdict of 11 April 2017 (guilty plea)
- *Prosecutor v. Samir Sijamhodžić*, Case no. 98618/17KZ, Second Instance Verdict of 7. September 2017

Šečić and Nedić

- *Prosecutor v. Fehret Šečić and Lejla Nedić*, Case no. KT11143/17, Indictment of 29 November 2017.
- *Prosecutor v. Fehret Šečić and Lejla Nedić*, Case no. KT11143/17 Amended Indictment of 9 October 2018
- *Prosecutor v. Fehret Šečić and Lejla Nedić*, Case no. 104826/17, First Instance Verdict of 17 October 2018
- *Prosecutor v. Fehret Šečić and Lejla Nedić*, Case no. 104826/19KZ, Second Instance Verdict of 22 August 2019

Annexes

ANNEX I: International definition of human trafficking

United Nations, United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organised Crime (2000), Article 3.

Council of Europe, Council of Europe Convention on Action against Trafficking in Human Beings (2005), Article 4.

- (a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) "Child" shall mean any person under eighteen years of age.

ANNEX II: THB in Criminal Code of BiH

2003 CC BiH	2010 CC BiH	2015 CC BiH
Article 186 Trafficking in Human Beings	Article 186 Trafficking in Human Beings	Article 186 Trafficking in Human Beings
<p>(1) Whoever takes part in the recruitment, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to obtain the consent of a person having control over another person, for the purpose of exploitation, shall be punished by imprisonment for a term between one and ten years.</p> <p>(2) Whoever perpetrates the criminal offence referred to in paragraph 1 of this Article against a juvenile shall be punished by imprisonment for a term not less than five years.</p> <p>(3) Whoever organises a group of people with an aim of perpetrating the criminal offence referred to in paragraphs 1 and 2 of this Article shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.</p> <p>(4) Whoever acting out of negligence facilitates the perpetration of the criminal offence referred to in paragraphs 1 through 3 of this Article, shall be punished by imprisonment for a term between six months and five years.</p>	<p>(1) Whoever, by use of force or threat of use of force or other forms of coercion, abduction, fraud or deception, abuse of power or influence or a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, recruits, transports, transfers, harbors or receives a person for the purpose of the prostitution of that person or other forms of sexual exploitation, forced labor or services, slavery or a similar status, servitude or the removal of organs or of some other type of exploitation, shall be punished by imprisonment for a term of not less than three years.</p> <p>(2) Whoever recruits, solicits, transports, transfers, harbours or receives a person younger than 18 years of age with the purpose of exploitation referred to in Paragraph 1 of this Article, shall be punished by imprisonment for a term for at least five years.</p> <p>(3) If the criminal offence referred to in Paragraphs (1) and (2) of this Article is committed by an official person while executing official duty, the perpetrator shall be punished by imprisonment for a term of not less than five years.</p>	<p>(1) Whoever, by use of force or threat of use of force or other forms of coercion, abduction, fraud or deception, abuse of power or influence or a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, recruits, transports, transfers, harbours or receives a person for the purpose of exploitation of that person in the country in which that person does not have residence or citizenship shall be punished by imprisonment for a term of not less than five years</p> <p>(2) Whoever recruits, solicits, transports, transfers, harbours or receives a person younger than 18 years of age with the purpose of exploitation through prostitution of another person or other forms of sexual exploitation, forced labour or services, slavery or a similar status, servitude or the removal of organs or of some other type of exploitation, in the country in which that person does not have residence or citizenship, shall be punished by imprisonment for a term of at least ten years.</p> <p>(3) If the criminal offence referred to in Paragraphs (1) and (2) of this Article is committed by an official person while executing official duty, the perpetrator shall be punished by imprisonment for a term of at least ten years.</p>

(5) “Exploitation” referred to in paragraph 1 of this Article includes, in particular, exploiting other persons by way of prostitution or of other forms of sexual exploitation, forced labour or services, slavery or slavery-like practices, serving under coercion or removal of organs for the purpose of transplantation.

(4) Whoever counterfeits, procures or issues travel or identification documents, or uses, holds, seizes, alters, damages or destroys travel or identification documents of another person with the purpose of facilitating human trafficking, shall be punished by imprisonment for a term between one and five years.

(5) Whoever organises or directs at any level the group of people for the purpose of perpetration of the criminal offences referred to in Paragraphs (1) or (2) of this Article, shall be punished by imprisonment for a term of not less than ten years or long-term imprisonment.

(6) Whoever uses the services of the victims of human trafficking, shall be punished by imprisonment for a term of between six months and five years.

(7) If the perpetration of the criminal offense referred to in Paragraphs (1) and (2) caused serious health damage, grievous bodily harm or the death of the persons referred to in Paragraphs (1) and (2), the perpetrator shall be punished a term of not less than five years or long-term imprisonment.

(8) Items, conveyances and facilities used for the perpetration of the offence shall be seized., while the facilities and premises used for human trafficking, without prejudice to the rights of the third parties, may be closed temporarily or permanently.

(9) Whether the person who is a victim of human trafficking consented to the exploitation bears no relevance to the existence of the criminal offence of human trafficking.

(4) Whoever counterfeits, procures or issues travel or identification documents, or uses, holds, seizes, alters, damages or destroys travel or identification documents of another person with the purpose of facilitating human trafficking, shall be punished by imprisonment for a term between one and five years.

(5) Whoever uses the services of the victim of human trafficking, shall be punished by imprisonment for a term of between six months and five years.

(6) If the perpetration of the criminal offence referred to in Paragraphs (1) and (2) caused serious health damage, grievous bodily harm or the death of the persons referred to in Paragraphs (1) and (2), the perpetrator shall be punished by imprisonment for a term of at least ten years or long-term imprisonment.

(7) Exploitation, for the purpose of this Article, shall mean: prostitution of another person or other forms of sexual exploitation, forced labour or services, slavery or a similar status, servitude or the removal of organs or of some other type of exploitation.

(8) Items, conveyances and facilities used for the perpetration of the offence shall be seized.

(9) Whether the person who is a victim of human trafficking consented to the exploitation bears no relevance to the existence of the criminal offence of human trafficking.(

10) No criminal proceedings will be conducted against a victim of trafficking who was forced, by the perpetrator of the offence, to participate in the commission of another criminal offence if such action was direct result of his/her status of the victim of trafficking.

ANNEX III: THB in the entity and Brčko District criminal codes

Criminal Code of FBiH	Criminal Code of RS	Criminal Code of Brčko District
<i>Introduced in 2016</i>	<i>Introduced in 2016</i>	<i>Introduced in 2016</i>
<p>Trafficking in Human Beings Article 210a</p> <p>(1) Whoever, by use of force or threat of use of force or other forms of coercion, abduction, fraud or deception, abuse of power or influence or a position of vulnerability, or by giving or receiving payments or other benefits to achieve the consent of a person having control over another person, recruits, transports, transfers, harbours or receives a person for the purpose of exploitation of that person, shall be punished by imprisonment for a term of at least five years.</p> <p>(2) Whoever recruits, solicits, transports, transfers, harbours or receives a person younger than 18 years of age with the purpose of exploitation through prostitution or other forms of sexual exploitation, forced labour or services, slavery or similar status, servitude or the removal of body parts or of some other type of exploitation, shall be punished by imprisonment for a term of at least ten years.</p> <p>(3) Exploitation, for the purpose of this Article, means: prostitution of another person or other forms of sexual exploitation, forced labour or services, forced begging, slavery or similar status, servitude or the removal of body parts or some other type of exploitation.</p> <p>(4) If the criminal offence referred to in Paragraphs (1) and (2) of this Article is committed by an official person while discharging official duties, the perpetrator shall be punished by imprisonment for a term of at least ten years.</p>	<p>Trafficking in Human Beings Article 198a</p> <p>(1) Whoever, by force or threat of force or other forms of coercion, abduction, fraud or deception, abuse of relationship of trust, dependence or vulnerability, difficult circumstances of another person, by giving or receiving of money or other benefits, recruits, transports, transfers, delivers, sells, purchases, intermediates in sale, harbours, receives or keeps a person for the purpose of the use or exploitation of that person's labour, perpetration of a criminal offence, prostitution, use for pornographic purposes, establishment of slavery or similar relationship, forced marriage, forced sterilization, for the purpose of the removal of organs or body parts, for the use in armed forces or of some other type of exploitation, shall be punished by imprisonment for a term of not less than three years.</p> <p>(2) Whoever seizes, holds or counterfeits or destroys personal identification documents with the purpose of perpetrating criminal offences referred to in paragraph 1 of this Article, shall be punished by imprisonment for a term between two and twelve years.</p> <p>(3) If the criminal offence referred to in paragraphs 1 and 2 of this Article was perpetrated as member of an organised group, the perpetrator shall be punished by imprisonment for a term of not less than five years.</p>	<p>Trafficking in Human Beings Article 207a</p> <p>(1) Whoever, by force or threat of force or other forms of coercion, abduction, fraud or deception, abuse of relationship or trust or vulnerability, or by giving or receiving money or other benefits to persuade a person having control over another person, recruits, transports, transfers, delivers, harbours or receives a person for the purpose of exploiting him/her, shall be punished by imprisonment for a term of not less than five years. For the purpose of this Article the exploitation shall mean: prostitution of another person or other forms of sexual exploitation, forced labour or services, slavery or similar relationship, servitude, removal of organs or body parts, or some other form of exploitation.</p> <p>(2) Whoever recruits, transports, transfers, delivers, harbours or receives a person younger than 18 years of age with the purpose of using or exploiting him/her for prostitution or other forms of sexual exploitation, forced labour or services, slavery or similar relationship, servitude, removal of organs or body parts, or some other form of exploitation, shall be punished by imprisonment for a term of not less than ten years.</p> <p>(3) If the offences referred to in paragraphs 1 and 2 of this Article were perpetrated by an official person in exercising his/her duty, s/he shall be punished by imprisonment for a term of not less than ten years.</p>

- (5) Whoever counterfeits, procures or issues travel or identification document, or uses, withholds, seizes, alters, damages or destroys travel or identification documents of another person with the purpose of facilitating trafficking in human beings, shall be punished by imprisonment for a term between one and five years.
- (6) Whoever uses the services of a victim of trafficking in human beings shall be punished by imprisonment for a term of six months to five years. (7) If the perpetration of the criminal offence referred to in Paragraphs (1) and (2) of this Article caused serious health damage, grievous bodily harm or the death of the persons referred to in Paragraphs (1) and (2) of this Article, the perpetrator shall be punished by imprisonment for a term of at least ten years or long-term imprisonment. (8) Items, vehicles and facilities used for the perpetration of the offence shall be confiscated.
- (9) Consent of the victim of trafficking in human beings to the exploitation bears no relevance to the existence of the criminal offence of trafficking in human beings.
- (10) No criminal proceedings will be conducted against a victim of trafficking in human beings who was forced, by the perpetrator of the offence, to participate in the commission of another criminal offence if such action was direct result of his/her status of the victim of trafficking in human beings.

- (4) Whoever uses, or enables other person to use sexual services or other forms of exploitation, and was aware that it concerns the victim of the human trafficking, shall be punished by imprisonment for a term between six months and five years.
- (5) If the offence referred to in paragraphs 1, 2, 3 and 4 of this Article are perpetrated by an official person in the exercise of duty, shall be punished by imprisonment for a minimum term of eight years.
- (6) If due to the criminal offence referred to in paragraphs 1 and 3 of this Article caused grievous bodily harm, serious health damage, or the death of one or more persons, the perpetrator shall be punished by imprisonment for a minimum term of ten years.
- (7) The consent of the victim to any form of exploitation referred to in paragraph 1 of this Article shall bear no relevance to the existence of the criminal offence of human trafficking.
- (8) Items, vehicles and facilities used for the perpetration of the offence referred to in this Article shall be seized.

- (4) Whoever counterfeits, obtains or issues travel or identification document or uses, seizes, holds, trades, damages, destroys travel or identification document of another person to enable trafficking in human beings, shall be punished by imprisonment for a term between one and five years.
- (5) Whoever uses services provided by a victim of trafficking, shall be punished by imprisonment for the term between six months and five years.
- (6) If due to the criminal offences referred to in paragraphs 1 and 2 of this Article caused serious health problems, grievous bodily harm, or the death of one or more persons referred to in paragraphs 1 and 2, the perpetrator shall be punished by imprisonment for a minimum term of ten years or a long-term imprisonment.
- (7) Items, vehicles and facilities used for the perpetration of the offence shall be seized.
- (8) The consent of the victim to exploitation shall bear no relevance to the existence of the criminal offence of human trafficking.
- (9) The victim of trafficking that was forced by the perpetrator of that criminal offence to take part in committing another criminal offence, shall not be prosecuted for the offence s/he committed if his/her actions were direct consequence of his/her status of the victim of trafficking.

Trafficking in Minors
Article 198b

- (1) Whoever recruits, transports, transfers, delivers, sells, purchases, intermediates in sale, harbours, keeps or receives a person younger than 18 years of age with the purpose of use or exploitation of that person's labour, perpetration of a criminal offence, prostitution or other uses of sexual exploitation, pornography, establishment of slavery or similar relationship, forced marriage, forced sterilization, illegal adoption or similar relationship, for the purpose of the removal of organs or body parts, for the use in armed forces or of some other type of exploitation, shall be punished by imprisonment for a term of not less than five years.
- (2) Whoever perpetrates the offence referred to in paragraph 1 of this Article by use of force, serious threat or other forms of coercion, by deception, abduction, blackmail, abuse of office, abuse of relationship of trust, dependence of vulnerability, difficult circumstances of another person, by giving money or other benefits, shall be punished by imprisonment for a term of not less than eight years.
- (3) Whoever uses, or enables other person to use sexual services or other forms of exploitation of a minor, and was aware that it concerns the victim of the human trafficking, shall be punished by imprisonment for a term of not less than five years.
- (4) Whoever seizes, holds or counterfeits or destroys personal identification documents with the purpose of perpetrating criminal offences referred to in paragraphs 1 and 2 of this Article, shall be punished by imprisonment for a term between three and fifteen years.

Organised Trafficking in Human Beings Article 210b

- (1) Whoever organises or manages a group of people, an organised group of people or an organised crime group that jointly perpetrates or attempts to perpetrate the criminal offence referred to in Article 210a (Trafficking in Human Beings) of this Code shall be punished by imprisonment for a term of at least ten years or a long-term imprisonment.
- (2) Whoever commits a crime as a member of a group referred to in Paragraph (1) of this Article, shall be punished by imprisonment for a term of at least ten years.
- (3) A member of the group referred to in Paragraph (1) of this Article who reveals this group or association may be exonerated of punishment.

- (5) If the criminal offence referred to in paragraphs 1, 2, 3 and 4 of this Article was perpetrated as member of an organised group, the perpetrator shall be punished by imprisonment for a term of not less than ten years.
- (6) If the offence referred to in paragraphs 1, 2, 3 and 4 of this Article are perpetrated by an official person in the exercise of duty, shall be punished by imprisonment for a minimum term of eight years.
- (7) If due to the criminal offence referred to in paragraphs 1 and 3 of this Article caused grievous bodily harm, serious health damage, or the death of one or more persons, the perpetrator shall be punished by imprisonment for a minimum term of ten years.
- (8) The consent of the minor to any form of exploitation referred to in paragraph 1 of this Article shall bear no relevance to the existence of this criminal offence.
- (9) Items, vehicles and facilities used for the perpetration of the offence referred to in this Article shall be seized.

Organised Trafficking in Human Beings Article 207b

- (1) Whoever organises or leads a group, an organised group or a criminal group which jointly perpetrates or attempts a criminal offences referred to in articles 207a of this Code, shall be punished by imprisonment for a term of at least ten years or long-term imprisonment.
- (2) Whoever perpetrates a criminal offence as a member of the group referred to in paragraph 1 of this Article, shall be punished by imprisonment of at least ten years.
- (3) Whoever becomes a member of a group referred to in paragraph 1 of this Article, shall be punished by imprisonment for a term of at least one year.
- (4) A member of a group referred to in paragraph 1 of this Article who divulges the group may be released of punishment.

ANNEX IV: THB in 2017 Criminal Code of RS Amended in 2021

Human Trafficking Article 145	Trafficking in Children Article 146	Associating for the Purpose of Perpetrating the Criminal Offences of Trafficking in Humans and Children Article 147
<p>(1) Whoever, by the use of force or threat of use of force or other forms of coercion, abduction, fraud or deception, abuse of authority or influence or a relationship of trust, dependence or vulnerability, difficult personal circumstances of another person, or by giving or receiving payments or other benefits to achieve the consent of a person having control over another person, recruits, transports, transfers, surrenders, sells, purchases, intermediates in sale, harbours, receives or keeps another person for the purpose of the person's use or exploitation of his/her work, perpetration of a criminal offence, prostitution, use for pornographic purposes, or other forms of sexual exploitation forced begging, servitude, establishing slavery or similar relationship, forced marriage, enforced sterilization, for the purpose of harvesting organs or body parts, for the purpose of use in the armed forces or other forms of exploitation, shall be punished by imprisonment for a term between three and 20 years.</p> <p>(2) Whoever seizes, holds, counterfeits or destroys personal identification documents for the purpose of perpetrating the offence referred to in paragraph (1) of this Article, shall be punished by imprisonment for a term between two and twelve years.</p> <p>(3) In the event that the offence referred to in paragraphs (1) and (2) of this Article has been</p>	<p>(1) Whoever recruits, transports, transfers, surrenders, sells, purchases, intermediates in sale, harbours, receives or keeps a child for the purpose of his/her utilisation or exploitation of his/her work, perpetration of a criminal offence, prostitution or other forms of sexual exploitation, pornography, forced begging, servitude, establishment of slavery or some similar relationship, forced marriage, enforced sterilization, illegal adoption or some similar relationship, for the purpose of harvesting organs or parts of the body, for the purpose of utilisation in the armed forces or other forms of exploitation, shall be punished by imprisonment for a term between five and 20 years..</p> <p>(2) Whoever perpetrates the criminal offence referred to in paragraph (1) of this Article by use of force or threat of use of force or other forms of coercion, fraud or deception, abduction, blackmailing, abuse of power abuse, authority or influence or a relationship of confidence, dependability or vulnerability, difficult personal circumstances of another person, or by giving or receiving payments or other benefits to achieve the consent of a person having control over another person, shall be punished by imprisonment for a term of no less than eight years.</p> <p>(3) Whoever uses or enables another person to use sexual services or to perform other forms of exploitation against a child, although he/she</p>	<p>(1) Whoever organises a group or an organised criminal group for the purpose of perpetrating the criminal offences referred to in Article 144 and Article 145 of this Code, shall be punished by imprisonment for a term between three and fifteen years.</p> <p>(2) Whoever becomes a member of a criminal group or an organised criminal group referred to in paragraph (1) of this Article or otherwise renders help to a group or an organised criminal group, shall be punished by imprisonment for a term between one and ten years.</p>

perpetrated within an organised criminal group, the perpetrator shall be punished by imprisonment for a term between five and 20 years.

- (4) Whoever uses or enables another person to use sexual services or to perform other forms of exploitation, although he/she was aware that such actions concern a victim of human trafficking, shall be punished by imprisonment for a term between six months and five years.
- (5) In the event that the criminal offence referred to in paragraphs (1) through (4) of this Article has been perpetrated by an official person while exercising his/her official duty, the perpetrator shall be punished by imprisonment for a term of no less than eight years.
- (6) In the event that the perpetration of the criminal offence referred to in paragraphs (1) and (3) has caused serious health damage, grievous bodily harm or the death of one or several persons, the perpetrator shall be punished by imprisonment for a term of no less than ten years.
- (7) Whether the person who is a victim of human trafficking consented to any form of exploitation referred to in paragraph (1) of this Article, shall bear no relevance to the existence of the criminal offence of human trafficking.
- (8) The items, vehicles and facilities used for the perpetration of the offence referred to in this Article shall be seized.

was aware that such actions involved a victim of human trafficking, shall be punished by imprisonment for a term five and 20 years.

- (4) Whoever seizes, holds, counterfeits or destroys personal identification documents for the purpose of perpetrating the offence referred to in paragraphs (1) and (2) of this Article, shall be punished by imprisonment for a term between three and fifteen years.
- (5) In the event that the offence referred to in paragraphs (1), (2), (3) and (4) of this Article has been perpetrated within an organised criminal group, the perpetrator shall be punished by imprisonment for a term of no less than ten years.
- (6) In the event that the criminal offence referred to in paragraphs (1), (2), (3) and (4) of this Article has been committed by an official person while executing official duty, the perpetrator shall be punished by imprisonment for a term of no less than eight years.
- (7) In the event that the perpetration of the criminal offence referred to in paragraphs (1) (2) and (3) has caused a serious health damage, grievous bodily harm or the death of one or several persons, the perpetrator shall be punished by imprisonment for a term of no less than twelve years.
- (8) Whether the child who is a victim of human trafficking consented to any form of exploitation referred to in paragraph (1) of this Article, shall bear no relevance for the existence of this criminal offence.

(9) Criminal proceedings shall not be conducted against the victim of human trafficking who was forced by the perpetrator of criminal offence to take part in perpetration of the criminal offence, insofar as such form of their conduct was a direct consequence of their status as the victim of human trafficking.

(9) Items, vehicles and facilities used for the perpetration of the offence referred to in this Article shall be confiscated.

(10) Criminal proceedings shall not be conducted against the victim of trafficking in children who was forced by the perpetrator of the criminal offence to take part in perpetration of the criminal offence, insofar as such form of his/her conduct was a direct consequence of his/her status as the victim of human trafficking.

ANNEX V: Compilation of recommendations from 2009 Report

Recommendation	Recommendation made to	Implementation status	Further information
Amend the sentencing ranges within the BiH Criminal Code to reflect that trafficking offences committed by a public official in the line of duty, or which deliberately or by gross negligence endanger the life of the victim are aggravating factors	Legislators, in consultation with the relevant ministries of justice	Yes	For more details see Annex II
Amend the titles and definitions of the Entity and Brčko District Criminal Codes for offences related to Trafficking in Human Beings for the Purpose of Prostitution and Enticing into Prostitution so as to eliminate the risk of charging improperly the international crime of human trafficking	Legislators, in consultation with the relevant ministries of justice	Mostly	To minimize the risks of under-charging of THB, the authorities opted for the introduction of criminal offences of human trafficking into all four criminal jurisdictions in BiH and modifications of provisions related to the incitement to prostitution in entities and Brčko District BiH CCs. For more details see Annex II and IV. However, as described in this Report, prosecutors continued to fail to recognize actual trafficking cases as such and charge traffickers under offences that carry lower sentences such as enticement to prostitution.
Ensure that the recommendations below find the appropriate support in Law.	Legislators, in consultation with the relevant ministries of justice	To the Mission's best knowledge, no policies were developed by any legislative body or relevant ministry to ensure implementation of the below recommendations	

Refer cases to the Office of the State Prosecutor, alternatively to the State Court, whenever any doubts arise as to the qualification of criminal conduct containing elements of trafficking in human beings	The judiciary, prosecutors and law enforcement officials, as applicable.	Partially	As described in this Report, before the introduction of criminal offences of THB into the entity and Brčko DistriBiH level criminal codes prosecutors often failed to recognize actual trafficking cases as such and charged them under offences that carry lower sentences instead of referring them to the POBiH.
Consider all aggravating circumstances prior to evaluating mitigating circumstances; such an assessment should include the weighing of potential infringements of human rights, giving specific attention to the age of victims, their number, the degree and duration of exploitation and the conditions to which the victims were exposed	The judiciary, prosecutors, and law enforcement officials, as applicable	Partially	As shown in this Report, despite a few positive examples in which the sentences can be described as proportionate to the gravity of the crime, overall sentencing practice in trafficking-related cases can be described as lenient.
Develop work aids for a consistent interpretation and human rights-oriented methodology in the application of Article 48 of the State Criminal Code and corresponding clauses in the Entity and the Brčko District Criminal Codes, upholding the international penal standards of effective, proportional and dissuasive criminal sanctions in cases of trafficking in human	The judiciary, prosecutors, and law enforcement officials, as applicable	To the Mission's knowledge, no such methodology has been developed to date.	
Endorse special investigative measures and other extraordinary prosecution tools for trafficking in human beings which enable the collection of evidence other than victims' testimony when justified by the security of potential victims and other human rights principles.	The judiciary, prosecutors, and law enforcement officials, as applicable	Partially	As described in this Report, the prosecution often regarded victims primarily as sources of information, rather than persons whose rights are violated, and who are, therefore, entitled to justice and thus relied heavily on victims' testimony to prove the case.

Suggest to legislators the contents of guidelines and other instruments that enhance co-ordination in line with the findings of this report.	The judiciary, prosecutors and law enforcement officials, as applicable	Partially	To enhance the capacities of the relevant law enforcement and prosecution authorities to investigate cases of THB in a coordinated manner, the Mission, together with the Strike Force and representatives of wider legal community, developed a Manual for Investigating THB.
Provide training on the of trafficking in human beings as understood by international law, with particular attention to the differences of the State and the Entity or the Brčko District Criminal Codes and the applicable criminal procedure	The Judicial and Prosecutorial Training Centres	Yes	The Mission has organized such training in co-operation with JPTCs. However, further training could be helpful on specific problem areas identified in this Report.
Provide training on penal law and techniques for assessing aggravating circumstances and other factors which have an influence on the determination of the sanction.	The Judicial and Prosecutorial Training Centres	Mostly	JPTCs have occasionally organized such training sessions. However, further training could be helpful on victims-centred and human -rights based approach to sentencing and other problem areas identified in this Report.

LIST OF ACRONYMS AND ABBREVIATIONS

BiH:	Bosnia and Herzegovina
BDBiH or Brčko District:	Brčko District of BiH
CC:	Criminal Code
CPC:	Criminal Procedure Code
CSW:	Centre for Social Welfare
CoE:	Council of Europe
ECATHB:	European (CoE) Convention on Action against Trafficking in Human Beings
ECHR:	European Convention on Human Rights
ECtHR:	European Court of Human Rights
EU:	European Union
FBiH:	Federation of Bosnia and Herzegovina
FRA:	Fundamental Rights Agency
HJPC BiH:	High Judicial and Prosecutorial Council of BiH
ODIHR:	OSCE Office for Democratic Institutions and Human Rights
OHCHR:	Office of the (UN) High Commissioner for Human Rights
OSR/CTHB:	Office of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings
Palermo Protocol:	Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
PBA:	Plea Bargain Agreement
PO:	Prosecutor's Office
RS:	Republika Srpska
SIPA:	State Investigation and Protection Agency
THB:	Trafficking in Human Beings
UNTOC:	United Nations Convention against Transnational Organised Crime
UN:	United Nations
UNODC:	United Nations Office on Drugs and Crime

